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On behalf of himself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MICHAEL DAW, on behalf of himself and
all other aggrieved employees,

Plaintiff,

vs.

RRL CORPORATION, and Does 1-10,
inclusive,

Defendants.

Case No.: 30-2020-01157398-CU-OE-CXC

Hon. Randall J. Sherman - Dept. CX-105

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT, REASONABLE
ATTORNEY FEES AND COSTS, AND
ENHANCEMENT AWARD**

[Declaration of Jonathan M. Lebe; Plaintiff's
Report re: Compliance with Procedural
Guidelines; and [Proposed] Order Filed
Concurrently Herewith]

Hearing Information:

Date: December 3, 2021

Time: 10:00 a.m.

Dept.: CX-105

Reservation No.: 73631040

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 3, 2021 at 10:00 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Randall J. Sherman in Department CX-105 of
4 the above referenced Court located at 751 W Santa Ana Blvd, Santa Ana, CA 92701, Plaintiff
5 Michael Daw (“Plaintiff”) will and hereby does move this Court to approve the Private Attorneys
6 General Act (“PAGA”) Settlement reach by and between the Parties pursuant to California Labor
7 Code section 2699(l)(2). Plaintiff, individually and on behalf of other aggrieved employees, will
8 and hereby does move this Court for entry of an Order as follows:

- 9 1. Granting approval pursuant to Labor Code section 2699(l) of the parties’ proposed
10 Stipulation of Settlement (“Settlement Agreement”) of claims brought by Plaintiff
11 pursuant to the Private Attorneys General Act of 2004, California Labor Code section
12 2698 *et seq.*;
- 13 2. Appointing CPT Group, Inc. as the third-party Settlement Administrator, and
14 approving an award of \$5,500 in anticipated costs to CPT Group, Inc. for its settlement
15 administration services;
- 16 3. Approving as to form and content the proposed Notice of PAGA Settlement, and
17 directing that it be distributed to the Aggrieved Employees pursuant to the terms of the
18 Settlement Agreement;
- 19 4. Directing the distribution of the Gross Settlement Amount (\$325,000) pursuant to the
20 terms of the Settlement Agreement;
- 21 5. Approving an award of 33.3% of the Gross Settlement Amount (\$108,333.33) in
22 attorneys’ fees to Plaintiff’s Counsel;
- 23 6. Approving an award of \$11,281.63 in actual litigation costs reimbursement to
24 Plaintiff’s Counsel;
- 25 7. Approving an enhancement award of \$10,000 to Plaintiff for his service to the
26 Aggrieved Employees and the State of California; and
- 27 8. Approving the payment of \$142,413.78 to the California Labor & Workforce
28 Development Agency for its 75 percent share of PAGA civil penalties.

1 This Motion is based on this Notice, the Memorandum of Points and Authorities, the
2 Declarations of Plaintiff and Jonathan M. Lebe and exhibits thereto, the records filed in this action,
3 and any other evidence or argument that the Court may properly receive at or before the hearing.
4

5 DATED: October 21, 2021

LEBE LAW, APLC

6
7 By:  _____
8 Jonathan M. Lebe

9 Attorney for Plaintiff Michael Daw, on behalf of
10 himself and all other aggrieved employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Michael Daw (“Plaintiff”) respectfully requests this Court’s approval of a
4 settlement of claims under the Private Attorneys General Act of 2004, California Labor Code §
5 2698 et seq. (“PAGA”). Plaintiff’s operative complaint alleges Defendant RRL Corporation
6 (“Defendant”) owes civil penalties for violations of Labor Code §§ 201-204, 210, 226, 226.3,
7 226.7, 221, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802. Specifically,
8 Plaintiff alleges, on behalf of himself and other similarly situated aggrieved employees, that
9 Defendant failed to pay minimum and overtime wages, failed to pay sick leave, unlawfully
10 deducted wages, failed to provide compliant meal periods and rest breaks, failed to provide
11 accurate itemized wage statements, failed to pay all wages due upon separation of employment,
12 and failed to reimburse business expenses. Plaintiff’s allegations are brought on behalf of
13 approximately 165 non-exempt aggrieved employees who worked for Defendant from April 6,
14 2019 through May 28, 2021 (the “PAGA Period”). The proposed settlement is a non-reversionary
15 settlement of these PAGA claims for \$325,000.

