

1 HEATHER DAVIS, SBN 239372
2 heather@protectionlawgroup.com
3 AMIR NAYEBDADASH, SBN 232204
4 amir@protectionlawgroup.com
5 S. EMI MINNE, SBN 253179
6 emi@protectionlawgroup.com
7 **PROTECTION LAW GROUP, LLP**
8 237 California Street
9 El Segundo, California 90245
10 Telephone: (424) 290-3095
11 Facsimile: (866) 264-7880

12 Attorneys for Plaintiff
13 SANDRA WALLACE

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES**

16 SANDRA WALLACE, as an aggrieved
17 employee and private attorney general,

18 Plaintiff,

19 vs.

20 ALVARADO RESTAURANT GROUP,
21 LLC, a Colorado limited liability company;
22 PALO ALTO, INC., a Colorado corporation;
23 PALO VERDE, INC., a Colorado
24 corporation; and DOES 1 through 50,
25 inclusive,

26 Defendants.

Case No.: 20STCV26260

*Assigned for all purposes to: Hon. Barbara A.
Meiers, Dept. 12*

**NOTICE OF MOTION AND MOTION FOR
ORDER APPROVING SETTLEMENT
PURSUANT TO CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS GENERAL
ACT AND ENTERING JUDGMENT**

*[Filed concurrently with Declaration of
Heather Davis in Support of Motion for Order
Approving Settlement Pursuant to California
Labor Code Private Attorneys General Act,
Declaration of Sandra Wallace, and [Proposed]
Order and Judgement]*

Hearing Date: August 31, 2021

Hearing Time: 9:00 a.m.

Department: 12

Complaint Filed: July 13, 2020

Trial Date: None Set

RESERVATION NO: 886536487557

1
2 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
3 **RECORD:**

4 **PLEASE TAKE NOTICE** that on August 31, 2021, at 9:00 a.m. in Department 12 of the
5 above-entitled court, located at 111 North Hill Street, Los Angeles, CA 90012, Plaintiff Sandra
6 Wallace ("Plaintiff") will and hereby does move the Court for an Order:

7 1. Granting approval of the Joint Stipulation of PAGA Settlement and Release of
8 Claims between Plaintiff and Defendants Alvarado Restaurant Group, LLC, Palo Alto, Inc., and
9 Palo Verde, Inc. ("Settlement" or "Settlement Agreement"), attached as Exhibit 2 to the
10 Declaration of Heather Davis ("Davis Decl."), including but not limited to, the plan of allocation
11 and distribution of the Gross Settlement Amount.

12 2. Approving the distribution of the Net Settlement Amount, currently estimated to be
13 \$738,433.17, of which seventy-five percent (75%) shall be paid to the California Labor and
14 Workforce Development Agency and twenty-five percent (25%) shall be paid to PAGA Members
15 on a *pro rata* basis based upon the number of Pay Periods worked during the PAGA Period;

16 3. Appointing Phoenix Settlement Administrators ("Phoenix") as the Settlement
17 Administrator and approving the payment of \$6,850.00 to Phoenix in connection with the costs of
18 administering the Settlement;

19 4. Awarding \$7,500.00 to Plaintiff Sandra Wallace as a Plaintiff's Representative
20 Payment in return for her services in bringing the Action; an

21 5. Awarding Plaintiff's Counsel, Protection Law Group, LLP, the Plaintiff's Counsel
22 Fee Payment of \$411,250.00 and Plaintiff's Counsel Litigation Costs Payment of \$10,966.83 for
23 reimbursement of actual litigation costs and expenses pursuant to California Labor Code section
24 2699(g)(1).

25 6. Directing Defendants to deposit the Gross Settlement Amount of \$1,175,000.00 into
26 an account for administration of the Settlement and directing the Settlement Administrator to
27 distribute the Gross Settlement Amount in accordance with the Settlement Agreement;

28 7. Directing the mailing of the PAGA Payment Share checks to PAGA Members under
a cover letter substantially similar in content and form to the proposed cover attached as "Exhibit

1 A” of the Settlement Agreement;

2 Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well
3 as information regarding the approval hearing on this matter, were submitted to the California Labor
4 and Workforce Development Agency via online filing at [https://www.dir.ca.gov/Private-Attorneys-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
5 [General-Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) on July 26, 2021. See Davis Dec. ¶ 80, Ex. 6.

6 This Motion is made on the grounds that the proposed PAGA Settlement is fair, adequate,
7 reasonable, and in the best interest of the affected employees and the parties. The Motion is based
8 on this Notice of Motion, the attached Memorandum of Points and Authorities, the concurrently
9 filed Declaration of Heather Davis and all exhibits attached thereto, the Declaration of Sandra
10 Wallace, and all other oral and documentary evidence that may be presented at the hearing on this
11 Motion.

12
13 DATED: July 26, 2021

Respectfully submitted,

PROTECTION LAW GROUP, LLP

14
15
16 By:



Heather Davis
Amir Nayebdadash
S. Emi Minne
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF FACTS	2
III.	THE SETTLEMENT TERMS	3
A.	Definition of PAGA Members	3
B.	Gross Settlement Amount.....	3
C.	Allocation and Funding of the Gross Settlement Amount	3
D.	Scope of the Release in the Settlement Agreement.....	5
IV.	STANDARD OF REVIEW FOR APPROVAL OF A PAGA SETTLEMENT	5
V.	THE SETTLEMENT IS FAIR AND RESONABLE.....	7
A.	Plaintiff Has Complied with the Administrative Requirements of California Labor Code Section 2699.....	7
B.	Arm's-Length Negotiations.....	7
C.	Sufficient Investigation and Discovery by Experienced Counsel.	8
D.	The Settlement is Reasonable in Light of the Parties' Legal Positions, the Risks of Continued Litigation, and the Underlying Purpose of the PAGA.	8
1.	Plaintiff's Counsel's Analysis of Defendants' Maximum Potential Liability.	9
2.	Plaintiff's Counsel's Risk-Based Analysis and Adjustments	9
3.	The Settlement Fulfills the Fundamental Purpose of PAGA and is Consistent with Other PAGA Settlement Approved by the Court.	12
VI.	THE REQUESTED ATTORNEYS' FEES PAYMENT IS FAIR AND SHOULD BE APPROVED.....	13
A.	A Fee Award Based on a Percentage of the Entire Settlement Fund is Appropriate.	13
B.	The Requested Fee Award Is Reasonable Based on the Dunkel Factors.	15
1.	Time and Labor Required.	15
2.	The Skill Required to Perform Legal Services.	16
3.	The Value, Amount, and Results Achieved.....	16
4.	Whether the Fee is Fixed or Contingent.	16
C.	The Requested Fee is Reasonable Under a Lodestar Analysis.....	17
1.	Counsel Spent a Reasonable Amount of Time.	17
2.	Plaintiff's Counsel's Hourly Rate is Reasonable.....	18
3.	The Use of a Multiplier is Reasonable and Appropriate.....	18

1	D. The Requested Costs Are Fair and Reasonable.....	20
2	VII. THE REQUESTED PLAINTIFF’S REPRESENTATIVE PAYMENT IS FAIR AND	
3	REASONABLE AND SHOULD BE APPROVED.	20
4	VIII. THE PROPOSED SETTLEMENT COVER LETTER TO THE AGGRIEVED	
5	EMPLOYEES SHOULD BE APPROVED.....	21
6	IX. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE.....	21
7	X. CONCLUSION.	22

