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

ENRIQUE HERNANDEZ, individually, and
on behalf of aggrieved employees pursuant to
the Private Attorneys General Act
("PAGA");

Plaintiff,

v.

MMR GROUP, INC., a Louisiana
corporation; MMR CONSTRUCTORS,
INC., a Louisiana corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: RIC2003857

Assigned for All Purposes to:
Honorable Craig Riemer
Department 1

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, ET SEQ.)
SETTLEMENT AGREEMENT AND
ATTORNEY FEE AMOUNT AND COST
AMOUNT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Reservation ID: 872255059058]

[Declaration of Counsel (Douglas Han);
Declaration of Jodey Lawrence; Compliance
Chart; and [Proposed] Order and Judgment
filed concurrently herewith]

Hearing Date: June 1, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: September 23, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 1, 2023 at 8:30 a.m., or as soon as thereafter as
2 the matter may be heard, before the Honorable Craig Riemer in Department 1 of the Riverside
3 County Superior Court (Historic Courthouse) located at 4050 Main Street, Riverside, California
4 92501, Plaintiff Enrique Hernandez (“Plaintiff”) will and hereby does move for entry of an order
5 and judgment approving the Parties’ PAGA Settlement Agreement and Release (“Settlement
6 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the declaration of Douglas
7 Han, pursuant to Labor Code section 2699(l).

8 This motion is based upon this notice of motion and motion; the Settlement Agreement;
9 the Declarations of PAGA Counsel (Douglas Han), and proposed Administrator (Jodey Lawrence)
10 in support thereof; proposed order approving the Settlement Agreement; the pleadings and other
11 records on file with the Court in this matter; and such evidence and oral argument as may be
12 presented at the hearing on this motion.

13
14 Dated: May 9, 2023

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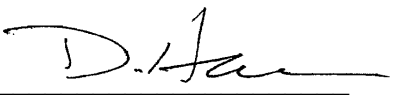
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16 By: 
17 Douglas Han
18 *Attorneys for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 This is a representative PAGA action. Under Labor Code section 2699(1)(2), Plaintiff
4 Enrique Hernandez (“Plaintiff”) seeks approval of the Settlement Agreement entered between
5 Plaintiff and Defendants MMR Group, Inc. and MMR Constructors, Inc. (“Defendants”).
6 Plaintiff entered the Settlement Agreement on behalf of himself and all current and former non-
7 exempt employees employed by Defendants in California during the period from July 20, 2019
8 through and including March 25, 2023 (“Aggrieved Employees” and “PAGA Period”).

9 The Parties agreed to resolve this case for a settlement inclusive of the: (1) amount
10 allocated for the Labor Workforce Development Agency (“LWDA”) and Aggrieved Employees
11 that will be distributed in accordance with Labor Code section 2699(i); (2) Attorney Fee Amount
12 and Cost Amount, pursuant to Labor Code section 2699(g)(1); and (3) Administration Costs.

13 Plaintiff submits the Settlement is fair, adequate, and reasonable, and meets requirements
14 for Court approval. Thus, Plaintiff requests this Court approve the Settlement.

15 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

16 On June 11, 2020, Plaintiff served a notice letter to the LWDA and Defendants. On
17 September 23, 2020, Plaintiff filed this representative Private Attorneys General Act of 2004
18 (“PAGA”) action Defendants. Defendants filed an Answer to the operative complaint on
19 December 18, 2020. Afterwards, on August 31, 2022, Defendants filed a motion to compel
20 individual arbitration of Plaintiff’s claims and to dismiss Plaintiff’s non-individual PAGA claims
21 or to stay the proceedings.¹ Plaintiff seeks PAGA civil penalties based on allegations that
22 Defendants: (1) failed to pay minimum and overtime wages; (2) failed to provide compliant
23 breaks and pay associated premium wages; (3) failed to timely pay wages; (4) failed to provide
24 compliant wage statements; and (5) failed to reimburse necessary business expenses.²

25 ///

26
27 ¹ (Declaration of Douglas Han In Support of Plaintiff’s Motion for Approval of Private
28 Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement Agreement (“Han Decl.”), ¶ 11.)

² (*Id.* at ¶ 21.)