16 Under the Labor Code, the Court must review and approve any proposed PAGA settlement.
17 (Cal. Lab. Code § 2699(l)(2).) As set forth herein, the proposed Settlement embodies all of the
18 features of a settlement that is fair, reasonable, and adequate, as it: (1) is the product of arm’s-
19 length negotiations, (2) was negotiated by attorneys experienced in wage-and-hour issues with the
20 assistance of an experienced, neutral mediator, (3) was negotiated after the parties undertook
21 sufficient investigation to evaluate the relative strength and value of the PAGA claim, and (4)
22 reflects a reasoned compromise based directly on the relative strength and value of the PAGA
23 claim, as well as the risks, expense, complexity and likely duration of further litigation. Here, the
24 proposed Settlement is sufficient to deter and punish future violations, as well as compensate
25 aggrieved employees for the alleged violations. The Settlement is attached to the Declaration of
26 Jonathan M. Lebe (“Lebe Decl.”) as Exhibit 4, and the proposed Notice of Settlement to be sent
27 to the aggrieved employees is attached to the Settlement as Exhibit A. Plaintiff now seeks this
28 Court’s approval of the Settlement terms.

II. PROCEDURAL HISTORY

Defendant is an automobile dealership located in Westminster, California that sells new and used automobiles and services automobiles. (Declaration of Michael Daw, ¶ 2.) Plaintiff worked as a Service Consultant for Defendant from approximately November 27, 2017 to approximately April 20, 2020. (Declaration of Michael Daw, ¶ 2.)

On June 16, 2020, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) of his intent to assert a claim under PAGA and his alleged basis for the claim. (Lebe Decl., ¶ 10, Exhibit 1.) On July 29, 2020, Plaintiff gave amended written notice to the LWDA. (Lebe Decl., ¶ 11, Exhibit 2.) The LWDA did not inform Plaintiff that it intended to investigate the alleged violations. (Lebe Decl., ¶ 12.)

On August 27, 2020, Plaintiff filed his representative complaint against Defendant in the Orange County Superior Court, asserting the following causes of action: (1) PAGA Civil Penalties for Violations of Labor Code §§ 1194, 1197.1 and the Applicable Wage Order for Failure to Pay All Minimum Wages; (2) PAGA Civil Penalties for Violations of Labor Code §§ 510, 1194, 1198 and the Applicable Wage Order for Failure to Pay all Overtime Wages; (3) PAGA Civil Penalties for Violations of Labor Code §§ 204, 210 and the Applicable Wage Order for Failure to Pay All Wages; (4) PAGA Civil Penalties for Violations of Labor Code §§ 226.7, 512 and the Applicable Wage Order for Failure to Provide Timely and Compliant Meal Periods; (5) PAGA Civil Penalties for Violations of Labor Code § 226.7 and the Applicable Wage Order for Failure to Provide Timely and Compliant Rest Periods; (6) PAGA Civil Penalties for Violations of Labor Code § 246 for Failure to Provide Sick Pay; (7) PAGA Civil Penalties for Violations of Labor Code § 221 for Unlawful Deduction of Wages; (8) PAGA Civil Penalties for Violations of Labor Code §§ 226, 226.3 and the Applicable Wage Order for Failure to Provide Accurate and Itemized Wage Statements; (9) PAGA Civil Penalties for Violations of Labor Code §§ 201-203 for Failure to Timely Pay All Wages Due to Terminated/Separated Employees; and (10) PAGA Civil Penalties for Violations of Labor Code § 2802 and the Applicable Wage Order for Failure to Reimburse All Reasonable and Necessary Business Expenses. (Lebe Decl., ¶ 13.)

Shortly thereafter, the Parties agreed to attend mediation with an informal exchange of

1 discovery. (Lebe Decl., ¶ 14.) In preparation for mediation, Defendant produced a thirty percent
2 sample of the aggrieved employees' time and payroll records, along with the relevant employee
3 handbook and policy documents. (*Id.*) Plaintiff's expert formulated a damages analysis based on
4 the records provided by Defendant. (*Id.*)

5 On March 8, 2021, the Parties engaged in a full-day mediation with mediator Todd Smith,
6 Esq., but were unable to reach a settlement that day. (Lebe Decl., ¶ 15.) Following mediation,
7 with Mr. Smith's assistance, the settlement negotiations continued, and a mediator's proposal was
8 accepted by both Parties on May 28, 2021. (*Id.*)

9 The Parties finalized the terms of the settlement in August 2021, which is now presented
10 to this Court for approval. (Lebe Decl., ¶ 16.) Plaintiff provided notice of the Settlement to the
11 LWDA on September 28, 2021. (Lebe Decl., ¶ 23.)

12 **III. PAGA REQUIREMENTS**

13 Based on the California Supreme Court's opinions in *Arias v. Superior Court* (2009) 46
14 Cal. 4th 969 and *Iskanian c. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348,
15 Plaintiff can seek appropriate civil penalties as called for under PAGA on behalf of the State of
16 California and other similarly aggrieved employees without seeking class certification or meeting
17 the requirements of class certification (i.e., numerosity, typicality, commonality and adequacy).
18 As such, the usual two-step preliminary and final approval process is not required.

