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6 Attorneys for Plaintiff Lolita Galvin, on behalf of herself and all "aggrieved employees" pursuant
7 to Labor Code § 2698 *et seq.*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF RIVERSIDE**

10 LOLITA GALVIN, on behalf of herself and
11 all "aggrieved employees" pursuant to Labor
12 Code § 2698 *et seq.*,

13 Plaintiff,

14 v.

15 EMPLOYER SOLUTIONS STAFFING
GROUP II, LLC, a Minnesota limited
liability company, CORONA MAGNETICS,
16 INC., a California corporation, and DOES 1
17 through 10, inclusive,

18 Defendants.

CASE NO: RIC2002048

Assigned to Hon. Harold Hopp, Dept. 1

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS' FEES, COSTS,
SERVICE AWARD PAYMENT, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
DISMISSING ACTION WITH PREJUDICE;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: June 17, 2024

Time: 8:30 a.m.

Dept.: 1

Reservation ID: 045744568069

Complaint Filed: June 18, 2020

1 **PLEASE TAKE NOTICE THAT** on June 17, 2024 at 8:30 a.m., or as soon thereafter as
2 the matter may be heard, in Department 1 of the above-entitled Court, located at 4050 Main Street,
3 Riverside, CA 92501, Plaintiff Lolita Galvin will and hereby does move unopposed for an Order:
4 (1) granting approval of the proposed settlement of claims brought pursuant to the Private Attorneys
5 General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”) set forth in the Parties’ Settlement
6 Agreement and Release of Private Attorneys General Act Claim (the “Settlement Agreement”); (2)
7 appointing Phoenix Settlement Administrators as the Settlement Administrator and approving
8 payment of its fees not to exceed \$2,950 from the Gross Settlement Amount; (3) directing
9 disbursement of the Gross Settlement Amount pursuant to the terms of the Settlement Agreement;
10 (4) directing payment of attorneys’ fees and litigation costs from the Gross Settlement Amount not
11 to exceed \$80,625 to Plaintiff’s counsel; (5) directing a Service Award Payment from the Gross
12 Settlement Amount in the amount of \$10,000 to Plaintiff Lolita Galvin; and (6) dismissing this
13 action with prejudice.

14 This motion will be based on this Notice, the supporting memorandum of points and
15 authorities, the Parties’ Settlement Agreement, the Declarations of Daniel F. Gaines, Plaintiff Lolita
16 Galvin, and Jodey Lawrence, the documents and records on file in this matter, and such additional
17 arguments, authorities, and evidence and other matters as may be presented by the Parties hereafter.

18 Date: May 22, 2024

Respectfully submitted,

GAINES & GAINES, APLC

21 By: *Daniel F. Gaines*
22 DANIEL F. GAINES
23 ALEX P. KATOFISKY
24 Attorneys for Plaintiff
25 LOLITA GALVIN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Lolita Galvin (“Plaintiff”), under the Labor Code’s Private Attorneys General Act
4 of 2004 (“PAGA”), respectfully moves this Court for an Order granting approval of the proposed
5 Settlement of the above-captioned lawsuit against Defendants Employer Solutions Staffing Group
6 II, LLC (“ESSG”) and Corona Magnetics, Inc. (“Corona”) (ESSG and Corona are collectively
7 referred to as “Defendants”). The proposed Settlement will dispose of the Released PAGA Claims
8 asserted by Plaintiff on behalf of the State and approximately 121 individuals who were employed
9 by Defendant Corona and/or Defendant ESSG while placed to work for Defendant Corona in
10 California as hourly and/or non-exempt employees at any time from April 6, 2019 through October
11 27, 2023 (the “PAGA Period”) (the “PAGA Members”). *See* Settlement Agreement, at ¶¶ 9, 16-
12 17.

13 This case addresses claimed violations of employee protections embodied in the California
14 Labor Code and penalties stemming therefrom for the violation of the PAGA. Plaintiff alleged that
15 Defendants failed to pay all minimum and overtime wages earned by Plaintiff and PAGA Members,
16 in violation of Labor Code §§ 510, 558, and 1194; failed to provide Plaintiff and PAGA Members
17 with legally compliant rest periods, or compensation in lieu thereof, in violation of Labor Code §§
18 226.7 and 558; failed to issue accurately itemized wage statements to Plaintiff and PAGA Members,
19 in violation of Labor Code §§ 226(a) and 226.3; and failed to timely pay Plaintiff and PAGA
20 Members all wages due at the separation of their employment, in violation of Labor Code §§ 201-
21 202. As a result of Defendants’ alleged violations of the Labor Code, approximately 121 employees
22 are claimed to have suffered Labor Code violations for up to 10,950 aggregate pay periods¹ at the
23 rate of \$100 each based on PAGA’s penalty provisions. *Gaines Decl.*, ¶ 31.

24 As discussed throughout the Motion, this Settlement achieves great value for Plaintiff,
25 PAGA Members, and the State of California. While Defendants’ potential liability could be up to
26 \$3,300,550, if penalties were stacked [*see* Motion at § II(D)], there is no California authority that
27

28 ¹ The pay period count was calculated based on approximately 75 employees paid weekly from
April 6, 2019 through January 25, 2022 (the date of the first mediation).

1 expressly permits the practice of stacking penalties [*see* Motion at § III(B)(2)]. Additionally, Courts
2 have held that Defendants may not be subject to heightened penalties if they were not notified by
3 the Labor Commissioner or any court in California that they were subject to the California Labor
4 Code [*see id.*]. Therefore, the more accurate measure of Defendants' potential liability is to multiply
5 the 10,950 aggregate pay periods by \$100 each, which totals approximately \$1,095,000 in
6 theoretical exposure. *See* Gaines Decl. at ¶ 31.

7 In deciding whether to grant approval of the proposed Settlement, the primary issue to be
8 decided is whether the Settlement is fair, adequate and reasonable. As set forth herein, the proposed
9 Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is
10 the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and
11 hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative
12 strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on
13 the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and
14 likely duration of further litigation.

15 The value achieved by the Settlement may be gleaned from the fact that the Labor and
16 Workforce Development Agency ("LWDA") and the approximately 121 PAGA Members
17 encompassed by the Settlement will receive no less than \$93,925 under the terms of the Settlement,
18 which, pursuant to the operative statute, shall be allocated "75 percent to the Labor and Workforce
19 Development Agency . . . and 25 percent to the Aggrieved Employees." *See* Cal. Lab. Code §
20 2699(i). This is a reasonable recovery, not only because further litigation may have resulted in a
21 net-zero recovery based on the defenses available to Defendants, but because the amount secured
22 by Plaintiff is sizable and in line with similar settlements of these types of claims under PAGA. It
23 is also important to underscore that all penalty amounts paid to PAGA Members will be an
24 unexpected windfall, as employees typically do not bring individual lawsuits asserting only PAGA
25 penalties. Such employees preserve their right to assert claims against Defendants for unpaid wages
26 and statutory penalties.

27 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this
28 Court enter the Order submitted herewith.

1 **II. STATEMENT OF THE CASE AND THE SETTLEMENT**

2 **A. The Parties**

3 Defendant ESSG partners with businesses to provide employment staffing solutions.
4 Defendant Corona manufactures a wide range of electro-magnetic components. Gaines Decl. at ¶
5 6.

6 Defendant ESSG employed Plaintiff as a non-exempt employee from June 2019 through
7 March 2020 and placed her to work at with Defendant Corona in Riverside County, California. The
8 PAGA Members are all individuals who were employed by Defendant Corona and/or Defendant
9 ESSG while placed to work for Defendant Corona in California as hourly and/or non-exempt
10 employees at any time from April 6, 2019 through October 27, 2023. Gaines Decl. at ¶ 7.