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

<i>Aguirre v. Genesis Logistics</i> , 2013 WL 10936035 (C.D.Cal., 2013).....	11
<i>Amalgamated Transit Union, Local 1756, AFL-CIO</i> , 46 Cal.4th 993, 1003 (2009)	6
<i>Apple Computer, Inc. v. Super. Ct.</i> , 126 Cal.App.4th 1253 (2005)	13
<i>Arias v. Sup. Ct.</i> , 46 Cal.4th 969, 986 (2009)	6, 7
<i>Bell v. Famers Ins. Exch.</i> , 115 Cal.App.4th 715 (2004)	20
<i>Camden I Condominium Association, Inc. v. Dunkel</i> , 946 F.2d 768 (11th Cir. 1991).....	15
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504, 529 (2018).....	10
<i>Cates v. Chiang</i> , 213 Cal.App.4th 791 (2013)	16, 17
<i>Chu v. Wells Fargo Investments, LLC</i> , 2011 WL 672645 (N.D. Cal. 2011)	12
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009).....	7, 20
<i>Cruz v. Sky Chefs, Inc.</i> , 2014 U.S. Dist Lexis 17693 (N.D. Cal. 2014).....	12
<i>Davis v. Brown Shoe Co.</i> , 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015).....	12
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996).....	13, 15
<i>Duran v. U.S. Bank Nat. Assn.</i> , 59 Cal.4th 1 (2014).....	9
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169 (C.D. Cal. 2008).....	9
<i>Estrada v. FedEx Ground Package Sys. Inc.</i> , 154 Cal.App.4th 1 (2007)	13
<i>Fleming v. Covidien, Inc.</i> , 2011 WL 756304718, at *4 (C.D.Cal. Aug. 12, 2011)	10
<i>Franco v. Ruiz Foods, Inc.</i> , 2012 WL 5941801 (E.D. Cal. 2013)	13
<i>Greene v. Dillingham Construction</i> , 101 Cal.App.4th 418 (2002).....	19
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> , 58 Cal.4th 348, 381 (2014)	6
<i>Ketchum v. Moses</i> , 24 Cal.4th 1122 (2001)	17, 18, 19
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008)	8
<i>Lealao v. Beneficial Cal., Inc.</i> , 82 Cal.App.4th 19 (2000).....	13, 14
<i>Litty v. Merrill Lynch & Co.</i> , 2014 WL 5904904 (C.D. Cal. Nov. 10, 2014).....	9
<i>Lusby v. Gamestop Inc.</i> , 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015)	12
<i>Martino v. Ecolab Inc.</i> , No. 3:14CV04358 (N.D. Cal. 2017)	12
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal.App.4th 399 (2010)	20
<i>O’Conner v. Uber Techs.</i> , 201 F.Supp.3d 1110 (N.D. Cal. Aug. 18, 2016).....	12
<i>Ochoa-Hernandez v. CJADERS Foods, Inc.</i> , 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010) ...	6
<i>Ramirez v. Benito Valley Farms, LLC</i> , 2017 WL 3670794 (N.D. Cal. Aug. 25, 2017)	12

1	<i>Sanchez v. McDonalds Restaurants of California, Inc.</i> , 2017 WL 4620746 (LA Super. Ct. July 6,	
2	2017)	11
3	<i>Serrano v. Priest</i> , 20 Cal.3d 25 (1977)	13, 18
4	<i>Smith v. Lux Retail North America, Inc.</i> , 2013 WL 2932243 (N.D. Cal. June 13, 2013)	11
5	<i>Stafford v. Dollar Tree Stores, Inc.</i> , 2014 WL 6633396 (E.D. Cal. Nov. 2014)	10
6	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112, 1136 (2012)	10
7	<i>Viceral v. Mistras Group, Inc.</i> , 206 WL 5907869 (N.D. Cal. Oct. 11, 2016)	12
8	<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d. 1043 (9th Cir. 2002)	17
9	<i>Vo v. Las Virgenes Municipal Water Dist.</i> , 79 Cal.App.4th 440 (2000)	17
10	<i>Williams v. Sup. Ct.</i> , 3 Cal.5th 531, 549 (2017)	5, 6
11	Statutes	
12	Code of Civil Procedure section 1021.5	13
13	Labor Code section 2699	5,7,12, 13
14	Treatises	
15	<i>Newberg on Class Actions</i> , 4 th Ed. 2002, §14:6	14
16	R. Pearle, <i>California Attorney Fee Awards</i> (CEB, 1993 §7A)	13

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Sandra Wallace (“Plaintiff”) seeks approval of a Joint Stipulation of PAGA
4 Settlement and Release of Claims (“Settlement” or “Settlement Agreement”) entered into between
5 Plaintiff, individually and on behalf of the State of California and other “PAGA Members,” and
6 Defendants Alvarado Restaurant Group, LLC, Palo Alto, Inc., and Palo Verde, Inc. (“Defendants”) pursuant to California Labor Code section 2699(1)(2). The Settlement was reached following a full
7 day mediation with Marc Feder, Esq. and extensive informal discovery and investigation by
8 Plaintiff. By this Motion, Plaintiff requests that the Court grant the approval of the Settlement
9 Agreement signed by the Parties on or about July 7, 2021, and enter Judgment accordingly. The
10 Settlement terms are outlined as follows:

- 11
- 12 • Number of PAGA Members: approximately 1,575 individuals.
 - 13 • Gross Settlement Amount: \$1,175,000.00
 - 14 • Plaintiff’s Counsel Fees Payment: \$411,250.00
 - 15 • Plaintiff’s Counsel Litigation Costs Payment: \$10,966.83
 - 16 • Settlement Administrator Payment: \$6,850.00
 - 17 • Plaintiff’s Representative Payment: \$7,500.00
 - 18 • Net Settlement Amount: \$738,433.17

18 The Net Settlement Amount will be distributed as follows: seventy-five percent (75%), *i.e.*
19 \$553,824.88, will be paid to the California Labor and Workforce Development Agency; twenty-
20 five percent (25%), *i.e.* \$184,608.29, will be paid to PAGA Members on a *pro rata* basis according
21 to the number of Pay Periods worked by each PAGA Member from May 9, 2019, to July 5, 2021
22 (the “PAGA Period”). PAGA Members means “all current and former hourly-paid, non-exempt
23 employees who were employed by Defendants in the state of California at any time during the
24 PAGA Period.” *See* Declaration of Heather Davis (“Davis Decl.”), Ex. 2 Settlement Agreement ¶
25 5-6 (hereinafter “Settlement” or Settlement Agreement”).

26 The Settlement is the product of informed discovery, arms-length negotiations by highly
27 experienced counsel, and is fair, reasonable, and adequate in light of the relative strengths of
28 Plaintiff’s PAGA claims, the risk, expense, and uncertainty of further litigation, the benefit

1 conferred by the Settlement, and the underlying goals associated with recovery under the Private
2 Attorneys General Act. Plaintiff therefore respectfully requests that the Court approve the proposed
3 Settlement and enter Judgment thereon.

4 **II. STATEMENT OF FACTS**

5 On or about May 7, 2020, Plaintiff filed a letter with the Labor and Workforce Development
6 Agency (“LWDA”), and provided copies of this letter to Defendants via certified mail, asserting
7 claims for Defendants’ (1) failure to pay for all time worked at correct rates of pay, including
8 minimum wages, straight time wages, and overtime compensation; (2) failure to provide meal
9 periods and pay meal period premiums; (3) failure to authorize and permit rest periods and pay rest
10 period premiums; (4) failure to timely pay wages during employment; (5) failure to provide accurate
11 itemized wage statements; (6) failure to maintain accurate records; (7) failure to reimburse necessary
12 business expenditures; (8) failure to pay vacation time; and (9) failure to timely pay all wages upon
13 termination of employment. Davis Decl. ¶ 12, Ex. 1. On or about July 13, 2020, Plaintiff filed a
14 Complaint against Defendants as an aggrieved employee and private attorney general, alleging a
15 single cause of action for Violation of California Labor Code § 2699, et seq. (Private Attorneys
General Act) (“PAGA”). *See* Complaint; Davis Decl. ¶ 13, 33-35.