19 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by
20 the State and by private individuals who have been aggrieved by their employers. The statute calls
21 for 75 percent of any penalties recovered to be paid to California's LWDA and the remaining 25
22 percent to the aggrieved employees. (Cal. Lab. Code § 2699(i).)

23 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
24 must first provide written notice to the LWDA and the employer of the particular Labor Code
25 violations the aggrieved employee alleges the employer has violated. (See Cal. Labor Code §
26 2699.3(a)(1)(A).) Once the LWDA notifies the aggrieved employee that it does not intend to
27 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
28 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf

of the LWDA and all other similarly aggrieved employees. (See Cal. Labor Code § 2699.3(a)(2)(A).)

In 2009, the California Supreme Court considered the issue of whether an aggrieved employee who brings a PAGA representative claim needs to meet class certification requirements. (Arias, 46 Cal. 4th at 976.) After a substantial review of the legislative history of PAGA, the Court held that an aggrieved employee's representative action brought on behalf of other aggrieved employees against an employer for PAGA violations does not need to meet the requirements for class certification. (Id. at 975, 980-88.) As the Court held, a plaintiff bringing suit under PAGA does so as the proxy or agent of California's labor law enforcement agencies. (Id. at 986.) Because the employee's PAGA action functions as a substitute for an action brought by the government itself, a judgment in the PAGA action binds all those who would be bound by a judgment in an action brought by the government. (Id.)

Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court need only “review and approve” the settlement. (Cal. Lab. Code § 2699(1)(2).) The Parties to this current PAGA action have reached such an agreement and now seek this Court’s approval of the proposed settlement.

IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES

The Parties have agreed that Defendant will pay a total settlement amount of \$325,000, subject to a *pro rata* increase of \$27.74 per additional workweek above 12,889 (which is 10% more than the 11,717 workweeks estimated at mediation) (“Gross Settlement Amount”). (Lebe Decl., ¶ 17, Exhibit 4.) From this amount, one third of the Gross Settlement Amount, or \$108,333.33, is allocated as attorneys’ fees. (Id.) Additionally, Plaintiff’s counsel costs incurred are \$11,281.63, and shall be paid to Plaintiff’s counsel from the Gross Settlement Fund. (Id.) The Settlement Administrator CPT Group, Inc.’s costs associated with administration of the Settlement is \$5,500 and shall be paid from the Gross Settlement Fund. (Id.) In exchange for a general release of his individual claims, \$10,000 is allocated to Plaintiff. (Id.)

After deducting the attorneys’ fees and costs, Settlement Administrator’s costs, and Plaintiff’s individual enhancement award, the remaining fund, anticipated to be \$189,885.04 (“Net

PAGA Payment”) will be paid 75 percent (anticipated to be \$142,413.78) to the LWDA and 25 percent (anticipated to be \$47,471.26) to the aggrieved employees. (*Id.*) Aggrieved employees are “All current and former non-exempt employees who performed work for Defendant within the State of California at any time during the PAGA Period.” (*Id.*)

The Individual PAGA Payment for each aggrieved employee shall be determined based on the number of workweeks each Aggrieved Employee was employed by Defendant during the PAGA Period, with each Aggrieved Employee being entitled to a share of the Net PAGA Payment allocated to the Aggrieved Employees based upon the Aggrieved Employee’s number of workweeks employed with Defendant during the specified period as a numerator and the total number of workweeks all Aggrieved Employees were employed with by Defendant during the PAGA Period as the denominator. (Lebe Decl., ¶ 18.)

The Settlement Administrator will disburse Notice of PAGA Settlement (“Notice”) and Individual PAGA Payment to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each Aggrieved Employee with directions to the Postmaster to forward the Notice and Individual PAGA Payment and return all undeliverable Notices and Individual PAGA Payments to the Settlement Administrator. (Lebe Decl., ¶ 19.) For each Notice and Individual PAGA Payment that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. (*Id.*) All funds not claimed within 120 days of mailing of payment shall be paid to the LWDA by the Settlement Administrator. (*Id.*)

In exchange for the settlement payment, the State of California and the aggrieved employees will release “PAGA Released Claims” defined as “any action under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, against, the Released Parties based on or arising out of alleged violations of Labor Code sections alleged in the Action, including unpaid wages, minimum wages, regular wages, overtime and double time, improper calculation of overtime and double time wages, unlawful deduction of wages, failure to provide sick leave, meal and rest breaks, failure to timely pay wages during employment, non-compliant wage statements, failure to pay wages due upon termination, failure