1 After conducting significant investigation, the Parties' counsel engaged in extensive
2 negotiations to try to resolve the entire matter. The Parties participated in private mediation on
3 January 24, 2023 before Lynn S. Frank, Esq., that resulted in the settlement of this case.³

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

6 **III. SUMMARY OF THE SETTLEMENT TERMS**

7 **A. Allocation of the Gross Settlement Amount**

8 The Settlement provides Defendants will pay a non-reversionary Gross Settlement
9 Amount of \$581,360. The PAGA Penalties Fund will be the Gross Settlement Amount less the
10 following: (1) Attorney Fee Amount of up to \$193,786.66; (2) Cost Amount of \$12,357.87; and
11 (3) Administration Costs of up to \$10,000. The amount of the PAGA Penalties Fund is estimated
12 to be \$365,215.47. Twenty-five percent (25%) of the PAGA Penalties Fund will be distributed to
13 the Aggrieved Employees as their Individual PAGA Payment. The remaining seventy-five
14 percent (75%) of the PAGA Penalties Fund will be transmitted to the LWDA as the LWDA
15 PAGA Payment, pursuant to Labor Code section 2699(i).⁴

16 **B. Distribution of the PAGA Penalties Fund**

17 Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the
18 Administrator no later than fifteen (15) calendar days after the Effective Date or as otherwise
19 directed by the Court. Within ten (10) calendar days after Defendants fund the Gross Settlement
20 Amount, the Administrator will issue checks for the Attorney Fee Amount, Cost Amount,
21 Administration Costs, LWDA PAGA Payment, and all Individual PAGA Payments.
22 Disbursement of the Attorney Fee Amount and Cost Amount shall not precede disbursement of
23 Individual PAGA Payments.⁵

24 ///

25 _____
26 ³ (Han Decl., *supra*, at ¶ 16.)

27 ⁴ (See Settlement Agreement attached as **Exhibit 2** to the Han Decl. ("Settlement
28 Agreement"), §§ I(14), III(1), III(2).)

⁵ (*Id.* at §§ IV(3), IV(4).)

1 All checks mailed to Aggrieved Employees will be valid for one hundred eighty (180)
2 calendar days after their mailing. Afterwards, the uncashed settlement checks will be cancelled.
3 The funds associated with such cancelled checks, plus any interest, if any, that has accrued
4 thereon, will be distributed to State Controller's Office Unclaimed Property Division in the name
5 of the Aggrieved Employees.⁶

6 **C. The Scope of the Releases in the Settlement Agreement**

7 Effective on the date when Defendants fully fund the entire Gross Settlement Amount,
8 Plaintiff, individually and in his capacity as a private attorney general proxy or agent of the State,
9 and the State of California, as real party in interest, knowingly and voluntarily release all claims
10 for civil and statutory penalties that could have been sought by the Labor Commissioner for the
11 alleged violations identified in the PAGA Notice and to the extent they are alleged in the operative
12 complaint. The Released PAGA Claims shall only apply to the alleged violations that arose,
13 accrued, and/or have been asserted during the PAGA Period.⁷ (See *Arias v. Sup. Ct.* (2009) 46
14 Cal.4th 969, 980, 986 [a plaintiff suing under PAGA "does so as the proxy or agent of the state's
15 labor law enforcement agencies," and, as such, "represents the same legal right and interest as
16 state labor law enforcement agencies"].) A judgment in a PAGA action "binds not only that
17 [plaintiff] employee but also the state labor law enforcement agencies." (*Ibid.*) Further,
18 "[b]ecause an aggrieved employee's action under [PAGA] functions as a substitute for an action
19 brought by the government itself, a judgment in that action binds all those, including nonparty
20 aggrieved employees, who would be bound by a judgment in an action brought by the
21 government." (*Ibid.*) "Accordingly, with respect to the recovery of civil penalties, nonparty
22 employees as well as the government are bound by the judgment in an action brought under
23 [PAGA]" (*Ibid.*)

24 The Released Parties include Defendants together with their officers, directors, employees,
25 and agents.⁸

26 _____
27 ⁶ (Settlement Agreement, *supra*, at §§ IV(4)(a), IV(4)(c).)

28 ⁷ (*Id.* at § V(1).)

⁸ (*Id.* at §§ I(27), V(1).)

1 **D. No Right to Object to or Opt Out of the Settlement**

2 “[A] PAGA action is a statutory action for penalties brought as a proxy for the state, rather
3 than a procedure for resolving the claims of other employees, there is no need to protect absent
4 employees’ due process rights[.]” (*Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 546.) “Unnamed
5 employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out
6 of the representative PAGA claim.” (*Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr.
7 2, 2010), 2010 WL 3570777, at *5.) “PAGA does not make other potentially aggrieved
8 employees parties” and no “due process concerns arise under PAGA because absent employees
9 do not own a personal claim for PAGA civil penalties and whatever personal claims the absent
10 employees might have for relief are not at stake.” (*Williams*, at pp. 546-547 (internal references
11 omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46th
12 Cal.4th 993, 1003 and *Iskanian v. CLS Trans. Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.))