16 After the filing of the Complaint and after the Parties propounded an initial round of
17 discovery. Shortly thereafter, the Parties met and conferred regarding potential resolution and agreed
18 to informally stay discovery pending private mediation. However, as a condition for early mediation,
19 the Parties entered into a Stipulation in which they agreed to negotiate and finalize a *Belaire-West*
20 Notice that would be sent to the aggrieved employees in the event that mediation was unsuccessful,
21 in order to ensure swift prosecution of Plaintiff’s claims. As part of the stipulation, Defendants also
22 agreed to provide Plaintiff’s Counsel with a random 10% sampling of time and payroll records at
23 least four weeks prior to mediation as well as additional informal discovery. Davis Decl. ¶ 14. In
24 advance of mediation, Defendants provided Plaintiff’s Counsel with the stipulated time and payroll
25 records as well as all employee handbooks and relevant policy documents in place during the PAGA
26 Period. Defendants also supplied information relating to PAGA Members including, the total
27 number of pay periods at issue, the number of current and former employees, the number of
28

1 premiums paid, and other relevant information. Plaintiff's Counsel also conducted extensive
2 independent investigation of the claims and defenses. Davis Decl. ¶ 15.

3 Following the exchange of informal discovery, on May 6, 2021, the Parties attended
4 mediation with Marc Feder, Esq. At the mediation the parties debated their positions with the
5 mediator and exchanged arguments regarding their claims and defenses. Following a full day of
6 mediation, the Parties and agreed to resolve the Action for a Gross Settlement Amount of
7 \$1,175,000.00. Davis Decl. ¶ 16. The Parties executed a memorandum of understanding
8 memorializing this agreement and thereafter spent considerable time negotiating and finalizing the
9 terms of a long form settlement. Then, on July 7, 2021, the Parties fully executed the Joint
10 Stipulation of PAGA Settlement and Release of Claims. Davis Decl. ¶ 17, Ex. 2. On or about July
11 26, 2021, at the same time this agreement was submitted to the Court, Plaintiff submitted the
12 proposed Settlement Agreement to the LWDA. Davis Decl. ¶ 80, Ex. 6.

13 **III. THE SETTLEMENT TERMS**

14 **A. Definition of PAGA Members**

15 Under the Settlement Agreement, Plaintiff's representative claims include "PAGA
16 Members" defined as "all current and former hourly-paid, non-exempt employees who were
17 employed by Defendants in the state of California at any time during the PAGA Period." "PAGA
18 Period" means the period of time commencing on May 9, 2019 and ending on July 5, 2021. Davis
19 Decl. ¶ 19; Settlement Agreement ¶ 5-6. There are approximately 1,575 PAGA Members. Davis
20 Decl. ¶ 20.

21 **B. Gross Settlement Amount**

22 The Parties have agreed to settle the PAGA claims at issue for a non-reversionary Gross
23 Settlement Amount of \$1,175,000.00. Davis Decl. ¶ 21; Settlement Agreement ¶ 15.

24 **C. Allocation and Funding of the Gross Settlement Amount**

25 The Settlement is a common fund and therefore includes all requested costs, fees, and other
26 allocations. As stated above, subject to Court approval, the Gross Settlement Amount includes: (1)
27 the Plaintiff's Counsel Fee Payment in the amount of \$411,250.00; (2) the Plaintiff's Counsel
28 Litigation Costs Payment of \$10,966.83;¹ (3) the Settlement Administrator Payment of up to

¹ The Settlement Agreement calls for Plaintiff's Counsel to receive reimbursement in costs up to \$20,000. Plaintiff's Counsel have incurred and reasonably expect to incur no more than

1 \$6,850.00; and (4) the Plaintiff's Representative Payment to Plaintiff in the amount of \$7,500.00.
2 After the foregoing amounts are deducted from the Gross Settlement Amount, the remaining Net
3 Settlement Amount will to be paid to the LWDA and Aggrieved Employees. Davis Decl. ¶ 22;
4 Settlement Agreement ¶ 9-12, 17-19.

5 The Net Settlement Amount is estimated to be \$738,433.17 and will be distributed as follows:
6 75% of the Net Settlement Amount, will be paid to the LWDA, and the remaining 25% will be paid
7 to all PAGA Members on a *pro rata* basis based upon the number of pay periods worked by each
8 Aggrieved Employee during the PAGA Period. Davis Decl. ¶ 23; Settlement Agreement ¶ 17-19.
9 The Individual PAGA Payments will be treated as miscellaneous income for which a 1099 will be
10 issued. Davis Decl. ¶ 24 ; Settlement Agreement ¶ 45.

11 Accordingly, no later than fourteen (14) calendar days after the Motion for Approval is
12 granted, Defendants will provide the Settlement Administrator the Aggrieved Employee List. Davis
13 Decl. ¶ 25; Settlement Agreement ¶ 7, 39(a). Then, within fourteen (14) calendar days of the
14 Effective Date², Defendants will deposit the Gross Settlement Amount into a Qualified Settlement
15 Fund established by the Settlement Administrator. Davis Decl. ¶ 26; Settlement Agreement ¶ 40.
16 Within fourteen (14) calendar days of its receipt of the Gross Settlement Amount, the Settlement
17 Administrator will issue payments to PAGA Members, LWDA, Plaintiff, Plaintiff's Counsel, and
18 itself. Davis Decl. ¶ 27; Settlement Agreement ¶ 41. Payments to PAGA Members will be
19 accompanied by a cover letter, substantially similar in content and form to the proposed cover letter
20 attached "Exhibit A" to the Settlement Agreement. Davis Decl. ¶ 28; Settlement Agreement, ¶ 21,
21 39, Ex. A. All checks to PAGA Members will be sent by the Settlement Administrator and shall
22 remain valid and negotiable for 180 days from the date of their issuance. If any checks are not cashed
23 within 180 days of mailing, those funds shall be transmitted to the Controller of the State of

24 \$10,966.83 in total costs associated with litigation of this Action. Accordingly, an additional
25 \$9,033.17 will be included in the Net Settlement Amount based on these savings.

26 ² The effective date is defined as the later of the following: (a) if no timely objections are
27 filed or if all objections are withdrawn, the date upon which the Court enters approval of the
28 settlement; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such
appeal being filed; or (c) if any timely appeals are filed, the date of the resolution (or withdrawal)
of any such appeal in a way that does not alter the terms of the settlement. Settlement Agreement ¶
22.

1 California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure
2 § 1500, et seq. This disposition results in no “unpaid residue” under California Civil Procedure Code
3 § 384, as the entire Net Settlement Amount will be paid out to the LWDA and PAGA Members,
4 whether or not all PAGA Members cash their settlement checks. Davis Decl. ¶ 29; Settlement
5 Agreement ¶ 43.

6 **D. Scope of the Release in the Settlement Agreement**

7 Upon the funding of the Gross Settlement Amount, PAGA Members shall release
8 Defendants and the Released Parties from the following Released Claims:

9 Any and all claims for the recovery for civil penalties, attorneys’ fees, and costs
10 permissible under PAGA which Plaintiff and/or PAGA Members had, or may claim
11 to have, against Defendants and the Released Parties, arising out of the violations
12 alleged in the Action, including unpaid straight and overtime wages (including any
13 work off-the-clock), failure to provide reporting time pay, failure to pay employees
14 all minimum wages and overtime wages owed including by failing to pay all
15 overtime and double time at the correct regular rate of pay, failure to provide
16 compliant meal and rest breaks, failure to pay them all premium wages owed for
17 short, late or missed meal and rest periods, failure to pay all wages owed at
18 discharge or resignation; failure to timely pay wages within the times permissible
19 under Labor Code section 204; failure to provide complete and accurate wage
20 statements; failure to keep complete and accurate payroll records; failure to
21 reimburse necessary business-related expenses and internet service; violations of
22 Labor Code Sections 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7, 510, 512(a),
23 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

24 The release is limited to claims arising during the PAGA Period. Nothing under the
25 Settlement Agreement shall be construed to release anything other than the claims for penalties
26 under Labor Code §2699, et seq. on behalf of the State or PAGA Members. However, in addition
27 to the narrow release of PAGA claims by PAGA Members and the State of California, Plaintiff has
28 agreed to a broader general release of any claims she may have against Defendants. Davis Decl. ¶
31-32; Settlement Agreement ¶ 24-25, 49-52.