11 **B. The Claims Asserted**

12 Plaintiff asserts claims that Defendants failed to pay all minimum and overtime wages
13 earned by Plaintiff and PAGA Members, failed to provide Plaintiff and PAGA Members with
14 legally compliant rest periods, or compensation in lieu thereof, failed to issue accurately itemized
15 wage statements to Plaintiff and PAGA Members, and failed to timely pay Plaintiff and PAGA
16 Members all wages due at the separation of their employment. Plaintiff asserts these claims under
17 PAGA, on behalf of herself, individually, and on behalf of the State of California and other PAGA
18 Members, seeking civil penalties for the alleged Labor Code violations. Gaines Decl. at ¶ 8.

19 **C. Procedural Posture**

20 On April 6, 2020, pursuant to Labor Code section 2699.3, Plaintiff gave written notice by
21 online filing with the LWDA and by certified mail, return receipt requested, to Defendants, of the
22 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
23 to support the alleged violation. Gaines Decl., ¶ 9; **Exhibit B** (LWDA Notice Letter). On June 18,
24 2020, and after the LWDA declined to take action within the statutorily permissible time with
25 respect to Plaintiff's April 6, 2020 letter, Plaintiff filed her representative action complaint in this
26 Court. Gaines Decl., ¶ 10.

27 **D. Plaintiff's Counsel's Investigation**

28 Counsel for Plaintiff engaged in targeted, formal and informal discovery of Defendants'

1 alleged Labor Code violations, which specifically evaluated the strength and value of the PAGA
2 claims in preparation for a resolution of this Action. Gaines Decl. at ¶ 11.

3 Plaintiff's Counsel served special interrogatories, form interrogatories, and requests for
4 production of documents on both Defendants, which both Defendants served responses to. Plaintiff
5 also had her deposition taken. Gaines Decl. at ¶ 12.

6 Plaintiff's Counsel obtained and reviewed (i) relevant policy documents relating to the
7 employment of Plaintiff and PAGA Members; and (ii) data relating to the number of alleged
8 violations, including time data. Gaines Decl. at ¶ 13.

9 Based on the information received, as well as through discussions with Defendants'
10 Counsel, Plaintiff's Counsel was able to (i) determine the total number of distinct individuals falling
11 within the definition of "PAGA Member" for the relevant statutory period and (ii) construct a
12 damage model that calculated the maximum amount of PAGA penalties that could be levied against
13 Defendants within the PAGA Period based on employee timekeeping data produced by Defendants.
14 Gaines Decl. at ¶ 14. At all relevant times, Defendants have disputed Plaintiff's claims and
15 contested both the existence of and extent of liability as alleged by Plaintiff. *Id.*

16 Plaintiff's Counsel's experience in litigating similar "representative" wage and hour claims,
17 the degree of investigation that was conducted here, the amount of data that was obtained, and the
18 discussions guided by mediation was sufficient to determine the potential value of the PAGA claim
19 and to evaluate the strength of this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-5, 15.
20 Defendants, however, disputed Plaintiff's claims and disputed both the existence of and extent of
21 liability as alleged by Plaintiff.

22 Below is Plaintiff's PAGA damage model, which includes stacked penalties.

23 **Lolita Galvan v. Employer Solutions & Corona Magnetics, Inc.**
24 **PLAINTIFF'S CONFIDENTIAL DAMAGE MODEL**

DESCRIPTION	TOTAL	CALCULATION
Number of PAGA Pay Periods (April 6, 2019 - January 25, 2022)	10,950	(approx. 75 employees who were paid weekly for approx. 146 weeks)
LC 2699 - PAGA Penalties (Labor Code 510/558/1194) - Failure to Pay all Minimum and Overtime Wages	\$1,095,000	(\$100/pay period)
LC 2699 - PAGA Penalties (Labor Code 226.7/558) - Failure to Provide Rest Periods	\$1,095,000	(\$100/pay period)
LC 2699 - PAGA Penalties (Labor Code 226/226.3) - Wage Statement Penalties	\$1,095,000	(\$100/pay period)
LC2699 - PAGA Penalties (Labor Code 201-202) - Failure to Timely Pay Wages at Separation of Employment	\$4,600	(approx. 46 former employees x \$100 each)
TOTAL PAGA PENALTIES	\$3,300,550.00	

1 Gaines Decl. at ¶ 16.

2 Prior to settlement, Plaintiff's Counsel created the above damage analysis using
3 assumptions based on the sampling information obtained through formal and informal discovery.
4 Defendants' time data consisted of scanned copies of punch in and out records, many of which
5 were illegible. Accordingly, Defendants' Counsel provided Plaintiff's Counsel with the number of
6 PAGA Members and the aggregate number of pay periods worked by PAGA Members through
7 mediation and Plaintiff's Counsel prepared an assumption-based damage analysis based on these
8 numbers. This damage analysis reveals that the negotiated settlement falls within a realistic range
9 of recovery on PAGA Members' claims. Gaines Decl. at ¶ 17.

10 Plaintiff alleges that Defendants failed to pay PAGA Members all wages due by rounding
11 down the hours reflected on PAGA Members' time records to pay fewer hours than were actually
12 worked, in violation of Labor Code §§ 510, 558, and 1194. Based on the records provided,
13 Defendants utilized a 1/10th of an hour rounding practice. Gaines Decl. at ¶ 18.

14 Defendants' liability for this claim was up to \$1,095,000 in civil PAGA penalties, assuming
15 one \$100 penalty per pay period. Defendants maintained numerous defenses to this claim, including
16 that any rounding done was fair and neutral on its face and any underpayment of wages, if any,
17 would be minimal. Gaines Decl. at ¶ 19.

18 Plaintiff also alleges that PAGA Members were routinely denied, and not authorized to take,
19 a proper, timely, uninterrupted, rest period for every four hours worked, but were not paid premium
20 wages of one hour's pay for each missed rest period. Plaintiff further contends that Defendants
21 maintained an unlawful written rest period policy requiring employees to remain on the premises
22 during these breaks. This subjected Defendants to up to \$1,095,000 in theoretical civil PAGA
23 penalties. Defendants maintained various defenses to this claim: that employees always took their
24 rest periods; that any employee who did not take a rest period voluntarily waived it; that Defendants
25 did not know or have any reasonable reason to know that any employee was working through
26 authorized rest periods; that Defendants maintained legally compliant written rest period policies;
27 and that this claim had significant manageability issues. What's more, Defendants contend that all
28 employees take their rest breaks at the same time in order to allow production to stop, and can

1 always leave the premises during their breaks notwithstanding the policy. Gaines Decl. at ¶ 20.

2 Plaintiff sought up to \$1,095,000 under PAGA for wage statement violations pursuant to
3 Labor Code § 226, premised on “derivative” violations for failing to pay all wages due, as discussed
4 above. Defendants argued that Plaintiff would not prevail on her underlying unpaid wages and rest
5 period claims at all, so there would be no wage statement penalties awarded. Defendants argued
6 that employees were always appropriately compensated and suffered no injury, such that a
7 condition to recovery of penalties under Labor Code § 226 was not satisfied. Gaines Decl. at ¶ 21.
8 What’s more, a recent California Supreme Court case has significantly undercut the viability of this
9 claim. *See Naranjo v. Spectrum Security Services, Inc.* 2024 WL 1979980 (Cal. 2024).

10 Finally, Plaintiff asserted a claim for waiting time penalties under Labor Code § 203 which
11 was valued at up to \$4,600 for approximately 46 former employees (one violation per separated
12 employee). This claim also faced substantial risk because of the good faith defense proffered by
13 Defendants. Gaines Decl. at ¶ 22.

14 If Plaintiff stacked penalties, the maximum value of the PAGA claims would be
15 approximately \$3,300,550. However, recovery on these claims was not certain. PAGA claims are
16 discretionary, such that the Court could (and almost certainly would) decline to award their full
17 value. The Court could award far less than the maximum value on these penalty claims, particularly
18 where, as here, they greatly exceed the value of the underlying wage claims. Considering the
19 numerous claims asserted by Plaintiff and the obstacles to prevailing on many of them, it is possible
20 that she would not prevail on one or more of them, such that her PAGA claims as to some or all of
21 her claims would also fail. The compromised settlement amount takes these risks into account. A
22 discount on the maximum value of PAGA Members’ claims was required (and warranted) to
23 resolve the matter at this stage of the litigation. Gaines Decl. at ¶ 23.