13 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
14 (*Williams v. Sup. Ct., supra*, 3 Cal.5th at p. 548 (internal references omitted, citing *Arias v. Sup.*
15 *Ct., supra*, at pp. 980-981; *Fireside Bank v. Sup. Ct.* (2007) 40 Cal.4th 1069, 1074 and *Richmond*
16 *v. Dart Indus., Inc.* (1981) 29 Cal, 3d 462, 474.)

17 Consistent with this law, the Settlement does not provide for a procedure for Aggrieved
18 Employees to opt out or otherwise exclude themselves from the Settlement.

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

20 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself,
21 other aggrieved employees and the State to recover civil penalties with respect to provisions of
22 the Labor Code that do not otherwise provide for civil penalties (Lab. Code § 2699(g)), and also,
23 civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an
24 employer (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must
25 comply with Labor Code section 2699.3. (See Lab. Code § 2699(a).) Although PAGA penalties
26 must be awarded by a court if a violation is found, a court “may award a lesser amount than the
27 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
28 the particular case, to do otherwise would result in an award that is unjust, arbitrary and

1 oppressive, or confiscatory.” (Lab. Code § 2699(e)(2).)

2 The settlement of a PAGA claim requires court approval. (See Lab. Code § 2699(l)(2)
3 (“The superior court shall review and approve any settlement of any civil action pursuant to this
4 part.”).) However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
5 considered a class action but a law enforcement action” and, therefore, does not have to meet the
6 requirements of a class action. (*Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012
7 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL
8 2173715, at *11; *Arias v. Sup. Ct.*, *supra*, 46 Cal.4th at pp. 980-88 (affirming lower court’s
9 holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim);
10 *Pedroza v PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15.) As such, a court’s
11 review of a PAGA settlement involves analysis of several unique features that render the approval
12 process distinct from approval of a class action settlement. A court reviewing a PAGA settlement
13 need only “ensur[e] that a negotiated resolution is fair to those affected.” (*Williams v. Sup. Ct.*,
14 *supra*, 3 Cal.5th at p. 549 (citing Lab. Code § 2699(l)(2)).) Although Labor Code section 2699(l)
15 does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved
16 settlements of a PAGA claim.⁹ The Court of Appeal has held that “a trial court should evaluate a
17 PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s
18 purposes to remediate present labor law violations, deter future ones, and to maximize
19 enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)

20 In a PAGA case, the Court’s focus is not the amount which “aggrieved employees” are to
21 receive but whether the total settlement amount achieves PAGA’s objectives. PAGA’s purpose
22 “to incentivize private parties to recover civil penalties for the government that otherwise may
23 not have been assessed and collected by overburdened state enforcement agencies.” (See *Ochoa-*
24 *Hernandez, supra*, 2010 WL 3570777, at *4 (citing *Arias v. Sup. Ct.*, *supra*, 46 Cal.4th at p. 986).)

25 ⁹ (See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Sup. Ct., Case
26 No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No.
27 JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575,
28 at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu*
v. Wells Fargo Invs., LLC (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz*
Food Prods. (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case*
(2010) 186 Cal.App. 4th 576, 589.)

1 Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for
2 enforcement of labor laws . . . and for education of employers and employees about their rights
3 and responsibilities under this code, to be continuously appropriated to supplement and not
4 supplant the funding to the agency for those purposes.” (See Lab. Code § 2699(j).) The recovery
5 of penalties on behalf of the state, by way of a PAGA claim, is essentially a law enforcement
6 action. (See *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, *supra*, 46 Cal.4th at
7 p. 1003 (stating the PAGA is mechanism for “an aggrieved employee to recover civil penalties –
8 for Labor Code violations – that otherwise would be sought by state labor law enforcement
9 agencies”); see also *Iskanian v. CLS Trans. Los Angeles, LLC*, *supra*, 58 Cal.4th at p. 381.)

