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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

MAHMUDUR RAHMAN on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

NMSO, INC., a California corporation, ANABI
OIL CORPORATION, a California corporation,
ANABI CONVENIENCE CENTERS, INC., a
California corporation and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 34-2020-00281076

ASSIGNED FOR ALL PURPOSES TO:
Judge: Hon. Laurie A. Damrell
Dept.: 28

**PLAINTIFF'S NOTICE OF UNOPPOSED
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (PAGA)
SETTLEMENT; [PROPOSED] ORDER.**

*[Declarations of James R. Hawkins, Esq. and
Mahmudur Rahman filed concurrently herewith]*

Hearing Date: June 16, 2023
Time: 9:00am
Dept. 28

Reservation # (Reservation A-281076-001).

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT at 9:00am on June 16, 2023, or as soon thereafter
as the matter can be heard, in Department 28 of the above entitled Court before the Honorable Laurie
A. Damrell, Plaintiff Mahmudur Rahman, ("Plaintiff") will and hereby does move unopposed for an
order: (1) granting approval of the proposed settlement of claims brought pursuant to the Private
Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) ("PAGA") set forth in the Parties'
Settlement Agreement and Release of PAGA Claims ("Settlement Agreement") in the amount of

1 Four Hundred Thousand Dollars (\$400,000) (“Total Settlement Payment”); (2) appointing Simpluris
2 as the Settlement Administrator and approving payment of its fees not to exceed Ten Thousand
3 Dollars (\$10,000) from the Total Settlement Payment; (3) directing disbursement of the Total
4 Settlement Payment pursuant to the terms of the Settlement Agreement; (4) directing payment of
5 attorneys’ fees and litigation costs from the Total Settlement Payment not to exceed thirty-three and
6 one-third percent (33 1/3%) totaling no more than One Hundred Thirty Three Thousand Three
7 Hundred Thirty Two Dollars (\$133,332) for attorneys’ fees and Nine Thousand One Hundred Fifteen
8 Dollars (\$9,115) for litigation costs to Plaintiff’s counsel (collectively, “Plaintiff’s Counsel
9 Payment”); (5) directing disbursement of the Plaintiff’s Enhancement award in the amount of Five
10 Thousand Dollars (\$5,000); and (6) dismissing this action with prejudice. This motion will be based
11 on this Notice, the supporting Memorandum of Points and Authorities, the Settlement Agreement,
12 the Declarations of James Hawkins and Mahmudur Rahman, the documents and records on file in
13 this matter, and such additional arguments, authorities, and evidence and other matters as may be
14 presented by the Parties hereafter. The Labor Workforce Development Agency has been served with
15 this motion and the Settlement Agreement as set forth in the accompanying Proof of Service.

16
17 Dated: May 24, 2023

Respectfully submitted,

JAMES HAWKINS APLC

19 By: 
20 James R. Hawkins, Esq
21 Isandra Fernandez, Esq.
22 Kacey E. Cook, Esq.
23 Attorneys for Plaintiff individually and on
24 behalf of the general public as Private
25 Attorney General
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1 ('aggrieved employees") are all persons employed by Defendants as a non-exempt employee in
2 California at any time from June 22, 2019, through the date the Court issues the Final Order
3 ("PAGA Period") (Settlement Agreement, pp.1, 2 ¶¶ 7,8.)

4 **B. The Procedural History**

5 On June 22, 2020, Plaintiff filed a wage and hour class action complaint against Defendants
6 asserting Labor Code claims based on allegations that Defendants failed to pay Plaintiff and
7 aggrieved employees all wages due including overtime wages, in violation of Labor Code §§ 510,
8 1194, and 1199; failed to provide legally compliant meal and rest periods, in violation of Labor Code
9 §§ 226.7 and 512 and the IWC Wage Orders; failed to timely pay wages due at termination, in
10 violation of Labor Code §§ 201-203; failed to pay all wages due or issue accurately itemized wage
11 statements to Plaintiff and aggrieved employees, in violation of Labor Code §§ 201-203 and 226(a);
12 and violations of the unfair competition law (the "Action".) On that same day, pursuant to Labor
13 Code § 2699.3, Plaintiff gave written notice by certified mail to the LWDA and to Defendants of the
14 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
15 to support the alleged violations.

16 On August 28, 2020, after the LWDA declined to take action within the statutory period,
17 Plaintiff filed a First Amended Complaint adding a claim under PAGA ("FAC"). (Hawkins Decl. ¶
18 3.) On or about October 27, 2020, Plaintiff filed a request for dismissal of his individual and class
19 action claims against Defendants in light of an arbitration agreement executed by Plaintiff while
20 employed by Defendants. After the Court granted Plaintiff's request for dismissal, the only claim
21 that remained in this litigation was the PAGA claim. (*Id.*)

22 **C. Plaintiff's Counsel's Investigation**

23 Counsel for Plaintiff engaged in informal discovery of Defendants' alleged Labor Code
24 violations, which specifically targeted evaluating the strength and value of the PAGA claims in
25 preparation for a resolution of this Action (Hawkins Decl., ¶ 5).

26 Plaintiff's Counsel obtained and reviewed multiple documents and a variety of data,
27 including (i) Plaintiff's employee file and wage statements, (ii) policy documents relating to the
28 employment of Plaintiff and other aggrieved employees, and (iii) time-keeping and payroll data for a

1 randomly-selected sample of the aggrieved employees relating to the number of alleged violations
2 and the value of the recoverable penalties (Hawkins Decl., ¶ 6.)

3 Based on the information, data, and documents produced by Defendants, Plaintiff's Counsel
4 was able to (i) determine the total number of distinct individuals falling within the definition of
5 "PAGA Settlement Members" for the relevant statutory period, and (ii) construct a damages model
6 that calculated the maximum realistic amount of PAGA penalties that could be levied against
7 Defendants within the PAGA Period. Defendants, however, disputed (and continue to dispute)
8 Plaintiff's claims and disputed both the existence of and extent of liability as alleged by Plaintiff
9 (Hawkins Decl., ¶ 7.)