24 **E. Settlement Negotiations**

25 On January 25, 2022, the Parties participated in a mediation session with a respected
26 mediator and retired jurist, Hon. Michael A. Latin (Ret). This mediation did not end in a resolution.
27 On September 27, 2023, the Parties again participated in a mediation session with a respected
28 mediator, Brandon McKelvey, Esq. During the second mediation, the Parties engaged in arm’s-

length negotiations and reached a resolution of the PAGA claims asserted in this Action. Gaines Decl. at ¶ 24.

F. The Proposed Settlement

The Parties jointly prepared and executed a Settlement Agreement and Release of Private Attorneys General Act Claim (the “Settlement” or “Settlement Agreement”). Gaines Decl., ¶ 25; **Exhibit C**. The Settlement Agreement sets forth the terms of the Settlement reached by the Parties, including the following key points:

1. Defendants agree to settle this matter for the payment of \$187,500 (hereinafter the “Gross Settlement Amount,” payable \$15,000 by Defendant ESSG and \$172,500 by Defendant Corona [*see* Settlement at ¶ 31]), which shall be all inclusive, encompassing (i) all payments to the LWDA and PAGA Members, (ii) any and all costs of third-party administration of the settlement, (iii) Plaintiff’s Counsel’s attorneys’ fees and costs of suit, and (iv) a modest Service Award Payment to Plaintiff, which also compensated her for a full general release of all claims. *See* Settlement Agreement, at ¶¶ 30 (a) – (e).

2. The total sum available for payment of PAGA penalties shall be calculated by deducting from the \$187,500 Gross Settlement Amount, \$80,625 for the payment of Plaintiff’s Counsel’s fees and costs (\$65,625 in fees and \$15,000 in costs), \$10,000 for the payment of Plaintiff’s Service Award Payment, and the costs of administration not to exceed \$2,950, which yields \$93,925, and of which seventy-five percent (75%) or \$70,443.75, shall be distributed to the LWDA, and the remaining twenty-five percent (25%) or \$23,481.25, shall be distributed to the PAGA Members. *See* Settlement Agreement, at ¶¶ 30 (a)-(e).

3. All PAGA Members will receive a pro rata share of the \$23,481.25 allocated to them, which shall be distributed based on the number of pay periods each Aggrieved Employee worked for Defendants in California during the PAGA Period. *See* Settlement Agreement, at ¶ 30(e). Although these calculations will not be made until after approval, a rough estimation of the value to the approximately 121 individuals falling within the definition of “PAGA Member” may be gleaned from the fact that an equal division would provide about \$194.06 to each PAGA Member, net of payments to the LWDA, the Settlement Administrator, attorney’s fees and costs,

1 and a Service Award Payment to Plaintiff. The LWDA will be paid a substantial \$70,443.75. *See*
2 *Gaines Decl.*, at ¶ 27.

3 4. In exchange for the above settlement consideration, Defendants and the Released
4 Parties shall be entitled to a limited release as follows²:

5 Upon approval by the Court of this Settlement, and subject to Defendants' payment
6 of the GSA, Plaintiff, individually and in her representative capacity on behalf the
7 State of California and the PAGA Members, will fully and finally release and
8 discharge the Released Parties from all claims for penalties arising under the Private
9 Attorneys General Act of 2004 that were either alleged, or that reasonably could
10 have been alleged based on the factual allegations contained in the Lawsuit,
11 including, but not limited to, claims pursuant to Labor Code sections, 201, 202, 203,
12 226(a), 226.3, 226.7, 510, 558, and 1194, and any and all other civil penalties,
13 attorneys' fees, and/or costs under the Private Attorneys General Act of 2004, within
14 the PAGA Period (the "Released PAGA Claims").

11 "Released Parties" means Defendants, and their present and former parents,
12 subsidiaries, co-employers, and each of their respective present and former owners,
13 boards, directors, officers, trustees, shareholders, members, partners, employees,
14 agents, attorneys, representatives, successors and assigns, and present and former
15 parents, subsidiaries, affiliated and related parties, and each of them.

15 *See Settlement Agreement*, at ¶ 21 and 32.

16 5. Additionally, Plaintiff is entering into a full and general release for all claims against
17 Defendants, which is far broader than the release given by the PAGA Members. *See Settlement*
18 *Agreement*, at § E (a) – (c).

19 5. Settlement administration, which is to be paid from the Gross Settlement Amount,
20 shall not exceed \$2,950. *See Declaration of Jodey Lawrence ("Lawrence Decl.")*, ¶ 16; **Exhibit B**
21 to Lee Decl. Phoenix Settlement Administrators, a reputable settlement administration company,
22 has agreed to administer the settlement for this amount, submitting a competitive bid. *Id.* at ¶¶ 5-
23 15; **Exhibit A**.

24 6. As detailed herein, Plaintiff's counsel seeks an award of attorneys' fees and
25 litigation costs totaling \$80,625, and Plaintiff seeks a Service Award Payment of \$10,000. *See*

26 ² This comports with settled California Supreme Court authority. *See Arias v. Superior Court*
27 (2009) 46 Cal. 4th 969, 986 (concluding that "with respect to the recovery of civil penalties,
28 nonparty employees as well as the government are bound by the judgment in an action brought
under the act . . .").

1 Settlement Agreement, at ¶¶ 30(b)-(c). Plaintiff's Service Award Payment of \$10,000 is also
2 consideration for her full general release of all claims as to the Released Parties. *Id.* at ¶ 20.

3 7. Finally, under the terms of the Settlement Agreement, the value of checks
4 uncashed more than 180 days after issuance shall be remitted to the Unclaimed Property Fund of
5 the California State Controller's Office to be held in the name of the PAGA Member. *See*
6 Settlement Agreement, at ¶ 41. The Parties agree that it is in the best interest of the PAGA
7 Members for the value of checks uncashed more than 180 days after issuance to be remitted to
8 the Unclaimed Property Fund of the California State Controller's Office to be held in the name
9 of the Aggrieved Employee. *Id.* Counsel for Plaintiff attests that their office regularly receives
10 calls from class members or aggrieved employees years after a case has settled to inquire about
11 obtaining their settlement share because they did not cash their check in time, lost their check, or
12 never received their check. Gaines Decl. at ¶ 29. By remitting the unclaimed checks to the State
13 Controller, the PAGA Members have a chance to receive their individual settlement payment
14 after the check cashing deadline. *Id.*

15 *Cy pres*, expanded to its "full implication," is *cy pres comme possible*, which means "as
16 near as possible." *Estate of Jackson* (1979) 92 Cal.App.3d 486, 489. *Cy pres* "is the doctrine that
17 equity will, when a charity is originally or later becomes impossible, inexpedient, or
18 impracticable of fulfillment, substitute another charitable object which is believed to approach
19 the original purpose as closely as possible." *Id.* Here, the nearest possibility for the PAGA
20 Members to obtain their recoveries is to allow the uncashed checks to be remitted to the
21 Unclaimed Property Fund of the California State Controller's Office to be held in the name of
22 the Aggrieved Employee.

23 **III. LEGAL ARGUMENT**

24 **A. Standards for Approval of a PAGA Settlement**

25 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
26 statute, which states that the "[t]he superior court shall review and approve any settlement of any
27 civil action filed pursuant to this part." *See Labor Code* § 2699(1)(2).

