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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

GEORGE WEST, on behalf of the State of
California, as a private attorney general,

Plaintiff,

v.

SILVERCAR, INC., a corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 20TRCV00869

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR APPROVAL OF PAGA
SETTLEMENT**

Date: April 20, 2022

Time: 8:30 a.m.

Reservation ID: 377295476955

Dept.: M

Judge: Deirdre Hill

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff George West (“Plaintiff”) seeks approval of the Stipulation of Settlement of PAGA
4 Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary
5 relief for 70 “Aggrieved Employees,” defined as all of Defendant SILVERCAR, INC.’s current and
6 former non-exempt employees employed in California between July 31, 2019 and October 20, 2021
7 (“PAGA Period”). Agreement at § I(B). This is only a settlement of the PAGA claim for civil
8 penalties and is not a class settlement and does not release the individual wage claims, if any, of the
9 affected employees other than Plaintiff himself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS*
10 *Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019)
11 (unpaid wages are not recoverable under PAGA).

12 If approved, the Aggrieved Employees and the California Labor Workforce and Development
13 Agency (“LWDA”) will share in a Total Settlement Amount of One Hundred Twenty-Five Thousand
14 Dollars (\$125,000.00). Agreement at § I(Z). After deducting any Court-approved Plaintiff’s Counsel
15 Award and the Settlement Administration Costs, the Net Settlement Amount shall be distributed, 75%
16 to the LWDA and 25% to the Aggrieved Employees based on the number of Pay Periods each worked
17 while employed by Defendant during the PAGA Period. Agreement at § III(I).

18 An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf
19 of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The Settlement is a
20 product of informed, adversarial, and non-collusive and mediated negotiations between experienced
21 counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement
22 approval. Accordingly, Plaintiff and Plaintiff’s Counsel respectfully request this Court grant
23 approval of the Agreement. JCL Dec., at ¶ 6.

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28 ¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff was employed by Defendant as a non-exempt employee in California during the PAGA Period. JCL Dec., ¶ 7. On July 31, 2020, Plaintiff served Defendant and the LWDA with a Notice of Violations (“PAGA Notice”) and draft complaint memorializing claims against Defendant for alleged violations of the California Labor Code, including causes of action for: failure to pay minimum wages in violation of Labor Code sections 1194, 1197, and 1197.1; failure to pay overtime wages in violation of Labor Code sections 510, 1194, and 1198; failure to provide required meal periods in violation of Labor Code sections 226.7 and 512; failure to provide required rest periods in violation of Labor Code sections 226.7 and 512; failure to reimburse employees for required expenses in violation of Labor Code section 2802; failure to provide accurate itemized wage statements in violation of Labor Code section 226; and failure to provide wages when due in violation of Labor Code sections 201, 202, and 203 (LWDA Case No. 800898-20). JCL Dec., at ¶ 4, 8. On November 23, 2020, Plaintiff filed a complaint against Defendant in the Superior Court of Los Angeles County, Case No. 20TRCV00869, alleging a single cause of action for violations of PAGA based on the above Labor Code violations. Thus, the sole claim before this Court is a putative representative claim under PAGA on behalf of Plaintiff, the Aggrieved Employees, and the State of California for civil penalties pursuant to the PAGA. JCL Dec., at ¶ 9.

Plaintiff and Defendant agreed to mediate the action with Gig Kyriacou, Esq. (“Kyriacou”), an experienced wage and hour PAGA action mediator. Prior to the mediation, in order to evaluate the potential value of the claims, the Parties engaged in significant efforts to obtain the facts regarding the claims asserted, including all of Defendant’s relevant wage and hour policies, the exchange of detailed statistical data regarding assignments performed by Plaintiff and the Aggrieved Employees, the production of thousands of pages of documents including a 95% sample of time records and payroll records, and the exchange of detailed briefing and analysis in connection with the mediation. JCL Dec., at ¶ 10.

Thereafter, on October 20, 2021, the Parties participated in a full-day mediation with Kyriacou. After extensive, arms-length negotiations and bargaining, the Parties reached an agreement to settle based on Kyriacou’s proposal, which led to the signing of the Settlement Agreement and

1 Memorandum of Understanding memorializing the Settlement. The Settlement was negotiated in light
2 of all known facts and circumstances and the uncertainty associated with litigation – including the risk
3 of Plaintiff not being able to maintain representative claims and establishing manageability, the
4 difficulty of proving Plaintiff’s claims in a manageable trial, the merits of Defendant’s potential
5 defenses, and the significant delay and potential appellate issues inherent to litigation. JCL Dec., at ¶
6 11.