1 to produce employment records, failure to reimburse for business expenses, and any other alleged
2 violation in Plaintiff’s LWDA letter.” (Lebe Decl., ¶ 20.) The “Released Parties” are “Defendant,
3 its subsidiaries, affiliates, predecessors or successors in interest, and its respective past or present
4 officers, directors, shareholders, employees, attorneys, agents, assigns, members, investors,
5 principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and
6 their respective successors and predecessors in interest, subsidiaries, affiliates, parents and
7 attorneys.” (*Id.*) Only Plaintiff agrees to a general release of all known and unknown claims. (*Id.*)

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

9 **A. Standard for Approval of a PAGA Settlement**

10 The settlement of a PAGA claim requires court approval. (See Labor Code § 2699(l).
11 [stating, the “court shall review and approve any penalties sought as part of a proposed settlement
12 agreement pursuant to this part.”].) The Court must be mindful that “[s]ettlement is a compromise,
13 which balances the possible recovery against the risks inherent in litigating further.” (*In re TD
14 Ameritrade Account Holder Litig.* (N.D. Cal. Sep. 12, 2011) 2011 U.S. Dist. LEXIS 103222 at
15 *24.) Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes and an abandoning
16 of highest hopes,’” as “it is the very uncertainty of outcome in litigation and avoidance of wasteful
17 and expensive litigation that induce consensual settlements.” (*Officers for Justice v. Civil Service
18 Com.* (9th Cir. 1982) 688 F.2d 615, 624-25.) As such, “the settlement or fairness hearing is not to
19 be turned into a trial or rehearsal for trial on the merits,” or “judged against a hypothetical or
20 speculative measure of what might have been achieved.” (*Id.*)

21 Although the operative PAGA statute does not set forth the criteria by which a PAGA
22 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for
23 review of a class action settlement. However, “a PAGA claim asserted on a non-class
24 representative basis...is not considered a class action but a law enforcement action, and therefore
25 does not have to meet the requirements of [a class action].” (See *Casida v. Sears Holdings Corp.*,
26 (E.D. Cal. Jan. 25, 2012) 2012 U.S. Dist. LEXIS 9302 at *8; *Mendez v. Tween Brands, Inc.* (E.D.
27 Cal. June 30, 2010) 2010 U.S. Dist. LEXIS 66454 at *11.) A court’s review of a PAGA settlement
28 necessarily implicates the following unique features that render the approval process distinct from

1 approval of a class action settlement under Code of Civil Procedure Section 382 and California
2 Rules of Court Rule 3.769.

3 First in evaluating the adequacy of the settlement amount, the Court’s focus is not
4 concerned with the amount aggrieved employees are to receive, but rather, must focus on the total
5 settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit
6 consists of civil penalties, not individual or class damages,” and while a “[PAGA] action is ...
7 designed to protect the public and penalize the employer for past illegal conduct,” a reviewing
8 Court must be mindful of the fact that settlement of a PAGA claim involves a compromise.
9 (*Mendez*, 2010 U.S. Dist. LEXIS 66454 at *11.) “Unlike class actions, these civil penalties are
10 not meant to compensate unnamed employees because the action is fundamentally a law
11 enforcement action.” (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (Apr. 2, 2010) 2010 U.S. Dist.
12 LEXIS 32774 at *12.) The Court must not lose sight of the fact that, “[u]nlike a class action
13 seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize
14 private parties to recover civil penalties for the government that otherwise may not have been
15 assessed and collected by overburdened state enforcement agencies.” (*Id.*)

16 Second, consistent with the fact that unnamed employees have no property interest in a
17 PAGA claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
18 have the ability to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez*, 2010 U.S.
19 Dist. LEXIS 32774 at *13.) Indeed, “[PAGA] does not create property rights or any other
20 substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employees to
21 recover civil penalties – for Labor Code violations – that otherwise would be sought by state labor
22 law enforcement agencies.” (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*
23 (2009) 46 Cal.4th 993, 1003.) This renders the approval process of a PAGA settlement distinct
24 from a class action settlement, as there is no need for the Court to employ the “two-step approval
25 process” required under California Rules of Court Rule 3.769.

26 Finally, unlike class action settlements, the scope of release permitted in a PAGA
27 settlement is limited. While “judgment in [a PAGA] action is binding not only on the named
28 employee plaintiff but also on government agencies and any aggrieved employee not a party to the

proceeding...the non-party employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.” (*See Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 986-87.) Thus, the scope of a release in a PAGA settlement is confined to the PAGA penalties alleged in the complaint and to the claims that were, or could have been, alleged pursuant to PAGA based on the factual allegations in the complaint. In the case at hand, as the only claims at issue are PAGA claims, those will be the only claims extinguished through this Settlement.