28 As with any settlement, the Court must be mindful in conducting its inquiry that

1 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
2 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222,
3 24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding of
4 absolutes and an abandoning of highest hopes’” [*Officers for Justice v. Civil Service Com.*, 688
5 F.2d 615, 624 (9th Cir., 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
6 of wasteful and expensive litigation that induce consensual settlements.” *See id.*, at 625. As such,
7 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
8 or “judged against a hypothetical or speculative measure of what might have been achieved by the
9 negotiators.” *See id.*

10 Although the operative PAGA statute does not set forth the criteria on which a PAGA
11 settlement is to be judged, California law does state that some of the factors for review of a class
12 action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. section 382 and Cal. Rules of Court,
13 Rule 3.769, may be “useful in evaluating the fairness of a PAGA settlement” to the reviewing court.
14 *See Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56, 77 (“Thus, while PAGA does not require
15 the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for
16 settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public
17 and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors
18 used to evaluate class action settlements bear on a settlement’s fairness—including the strength of
19 the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of
20 further litigation, and the settlement amount—these factors can be useful in evaluating the fairness
21 of a PAGA settlement.”). Courts within California have continued to approve settlements of PAGA
22 claims using Rule 23 criteria³. However, it is important to underscore that not all Rule 23 factors

23
24 ³ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
25 balancing of several factors which may include, among others, some or all of the following: [1] the
26 strength of plaintiffs’ case; [2] the risk, expense, complexity, and likely duration of further
27 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
28 in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the
experience and views of counsel; [7] the presence of a governmental participant; and [8] the
reaction of the class members to the proposed settlement.” *See Linney v. Cellular Alaska P’ship*,
151 F.3d 1234, 1242 (9th Cir., 1998). “Not all of these factors will apply to every class action
settlement” and “[u]nder certain circumstances, one factor alone may prove determinative in

1 can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered
2 a class action but a law enforcement action, and therefore does not have to meet the requirements
3 of Rule 23.” See *Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan.
4 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2,
5 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010).
6 Based thereon, a court’s review of a PAGA settlement necessarily implicates the following unique
7 features that render the approval process completely distinct from approval of a class action
8 settlement under Rule 23 or C.C.P. § 382 and Cal. Rules of Court, Rule 3.769.

9 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
10 concerned with the amount which “Aggrieved Employees” are to receive, but rather, must focus on
11 the total settlement amount in achieving PAGA’s objective.

12 While “[a PAGA] action is . . . designed to protect the public and penalize the employer for
13 past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take
14 into account the fact that settlement of a PAGA claim – like any settlement – involves a
15 “compromise” that stops short of rendering findings of liability and damages. Moreover, the Court
16 must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for
17 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties
18 for the government that otherwise may not have been assessed and collected by overburdened state
19 enforcement agencies.” See *Ochoa-Hernandez v. CJADER Foods, Inc.*, 2010 U.S. Dist. LEXIS
20 32774, 12 (N.D. Cal. Apr. 2, 2010).

21 **B. The Settlement Meets All the Criteria For Approval**

22 Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA
23 considerations detailed above – the proposed Settlement embodies all of the key features of a
24 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for
25 approval.

26 \\\n

27
28 finding sufficient grounds for court approval.” See *Nat’l Rural Telcoms. Coop. v. DIRECTV, Inc.*,
221 F.R.D. 523, 525-526 (C.D. Cal., 2004).

1 **1. The Factors Giving Rise to a Presumption of Fairness Exist**

2 In conducting a review of a settlement, it is generally recognized that an “agreement . . .
3 reached through arms-length negotiation between experienced parties . . . is entitled to a
4 presumption of fairness.” *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS
5 43377, 44 (C.D. Cal. Apr. 12, 2010).

6 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-
7 length negotiations brokered through respected third party neutrals [Gaines Decl. at ¶ 24], (2) was
8 negotiated by Counsel with significant experience in similar wage and hour litigation [*see id.*, at ¶¶
9 2-5, 35 and **Exhibit A**], (3) occurred after Counsel had conducted sufficient investigation to
10 evaluate the strength and potential value of the PAGA claim, as well as evaluating the risks of
11 litigating this claim through trial. *See id.*, at ¶¶ 11-24, 35. Based thereon, the Court should give
12 considerable weight to the competency and integrity of counsel in assuring itself that the Settlement
13 Agreement represents an arms-length transaction entered without self-dealing or other potential
14 misconduct.

15 **2. The Relative Strength Of The PAGA Claim, And the Realistic Range of**
16 **Outcomes In The Litigation, Strongly Favor Approval of the Settlement**

17 The relative strength of the PAGA claim brought by Plaintiff weighs in favor of the Court
18 finding that the settlement is fair, adequate, and reasonable, as Defendants maintained numerous
19 defenses to the theories of penalty-liability put forward by Plaintiff that, if successful, had the
20 potential to completely eliminate any recovery.

21 This case addresses violations of important employee protections embodied in the
22 California Labor Code – namely, that Defendants failed to pay all minimum and overtime wages
23 earned by Plaintiff and PAGA Members, in violation of Labor Code §§ 510, 558, and 1194; failed
24 to provide Plaintiff and PAGA Members with legally compliant rest periods, or compensation in
25 lieu thereof, in violation of Labor Code §§ 226.7 and 558; failed to issue accurately itemized wage
26 statements to Plaintiff and PAGA Members, in violation of Labor Code §§ 226(a) and 226.3; and
27 failed to timely pay Plaintiff and PAGA Members all wages due at the separation of their
28 employment, in violation of Labor Code §§ 201-202. *See Gaines Decl.* at ¶ 30.

1 Defendants' realistic maximum theoretical exposure in this Action, without stacking
2 penalties, totals approximately \$1,095,000 computed by multiplying 10,950 aggregate pay periods
3 by \$100 each. *See* Gaines Decl. at ¶ 31. There is no California authority that expressly permits the
4 practice of counting multiple violations/penalties that occur within the same pay period, known as
5 "stacking" penalties. Plaintiff's Counsel is aware of no court that has actually stacked such PAGA
6 penalties for multiple violations (meaning the "market" for PAGA settlements is based on no
7 stacking of penalties) and given the circumstances of this case, it is unlikely that this Court would
8 impose a massive penalty by stacking the PAGA penalty claims against Defendants. *See* Gaines
9 Decl. at ¶ 31. Although stacking penalties is not unlawful, the majority of cases that address awards
10 of PAGA penalties focus on the court's discretion to reduce awards. *See Romo v. GMRI, Inc.*, 2014
11 WL 11320647, at *7 (C.D. Cal. Feb. 18, 2014) ("The court retains discretion over awards under a
12 PAGA claim"); *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413, at *4 (C.D. Cal.
13 Jan. 31, 2011) ("The PAGA text also provides the Court with the discretion to limit the amount
14 Plaintiffs may recover from the employer."); *Bright v. 99c Only Stores* (2010) 189 Cal. App. 4th
15 1472, 1480 n.8 ("The trial court has discretion to award less than the maximum amount of the civil
16 penalty"). Based thereon, the non-stacking/one penalty per pay period is an appropriate
17 evaluation for maximum potential exposure in this case.

18 Additionally, the Ninth Circuit has held that heightened penalties are not appropriate where
19 the Defendants were not notified by the Labor Commissioner or any court that it was subject to the
20 California Labor Code. *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021). *See also*
21 *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 340 (reversing heightened penalties
22 awarded by trial court for Labor Code § 226.3 because "the plain language of the statute [Labor
23 Code § 226.3] provides that heightened penalties apply only where the employer fails to provide
24 wage statements or fails to keep required records.") Further, courts are often hesitant to award a
25 heightened penalty where there is no prior citation by the Labor Commissioner. *See Bernstein* at
26 1144. *See also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (holding that
27 "[u]ntil the employer has been notified that it is violating a Labor Code provision...the employer
28 cannot be presumed to be aware that its continuing underpayment of employee's is a violation

1 subject to penalties.”) (internal quotations omitted). Defendants were not notified by the Labor
2 Commissioner or any court that it was subject to the California Labor Code, and have not been
3 previously cited by the Labor Commissioner for Labor Code violations. Therefore, any violations
4 prior to Plaintiff’s April 6, 2020 LWDA letter are not subject to heightened penalties. *See also*
5 *Naranja v. Spectrum Security Services* 2024 WL 1979980 (Cal. 2024) (holding that (1) an
6 employer’s good faith, but mistaken, belief that it provided adequate wage statements precluded an
7 award of civil penalties for a knowing an intentional failure to provide accurate wage statements;
8 and (2) an employer’s reasonable, good faith basis for believing it was complying with California
9 wage and hour law precluded the employer from being held liable for civil penalties).