10 Based on Plaintiff's Counsel's experience in litigating many similar "representative" wage
11 and hour claims, the degree of investigation that was conducted, and the amount of data that was
12 obtained, there was sufficient evidence to determine the potential value of the PAGA claim(s), and
13 to evaluate the strength of this claim for purposes of settlement (Hawkins Decl., ¶¶ 7,8, 25-28.)

14 **D. Settlement Negotiations**

15 On August 24, 2021, the Parties participated in a mediation session with mediator Kelly
16 Knight, Esq. an experienced and respected mediator. During the mediation, the Parties engaged in
17 arm's-length negotiations but reached an impasse. However, the Parties continued settlement
18 discussions with the assistance of the mediator. On April 8, 2022 those continued settlement
19 discussions resulted in the resolution of the PAGA claims asserted in the FAC via the Parties
20 acceptance of the mediator's proposal. Subsequently, the Parties exchanged drafts of the
21 Memorandum of Settlement, which was finalized on or about June 20, 2022. Thereafter, the Parties
22 exchanged drafts of the Settlement Agreement, which was fully executed on or about April, 2023
23 (Hawkins Decl., ¶ 9.)

24 **E. The Proposed Settlement**

25 The Parties jointly prepared and executed the Settlement Agreement (Hawkins Decl., ¶ 10;
26 Exh. 1.) The Settlement Agreement sets forth the terms of the Settlement reached by the Parties,
27 including the following key points:

- 28 1. Defendants agrees to settle this matter for the payment of Four Hundred

1 Thousand Dollars (\$400,000.00) (hereinafter the “Total Settlement Payment”), which shall be all
2 inclusive, encompassing all settlement administrative fees and costs, Plaintiff’s Counsel’s attorneys’
3 fees and costs of suit (“Plaintiff’s Counsel Payment”), Plaintiff’s Enhancement, and Settlement
4 Administrative Costs. Defendants represent that there are approximately 20,266 pay periods worked
5 by the PAGA Settlement Members through October 22, 2022 (Settlement Agreement, p. 4 ¶ 23.)

6 2. The total sum available for payment of PAGA penalties shall be calculated by
7 deducting One Hundred Thirty Three Thousand Three Hundred Thirty Two Dollars (\$133,332 or not
8 more than 33 1/3 % of the Total Settlement Payment) for the payment of Plaintiff’s Counsel’s fees,
9 Nine Thousand One Hundred Fifteen Dollars (\$9,115) for the Attorneys’ costs (attorneys’ fees and
10 reasonable litigation costs, together, are referred to as “Plaintiff’s Counsel Payment”)(Settlement
11 Agreement, p. 4 ¶ 24), Plaintiff’s Enhancement award in the amount of Five Thousand Dollars
12 (\$5,000), and the Settlement Administration Costs of up to Ten Thousand Dollars (\$10,000) from
13 the Total Settlement Payment (Settlement Agreement, p.5 ¶ 28, 29.)

14 3. After deducting the Plaintiff’s Counsel Payment, Plaintiff’s Enhancement, and
15 Settlement Administration Costs, the remainder of the Total Settlement Payment shall be allocated
16 toward payment to the Labor & Workforce Development Agency(“LWDA”) and PAGA Settlement
17 Members (the “PAGA Fund”). Seventy-five percent (75%) of this amount, or One Hundred Eighty-
18 One Thousand Nine Hundred Fourteen Dollars and Seventy Five Cents (\$181,914.75) shall be
19 distributed to the LWDA (“LWDA Payment”), and the remaining twenty-five percent (25%) or
20 Sixty Thousand Six Hundred Thirty-Eight Dollars and Twenty Five Cents (\$60,638.25) shall be
21 distributed to the PAGA Settlement Members, based on his or her proportionate share of the pay
22 periods worked during the PAGA Period (Settlement Agreement, p.5 ¶¶ 29, 30.)

23 4. In exchange for the above settlement consideration, Defendants and the
24 Released Parties shall be entitled to the following release from each and every PAGA Settlement
25 Member, including Plaintiff:

26
27 **"Released Claims"** shall mean any and all known and unknown claims, rights,
28 demands, liabilities and causes of action that arose during the PAGA Period for
civil penalties under the PAGA that were pled or which could have been pleaded
based on the factual allegations pled in the operative Complaint in the Action and

1 the LWDA Notice, including but not limited to the following claims: (1) failure to
2 pay all lawful wages owed; (2) failure to provide all lawful meal periods or
3 compensation in lieu thereof; (3) failure to provide all lawful rest periods or
4 compensation in lieu thereof; (4) failure to timely pay all wages; (5) knowing and
5 intentional failure to comply with itemized employee wage statement provisions; (6)
6 violations of the unfair competition law; and (7) for all available penalties and relief
7 afforded by the Private Attorney General Act (Labor Code 2699 *et seq.*)

8 (Settlement Agreement, p. 2 ¶ 14.)

9 5. Upon the funding of the Total Settlement Payment and payment of Plaintiff's
10 Enhancement award, Plaintiff releases the Released Claims against Defendants and the Released
11 Parties, and makes the additional following General Release in favor of the Released Parties:

12 a) Plaintiff individually hereby unconditionally waives and forever
13 releases, waives, discharges, any and all demands, damages, debts, liabilities, contracts, obligations,
14 actions, causes of action and claims of every kind, nature, and description whatsoever, whether now
15 known or unknown, suspected or unsuspected, including in equity or otherwise, which he ever had
16 or now has against the Released Parties arising or accruing at any time prior to the Effective Date,
17 including without limitation without limitation any matter, cause or claim arising out of or related to
18 facts or events occurring prior to the execution of this Settlement Agreement, and/or related to
19 Plaintiff's employment with Defendants and his separation therefrom. At a minimum, the claims
20 released by Plaintiff include but are not limited to: (a) any claims that were or could have been
21 brought under California Labor Code sections 132a, 201, 202, 203, 204, 216, 218, 218.5, 218.6,
22 225.5, 226, 226.3, 226.7, 432.5, 510, 512, 558, 1050, 1054, 1194, 1194.2, 1197, 1198, 2698 *et seq.*,
23 2800, *et seq.*, the applicable Industrial Welfare Commission Wage Orders, the FLSA, and all related
24 or corresponding federal laws, and all implementing regulations and interpreting guidance; (b) any
25 claims that were or could have been brought under California Corporations Code, and California
26 Business and Professions Code, including but not limited to California Business and Professions
27 Code section 17200 *et seq.* as unlawful, fraudulent or misleading based on the claims, facts and
28 allegations alleged in the Action (including, but not limited to, claims of conduct unlawful under
state or federal law); (c) any other causes of action, including those seeking premiums, penalties,
interest, punitive damages, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting,
whether such causes of action are in tort, contract, equity, statute, or common law; (d) any claims