B. The Court Should Approve the Settlement Because it is Fair, Adequate and Reasonable Compromise of Disputed Claims

California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class and representative PAGA settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to absent individuals. (*See Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79.) To be approved, a settlement must be “fair, reasonable and adequate to all concerned.” (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337.) Settlement is the preferred means of dispute resolution, particularly in complex representative litigation. (*See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101.) The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product of fraud or collusion between the negotiating parties. (*See, e.g., Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.) There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s length by experienced counsel. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Because this Settlement is fair, adequate, and reasonable, Plaintiff respectfully requests that the Court grant approval.

1. Factors in Evaluating a PAGA Settlement

A settlement is presumptively fair where it is reached through arm’s-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, and counsel is experienced in similar litigation. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th

1794, 1802; *see also Kullar*, 168 Cal.App.4th at 130.) In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. (*Mallick v. Sup. Ct.* (1979) 89 Cal.App.3d 434, 438.) In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” (*Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted).) Relevant factors for the Court to consider include, but are not limited to:

[T]he strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

(*Id.*) These factors require balancing and are non-exhaustive. Trial courts should therefore tailor the factors to each case and give due regard to “what is otherwise a private consensual agreement between the parties.” (*Id.*) In the context of a PAGA settlement, the third and eighth factors (risk of maintaining class action status and reaction of class members to settlement) are inapplicable.

“In the context of a settlement agreement, the test is not the maximum amount Plaintiff might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.) Further, courts review the discovery conducted by the parties to aid in assessing whether the parties sufficiently developed the claims and supporting factual bases before reaching settlement. (*See Kullar*, 168 Cal.App.4th at 129-31.) Information is sufficient where it allows the parties and the court to form “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Clark v. Am. Residential Serv. LLC* (2009) 175 Cal.App.4th 785, 801.) This requirement exists so that parties can provide the trial court with “a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated.” (*Kullar*, 168 Cal.App.4th at 132.)

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1 **a. The Strength of Plaintiff's Case**

2 Although Plaintiff steadfastly maintains that this action is meritorious, Plaintiff
3 acknowledges there are substantial risks and uncertainty in proceeding to trial. Defendant
4 presented numerous defenses, such as aggrieved employees were paid for all hours worked and
5 were provided proper meal and rest breaks. While Plaintiff was prepared to litigate his claims
6 through trial, he still faced substantial challenges in prevailing and obtaining a better result than
7 will be provide through this Settlement. Thus, this factor supports approval.

8 **b. Risk, Exposure, Complexity and Duration of Further Litigation**

9 Although the Parties engaged in substantial informal discovery prior to mediation, the
10 Parties agreed to postpone formal written discovery and depositions until after exhausting their
11 settlement efforts at mediation. (Lebe Decl., ¶ 21.) Therefore, absent settlement, the Parties will
12 be required to expend substantial time and resources conducting formal discovery. (*Id.*)
13 Preparation for trial remained, as well as the prospect of appeals in the wake of an adverse
14 summary judgment ruling for either party, as well as appeals after trial. (*Id.*) This settlement
15 avoids these consideration costs, risks, and burden of continued litigation on the Court.

16 **c. The Settlement Amount is Fair and Reasonable**

17 For a group of approximately 165 employees, a penalty of \$325,000 is large enough to
18 punish Defendant for alleged violations. (Lebe Decl., ¶ 22.) The settlement amount is equivalent
19 to a penalty of approximately \$1,969.70 per employee, which is a significant penalty for a wage
20 and hour case. (*Id.*) At the same time, the penalty amount is not so large as to be unjust, oppressive
21 or confiscatory, considering the company's potential exposure explained below. (*Id.*) After
22 deductions and payment of 75 percent to the LWDA, each aggrieved employee will receive on
23 average \$287.70. (*Id.*)

24 The Gross Settlement Fund is also reasonable in light of the facts of the foregoing action,
25 the real risk that no PAGA penalties would be paid, and inherent risks and uncertainties associated
26 with PAGA claims. (*Id.*) Plaintiff and his expert analyzed Defendant's produced data, and
27 forecasted Defendant's exposure for PAGA civil penalties as follows:

1 Failure to Provide Accurate and Itemized Wage Statements: Plaintiff's claim for failure to
2 provide accurate and itemized wage statements is premised on the theory that Defendant failed to
3 include all required information pursuant to Labor Code Section 226, including but not limited to,
4 failing to include the correct number of hours worked and wages earned. (*Id.*) Plaintiff and his
5 expert calculated Defendant's exposure as to this cause of action based on the applicable labor
6 code statute, Labor Code Section 226.3, which provide that: "Any employer who violates
7 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
8 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
9 per employee for each violation in a subsequent citation, for which the employer fails to provide
10 the employee a wage deduction statement or fails to keep the records required in subdivision (a)
11 of Section 226. The civil penalties provided for in this section are in addition to any other penalty
12 provided by law..." (*Id.*) By using the information provided by Defendant in advance of the
13 mediation and the records of Aggrieved Employees, Plaintiff and his expert were able to calculate
14 the exposure of Defendant for this cause of action. (*Id.*) Specifically, by 4,057 pay periods of
15 wage statement violation with \$250, Plaintiff and his expert estimated that Defendant's maximum
16 exposure for this claim was **\$1,014,250**. (*Id.*)

17 Failure to Pay Minimum Wage for Non-Productive Hours Worked: Plaintiff's claims for
18 failure to pay minimum wages due to are premised on the theory that Defendant failed to pay
19 Aggrieved Employees all minimum wages owed due to Defendant's alleged practice of failing to
20 pay for non-productive time, such as time spent on required meetings, training, administrative
21 tasks and clerical work. (Lebe Decl., ¶ #.) By using the information provided by Defendant in
22 advance the mediation and the records of Aggrieved Employees, Plaintiff and his expert were able
23 to calculate the exposure of Defendant for this causes of action. (*Id.*) Specifically, by multiplying
24 2,393 pay periods with \$100, Plaintiff and his expert estimated that Defendant's maximum
25 exposure for this claim was **\$239,300**. (*Id.*)

26 Failure to Pay Overtime Wages Due to Regular Rate of Pay Issues: Plaintiff also has
27 overtime wages claim for failure to pay overtime wages premised on the theory that Defendant
28 failed to pay Aggrieved Employees all overtime wages at the regular rate of pay. (*Id.*) By using

1 the information provided by Defendant in advance of the mediation and the records of Aggrieved
2 Employees, Plaintiff and his expert were able to calculate the exposure of Defendant for this cause
3 of action. (*Id.*) Specifically, by multiplying 272 pay periods of underpaid overtime wages with
4 \$100, Plaintiff and his expert estimated that Defendant's maximum exposure for this claim was
5 **\$27,200.** (*Id.*)

6 Failure to Pay Sick Pay Due to Regular Rate of Pay Issues: Plaintiff also has sick pay claim
7 for failure to pay sick pay premised on the theory that Defendant failed to pay Aggrieved
8 Employees all sick pay at the regular rate of pay. (*Id.*). By using the information provided by
9 Defendant in advance of the mediation and the records of Aggrieved Employees, Plaintiff and his
10 expert were able to calculate the exposure of Defendant for this cause of action. (*Id.*) Specifically,
11 by multiplying 214 pay periods of underpaid sick pay with \$100, Plaintiff and his expert estimated
12 that Defendant's maximum exposure for this claim was **\$21,400.** (*Id.*)

13 Failure to Provide Timely and Compliant Meal Periods: Plaintiff's claim for failure to
14 provide timely and compliant meal periods is premised on the theory that Defendant failed to
15 provide meal periods for each five hours worked, Plaintiff and Aggrieved Employees often worked
16 through meal periods, meal periods were treated as on-duty by requiring Aggrieved Employees to
17 be response to their cellular phones, and purported meal periods were often short, late or
18 interrupted. (*Id.*) By using the information provided by Defendant in advance of the mediation
19 and the records of Aggrieved Employees, Plaintiff and his expert able to calculate the exposure of
20 Defendant for this cause of action. (*Id.*) Specifically, by multiplying 5,741 pay periods of unique
21 meal period violations with \$100, Plaintiff and his expert estimated that Defendant's maximum
22 exposure for this claim was **\$574,100.** (*Id.*)

23 Failure to Provide Timely and Compliant Rest Breaks: Plaintiff's claim for failure to
24 provide timely and compliant rest breaks is premised on the theory that Defendant failed to
25 authorize or permit ten-minute rest breaks for every four hours or major fraction thereof worked.
26 (*Id.*) By using the information provided by Defendant in advance of the mediation and the records
27 of Aggrieved Employees, Plaintiff and his expert were able to calculate the exposure of Defendant
28 for this cause of action. (*Id.*) Specifically, by multiplying 5,842 pay periods of unique rest break

violations with \$100, Plaintiff and his expert estimated that Defendant's maximum exposure was **\$584,200**. (*Id.*)

Failure to Timely Pay All Wages due to Terminated/Separated Employees: Plaintiff's claim for failure to timely pay all wages due to terminated/separated employees is premised on Defendant's failure to pay all final wages upon termination/separation. (*Id.*) By using the information provided by Defendant in advance of the mediation and the records of Aggrieved Employees, Plaintiff and his expert were able to calculate the exposure of Defendant for this cause of action. (*Id.*) Specifically, by multiplying 129 pay periods of violations with \$100, Plaintiff and his expert estimated that Defendant's maximum exposure for this claim was **12,900**. (*Id.*)