10 Furthermore, Defendants contend they acted within the requirements of California law at
11 all times as to all PAGA Members. In particular, Defendants contend that they paid all employees
12 all wages due. Defendants also contend that they maintain compliant rest break practices.
13 Defendants further contend that not every pay period at issue involved an alleged Labor Code
14 violation subject to civil penalties. Moreover, Defendants maintained that even if the Court did
15 award penalties, the Court could and would *substantially* reduce the penalties awarded based on
16 the discretionary factors contained in Labor Code § 2699(e)(2) (“In any action by an aggrieved
17 employee . . . , a court may award a lesser amount than the maximum civil penalty amount specified
18 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
19 result in an award that is unjust, arbitrary and oppressive, or confiscatory.”). *See* Gaines Decl., ¶
20 32.

21 Based on these disputes, which had the potential to completely eliminate Plaintiff’s
22 recovery, the range of realistic “litigation outcomes” on the Plaintiff’s PAGA claim was defined
23 by a “maximum possible liability” amount of approximately \$1,095,000 [Gaines Decl., ¶ 33], and
24 a net-zero recovery based on the defenses asserted by Defendants. Notwithstanding the existence
25 of such issues, the Settlement achieves a significant benefit – approximately 17% recovery of the
26 maximum possible liability. As such, this factor weighs very heavily in favor of resolution by way
27 of the compromise set forth in the Settlement Agreement. Gaines Decl., ¶ 33.
28

1
2 **3. The Risk, Expense, and Complexity of Further Litigation Balances**
3 **Strongly in Favor of Approval of the Settlement**

4 Approval of the Settlement Agreement is also appropriate in light of the risk, expense, and
5 complexity of further litigation. As discussed above, the Settlement Agreement takes into
6 consideration the specific factual and legal hurdles faced by Plaintiff in establishing Defendants'
7 penalty-liability in this case, which again, may have resulted in a net-zero recovery. Any recovery
8 on these claims is not certain. And even when liability is found, PAGA claims are discretionary,
9 such that the Court could decline to award their full value. Some of Plaintiff's claims are also
10 derivative, and as such, Plaintiff must prevail on her underlying Labor Code claims in order to
11 prevail on the derivative claims. These risks – when balanced with the fact that the settlement
12 achieved a very significant recovery (as demonstrated below), and that further litigation posed a
13 risk of diminishing such recovery by increasing litigation expenses – weigh strongly in favor of
14 settlement approval.

15 **4. The Benefits Conferred by the Settlement Balance in Favor of Approval**

16 The Settlement Agreement provides a significant monetary benefit that falls well within
17 “the range of an acceptable settlement” under the circumstances, which is the standard on which
18 the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and
19 reasonable even where it only provides a fraction of what could have been obtained at trial:

20 The proposed settlement is not to be judged against a hypothetical or
21 speculative measure of what might have been achieved by the
22 negotiators.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d at
23 625 (emphasis in original). Thus, “the very essence of a settlement is
24 compromise, ‘a yielding of absolutes and an abandoning of highest
25 hopes.’” *Id.* at 624 (citations omitted). As the Second Circuit has
26 pointed out: “The fact that a proposed settlement may only amount
27 to a fraction of the potential recovery does not, in and of itself, mean
28 that the proposed settlement is grossly inadequate and should be
disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 &
n.2 (2nd Cir. 1974).

26 *See Linney, supra*, 151 F.3d at 1242.

27 Here, after all deductions are made for administration, an enhancement award, attorneys'
28 fees and costs, \$93,925 will be paid out, of which \$70,443.75 (i.e. 75%) will go to the LWDA, and

1 \$23,481.25 (i.e. 25%) will go to the PAGA Members, as required by Labor Code § 2699(i) (“civil
2 penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor
3 and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”). *See*
4 Settlement Agreement, at ¶¶ 30(d)-(e).

5 This result is exceptional, as settlements of PAGA claims impacting thousands of
6 individuals have been approved as reasonable for amounts far less than the payment in this case.
7 *See e.g., Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27,
8 2012) (“Defendants has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the
9 \$10,000, 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will
10 benefit the class The Court finds that the PAGA payment is set at a reasonable amount, and it
11 shall be approved.”); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D.
12 Cal. Oct. 29, 2012) (“GTI agrees to allocate \$10,000 to Plaintiff’s PAGA claims, and will pay
13 \$7,500 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports
14 with settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
15 allocation of the Settlement to Plaintiff’s PAGA claim.”); *Schiller v. David's Bridal, Inc.*, 2012
16 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) (“Pursuant to the Settlement Agreement, the
17 parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .
18 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
19 be approved.”); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
20 2012) (“Pursuant to the Settlement Agreement, Defendants has agreed to pay \$15,000 to the
21 California Labor and Workforce Development Agency The Court finds that the PAGA
22 payment is set at a reasonable amount, and it shall be approved.”).⁴

23 Thus, notwithstanding the existence of issues having the potential to completely eliminate
24 recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds
25

26 ⁴ Significantly, each of the above-cited actions involved a *higher* number of “aggrieved employees”
27 than at issue here. *See Franco*, 2012 U.S. Dist. LEXIS 169057, 14 (“2,055 Class Members were
28 ultimately identified”); *Garcia*, 2012 U.S. Dist. LEXIS 160052, at 12 (class comprised of
“approximately 1,869 individuals”); *Schiller*, 2012 U.S. Dist. LEXIS 80776, 16 (“3,327 California
Class members were ultimately identified”); *Gong-Chun*, 2012 U.S. Dist. LEXIS 96828, 18 (“2,051
California Class Members were ultimately identified”).

1 typical PAGA awards routinely approved by the courts, but it also recovers monies for PAGA
2 Members which they otherwise would not receive. As such, this factor balances strongly in favor
3 of approval of the Settlement.

4 **5. The Scope of the Release is Narrowly Tailored**

5 As discussed above, the California Supreme Court has concluded that in the context of
6 PAGA “the nonparty employees, because they were not given notice of the action or afforded any
7 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
8 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in
9 exchange for the foregoing consideration is limited to the civil penalties asserted in the Action
10 under Labor Code §§ 2698 *et seq.* As such, the scope of the release in the Settlement Agreement
11 is narrowly tailored and favors approval of the Settlement. It does not encompass wages or any
12 recovery other than PAGA civil penalties. *See Settlement Agreement*, at ¶ 32. *See also Proposed*
13 *Order* at ¶ 9.

14 **6. The Experience and Views of Plaintiff’s Counsel Favor Approval of the Settlement**

15 Plaintiff’s Counsel has a significant degree of experience in complex wage and hour
16 litigation. *See Gaines Decl.*, ¶¶ 2-5, 31-42, *Gaines Decl.* at **Exhibit A**. In the view of Plaintiff’s
17 Counsel, the benefit conferred by the proposed Settlement is fair, reasonable, and adequate under
18 the circumstances, as it reflects a reasoned compromise which takes into consideration the risks
19 inherent in this case, which had the potential to completely eliminate recovery. *Gaines Decl.*, ¶¶
20 11-24, 31-42. As such, this factor balances in favor of approval of the Settlement.