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

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

12 A settlement agreement that is “the product of extensive and hard-fought adversarial
13 negotiations between the parties” is entitled to a presumption of fairness. (*Wershba v. Apple*
14 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)

15 The Settlement Agreement is presumptively fair. This is because the Settlement
16 Agreement: (1) is the product of non-collusive, arm’s-length negotiations; (2) was negotiated by
17 counsel with significant experience in similar wage-and-hour litigation following a full-day
18 mediation with an experienced mediator; and (3) occurred after Parties’ counsel engaged in
19 significant investigation of the strengths of this case and the risks of continued litigation. PAGA
20 Counsel also have extensive experience in representative and class action wage-and-hour
21 litigation and used that experience to achieve a reasonable result.¹⁰

22 Therefore, the Court should give considerable weight to the competency, experience, and
23 opinion of counsel and the involvement of a neutral mediator in assuring the Settlement is a
24 product of hard-fought negotiations that was entered without collusion. (See *Kirkorian v. Borelli*
25 (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable
26 weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations
27 of plaintiffs’ counsel should be given a presumption of reasonableness); see also *Satchell v. Fed.*

28

¹⁰ (Han Decl., *supra*, at ¶¶ 2-8, 12-16, 51; Exhibit 1.)

1 *Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating the “assistance of an
2 experienced mediator in the settlement process confirms that the settlement is non-collusive”).)

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

5 Plaintiff contends the provisions of the Labor Code potentially triggering PAGA penalties
6 in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221,
7 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.¹¹ For
8 Plaintiff to recover civil penalties, he must prove the underlying Labor Code violations with
9 respect to the Aggrieved Employees and show Defendants’ conduct gave rise to penalties. (See,
10 e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82
11 (“Plaintiffs’ claim under [PAGA] is wholly dependent upon her other claims. Because all of
12 Plaintiffs’ other claims fail as a matter of law, so does her PAGA claim.”).)

13 Defendants maintained they had legally compliant employment policies and practices
14 throughout the statutory period. Defendants also denied they ever violated any provision of the
15 Labor Code. Next, Defendants denied this case is appropriate for representative treatment for any
16 purpose other than the Settlement. If this case had not settled, Defendants would likely have
17 challenged Plaintiff’s standing as an Aggrieved Employee and denied their other employees were
18 aggrieved. Finally, Defendants argued the Court was unlikely to assess cumulative penalties for
19 the maximum number of possible separate Labor Code violations because the “subsequent
20 violation” theory of PAGA recovery would not be triggered in this case, and it would be unjust,
21 arbitrary, oppressive, and/or confiscatory. (See, e.g., *Bernstein v. Virgin Am., Inc.* (9th Cir. 2021)
22 3 F.4th 1127, 1144.) Collectively, this meant Plaintiff and PAGA Counsel had to consider the
23 strengths and weaknesses of each side’s position and the uncertainty of how the case might have
24 ended.¹² Defendants asserted, regardless of any alleged liability for Labor Code violations, PAGA
25 penalties are not mandatory but permissive and discretionary. Defendants also maintained they
26 had a strong argument that it would be unjust to award maximum PAGA penalties given the

27
28 ¹¹ (Han Decl., *supra*, at ¶ 25.)

¹² (*Id.* at ¶¶ 20-24.)

1 unsettled state of PAGA liability. (*Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
2 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)¹³

3 Although wage-and-hour actions are amenable to class-wide resolution,¹⁴ courts have
4 found certain Labor Code violations raise individualized issues and/or are unmanageable and are
5 not suitable for class adjudication.¹⁵ Similarly, in PAGA-only actions, Defendants contend courts
6 have found due process requires the adjudication of a PAGA claim meet a “manageability”
7 requirement. (See, e.g., *Liuy v. Merrill Lynch & Co.* (C.D.Cal. Nov. 10, 2014) No. CV-14-0425-
8 PA, WL 5904904 at **3-4 (Court dismissed the PAGA claim because a multitude of
9 individualized assessments would be necessary, making the PAGA claim unmanageable); see
10 also *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 766-767.)

11 Plaintiff alleges, under Defendants’ argument that stacking penalties does not apply to the
12 PAGA claim, and limiting potential exposure to an initial violation only, PAGA penalties would
13 approximately **\$36,200** (362 employees x \$100 initial violation) on the low end and **\$217,200**
14 (362 employees x \$100 initial violation x 6 theories of recovery) on the high end.¹⁶

15 Plaintiff also recognized the risk any PAGA award could be significantly reduced. Many
16 of the claimed Labor Code violations underlying the PAGA claim were cumulative for which the
17 Court may or may not stack. Thus, a Gross Settlement Amount of \$581,360 for PAGA civil
18 penalties was reasonable and significant. When PAGA penalties are negotiated in good faith and
19 “there is no indication that [the] amount was the result of self-interest at the expense of other
20 Class Members,” such amounts are generally considered reasonable. (*Hopson v. Hanesbrands*
21 *Inc.* (N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900 at *24; see, e.g.,
22 *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its
23

24 ¹³ (Han Decl., *supra*, at ¶ 25.)