1 under the Fair Employment and Housing Act, Americans with Disabilities Act, Age Discrimination
2 in Employment Act, and Title VII of the Civil Rights Act of 1964, and (e) any other claims the Class
3 Representative could have made related to her employment with Defendants. Plaintiff may hereafter
4 discover facts in addition to or different from those which he now knows or believes to be true, but
5 stipulates and agrees that, upon the funding of the Total Settlement Payment and all applicable
6 employer-side payroll taxes, he fully, finally, and forever settles and releases any and all claims,
7 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not
8 concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity
9 and without regard to the subsequent discovery or existence of such different or additional facts.
10 Plaintiff is deemed, by operation of the Court's Order granting approval of the PAGA settlement, to
11 have agreed not to sue or otherwise make a claim against any of the Released Parties for any claim
12 (Settlement Agreement p. 9 ¶ 46(a).)

13 **b)** Plaintiff acknowledges that he has had the opportunity to review, and
14 has reviewed, California Civil Code section 1542, which provides:

15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
16 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
17 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
18 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASING
PARTY.

19 Being fully informed of this provision of the Civil Code and understanding its provisions, Plaintiff
20 agrees to waive any rights under that section, and acknowledges that this Settlement Agreement and
21 the release contained herein extends to all claims that he has or might have against the Released
22 Parties, including those which are presently unknown to him or that he does not know or suspect to
23 exist, which, if known by Plaintiff, might have affected his settlement with, and release of,
24 Defendants and the Released Parties or might have affected his decision (Settlement Agreement p.
25 10 ¶ 46(b).)

26 6. Settlement Administration Costs which are to be paid from the Total
27 Settlement Payment, will not exceed \$10,000 (Settlement Agreement, pp. 2, 3 ¶ 16.) Simpluris, a
28 reputable neutral, third-party, settlement administration company was chosen to administer the

1 Settlement (*Id.*)

2 7. As detailed herein, Plaintiff's counsel seeks an award of attorneys' fees not to
3 exceed thirty-three and one-third percent (33 1/3%), \$133,332.00, of the Total Settlement Payment,
4 and Plaintiff's Counsel will also seek reimbursement of reasonable litigation costs (attorneys' fees
5 and reasonable litigation costs, together, are referred to as "Plaintiff's Counsel Payment").
6 Attorneys' costs shall not exceed Nine Thousand One Hundred and Fifteen Dollars and Zero Cents
7 (\$9,115) (Settlement Agreement, p.4 ¶ 24.)

8 8. Funding of the Total Settlement Payment shall occur by Defendants in two
9 installments, as follows: (1) the first installment payment of \$200,000 shall be funded within sixty
10 (60) calendar days after the Effective Date; and (2) the second installment of the remaining
11 \$200,000 shall be funded by Defendants within 120 days thereafter (Settlement Agreement, p. 6 ¶
12 32.) The "Effective Date" refers to the date upon which both of the following have occurred: (i) approval
13 of the Settlement is granted by the Superior Court of California for the County of Sacramento, or other
14 court assuming jurisdiction of this matter, (ii) the Court's Order approving the Settlement becomes Final,
15 and (iii) the date of the time for filing or noticing any appeal of the Order has expired (Settlement
16 Agreement, p. 1 ¶ 4.)

17 9. Finally, under the terms of Settlement, settlement checks will remain valid
18 and negotiable for 180 days from the date of their mailing by the Settlement Administrator. After
19 180 days from the date of their mailing by the Settlement Administrator, any uncashed checks will
20 be void and escheat to the California State Controller's Office in the name of the Class Member
21 who did not cash his or her check (Settlement Agreement, p. 8 ¶ 42.)

22 **III. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
23 **SETTLEMENT OF THE PAGA CLAIM**

24 The claim before this Court is a representative claim on behalf of the State of California for
25 civil penalties pursuant to the PAGA. The Parties have agreed to settle this PAGA claim in its
26 entirety after the discovery, the exchange of pre-mediation information, and arm's length mediation.
27 (Hawkins Decl., ¶¶ 7-10.) Labor Code § 2699(l) requires that the Court "shall review and approve
28 any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall

1 be submitted to the agency at the same time that it is submitted to the court.” Consequently, the
2 Parties respectfully ask the Court to review and approve the settlement of the PAGA claim and the
3 payments to be paid as part of the proposed settlement.

4 1. The Settlement

5 A settlement agreement that is “the product of extensive and hard-fought adversarial
6 negotiations between the Parties” is entitled to a presumption of fairness. *Wershba v. Apple*
7 *Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001). Here, the settlement is presumptively fair because:
8 (1) it is the product of non-collusive, arm’s-length negotiations that were overseen by an
9 independent mediator knowledgeable in complex labor and employment matters; (2) it was
10 negotiated by counsel with significant experience in similar complex labor and employment matters;
11 and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the
12 strength and potential value of the PAGA claim, and the risks of litigating these claims through trial.
13 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996); (Hawkins Decl., ¶¶ 7-9, 25-27.)

