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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

ROBERT ENRIQUEZ, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act (“PAGA”);

Plaintiff,

v.

MCE CORPORATION, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: MSC20-01774

Honorable Edward Weil
Department 39

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *ET SEQ.*)
SETTLEMENT AGREEMENT AND
ATTORNEYS’ FEES WARD,
LITIGATION COSTS AWARD, AND
ENHANCEMENT PAYMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Declaration of Counsel (Douglas Han);
Declaration of Plaintiff (Robert Enriquez); and
[Proposed] Order and Judgment filed
concurrently herewith]

Complaint Filed: September 9, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that as soon as the matter may be heard, before the Honorable
2 Edward Weil in Department 39 of the Contra Costa Superior Court (Wakefield Taylor
3 Courthouse), located at 725 Court Street Martinez, California 94553, Plaintiff Robert Enriquez
4 (“Plaintiff”) will and hereby does move for entry of the following orders:

- 5 1. Granting approval, pursuant to Labor Code section 2699(1), of the proposed settlement
6 between Plaintiff and Defendant MCE Corporation (“Defendant”) of the claims
7 brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”) as set forth
8 in the Settlement Agreement and Release (“Settlement Agreement,” “Settlement,” or
9 “Agreement”), attached as **Exhibit 2** to the Declaration of Douglas Han;
- 10 2. Approving the PAGA Penalties Fund available for payment of PAGA penalties that is
11 estimated to be \$294,372.79, seventy-five percent (75%) of which (\$220,779.59) will
12 be paid to the California Labor and Workforce Development Agency (“LWDA”)
13 (“LWDA Payment”) and twenty-five percent (25%) of which (\$73,593.20) will be paid
14 to the Settlement Group Members (“Net Settlement Amount” and “Individual
15 Settlement Awards”);
- 16 3. Directing Defendant to transfer the Gross Settlement Amount to the Settlement
17 Administrator in accordance with the Settlement Agreement;
- 18 4. Directing the mailing of the Individual Settlement Awards accompanied by an
19 explanatory letter providing notice of PAGA settlement to Settlement Group Members;
- 20 5. Awarding \$10,000 to Plaintiff as the Enhancement Payment; and
- 21 6. Awarding Administration Costs to the Settlement Administrator in an amount not to
22 exceed \$5,000;
- 23 7. Awarding to Plaintiff’s Counsel, Justice Law Corporation, an Attorneys’ Fees Award
24 in the amount of \$175,000 as compensation for reasonable attorneys’ fees and
25 Litigation Costs Award in the amount of \$15,627.21 as reimbursement for litigation
26 costs and expenses incurred in litigating the PAGA claim, pursuant to Labor Code
27 section 2699(g)(1) and Code of Civil Procedure section 1021.5;

28 ///

1 This motion will be based upon the following Memorandum of Points and Authorities,
2 the Settlement Agreement, the Declaration of Plaintiff's Counsel (Douglas Han), the Declaration
3 of Plaintiff (Robert Rodriguez) in support thereof, the pleadings and other records on file with
4 the Court in this matter, and such evidence and oral argument as may be presented at the hearing
5 on this motion.

6
7 Dated: February 24, 2022

JUSTICE LAW CORPORATION

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9 By: 
10 Douglas Han
11 *Attorneys for Plaintiff*
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5	<i>Iskanian v. CLS Trans. Los Angeles, LLC,</i>	
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19	<i>Martinez v. Joe's Crab Shack Holdings, et al.,</i>	
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Under Labor Code section 2699(l)(2), Plaintiff seeks approval of the Settlement Agreement
4 entered by and between Plaintiff and Defendant. Plaintiff entered the Settlement Agreement on
5 behalf of himself and all current and former hourly-paid employees of Defendant who worked for
6 Defendant at any time from June 19, 2019, through February 1, 2022 (“Settlement Group,”
7 “Settlement Group Members,” and “Settlement Period”).

8 Subject to Court approval, Plaintiff and Defendant have agreed to resolve this case brought,
9 pursuant to the PAGA, for a Gross Settlement Amount of \$500,000. The Gross Settlement Amount
10 is inclusive of: (1) the amount allocated for the LWDA that will be distributed in accordance with
11 Labor Code section 2699(i); (2) the Attorneys’ Fees Award and the Litigation Costs Award to
12 Plaintiff’s Counsel, pursuant to Labor Code section 2699(g)(1); (3) the Enhancement Payment to
13 Plaintiff; and (4) the Administration Costs to the Settlement Administrator.

14 The PAGA Penalties Fund shall be the Gross Settlement Amount less the Court-approved
15 Attorneys’ Fees Award, Litigation Costs Award, Enhancement Payment, and Administration
16 Costs, and is currently estimated to be \$294,372.79. Seventy-five percent (75%) of the PAGA
17 Penalties Fund will be the LWDA Payment, and twenty-five percent (25%) will be the Net
18 Settlement Amount, pursuant to Labor Code section 2699(i). Each Settlement Group Member will
19 receive a pro-rated share of the Net Settlement Amount based on the total number of pay periods
20 he or she worked as an hourly-paid employee of Defendant during the Settlement Period.

21 Plaintiff submits that the proposed Settlement is fair, adequate, and reasonable, and meets
22 the requirements for Court approval. Plaintiff respectfully requests that this Court approve the
23 Settlement and award the Attorneys’ Fees Award, the Litigation Costs Awards, the Enhancement
24 Payment, and the Administration Costs that are provided by the Settlement and requested herein.

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II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

On or about June 19, 2020, Plaintiff served a notice letter to the LWDA and Defendant, pursuant to Labor Code Section 2699.3, to notify LWDA and Defendant of alleged Labor Code violations. On or about September 9, 2020, Plaintiff filed this representative PAGA action via a complaint for civil penalties for violation of Labor Code sections 2698, *et seq.* (PAGA). Plaintiff sought on behalf of California to represent himself and all Settlement Group Members.¹

Plaintiff's core allegations are that Defendant has systematically violated the Labor Code, with respect to Plaintiff and Settlement Group Members, *inter alia*, by: (1) failing to compensate minimum and overtime wages; (2) failing to provide compliant meal and rest breaks and pay associated premium pay; (3) failing to timely pay wages; (4) failing to provide compliant wage statements; and (5) failing to reimburse necessary business expenses.²

After conducting significant investigation of the facts and law during the prosecution of this case, counsel for the Parties engaged in extensive settlement negotiations to try to resolve the entire matter. The Parties participated in private mediation on November 8, 2021 before Jeffrey Krivis, a mediator experienced in mediating wage-and-hour class and representative actions. Under the auspices of the mediator, the Parties were ultimately able to reach a settlement.³

Plaintiff now moves for an order granting approval of the Settlement, pursuant to Labor Code section 2699(1)(2).

III. SUMMARY OF THE SETTLEMENT TERMS

A. Settlement Group Members

The Settlement Group Members who are covered by the Settlement are:

All current and former hourly-paid employees of Defendant who worked for Defendant at any time from June 19, 2019, through February 1, 2022.⁴

¹ (Declaration of Douglas Han In Support of Plaintiff's Motion for Approval of Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement ("Han Dec."), ¶ 10.)

² (*Id.* at ¶ 21.)

³ (*Id.* at ¶¶ 15-16.)

⁴ (Settlement Agreement and Release, attached as **Exhibit 2** to the Declaration of Douglas Han filed concurrently herewith ("Settlement Agreement"), §§ 5.a., 5.b.)