25 ¹⁴ (See, e.g., *Martinez vs. Joe’s Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362,
26 383-84, modified on other grounds by *Martinez v. Joe’s Crab Shack Holdings, et al.* (Dec. 3,
27 2014 B242807) 2014 Cal.App. LEXIS 1102, *1-2.)

28 ¹⁵ (See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35.)

¹⁶ (Han Decl., *supra*, at ¶¶ 26-29.)

discretion in approving a settlement which does not allocate any damages to the PAGA claims.”.) PAGA Counsel negotiated about an average of **\$58.99** in penalties per pay period would be fair and reasonable [$\$581,360 \div 9,856$ total pay periods in PAGA Period]. Considering the recent cases justifying \$5 per pay period, (see e.g., *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504), the recovery is reasonable.¹⁷

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

Courts favor 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).)

Both sides used the pre-mediation time to investigate the veracity, strength, and scope of the PAGA claim. The Parties engaged in written discovery and exchanged documents and data for purposes of mediation relevant to the claim of Labor Code violations and applicable defenses thereto to determine the potential value and strength of the PAGA claim. After engaging in extensive investigation and negotiations, PAGA Counsel believed it would be best to pursue a settlement rather than take the risky and uncertain trial and/or arbitration route. In other words, the Settlement offers immediate recovery rather than only the possibility of recovery at some indeterminate later date. In addition, even if the Parties had reached a similar settlement down the line, it would have been undercut by additional costs and expenses incurred. This further justifies how the benefits of the settlement outweigh the risks of continued litigation.¹⁸

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

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

¹⁷ (Han Decl., *supra*, at ¶ 30.)

¹⁸ (*Id.* at ¶¶ 12-16, 24.)

1 The Settlement provides a significant monetary benefit to the LWDA and Aggrieved
2 Employees. Specifically, the PAGA Penalties Fund is currently estimated to equal \$365,215.47.
3 In addition, the proposed plan of allocation of the PAGA Penalties Fund to the LWDA and
4 Aggrieved Employees fully complies with Labor Code section 2699(i).

5 After their investigations and inquiries, Plaintiff and PAGA Counsel recognize the
6 expense, length, risk, and uncertainty of continued proceedings necessary to litigate this dispute.
7 To recover civil penalties, Plaintiff would have to prove the Aggrieved Employees suffered from
8 the underlying Labor Code violations and that Defendants' conduct gave rise to penalties, which
9 could take several months, or even years, to prove, assuming liability is found, and Plaintiff would
10 have to proffer a manageable trial plan to the Court to prove penalties. Plaintiff and PAGA
11 Counsel are aware of the burdens of proof necessary to establish liability and the difficulties in
12 establishing liability for penalties. Plaintiff and PAGA Counsel also considered Defendants'
13 agreement to enter a settlement that confers significant relief without the need for extended, risky,
14 and expenses litigation. Plaintiff and PAGA Counsel determined the Settlement represents a fair,
15 adequate, and reasonable resolution of the PAGA claim.¹⁹

16 Therefore, the results achieved, and the PAGA allocation provided by the Settlement
17 Agreement, is within the range of acceptable settlement under the circumstances.²⁰

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22 ¹⁹ (Han Decl., *supra*, at ¶¶ 20-24, 51.)

23
24 ²⁰ (See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833
25 (May 2017) (approving \$15,000 out of \$4 million toward settlement of the PAGA claim); *Garcia*,
26 *supra*, 2012 WL 5364575, at *3 (approving \$10,000 out of \$3.7 million toward settlement of the
27 PAGA claim); *Schiller v. David's Bridal, Inc.*, *supra*, 2012 WL 2117001, at *14 (approving
28 \$10,000 out of \$518,245 toward settlement of the PAGA claim); *Chu v. Wells Fargo Invs.*, *supra*,
2011 WL 672645, at *1 (approving \$10,000 out of \$6.9 million toward settlement of the PAGA
claim); *Franco v. Ruiz Food Prods.*, *supra*, 2012 WL 5941801, at *14 (approving \$10,000 out of
\$2.5 million toward settlement of the PAGA claim); *Nordstrom Commissions Case*, *supra*, 186
Cal.App.4th at p. 589 (finding no abuse of discretion by the trial court in approving a settlement
that allocates \$0 toward the settlement of the PAGA claim at issue in the lawsuit).)