14 Here, after engaging in extensive discussions, and an exchange of information and
15 documents, the Parties participated in mediation to try to resolve the lawsuit. (Hawkins Decl., ¶ 7-
16 10.) The Parties continued their negotiations following the mediation and, based on all the
17 information available to the Parties, the Parties agreed to settle this matter given the strengths and
18 weaknesses of the PAGA claims (*Id.*)

19 Plaintiff’s Counsel has extensive experience in representative and class action wage-and-hour
20 litigation, and used that experience to achieve favorable results for Plaintiff, the State of California,
21 and the Aggrieved employees (Hawkins Decl. at ¶¶ 25-27.) Plaintiff respectfully submits that the
22 Court should give considerable weight to the competency, experience, and opinion of counsel and
23 the involvement of a neutral mediator in assuring that the settlement was a product of hard-fought
24 negotiations that was entered into without collusion. *Dunk*, 48 Cal. App. 4th at 1802-03; *see*
25 *Mardirossian & Assocs., Inc. v. Ersoff*, 153 Cal. App. 4th 257, 272 (2007) (relevant factors in
26 determining reasonableness of fees include counsel’s skill and experience); *Kirkorian v. Borelli*, 695
27 F.Supp. 446, 451 (N.D. Cal. 1988) (opinion of experienced counsel is entitled to considerable
28 weight); *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 616-17, 622 (N.D. Cal. 1979) (recommendations

1 of plaintiffs’ counsel should be given a presumption of reasonableness); *see also Clark v. Am.*
2 *Residential Servs. LLC*, 175 Cal. App. 4th 785, 798 (2009) (use of a mediator indicates that the
3 settlement is not the product of collusion); *Satchell v. Fed. Express Corp.*, No.: C03-2659 SI, 2007
4 U.S. Dist. LEXIS 99066, *17 (N.D. Cal. Apr. 13, 2007) (stating that the “assistance of an
5 experienced mediator in the settlement process confirms that the settlement is non-collusive”).

6 2. The Settlement Amount is Presumptively Fair and Reasonable

7 The settlement is reasonable in light of the risks and uncertainties associated with the PAGA
8 claim in this case. The relative strength of the PAGA claim brought by Plaintiff weighs in favor of
9 the Court finding that the Settlement is fair and reasonable, as Defendants maintained numerous
10 defenses to the theories of penalty-liability put forward by Plaintiff that, if successful, had the
11 potential to eliminate any recovery or significantly reduce any penalties ultimately awarded.

12 This case addresses alleged violations of employee protections embodied in the California
13 Labor Code– namely, that Defendants failed to: 1) compensate Plaintiff and all aggrieved
14 employees with all wages owed, including overtime in violation Labor Code §§ 510, 1194, and
15 1199; 2) provide legally compliant rest breaks to Plaintiff and all aggrieved employees, in violation
16 of Labor Code § 226.7; 3) provide legally compliant meal breaks to Plaintiff and all aggrieved
17 employees, in violation of Labor Code §§ 226.7 and 512; 4), timely pay wages upon separation of
18 employment to Plaintiff and all aggrieved employees, in violation of Labor Code §§ 201-204; and
19 5) to issue accurate, itemized wage statements to Plaintiff and aggrieved employees, in violation of
20 Labor Code § 226(a).

21 The PAGA claims are premised on allegations that due to the demands of the work shift,
22 Plaintiff and aggrieved employees were frequently required to perform work “off the clock” during
23 their meal periods and prior to the start of their shift and after clocking out at the end of their shifts.
24 (Hawkins Decl. ¶ 11.) The PAGA claims for failure to provide compliant rest and meal breaks are
25 likewise also based on allegations that, due to the demands of the shift, Plaintiff and aggrieved
26 employees were unable to take lawful meal and/or rest breaks. (*Id.*) The PAGA claims based on
27 Defendants’ alleged failure to pay timely wages and provide accurate itemized wage statement are
28 derivative of the failure to pay wage and premium wages claims. (*Id.*)

1 Defendants' maximum potential PAGA exposure is calculated to be Two Million Twenty-
2 Six Thousand Six Hundred Dollars (\$2,026,600), assuming Plaintiff could prove the alleged
3 violations occurred, which Defendants deny. This figure attributes a \$100 penalty to each of the
4 20,266 pay periods in scope during the PAGA period. (Hawkins Decl. ¶ 12.) The figure also
5 assumes that there is a 100% violation rate during the PAGA period, such that every single pay
6 period in question involved at least one Labor Code violation, despite disputes regarding
7 Defendants' liability. (*Id.*) From there, Plaintiff applies the full amount of the default initial penalty
8 provided under PAGA, despite the Court's discretion to reduce the penalty structure and award
9 lower than the default amounts. (*Id.*) Defendants do not concede that the default penalty, in whole
10 or in part, is applicable to all of Plaintiff's alleged claims. While Plaintiff asserts multiple theories of
11 recovery, Plaintiff reasonably believes that "stacking" the potential penalties attendant to each
12 underlying Labor Code violation would not be proper because such penalties are predicated on the
13 same purported underlying conduct. Nor are each of the statutes cited that Plaintiff alleges were
14 violated independently actionable. Thus, the maximum potential exposure for the singular PAGA
15 claim does not and should not reflect the sum of the potential exposure for each underlying alleged
16 Labor Code violation. (Hawkins Decl. ¶ 13.)

17 Where a party asserts "one primary right, and but one violation of that right, the complaint
18 states but one cause of action, even though two or more theories of recovery are alleged." *Plotnik v.*
19 *Meihaus*, (2012) 208 Cal. App. 4th 1590, 1612. "Double or duplicative recovery for the same items
20 of damage amounts to overcompensation and is therefore prohibited." *Id.*; *Renda v. Nevarez*, (2014)
21 223 Cal. App. 4th 1231, 1236-37 (recognizing "the rule prohibiting double recovery for the same
22 harm."). California federal courts have also recognized this prohibition and noted that plaintiffs
23 cannot "pile one penalty on another for a single substantive wrong." *Smith v. Lux Retail N. Am., Inc.*,
24 (N.D. Cal. June 13, 2013); 2013 WL 2932243, at *3; *Castillo v. ADT, LLC*, (E.D. Cal. Jan. 25, 2017)
25 2017 WL 363108, at *4 ("penalties cannot be 'stack[ed]' on top of each other").

