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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

VICTOR FARDANESH, individually, and
on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act;

Plaintiff,

vs.

HEALTHCARE SERVICES GROUP, INC.,
an unknown business entity; HCSG WEST
LLC, an unknown business entity; 915
QUALITY BUSINESS SOLUTIONS, INC.,
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 20STCV33842

Honorable Maurice A. Leiter
Department 54

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (CAL. LABOR CODE § 2698,
ET SEQ.) SETTLEMENT
AGREEMENT AND AWARD OF
ATTORNEYS' FEES, COSTS,
SERVICE AWARD, AND
SETTLEMENT ADMINISTRATION
COSTS; MEMORANDUM OF POINTS
AND AUTHORITIES**

[Declaration of Plaintiff's Counsel
(Edwin Aiwazian); Declaration of Plaintiff
(Victor Fardanesh); and [Proposed] Order
and Judgment filed concurrently herewith]

Date: June 6, 2022
Time: 9:00 a.m.
Department: 54

Complaint Filed: September 3, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 26, 2022, at 9:00 a.m. or as soon thereafter as
2 the matter may be heard before the Honorable Maurice A. Leiter in Department 54 of the
3 Superior Court of the State of California, for the County of Los Angeles - Stanley Mosk
4 Courthouse, located at 111 North Hill Street, Los Angeles, California 90012, Plaintiff Victor
5 Fardanesh (“Plaintiff”) will and hereby does move for entry of an order:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the
7 settlement between Plaintiff and Defendants Healthcare Services Group, Inc. and
8 HCSG West LLC (“Defendants”) of the claims brought pursuant to the Private
9 Attorneys General Act of 2004 (“PAGA”), as set forth in the Labor Code Private
10 Attorneys General Act Settlement Agreement (“Settlement,” “Agreement,” or
11 “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin
12 Aiwazian, including and not limited to, the plan of allocation and distribution of the
13 Gross Settlement Fund for payment of the LWDA Payment to the California Labor
14 and Workforce Development Agency (“LWDA”), Individual PAGA Payments to the
15 Aggrieved Employees, Attorneys’ Fees and Attorneys’ Costs to Plaintiff’s Counsel,
16 Settlement Administration Costs to the Settlement Administrator, and Service Award
17 to Plaintiff;
- 18 2. Approving the Net Settlement Fund, estimated to be no less than \$196,864.30, of
19 which seventy-five percent (75%) will be paid to the LWDA (“LWDA Payment”) and
20 twenty-five percent (25%) will be paid to the Aggrieved Employees, pursuant to
21 California Labor Code section 2699(i);
- 22 3. Appointing Simpluris, Inc. (“Simpluris”) as the Settlement Administrator;
- 23 4. Directing Defendants to transmit the Gross Settlement Fund of \$350,000.00 into a
24 qualified settlement account established by the Settlement Administrator for
25 administration of the Settlement, and directing the Settlement Administrator to
26 distribute the Gross Settlement Fund in accordance with the Settlement Agreement;

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5. Directing the mailing of Individual PAGA Payment checks to the Aggrieved Employees along with the Cover Letter, substantially similar in content and form to that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys’ Fees, Costs, Service Award, and Settlement Administration Costs (“[Proposed] Order and Judgement”) filed concurrently herewith and as “EXHIBIT A” to the Settlement Agreement;
6. Directing the mailing of a postcard to the Aggrieved Employees reminding them to cash their checks, substantially in the form attached as “**EXHIBIT 2**” to the [Proposed] Order and Judgment and as “EXHIBIT B” to the Settlement Agreement;
7. Awarding \$9,500.00 to Plaintiff Victor Fardanesh as a Service Award;
8. Awarding up to \$4,000.00 to the Settlement Administrator as Settlement Administration Costs; and
9. Awarding to Plaintiff’s Counsel, Lawyers *for* Justice, PC, \$122,500.00 as compensation for reasonable attorneys’ fees (“Attorneys’ Fees”) and \$17,135.70 for reimbursement of litigation costs and expenses (“Attorneys’ Costs”), pursuant to California Labor Code section 2699(g)(1).

The Settlement Agreement and moving and supporting papers for this motion are being concurrently submitted to the California Labor and Workforce Development Agency in conformity with California Labor Code section 2699(l)(2).

This motion is made pursuant to California Labor Code section 2699(l)(2), which provides for review and approval by the Court of the settlement of a civil action filed pursuant to PAGA, and Rule 3.1113(e) of the California Rules of Court, which permits the Court to extend the page limit for memoranda.

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

6 Dated: May 17, 2022

LAWYERS for JUSTICE, PC

7
8 By:


Edwin Aiwazian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Victor Fardanesh (“Plaintiff”) seeks approval of the Labor Code Private Attorneys General Act Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”)¹ entered into between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and Defendants Healthcare Services Group, Inc. and HCSG West LLC (“Defendants”), pursuant to California Labor Code section 2699(1)(2).

Subject to approval by the Court, Plaintiff and Defendants (together, the “Parties”) have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Gross Settlement Fund of \$350,000.00.²

The Gross Settlement Fund is inclusive of: (1) Attorneys’ Fees and Attorneys’ Costs to be paid to Lawyers *for* Justice, PC (“Plaintiff’s Counsel”), (2) Service Award to Plaintiff, (3) Settlement Administration Costs to be paid to the Settlement Administrator, and (4) Net Settlement Fund to be paid to the California Labor and Workforce Development Agency (“LWDA”) and all current and former employees of Healthcare Services Group, Inc. and HCSG West LLC employed in California at any time between June 30, 2019 and December 28, 2019 who were classified as non-exempt and held the job title of “account manager” (“Aggrieved Employees”).³

The Net Settlement Fund will be the Gross Settlement Fund less the Court-approved Attorneys’ Fees, Attorneys’ Costs, Settlement Administration Costs, and Service Award, and is currently estimated to be no less than \$196,864.30.⁴ The Net Settlement Fund will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and twenty-five percent (25%) to the Aggrieved Employees.⁵ Each Aggrieved Employee will be entitled to

¹ The Labor Code Private Attorneys General Act Settlement Agreement (“Settlement Agreement”) is attached as “EXHIBIT 1” to the Declaration of Edwin Aiwanian.

² Settlement Agreement, ¶ II.A.11.

³ *Id.*, ¶¶ II.A.11 & II.A.3. The “PAGA Period” means the period between June 30, 2019 and December 28, 2019. See *id.*, ¶ II.A.16.

⁴ *Id.*, ¶ II.A.15.

⁵ *Id.*, ¶ II.A.15.

1 payment of his or her *pro rata* share of the Aggrieved Employees’ portion of the Net Settlement
2 Fund, based on the number of full or partial pay periods he or she was employed by Defendants
3 in California as a non-exempt employee holding the job title of “account manager” during the
4 PAGA Period according to Defendants’ personnel and payroll records (“Pay Periods”).⁶

5 The payment to Aggrieved Employees will be treated and reported for tax purposes as
6 penalties and the Settlement Administrator will be responsible for issuing IRS Form 1099s as
7 required.⁷

8 Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the
9 requirements for approval by the Court based upon the relevant fairness factors, the relative
10 strengths of the PAGA claims, the risk, expense, and complexity of further litigation, the benefit
11 conferred by the Settlement, the scope of the release of claims, the experience and views of
12 counsel, and the reasonableness of the Net Settlement Fund (consisting of the LWDA Payment
13 and the Aggrieved Employees’ portion of the Net Settlement Fund), Attorneys’ Fees, Attorneys’
14 Costs, Settlement Administration Costs, and Service Award. Plaintiff respectfully requests that
15 this Court approve the Settlement, award the Attorneys’ Fees, Attorneys’ Costs, Settlement
16 Administration Costs, and Service Award and approve the LWDA Payment, which are provided
17 for by the Settlement and requested herein.

18 In order to efficiently present the Court with adequate information to determine whether
19 to grant approval of the Settlement, Plaintiff also moves for an order permitting the filing of this
20 memorandum, although it exceeds the page limit established by California Rules of Court, Rule
21 3.1113(d).