Based on information provided by Defendant and Plaintiff's expert's analysis, there are approximately 22,522 pay periods during the Settlement Period.⁵

B. Distribution of the Gross Settlement Amount

Under the terms of the proposed Settlement, Defendant will pay a Gross Settlement Amount of \$500,000.⁶ The PAGA Penalties Fund will be the Gross Settlement Amount less the following amounts: (1) the Attorneys' Fees Award of up to \$175,000 to Plaintiff's Counsel; (2) the Litigation Costs Award in the sum of \$15,627.21 to Plaintiff's Counsel; (3) the Enhancement Payment of up to \$10,000 to Plaintiff; and (4) the Administration Costs in an amount not to exceed \$5,000 to the Settlement Administrator.⁷ Twenty-five percent (25%) of the PAGA Penalties Fund will be distributed to each Settlement Group Member based on the total number of pay periods he or she worked as an hourly-paid employee of Defendant during the Settlement Period, and the remaining seventy-five percent (75%) of the PAGA Penalties Fund will be transmitted to the LWDA, pursuant to Labor Code section 2699(i).⁸

C. Distribution of the PAGA Penalties Fund

Within twenty (20) business days after the Effective Date of the Agreement, Defendant shall deposit with the Settlement Administrator the full Gross Settlement Amount. Within fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will issue the payments required by the Agreement to the appropriate entities or persons.⁹ Specifically, Individual Settlement Awards will be paid in the form of a check delivered to each Settlement Group Member at the last known address on file with Defendant or as updated by the Settlement Administrator. Each Individual Settlement Award will be accompanied by an explanatory letter.¹⁰

⁵ (Han Dec., *supra*, at ¶ 10.)

⁶ (Settlement Agreement, *supra*, at § 7.a.)

⁷ (*Id.* at §§ 7.b.i., 7.b.ii, 7.b.iii., 7.b.v.)

⁸ (*Id.* at §§ 7.b.iv.A, 7.b.iv.B.)

⁹ (*Id.* at §§ 8.a.i., 8.b.)

¹⁰ (*Id.* at § 8.c.i.)

1 Furthermore, Individual Settlement Award checks will remain negotiable for one hundred
2 twenty (120) days after the date of their issuance (the “Check Stale Date”). Any Individual
3 Settlement Award checks that are not cashed, deposited, or negotiated after the Check Stale Date
4 will be void and the amount of those checks will be directed to the California State Controller for
5 the deposit in the Unclaimed Property Fund in the name of the employee.¹¹

6 Any checks to the Settlement Group that are returned as undeliverable on or before the
7 Check Stale Date will be sent promptly via regular First-Class U.S. Mail to the forwarding address
8 affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly
9 attempt to determine the correct address using a skip trace or other reasonable method and will
10 then perform a single remailing. Any Settlement Group Member who cannot be located after the
11 above procedures are followed will continue to be bound by the Agreement, but the funds
12 associated with his or her Individual Settlement Award will be directed to the California State
13 Controller for the deposit in the Unclaimed Property Fund in the name of the employee.¹²

14 The PAGA Penalties Fund is currently estimated to be \$294,372.79.¹³ In conformity with
15 the PAGA statute, seventy-five percent (75%) of the PAGA Penalties Fund shall be distributed to
16 the LWDA as its share of the Settlement attributable to civil penalties under Labor Code section
17 2699(i), and the remaining twenty-five percent (25%) will be known as the Net Settlement
18 Amount to be paid to each Settlement Group Member as their Individual Settlement Award.¹⁴

19 Individual Settlement Awards shall be deemed to consist entirely of civil penalties
20 recovered under PAGA and subject to treatment as IRS Form 1099 income. Accordingly, an IRS
21 Form 1099 will be issued to each Settlement Group Member in connection with his or her
22 Individual Settlement Award if it is \$600 or more.¹⁵

24 ¹¹ (Settlement Agreement, *supra*, at § 8.c.ii.)

25 ¹² (*Id.* at § 8.c.iii.)

26 ¹³ (Han Dec., *supra*, at ¶ 18.)

27 ¹⁴ (Settlement Agreement, *supra*, at §§ 7.b.iv.A, 7.b.iv.B.)

28 ¹⁵ (*Id.* at § 7.e.iii.)

1 **D. The Scope of the Release in the Settlement Agreement**

2 The Released Parties are Defendant and each and all of Defendant’s past, present, and
3 future parents, affiliates, subsidiaries, divisions, predecessors, successors, managing members,
4 divisions, affiliates, affiliated entities, related entities, and assigns; the past, present, and future
5 shareholders, owners, officers, directors, board members, employees, agents, trustees, attorneys
6 or legal representatives, insurers, representatives, administrators, fiduciaries, beneficiaries,
7 subrogees, partners, and members of the foregoing; and/or any other entity or individual which
8 could be liable for the acts or omissions of Defendant (“Released Parties”).¹⁶

9 Upon the Effective Date, the Settlement forever bars Plaintiff, the LWDA, and any other
10 representative, proxy, or agent thereof, including, but not limited to, any and all allegedly
11 aggrieved employees, from pursuing any action against the Released Parties under the PAGA,
12 Labor Code sections 2698, *et seq.*, based on or arising out of alleged violations of Labor Code
13 sections alleged in this case through the end of the Settlement Period.¹⁷

14 **E. No Right to Object to or Opt Out of the Settlement**

15 “[A] PAGA action is a statutory action for penalties brought as a proxy for the state, rather
16 than a procedure for resolving the claims of other employees, there is no need to protect absent
17 employees’ due process rights[.]” *Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 546. “Unnamed
18 employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of
19 the representative PAGA claim.” *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2,
20 2010), 2010 WL 1340777, at p. *5. A representative PAGA action need not satisfy class action
21 requirements, and no due process concern arises from the fact that there are “nonparty aggrieved
22 employees who are not given notice of, and an opportunity to be heard in, a representative action
23 that is not brought as a class action.” *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 984. “PAGA does
24 not make other potentially aggrieved employees parties” to the action and no “due process
25 concerns arise under PAGA because absent employees do not own a personal claim for PAGA
26 civil penalties and whatever personal claims the absent employees might have for relief are not at

27 ¹⁶ (Settlement Agreement, *supra*, at § 9.a.)

28 ¹⁷ (*Id.* at § 9.b.)

1 stake.” *Williams, supra*, 546-547 (internal references omitted, citing *Amalgamated Transit Union,*
2 *Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46th Cal.4th 993, 1003 and *Iskanian v. CLS Trans. Los*
3 *Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

4 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
5 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v. Sup.*
6 *Ct.* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Indus., Inc.* (1981) 29 Cal, 3d 462, 474.)
7 A “judgment in such an action is binding not only on the named employee plaintiff but also on
8 government agencies and any aggrieved employee not a party to the proceeding” because “the
9 employee plaintiff represents the same legal right and interest as state labor law enforcement
10 agencies[.]” “collateral estoppel applies [...] against those for whom the party acted as an agent
11 or proxy[.]” and “[w]hen a government agency is authorized to bring an action on behalf of an
12 individual or in the public interest, and a private person lacks an independent right to bring the
13 action, a person who is not a party but who is represented by the agency is bound by the judgment
14 as though the person were a party.” *Arias, supra*, at 985-986 (citations omitted).

15 As such, consistent with the law, the Settlement does not provide for a procedure for
16 Settlement Group Members to opt out or otherwise exclude themselves the Settlement.

17 **IV. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

18 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or
19 herself and on behalf of other aggrieved employees and the State to recover civil penalties which
20 are specifically established by the PAGA with respect to provisions of the Labor Code that do not
21 otherwise provide for civil penalties (Lab. Code § 2699(g)), and also, civil penalties which,
22 outside of PAGA, only the LWDA can assess upon and collect from an employer (Lab. Code §
23 2699(a)). Before bringing a civil action under PAGA, an employee must comply with Labor Code
24 section 2699.3. See Lab. Code § 2699(a).

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1 The settlement of a PAGA claim requires court approval. See Lab. Code § 2699(1)(2)
2 (“The superior court shall review and approve any settlement of any civil action pursuant to this
3 part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
4 considered a class action but a law enforcement action” and, therefore, does not have to meet the
5 requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL
6 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715,
7 at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not
8 satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal.
9 Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves
10 analysis of several unique features that render the approval process distinct from approval of a
11 class action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a
12 negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing Lab. Code §
13 2699(1)(2)). Although Labor Code section 2699(1) does not set forth the criteria on which a PAGA
14 settlement is to be judged, courts have approved settlements of PAGA claims.¹⁸ In a PAGA case,
15 the Court’s focus is not the amount which “aggrieved employees” are to receive, but instead,
16 whether the total settlement amount achieves the PAGA’s objectives. The purpose of the PAGA
17 is “to incentivize private parties to recover civil penalties for the government that otherwise may
18 not have been assessed and collected by overburdened state enforcement agencies.” See *Ochoa-*
19 *Hernandez, supra*, 2010 WL 1340777, at *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties
20 recovered under the PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor
21 laws . . . and for education of employers and employees about their rights and responsibilities
22 under this code, to be continuously appropriated to supplement and not supplant the funding to
23 the agency for those purposes.” See Lab. Code § 2699(j). The recovery of penalties on behalf of
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25 ¹⁸ (See also See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Sup.
26 Ct., Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct.,
27 Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL
28 5364575, at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at
*14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v.*
Ruiz Food Prods. (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions*
Case (2010) 186 Cal.App. 4th 576, 589.)