21 **7. The Extent of Discovery Completed And The Stage Of The Proceedings** 22 **Favor Approval of the Settlement**

23 In evaluating this element, the Court should be mindful that “formal discovery is not a
24 necessary ticket to the bargaining table” [*Linney*, 151 F.3d at 1239], as the relevant consideration
25 is “whether ‘the parties have sufficient information to make an informed decision about
26 settlement.’” *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at
27 26 (C.D. Cal. Nov. 9, 2011).

28 Notwithstanding, the Parties engaged in extensive formal and informal discovery, sufficient

1 to enable Plaintiff's Counsel to evaluate the strength and value of the claim for purposes of
2 settlement. Gaines Decl., ¶¶ 11-24. Prior to mediation, Defendants provided Plaintiff with
3 documents related to the policies and practices at issue in this PAGA action. As discussed above,
4 Plaintiff's Counsel's investigation was sufficient to, among other things, tabulate with precision
5 the total number of alleged Labor Code violations at issue during the PAGA Period and identify
6 the total number of individuals falling within the definition of "PAGA Member" for the PAGA
7 Period.

8 Based on Plaintiff's Counsel's experience litigating wage and hour claims, such
9 investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate
10 the strength of this claim for purposes of settlement. *See* Gaines Decl., ¶¶ 2-5; 35-37.

11 **8. Additional Factors Weigh In Favor Of Finding The Terms Of The Proposed**
12 **Settlement To Be Fair, Adequate, And Reasonable**

13 In addition to the factors presented above, the proposed Settlement does not possess any
14 obvious deficiencies. The Settlement contemplates entry of an Order (submitted concurrently
15 herewith) which approves the Settlement and dismisses the Action with prejudice. Paragraphs 50
16 and 57 of the Settlement Agreement and paragraph 8 of the Proposed Order authorize the Court to
17 retain jurisdiction to enforce the Settlement Agreement. This procedure effectively disposes of the
18 Action in its entirety, documents the Court's approval of the Settlement as required by PAGA, and
19 allows for Court intervention if necessary to enforce the terms of the Settlement Agreement. In
20 sum, under the applicable standards for approval of PAGA settlements in California, the settlement
21 in this case meets the standards for approval.

22 **IV. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER THEIR**
23 **REASONABLE FEES AND COSTS**

24 Pursuant to the terms of the Settlement, Plaintiff's Counsel seeks attorneys' fees of thirty-
25 five percent of the Gross Settlement Amount (\$65,625) and reimbursement of litigation costs of
26 \$15,000⁵, falling within the bounds authorized by the Settlement Agreement. *See* Settlement
27 Agreement, at ¶ 30(b). Plaintiff's Counsel's entitlement to an award of attorneys' fees and costs is
28 warranted on multiple independent grounds. Further, the amount of fees requested falls well within

⁵ Plaintiff's Counsel incurred \$17,852.30 in actual costs. *See* Gaines Decl., ¶ 47; **Exhibit E**.

1 the range of reasonableness under applicable standards, as the amount requested constitutes a
2 “percentage of the fund” deemed reasonable in similar wage and hour settlements of this size and
3 approved by California courts, which is not only warranted based on the contingency risk Plaintiff’s
4 Counsel has agreed to incur for the benefit of the State of California and PAGA Members, but also
5 based on the significant results achieved, as the Settlement obtains a recovery substantially above
6 the range approved as reasonable by California state and federal courts. Based thereon, Plaintiff’s
7 Counsel respectfully requests that the Court enter an order approving the fee and cost amounts
8 requested.

9 A. **Plaintiff’s Counsel Are Entitled To Recover Their Reasonable Fees And**
 Costs As A Matter Of Right

10 Plaintiff’s Counsel are entitled to recover attorneys’ fees and costs under the “common
11 fund” doctrine as a matter of right. As held by the U.S. Supreme Court, “a lawyer who recovers a
12 common fund for the benefit of persons other than herself or his client is entitled to a reasonable
13 attorney’s fee from the fund as a whole.” *See Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.

14 Courts have long recognized the “common fund” or “common benefit” doctrine, under
15 which attorneys who create a common fund or benefit for a group of persons may be awarded their
16 fees and costs to be paid out of the fund. *Serrano v. Priest* (“*Serrano III*”) (1977) 20 Cal.3d 25,
17 34, quoting *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees’*
18 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
19 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
20 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

21 The California Supreme Court has held that, “when a number of persons are entitled in
22 common to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all
23 results in the creation or preservation of that fund, such Plaintiff or Plaintiffs may be awarded
24 attorneys’ fees out of the fund.” *Serrano III, supra*, 20 Cal.3d at 34, quoting *D’Amico*, 11 Cal.3d
25 1; *see also Boeing, supra*, 444 U.S. at 478 (“[A] lawyer who recovers a common fund for the benefit
26 of persons other than herself or his client is entitled to a reasonable attorney’s fee from the fund as
27 a whole.”); *Mills, supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common
28 fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter

1 Group) at § 17:172.3 explains the common fund doctrine as follows:

2 Where the lawsuit results in the recovery of a fund or property
3 benefiting others as well as Plaintiffs (e.g., a class action), the court
4 has inherent equitable power to order Plaintiffs' attorney fees paid
5 out of the common fund or property [citations]. Such fee spreading
6 assures that all of those benefited by the litigation pay their fair share
7 of obtaining the recovery.

8 The percentage-of-the-fund approach appears to be the preferred method of awarding fees
9 in traditional common fund cases, such as this case. Where the settlement amount is a "certain or
10 easily calculable sum of money," use of the percentage-of-the-fund method is appropriate. *Serrano*
11 *III*, 20 Cal. 3d at 35.

12 In *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341
13 fn.19, the California Supreme Court upheld an attorney's fee award based on a percentage of the
14 common benefit obtained in a lawsuit by a city employee's association for retroactive wages:

15 It is not necessary to find this suit a proper class action in order to
16 uphold the portion of the judgment awarding counsel for Plaintiffs
17 25 percent of all retroactive salaries and wages received. That award
18 may be sustained under the rule that a litigant who creates a fund in
19 which others enjoy beneficial rights may require those beneficiaries
20 to pay their fair share of the expense of litigation. (See *Sprague v.*
21 *Ticonic National Bank* (1939) 307 U.S. 161, 159; *Estate of Stauffer*
22 (1959) 53 Cal.2d 124, 132).

23 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court
24 stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which
25 others derive benefits may require those passive beneficiaries to bear a fair share of the litigation
26 costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111,
27 the California Supreme Court recognized that the common benefit doctrine has been applied
28 "consistently in California when an action brought by one party creates a fund in which other
persons are entitled to share."

Numerous appellate courts have ruled similarly. See e.g., *Knoff v. City and County of San*
Francisco (1969) 1 Cal.App.3d 184, 203-204 (court upheld a "contingent percentage" award of
attorneys' fees in a representative action as the proper exercise of the court's broad equitable
powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys' fees and
expenses properly awarded from common benefit composed of illegally imposed sales and use tax);

1 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit
2 created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974)
3 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners
4 of residential property in an inverse condemnation action).

5 Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth,
6 Tenth, Eleventh and the D.C. Circuit—have endorsed the “percentage fee” method for determining
7 reasonable attorneys’ fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.* 74 F.
8 Supp. 2d 393, 396-398 (S.D.N.Y. 1999) (describing the overwhelming weight of federal authority
9 in favor of the percentage fee method); *see also, Lealao v. Beneficial California, Inc.* (2000) 82
10 Cal.App.4th 19, 30-31 (describing same).