22 **II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY**

23 Defendants are a housekeeping, laundry, dining, and nutritional services provider to the
24 healthcare industry. Defendants’ services are provided nationwide. Plaintiff Victor Fardanesh
25 is a former employee of Defendants.

26
27
28 ⁶ Settlement Agreement, ¶¶ II.A.15, II.A.17, & II.D.5.a.

⁷ *Id.*, ¶ II.D.8.

1 Prior to commencing this lawsuit, on June 17, 2020, as required by California Labor
2 Code section 2699.3, Plaintiff Victor Fardanesh provided the LWDA with written notice of his
3 intent to assert claims under PAGA and the basis for those claims, to which the LWDA did not
4 respond.⁸

5 On September 3, 2020, Plaintiff filed a Complaint for Enforcement Under the Private
6 Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) against
7 Healthcare Services Group, Inc., HCSG West LLC, and Quality Business Solutions, Inc.
8 (erroneously sued as 915 Quality Business Solutions, Inc.) in the Los Angeles County Superior
9 Court (“Court”), Case No. 20STCV33842 (the “Action”). Defendants contend that Quality
10 Business Solutions Inc., erroneously sued as 915 Quality Business Solutions, Inc, only provides
11 payroll services to Defendants and is not an employer of the Aggrieved Employees. Plaintiff’s
12 core allegation is that Defendants have violated the California Labor Code by engaging in a
13 uniform practice and procedure, with respect to Plaintiff and other aggrieved employees, of,
14 *inter alia*, failing to pay overtime and minimum wages, failing to provide compliant meal and
15 rest periods and associated premiums, failing to pay timely wages during employment and upon
16 termination of employment, failing to provide complete and accurate itemized wage statements,
17 failing to keep complete and accurate payroll records, and failing to reimburse necessary
18 business-related expenses and costs.

19 On September 4, 2020, Plaintiff filed a Class Action Complaint for Damages against
20 Healthcare Services Group, Inc., HCSG West LLC, and Quality Business Solutions, Inc.
21 (erroneously sued as 915 Quality Business Solutions, Inc.) in the Los Angeles County Superior
22 Court, Case No. 20STCV33872 (the “Class Action”).

23 On October 19, 2020, Defendants filed an Answer to Plaintiff’s PAGA Complaint.
24 Defendants maintained, and continue to maintain, that they had, and continue to have, legally-
25 compliant employment policies and practices throughout the time period at issue. Defendants
26 deny that they ever violated any provision of the California Labor Code, including, but not
27 limited to, those sections for which Plaintiff seeks penalties under the PAGA.

28 ⁸ Declaration of Edwin Aiwasian (“Aiwasian Decl.”), ¶ 10.

On January 19, 2021, Plaintiff filed a Request for Dismissal and supporting documents in the Class Action, and thereafter, on February 9, 2021, the court in the Class Action filed an Order that dismissed Plaintiff's Class Action Complaint for Damages and all causes of action therein (Plaintiff's individual claims were dismissed without prejudice and the class claims were dismissed without prejudice).

On March 5, 2021, Plaintiff propounded multiple sets of written discovery requests on Defendants, including Requests for Production of Documents (Set One); Special Interrogatories (Sets One & Two); and Form Interrogatories – General (Set One), and noticed the deposition of Defendants' Persons Most Knowledgeable regarding organizational structure and wage and hour practices.

On October 19, 2021, the Parties participated in a full-day mediation conducted by Deborah Crandall Saxe, Esq. a well-respected mediator experienced in mediating complex labor and employment matters.⁹ With the aid of the mediator, the Parties were able to reach the Settlement described herein.¹⁰

Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(1)(2). The Settlement Agreement and moving and supporting papers for this motion are being submitted to the LWDA in conformity with California Labor Code section 2699(1)(2), concurrently with this filing.¹¹

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Aggrieved Employees who are covered by the Settlement are:

All current and former employees of Healthcare Services Group, Inc. and HCSG West LLC employed in California at any time between June 30, 2019 and December 28, 2019 who were classified as non-exempt and held the job title of "account manager."¹²

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⁹ Aiwazian Decl., ¶ 13.

¹⁰ *Ibid.*

¹¹ The Court is referred to the concurrently-filed Proof of Service, which confirms submission of the papers to the LWDA.

¹² Settlement Agreement, ¶ II.A.3.

Defendant represented that there are approximately four hundred (400) Aggrieved Employees.¹³

B. Distribution of the Gross Settlement Fund

Under the terms of the Settlement Agreement, Defendants will pay a Gross Settlement Fund of \$350,000.00.¹⁴ The Net Settlement Fund will be the Gross Settlement Fund less the following amounts: (1) Attorneys' Fees consisting of attorneys' fees of \$122,500.00 and Attorneys' Costs consisting of reimbursement of litigation costs and expenses of \$17,135.70 to Plaintiff's Counsel; (2) Service Award of \$9,500.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$4,000.00 to Simpluris, Inc. ("Simpluris" or "Settlement Administrator").¹⁵ The Net Settlement Fund will be fully distributed to the Aggrieved Employees and the LWDA, as described in Section III.C, *infra*.

C. Distribution of the Net Settlement Fund

No later than ten (10) calendar days after the Effective Date, Defendants shall deposit the Gross Settlement Fund into a Qualified Settlement Fund established by the Settlement Administrator for administration of the Settlement.¹⁶ No later than seven (7) calendar days after the Effective Date, Defendants shall provide the Settlement Administrator with an electronic spreadsheet containing, for each Aggrieved Employee, his or her first and last names, last known address, social security number, dates of employment, and number of Pay Periods he or she was employed by Defendants in California during the PAGA Period during which he or she held the job title of "account manager" (collectively, the "Aggrieved Employees List").¹⁷

Seventy-five percent (75%) of the Net Settlement Fund (or approximately \$147,648.22) will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%) of the Net Settlement Fund (or approximately \$49,216.08) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Pay Periods.¹⁸ To calculate the twenty-five

¹³ Aiwazian Decl., ¶ 9.

¹⁴ Settlement Agreement, ¶ II.A.11., and Aiwazian Decl., ¶ 11.

¹⁵ Aiwazian Decl., ¶ 11.

¹⁶ Settlement Agreement, ¶ II.D.2.

¹⁷ *Id.*, ¶ II.D.1.

¹⁸ *Id.*, ¶ II.D.5.

1 percent (25%) of the Net Settlement Fund, payable to each Aggrieved Employee (“Individual
2 PAGA Payment”), the Settlement Administrator shall divide the twenty-five percent (25%) of
3 the Net Settlement Fund attributable to all Aggrieved Employees by the aggregate number of
4 Pay Periods all Aggrieved Employees were employed by Defendants in California during the
5 PAGA Period during which they were classified as non-exempt and held the job title of “account
6 manager,” according to Defendants’ personnel and payroll records (“Total Pay Periods”),
7 resulting in a value for each Pay Period during the PAGA Period (“Pay Period Value”).¹⁹ The
8 Settlement Administrator shall then take the number of Pay Periods for each Aggrieved
9 Employee and multiply it by the Pay Period Value to arrive at each Aggrieved Employee’s
10 Individual PAGA Payment.²⁰ One hundred percent (100%) of all Individual PAGA Payments
11 are to be considered penalties and are to be reported on IRS Form 1099 (if required).²¹

12 No later than seven (7) calendar days after receiving the Gross Settlement Fund from
13 Defendants, the Settlement Administrator shall mail the Cover Letter together with an Individual
14 PAGA Payment check (together, the “PAGA Settlement Package”) to all Aggrieved Employees
15 by First Class U.S. Mail.²² If any PAGA Settlement Package is returned as undeliverable within
16 thirty (30) calendar days of the initial mailing, the Settlement Administrator shall promptly re-
17 mail the PAGA Settlement Package via First Class U.S. Mail to the forwarding address affixed
18 thereto.²³ If no forwarding address is provided, the Settlement Administrator shall promptly
19 attempt to determine an alternate address by the use of skip-tracing, or other type of automated
20 search, using the name, address and/or social security number of the Aggrieved Employee
21 involved, and shall then perform a re-mailing to the Aggrieved Employee whose PAGA
22 Settlement Package was returned as undeliverable, assuming another mailing address is
23 identified by the Settlement Administrator.²⁴

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26 ¹⁹ Settlement Agreement, ¶¶ II.A.12, II.A.26, & II.D.5.a.