29 **IV. STANDARD OF REVIEW FOR APPROVAL OF A PAGA SETTLEMENT**

30 PAGA allows an “aggrieved employees” to bring a civil action on behalf of himself or
31 herself, other aggrieved employees and the State to recover civil penalties which, outside of PAGA,
32 only the LWDA can collect from an employer. Cal. Labor Code § 2699(a). The settlement of a
33 PAGA action requires court approval. See Cal. Labor Code § 2699(l)(2).

1 In reviewing a PAGA settlement, the Court need only ensure that “a negotiated resolution is
2 fair to those affected.” *Williams v. Sup. Ct.*, 3 Cal.5th 531, 549 (2017). The court’s focus is not the
3 monetary amount which aggrieved employees or the State stand to receive, but on whether the total
4 amount achieves PAGA’s objective - “to incentive private parties to recover civil penalties for the
5 government that otherwise may not have been assessed and collective by overburdened state
6 enforcement agencies.” See *Ochoa-Hernandez v. CJADERS Foods, Inc.*, 2010 WL 1340777 at *4
7 (N.D. Cal. Apr. 2, 2010) (citing *Arias v. Sup. Ct.*, 46 Cal.4th 969, 986 (2009)). Penalties recovered
8 under PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and
9 for education of employers and employees about their rights and responsibilities under this code. . .
10 to supplement the funding to the agency for those purposes.” See Cal. Labor Code § 2699(j).

11 Because a PAGA claim is effectively considered a law enforcement action, it does not have
12 to meet the requirements of a class action. *Arias*, 46 Cal. 4th at 980-988 (affirming lower court’s
13 holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim);
14 *Amalgamated Transit Union, Local 1756, AFL-CIO*, 46 Cal.4th 993, 1003 (2009) (stating that
15 PAGA is a mechanism for aggrieved employees to recover civil penalties that would otherwise be
16 sought by state labor law enforcement agencies). Moreover, because PAGA claim is “a statutory
17 action for penalties brought as a proxy for the State,” “there is no need to protect absent employees’
18 due process rights[.]” *Williams*, 3 Cal.5th at 546. “PAGA does not make other potentially aggrieved
19 employees parties” to the action and no “due process concerns arise under PAGA because absent
20 employees do not own a personal claim for PAGA civil penalties and whatever personal claims the
21 absent employees might have for relief are not at stake.” *Id.* at 546-47 (2017) (internal references
22 omitted, citing *Amalgamated Transit Union.*, 46 Cal.4th at 1003; *Iskanian v. CLS Transportation*
Los Angeles, LLC, 58 Cal.4th 348, 381 (2014)).

23 Accordingly, “[u]nnamed employees need not be given notice of the PAGA claim, nor do
24 they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
25 1340777 at *5. “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
26 *Williams*, 3 Cal. 4th at 548. A “judgment in such an action is binding not only on the named
27 employee plaintiff but also on government agencies and any aggrieved employee not a party to the
28 proceeding” because “the employee plaintiff represents the same legal right and interest as state

1 labor law enforcement agencies”, “collateral estoppel applies. . . against those for whom the party
2 acted as an agent or proxy”, and “[w]hen a government agency is authorized to bring an action on
3 behalf of an individual or in the public interest, and a private person lacks an independent right to
4 bring the action, a person who is not a party but is represented by the agency is bound by the
5 judgment as though the person were a party.” *Arias*, 46 Cal.4th at 985-86. This renders approval of
6 a PAGA settlement distinct from a class action settlement and, under both federal and state law, the
7 Court need not employ the two-step approval process that applies to a class action settlement.

8 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

9 As set forth below, the Settlement before the Court is the result of adversarial, arms-length
10 negotiations, extensive investigation, and fulfills the objectives of the PAGA. Moreover, the
11 Settlement is fair and reasonable in light of the relative strengths of the PAGA claims and risks
12 associated with protracted litigation. Accordingly, the Settlement should be approved by the Court.

13 **A. Plaintiff Has Complied with the Administrative Requirements of California
14 Labor Code Section 2699.**

15 Before bringing a civil action under PAGA, an employee must comply with the notice
16 requirements set for in Labor Code section 2699.3. Plaintiff complied with these requirements. *See*
17 *Davis Decl.* ¶ 33, Ex. 1. In addition, the Settlement Agreement and this motion and supporting papers
18 are being concurrently submitted to the California Labor and Workforce Development Agency, as
19 required by California Labor Code section 2699(1)(2). *Davis Decl.* ¶ 34, Ex. 6; *see* Proof of Service.

20 **B. Arm’s-Length Negotiations.**

21 Although PAGA settlements are not subject to the same, heightened requirements as a class
22 action settlement, the underlying guidelines utilized in class action settlements may be useful in
23 evaluating the fairness of a PAGA settlement. California courts recognize that “a presumption of
24 fairness exists where . . . [a] settlement is reached through arm’s-length bargaining.” *Wershba v.*
25 *Apple Computer*, 91 Cal.App.4th 224, 245 (2001) (disapproved on other grounds). Here, the Parties
26 engaged in arms-length, non-collusive negotiations at all times including attending a full day
27 mediation with Marc Feder, Esq., a highly-respected mediator with extensive experience in wage
28 and hour matters including actions brought pursuant to the Private Attorneys General Act. At all
times, Plaintiff was willing and prepared to litigate this matter through trial and possible appeals if
the Parties had been unable to reach a favorable resolution. The proposed Settlement was reached at

1 the end of a process that was neither fraudulent nor collusive. To the contrary, counsel for the Parties
2 advanced their respective positions throughout the settlement negotiations. Davis Decl. ¶ 35.

3 **C. Sufficient Investigation and Discovery by Experienced Counsel.**

4 The Parties engaged in extensive informal discovery prior to reaching a settlement. Prior to
5 mediation, Defendants informally produced a random sampling of time and payroll records for the
6 aggrieved employees, as well as information regarding the total number of non-exempt employees,
7 the number of current and former employees, the number of pay periods worked within the relevant
8 time period, the total amount of meal and rest period premiums paid, and other relevant information.
9 Defendants also produced and their employee handbooks, all applicable wage and hour policies, and
10 other relevant documents. This allowed Plaintiff's Counsel to conduct an informed assessment and
11 analysis of Defendants' potential exposure. Davis Decl. ¶ 36. The Parties extensively briefed their
12 positions regarding the strengths and weaknesses of Plaintiff's claims and Defendants' defenses,
13 provided their analyses to the mediator, and debated the merits of their respective positions at
14 mediation. Davis Decl. ¶ 37.

15 Furthermore, negotiations were conducted by highly capable and respected counsel with
16 strong records of vigorous and effective advocacy handling complex wage and hour litigation. Davis
17 Decl. ¶ 2-10. Accordingly, Plaintiff's Counsel had sufficient information and experience to act
18 intelligently in negotiating the Settlement.

19 **D. The Settlement is Reasonable in Light of the Parties' Legal Positions, the Risks
20 of Continued Litigation, and the Underlying Purpose of the PAGA.**

21 The Gross Settlement Amount of \$1,175,000 is a reasonable settlement in light of the
22 strength of Plaintiff's claims and Defendants' defenses, the risks of further litigation, and the unique
23 risks associated with litigation of PAGA claims. A settlement is not judged against what might have
24 been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the
25 damages sought. *Wershba*, 91 Cal.App.4th at 250. In the context of class action settlements, the
26 Court of Appeal has held that a trial court should consider "the strength of plaintiffs' case, the risk,
27 expense, complexity and likely duration of further litigation . . . the amount offered in settlement,
28 the extent of discovery completed and the stage of the proceedings,[and] the experience and views
of counsel" among other factors. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)
Here, the reasonableness of the Settlement is underscored by the fact that Defendants have legal and

1 factual grounds for defending the action.

2 1. Plaintiff's Counsel's Analysis of Defendants' Maximum Potential Liability.

3 At mediation, there were approximately 1,509 employees and approximately 17,688 pay
4 periods at issue. Plaintiff's Counsel reviewed and analyzed an extensive sampling of time records
5 and other relevant documents and data and estimated with all claims adjudicated in favor of Plaintiff,
6 Defendants' estimated liability exceeded \$13,382,300.00 in penalties arising from the alleged Labor
Code Violations. Davis Decl. ¶ 38.