11 Thus, as Plaintiff’s Counsel has expended a significant amount of time and money to secure
12 a \$187,500 settlement fund for the LWDA and PAGA Members [*Schiller*, 2012 U.S. Dist. LEXIS
13 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees have resulted
14 in the preservation or recovery of a certain or easily calculable sum of money-out of which sum or
15 ‘fund’ the fees are to be paid.”)], and in doing so, has exclusively borne the risk of loss for such
16 expenditures of time and expenses (as the LWDA elected not to take the case after receiving the
17 PAGA Notice), Plaintiff’s Counsel is entitled to claim reasonable fees from that fund under
18 applicable precedent.⁶

19 **B. The Fee Amount Requested Is Reasonable**

20 In addition to the forgoing, Plaintiff’s Counsel’s request for attorneys’ fees in the amount
21 of thirty-five percent of the \$187,500 Gross Settlement Amount falls well within the “zone of
22 reasonableness.” It is important to highlight at the outset that the fee amount presently sought is

23
24 ⁶ Plaintiff’s Counsel is also entitled to recover attorney’s fees and costs as a matter of right under
25 the PAGA statute [*Labor Code* § 2699(g)(1) (“Any employee who prevails in any action shall be
26 entitled to an award of reasonable attorney’s fees and costs.”)], and under *C.C.P.* § 1021.5, as the
27 instant PAGA action was by definition “for the public benefit” and secured monetary awards for
28 approximately 300 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.*
(2007) 154 Cal.App.4th 1, 16-17 (2007) (“Estrada’s personal motivation does not diminish the fact
that he pursued this public interest class action not only for himself but on behalf of a class
comprised of FedEx’s past and present drivers and ultimately obtained awards for 209 drivers. []
No more is required to satisfy the ‘significant benefit,’ ‘public interest,’ and ‘large class of persons’
requirements of Code of Civil Procedure section 1021.5.”).

1 not extraordinary, but actually falls at the “average” fee deemed reasonable under California State
2 court authority, as it is recognized that “courts may award attorney’s fees in the 30-40% range in
3 wage and hour class actions that result in recovery of a common fund under \$10 million.” *See e.g.,*
4 *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). This fee
5 falls directly within that range.

6 Moreover, Plaintiff’s Counsel agreed to incur the contingency risk for the benefit of the
7 State of California (which elected not to take the case after receiving the PAGA Notice). Gaines
8 Decl., ¶¶ 38-43. The significant results achieved, and the underlying facts therefrom, justify
9 Plaintiff’s Counsel’s requested fee as reasonable under all applicable standards.

10 **C. The Fee Amount Allocated by The Settlement Agreement Is Within the**
11 **Zone of Reasonableness Under the “Percentage of the Fund” Method**

12 The amount of fees requested by Plaintiff’s Counsel is reasonable based on standards
13 applicable to the “percentage of the fund” method. “When assessing whether the percentage
14 requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of
15 litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the
16 financial burden; and (f) the awards made in similar cases.” *See Vasquez v. Coast Valley Roofing,*
17 *Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

18 First, the results achieved by Plaintiff’s Counsel are significant as Defendants have agreed
19 to pay \$187,500 under the Settlement. This is a significant recovery given the risks associated with
20 obtaining any recoverable penalties. Gaines Decl., ¶¶ 11-24, 31-35. Further, the settlement of
21 PAGA claims impacting a comparable number of individuals have been approved as reasonable for
22 between \$7,500.00 and \$15,000.00. *See* Section III.B.4., *supra*.

23 Second, such results were achieved in the face of significant risks. As explained above,
24 Defendants maintained defenses to Plaintiff’s PAGA claims that very well could have resulted in
25 a net-zero recovery at trial.

26 Third, notwithstanding this risk of loss, Plaintiff’s Counsel undertook representation of the
27 instant PAGA claim for the benefit of the State of California on a contingency basis. *See* Gaines
28 Decl. at ¶¶ 41-46. This required Plaintiff’s Counsel to personally assume the risk of nonpayment

1 in securing the substantial financial benefit the State of California stands to receive, and also
2 constitutes a “loan” on Plaintiff’s Counsel services – both of which are factors that warrant fee
3 enhancement under applicable California Supreme Court authority:

4 One of the most common fee enhancers . . . is for contingency risk.
5 We reaffirmed the propriety of a contingency risk enhancement in
6 Ketchum: “The economic rationale for fee enhancement in
7 contingency cases has been explained as follows: ‘A contingent fee
8 must be higher than a fee for the same legal services paid as they are
9 performed. The contingent fee compensates the lawyer not only for
10 the legal services he renders but for the loan of those services. The
11 implicit interest rate on such a loan is higher because the risk of
12 default (the loss of the case, which cancels the debt of the client to
13 the lawyer) is much higher than that of conventional loans.’ (Posner,
14 Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) ‘A lawyer
15 who both bears the risk of not being paid and provides legal services
16 is not receiving the fair market value of his work if he is paid only
17 for the second of these functions. If he is paid no more, competent
18 counsel will be reluctant to accept fee award cases.”

19 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579-580.

20 Finally, the percentage requested by Plaintiff’s Counsel falls within a typical range,
21 particularly in light of the modest settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796,
22 23 (“[C]ourts may award attorney’s fees in the 30-40% range in wage and hour class actions that
23 result in recovery of a common fund under \$10 million.” *See also Crandall v. U-Haul*
24 *International, Inc.*, LASC Case No. BC178775 (awarding attorneys’ fees of 40% of a common
25 fund).

26 Attorneys’ fee awards in the amount sought here are well-established by California law and
27 practice. Accordingly, Plaintiff’s Counsel’s fee request is fair and reasonable, and is consistent with
28 the awards in California and the Ninth Circuit. It is also reasonable given the history of this action
and the results obtained.

29 **D. While the Requested Award of Attorneys’ Fees is Reasonable as a**
30 **Percentage of the Common Fund, It is Further Confirmed by a**
31 **Lodestar Cross-Check**

32 The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* (2016) 1
33 Cal.5th 480, 506, that “[t]he percentage of fund method survives in California class action cases.”
34 Specifically, the *Laffitte* Court held:

1 The recognized advantages of the percentage method—including relative
2 ease of calculation, alignment of incentives between counsel and the class, a
3 better approximation of market conditions in a contingency case, and the
4 encouragement it provides counsel to seek an early settlement and avoid
unnecessarily prolonging the litigation—convince us the percentage method
is a valuable tool that should not be denied our trial courts.

5 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when
6 a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff
7 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or
8 plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d
9 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties, the trial
10 court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v.*
11 *Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
12 method for calculating attorneys’ fees more accurately reflects the results achieved for the putative
13 class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’
14 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
15 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
16 percentage-of-recovery method is generally favored in common fund cases because it allows courts
17 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
18 failure.’”).

19 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with
20 tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar
21 (hours worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed
22 to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-
23 06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold
24 further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the
25 court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to
26 evaluate the reasonableness of a requested percentage fee.”)

27 Here, Plaintiff’s Counsel’s fee request of thirty-five percent of the Gross Settlement Amount
28 is fair and reasonable based on a percentage of the recovery, and as well as when confirmed with a

1 lodestar cross-check. First, “regardless whether the percentage method or the lodestar method is
2 used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*
3 (2008) 162 Cal.App.4th 43, 66, fn. 11. This is also consistent with Plaintiff’s Counsel’s experience
4 in similar wage and hour class action matters. Gaines Decl., ¶¶ 2-5; 35-37. Thus, the percentage
5 sought by Plaintiff’s Counsel here is reasonable.

6 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
7 multiplying the number of hours reasonably expended by each attorney or legal staff member by
8 their reasonable hourly rates. *See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 48. The court then
9 enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty
10 and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49;
11 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92
12 Cal.App.4th 819, 834 (“There is no hard-and-fast rule limiting the factors that may justify an
13 exercise of judicial discretion to increase or decrease a lodestar calculation”).

14 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
15 *Chavez, supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of*
16 *Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (approving multiplier of ~2.34); *Coalition*
17 *for L. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving
18 multiplier of ~2.04). In representative actions such as this one, where the value of the benefit
19 conferred to the class “can be monetized with a reasonable degree of certainty,” a court may “adjust
20 the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
21 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
22 litigation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557. In doing so, “the court
23 determines, retrospectively, whether the litigation involved a contingent risk or required
24 extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate
25 the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at 503-05.