27 ²⁰ *Id.*, ¶ II.D.5.a.

28 ²¹ *Id.*, ¶ II.D.8.

²² *Id.*, ¶¶ II.A.18, II.D.3 & II.D.6.

²³ *Id.*, ¶ II.D.6.

²⁴ *Ibid.*

Individual PAGA Payment checks will remain negotiable for ninety (90) calendar days after mailing.²⁵ If an Individual PAGA Payment check remains uncashed after thirty (30) calendar days, the Settlement Administrator shall mail the Aggrieved Employee a postcard reminding him or her to cash his or her check, substantially in the form attached as “EXHIBIT 2” to the [Proposed] Order and Judgment and as “EXHIBIT B” to the Settlement Agreement. Any funds remaining from the cancelled checks shall be distributed by the Settlement Administrator to the California State Controller’s Office Unclaimed Property Division, in the name of the Aggrieved Employee at issue and in the amount of his or her respective Individual PAGA Payment.²⁶

D. The Scope of the Release in the Settlement Agreement

Upon the Effective Date and full funding of the Gross Settlement Fund, Plaintiff and the State of California, and Aggrieved Employees, shall, for the PAGA Period, be deemed to have forever released, acquitted, and discharged the Released Parties from the Released Claims.²⁷

The “Released Claims” are any and all demands, rights, liabilities, claims, and/or causes of action under the PAGA, based on or arising out of the facts alleged in the Action or in the PAGA Letter, or that could have been alleged under the PAGA based on the same facts, including, but not limited to, PAGA claims for the Released Parties’ alleged failure to pay overtime, provide meal periods, provide rest periods, pay minimum wages, timely pay wages upon termination, timely pay wages during employment, provide complete and accurate wage statements, keep complete and accurate payroll records, and reimburse necessary business related expenses and costs, in violation of Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order Nos. 4-2001, 5-2001, and 6-2001.²⁸

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²⁵ Settlement Agreement, ¶ II.D.7.

²⁶ *Ibid.*

²⁷ *Id.*, ¶ II.E.1.

²⁸ *Ibid.*

The “Released Parties” are Defendants, Quality Business Solutions, Inc., and each of their respective past and present subsidiaries, directors, officers, employees, shareholders, partners, agents, attorneys, insurance carriers, executors, administrators, representatives, joint venturers, employers, joint employers, clients, predecessors, successors and assigns of any of the foregoing, as well as anyone and everyone who could have been named in such action based on the facts contained in the Complaint or in the PAGA Letter.²⁹

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

“[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546. “Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5. A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are “nonparty aggrieved employees who are not given notice of, and an opportunity to be heard in, a representative action that is not brought as a class action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other potentially aggrieved employees parties” to the action and no “due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and whatever personal claims the absent employees might have for relief are not at stake.” *Williams, supra*, 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

“[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]” *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 474.) A “judgment in such an action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the

²⁹ Settlement Agreement, ¶ II.A.21.

proceeding” because “the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies[,]” “collateral estoppel applies [...] against those for whom the party acted as an agent or proxy[,]” and “[w]hen a government agency is authorized to bring an action on behalf of an individual or in the public interest, and a private person lacks an independent right to bring the action, a person who is not a party but who is represented by the agency is bound by the judgment as though the person were a party.” *Arias, supra*, at 985-86 (citations omitted); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (aggrieved employee cannot opt out of a PAGA settlement). As such, the Settlement is consistent with the law, and there is no requirement that the Aggrieved Employees be provided with a mechanism to opt out of or object to the Settlement.

IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT

The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or herself and on behalf of other aggrieved employees and the State of California to recover civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer (Cal. Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. See Cal. Lab. Code § 2699(a). Plaintiff has complied.

The settlement of a PAGA action requires court approval. See Cal. Lab. Code § 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action” and therefore does not have to meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from, and simpler than, the process for approval of a class action settlement. A

1 court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to
2 those affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California
3 Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be
4 judged, courts have approved settlements of PAGA claims.³⁰ See, e.g., *Resendez v. Bridgestone*
5 *Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH*
6 *Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May
7 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller*
8 *v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo*
9 *Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D.
10 Cal Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186
11 Cal.App.4th 576, 589.

12 In a PAGA case, the court’s focus is not the monetary amount which aggrieved
13 employees or the State stand to receive, but instead, whether the Gross Settlement Fund achieves
14 the PAGA’s objectives. The purpose of the PAGA is “to incentivize private parties to recover
15 civil penalties for the government that otherwise may not have been assessed and collected by
16 overburdened state enforcement agencies.” See *Ochoa-Hernandez, supra*, 2010 WL 1340777,
17 at *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part,
18 to “be distributed to the [LWDA] for enforcement of labor laws . . . and for education of
19 employers and employees about their rights and responsibilities under this code, to be
20 continuously appropriated to supplement and not supplant the funding to the agency for those
21 purposes.” See Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by
22 way of a PAGA claim, is essentially a law enforcement action. See *Amalgamated, supra*, 46
23 Cal.4th at 1003 (stating that the PAGA is a mechanism for “an aggrieved employee to recover
24 civil penalties—for Labor Code violations—that otherwise would be sought by state labor law
25 enforcement agencies”); see also *Iskanian, supra*, at 381.

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³⁰ Aiwazian Decl., ¶ 7.

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

V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

The Settlement resulted from hard-fought negotiations, fulfills the objectives of the PAGA statute, is fair, adequate, and reasonable, and meets all of the criteria for approval for the reasons discussed below.

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

The Parties reached the Settlement through arm’s-length negotiations, after a mediation with an experienced and respected mediator, Deborah Crandall Saxe, Esq.³¹ A settlement that is “the product of extensive and hard-fought adversarial negotiations between the parties” is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

The Settlement is presumptively fair because: (1) it is the product of non-collusive, arm’s-length negotiations with the assistance of an independent mediator knowledgeable in complex labor and employment matters; (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters; and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claims, and the risks associated with possible arbitration proceedings and of litigating these claims through trial.³²

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³¹ Aiwazian Decl., ¶ 13.

³² *Id.*, ¶¶ 4-7, 12-14, & 15-20.

1 After engaging in extensive formal and informal discovery, the Parties participated in
2 settlement negotiations to try to resolve the lawsuit.³³ These efforts included participating in
3 formal mediation conducted by Deborah Crandall Saxe, Esq., a well-respected mediator
4 experienced in mediating complex labor and employment matters.³⁴ During mediation, the
5 Parties discussed all aspects of the case, including the risks and delays of further litigation, the
6 risks to the Parties of proceeding with trial, possible arbitration proceedings, as well as the law
7 relating to representative PAGA actions, off-the-clock theory, wage-and-hour enforcement, and
8 arbitration agreements, the evidence produced and analyzed, and the possibility of bifurcation
9 of discovery and/or trial and appeals, among other things.³⁵ During all settlement discussions,
10 the Parties conducted their negotiations at arm's length in an adversarial position.³⁶

11 Based on all of the information available to the Parties and with the assistance of the
12 experienced mediator, the Parties agree that this matter is well-suited for settlement given the
13 strengths and weaknesses of the PAGA claim.³⁷ Plaintiff and Plaintiff's Counsel believe that
14 the settlement is a fair, adequate, and reasonable resolution of this matter.³⁸ Plaintiff's Counsel
15 has extensive experience handling representative and class action wage-and-hour litigation and
16 used that experience to achieve a great result for Plaintiff, the State of California, and the
17 Aggrieved Employees.³⁹ Therefore, the Court should give considerable weight to the
18 competency, experience, and opinion of counsel and the involvement of a neutral mediator in
19 assuring that the settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli*
20 (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to
21 considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622
22 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness); see
23 also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating
24 that the "assistance of an experienced mediator in the settlement process confirms that the
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26 ³³ Aiwazian Decl., ¶ 13.