7 2. Plaintiff's Counsel's Risk-Based Analysis and Adjustments

8 Despite this potentially large liability, substantial barriers to recovery of such penalties exist.
9 First, in order for Plaintiff to prevail at trial on her PAGA claims, she would have to prove the
10 underlying Labor Code violations, demonstrate that Aggrieved Employees suffered these violations,
11 and demonstrate that Defendants' conduct gives rise to penalties. *See Elliot v. Spherion Pac. Work,*
12 *LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly
13 dependent upon his other claims. Because Plaintiff's other claims fail as a matter of law, so does his
14 PAGA claim"). Plaintiff's core allegation is that Defendants systematically violated the California
15 Labor Code by, *inter alia*, failing to pay for all time worked, including minimum and overtime
16 wages, failing to provide compliant meal and rest periods and associated premiums, failing to timely
17 pay wages during and upon termination of employment, failing to provide accurate itemized wage
18 statements, failing to maintain accurate payroll records, and failing to reimburse business expenses
19 and costs. Although Plaintiff maintains that such wage and hour claims are amenable to resolution
20 as to a group of employees, many courts have found that the issues raised by Plaintiff, including off-
21 the-clock work, meal and rest period violations, and unreimbursed business expenses, raise
22 individualized issues that render a case unmanageable and unsuitable for adjudication as to a large
23 group of employees. *See, e.g., Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1 (2014); Although
24 California case law clearly states that PAGA actions need not satisfy class action requirements,
25 Plaintiff's Counsel remained mindful of the fact that some courts have nevertheless held that PAGA
26 claims must meet a threshold "manageability" requirement. Davis Decl. ¶ 39-40; *see, e.g., Litty v.*
27 *Merrill Lynch & Co.*, 2014 WL 5904904 at *3-4 (C.D. Cal. Nov. 10, 2014) (dismissing PAGA claim
28 because individualized assessments would be necessary, rendering the claim unmanageable).

1 Defendants also maintained several defenses to Plaintiff's theory of liability which, if
2 successfully proven, had the potential to eliminate or substantially reduce Plaintiff's estimated
3 recovery. Throughout this litigation, Defendants maintained and continue to maintain that they had
4 legally-compliant employment policies and practices and deny that they ever violated the Labor
5 Code provisions Plaintiff seeks to enforce under PAGA. Defendants argued that given what they
6 maintained were compliant policies and practices, any issues regarding remaining meal periods
7 would require an individualized inquiry that would be unmanageable, and which further did not
8 warrant imposition of substantial penalties, which under PAGA are intended to be deterrent in
9 nature, not compensatory. Davis Decl. ¶ 41. Plaintiff's claims regarding off-the-clock work
10 performed before and after employees' shifts and during meal periods faced similar challenges and
11 the potential need for individualized inquiry. Davis Decl. ¶ 42. Plaintiff also anticipates that should
12 the case proceed, Defendants will attempt to challenge Plaintiff's standing as an aggrieved employee
13 and will deny that any of their other employees whom Plaintiff seeks to represent are aggrieved.
14 Indeed, some courts have taken an approach requiring plaintiffs to establish standing and bifurcating
15 discovery and/or trial of a PAGA claim. Davis Decl. ¶ 43. *See, e.g., Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396 at *4 (E.D. Cal. Nov. 2014).

16 In addition to Defendants' anticipated defenses, Plaintiff's Counsel remained mindful of the
17 fact that PAGA gives the Court discretion to lower the penalties assessed if, based on the facts and
18 circumstances of the particular case, to do otherwise would result in an award that is
19 "unjust, arbitrary and oppressive, or confiscatory." Davis Decl. ¶ 44; *see* Cal. Labor Code §
20 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136 (2012)
21 (holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon
22 discretionary factors) (disapproved on other grounds); *Fleming v. Covidien, Inc.*, 2011 WL
23 756304718, at *4 (C.D.Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*,
24 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is warranted where
25 good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504,
26 529 (2018) (approving reduction in penalties from \$50 per pay period to \$5 per pay period based on
27 good faith attempts to comply with obligations and minimal violations).

28 Plaintiff's Counsel also recognized that there was a significant risk that the Court would

1 decline to assess the cumulative penalties for a large number of derivative violations. A significant
2 portion of Defendants' liability arises from claims that are largely predicated on the successful
3 prosecution of Plaintiff's unpaid overtime and minimum wage claims, and penalties derivative of
4 this conduct could be considered duplicative. Davis Decl. ¶ 45; *see, Thurman*, 203 Cal.App.4th at
5 1131 (imposition of both statutory and civil penalties for same conduct is impermissible double
6 recovery) (disapproved on other grounds); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3
7 (C.D. Cal. 2013) ("duplicative effect" of penalties is a factor in favor of "reducing . . . the PAGA
8 penalty"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243 at *3 (N.D. Cal. June 13,
9 2013) (declining to stack penalties based on the same conduct); *Sanchez v. McDonalds Restaurants*
10 *of California, Inc.*, 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties
11 arising out of the same conduct).

12 Moreover, Plaintiff's Counsel recognized that, protracted litigation of the alleged claims
13 would be an expensive, time-consuming, and extremely uncertain proposition. In order to prove
14 liability and damages, Plaintiff will be required to conduct additional extensive discovery, conduct
15 numerous depositions, request and analyze thousands of pages of documents, obtain aggrieved
16 employees' contact information, contact these employees, and obtain numerous declarations at great
17 expense. Obtaining the cooperation of current employees would also be difficult, given the likely
18 reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Defendants
19 would likely be able to obtain the cooperation of their employees. Moreover, even if Plaintiff
20 prevailed at trial, possible appeals could substantially delay recovery. Accordingly, there is a
21 significant risk that Plaintiff could ultimately recover nothing despite protracted litigation. Davis
22 Decl. ¶ 46.

23 Thus, while Plaintiff maintains that her PAGA claim is meritorious, Plaintiff's Counsel took
24 into account the strengths and weaknesses of each side's respective positions in evaluating the
25 Defendants' likely potential exposure. First, taking into account the risk of maintaining the case on
26 a representative basis, arguments regarding manageability, and challenges to Plaintiff's status as an
27 aggrieved employee, Plaintiff's Counsel discounted Defendants' estimated liability by 50%. In
28 consideration for merits based risk factors, including prevailing at trial, Plaintiff's Counsel
discounted Defendants' estimated liability an additional 50%. Finally, given the discretionary nature

1 of PAGA penalties, the likelihood that these potential penalties could be severely reduced by the
2 Court's decision to decline to stack such penalties, and the fact that Defendants have potential
3 arguments that the imposition of such penalties would be arbitrary and oppressive, Plaintiff's
4 Counsel discounted Defendants' estimated liability by an additional 50%. This resulted an adjusted
5 estimated liability of \$1,672,787.50. Davis Decl. ¶ 47. In light of the Parties' respective legal
6 positions and the risks to potential recovery, it is clear that the Gross Settlement Amount is fair,
7 adequate, and reasonable.

8 3. *The Settlement Fulfills the Fundamental Purpose of PAGA and is Consistent with Other*
9 *PAGA Settlement Approved by the Court.*

10 Finally, Plaintiff's Counsel was mindful of the fact that PAGA is fundamentally not intended
11 to be compensatory in nature, but is instead intended to facilitate enforcement of California's labor
12 laws by financing state activities and educating and deterring non-compliance. Davis Decl. ¶ 48; *see*
13 Cal. Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3 Cal.5th 531,
14 546; *O'Conner v. Uber Techs.*, 201 F.Supp.3d 1110, 1132-33, 1135 (N.D. Cal. Aug. 18, 2016);
15 *Ramirez v. Benito Valley Farms, LLC*, 2017 WL 3670794 (N.D. Cal. Aug. 25, 2017); *Viceral v.*
16 *Mistras Group, Inc.*, 206 WL 5907869 (N.D. Cal. Oct. 11, 2016).