26 In this case, Plaintiff’s Counsel is submitting an attorney fee request equaling \$65,625.
27 Based on a projected final lodestar of \$83,765, this yields a “negative multiplier” of approximately
28 0.78 under the \$65,625 fee request. Gaines Decl., ¶ 34; **Exhibit D** to Gaines Decl. The billing rates

1 used to compute the lodestar are reasonable in view of the evidence submitted herewith. Gaines
2 Decl., ¶¶ 2-5; 35-39; **Exhibit D**.

3 Based thereon, and for the reasons discussed above (the significant risk in continuing to
4 litigate this matter and in seeking to obtain penalties based on the claims asserted; the risks and
5 burden involved in representation on a contingency basis; the knowledge and experience of
6 Plaintiff's Counsel; and the value obtained by Plaintiff's Counsel for the PAGA Members), it is fair
7 and reasonable to account for these risks and compensate Plaintiff's Counsel with a fee award of
8 \$65,625 (thirty-five percent of the Gross Settlement Amount).

9 **E. Plaintiff's Counsel's Request for Costs is Reasonable**

10 In the course of this litigation, Plaintiff's Counsel incurred out-of-pocket costs of
11 \$17,852.30.⁷ See Gaines Decl. at ¶ 47, **Exhibit E**. As demonstrated in the Gaines Declaration
12 submitted herewith, the incurred costs included filing fees, postage, and mediation fees. *Id.* Such
13 costs are appropriate for cost reimbursement in these types of cases. See e.g., *In re United Energy*
14 *Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (C.D. Cal. 1989) (quoting *Newberg*,
15 *Attorney Fee Awards*, § 2.19 (1987)); see also, *In re GNC Shareholder Litigation* 668 F.Supp. 450,
16 452 (W.D. Pa. 1987).

17 The costs incurred by Plaintiff's Counsel in this litigation benefited Plaintiff, PAGA
18 Members, and the State. Plaintiff's cost request is reasonable and represents the costs that
19 Plaintiff's Counsel was required to incur to prosecute this action and should therefore be granted.

20 **V. THE SERVICE AWARD/GENERAL RELEASE PAYMENT SOUGHT BY**
21 **PLAINTIFF IS REASONABLE AND SHOULD BE APPROVED**

22 The Parties have agreed that Plaintiff will be paid a Service Award Payment in the amount
23 of \$10,000. This payment is intended to recognize the time and effort that Plaintiff spent on behalf
24 of other PAGA Members and the State and for Plaintiff's full general release of claims against
25 Defendants. See Settlement Agreement at ¶¶ 20 and 30(c). See Declaration of Lolita Galvin,
26 submitted herewith. See Gaines Decl., ¶ 48.

27
28 ⁷ Plaintiff's Counsel incurred out-of-pocket costs higher than what is allocated for in the Settlement
Agreement. Accordingly, Plaintiff's Counsel is only seeking the amount of costs permitted by the
Settlement Agreement. See Settlement Agreement at ¶ 30(b).

1 As to an incentive award, case law supports the award of incentive payments in private
2 attorney general actions. The Ninth Circuit has recognized that a named plaintiff's "willingness to
3 act as a private attorney general" may justify the award of an incentive payment. *Rodriguez v. West*
4 *Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub*
5 *LLC*, 2013 WL 12415482 (E.D. Cal., Sep. 6, 2013), the United States District Court for the Eastern
6 District of California approved a similar PAGA-only settlement and awarded a service payment to
7 the representative plaintiff in recognition of his efforts.

8 The traditional bases for awarding incentive awards in class settlements support the award
9 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
10 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive
11 awards and held that "the rationale for making enhancement or incentive awards to named Plaintiffs
12 is that he or she should be compensated for the expense or risk he has incurred in conferring a
13 benefit" on others. *Id.* at 806. That rationale applies synonymously in this Action.

14 Without Plaintiff's efforts, there would be no recovery at all. The requested award is
15 appropriate to compensate Plaintiff for the risk and expense she incurred in conferring a benefit on
16 the PAGA Members and the State of California, as well as for her full general release of all claims
17 against Defendants. As a result of the named Plaintiff's efforts, the PAGA Members will receive
18 monetary settlement payments, and the State of California will receive \$70,443.75 to be put toward
19 education about and enforcement of California's labor laws. *See* Gaines Decl., ¶ 27.

20 In this case, Plaintiff performed the following tasks, among others: (1) assisted Counsel in
21 investigating and substantiating the claims alleged in this action, including multiple interviews with
22 counsel to review facts, documents, and Defendants' policies; (2) had her deposition taken; (3)
23 assisted Counsel in preparing for two mediations; (4) assisted in the preparation of the Complaint
24 in this action; (5) produced evidentiary documents to Counsel; and (6) assisted in the settlement of
25 this litigation. *See generally*, Galvin Declaration. Moreover, as with any plaintiff who files a civil
26 action, the named Plaintiff undertook the financial risk that, in the event of a judgment for
27 Defendants in this action, she could have been personally responsible for any attorneys' fees and
28 costs awarded in Defendants' favor.

1 The award of such payment to Plaintiff is especially warranted in a case like this one. It is
2 necessary to ensure that employees continue to bring forth claims that enforce their rights.
3 Individuals like the named Plaintiff (and most aggrieved employees) would have little, if any,
4 recourse without the representative action device. Most aggrieved employees – like the named
5 Plaintiff – would be fearful of retaliation in response to filing any lawsuit, much less a
6 representative action suit. Plaintiff must be commended for pursuing her claims; the modest
7 payment sought here is an appropriate means of doing so.

8 Plaintiff is also entering into a full general release against Defendants and their Released
9 Parties, which is far broader than the release by other PAGA Members. Specifically, PAGA
10 Members are releasing only limited PAGA civil penalty claims, while Plaintiff is releasing all
11 claims which she asserts or could assert against Defendants. *See* Settlement Agreement at ¶ 20 and
12 § E (a)-(c). The value of her individual wage and hour claims is substantial. Gaines Decl. at ¶ 51;
13 **Exhibit F**. No other Aggrieved Employee is subject to this broad form of release. *Id.* This broad
14 release by Plaintiff was negotiated (and necessary) to resolve the Action. To resolve the Action,
15 Defendants sought a full general release of Plaintiff's claims. *Id.* at ¶ 50.

16 Without the resolution and release of Plaintiff's individual claims, litigation would continue
17 in a piecemeal fashion. The Parties wished to avoid further litigation, and agreed that a global
18 resolution of Plaintiff's individual claims and the PAGA claims asserted in the Complaint was in
19 the best interest of all parties involved, and thus, a general release by Plaintiff was appropriate.
20 Gaines Decl. at ¶ 50.

21 **VI. CONCLUSION**

22 As shown herein, the Settlement Agreement is fair, adequate and reasonable, as it represents
23 a reasoned compromise obtained through arms-length negotiations. For all the reasons set forth
24 above, Plaintiff respectfully requests that this Court, as set forth in the proposed Order Approving
25 Settlement, do the following:

- 26 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
27 2699, subpart 1;
- 28 2. Appoint Phoenix Settlement Administrators as the Settlement Administrator and

1 approve its administration fees up to \$2,950 for payment out of the Gross Settlement Amount;

2 3. Approve the award of attorneys' fees of \$65,625, and costs of \$15,000, to Plaintiff's
3 Counsel, payment of which shall come from the Gross Settlement Amount;

4 4. Approve the Service Award Payment to Plaintiff Lolita Galvin in the amount of
5 \$10,000 from the Gross Settlement Amount;

6 5. Direct disbursement of the PAGA Penalty Fund to the LWDA and all PAGA
7 Members as provided for in the Settlement Agreement; and

8 6. Dismiss the Action with prejudice.

9
10 Date: May 22, 2024

Respectfully submitted,

11 GAINES & GAINES, APLC

12
13 By: *Daniel F. Gaines*

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