27 ³⁴ *Ibid.*

28 ³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Id.*, ¶ 27.

³⁸ *Ibid.*

³⁹ *Id.*, ¶¶ 4-7.

settlement is non-collusive”).

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

In order for Plaintiff to prevail on the PAGA claims, he would have to prove that Defendants engaged in the alleged California Labor Code violations and demonstrate that Defendants’ conduct warrants the imposition of penalties. *See, e.g., Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 (“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims. Because all of plaintiff’s other claims fail as a matter of law, so does her PAGA claim.”).

Plaintiff’s core allegation is that Defendants have systematically violated the California Labor Code, with respect to Plaintiff and the Aggrieved Employees, by, *inter alia*, failing to properly pay minimum, regular, overtime wages, failing to provide compliant meal and rest periods and associated premiums, failing to timely pay wages during employment and upon termination of employment, failing to provide complete and accurate wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

Although wage-and-hour actions are amenable to resolution as to a group of employees,⁴⁰ some courts have also found that, for various reasons, the issues raised by Plaintiff raise

⁴⁰ *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 [employees] . . . the trial court may in fact find class analysis a more efficient and effective means of resolving plaintiffs’ overtime claim”); *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 330-31 (Court successfully managed and adjudicated wage-and-hour claims made on behalf of a group of employees, utilizing, among other things, statistics and surveying.); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033 (“Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment [...] The theory of liability – that [the employer] has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law - is by its nature a common question eminently suited for class treatment.”); *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (finding that real parties demonstrated that the existence of the practice and the fact of damage were matters suitable for determination on behalf of a group of employees and that, “[r]eal parties’ evidence supports the reasonable inference that [...] they could establish that petitioners engaged in the alleged practice, that is, they never paid meal break premium wages, even though a significant number of employees accrued them. Furthermore, in view of real parties’ theory of restitution, those facts would also suffice to demonstrate the fact of damage. Under that theory, the fact of damage does not require a showing

(Footnote continued)

individualized issues and/or are unmanageable and thus not suitable for adjudication as to a group of employees.⁴¹

Defendants contended that courts have required, and that due process requires, that the adjudication of PAGA claims meet a “manageability” requirement. *See, e.g., Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 756 (“courts have inherent authority to ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike claims that cannot be rendered manageable”)⁴²; *but cf. Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685⁴³, 712, *petition for cert. pending* (May 2, 2022) (“[i]mposing a manageability

that all -- or virtually all -- class members accrued unpaid meal break premium wages, but only that on a system-wide basis, petitioners denied the class members the benefits of the compensation guarantee and enhanced enforcement implemented by section 226.7.”); *Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036 (holding that statistical evidence is admissible to support class action certification because it is also admissible to prove liability and damages across a group of employees, where the defendant employer had not kept records of time spent by employees with respect to donning and doffing protective clothing).

⁴¹ *See, e.g., Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35 (stating that even where it has been alleged “that the employer consistently imposed a uniform policy or de facto practice” as to its employees, “the party must still demonstrate that the illegal effects of this conduct can be proven efficiently and manageably” and in litigating representative actions the procedures utilized by the court “may not be used to abridge a party’s substantive rights,” including “abridge[ing the defendant’s] presentation of [a defense] simply because that defense was cumbersome to litigate,” because of “principles of due process”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1018 (stating that employers must authorize, permit, or “relieve the employee of all duty for [a] designated meal [or rest] period,” and “relinquish [full] control over [the employee’s] activities” and “afford” employees an “opportunity to take an *uninterrupted* thirty-minute break,” but are not obligated to affirmatively ensure that no work related tasks are performed during such periods).

⁴² In *Wesson*, the appellate court determined that trial courts may dismiss PAGA actions if they are unmanageable. The employer moved to strike the PAGA claim, arguing that the misclassification allegations were “highly fact dependent” and would require individualized inquiries to evaluate the company’s affirmative defenses, and that the number of employees and the nature of the allegations made the PAGA action “unmanageable,” which would violate Staples’ due process rights. *Wesson*, 68 Cal.App.5th 746, 755-756 and 772-773. The trial court invited the plaintiff to submit a trial plan showing that his PAGA action would be manageable at trial, but the plaintiff insisted the trial court lacked authority to require that his claim was manageable. *Id.* at 755-756. Following this response, the trial court concluded that the PAGA claim could not be managed at trial and granted the employer’s motion to strike the PAGA claim. *Ibid.* The appellate court affirmed, holding that trial “courts have inherent authority to ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike claims that cannot be rendered manageable;” “as a matter of due process, defendants are entitled to a fair opportunity to litigate available affirmative defenses, and a court’s manageability assessment should account for them;” and “given the state of the record and [plaintiff’s] lack of cooperation with the trial court’s manageability inquiry, the court did not abuse its discretion in striking his PAGA claim as unmanageable.” *Id.* at 755-756 and 764-766. The appellate court noted that because PAGA claims lack the basic requirements that control class actions, such as a well-defined community of interest and a showing that common questions predominate over individual ones, PAGA claims “may well present more significant manageability concerns than those involved in class actions.” *Id.* at 766. In other words, the appellate court noted, because PAGA actions may include “disparate groups of employees and involve different kinds of violations raising distinct questions,” there is a heightened need to consider manageability and that “a need for individualized proof pertaining to a very large number of employees will raise manageability concerns.” *Ibid.*

⁴³ In *Estrada*, the plaintiffs alleged representative claims under PAGA and class claims primarily based on purported meal and rest period violations. The trial court initially certified two classes and denied the employer’s pre-trial motion to decertify the class, due to the employer’s failure to show changed circumstances warranting decertification.

(Footnote continued)

1 requirement would create an extra hurdle in PAGA cases that does not apply to LWDA
2 enforcement actions.”); *Litty v. Merrill Lynch & Co.* (C.D. Cal. Nov. 10, 2014) No. CV-14-0425-
3 PA, WL 5904904 at **3-4 (Court dismissed the PAGA claim because a multitude of
4 individualized assessments would be necessary, making the PAGA claim unmanageable).

5 Defendants also maintained several defenses to Plaintiff’s theory of liability, which, if
6 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
7 Throughout this litigation, Defendants maintained, and continue to maintain, that they had, and
8 continue to have, legally-compliant employment policies and practices throughout the time
9 period at issue.⁴⁴ Defendants deny that they ever violated any provision of the California Labor
10 Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the
11 PAGA.⁴⁵ Defendants further denied, and continue to deny, that the lawsuit is appropriate for
12 representative adjudication for any purpose other than settlement.⁴⁶

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14 *Estrada*, 76 Cal.App.5th 685, 700. However, following the presentation of evidence at trial, the trial court decertified
15 one of the classes (and in relevant part, this also involved dismissing the PAGA meal period claims of this class, due
16 to their being “unmanageable”), and entered judgment. *Id.* at 701-702. Both sides appealed. The Fourth District
17 Court of Appeal determined, in relevant part, that the trial court erred in dismissing the PAGA claims as
18 unmanageable, and in doing so, specifically acknowledged that it was reaching “the opposite conclusion” to that
19 reached in *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746 (where it was concluded that
20 courts have inherent authority to strike unmanageable PAGA claims). *Id.* at 697. The appellate court relied on *Arias*
21 *v. Superior Court* (2009) 46 Cal.4th 969 and *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, to find
22 that a court cannot strike a PAGA claim based on manageability, because:

19 “[t]hese cases have made clear that PAGA claims are unlike conventional civil suits and, in particular, are
20 not class actions. Allowing dismissal of unmanageable PAGA claims would effectively graft a class action
21 requirement onto PAGA claims, undermining a core principle of these authorities. It would also interfere
22 with PAGA’s purpose as a law enforcement mechanism by placing an extra hurdle on PAGA plaintiffs that
23 is not placed on the state. That said, courts are not powerless when facing unwieldy PAGA claims. Courts
24 may still, where appropriate and within reason, limit the amount of evidence PAGA plaintiffs may introduce
25 at trial to prove alleged violations to other unrepresented employees. If plaintiffs are unable to show
26 widespread violations in an efficient and reasonable manner, that will just reduce the amount of penalties
27 awarded rather than lead to dismissal.” *Id.* at 697.