17 After considering this multitude of factors, Plaintiff and Plaintiff's Counsel concluded that it
18 was in the best interest of the State of California and PAGA Members to enter into the Settlement.
19 The overall relief obtain by the Settlement is significant, not only from a monetary perspective, but
20 also because it fulfills the public policy objectives of PAGA—to promote enforcement of
21 California's labor laws, provide funds to the state, and deter future non-compliance by Defendants.
22 Davis Decl. ¶ 49. Moreover, the Settlement is well-within the range of settlements of PAGA claims
23 approved by Courts in other cases. Davis Decl. ¶ 50. *See, e.g., Davis v. Brown Shoe Co.*, 2015 U.S.
24 Dist. LEXIS 149010 (E.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$1.5 million class settlement);
25 *Zamora v. Ryder Integrated Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014) (\$7,500
26 payment to LWDA on a \$1.5 million class settlement); *Lusby v. Gamestop Inc.*, 2015 U.S. Dist.
27 LEXIS 42637 (N.D. Cal. 2015) (\$5,000 in a \$500,000 class settlement); *Cruz v. Sky Chefs, Inc.*,
28 2014 U.S. Dist. Lexis 17693 (N.D. Cal. 2014) (\$10,000 to the LWDA out of \$1,750,000 class
settlement); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (PAGA
payment of \$7,500 out of \$6.9 million common-fund settlement); *Martino v. Ecolab Inc.*, No.

1 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted as PAGA penalties out of \$21,000,000 settlement
2 amount); and *Franco v. Ruiz Foods, Inc.*, 2012 WL 5941801 at *14 (E.D. Cal. 2013) (\$10,000.00
3 allotted as PAGA penalties out of \$2.5 million settlement);

4 Thus, taking into consideration both the potential value of the PAGA claim, the significant
5 risks associated with continued litigation, and the underlying objectives of PAGA, Plaintiff submits
6 that the Settlement presented herein is fair, reasonable, and adequate. Davis Decl. ¶ 51.

7 **VI. THE REQUESTED ATTORNEYS' FEES PAYMENT IS FAIR AND SHOULD**
8 **BE APPROVED.**

9 **A. A Fee Award Based on a Percentage of the Entire Settlement Fund is**
10 **Appropriate.**

11 Plaintiff's Counsel is entitled to recover reasonable attorneys' fees and costs as a matter of
12 right under PAGA. *See* Cal. Labor Code § 2699(g)(1). Plaintiff's Counsel is also entitled to fees and
13 costs under Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for
14 the benefit" of other and secures substantial monetary recovery of State of California and the
15 Aggrieved Employees. *See Estrada v. FedEx Ground Package Sys. Inc.*, 154 Cal.App.4th 1, 16-17
(2007) (recovery obtained on behalf of 209 individuals satisfies C.C.P. § 1021.5).

16 Where the amount of a settlement is a "certain easily calculable sum of money," California
17 courts may calculate attorneys' fees as a reasonable percentage of the settlement created. *See Dunk*
18 *v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1808 (1996). The California Supreme Court has confirmed
19 the propriety of awarding attorneys' fees based on a percentage of the total value made available by
20 the settlement. *See Serrano v. Priest*, 20 Cal.3d 25, 34 (1977).

21 The ultimate goal is the award of a "reasonable" fee to compensate counsel for their efforts,
22 irrespective of the method of calculation. *See Apple Computer, Inc. v. Super. Ct.*, 126 Cal.App.4th
23 1253, 1270 (2005). Trial courts have wide latitude in assessing the value of attorneys' fees and their
24 decisions will not be disturbed on appeal absent a manifest abuse of discretion. *See Lealao v.*
25 *Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). Moreover, Courts have consistently recognized
26 that class and representative litigation is necessary to protect the rights of individuals whose injuries
27 and/or damages are too small to economically justify individual representation. Accordingly, in
28 determining a reasonable common fund fee award, courts award fees to serve as an economic
incentive for lawyers to engage in representative litigation that will permit increased access to the

1 judicial system for meritorious claims and deter wrongdoing. *See*, R. Pearle, *California Attorney Fee*
2 *Awards* (CEB, 1993) §7A, p. 5-7. Fee awards that are too small will “chill the private enforcement
3 essential to the vindication of many legal rights and obstruct the representative actions that often
4 relieve the courts of the need to separately adjudicate numerous claims.” *Lealao*, 82 Cal.App.4th at
5 53. Therefore, fees awards in representative actions should approximate the terms of a contingent-
6 fee negotiated in comparable litigation based on the result achieved and risk incurred. *Id.* at 47. The
7 percentage-of-the-benefit approach is preferred in such cases because “it better approximates the
8 workings of the marketplace than the lodestar approach.” *Id.*

9 Historically, courts have awarded percentage fees in the range of 20% to 50% in complex
10 actions, depending on the circumstances of the case. *Newberg on Class Actions*, 4th Ed. 2002, §14:6.
11 According to *Newberg*, “. . . no general rule could be articulated as to what is a reasonable percentage
12 of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award in order to
13 assure that fees do not consume a disproportionate part of the recovery obtained for the class, though
14 somewhat larger percentages are not unprecedented.” *Id.* *Newberg* further notes that achievement of
15 a substantial recovery with modest hours expended should not be penalized, but should be rewarded
for considerations of time saved by superior services performed. *Id.*

16 Here, the Settlement provides for a Plaintiff’s Counsel Fee Payment of \$411,250.00, *i.e.* 35%
17 of the Gross Settlement, subject to Court approval. Settlement Agreement ¶ 9, 47(b). The requested
18 fee award is well-within the range of reasonableness in light of the facts and circumstances
19 surrounding this case. Plaintiff’s Counsel risked substantial economic loss when it took this case on
20 a contingency basis, knowing that there would likely be a long battle with an aggressive defense
21 firm. As a result of Plaintiff’s Counsel’s willingness to take on this risk and their efforts in
22 prosecuting this case, the State and PAGA Members will receive a substantial recovery for violations
23 that would otherwise have gone unaddressed. *See* Davis Decl. ¶ 52-53.

24 Accordingly, the requested fee award: (1) is consistent with the private marketplace where
25 contingent-fee attorneys are customarily compensated on such a basis; (2) aligns the interests of
26 Plaintiff’s Counsel, the State of California, and Aggrieved Employees in achieving the maximum
27 possible resolution of the case; (3) encourages the most efficient resolution of the litigation by
28 providing an incentive for early, yet fair and reasonable settlement; and (4) reflects the work

1 performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar
2 matters. As such, Plaintiff's Counsel has obtained a fair recovery for the State of California and
3 Aggrieved Employees which justifies a fee award based on the 35% of the common fund.

4 **B. The Requested Fee Award Is Reasonable Based on the *Dunkel* Factors.**

5 In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir. 1991),
6 the court identified twelve factors to be considered in determining whether fee awards are
7 reasonable in a common fund case. The court also noted that, "the analysis in a common fund case
8 focuses not on the Plaintiff's position as 'prevailing parties,' but on a showing that the fund
9 conferring a benefit on the class resulted from their efforts" and thus in common fund cases "the
10 monetary results achieved predominate over all other criteria." *Id.* at 774. Evaluation of these
11 factors demonstrates that the fees award requested here is reasonable and should be approved.

12 1. Time and Labor Required.