26 Defendants dispute Plaintiff's claims and contend that they complied with California law
27 including by prohibiting "off the clock" work, paying for all time worked, providing compliant meal
28 periods, authorizing and permitting compliant rest breaks, providing accurate itemized wage

1 statements and timely paying final wages. (Hawkins Decl. ¶ 14.) Defendants further deny that any
2 PAGA Settlement Member, including Plaintiff, was “aggrieved” under PAGA. (*Id.*) Defendants
3 further maintained that Plaintiff and the aggrieved employees entered into arbitration agreements
4 that required pursuant to *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022), that (1)
5 Plaintiff and the aggrieved employees individually arbitrate their individual PAGA claims, and (2)
6 the Court dismiss Plaintiff’s non-individual PAGA claims. Defendants specifically disclaim any
7 liability to Plaintiff or any of the allegedly aggrieved employees or the LWDA for any alleged
8 violation of rights, or for any alleged violation of the California Labor Code or Industrial Welfare
9 Commission Wage Orders. (Hawkins Decl. ¶ 15.)

10 Moreover, Defendants maintains that even if the Court did award penalties, the Court could
11 significantly reduce the penalties awarded based on the discretionary factors contained in Labor
12 Code §2699(e)(2) (“In action by an aggrieved employee . . . , a court may award a lesser amount
13 than the maximum civil penalty amount specified by this part if, based on the facts and
14 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
15 and oppressive, or confiscatory.”) (Hawkins Decl. ¶ 16.)

16 The valuations provided to the claims for purposes of settlement, including the range of
17 violation and resulting potential PAGA penalties are as follows, which, again, were not added
18 together in calculating the maximum potential liability due to the unavailability of stacking
19 (Hawkins Decl. ¶ 17.):

20 a. Failure to Pay Wages Due-

21 This claim is premised on allegations that due to the demands of the work shift, Plaintiff and
22 aggrieved employees were frequently required to perform work “off the clock” primarily in the
23 performance of post shift duties including, but not limited to, counting inventory and cash, cleaning
24 and taking out the trash. Plaintiff alleges that although there were times in which Defendants
25 authorized overtime, Defendants’ policy and practice is to discourage overtime on a routine basis.
26 Plaintiff and aggrieved employees were instructed to clock out at the end of their scheduled eight-
27 hour shift to avoid any overtime.

28 Defendants adamantly dispute that (1) employees were required to work off the clock as it is

1 against Defendants' policy to do so, (2) employees actually performed any off-the-clock work of
2 which Defendants knew or should have known, and (3) Plaintiff possessed any evidence of any "off
3 the clock" work. Taking into consideration the nature of the claim and Defendants' defenses thereto
4 including the inability to establish the violation with respect to all of the PAGA Settlement
5 Members, this claim was valued in the 20% to 10% violation rate and thus \$405,320 and \$202,660 in
6 PAGA penalties.

7 b. Meal Period Claim-

8 The meal period claim is based on allegations that Plaintiff and aggrieved employees were
9 not provided compliant meal breaks during their work shifts. For instance, Plaintiff alleges that, due
10 to the work load requirements and time constraints imposed by Defendants, he and aggrieved
11 employees were required to clock out for meal breaks, but were only provided on-duty meal periods
12 during all the shifts worked during the PAGA Period. Defendants dispute Plaintiff's allegations and
13 contend that Defendants' meal break policy and practice is compliant due to the existence of
14 executed on duty meal period agreement. Taking into consideration the nature of the claim,
15 Defendants' defenses and issues faced due to *Brinker Rest. Corp. v. Super. Ct.*, (2012) 53 Cal. 4th
16 1004 ("*Brinker*"), this claim was valued in the 20% to 10% violation rate and thus between \$405,320
17 and \$202,660 in PAGA penalties.

18 c. Rest Period Claim-

19 As with the meal period claim, the rest period violation claim is primarily based on
20 allegations that due to the work pressures and time constraints, Plaintiff and aggrieved employees
21 worked without being able to take a ten (10) minute rest break during their work shifts, and were
22 required to remain on the premises during their rest breaks. Defendants dispute Plaintiff's
23 allegations and contends that Plaintiff and aggrieved employees were allowed to take compliant rest
24 breaks during their work shifts. Defendants also asserted that Plaintiff lacked any evidence that any
25 individual was not authorized or permitted to take compliant rest periods and noted the
26 unmanageability of such a claim, due to the fact that rest periods are not recorded. Taking into
27 consideration the nature of the claim, Defendants' defenses and issues faced due to *Brinker*, this
28 claim was valued in the range of 10% to 5% violation rate and thus between \$202,660 and \$101,330

1 in PAGA penalties.

2 d. Failure to Timely Pay Wages-

3 This claim is derivative of the underlying claims. Faced with the willful intent requirement of
4 the enabling statute along with Defendants' position, at the time of settlement, that Lab. Code §203
5 did not apply to rest and meal break claims based on *Naranjo v. Spectrum Security Services, Inc.*,
6 (2019) 40 Cal. App. 5th 444, 474 (meal and rest break violations do not entitle employees to
7 derivative penalties in Labor Code § 203),² and Defendants' position that they did not fail to pay
8 wages, this claim was valued in the range of 20% to 10% violation rate and thus between \$405,320
9 and \$202,660 in PAGA penalties.

10 e. Failure to Provide Accurate Itemized Wage Statements-

11 This claim is based on allegations that Defendants failed to state the correct hours worked,
12 the correct applicable hourly rate and correct total wages earned. Defendants deny that they
13 provided inaccurate wage statements. Further, Defendants argue that, if any wage statements were in
14 fact inaccurate, they did not "knowingly and intentionally" fail to provide accurate statements. At the
15 time of settlement, Defendants also relied on *Naranjo, supra*, for their position that meal and rest
16 break violations do not give rise to derivative penalties under Labor Code § 226. For purposes of
17 settlement negotiations, said claim was valued at a 20% to 0% violation rate and thus between
18 \$405,320 and \$0.

19 Based on these disputes, which had the potential to completely eliminate or significantly
20 reduce Plaintiff's recovery, the range of realistic "litigation outcomes" on Plaintiff's PAGA claim
21 was defined by a "maximum possible liability" amount of approximately \$2,026,600 and a net-zero
22 recovery based on the defenses asserted by Defendants. (Hawkins Decl. ¶ 17.) As such, these factors
23 weigh heavily in favor of resolution by way of the compromise set forth in the Settlement. In the
24 view of Plaintiff's Counsel, the benefit conferred by the proposed Settlement is fair, reasonable, and
25 adequate under the circumstances, as it reflects a reasoned compromise which takes into
26 consideration the risks inherent in this case which had the potential to completely eliminate recovery

27 _____
28 ² On May 23, 2022, the California Supreme Court ruled that premium pay for rest and meal break
violations are wages for purposes of Labor Code sections 203 and 226

1 (Id.)