1 **E. The Experience and Views of PAGA Counsel Favor Settlement Approval.**

2 PAGA Counsel are experienced in complex representative and class action wage-and-
3 hour litigation. PAGA Counsel believe the benefit conferred by the Settlement is eminently fair
4 and reasonable and in the best interests of the LWDA and Aggrieved Employees.²¹

5 **VI. APPROVAL OF THE REQUESTED ATTORNEYS' FEES.**

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

7 The Settlement provides for PAGA Counsel to apply for an Attorney Fee Amount
8 \$193,786.66 (1/3 of the Gross Settlement Amount). Per the Settlement, Defendants do not oppose
9 Court approval of, but make no claims or admissions with respect to, the reasonableness of the
10 Attorney Fee Amount, or the grounds and attorney billing rates supporting such Attorney Fee
11 Amount claimed by PAGA Counsel. The Attorney Fee Amount is commensurate with the: (1)
12 risks undertaken; (2) time, effort, and expense dedicated; (3) skills and determination shown; (4)
13 exceptional results achieved; and (5) other cases turned down.

14 PAGA Counsel are entitled to recover reasonable attorneys' fees and costs as a matter of
15 right under PAGA. (See Lab. Code § 2699(g)(1).) PAGA Counsel are entitled to fees and costs
16 under Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for
17 the benefit" of others and has secured monetary awards for Aggrieved Employees.²² The payment
18 to the LWDA will also benefit the agency in enforcing labor laws and educating "employers and
19 employees about their rights and responsibilities under [the Labor Code]." (Lab. Code § 2699(i).)

20 PAGA Counsel investigated and litigated this case for over two and one-half (2.5) years
21 before mediation with a real chance of not reaching a resolution. The ongoing work has been
22 extensive and successful in achieving a settlement. PAGA Counsel have borne all the risks and
23 costs of litigation and will not receive any compensation until recovery via this Settlement.²³

24
25 ²¹ (Han Decl., *supra*, at ¶¶ 2-8; Exhibit 1.)

26 ²² (See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
27 (recognizing that recovery obtained on behalf of 209 individual satisfies the "significant benefit,"
28 "public interest," and "large class of persons" requirements of Code of Civil Procedure section
1021.5, regardless of plaintiff's personal motivation).)

²³ (Han Decl., *supra* at ¶ 46.)

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

3 The factors courts consider in determining whether fee awards are reasonable are: (1) time
4 and labor required; (2) novelty and difficulty of the questions; (3) requisite skills to perform the
5 legal services; (4) preclusion of other employment by the attorney; (5) customary fee; (6) whether
6 the fee is fixed or contingent; (7) time limitation imposed; (8) amount involved and results
7 obtained; (9) experience, reputation and ability of the attorney; (10) undesirability of the case;
8 (11) nature and length of the professional relationship; and (12) awards in similar cases. (*Camden*
9 *I Condo. Ass'n, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.)

10 It should be highlighted the percentage award sought is commensurate with the: (1)
11 exceptional results obtained; (2) extraordinary risks undertaken; (3) novelty and difficulty of this
12 case; and (4) skills displayed and the quality of work, which are each addressed below.

13 ***1. The Exceptional Results Obtained***

14 The results attorneys obtain for their clients is an important factor when determining the
15 reasonability of a percentage-based fee. (See *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
16 480, 489.) Law firms that obtain exceptional results expect them to be reflected in their fees.

17 The exceptional results obtained are reasonable as PAGA Counsel obtained a settlement
18 of \$581,360 without the need for extended litigation. If this case went to trial and/or arbitration,
19 there was no guarantee the trial and/or arbitration would have been short or either party would
20 have prevailed. Even if the Parties reached a similar settlement down the line after additional
21 litigation, it would have been undercut by additional expenses incurred. Resolution of this dispute
22 at this stage is preferred as the Parties were moving to the phase where significant time and money
23 would inevitably have to be spent to prepare for trial and/or arbitration. Preparation for trial and/or
24 arbitration would have also entailed preparing for and deposing persons most qualified, which
25 would have been a lengthy and expensive endeavor with no guarantee of a successful resolution.

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1 Consequently, agreeing to settle this case prior to trial and/or arbitration meant PAGA
2 Counsel used their skills and experience to obtain an excellent result at far less expense. Also, by
3 avoiding the uncertainties associated with conducting trial and/or arbitration and Defendants'
4 responses to the allegations, PAGA Counsel obtained those results more quickly and surely than
5 if the matter had been litigated to final resolution. Under California law, this factor also supports
6 the requested fee. (See *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App. 4th 19, 51.)