13 Plaintiff's Counsel has extensive experience in the handling of complex employment class
14 actions and PAGA actions. *See* Davis Decl. ¶ 2-10. Plaintiff's Counsel have aggressively litigated
15 this case from the initial pleading to the settlement of this action. As a result of Plaintiff's Counsel's
16 aggressive efforts, Defendants agreed to attend early mediation rather than proceeding with
17 litigation. The ongoing work performed by Plaintiff's Counsel has been extensive, complex and
18 ultimately successful in achieving a fair settlement for PAGA Members and the State. Plaintiff's
19 Counsel actively participated in this litigation, attending client meetings, attending hearings with the
20 Court, conducting legal research on unanticipated and remote legal defenses, propounding discovery
21 including noticing depositions of Defendants' Persons Most Knowledgeable, reviewing and
22 objecting to Defendant's discovery requests, drafting the stipulations necessary to attend mediation,
23 drafting a *Belaire-West* Notice to send to the aggrieved employees, participating in case strategy and
24 analysis, and drafting, reviewing, and revising pleadings. Plaintiff's Counsel conducted extensive
25 informal discovery, researched defenses raised by Defendants, and investigated Defendants'
26 policies, practices, and procedures before attending a full day mediation. Plaintiff's Counsel also
27 spent significant time drafting and revising the Settlement before the Court. A settlement was finally
28 achieved despite all of the obstacles, because of Plaintiff's Counsel's time, effort, experience, and
skill. *See* Davis Decl. ¶ 54.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. The Skill Required to Perform Legal Services.

The skill required to properly litigate this case is evident not only in the results achieved, but in the steps necessary to reach this result. Defendants retained well-respected counsel and vigorously denied liability. Indeed, Defendants and their Counsel felt very strongly about Defendants' ability to prevail and mounted several defenses that posed significant threats to Plaintiff's claims, challenged the theories of Plaintiff's Counsel, and promised a strong defense moving forward. Further, in order to evaluate these claims and defenses, Plaintiff's Counsel were required to review and analyze a tremendous amount of data to determine Defendants' underlying practices and liability, a complex process that took considerable time, energy, and knowledge. This settlement, against experienced defense counsel, and despite the existence of several strong defenses, was made possible through Plaintiff's Counsel's skill and reputation in complex employment matters. Davis Decl. ¶ 55.

3. The Value, Amount, and Results Achieved.

The Settlement represents a fair resolution of this case given the risks inherent in litigating it through trial and possible appeals. As discussed at length above, although Plaintiff's Counsel predict that Plaintiff would prevail on at trial, a number of risks reduced value of the case. Had the case not settled, Plaintiff anticipates Defendants would have vigorously challenged the manageability of the case, disputed Plaintiff's contentions on the merits, and sought drastic reduction in the amount of any penalties assessed. Preparing the case for trial would have been an extraordinarily expensive and risky proposition. In contrast, settlement at this stage guarantees immediate recovery for the State of California and PAGA Members. Indeed, despite the challenges Plaintiff faced moving forward, Defendants agreed to pay a non-reversionary Gross Settlement Amount of \$1,175,000. This is an outstanding result, particularly for a settlement limited to penalties arising under PAGA and which does not affect PAGA Members' individual wage claims. Davis Decl. ¶ 56.

4. Whether the Fee is Fixed or Contingent.

Whether the representation was provided on a contingency basis, as it was in this case, is an important factor:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. A lawyer who both bears the

1 risk of not being paid and provides legal services is not receiving the fair market value
2 of his work if he is paid only for the second of these functions. *Cates v. Chiang*, 213
3 Cal.App.4th 791, 823 (2013).

4 This case was litigated on a contingent basis. If Plaintiff's Counsel had been unsuccessful,
5 they would not receive any fee or recover any portion of the expenses spent litigating this matter.
6 Plaintiff's Counsel has borne all risks and costs associated with the litigation and will not receive
7 any compensation until recovery is obtained. If the Covid-19 crisis has made one thing clear, it is that
8 economic uncertainty can arise swiftly and for reasons beyond any parties' control. These are the
9 types of risks Plaintiff's Counsel took in deciding to litigate this matter on a contingent basis and this
10 risk is a relevant factor in considering the reasonableness of the requested fee. Davis Decl. ¶ 57.

11 **C. The Requested Fee is Reasonable Under a Lodestar Analysis.**

12 While the percentage-of-the-benefit approach is endorsed as the better approximation of the
13 workings of the marketplace than the lodestar approach, courts may also use the lodestar method to
14 "cross-check" the results of the other. This said, Courts have cautioned that the primary basis of the
15 fee award in common fund cases remains the percentage of the fund method and have cautioned that
16 plaintiff's counsel should not necessarily receive a lesser fee achieving a speedy and timely result for
17 individuals in need of immediate relief. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d. 1043, 1050
18 fn.1 (9th Cir. 2002). Indeed, courts have noted that "it is widely recognized that the lodestar method
19 creates incentives for counsel to expend more hours than may be necessary on litigating a case so as
20 to recover a reasonable fee, since the lodestar method does not reward early settlement." *Id.* (quoting
21 *Camden I Condominium Ass'n*, 946 F.2d at 773-74.)

22 Here, the lodestar is calculated based on reasonable hours at reasonable prevailing hourly
23 rates for the attorneys who worked on these matters. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-
24 32 (2001). Counsel are entitled to compensation for every hour reasonably spent on the matter. *See*
25 *Id.* at 1133. Further, this amount may be enhanced and courts in California routinely apply
26 multipliers between 1 and 4 to a party's requested lodestar amount based on some of the same factors
27 identified above. *See Cates*, 213 Cal.App.4th at 822.

28 **1. Counsel Spent a Reasonable Amount of Time.**

Reasonableness of hours is assessed by "the entire course of the litigation, including pretrial
matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo v. Las*
Virgenes Municipal Water Dist., 79 Cal.App.4th 440, 447 (2000). As discussed above, this case was

1 highly contested, as Defendants raised significant defenses and denied liability. Plaintiff's Counsel
2 invested significant time and labor into this matter. The services provided include, but were not
3 limited to attending client meetings, attending hearings with the Court, conducting legal research on
4 unanticipated and remote legal defenses, drafting a *Belair-West* Notice, conducting and responding
5 to formal discovery, conducting extensive informal discovery, investigating Defendants' policies,
6 practices, and procedures, reviewing hundreds of documents, analyzing time and payroll data,
7 participating in case strategy and analysis, drafting, reviewing, and revising pleadings, preparing for
8 and attending mediation, participating in settlement negotiations and negotiating, reviewing,
9 revising, and finalizing the final version of the Settlement Agreement. Plaintiff's Counsel
10 conservatively expended a total of 280.35 hours on this matter. The time spent on this matter was
11 time Plaintiff's Counsel could not spend on other cases or performing other tasks. Moreover,
12 Plaintiff's Counsel bore the significant risk that, despite all their efforts, there might ultimately be
13 no recovery. Accordingly, Plaintiff's Counsel has spent a reasonable number of hours working on
this matter. *See* Davis Decl. ¶ 53-54, 63, Ex. 3.

14 2. Plaintiff's Counsel's Hourly Rate is Reasonable.

15 Both California and federal courts recognize that attorneys should be compensated for
16 providing representation on a contingency basis and for taking on the risks associated with said
17 representation, as well as being provided with financial incentives to enforce important rights and
18 protections like those at issue in this Action. *See Ketchum*, 24 Cal.4th at 1132-33. In awarding
19 attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding
20 attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly
21 rates for winning contingency cases." *See Id.* Here, the professional background and experience
22 support the use of a blended rate of at least \$650.00 for Plaintiff's Counsel, resulting in an
23 approximate lodestar value of \$182,227.50. Davis Decl. ¶ 10, 60-63.

24 3. The Use of a Multiplier is Reasonable and Appropriate.

25 The lodestar amount may be increased by applying a multiplier. *See Serrano*, 20 Cal.3d at
26 49. In California, "[m]ultipliers can range from two to four or even higher" and are routinely applied
27 in the range requested here. *Wershba*, 91 Cal.App.4th at 254 (noting multipliers commonly applied);
28 *Chavez*, 162 Cal.App.4th at 66 (upholding 2.5 multiplier); *Vizcaino*, 290 F.3d at 1051, n.6 (noting

1 multipliers of 1-4 are commonly applied). Factors considered include: (1) the difficulty of the
2 questions involved; (2) the skill displayed; (3) the extent to which the litigation precluded other
3 employment; and (4) the contingent nature of the fee award and the associated risk. *See Ketchum v.*
4 *Moses*, 24 Cal.4th 1122, 1132 (2001).