Failure to Reimburse All Reasonable and Necessary Business Expenses: Plaintiff's claim for failure to reimburse all reasonable and necessary business expenses is premised on the theory that Defendant failed to reimburse for all necessary business expenses, including but not limited to personal cell phone costs. (*Id.*) By using the information provided by Defendant in advance of the mediation and the records of Aggrieved Employees, Plaintiff and his expert were able to calculate the exposure of Defendant for this cause of action. (*Id.*) Specifically, by multiplying 131 pay periods of unreimbursed business expenses with \$100, Plaintiff and his expert estimated that Defendant's maximum exposure for this claim was **13,100**. (*Id.*)

Thus, the maximum value of the PAGA claims in this action is **\$2,473,550**. (*Id.*) The \$325,000 settlement amounts to 13.1 percent of the maximum value. (*Id.*) Plaintiff submits this is a reasonable and fair settlement. (*Id.*) In settling this case, Plaintiff recognizes that the Court could determine otherwise and significantly reduce the PAGA penalties, especially in light of Defendant's financial condition. (*Id.*) This wide range of potential recovery and the additional delays and risks of trial justified settling at this point for a reasonable amount of recovery for the LWDA and per aggrieved employee. (*Id.*)

d. Discovery Completed and Status of Proceedings

The Parties engaged in substantial informal discovery and information exchange necessary to evaluate the value of the PAGA claims prior to mediation. Defendant produced a thirty percent sample of the aggrieved employees' time and payroll records, along with the relevant employee

handbook and policy documents. (Lebe Decl., ¶ 14.) Plaintiff’s expert formulated a damages analysis based on the records provided by Defendant. (*Id.*)

e. The Experience and Views of Counsel

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378.) Here, Plaintiff is represented by competent and experienced counsel who possess extensive experience litigating wage and hour class and PAGA representative actions, and who believe this Settlement to be fair and adequate for all involved. (Lebe Decl., ¶¶ 3-9.) Further, the proposed Settlement was reached with the input and assistance of Todd Smith, Esq., an experienced wage and hour mediator. (Lebe Decl., ¶ 15.) Thus, this factor strongly supports settlement approval. (*Kullar*, 68 Cal.App.4th at 130 [“The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s length transaction entered without self-dealing or other political misconduct.”].)

C. The Requested Awards for Attorneys’ Fees is Reasonable as a Percentage of the Gross Settlement Amount

Plaintiff, as the prevailing party in settlement, is entitled to recover attorneys’ fees and costs for bringing his PAGA claim. (*See* Labor Code § 2699(g) [“Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”]; Code of Civil Procedure § 1021.5(a).) A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”].)

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

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

5 (*Id.*, at 503) [internal citation omitted].) Fee awards of roughly one-third of the settlement fund
6 are routinely awarded in California state and federal courts in class actions. (*Chavez v. Netflix,*
7 *Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11; *see also, e.g., In re Pacific Enterprises Securities Litig.*
8 (9th Cir. 1995) 47 F.3d 373, 379 [affirming 33% fee award].) Here, Plaintiff’s Counsel’s fee
9 request of \$108,333.33 (33 1/3% of the Gross Settlement Amount) is fair and reasonable based on
10 the percentage of the recovery method, as confirmed by a lodestar cross-check.

11 In *Laffitte*, the California Supreme Court also held that trial courts have discretion to assess
12 the reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial
13 court calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to
14 bring the lodestar on par with the percentage of recovery is reasonable. (*Laffitte*, 1 Cal.5th at 503-
15 06.) Under the lodestar method, the court multiplies the number of hours reasonably expended by
16 each attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar
17 figure by a “multiplier” to account for a range of factors, such as the contingent nature of the case
18 and the degree of success achieved. (*See Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49; *Ketchum*
19 *v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th
20 819, 834 [“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial
21 discretion to increase or decrease a lodestar calculation”].)