1 the state, by way of a PAGA claim, is essentially a law enforcement action. *See Amalgamated,*
2 *supra*, 46 Cal.4th at 1003 (stating that the PAGA is mechanism for “an aggrieved employee to
3 recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor
4 law enforcement agencies”); *see also Iskanian, supra*, at 381.

5 A PAGA settlement is a settlement of claims for penalties and other remedies which the
6 LWDA could assess and collect on behalf of employees without their involvement or approval.
7 “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
8 to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010 WL 1340777, at
9 p. *5. This renders the approval process of a PAGA settlement distinct from a class action
10 settlement, as the Court need not employ the two-step approval process normally required for a
11 class action settlement.

12 **V. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED.**

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

14 The Parties reached the proposed Settlement through arms’-length negotiations through
15 experienced counsel with the assistance of an experienced and respected private mediator, Jeffrey
16 Krivis, at a full-day mediation. Under the auspices of the mediator, the Parties were ultimately
17 able to reach a settlement.¹⁹ A settlement agreement that is “the product of extensive and hard-
18 fought adversarial negotiations between the parties” is entitled to a presumption of fairness.
19 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

20 The proposed Settlement is presumptively fair because: (1) it is the product of non-
21 collusive, arms’-length negotiations that were overseen by an independent mediator
22 knowledgeable in wage-and-hour litigation; (2) it was negotiated by counsel with significant
23 experience in similar wage-and-hour litigation; and (3) it occurred after the Parties’ counsel
24 engaged in significant investigation to evaluate the strength and potential value of the PAGA
25 claim, and the risks of litigating this claim through trial.²⁰

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28 ¹⁹ (Han Dec., *supra*, at ¶¶ 14-16.)

²⁰ (*Id.* at ¶¶ 14-15.)

1 After engaging in discovery, the Parties participated in settlement negotiations to try and
2 resolve this case. These efforts included participating in extensive formal mediation conducted on
3 November 8, 2021. During the mediation, the Parties discussed all aspects of the case, including
4 the Defendant’s defenses, the risks and delays of further litigation, the risks to both Parties of
5 proceeding with trial, the law relating to representative PAGA actions, off-the-clock theory, and
6 meal and rest breaks, the evidence produced and analyzed, and the possibility of bifurcation of
7 discovery and/or trial and appeals, among other things. During all settlement discussions, Parties
8 conducted their negotiations at arms’ length from an adversarial position.²¹

9 Based on all of the information available to the Parties and with the assistance of the
10 experienced mediator, the Parties have agreed that this matter is well-suited for settlement given
11 the strengths and weaknesses of the PAGA claim.²² Plaintiff’s Counsel believe that the proposed
12 Settlement is a fair, adequate, and reasonable resolution of this matter.²³ Plaintiff’s Counsel have
13 extensive experience in representative and class action wage-and-hour litigation and used that
14 experience to achieve a great result for Plaintiff, Supplemental Group Members, and the LWDA.²⁴
15 Therefore, the Court should give considerable weight to the competency, experience, and opinion
16 of counsel and the involvement of a neutral mediator in assuring that the proposed Settlement is
17 a product of hard-fought negotiations that was entered without collusion. See *Kirkorian v. Borelli*
18 (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable
19 weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations
20 of plaintiffs’ counsel should be given a presumption of reasonableness); see also *Satchell v. Fed.*
21 *Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the “assistance of
22 an experienced mediator in the settlement process confirms that the settlement is non-collusive”).

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26 ²¹ (Han Dec., *supra*, at ¶¶ 15, 20-23.)

27 ²² (*Id.* at ¶ 24.)

28 ²³ (*Id.* at ¶ 40.)

²⁴ (*Id.* at ¶¶ 2-8; Exhibit 1.)

B. The Relative Strength of the PAGA Claim and the Range of Possible Outcomes in the Litigation Strongly Favor Approval of the Settlement.

For Plaintiff to recover civil penalties, he would have to prove the underlying Labor Code violations, demonstrate that Settlement Group Members suffered, and demonstrate Defendant's conduct gave rise to penalties. See, e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 ("Plaintiffs' claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiffs' other claims fail as a matter of law, so does her PAGA claim.").

Plaintiff's core allegations are that Defendant has systematically violated the Labor Code, with respect to Plaintiff and Settlement Group Members, *inter alia*, by: (1) failing to compensate minimum and overtime wages; (2) failing to provide compliant meal and rest breaks and pay associated premium pay; (3) failing to timely pay wages; (4) failing to provide compliant wage statements; and (5) failing to reimburse necessary business expenses.²⁵ For example, Plaintiff claimed that under Defendant's policies and procedures, Plaintiff and Settlement Group Members were forced to skip, cut short, or take late meal and rest breaks to maintain production and promptly complete services.

Although wage-and-hour actions are amenable to resolution as to a group of employees,²⁶ some courts have also found that, for various reasons, the issues raised here – non-compliant meal break, non-compliant rest breaks, and off-the-clock work – raise individualized issues and/or are unmanageable, and, thus, are not suitable for adjudication as to a group of employees.²⁷ Defendant

²⁵ (Han Dec., supra, at ¶ 21.)

²⁶ (See, e.g., *Martinez vs. Joe's Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-84, *modified on other grounds by Martinez v. Joe's Crab Shack Holdings, et al.* (Dec. 3, 2014 B242807) 2014 Cal.App. LEXIS 1102, *1-2 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of resolving wage-and-hour claims, including misclassification and overtime, recognizing that "statistical sampling may provide assistance in identifying the realistic demands of the job and illuminating whether the typical employee was able to meet those expectations" and that "[b]y refocusing its analysis on the policies and practices of the employer and the effect those policies and practices have on the putative class . . . the trial court may in fact find class analysis a more efficient and effective means of resolving plaintiffs' overtime claim".))

²⁷ (See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal. 4th 1, 25, 29, 31, and 34-35

(Footnote continued)

1 contended that courts have found that due process to defendant requires that the adjudication of a
2 PAGA claim meet a “manageability” requirement. See, e.g., *Liuy v. Merrill Lynch & Co.*
3 (C.D.Cal. Nov. 10, 2014) No. CV-14-0425-PA, WL 5904904 at **3-4 (Court dismissed the PAGA
4 claim because a multitude of individualized assessments would be necessary, making the PAGA
5 claim unmanageable).

6 Defendant maintained several defenses to Plaintiff’s theory of liability, which, if
7 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
8 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and
9 continues to have, legally compliant employment policies and practices throughout the statutory
10 period. Defendant also denied it ever violated any provision of the Labor Code. Finally, Defendant
11 denied, and continues to deny, that this case is appropriate for representative treatment for any
12 purpose other than the Settlement.²⁸

13 Defendant may also challenge Plaintiff’s standing as a Settlement Group Member and
14 deny that Defendant’s other employees, whom Plaintiff sought to represent, were aggrieved.²⁹
15 This would pose a risk to recovery because, at the time, multiple courts had taken an approach
16 requiring a plaintiff to establish standing and face the possibility of bifurcation of discovery and/or
17 trial of the PAGA claim. See *Amalgamated Transit Union, supra*, 46 Cal.4th at p. 1001 (noting
18 that PAGA “require[s] a plaintiff to have suffered an injury resulting from an unlawful action”);
19 *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding
20 that judicial economy supported bifurcation because of the difficulties and inherent uncertainties

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22 (determining that in a misclassification case “based on allegations that the employer consistently
23 imposed a uniform policy or de facto practice on [employees], the party must still demonstrate
24 that the illegal effects of this conduct can be proven efficiently and manageably within a class
25 setting” and in litigating representative actions the procedures utilized by the court “may not be
26 used to abridge a party’s substantive rights,” including “abridge[ing] [the defendant’s]
27 presentation of [a defense] simply because that defense was cumbersome to litigate,” because of
28 “principles of due process”); *Mies v. Sephora USA, Inc.* (2015) 234 Cal. App. 4th 967, 971 and
982—86 (affirming decision denying class certification in a misclassification case because
determining liability would require an individual assessment as to how each of the employees
spent their time).)