7 **2. The Extraordinary Risk Taken by PAGA Counsel**

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

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

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

14 Plaintiff executed a contingent fee agreement. This meant no recovery would have equated
15 to no compensation for 279.6 hours of work and \$12,357.87 litigation costs incurred.²⁴

16 Several factors also made this case difficult, thereby contributing to the risks undertaken.
17 These factors included: (1) size of Aggrieved Employees (over 300); (2) difficulties in pinning
18 down job responsibilities, wages paid, meal and rest breaks taken; (3) opposing Defendants'
19 motion to compel arbitration; (4) number of documents that had to be gathered and analyzed; (5)
20 propounding formal discovery requests and reviewing Defendants' responses; (6) shifting wage-
21 and-hour laws; and (7) Defendants' firm resistance to the relief.²⁵

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

23 The unsettled nature of the law, factual complexities underlying the policies and practices
24 in place, and other issues made this case complex and difficult. Yet, PAGA Counsel overcame
25 these obstacles by obtaining a settlement that is fair, adequate, and reasonable. PAGA Counsel
26 obtaining a fair settlement despite these roadblocks speaks volumes of their skill and experience.

27
28 ²⁴ (Han Decl., *supra*, at ¶¶ 42-43, 46.)

²⁵ (*Id.* at ¶ 32.)

1 (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p. 42 (the “special skill and
2 experience of counsel” is a relevant factor when determining fee award).)

3 Due to the novelty and difficulty of this case, PAGA Counsel devoted substantial hours
4 to this matter. The Time Records set forth these hours, allocating the total time to the tasks
5 required to conclude this lawsuit. The Time Records are thorough, comprehensive, and
6 demonstrates the effort to diligently manage this case. The work commenced with the pre-filing
7 case analysis and research and continues up to the moment of the work for final approval.²⁶

8 As stated in the previous section, this was not a clear-cut case, and PAGA Counsel had to
9 overcome several roadblocks and obstacles before they could reach a reasonable settlement (*i.e.*,
10 propounding formal discovery requests and reviewing Defendants’ responses, opposing
11 Defendants’ motion to compel arbitration). The fact this case has been litigated for over two and
12 one-half (2.5) years speaks volumes of the challenges PAGA Counsel had overcome.

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

14 The level of skill displayed and the excellent quality of work it produced also justify the
15 requested fee. PAGA Counsel are skilled and experienced representatives and class action wage-
16 and-hour litigators, and the Time Records further illustrate this assertion.

17 PAGA Counsel used the pre-mediation time period to investigate the veracity, strength,
18 and scope of the PAGA claim and to prepare for representative adjudication. This included,
19 among other things: (1) case strategy and analysis; (2) drafting, reviewing, and revising pleadings
20 and a mediation brief; (3) preparing for and appearing at court proceedings; (4) opposing
21 Defendants’ attempt to compel arbitration; (5) undertaking calculations of potential damages; (6)
22 preparing for and attending mediation and settlement negotiations; and (7) working with Defense
23 Counsel to draft, update and finalize the Settlement Agreement following mediation. In addition
24 to determining the scope of the Aggrieved Employees, PAGA Counsel undertook the time-
25 consuming task of locating and interviewing Aggrieved Employees to verify whether the PAGA
26 claim raised individualized issues.²⁷

27 ²⁶ (Han Decl., *supra*, at ¶ 42; Exhibit 3.)

28 ²⁷ (*Id.* at ¶ 14.)

1 Thus, PAGA Counsel’s accumulated skill and expertise contributed to the Settlement in
2 this case. Under California law, this factor (skills displayed and quality of work) also supports
3 the Attorney Fee Amount. (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p. 51.)

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

5 PAGA Counsel spent 279.6 hours litigating this matter. PAGA Counsel’s hourly rates are
6 supported by the 2021 Real Rate Report that was compiled by Wolter Kluwer that surveyed the
7 hourly rates charged in 2021 by hundreds of attorneys in California. Likewise, PAGA Counsel’s
8 hourly rates are also in line with the Laffey Matrix.²⁸

9 **1. *PAGA Counsel Performed Work for a Reasonable Number of Hours.***

10 This matter required a significant amount of time and labor, and Defendants disputed the
11 PAGA claim and questioned its manageability. The Time Records evidence the numerous tasks
12 that were performed to seek all necessary information. Specifically, the Time Records illustrate
13 PAGA Counsel spent a reasonable number of hours working on this case, thereby demonstrating
14 the application for the attorneys’ fees is within the range of reasonableness.²⁹

15 The case involved, among other things, gathering and analyzing data from Defendants
16 and the Aggrieved Employees. PAGA Counsel undertook intense preparation to resolve the entire
17 matter through mediation. These intense preparations ranged from locating and interviewing
18 several putative aggrieved employees, reviewing a myriad of documents, determining the scope
19 of the Aggrieved Employees, verifying the strengths of the PAGA claim, etc.