22 Under California law, lodestar multipliers can range from 2 to 4 or even higher. (*See, e.g.,*
23 *Chavez*, 162 Cal.App.4th at 49-50 [approving multiplier of approximately 2.5]; *Coalition for L.*
24 *County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 [approving
25 multiplier of approximately 12.8].) In class and representative actions, where the value of the
26 benefit conferred “can be monetized with a reasonable degree of certainty,” the Court may “adjust
27 the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
28

1 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
2 litigation.” (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

3 In this case, Plaintiff’s counsel has billed a total of 209.1 hours prosecuting this case. (Lebe
4 Decl. ¶ 24, Exhibit 6.) Plaintiff’s counsel dedicated significant resources to this case by dividing
5 the tasks required according to skill level, the professional hours generated by each attorney are
6 neither unreasonable nor duplicative. (*Id.*) Multiplying the total hours billed by Plaintiff’s counsel
7 to the litigation by their reasonable hourly rates yields a lodestar of \$100,115, which results in a
8 1.08 multiplier. (*Id.*)

9 Plaintiff’s Counsel’s previous experience in litigating wage and hour class and
10 representative actions supports the reasonableness of the fee request. Plaintiff’s Counsel are well-
11 versed in plaintiff-side wage and hour class and representative action litigation. (Lebe Decl. ¶¶ 3-
12 9.) Plaintiff’s Counsel have also been certified as class counsel in conjunction with the approved
13 settlement of numerous class and PAGA action cases alleging wage and hour claims. (*Id.*)
14 Plaintiff’s Counsel’s experience in similar matters was integral in evaluating the strengths and
15 weaknesses of this case and the reasonableness of the Settlement. Because it is reasonable to
16 compensate Plaintiff’s Counsel commensurate with their skill, reputation, and experience, the
17 requested fee award of \$108,333.33 is fair, reasonable and adequate, and should therefore be
18 approved.

19 **D. The Requested Cost Reimbursement Warrants Approval as Fair, Adequate and**
20 **Reasonable**

21 Plaintiff’s Counsel incurred and respectfully requests reimbursement of \$11281.63 in
22 actual litigation costs. (Lebe Decl. ¶ 25, Exhibit 7.) Plaintiff’s Counsel’s request is fair, adequate,
23 and reasonable, as all of these costs are documented and reasonably incurred. (*Id.*) Moreover, the
24 costs Plaintiff seeks are the types of costs routinely approved by courts. (*See, e.g., Harris v.*
25 *Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 [counsel should recover “those out-of-pocket expenses”
26 that would normally be charged to a fee paying client]; *In re Immune Response Securities*
27 *Litigation* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 [mediation expenses, legal research,
28 copies, postage, filing fees, messenger and overnight delivery costs are reimbursable].) Because

the expense reimbursements requested by Plaintiff’s Counsel were reasonably incurred, the Court should grant the request for reimbursement of \$11,097.63 in litigation costs incurred.

E. The Court Should Approve the Requested Administration Costs

Plaintiff requests the Court approve \$5,500 in estimated administration costs to the Settlement Administrator, CPT Group, Inc. (Lebe Decl., ¶ 26.) As detailed in the Settlement Agreement submitted concurrently with this Motion, CPT Group, Inc. will perform duties in connection with this Settlement that are integral in effectuating the Settlement and the Notice process. (*Id.*) Among other things, CPT Group, Inc. will calculate each aggrieved employee’s individual settlement payment, format the Notice Packets for mailing, mail Notice Packets to all aggrieved employees, and otherwise administer the Settlement. (*Id.*) CPT Group, Inc. was selected to administer this Settlement because it is an experienced and well-respected settlement administrator and returned a bid at a competitive rate. (*Id.*) For these reasons, CPT Group Inc.’s requested costs are fair, reasonable, and adequate, and should be approved.

F. The Court Should Approve Plaintiff’s Requested Enhancement Award Because it is Fair, Adequate and Reasonable in View of Plaintiff’s Efforts and the Risks Assumed on Behalf of the Aggrieved Employees

Courts routinely approve enhancement awards to compensate named plaintiffs for the services they provide and the risks they incur during class and representative litigation. (*See, e.g., Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 [upholding “service payments” to named plaintiffs for their efforts in bringing the case].) Here, pursuant to the Settlement, Plaintiff seeks an enhancement award of \$10,000.00. (Settlement, § I(R).) This request is reasonable given Plaintiff’s efforts in this case and the risks he undertook on behalf of the Aggrieved Employees. Plaintiff actively sought out legal representation for the wage and hour claims asserted in his lawsuit and had multiple conversations with Plaintiff’s Counsel regarding the facts and legal theories at issue in the case, including devoting significant time prior to mediation detailing all of the non-productive activities he was required to perform for Defendant and how often he missed his meal and rest breaks. (Daw Decl., ¶ 8.) Accordingly, Plaintiff’s enhancement award is appropriate and justified as part of the Settlement.

1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
3 pursuant to PAGA in this Action.

4
5 DATED: October 21, 2021

LEBE LAW, APLC

6
7 By:  _____
8 Jonathan M. Lebe

9 Attorney for Plaintiff Michael Daw, on behalf of
10 himself and all aggrieved employees
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