2 3. The Benefits Conferred by the Settlement Favor Approval

3 The Settlement Agreement provides a monetary benefit that falls well within “the range of an
4 acceptable settlement” under the circumstances. Here, after all deductions are made for
5 administration, attorneys’ fees and costs, approximately \$242,553 will be paid out, of which
6 \$181,914.75 (i.e., 75%) will go to the LWDA, and \$60,638.25 (i.e., 25%) will go to PAGA
7 Settlement Members, as required by Labor Code § 2699(i). (Settlement Agreement, p.5 ¶ 30.)
8 Although these calculations will not be made until after approval, a rough estimation of the value to
9 the approximately 584 individuals falling within the definition of “PAGA Settlement Member” may
10 be gleaned from the fact that an equal division would provide approximately \$103.83 to each PAGA
11 Settlement Member, net of payments to the LWDA, to the Settlement Administrator, and of
12 attorney’s fees and costs. (Hawkins Decl. ¶ 16.)

13 This result is favorable, as settlements of PAGA claims impacting thousands of individuals
14 have been approved as reasonable for amounts far less than the payment in this case. *Franco v. Ruiz*
15 *Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012) (“Defendant has
16 agreed to pay \$10,000 as civil penalties pursuant to the PAGA ... Of the \$10,000, 75 percent
17 (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will benefit the class . . .
18 the Court finds that the PAGA payment is set at a reasonable amount, and it shall be approved.”);
19 *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal. Oct. 29, 2012)
20 (“GTI agrees to allocate \$10,000 to Plaintiff’s PAGA claims, and will pay \$7,500 to the LWDA, and
21 \$2,500 to participating Class Members on a pro-rata basis. This comports with settlement approval
22 of PAGA awards in other cases. . . therefore, the Court will approve the allocation of the Settlement
23 to Plaintiff’s PAGA claim.”); *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, 40
24 (E.D. Cal. June 11, 2012) (“Pursuant to the Settlement Agreement, the Parties have agreed to pay
25 \$7,500 to the California Labor and Workforce Development Agency . . . the Court finds that the
26 PAGA Payment is set at a reasonable amount, and recommends that it be approved.”); *Gong-Chun v.*
27 *Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11, 2012) (“Pursuant to the
28 Settlement Agreement, Defendant has agreed to pay \$15,000 to the California Labor and Workforce
Development Agency . . . the Court finds that the PAGA payment is set at a reasonable amount, and

1 it shall be approved.”).³

2 Thus, notwithstanding the existence of issues having the potential to completely eliminate
3 recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds
4 typical PAGA awards routinely approved by the courts, it also recovers monies for aggrieved
5 employees which they otherwise would not receive.

6 4. The Settlement Avoids the Risks and Costs of Continued Litigation

7 Plaintiff recognizes the expense and length of continued proceedings necessary to litigate the
8 matter through trial and any possible appeals and have also considered the uncertainty and risk of the
9 outcome of further litigation, and the difficulties and delays inherent in such litigation based upon
10 the burdens of proof. (Hawkins Decl., ¶ 19.) Plaintiff is also aware of the burdens of proof necessary
11 to establish liability, both generally and in response to Defendants’ defenses thereto, and the
12 difficulties in establishing Defendants’ liability for, and the right to recover, penalties on behalf of
13 Plaintiff, the State of California, and the other purported aggrieved employees (*Id.*)

14 Additionally, there is a real possibility that Plaintiff would recover nothing, either for himself
15 or on behalf of the State of California or other PAGA Settlement Members, after years of costly and
16 labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation,
17 which would involve significant costs, favors settlement. (Hawkins Decl., ¶ 20.)

18 A crucial factor in evaluating the value of a PAGA-only case is that all PAGA awards are
19 discretionary and can be reduced by the Court.⁴ California Labor Code Section 2699(e)(1) permits a

20
21 ³ Significantly, each of the above-cited actions involved substantially more “aggrieved employees” than the
22 approximately 584 PAGA Settlement Members in the instant Action. *Franco*, 2012 U.S. Dist. LEXIS 169057,
23 14 (“2,055 Class Members were ultimately identified”); *Garcia*, 2012 U.S. Dist. LEXIS 160052, at 12 (class
24 comprised of “approximately 1,869 individuals”); *Schiller*, 2012 U.S. Dist. LEXIS 80776, 16 (“3,327
25 California Class members were ultimately identified”); *Gong-Chun*, 2012 U.S. Dist. LEXIS 96828, 18
26 (“2,051 California Class Members were ultimately identified”).

27 ⁴ Under PAGA, courts have considerable discretion to reduce the penalty award. In *Thurman v. Bayshore*
28 *Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012), the court found no abuse of discretion
when the trial court reduced the penalty by 30 percent based on the facts of the case, ruling that “[t]o do
otherwise under the particular facts and circumstances of this case would be unjust, arbitrary, oppressive, and
confiscatory.” Some trial courts have actually awarded no civil penalties, even when Labor Code violations
are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6,
2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision);
In re Taco Bell Wage & Hour Actions, No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D.
Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

1 Court to award a lesser amount than the maximum civil penalty if, based on the facts and
2 circumstances, to do otherwise would result in an award that is “unjust, arbitrary and oppressive or
3 confiscatory.” For example, in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the
4 Court of Appeal affirmed a judgment after trial that only provided for a PAGA penalty of \$5 per pay
5 period. Given this precedent, there is a risk at trial that any PAGA penalties awarded could be
6 significantly less than Plaintiff’s calculation even where Plaintiff prevailed on the PAGA claim.

7 In other words, were this matter to go to trial, any award granted would be at the discretion of
8 the Court. While Plaintiff maintains that his PAGA claim has merit, in reaching the settlement,
9 Plaintiff and his counsel took into account the strengths and weaknesses of each side’s position and
10 the uncertainty associated with continued litigation, trial, and/or appeals.