23 For this and other reasons, the appellate court reversed the trial court’s order decertifying the class and dismissing the
24 related PAGA claim as unmanageable. However, the appellate court also acknowledged that “[s]ome PAGA claims
25 involve hundreds or thousands of alleged aggrieved employees, each with unique factual circumstances” and to
26 address this, where appropriate and within reason, trial courts may “limit witness testimony and other forms of
27 evidence when determining the number of violations that occurred and the amount of penalties to assess[.]” and
28 plaintiffs’ counsel should “work with the trial courts during trial planning to define a workable group or groups of
aggrieved employees for which violations can be more easily shown[.]” *Id.* at 712-713. Otherwise, the appellate court
noted, a PAGA plaintiff seeking to try their claim “risk[s] being awarded a paltry sum of penalties, if any,” due to
problems of proof. *Id.* at 713. The appellate court’s comments regarding the practical limitations of actually trying a
PAGA lawsuit are being used by employers to argue that PAGA lawsuits are unmanageable or that the scope of such
lawsuits should be narrowed for purposes of trial.

⁴⁴ *Aiwazian Decl.*, ¶ 17.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

Defendants also challenged Plaintiff's standing as an aggrieved employee and denied that any of Defendants' other employees whom Plaintiff seeks to represent are aggrieved.⁴⁷ Also, at the time that this case commenced, multiple courts had taken an approach requiring a plaintiff to establish standing and face the possibility of bifurcation of discovery and/or trial of the PAGA claim. *See Amalgamated Transit Union, supra*, 46 Cal.4th at 1001 (noting that PAGA "require[s] a plaintiff to have suffered an injury resulting from an unlawful action"); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding that judicial economy supported bifurcation because of the difficulties and inherent uncertainties of being able to establish liability with respect to a large number of potentially aggrieved employees and noted that "PAGA's public purpose would be ill-served if the court finds [the plaintiff] has not been aggrieved by a Labor Code violation"); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of litigation is allowed to avoid wasting time and money on trial when litigation of issues could be rendered moot).

Defendants also argued that an important feature of PAGA is that the Court retains discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." *See* Cal. Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors). Defendants maintained, and continue to maintain, that they had and continue to have, legally-compliant employment policies and practices throughout the time period at issue.⁴⁸ Defendants deny that they ever violated any provision of the California Labor Code.⁴⁹ Even if, *arguendo*, such violations occurred, which Defendants deny, Defendants contended that said violations would only be considered "initial violations" and thus heightened "subsequent violation" penalties were not warranted. *See* Cal. Lab. Code § 2699(f)(2); *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 ("Until the employer has been notified that it is

⁴⁷ Aiwazian Decl., ¶ 19.

⁴⁸ *Id.*, ¶ 17.

⁴⁹ *Ibid.*

violating a Labor Code provision [...], the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”).

Defendants also contended that, with respect to PAGA claims, the Court was unlikely to assess cumulative penalties for the maximum number of possible, separate California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be regulated by multiple provisions of the California Labor Code that are interrelated and work in tandem. As such, Defendants contended that cumulative penalties and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.

There is also uncertainty regarding the viability of PAGA claims and how arbitration agreements impact PAGA claims, which is relevant to this matter in light of Defendant’s arbitration agreements (which included a waiver of class, collective, and representative proceedings). *Moriana v. Viking River Cruises, Inc.*, No. B297327, 2020 WL 5584508 (Cal. Ct. App. 2d Dist. Sept. 18, 2020), *cert. granted*, 2021 WL 5911481 (U.S. Dec. 15, 2021) (No. 20-1573).⁵⁰

While Plaintiff disagrees with Defendants’ contentions and maintains that his PAGA claim has merit, in reaching the settlement, Plaintiff and his counsel took into account the strengths and weaknesses of each side’s position and the uncertainty of how the case might have concluded as litigation continued, at trial, in arbitration proceedings, and/or appeals.⁵¹

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

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

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⁵⁰ Aiwasian Decl., ¶ 18.

⁵¹ *Id.*, ¶ 20.

Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the PAGA claim.⁵² In addition, the Parties exchanged a large volume of documents and data relevant to Plaintiff's claims and Defendants' defenses thereto, including, and not limited to, the employment records of Plaintiff and other Aggrieved Employees, employees' time and pay data, Defendants' Employee Handbook, Defendants' Arbitration Agreement, job descriptions, various agreements and acknowledgments (such as, Defendants' Employee Handbook Acknowledgement, Acknowledgment to Arbitration Agreement, and Employee Acknowledgement Slip-Resistant Shoe (SRS) Program) and Defendants' operations practices, policies (such as, Defendants' Mandatory Arbitration Policy, Timekeeping Requirements policy, Overtime, Non-Exempt Employees policy, Meal Periods and Rest Breaks policy, Payment on Resignation or Termination policy, Business Expenses policy, Personnel Records policy, and Personal Appearance Standards policy) and procedures, among other documents.⁵³ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant documents and data to evaluate Plaintiff's claims, including, and not limited to, calculating the potential monetary recovery under PAGA.⁵⁴ Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding the mediation and settlement, among other issues; participating in case strategy and analysis; drafting, reviewing, and revising the mediation memorandum; and preparing for and attending the mediation and settlement negotiations.

Had the case not settled, the Parties would have conducted extensive additional formal discovery, including propounding additional written discovery requests as well as multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendants indicated that they would aggressively litigate this matter.⁵⁵ Even if Defendants failed on their defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if

⁵² Aiwazian Decl., ¶ 14.

⁵³ *Id.*, ¶¶ 14 & 20.

⁵⁴ *Ibid.*

⁵⁵ *Id.*, ¶ 17.

1 either party were to appeal adverse rulings.⁵⁶ Additionally, there is a real possibility that
2 Plaintiff would recover nothing, either for himself or on behalf of the State of California or other
3 Aggrieved Employees after years of costly and labor-intensive litigation. Avoiding these risks
4 and the likelihood of future contentious litigation, which would involve significant costs, favors
5 settlement.

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

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

11 The Settlement provides significant benefits to the State of California and the Aggrieved
12 Employees and falls well-within the range of acceptable settlements under the circumstances.
13 Under the Agreement, Defendants have agreed to pay a Gross Settlement Fund of \$350,000.00,
14 which encompasses the Net Settlement Fund, Attorneys’ Fees, Attorneys’ Costs, Settlement
15 Administration Costs, and Service Award.⁵⁷ Subject to approval by the Court, the following
16 amounts will be subtracted from the Gross Settlement Fund to yield the Net Settlement Fund:
17 (1) Attorneys’ Fees, consisting of attorneys’ fees in the amount of \$122,500.00, and Attorneys’
18 Costs, consisting of reimbursement of litigation costs and expenses in the amount of \$17,135.70
19 to Plaintiff’s Counsel⁵⁸; (2) the Settlement Administration Costs of up to \$4,000.00; and (3)
20 Service Award of up to \$9,500.00 to Plaintiff.⁵⁹

21 The Net Settlement Fund is currently estimated to be \$196,864.30, of which an estimated
22 \$49,216.08 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their Pay
23 Periods and \$147,648.22 is to be distributed to the LWDA. There is no reason to doubt the
24 fairness of the proposed plan of allocation of the Net Settlement Fund as it fully complies with

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26 ⁵⁶ Aiwazian Decl., ¶¶ 12, 14, 16 & 20.