20 **2. *The Fees Requested Represent a Reasonable Hourly Rate of Compensation.***

21 PAGA Counsel’s hourly rates are well within the range of rates charged by comparably
22 qualified attorneys in California and the legal profession in general for comparably complex
23 work. By extension, PAGA Counsel’s hourly rates are also in line with the Laffey Matrix.³⁰

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26 ²⁸ (Han Decl., *supra*, at ¶¶ 42-44; Exhibits 4-5.)

27 ²⁹ (*Id.* at ¶ 42; Exhibit 3.)

28 ³⁰ (*Id.* at ¶¶ 43-44; Exhibits 4-5.)

1 PAGA Counsel’s hourly rates are also reasonable for the following reasons: (1) comparable
2 hourly rates for similar services have been deemed to be reasonable in several cases in California;
3 and (2) several surveys of legal rates have supported PAGA Counsel’s hourly rates. This shows
4 PAGA Counsel’s hourly rates used for the lodestar calculation are well within the range of non-
5 contingent rates charged by comparable attorneys for similar work performed in California.

6 Based on the attorney time expended, the base lodestar fees calculation is \$187,020,
7 resulting in a modest multiplier of 1.04 when cross-checked to the Attorney Fee Amount.³¹ Under
8 California law, “[m]ultipliers can range from 2 to 4 or even higher.” (*Wershba v. Apple Computer,*
9 *Inc., supra*, 91 Cal.App.4th at p. 255.) In *Building a Better Redondo, Inc. v. City of Redondo*
10 *Beach* (2012) 203 Cal.App.4th 852, 874, the court noted, “[T]he modest multiplier the trial court
11 employed was justified by the contingent nature of counsel’s compensation.” Similarly, the court
12 in *Pulliam v. HNL Automotive Inc.* (2021) 60 Cal.App.5th 396, 409 even ruled, “The requested
13 multiplier was modest and it accounted for the risk plaintiff’s counsel took in litigating the case
14 against defendants whom the court found made the case challenging and protracted.” PAGA
15 Counsel undertaking this case on a contingent basis and risking no payment justifies the Attorney
16 Fee Amount even if it results in a modest multiplier under the lodestar analysis. In addition, the
17 risk of no payment was exacerbated by the obstacles and difficulties PAGA Counsel encountered,
18 described above, thereby making this case challenging and protracted.

19 **VII. THE LITIGATION COSTS TO BE REIMBURSED SHOULD BE APPROVED**

20 The Settlement provides for Cost Amount not to exceed \$20,000. PAGA Counsel have
21 incurred \$12,357.87 in litigation costs and expenses, which were reasonable and necessary. Thus,
22 PAGA Counsel request the Court order reimbursement for these costs and expenses.³²

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28 ³¹ (Han Decl., *supra*, at ¶¶ 43, 45.)

³² (*Id.* at ¶ 46; Exhibit 6.)

1 **VIII. THE ADMINISTRATION COSTS SHOULD BE APPROVED**

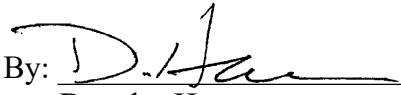
2 The Agreement provides for the payment of Administration Costs of up to \$10,000 to the
3 Administrator. The Administration Costs are intended to cover the costs incurred by the
4 Administrator for performing its duties outlined in the Agreement. PAGA Counsel has worked
5 with the desired Administrator in the past and are familiar with its superior work product. Thus,
6 the Court should approve the payment of the Administration Costs to the Administrator.

7 **IX. CONCLUSION**

8 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise.
9 Based thereon, Plaintiff requests the Court approve the Settlement.

10
11 Dated: May 9, 2023

JUSTICE LAW CORPORATION

12 By: 
13 Douglas Han
14 *Attorneys for Plaintiff*

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On May 9, 2023, I served the foregoing document described as

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698, ET SEQ.) SETTLEMENT AGREEMENT AND ATTORNEY FEE AMOUNT AND COST AMOUNT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

for the following case: **Hernandez v. MMR Group, Inc., et al.**
LWDA/Court Case No.: **LWDA Case No.: CM-793191-20**
Court Case No.: RIC2003857
Riverside County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 9, 2023, at Pasadena, California.



Mariah Anderson