²⁸ (Han Dec., *supra*, at ¶ 22.)

²⁹ (*Id.* at ¶ 23.)

1 of being able to establish liability with respect to a large number of potentially aggrieved
2 employees and noted that “PAGA’s public purpose would be ill-served if the court finds [the
3 plaintiff] has not been aggrieved by a Labor Code violation.”); *Horton v. Jones* (1972) 26
4 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of litigation is allowed to avoid
5 waste of time and money on trial and litigation of issues could be rendered made moot).

6 Defendant also argued that an important feature of PAGA is that a court retains discretion
7 to lower the penalties if, based on the facts and circumstances of the case, to do otherwise would
8 result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” Lab. Code §
9 2699(e)(2); *see also Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112,
10 1136. As stated above, Defendant argued that it maintained legally compliant employment
11 policies and practices throughout the statutory period. Defendant has also continuously denied
12 that it ever violated any provision of the Labor Code.³⁰ Even if, *arguendo*, such violations
13 occurred, which Defendant denies, Defendant contended that said violations would only be “initial
14 violations” and thus heightened “subsequent violation” penalties were not warranted. Lab. Code
15 § 2699(f)(2); *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09
16 (Employer cannot be presumed to be aware that its continuing underpayment of employees is a
17 violation subject to penalties until has been notified that it is a violation).³¹

18 Defendant contended that the Court was unlikely to assess cumulative penalties for the
19 maximum numbers of possible separate Labor Code violations, because it would be unjust,
20 arbitrary, oppressive, and/or confiscatory. As such, Defendant argued that cumulative penalties
21 and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.³² By extension,
22 while Plaintiff maintains his PAGA claims have merit, Plaintiff and Plaintiff’s Counsel considered
23 the strengths and weaknesses of each side’s position and the uncertainty of how the case might
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26 ³⁰ (Han Dec., *supra*, at ¶¶ 22-23.)

27 ³¹ (*Id.* at ¶ 28.)

28 ³² (*Id.* at ¶ 23.)

1 have concluded as the litigation continued, at trial, and/or appeals in reaching the Settlement.³³

2 The provisions of the Labor Code potentially triggering PAGA penalties in this case
3 include but are not limited to Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
4 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802. Defendant asserts
5 that, regardless of the results of the underlying causes of action, PAGA penalties are not
6 mandatory but permissive and discretionary. Defendant also maintains that, in addition to its
7 strong arguments against the underlying claims, it had a strong argument that it would be unjust
8 to award maximum PAGA penalties given the law's unsettled state.³⁴ (*Thurman*, 203 Cal.App.4th
9 1112 [reducing penalties by 30% under this authority].) Defendant argued that without stacking
10 and limited to the initial violation, the PAGA penalties would be **\$34,100** (341 employees x \$100
11 initial violations) on the low end and **\$204,600** (341 employees x \$100 x 6 theories of recovery)
12 on the high end.³⁵

13 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
14 Many of the causes of action brought were cumulative for which the Court may or may not stack
15 the violations. Also, for the off-the-clock, overtime, reimbursement, and meal and rest period
16 violations, they did not occur every single pay period. Thus, a Gross Settlement Amount of
17 \$500,000 to PAGA civil penalties was reasonable and significant. When PAGA penalties are
18 negotiated in good faith and "there is no indication that [the] amount was the result of self-interest
19 at the expense of other Class Members," such amounts are generally considered reasonable.
20 *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D.
21 Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]rial
22 court did not abuse its discretion in approving a settlement which does not allocate any damages
23 to the PAGA claims."). Plaintiff's Counsel negotiated that about an average of **\$22.20** in penalties
24 per aggrieved pay period would be fair and reasonable [$\$500,000 \div 22,522$ Pay Periods in PAGA
25 Period date range = **\$22.20**]. Considering the recent cases justifying \$5 per pay period, *see e.g.*,

26 ³³ (*Id.* at ¶ 24.)

27 ³⁴ (Han Dec., *supra*, at ¶ 25.)

28 ³⁵ (*Id.* at ¶¶ 26-29.)

1 *Carrington v. Starbucks Corp.* 30 Cal.App.5th 504 (2018), \$22.20 per pay period is great result.³⁶

2 **C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation.**

3 Courts favor the voluntary conciliation and settlement of complex litigation. *Class*
4 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, “unless the settlement
5 is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive
6 litigation with uncertain results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan.
7 5, 2004) 221 F.R.D. 523, 526 (citation omitted).

8 Both sides used the pre-mediation time period to investigate the veracity, strength, and
9 scope of the PAGA claim. Plaintiff’s Counsel propounded multiple sets of written discovery
10 requests (Form Interrogatories, Set One, Special Interrogatories, Set One, Request for Production
11 of Documents, Set One, Requests for Admissions, Set One). Parties also exchanged documents
12 and data relevant to Plaintiff’s claim and Defendant’s defenses, including, and not limited to,
13 Plaintiff’s employment records, Settlement Group Members’ general job responsibilities, a
14 sampling of time and payroll records, and Defendant’s exemplar operations and employee
15 handbook, in an effort to determine the potential value and strength of the PAGA claim.³⁷ The
16 Parties’ Counsel undertook significant investigation, and invested time reviewing and analyzing
17 relevant documents and data to evaluate Plaintiff’s claims, including, and not limited to, Plaintiff’s
18 Counsel’s calculation of the potential penalties recoverable under the PAGA.³⁸

19 If the case had not settled, the Parties would have to conduct additional extensive discovery
20 to prepare the case for trial. From the inception of this litigation, Defendant indicated that it would
21 aggressively litigate this case. Litigating a complex PAGA action is inherently expensive, and the
22 litigation could continue beyond final judgment if either party were to appeal adverse rulings to
23 the Court of Appeal.³⁹ There is also a real possibility Plaintiff would recover nothing, for himself,
24 or on behalf of Settlement Group Members or the LWDA, after almost one and one-half (1.5)

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26 ³⁶ (*Id.* at ¶ 30.)

27 ³⁷ (Han Dec., *supra*, at ¶¶ 14, 24.)

28 ³⁸ (*Id.* at ¶¶ 13-14.)

³⁹ (*Id.* at ¶¶ 21-22.)

years of labor-intensive litigation. Avoiding these risks and future contentious litigation involving significant costs favors settlement.

D. The Settlement Is Fair, Adequate, and Reasonable.

“[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1981) 688 F.2d 615, 624. “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625.

The Settlement provides a significant monetary benefit to the LWDA and Settlement Group Members and falls well within the range of acceptable settlement under the circumstances. Under the Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$500,000.⁴⁰ Subject to Court Approval, the following amounts will be subtracted from the Gross Settlement Amount to yield the PAGA Penalties Fund: (1) the Attorneys’ Fees Award of \$175,000; (2) the Litigation Costs Award of \$15,627.21; (3) Administration Costs not to exceed \$5,000; and (4) the Enhancement Payment of \$10,000. The PAGA Penalties Fund is currently estimated to be \$294,372.79, seventy-five percent (75%) of which (\$220,779.59) will be the LWDA Payment and twenty-five percent (25%) of which (\$73,593.20) will be the Net Settlement Amount.⁴¹ There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with Labor Code section 2699(i).

The Settlement is a compromise of disputed claims. Plaintiff and Plaintiff’s Counsel recognize the expense and length of continued proceedings necessary to litigate the disputes through trial and any possible appeals. Plaintiff and Plaintiff’s Counsel have also considered the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Plaintiff’s Counsel are aware of the burdens of proof necessary to establish liability, both generally and in response to Defendant’s defenses, and the difficulties in establishing Defendant’s liability for, and the right to recover, penalties on behalf of Plaintiff and

⁴⁰ (Settlement Agreement, *supra*, at § 7.a.)

⁴¹ (*Id.* at §§ 7.b.i., 7.b.ii., 7.b.iii., 7.b.iv., 7.b.v.)