11 5. Notice of the Settlement was Provided to the LWDA

12 As set forth in the accompanying Proof of Service, the LWDA has been provided notice of
13 this Motion and the Settlement Agreement. The decision of the LWDA to accept the PAGA
14 settlement and not oppose the Motion should be given considerable weight. This is not a situation
15 where the Court needs to be concerned about the rights of absent employees as in a class settlement,
16 as this PAGA-only settlement does not release the individual claims of absent employees, and the
17 LWDA is a government entity that is more than capable of looking out for its own rights.

18 **IV. PLAINTIFF’S COUNSEL ARE ENTITLED TO RECOVER REASONABLE**
19 **FEES AND COSTS**

20 Pursuant to the terms of the Settlement, Plaintiff’s Counsel seeks attorneys’ fees of
21 \$133,332.00 and reimbursement of litigation costs of not more than \$9,115, all falling within the
22 bounds authorized by the Settlement Agreement (Settlement Agreement, p.4 ¶ 24.) Plaintiff’s
23 Counsel’s entitlement to an award of attorneys’ fees and costs is warranted on multiple independent
24 grounds. Further, the amount of fees requested falls well within the range of reasonableness under
25 applicable standards. The amount requested constitutes a “percentage of the fund” deemed
26 reasonable in similar wage and hour settlements of this size and approved by California courts.
27 (Hawkins Decl. ¶ 30.) This is not only warranted based on the contingency risk Plaintiff’s Counsel
28 agreed to incur for the benefit of the State of California and aggrieved employees, but also based on

1 the significant results achieved (*Id.*) Based thereon, Plaintiff's Counsel respectfully requests that the
2 Court enter an order approving the fee and cost amounts requested.

3 A. Plaintiff's Counsel is Entitled to Recover Reasonable Fees and Costs as a
4 Matter of Right

5 Plaintiff's Counsel is entitled to recover attorneys' fees and costs under the "common fund"
6 doctrine as a matter of right. As held by the U.S. Supreme Court, "a lawyer who recovers a common
7 fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's
8 fee from the fund as a whole." *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.

9 Courts have long recognized the "common fund" or "common benefit" doctrine, under
10 which attorneys who create a common fund or benefit for a group of persons may be awarded their
11 fees and costs to be paid out of the fund. *Serrano v. Priest* ("*Serrano III*") (1977) 20 Cal.3d 25, 34,
12 quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
13 *Ass'n v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995) 15
14 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
15 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

16 The California Supreme Court has held that, "when a number of persons are entitled in
17 common to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all
18 results in the creation or preservation of that fund, such Plaintiff or Plaintiffs may be awarded
19 attorneys' fees out of the fund." *Serrano III*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d 1; *Mills*,
20 396 U.S. at 391-392 (endorsing the common fund approach in class actions). The percentage-of-the-
21 fund approach appears to be the preferred method of awarding fees in traditional common fund
22 cases, such as this case. Where the settlement amount is a "certain or easily calculable sum of
23 money," use of the percentage-of-the-fund method is appropriate. *Serrano III*, 20 Cal. 3d at 35. In
24 *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19, the
25 California Supreme Court upheld an attorneys' fee award based on a percentage of the common
26 benefit obtained in a lawsuit by a city employees' association for retroactive wages:

27 It is not necessary to find this suit a proper class action in order to uphold the
28 portion of the judgment awarding counsel for Plaintiff's 25 percent of all
retroactive salaries and wages received. That award may be sustained under the
rule that a litigant who creates a fund in which others enjoy beneficial rights may

1 require those beneficiaries to pay their fair share of the expense of litigation
2 [citations omitted].

3 Numerous appellate courts have similarly found. *E.g., Knoff v. City & Cty. of San Francisco*
4 (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of attorneys’ fees
5 in a representative action as the proper exercise of the court's broad equitable powers); *Rider v.*
6 *County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and expenses properly
7 awarded from common benefit composed of illegally imposed sales and use tax); *Parker v. Los*
8 *Angeles* (1974) 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the
9 damages to owners of residential property in an inverse condemnation action).

10 Thus, as Plaintiff’s Counsel has expended a significant amount of time and money to secure a
11 \$242,553 settlement fund for the LWDA and aggrieved employees [*Schiller*, 2012 U.S. Dist. LEXIS
12 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees have resulted in
13 the preservation or recovery of a certain or easily calculable sum of money-out of which sum or
14 ‘fund’ the fees are to be paid.”)], and in doing so, have exclusively borne the risk of loss for such
15 expenditures of time and expenses (as the LWDA elected not to take the case after receiving the
16 PAGA Notice), Plaintiff’s Counsel is entitled to reasonable fees from that fund under applicable
17 precedent.⁵

18 **B. The Fee Amount Requested is Reasonable**

19 In addition to the forgoing, Plaintiff’s Counsel’s request for attorneys’ fees in the amount of
20 \$133,332.00, or not more than 33 1/3% of the \$400,000 Total Settlement Payment, is within the
21 “zone of reasonableness.” The fee amount presently sought is not extraordinary, but actually falls at
22 the “average” fee deemed reasonable under California State court authority, as it is recognized that
23 “courts may award attorney’s fees in the 30-40% range in wage and hour class actions that result in

24 ⁵ Plaintiff’s Counsel is also entitled to recover attorney’s fees and costs as a matter of right under the
25 PAGA statute [Labor Code § 2699(g)(1) (“Any employee who prevails in any action shall be
26 entitled to an award of reasonable attorney's fees and costs.”)], and under C.C.P. § 1021.5, as the
27 instant PAGA action was by definition “for the public benefit” and secured monetary awards for
28 approximately 333 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.*
(2007) 154 Cal. App. 4th 1, 16-17 (2007) (“Estrada’s personal motivation does not diminish the fact
that he pursued this public interest class action not only for himself but on behalf of a class
comprised of FedEx’s past and present drivers and ultimately obtained awards for 209 drivers. [] No
more is required to satisfy the ‘significant benefit,’ ‘public interest,’ and ‘large class of persons’
requirements of Code of Civil Procedure section 1021.5.”).