⁵⁷ Settlement Agreement, ¶¶ II.A.11.

27 ⁵⁸ *Id.*, ¶¶ II.A.5 & II.A.6. Although the Settlement Agreement provides that Plaintiff’s Counsel can seek up to \$25,000
for reimbursement of litigation costs and expenses, Plaintiff’s Counsel only seeks the amount of \$17,135.70 for this
payment, which is less than \$25,000.00. The difference between the amount sought and the maximum allocated
amount available under the settlement (i.e., the difference of \$7,864.30), will be a part of the Net Settlement Fund.

28 ⁵⁹ *Id.*, ¶¶ II.A.24 & II.A.22.

California Labor Code section 2699(i).

The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel recognize the expense and length of continued proceedings necessary to litigate the matter through trial and any possible appeals.⁶⁰ Plaintiff and his counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.⁶¹ Plaintiff and his counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendants' defenses thereto, and the difficulties in establishing Defendants' liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other Aggrieved Employees.⁶² Plaintiff and his counsel have also taken into account Defendants' agreement to enter into a settlement that confers significant relief upon the Aggrieved Employees and the State of California.⁶³

Considering all of the facts in this case, Plaintiff and his counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claims, and that it is in the best interests of the Aggrieved Employees and the State of California.⁶⁴

The result achieved in this case, and the monetary recovery provided by this settlement, are well-within the range of an acceptable settlement under the circumstances, especially when compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no

⁶⁰ Aiwazian Decl., ¶¶ 12, 16 & 20.

⁶¹ *Ibid.*

⁶² *Id.*, ¶¶ 15 & 16.

⁶³ *Id.*, ¶ 14.

⁶⁴ *Id.*, ¶ 27.

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). Here, the value obtained for settlement of the PAGA claims is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

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

Plaintiff’s Counsel is highly experienced in complex representative and class action wage-and-hour litigation.⁶⁵ In the view of Plaintiff’s Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁶⁶ Furthermore, 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 Cal. Lab. Code § 2699(g)(1)(i)).

VI. THE PROPOSED ATTORNEYS’ FEES PAYMENT IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

A. A Fee Award of a Percentage of the Entire Fund Is Appropriate

The Settlement provides for a Gross Settlement Fund of \$350,000.00.⁶⁷ The Settlement provides for attorneys’ fees in an amount of thirty-five percent (35%) of the Gross Settlement Fund, which is \$122,500.00, subject to approval and award by the Court.⁶⁸ The requested attorneys’ fees award is commensurate with: (1) the risk that Plaintiff’s Counsel took in bringing and litigating this case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that Plaintiff’s Counsel has shown, (4) the results that Plaintiff’s Counsel has achieved throughout the litigation, (5) the value that Plaintiff’s Counsel has achieved for

⁶⁵ Aiwazian Decl., ¶¶ 4-7.

⁶⁶ *Id.*, ¶ 27.

⁶⁷ Settlement Agreement, ¶ II.A.11.

⁶⁸ *Id.*, ¶ II.A.6.

1 Plaintiff, the Aggrieved Employees, and the State of California, and (6) the other cases that
2 Plaintiff's Counsel has turned down in order to devote time and effort to this matter.

3 Plaintiff's Counsel is entitled to recover reasonable attorneys' fees and costs as a matter
4 of right under PAGA. See Cal. Lab. Code § 2699(g)(1) ("Any employee who prevails in any
5 [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs"). Plaintiff
6 contends that Plaintiff's Counsel is also entitled to fees and costs under California Code of Civil
7 Procedure section 1021.5, as the instant PAGA action is by definition "for the benefit" of others
8 and secures monetary recovery for a large number of Aggrieved Employees, as well as the State
9 of California. See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-
10 17 (recognizing that recovery obtained on behalf of 209 individuals satisfies the "significant
11 benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure
12 section 1021.5, regardless of plaintiff's personal motivation). The settlement will also benefit
13 the state labor agency in enforcing labor laws and educating "employers and employees about
14 their rights and responsibilities under [the California Labor Code]." Cal. Lab. Code § 2699(i).

15 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
16 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
17 confirmed by the California Supreme Court. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
18 480 at 486 & 506. While trial courts have discretion to apply either a lodestar method or
19 percentage-of-the-fund method, the California Supreme Court has taken the position that trial
20 courts also "retain the discretion to forgo a lodestar cross-check and use other means to evaluate
21 the reasonableness of a requested percentage fee" and "[t]he percentage of fund method survives
22 in California." *Id.* (internal quotes omitted); see also *Wershba, supra*, 91 Cal.App. 4th at 253.

23 Courts award fees to serve as an economic incentive for lawyers to undertake litigation,
24 and thereby enhance and facilitate access to the judicial system for adjudication of meritorious
25 claims, and to deter wrongdoing. This is especially true in situations where multiple similar
26 alleged wrongs would not be economically feasible to pursue individually, such as here. See A.
27 Conte, *Attorney Fee Awards* (2d ed. 1993) 104, at 6.

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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 (holding that “trial court did not abuse its discretion in using [the percentage of fund method],
5 in part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is
6 the best judge of the value of professional services rendered in his court.” *Ketchum v. Moses*
7 (2001) 24 Cal.4th 1122, 1132.

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

14 The percentage fee method is preferred in representative actions because “it better
15 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
16 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be
17 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
18 based on the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at 47-50;
19 *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the
20 defendant will pay the plaintiff’s attorneys a percentage of the fund created by the settlement,
21 use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards
22 that are too small will “chill the private enforcement essential to the vindication of many legal
23 rights and obstruct the representative actions that often relieve the courts of the need to
24 separately adjudicate numerous claims.” *Id.* at 53. Therefore, fees in representative actions
25 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
26 attorney and client in comparable litigation. *Id.* at 48. “The ultimate goal . . . is the award of a
27 ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of
28 calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple*

1 *Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270).

2 Plaintiff's Counsel's application for attorneys' fees in light of the facts and
3 circumstances surrounding the case is well-within the range of reasonableness. Historically,
4 courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions,
5 depending on the circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981)
6 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million Gross
7 Settlement Fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979)
8 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California
9 courts routinely approve attorneys' fees awards "average[ing] around one-third of the recovery."
10 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of
11 contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee
12 was appropriate); *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles
13 County Superior Court, Case No. BC596892 (June 2016) (citing *Chavez, supra*, 162
14 Cal.App.4th at 66, n.11) (approving a fee award of one-third of the settlement amount of
15 \$950,000, in a PAGA action, because it was "reasonable and consistent with fee awards in class
16 action cases").

17 Plaintiff's Counsel has litigated this matter since it was commenced, with the very real
18 possibility of an unsuccessful outcome and no fee recovery of any kind. Counsel for the Parties
19 undertook significant investigation, and also invested time reviewing and analyzing relevant
20 documents and data to evaluate Plaintiff's claims, including, and not limited to, calculating the
21 potential monetary recovery under PAGA.⁶⁹ Other work performed by Plaintiff's Counsel
22 included, but was not limited to: meeting and conferring with Defendants' counsel regarding the
23 mediation and settlement, among other issues; participating in case strategy and analysis;
24 drafting, reviewing, and revising the mediation memorandum; and preparing for and attending
25 mediation and settlement negotiations.⁷⁰

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27
28 ⁶⁹ Aiwazian Decl., ¶ 12.

⁷⁰ *Ibid.*

1 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation.⁷¹
2 Plaintiff's Counsel is experienced in complex wage-and-hour litigation and used that experience
3 to obtain a great result for Plaintiff, the Aggrieved Employees and the State of California.⁷²
4 Considering the amount of fees requested, work performed, risks incurred, results obtained, and
5 experience of Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the
6 requested attorneys' fees are reasonable and should be awarded.