1 the Settlement Group. Finally, Plaintiff and Plaintiff's Counsel have considered Defendant's
2 agreement to enter a settlement that confers significant relief upon the LWDA and Settlement
3 Group Members.⁴² Considering all the facts in this case, Plaintiff and Plaintiff's Counsel have
4 determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA
5 claim, and that it is in the best interests of the LWDA and Settlement Group Members.⁴³

6 As discussed in section II.1.D, *infra*, payment of these penalties is conditioned on a limited
7 release of claims under PAGA. The Settlement does not include a general release of claims on
8 behalf of the non-party Settlement Group Members, nor does it release their non-PAGA
9 substantive claims for the underlying Labor Code violations. "Absent employees do not own a
10 personal claim for PAGA civil penalties and whatever personal claims the absent employees might
11 have for relief are not at stake." *Williams, supra*, 3 Cal.5th at 547. In other words, with respect to
12 Settlement Group Members, the effect of the Settlement is only to bar Settlement Group Members
13 from pursuing any representative and/or individual PAGA claim for civil penalties, for purported
14 Labor Code violations during the period covered by the Settlement.

15 The result achieved in this case, and the PAGA allocation provided by the Settlement, is
16 well within the range of acceptable settlement under the circumstances, especially when compared
17 to the settlement of PAGA claims approved as reasonable in other cases.⁴⁴ The value obtained for
18 settlement of the PAGA claim is very significant, and it will be distributed in accordance with the
19 PAGA statute, to supplement the LWDA budget to educate employees and employers and seek
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21 ⁴² (Han Dec., *supra*, at ¶¶ 21, 24.)

22 ⁴³ (*Id.* at ¶ 40.)

23 ⁴⁴ (See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833
24 (May 2017) (approving \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia*,
25 *supra*, 2012 WL 5364575, at *3 (approving \$10,000 out of \$3.7 million toward settlement of
26 PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving \$10,000 out of \$518,245
27 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving \$10,000 out
28 of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14
(approving \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom
Commissions Case, supra*, at 589 (finding no abuse of discretion by the trial court in approving a
settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the
lawsuit).)

enforcement of labor laws.

E. The Experience and Views of Plaintiff’s Counsel Favor Settlement Approval.

Plaintiff’s Counsel are highly experienced in complex representative and class action wage-and-hour litigation.⁴⁵ In the view of Plaintiff’s Counsel, the benefit conferred by the Settlement is eminently fair and reasonable, and is in the best interests of the LWDA and Settlement Group Members in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁴⁶ The courts have acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]” *Williams, supra*, 548 (citing Lab. Code § 2699(g)(1)(i)).

VI. APPROVAL OF THE REQUESTED ATTORNEYS’ FEES.

A. A Fee Award of Percentage of the Entire Fund is Appropriate.

The Settlement establishes a Gross Settlement Amount of \$500,000.⁴⁷ The Settlement provides for Plaintiff’s Counsel to apply to the Court for an Attorneys’ Fees Award of up to thirty-five percent (35%) of the Gross Settlement Amount, which is \$175,000.⁴⁸ The requested attorneys’ fees is commensurate with: (1) the risk Plaintiff’s Counsel took in bringing and litigating this case; (2) the time, effort and expense dedicated to the case; (3) the skills and determination Plaintiff’s Counsel have shown; (4) the value that Plaintiff’s Counsel have achieved for Plaintiff, the LWDA, and Settlement Group Members; and (5) the other cases Plaintiff’s Counsel could not pursue to devote its time and efforts to this matter.

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⁴⁵ (Han Dec., *supra*, at ¶¶ 2-8; Exhibit 1.)

⁴⁶ (Han Dec., *supra*, at ¶ 40.)

⁴⁷ (Settlement Agreement, *supra*, at § 7.a.)

⁴⁸ (*Id.* at § 7.b.i.)

1 Plaintiff's Counsel are entitled to recover reasonable attorneys' fees and costs as a matter
2 of right under the PAGA. See Lab. Code § 2699(g)(1). Plaintiff's Counsel is also entitled to fees
3 and costs under Code of Civil Procedure section 1021.5, as the instant PAGA action is by
4 definition "for the benefit" of others and has secured monetary awards for a large number of
5 Settlement Group Members, as well as the LWDA.⁴⁹

6 The payment to the LWDA will also benefit the agency in enforcing labor laws and
7 educating "employers and employees about their rights and responsibilities under [the Labor
8 Code]." Lab. Code § 2699(i).

9 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
10 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
11 confirmed by the California Supreme Court in recent years. *Laffitte v. Robert Half Int'l, Inc.*
12 (2016) 1 Cal.5th 480 at pp. 486 & 506. While trial courts have discretion to apply either a lodestar
13 method or percentage of-the-fund method, the California Supreme Court has taken the position
14 that trial courts also "retain the discretion to forgo a lodestar cross-check and use other means to
15 evaluate the reasonableness of a requested percentage fee[.]" and "[t]he percentage of fund
16 method survives in California." *Id.* (internal quotes omitted); see also *Wershba, supra*, 91
17 Cal.App. 4th at p. 253.

18 Courts award fees to serve as an economic incentive for lawyers to undertake litigation to
19 achieve increased access to the judicial system for meritorious claims and to enhance deterrents
20 to wrongdoing. This is especially true in situations where multiple similar alleged wrongs would
21 not be economically feasible to pursue individually, such as here. See A. Conte, *Attorney Fee*
22 *Awards* (2d ed. 1993) 1041 at p. 6.

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27 ⁴⁹ (See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
28 (recognizing that recovery obtained on behalf of 209 individual satisfies the "significant benefit,"
"public interest," and "large class of persons" requirements of Code of Civil Procedure section
1021.5, regardless of plaintiff's personal motivation).)

1 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
2 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
3 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; see also *Laffitte, supra*, 1 Cal.5th 480 at 506.
4 Indeed, it is long settled that the “experienced trial judge is the best judge of the value of
5 professional services rendered in his court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.

6 The percentage method is particularly appropriate where a common monetary fund has
7 been recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset*
8 *Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a
9 “certain easily calculable sum of money,” California courts may calculate attorneys’ fees as a
10 reasonable percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil*
11 *Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at p.1808.

12 The percentage fee method is preferred in representative actions because “it better
13 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
14 Cal.App.4th at p. 49. California law provides that the award for attorneys’ fees should be
15 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
16 based on the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at p. 47-50;
17 *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the
18 defendant agrees to pay the attorneys a percentage of the fund created by the settlement, use of
19 that percentage method is appropriate. *Id.* at 32. Fee awards that undercompensate counsel for
20 their work will “chill the private enforcement essential to the vindication of many legal rights and
21 obstruct the representative actions that often relieve the courts of the need to separately adjudicate
22 numerous claims,” *Id.* at 3. Therefore, fees in class and representative actions should approximate
23 the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client
24 in comparable litigation. *Id.* at 48. “The ultimate goal ... is the award of a ‘reasonable’ fee to
25 compensate counsel for their efforts, irrespective of the method of calculation.” *Consumer Privacy*
26 *Cases* (2009) 175 Cal.App.4th 545, 557-558 (quotation omitted). Courts have awarded fees as
27 high as fifty percent (50%) of the settlement recovered, depending on the case’s circumstances.⁵⁰

28 ⁵⁰ (See *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’

(Footnote continued)

1 Plaintiff's Counsel's application for attorneys' fees, in light of the facts and circumstances
2 surrounding the case, is well within the range of reasonableness. Plaintiff's Counsel have
3 investigated and litigated this case for over a year before mediation, with the real possibility of an
4 unsuccessful outcome and no fee recovery of any kind.⁵¹ The ongoing work has been extensive,
5 and ultimately successful in achieving a settlement resolution. See, § VI.B.1, *infra*.

6 Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any
7 compensation until recovery is obtained.⁵² Plaintiff's Counsel are experienced in representative
8 and class action wage-and-hour litigation and used that experience to obtain a favorable result for
9 Plaintiff, Settlement Group Members, and the LWDA.⁵³ Considering the amount of the fees
10 requested, work performed, risks incurred, success of this litigation, and experience of Plaintiff's
11 Counsel in handling similar matters, the requested Attorneys' Fees Award and the Litigation Costs
12 Award are reasonable and should be awarded.