5 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases
6 is necessary to (1) fully compensate counsel for the “loan” of legal services in light of the inherent
7 high risk of “default” posed by losing the case, and (2) to encourage competent counsel to take on
8 fee award cases. *Ketchum*, 24 Cal.4th at 1132-33. As the court noted, “A lawyer who both bears the
9 risk of not being paid and provides legal services is not receiving the fair market value of his work
10 if he is paid only for the second of these functions. If he is paid no more, competent counsel will be
11 reluctant to accept fee award cases.” *Id.* at 1133. Similarly, in *Greene v. Dillingham Construction*,
12 101 Cal.App.4th 418, 426 (2002), the Court of Appeal held that the trial court erred by refusing to
13 consider contingent risk as a factor in the decision to apply a multiplier. The court recognized that
14 “[t]he adjustment to the lodestar figure, e.g., to provide a fee enhancement reflecting the risk that
15 the attorney will not receive payment if the suit does not succeed, constitutes earned compensation;
16 unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate
17 market-level compensation for such services, which typically includes a premium for the risk of
18 nonpayment or delay in payment of attorney fees.” *Id.*

19 Here, the use of a multiplier is appropriate. Plaintiff’s Counsel expended significant time and
20 resources which could have been directed towards other less risky cases. Plaintiff’s Counsel agreed
21 to litigate this Action on a contingent fee basis and in the process assumed considerable risk. This is
22 particularly relevant here in light of the complex and unique issues relating the litigation of these
23 claims, which presented substantial concerns regarding the potential for individualized issues and
24 the manageability of the case at trial. Attempting to bring these claims as on a representative basis
25 required extensive data analysis and also required Plaintiff’s Counsel to evaluate and analyze
26 complex issues with respect to Defendants’ underlying meal and rest claims, and the alleged off-the-
27 clock work. Given the complex nature of these claims many attorneys would have been unprepared
28 to litigate these claims or obtain the proposed Settlement. This risk is particularly notable given the
broad economic uncertainty of these challenging times. Davis Decl. ¶ 64-69.

1 As recognized by the California Supreme Court in *Ketchum*, these risks illustrate that if
2 multipliers are not awarded to counsel in the cases that are successfully settled these attorneys will
3 not be fully compensated because the lodestar in and of itself cannot account for contingent risk
4 associated with the litigation. Further, a decision to withhold a multiplier not only fails to compensate
5 attorneys for this associated risk, but also this decision actively penalizes counsel who obtain a
6 timely and efficient result. Thus, the application of a multiplier is appropriate given the contingent
7 risk incurred by Plaintiff's Counsel, the difficulty of the questions involved, the benefit conferred
8 by the Settlement, and the skill displayed by Plaintiff's Counsel. For these reasons, Plaintiff
9 respectfully requests the Court award the requested attorneys' fees of \$411,250.00. Davis Decl. ¶
10 70.

11 **D. The Requested Costs Are Fair and Reasonable.**

12 Plaintiff's Counsel request the reimbursement of the costs incurred litigating this case in the
13 total amount of \$10,966.83. These costs include filing fees, costs to attend hearings, mediation fees,
14 and other costs associated with the Action. These costs also include \$350.00 in anticipated future
15 costs that will be necessary in order to successfully resolve this action including costs associated
16 with the filing of this Motion, attendance at the approval hearing, and additional costs for filing
17 declarations following distribution of the Gross Settlement Amount. These costs are less than
18 allocated under the Settlement and were necessary for the prosecution of the Action. Accordingly,
19 Plaintiff respectfully requests these costs be reimbursed in full. Davis Decl. ¶ 71, Ex. 4.

20 **VII. THE REQUESTED PLAINTIFF'S REPRESENTATIVE PAYMENT IS FAIR**
21 **AND REASONABLE AND SHOULD BE APPROVED.**

22 The Settlement provides for a Plaintiff's Representative Payment to be paid to Plaintiff in
23 the amount of \$7,500.00. The payment serves as an incentive award to encourage an aggrieved
24 employee to serve as the LWDA's proxy in undertaking the responsibilities associating with
25 initiating a PAGA lawsuit and serving in a representative capacity. *See Bell v. Famers Ins. Exch.*,
26 115 Cal.App.4th 715, 726 (2004) ("service payments" compensate named plaintiff "for [her] efforts
27 in bringing the action"); *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)
28 (noting that incentive payments compensate plaintiffs for the expense and risk the incur in conferring
benefits on others); *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009) ("an
incentive award is appropriate 'if it is necessary to induce an individual to participate in the suit'").

1 Here, Plaintiff initiated this litigation and invested considerable time and effort to enforce
2 the Labor Code on behalf of the State of California and PAGA Members, who will now receive
3 monetary payment as a result. Plaintiff provided Plaintiff's Counsel with relevant documents and
4 information, provided the facts and evidence necessary to attempt to prove her allegations, and had
5 numerous discussions with Plaintiff's Counsel about the case. Plaintiff made herself available,
6 actively monitored the status of the case, assisted in preparation for mediation, and reviewed the
7 Settlement and discussed its terms with Counsel. In short, Plaintiff played an instrumental role in
8 the successful litigation to this case. Davis Decl. ¶ 72; Declaration of Sandra Wallace ("Wallace
9 Decl.") ¶ 3-7.

10 The requested Plaintiff's Representative Payment also recognizes the fact that, as part of the
11 Settlement, Plaintiff is agreeing to a general release of any and all claims she may have against
12 Defendants, which is far broader than the narrow release applicable to PAGA Members. The
13 payment also serves to recognize the actual risk Plaintiff assumed by putting herself on the public
14 record in a representative employment lawsuit. Accordingly, it is reasonable and just for Plaintiff to
15 receive a modest incentive payment of \$7,500.00 in recognition for her contributions in obtaining
16 the settlement. Davis Decl. ¶ 73-77; Wallace Decl. ¶ 8-9.

17 **VIII. THE PROPOSED SETTLEMENT COVER LETTER TO THE AGGRIEVED**
18 **EMPLOYEES SHOULD BE APPROVED.**

19 Although PAGA does not require notice to unnamed aggrieved employees of a settlement,
20 the Parties prepared, and now present for the Court's consideration and approval, a proposed cover
21 letter to be sent to PAGA Members along with their settlement shares. The cover letter, which shall
22 be sent to PAGA Members in both English and Spanish, informs PAGA Members regarding this
23 Action, the Settlement, the PAGA Member's Individual Pay Periods, their share of the PAGA
24 Payment, and the scope of the Released Claims. Plaintiff respectfully requests that the Court approve
25 the cover letter and that this letter be sent to PAGA Members. Davis Decl. ¶ 78; Settlement
26 Agreement ¶ 21, 39, Ex. A.

27 **IX. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE.**

28 Subject to Court approval, the Parties have agreed to utilize Phoenix Settlement
Administrators ("Phoenix") to handle administration of the Settlement. The total fees and expenses
of the Settlement Administrator shall not exceed \$6,850.00. These costs include, but are not limited

1 to, expenses for translating the Notice from English to Spanish, preparing, printing and mailing the
2 cover letter and checks to PAGA Members, performing skip-traces; remailing returned payments;
3 and handling inquiries from PAGA Members regarding the Settlement. Accordingly, Plaintiff
4 respectfully requests that the Court approve payment of administration costs in the amount of
5 \$6,850.00 to Phoenix Settlement Administrators. Davis Decl. ¶ 79, Ex. 5.

6 **X. CONCLUSION.**

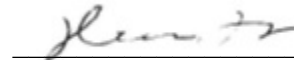
7 For the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
8 Motion and issue an Order approving of the Parties' settlement pursuant to the California Labor
9 Code Private Attorneys General Act and Enter Judgment.

10 Respectfully submitted,

11 DATED: July 26, 2021

PROTECTION LAW GROUP, LLP

12
13 By:



14 Heather Davis
15 Amir Nayebdadash
16 S. Emi Minne
17 Attorneys for Plaintiff
18
19
20
21
22
23
24
25
26
27
28