7 **B. The Fee Award Requested by Plaintiff's Counsel Is Reasonable Based on the**
8 **Factors Considered in Determination of Fee Awards**

9 The factors which courts consider in determining whether fee awards are reasonable, all
10 of which support the fee award requested by Plaintiff's Counsel, are: (1) the time and labor
11 required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to
12 perform the legal services properly; (4) the preclusion of other employment by the attorney due
13 to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent;
14 (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and
15 results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability
16 of the case; (11) the nature and length of the professional relationship with the client; and (12)
17 awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991)
18 946 F. 2d 768, 772. Some of the most relevant factors to this Court's fee determination will be
19 addressed below.

20 It should be highlighted that the percentage award sought is commensurate with the time,
21 effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel's
22 representation and the risks taken in commencing the Action, the skill and determination
23 required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that
24 Plaintiff's Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees, and the State
25 of California. For the reasons discussed herein, an award of attorneys' fees in the amount of
26 thirty-five percent (35%) of the Gross Settlement Fund is reasonable.

27
28 ⁷¹ Aiwazian Decl., ¶ 25.

⁷² *Id.*, ¶¶ 4-7.

1 **1. Time & Labor**

2 Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-
3 hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit,
4 Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal
5 issues, Defendants' business, and its operations and employment policies, practices, and
6 procedures.⁷³ During the litigation of the Action, Plaintiff's Counsel interviewed and obtained
7 information from Plaintiff and other Aggrieved Employees, conducted legal research, reviewed
8 and analyzed a volume of documents and data, prepared for and attended mediation, evaluated
9 the PAGA claims, and calculated the potential monetary recovery under PAGA.⁷⁴ Plaintiff's
10 Counsel also met and conferred with Defendants' counsel over issues relating to the mediation
11 and settlement.⁷⁵ Plaintiff's Counsel performed other work including, *inter alia*, case strategy
12 and analysis; and engaging in extensive settlement negotiations.⁷⁶

13 Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary
14 to prosecute the case with maximum efficiency, and has fully and actively participated in the
15 litigation process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT 2**" to
16 the accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Plaintiff's
17 Counsel has spent performing tasks in this matter. Plaintiff's Counsel has spent **322.20 hours**
18 to obtain a recovery on behalf of Plaintiff, the Aggrieved Employees, and the State of California.
19 These hours were required to bring the case to its successful conclusion.

20 In light of the value of time expended and the carrying of costs involved in this litigation,
21 the requested attorneys' fees award is fair, adequate, and reasonable.

22 **2. The Skill Required to Perform Legal Services Properly**

23 The skill required to properly litigate this case is evident not only in the results achieved,
24 but in the steps necessary to reach the same. Defendants retained highly-respected counsel to
25 represent its defenses. Defendants and their counsel felt very strongly about Defendants' ability
26

27 ⁷³ Aiwarzian Decl., ¶ 13.

28 ⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

to prevail on the merits and avoid representative adjudication of the PAGA claims. Plaintiff and Plaintiff's Counsel believe that the PAGA claims have merit and that Plaintiff will prevail at trial. Plaintiff's Counsel undertook extensive investigation, analysis, and research prior to filing the lawsuit and during the litigation. Plaintiff's Counsel took steps to prepare the case for trial and had every intention of taking the case to trial if Defendants did not offer an appropriate settlement.

Plaintiff's Counsel's effort and skill were used to, among other things, investigate the allegations and gather facts, research the legal issues, analyze data and information obtained from Defendants, Plaintiff, and through other sources, evaluate the PAGA claims, and negotiate the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used its extensive experience and skill in the handling of complex wage-and-hour matters to advocate for and obtain Aggrieved Employees and the State of California a recovery now, with maximum efficiency, as opposed to the possibility of recovery in the future, after significant expense and time.⁷⁷

3. *The Value of the Settlement*

The Settlement represents an excellent resolution of this lawsuit, given the uncertainty and risks of further litigation.⁷⁸ Had the case not settled, Defendants would have vigorously challenged manageability and liability, and sought a reduction in the amount assessed as penalties. Defendants, however, faced risks too, including and not limited to, the risk of having the Court assess penalties. Additionally, preparing the case for trial would have been extraordinarily expensive for the Parties.

At this stage, the settlement is preferred over continued litigation because such resolution saves time and money that would otherwise go to litigation. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation involving expert discovery, trial preparation, and appellate review of those

⁷⁷ Aiwazian Decl., ¶¶ 16-19.

⁷⁸ *Id.*, ¶¶ 15, 16, 19, & 27.

proceedings. The Settlement offers present and considerable monetary relief to Plaintiff, the Aggrieved Employees, and the State of California while avoiding additional expense, risk, and delay in obtaining possible further recovery.

4. *Whether the Fee Is Fixed or Contingent*

The representation provided by Plaintiff's Counsel has been on a contingent basis and Plaintiff's Counsel took on this matter without knowing whether any recovery would be obtained. Plaintiff's Counsel has invested **322.20 hours** of time to obtain relief on behalf of Plaintiff, the Aggrieved Employees, and the State of California. Plaintiff's Counsel is also requesting reimbursement of litigation costs and expenses in the amount of \$17,135.70.⁷⁹

In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation.⁸⁰ If Plaintiff's Counsel had not been successful, the time that they have devoted to litigating the case would have been for naught and would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel is well-experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the Aggrieved Employees, and the State of California.⁸¹ The skill and determination that Plaintiff's Counsel has shown throughout the Action justify the requested attorneys' fees and costs. Considering the amounts requested, work performed, and risks incurred, the requested fees and costs are reasonable and should be awarded.

5. *The Amount Involved and the Results Achieved*

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this case, are considerable. Here, the results achieved, and the recovery obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent a fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a settlement that provides for a Gross Settlement Fund of \$350,000.00, and it is currently estimated that the Net Settlement Fund available for distribution to the Aggrieved Employees

⁷⁹ Aiwazian Decl., ¶ 25 and Exh. 3.

⁸⁰ *Id.*, ¶ 25.

⁸¹ *Id.*, ¶¶ 4-7.

and the State of California, as set forth in Part III.C *infra*, is approximately \$196,864.30.⁸²

6. *The Reputation and Ability of the Attorneys*

Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its attorneys employed their knowledge, skill, and experience to bring the case to a successful conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and representative action cases.⁸³

C. The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Plaintiff's Counsel Has Performed Work That Is of Significant Value Based on Reasonable Hours and Prevailing Hourly Rates of Compensation

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. *See Laffitte, supra*, 1 Cal.5th at 505 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination"); *see also, e.g., Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award."). Importantly, "the lodestar calculation . . . does not override the trial court's primary determination of the fee as a percentage" and "does not impose an absolute maximum or minimum on the potential fee award." *Laffitte, supra*, 1 Cal.5th at 505.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

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⁸² Aiwazian Decl., ¶ 11.

⁸³ *Id.*, ¶¶ 4-7.

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

2 The reasonableness of hours is assessed by "the entire course of the litigation, including
3 pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo*
4 *v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

5 As discussed above, this case was highly contested and required a significant amount of
6 time and labor. Defendants made it clear very early on that it disputed all of Plaintiff's
7 allegations and disputed that representative adjudication was appropriate. Defendants also
8 argued, *inter alia*, that they had facially-compliant employment policies and practices
9 throughout the time period at issue.⁸⁴ Defendants raised affirmative defenses and denied
10 liability, and the pursuit of this case involved gathering and analyzing data from Defendants as
11 well as other sources.⁸⁵ The handling of this litigation involved a great amount of effort, and
12 also required and involved the exercise of a high level of skill, which Plaintiff's Counsel has, as
13 a result of its extensive experience in complex wage-and-hour litigation. Long and difficult
14 battles would have followed as the case moved toward trial, including taking and defending
15 declarant and expert depositions, depositions of person most knowledgeable designees,
16 conducting additional formal discovery, and engaging in extensive motion practice. As
17 Plaintiff's Counsel geared up for these battles, Plaintiff's Counsel undertook intense preparation
18 in an attempt to resolve the entire matter through settlement negotiations.