13 **B. The Requested Attorneys' Fees Award is Reasonable Based on the Factors**
14 **Considered in Determination of Fee Awards.**

15 The factors which courts consider in determining whether fee awards are reasonable,
16 support the fee award requested by Plaintiff's Counsel: (1) the time and labor required; (2) the
17 novelty and difficulty of the questions involved; (3) the requisite skills to perform the legal
18 services properly; (4) the preclusion of other employment by the attorney due to the acceptance
19 of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation

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21 fees of 45% of the \$7.3 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox*
22 *Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement
23 fund as attorney fees). California courts routinely approve attorneys' fee awards "average[ing]
24 around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11
25 (lower court found the range of contingency fees in marketplace to be 20 to 40 percent and
26 determined such a percentage fee was appropriate); see also, e.g., *Resendez v. Bridgestone Retail*
Operations, LLC, Los Angeles Sup. Ct., Case No. BC596892 (June 2016) (citing *Chavez, supra*,
162 Cal.App.4th at p. 66, n.11) (stating that a fee award of one-third of a PAGA settlement of
\$950,000 was "reasonable and consistent with fee awards in class action cases").)

27 ⁵¹ (Han Dec., *supra* at ¶¶ 11-13.)

28 ⁵² (Han Dec., *supra*, at ¶ 37.)

⁵³ (*Id.* at ¶ 40.)

1 imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the
2 experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the
3 nature and length of the professional relationship with the client; and (12) awards in similar cases.
4 *Camden I Condo. Ass'n, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772.

5 Each of the factors listed above favors the attorneys' fees sought herein. However, some
6 of the most relevant factors to this Court's fee determination will be addressed below. It should
7 be highlighted that the percentage award sought is commensurate with: (1) the results obtained by
8 Plaintiff's Counsel; (2) the extraordinary risks taken by Plaintiff's Counsel; (3) the novelty and
9 difficulty of this case; and (4) the skills displayed and the quality of work. As such, an award of
10 approximately thirty-five percent (35%) of the Gross Settlement Amount is reasonable.

11 ***1. The Results Obtained***

12 The results attorneys obtain for their clients is an important factor when determining the
13 reasonability of a percentage-based fee. *See Laffitte*, 1 Cal. 5th at 489. In the legal marketplace,
14 law firms that obtain exceptional results for their clients can and do expect that those exceptional
15 results to be reflected in their fees.

16 The results obtained in this matter are certainly exceptional as Plaintiff's Counsel obtained
17 a settlement in the sum of \$500,000 without the need for extended litigation that would have
18 followed had the case not settled. In fact, had this case gone to trial, there was no guarantee that
19 the trial would have been short or that either party would prevail. This issue would have also been
20 exacerbated by the legal expenses the Parties would have incurred from continued litigation. By
21 extension, even if the Parties did manage to reach a similar settlement at the later stages of this
22 case, it would have been severely undercut by the additional expenses incurred.

23 The Settlement represents a great resolution of this case given the risks inherent in
24 litigating a representative PAGA action. For example, Defendant argued Plaintiff's claims raised
25 individualized issues and were unmanageable. If proven true, this would have meant Plaintiff's
26 claims were not suitable for adjudication as to a group of employees. Defendant also challenged
27 Plaintiff's standing as a Settlement Group Member and denied that any of its employees were
28 aggrieved. If the case did not settle, Defendant indicated it would have aggressively litigated this

1 case. Resolution of this dispute at this stage is preferred, as the Parties were moving to the phase
2 of litigation where significant time and money would inevitably have to be spent to continue
3 litigation and prepare for trial. The Settlement provides an immediate and automatic recovery.

4 In addition, by agreeing to settle this case prior to trial rather than continuing to litigate
5 issues that remain unsettled and were certain to be appealed, Plaintiff's Counsel used their skills
6 and experience to obtain a fair result for the Settlement Group at far less expense. Consequently,
7 by avoiding the uncertainties associated with conducting a trial and Defendant's responses to
8 Plaintiff's allegations, Plaintiff's Counsel obtained those results more quickly and surely than if
9 the matter had been litigated to final resolution through the trial and appellate process. Under
10 California law, this factor also supports the requested fee. *See Lealao*, 82 Cal.App.4th at 51.

11 **2. The Extraordinary Risk Taken by Plaintiff's Counsel**

12 Whether or not representation is provided on a contingency basis is an important factor:

13 A contingent fee must be higher than a fee for the same legal services paid as they are
14 performed [and] [...] compensates the lawyer not only for the legal services he renders but
15 for the loan of those services. A lawyer who both bears the risk of not being paid and
16 provides legal services is not receiving the fair market value of his work if he is paid only
for the second of these functions. If he is paid no more, competent counsel will be reluctant
to accept fee award cases. (internal quotes and citations omitted)

17 *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 823.

18 By extension, if attorneys assume a significant financial risk on behalf of their clients, they
19 have the right to expect compensation that is greater than what it would have been if they had not
20 undertaken such risks. Attorneys being paid on an hourly basis as opposed to being paid on a
21 contingent basis are assuming less risks. *See, e.g., Ketchum*, 24 Cal. 4th at 1132-33. In other
22 words, the contingent risks undertaken by attorneys is also a significant factor when determining
23 the percentage of the settlement fund to devote to attorneys' fees. *See, e.g., Laffitte*, 1 Cal.5th at
24 504 (noting that trial court had carefully considered risks and contingency involved in awarding
25 33 and 1/3% fee); *Allapattah Servs. Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 2004-05 (S.D. Fla.
26 2006) ("Factors indicating 'exceptional success' include success achieved under unusually
27 difficult or risky circumstances and the size of plaintiffs' recovery").

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1 Plaintiff executed a contingent fee agreement, which meant Plaintiff's Counsel being paid
2 for their work was entirely contingent. In other words, no recovery for Plaintiff, the LWDA, or
3 the Settlement Group would have meant no compensation for Plaintiff's Counsel for 316 hours of
4 work already completed over the span of almost one and one-half (1.5) years and \$15,627.21
5 litigation costs incurred.⁵⁴ Consequently, undertaking this case was a great risk.

6 In addition to the extraordinary risks undertaken due to the contingent nature of Plaintiff's
7 Counsel's representation, this was also not a slam dunk or clear-cut case either. Specifically, cases
8 like this that are litigated against large corporation with unlimited resources and involving
9 complex factual issues and unsettled law frequently encounter roadblocks that either hinder
10 progress or defeat the case. Several factors made this case tricky, including: (1) the size of the
11 Settlement Group (over 300); (2) the difficulties in pinning down job responsibilities, wages paid,
12 meal and rest breaks taken; (3) the number of documents that had to be reviewed and analyzed in
13 preparation for the mediation; (4) the shifting wage-and-hour laws; (5) the different locations
14 Defendant conducted its business; and (6) Defendant's firm resistance to the relief.

15 3. *The Novelty and Difficulty of the Litigation*

16 The unsettled nature of the law, number of claims to be litigated, factual complexities
17 underlying Defendant's procedures, policies, and practices, the number of different locations
18 Defendant conducted its business, and a myriad of other issues made this case significantly more
19 complex and difficult than the average lawsuit. Despite these difficulties, Plaintiff's Counsel
20 overcame them by obtaining a settlement that is fair, adequate, and reasonable. The fact that
21 Plaintiff's Counsel were able to obtain a great settlement despite these obstacles speaks volumes
22 of their skills and experience. *See Lealao*, 82 Cal.App.4th at 42 (counsel's "special skill and
23 experience of counsel" a relevant factor when determining fee award).

24 Due to the novelty and difficulty of this case, Plaintiff's Counsel devoted substantial hours
25 to this matter. The Task & Time Chart, attached as **Exhibit 4** to the Declaration of Douglas Han,
26 set forth these hours, allocating the total time to the tasks that were required to bring this matter
27 to its successful conclusion. The chart is thorough, comprehensive, and demonstrates the effort to
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⁵⁴ (Han Dec., *supra*, at ¶¶ 33, 37.)