1 recovery of a common fund under \$10 million.” See *e.g. Martin v. AmeriPride Servs.*, 2011 U.S.
2 Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). Moreover, taking into account the contingency risk
3 Plaintiff’s Counsel agreed to incur for the benefit of the State of California (which elected not to take
4 the case after receiving the Notice) and the significant results achieved – facts which justify the
5 requested fee – Plaintiff’s Counsel’s requested fee is reasonable under all applicable standards.

6 C. The Fee Amount Allocated by The Settlement Agreement Is Within the Zone
7 of Reasonableness Under the “Percentage of the Fund” Method

8 The amount of fees requested by Plaintiff’s Counsel – not more than 33 1/3 % of the Total
9 Settlement Payment – is reasonable based on standards applicable to the “percentage of the fund”
10 method. “When assessing whether the percentage requested is reasonable, courts look to factors such
11 as: (a) the results achieved; (b) the risk of litigation; (c) the skill required, (d) the quality of work; (e)
12 the contingent nature of the fee and the financial burden; and (f) the awards made in similar cases.”
13 *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

14 First, the results achieved are significant, as Defendants has agreed to pay \$400,000 under
15 the Settlement Agreement. This is a significant recovery given the risk of success in obtaining any
16 recoverable penalties. (Hawkins Decl., ¶¶ 19-20.) Second, such results were achieved in the face of
17 significant risks. As explained above, Defendants maintained defenses to Plaintiff’s PAGA claims
18 that very well could have resulted in a net-zero recovery at trial.

19 Third, notwithstanding this risk of loss, Plaintiff’s Counsel undertook representation of the
20 instant PAGA claim for the benefit of the State of California on a contingency basis. This not only
21 required Plaintiff’s Counsel to personally assume the risk of nonpayment in securing the very
22 substantial financial benefit the State of California stands to receive, but constitutes a “loan” on
23 Plaintiff’s Counsel’s services – both of which are factors warranting fee enhancement under
24 applicable California Supreme Court authority, which Plaintiff’s Counsel is not seeking:

25 One of the most common fee enhancers . . . is for contingency risk. We reaffirmed
26 the propriety of a contingency risk enhancement in *Ketchum*: “The economic
27 rationale for fee enhancement in contingency cases has been explained as follows:
28 ‘A contingent fee must be higher than a fee for the same legal services paid as they
are performed. The contingent fee compensates the lawyer not only for the legal
services he renders but for the loan of those services. The implicit interest rate on
such a loan is higher because the risk of default (the loss of the case, which cancels
the debt of the client to the lawyer) is much higher than that of conventional

1 loans.’ (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534, 567.) ‘A
2 lawyer who both bears the risk of not being paid and provides legal services is not
3 receiving the fair market value of his work if he is paid only for the second of
4 these functions. If he is paid no more, competent counsel will be reluctant to
5 accept fee award cases.”

Graham v. DaimlerChrysler Corp. (2004) 34 Cal. 4th 553, 579-580.

6 Finally, the percentage requested by Plaintiff’s Counsel falls within a typical range,
7 particularly in light of the modest settlement size. *Martin*, 2011 U.S. Dist. LEXIS 61796, *23
8 (“[C]ourts may award attorney’s fees in the 30-40% range in wage and hour class actions that result
9 in recovery of a common fund under \$10 million.”).

10 Attorneys’ fee awards in the amount sought here are well-established by California law and
11 practice. Accordingly, Plaintiff’s Counsel’s attorneys’ fee request is fair and reasonable and is
12 consistent with the awards in California. It is also reasonable given the history of the Action, the
13 time and effort expended, and the results obtained (Hawkins Decl. ¶ 32.) The estimated lodestar
14 amount in this case which is \$152,320.

15 **D. Plaintiff’s Counsel’s Request for Costs is Reasonable**

16 In the course of this litigation, Plaintiff’s Counsel incurred costs of \$9,115 through the
17 conclusion of this matter. (Hawkins Decl., ¶ 32; Counsel’s Cost Invoice is attached to the
18 Declaration of James Hawkins as Exhibit.2). As demonstrated in the Hawkins Declaration submitted
19 herewith, the incurred costs included filing fees, legal analysis, mediation fees, court appearance
20 fees, service of process fees and other charges typical of litigation of this nature (*Id.*) Such costs are
21 appropriate for cost reimbursement in these types of cases. *In re United Energy Corp. Sec. Litig.*
22 (C.D. Cal. 1989) 1989 WL 7321 1, *6 (quoting Newberg, *Attorney Fee Awards*, § 2.19 (1987)); *In*
23 *re GNC Shareholder Litigation* (W.D. Pa. 1987) 668 F. Supp. 450, 452.

24 The costs incurred by Plaintiff’s Counsel in this litigation benefited Plaintiff, PAGA
25 Settlement Members, and the State. In light of the litigation costs that Plaintiff’s Counsel was
26 required to incur to prosecute this action, Plaintiff’s Counsel’s cost request is reasonable and should
27 be granted.

28 **V. CONCLUSION**

As shown herein, the Settlement is fair, adequate, and reasonable, as it represents a reasoned
and valuable compromise obtained through arms-length negotiations. For all the reasons set forth

1 above, Plaintiff respectfully requests that this Court, as set forth in the Proposed Order approving
2 settlement, do the following:

3 1. Grant approval of the Settlement and Settlement Agreement, pursuant to California
4 Labor Code §2699, subpart 1;

5 2. Appoint Simpluris as the Settlement Administrator and approve its administration
6 fees up to \$10,000 for payment out of the Total Settlement Payment;

7 3. Approve the award of attorneys' fees in the amount of \$133,332.00 and costs of not
8 more than \$9,115, which shall come from the Total Settlement Payment;

9 4. Approve the Plaintiff's Enhancement payment of \$5,000;

10 5. Direct disbursement of the remaining PAGA Fund to the LWDA and all PAGA
11 Settlement Members as provided for in the Settlement Agreement; and

12 6. Dismiss the Action with prejudice.

13 Respectfully submitted,

14 Dated: May 24, 2023

JAMES HAWKINS, APLC

15
16 

17 James R. Hawkins, Esq.
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