19 Plaintiff's Counsel had to bring together a volume of data and documents that were
20 produced by Defendants and obtained from Plaintiff, Aggrieved Employees, and through other
21 sources. Plaintiff's Counsel conducted extensive review and analysis of these documents and
22 data to strategize and evaluate the case and engage in settlement discussions.

23 As set forth above in Part VI.B.1 *supra*, attached to the Declaration of Edwin Aiwasian
24 is the Attorney Task and Time Chart that sets forth in detail the numerous tasks that Plaintiff's
25 Counsel performed in this matter, and the time required for completing those tasks.⁸⁶ The chart
26 demonstrates that Plaintiff's Counsel has spent a total of **322.20 hours** on this matter. In light

27 ⁸⁴ Aiwasian Decl., ¶ 17.

28 ⁸⁵ *Id.*, ¶¶ 14 & 20.

⁸⁶ *Id.*, Exh. 2.

of the facts and circumstances of this case, as well as the results Plaintiff’s Counsel has achieved on behalf of Plaintiff, the Aggrieved Employees, and the State of California, Plaintiff’s Counsel has spent a reasonable number of hours on this matter.

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

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In awarding attorneys’ fees, the aim is to mirror “the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases.” *See id.*

Plaintiff’s Counsel has been actively involved in the prosecution of this case, prior to the commencement of the Action and all the way up to approval of the settlement, and their dedication to the representation of Plaintiff, the Aggrieved Employees, and the State of California has precluded other employment. Here, Plaintiff’s Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, Plaintiff’s Counsel was successful in reaching a settlement of \$350,000.00.

As set forth in the Declaration of Edwin Aiwazian, the professional backgrounds and experience of Plaintiff’s Counsel support a reasonable blended hourly rate of compensation of at least \$600 per hour for services provided by Plaintiff’s Counsel.⁸⁷ Lawyers for Justice, PC has been awarded attorneys’ fees, compensating the firm at the blended rate of at least \$600 for legal services performed, by courts of this state.⁸⁸ While the circumstance of every case is

⁸⁷ Aiwazian Decl., ¶ 24.

⁸⁸ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys’ fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys’ fees involved an hourly rate of \$919.57; final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys’ fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice*

(Footnote continued)

unique, the fact remains that the work performed and efforts undertaken by Plaintiff's Counsel in this matter justify the requested attorneys' fees award.

The lodestar method, as a cross-check to the percentage fee sought, strongly supports the reasonableness of the requested attorneys' fees award. Applying the rate of \$600 per hour to 322.20 hours worked by Plaintiff's Counsel, would place a base lodestar value of \$193,320.00 on the services provided by Plaintiff's Counsel. However, Plaintiff's Counsel only seeks an attorneys' fee award of \$122,500.00 (equal to 35% of the Gross Settlement Fund based on the Settlement Agreement).

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba*, *supra*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th

Rutledge, et al. v. Healthport Technologies, LLC (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved a higher hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved a higher hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved a higher hourly rate of \$780.77; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved a higher hourly rate of \$845.64. Aiwazian Decl., ¶ 24.

495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez, supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that the Court approve and grant an attorneys' fees award in the amount of \$122,500.00 to Plaintiff's Counsel, which is reasonable and justified on a percentage-basis, but also based on a lodestar cross-check.

VII. COSTS TO BE REIMBURSED TO PLAINTIFF'S COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for reimbursement of litigation costs and expenses of up to \$25,000.00. As set forth in the Declaration of Edwin Aiwarzian, Plaintiff's Counsel has incurred a total of \$17,135.70 in litigation costs and expenses.⁸⁹ This amount was reasonable and necessary in the prosecution of this matter, and is less than the maximum amount allocated under the Settlement Agreement.⁹⁰ The cost savings of \$7,864.30 will be part of the Net Settlement Fund.⁹¹ Accordingly, Plaintiff's Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$17,135.70 to Plaintiff's Counsel.

VIII. THE PROPOSED COVER LETTER AND POSTCARD TO THE AGGRIEVED EMPLOYEES SHOULD BE APPROVED

Although PAGA does not require notice to unnamed aggrieved employees of a settlement, the Parties prepared, and now present for the Court's consideration and approval, the Cover Letter for transmission to the Aggrieved Employees along with their Individual PAGA Payment check (i.e., PAGA Settlement Package), substantially in the form attached as "EXHIBIT 1" to the [Proposed] Order and Judgment and as "EXHIBIT A" to the Settlement Agreement. The Cover Letter informs the Aggrieved Employees about the Action and the Settlement. Accordingly, Plaintiff respectfully requests that the Court approve the Cover Letter for transmission to the Aggrieved Employees at the time of disbursing their Individual PAGA

⁸⁹ Aiwarzian Decl., ¶ 25.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

Payment. The Parties have also prepared, and now present for the Court’s consideration and approval, a postcard to the Aggrieved Employees reminding him or her to cash his or her check, substantially in the form attached as “EXHIBIT 2” to the [Proposed] Order and Judgment and as “EXHIBIT B” to the Settlement Agreement.

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Simpluris, Inc. to handle the administration of the Settlement. The fees and expenses of the Settlement Administrator are estimated not to exceed \$4,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual PAGA Payment checks to the Aggrieved Employees (i.e., PAGA Settlement Package); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages to any updated addresses located; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to \$4,000.00 to Simpluris, a necessary third-party for handling the settlement process.

X. THE PROPOSED SERVICE AWARD IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for a Service Award to be paid to Plaintiff in the amount of \$9,500.00.⁹² The purpose of such an award is to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce an individual to participate in the suit’”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) (“Courts routinely approve incentive awards to compensate named

⁹² Settlement Agreement, ¶ II.A.22.

1 plaintiffs for the services they provided and the risks they incurred during the course of the [...]
2 litigation.”); *see also, e.g., Resendez, supra*, Los Angeles County Superior Court, Case No.
3 BC59689 (approving \$10,000 enhancement award in a PAGA action).

4 Here, Plaintiff contributed considerable time and effort to the litigation of this case in
5 order to enforce the California Labor Code on behalf of the State of California and for the benefit
6 of other Aggrieved Employees. Plaintiff gathered and produced relevant documents and
7 information, provided the facts and evidence necessary to attempt to prove the allegations, and
8 discussed his employment with his counsel.⁹³ Plaintiff was available whenever his counsel
9 needed him and tried to obtain documents and information that would aid in the litigation of the
10 PAGA claims and pursuit of recovery on behalf of the State of California and Aggrieved
11 Employees.⁹⁴ Additionally, as a part of the Settlement, Plaintiff has agreed to a broader release
12 of claims than the release of claims that applies to the Aggrieved Employees.

13 Accordingly, it is reasonable and just for Plaintiff to receive a Service Award in the
14 amount of \$9,500.00, in addition to the Individual PAGA Payment he will receive as an
15 Aggrieved Employee.

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28 ⁹³ Aiwazian Decl., ¶ 26; Declaration of Victor Fardanesh (“Fardanesh Decl.”), ¶¶ 3 & 4.

⁹⁴ Aiwazian Decl., ¶ 26; Fardanesh Decl., ¶¶ 3 & 4.

XI. CONCLUSION

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise of disputed claims that has been reached through arm's-length negotiations, in light of the risks, complexity, and expense of further litigation. Plaintiff respectfully requests that the Court approve the Settlement, including the plan of allocation and distribution of the Gross Settlement Fund for the LWDA Payment to the LWDA, Individual PAGA Payments to the Aggrieved Employees, Attorneys' Fees and Attorneys' Costs to Plaintiff's Counsel, Settlement Administration Costs to the Settlement Administrator, and Service Award to Plaintiff, and permit the filing of a memorandum that exceeds the page limit.

Dated: May 17, 2022

LAWYERS for JUSTICE, PC

By:



Edwin Aiwasian
Attorneys for Plaintiff