1 diligently manage this case. Specifically, the work commenced with the pre-filing case analysis
2 and research and continues up to the moment of settlement.⁵⁵

3 As stated above, this was not a clear-cut case, and Plaintiff's Counsel had to overcome
4 several roadblocks and obstacles before they could reach a reasonable settlement. These several
5 roadblocks and obstacles ranged from determining the scope of the Settlement Group, ensuring
6 that Plaintiff's claims did not raise individualized issues, locating a plaintiff that had standing, etc.
7 The fact that this case has been litigated for almost a one and one-half (1.5) years speaks volumes
8 of the novelty and difficulty of this case that Plaintiff's Counsel had to deal with.

9 **4. The Skill Displayed and Quality of Work**

10 The level of skill displayed here and the excellent quality of work it produced also justify
11 the requested fee. Plaintiff's Counsel are skilled and experienced representative and class action
12 wage-and-hour litigators. The Task & Time Chart further illustrates how Plaintiff's Counsel
13 implemented their skills and experience in litigating this case.⁵⁶

14 Prior to and during the mediation, Plaintiff's Counsel conducted investigations and
15 discovery into the facts of the case. This included, among other things, obtaining, reviewing, and
16 analyzing a volume of documents and a large sampling of payroll data for the Settlement Group
17 Members. Plaintiff's Counsel also reviewed Defendant's operations and employment policies,
18 practices, and procedures and conducted interviews with Plaintiff and Settlement Group Members.
19 Other work performed by Plaintiff's Counsel included, among other things: (1) case strategy and
20 analysis; (2) drafting, reviewing, and revising pleadings and a mediation brief; (3) preparing for
21 and appearing for court proceedings; (4) undertaking calculations of the value of the claims; and
22 (5) preparing for and attending the mediation and settlement negotiations.⁵⁷

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27 ⁵⁵ (Han Dec., *supra*, at ¶ 33; Exhibit 4.)

28 ⁵⁶ (Han Dec., *supra*, at ¶ 33; Exhibit 4.)

⁵⁷ (*Id.* at ¶ 13.)

1 The skills required to properly litigate this case is evident not only in the results achieved
2 but, in the steps, necessary to reach the same. This factor overlaps with many of the prior
3 discussions, including the obvious – a substantial Settlement was finally achieved despite all the
4 obstacles. Plaintiff’s Counsel had every intention of taking this case to trial if Defendant did not
5 offer an appropriate settlement amount.

6 Finally, not only did Plaintiff’s Counsel have to determine the scope of the Settlement
7 Group (over 300), but they also had to undertake the arduous and time-consuming task of locating
8 and interviewing Settlement Group Members. This, in turn, assisted Plaintiff’s Counsel with
9 determining whether Plaintiff’s claims raised any individualized issues, which would have made
10 this case unsuitable for adjudication as to a group of employees. Despite all this, Plaintiff’s
11 Counsel used their extensive experience in representative and class action wage-and-hour
12 litigation to obtain a substantial settlement.

13 Thus, Plaintiff’s Counsel’s accumulated skills and expertise contributed to the settlement
14 in this case. Under California law, this factor (skills displayed and quality of work) also supports
15 the requested attorneys’ fees. *See Lealao*, 82 Cal.App.4th at 51.

16 **C. The Lodestar Methodology Also Justifies Approval of the Requested Fees.**

17 While the percentage-of-the-benefit approach is endorsed as the better approximation of
18 the workings of the marketplace than the lodestar approach, when a common fund is involved,
19 courts may also use the lodestar method to “cross-check” the results of the other. A court tasked
20 with cross-checking a percentage-based fee first considers the reasonableness of the lodestar
21 figure, which is the time reasonably spent multiplied by the reasonable hourly compensation of
22 the attorneys involved in the litigation. *Serrano v. Priest*, 20 Cal.3d 25, 48 (1977). The court may
23 then enhance (or multiply) that figure after considering factors like the novelty and complexity of
24 the issues, the skill and expertise of counsel, the extent that the litigation precluded other
25 employment, and the risk involved. *Id.* at 49.

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1 Plaintiff's Counsel expended 316 hours in the litigation of this matter. As detailed in the
2 Declaration of Douglas Han, Plaintiff's Counsel's hourly rates utilized in the lodestar cross-check
3 are within the range of those charged by comparably qualified attorneys for similar work
4 throughout California, including the Los Angeles County area. Specifically, Plaintiff's Counsel's
5 hourly rates are supported by the 2020 Real Rate Report that was compiled by Wolter Kluwer that
6 surveyed the hourly rates charged in 2019 by hundreds of attorneys in the Los Angeles County
7 and San Francisco County areas. Likewise, Plaintiff Counsel's hourly rates are also in line with
8 the Laffey Matrix.⁵⁸

9 Plaintiff's Counsel documented lodestar is calculated to be \$199,335. When cross-checked
10 with the requested Attorneys' Fees Award of \$175,000, it results in a negative multiplier of 0.88.
11 The hours spent are fully documented and consistent with those that would be expected in a matter
12 of this duration, complexity, and amounts at stake.⁵⁹

13 ***1. Plaintiff's Counsel Performed Work for a Reasonable Number of Hours.***

14 Under California law, counsel is entitled to compensation for every hour reasonably spent
15 on the matter. *Ketchum*, 24 Cal.4th at 1133. Reasonableness is assessed by "the entire course of
16 the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and
17 the trial itself[.]" *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal. App. 4th 440, 447.

18 This is a matter that required a significant amount of time and labor for one and one-half
19 (1.5) years. Defendant made it clear that it disputed all claims alleged and raised several defenses
20 to Plaintiff's theory of liability. The case involved gathering and analyzing data from Defendant
21 and the Settlement Group. The handling of this matter involved a great amount of effort and
22 required a high-level of skill, which Plaintiff's Counsel had. Long and difficult battles would have
23 followed as the case had gone to trial. While Plaintiff's Counsel were gearing up for this battle,
24 they undertook intense preparation to attempt to resolve the entire matter through mediation.
25 These intense preparations ranged from locating and interviewing several putative settlement
26 group members, reviewing a myriad of documents, etc.

27 ⁵⁸ (Han Dec., *supra*, at ¶ 35; Exhibits 5-6.)

28 ⁵⁹ (*Id.* at ¶¶ 34, 36.)

1 The Task & Time Chart evidence the numerous tasks that were performed to seek all
2 necessary information. The total number of hours worked by Plaintiff's Counsel in pursuit of the
3 litigation is 316 hours, which is reasonable for an action that has lasted almost one and one-half
4 (1.5) years.⁶⁰ Thus, Plaintiff's Counsel spent a reasonable number of hours working on this matter,
5 and their application for the Attorneys' Fees Award are well within the range of reasonableness.

6 ***2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation***
7 ***in Light of Plaintiff's Counsel's Efforts and Experience.***

8 Plaintiff's Counsel's hourly rates are commensurate with the hourly rates of other wage-
9 and-hour class action attorneys in California. Specifically, the hourly rates of \$775 per hour for
10 Douglas Han, \$675 per hour for Shunt Tatavos-Gharajeh, and \$500 per hour for Arsiné Grigoryan
11 are well within the range of rates charged by comparably qualified attorneys in the Los Angeles
12 County area and the legal profession in general for comparably complex work. By extension,
13 Plaintiff's Counsel's hourly rates are also in line with the Laffey Matrix.⁶¹

14 Plaintiff's Counsel's hourly rates are also reasonable for the following reasons: (1)
15 comparable hourly rates for similar services have been deemed to be reasonable in several cases
16 in California, particularly Los Angeles County cases; and (2) several surveys of legal rates have
17 supported Plaintiff Counsel's hourly rates (*i.e.*, 2020 Real Rate Report compiled by Wolters
18 Kluwer and the Laffey Matrix). Collectively, for the reasons stated above, this shows that Plaintiff
19 Counsel's hourly rates used for the lodestar calculation are well within the range of non-contingent
20 rates charged by comparable attorneys for similar work performed. Based on the attorney time
21 expended, the lodestar fees incurred to date total \$199,335, which results in a negative multiplier
22 of 0.88 when cross-checked to the requested Attorneys' Fees Award of \$175,000.⁶²

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27 ⁶⁰ (Han Dec., *supra*, at ¶ 33; Exhibit 4.)

28 ⁶¹ (Han Dec., *supra*, at ¶¶ 34-35; Exhibits 5-6.)

⁶² (*Id.* at ¶¶ 34, 36.)

1 In addition, the California Supreme Court has stated that an attorney fee award that is higher
2 than the actual fees incurred is proper in contingency cases:

3 “‘[A] contingent fee contract, since it involves a gamble on the result, may properly provide
4 for a larger compensation than would otherwise be reasonable.’ ” The purpose of a fee
5 enhancement, or so-called multiplier, for contingent risk is to bring the financial incentives
6 for attorneys ... into line with incentives they have to undertake claims for which they are
paid on a fee-for-services basis.

7 *Ketchum*, 24 Cal.4th at 1132.

8 Moreover, the California Supreme Court has added that:

9 The economic rationale for fee enhancement in contingency cases has been explained as
10 follows: “A contingent fee must be higher than a fee for the same legal services paid as they
11 are performed. The contingent fee compensates the lawyer not only for the legal services
12 he renders but for the loan of those services. The implicit interest rate on such a loan is
higher because the risk of default (the loss of the case, which cancels the debt of the client
to the lawyer) is much higher than that of conventional loans.”

13 *Ketchum*, 24 Cal.4th at 1132-33.

14 In other words, “[F]ee enhancements are intended to compensate for the risk of loss
15 generally in contingency cases *as a class*.” *Ketchum*, 24 Cal.4th at 1133.

16 As stated above, a court tasked with assessing fees first considers the reasonableness of the
17 lodestar figure considering the time spent and reasonable hourly compensation of the attorneys
18 involved in the litigation. *Serrano*, 20 Cal.3d at 48. After taking into consideration factors such
19 as the novelty and complexity of the issues, the skill and expertise of counsel, the extent that the
20 litigation precluded other employment, and the risk involved, the court then has the power to
21 adjust, increase, or decrease the lodestar as appropriate. *Id.* at 49.

22 A review of the Settlement obtained for Plaintiff, the Settlement Group, and the LWDA
23 evidences the fairness, reasonability, and adequacy, of the Settlement, justifying the Attorneys’
24 Fees Award. As stated above, Plaintiff’s Counsel’s litigation of this matter required navigating
25 through several roadblocks and obstacles, including intense preparation for mediation, over the
26 span of almost one and one-half (1.5) years before reaching a reasonable settlement for Plaintiff,
27 the Settlement Group, and LWDA. This, in turn, justifies the requested Attorneys’ Fees Award,
28 which is supported by the negative multiplier following the cross-check.

1 In light of these factors, the time spent and hourly rates of Plaintiff's Counsel demonstrate
2 that Plaintiff's Counsel's lodestar is reasonable.

3 **VII. THE LITIGATION COSTS TO BE REIMBURSED TO PLAINTIFF'S COUNSEL**
4 **ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED**

5 The Settlement provides for Litigation Costs Awards of up to \$20,000.⁶³ Plaintiff's
6 Counsel has incurred \$15,627.21 in litigation costs and expenses, which were reasonable and
7 necessary in the prosecution of this matter.⁶⁴ Thus, Plaintiff's Counsel request that the Court order
8 reimbursement of the costs and expenses in the amount of \$15,627.21 to Plaintiff's Counsel.

9 **VIII. APPROVAL OF THE PROPOSED ENHANCEMENT PAYMENT TO PLAINTIFF.**

10 The Settlement provides for an Enhancement Payment of \$10,000 to be paid to Plaintiff.⁶⁵
11 The purpose of such an award is to incentivize plaintiffs to step into the shoes of the state labor
12 agency and undertake the risks associated with initiating a lawsuit and serving in a representative
13 capacity. See *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 ("service payments"
14 compensate named plaintiff "for [her] efforts in bringing the action"); *Clark v. Am. Residential*
15 *Servs., LLC* (2009) 175 Cal.App.4th 785, 804 ("an incentive award is appropriate 'if it is necessary
16 to induce an individual to participate in the suit'"); accord *Ingram v. The Coca-Cola Co.* (N.D.
17 Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) ("Courts routinely approve
18 incentive awards to compensate named plaintiffs for the services they provided and the risks they
19 incurred during the course of the [...] litigation."); see also, e.g., *Resendez, supra*, Los Angeles
20 County Court, Case No. BC59689 (approving \$10,000 Incentive Award in a PAGA action).

21 Here, Plaintiff contributed considerable time and effort to the litigation to enforce the
22 Labor Code on behalf of the LWDA and for the benefit of other Settlement Group Members,
23 producing relevant documents and past employment records, and providing the facts and evidence
24 necessary to support the allegations asserted in this action.⁶⁶ Plaintiff was available whenever

25 ⁶³ (Settlement Agreement, *supra*, § 7.b.ii.)

26 ⁶⁴ (Han Dec., *supra*, at ¶ 37; Exhibit 7.)

27 ⁶⁵ (Settlement Agreement, *supra*, at § 7.b.v.)

28 ⁶⁶ (Han Dec., *supra*, at ¶ 39; Declaration of Robert Enriquez In Support of Plaintiff's Motion

(Footnote continued)

1 Plaintiff's Counsel needed him and tried to obtain documents and information that would aid the
2 litigation of the PAGA claim and recovery of benefits for the LWDA and Settlement Group
3 Members.⁶⁷ Plaintiff was also made aware of and accepted the risks and consequences associated
4 with serving as the named plaintiff (*i.e.*, broader release, difficulty finding employment).⁶⁸ Finally,
5 Plaintiff's continued assistance has proven to be invaluable to Plaintiff's Counsel in terms of
6 developing legal theories, interviewing putative settlement group members, and requesting and
7 obtaining relevant documents.⁶⁹

8 Accordingly, it is reasonable and just for Plaintiff to receive an Enhancement Payment of
9 \$10,000 in addition to the Individual Settlement Award he will receive as a Settlement Group
10 Member, for his services in litigating this action to enforce California wage-and-hour laws.

11 **IX. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD**
12 **BE APPROVED.**

13 The Agreement provides for the payment of Administration Costs in an amount not to
14 exceed \$5,000 to Simpluris, Inc. ("Simpluris"), the Settlement Administrator.⁷⁰ The
15 Administration Costs are intended to cover the costs incurred by Simpluris for performing the
16 following administrative functions, among others: (a) updating the addresses for Settlement Group
17 Members using industry-standard mailing address databases; (b) calculating Individual Settlement
18 Awards; (c) mailing settlement payments to the appropriate entities and persons; (d) calculating
19 taxes and distributing the appropriate tax forms; and (e) sending uncashed Individual Settlement
20 Award checks to the California State Controller. Furthermore, Plaintiff's Counsel have worked
21 with Simpluris before and are familiar with their good reputation and work product.⁷¹

22
23 for Approval of Private Attorneys General Act (Labor Code §§ 2698, et seq.) Settlement
24 Agreement ("Enriquez Dec."), ¶¶ 5-9.)

25 ⁶⁷ (Han Dec., *supra*, at ¶ 39; Enriquez Dec., *supra*, at ¶¶ 5-9.)

26 ⁶⁸ (Han Dec., *supra*, at ¶ 39; Enriquez Dec., *supra*, at ¶ 10.)

27 ⁶⁹ (Han Dec., *supra*, at ¶ 39; Enriquez Dec., *supra*, at ¶¶ 7-8.)

28 ⁷⁰ (Settlement Agreement, *supra*, at § 7.b.iii.)

⁷¹ (Han Dec., *supra*, at ¶ 38.)

1 Accordingly, the Court should approve the payment of the Administration Costs in the
2 amount of up to \$5,000 to Simpluris, a necessary third-party to the notice and settlement process.

3 **X. CONCLUSION**

4 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise
5 reached through arms'-length negotiations and considers the risks, complexity, and expense of
6 further litigation. Based thereon, Plaintiff respectfully requests that the Court approve the
7 Settlement, including the plan of allocation and distribution of the Gross Settlement Amount for
8 payments to the LWDA, to Settlement Group Members, the Attorneys' Fees Award, the Litigation
9 Costs Award, the Administration Costs, and the Enhancement Payment.

10
11 Dated: February 24, 2022

JUSTICE LAW CORPORATION

12
13 By:  _____

Douglas Han

Attorneys for Plaintiff

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PROOF OF SERVICE