7 The parties have agreed to settle this PAGA claim in its entirety after significant formal and
8 informal discovery, and an arm’s length mediation. The Settlement is intended to fully and finally
9 resolve the PAGA Released Claims asserted by Plaintiff on behalf of the Aggrieved Employees and
10 State of California. This is only a Settlement of the PAGA claims for civil penalties and is not a class
11 settlement and does not release the individual claims, if any, of the Aggrieved Employees. This
12 Settlement does not release any claim that is not a PAGA claim.² Nor does this Settlement waive
13 Defendant’s right to assert *res judicata* or other available defense to any asserted claim or lawsuit.
14 JCL Dec., at ¶ 12.

15 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
16 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion
17 for settlement approval as set forth in the accompanying proof of service in compliance with Labor
18 Code section 2699(1). Additionally, Plaintiff will submit to the LWDA a copy of the Court’s judgment
19 and order approving the Settlement Agreement within ten (10) days after entry of judgment or order.
20 Agreement § III(K).

21 **III. TERMS OF THE PAGA SETTLEMENT**

22 **A. The Total Settlement Amount**

23 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).
24 The Settlement Agreement negotiated by the Parties provides for a “Total Settlement Amount” in the
25 amount of \$125,000. The Total Settlement Amount will be used to satisfy the Plaintiffs’ Counsel
26 Award, the Settlement Administration Costs, the LWDA Payment and the Aggrieved Employee
27

28 ² As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: “Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”

1 Payment. Agreement at § I(Z).

2 The Plaintiffs' Counsel Award is comprised of \$41,666.66 for attorneys' fees (one-third of the
3 Total Settlement Amount) and up to \$15,000 for reimbursement of actually incurred litigation
4 expenses. Agreement at §I(S). The Settlement Administration Costs are estimated to be \$3,600.00.
5 Agreement at § III(I)(8). Once the Plaintiffs' Counsel Award and Settlement Administration Costs
6 are deducted from the Total Settlement Amount, the remaining funds of approximately \$64,733.34,
7 known as the "Net Settlement Amount," shall be allocated as follows: a total of seventy-five percent
8 (75%) shall be paid to the LWDA ("LWDA Payment"), and the remaining twenty-five percent (25%)
9 shall be paid to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at § I(J).
10 This allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th
11 175 (2019).

12 B. Allocation of Aggrieved Employee Payment

13 The Aggrieved Employee Payment shall be based on the number of payroll periods each
14 Aggrieved Employee worked during the PAGA Period as a percentage of the total pay periods worked
15 by all Aggrieved Employees during the PAGA Period. Agreement at § III(I)(1).

16 At the time of mediation, Defendant represented to Plaintiff's Counsel that there are
17 approximately 70 Aggrieved Employees who worked approximately 1,500 pay periods during the
18 PAGA Period based on company records. Agreement at § III(A)(2).

19 C. Funding and Distribution

20 Provided that an order approving this Settlement is entered by the Court, Defendant shall fund
21 the Total Settlement Amount within ten (10) calendar days or the Court's entry of the order approving
22 this Settlement. Agreement at §§ I(G) and (I).

23 Within five (5) calendar days of its receipt of the Total Settlement Amount, the Settlement
24 Administrator will mail the LWDA Payment to the LWDA by check, via certified mail return receipt
25 requested. Agreement at § III(I)(6).

26 No later than fifteen (15) calendar days after the Funding Date, the Settlement Administrator
27 will mail the Aggrieved Employee Payments and a letter explaining why the check is being sent to the
28 Aggrieved Employees by postmarked First Class U.S. Mail. Agreement at § III(I)(4). Settlement

1 checks issued to Aggrieved Employees will expire one hundred eighty (180) days from the date they
2 are issued by the Settlement Administrator. Agreement at § III(I)(5). If the check remains uncashed
3 by the expiration of the 180-day period, the Settlement Administrator shall remit any unclaimed funds
4 to the Controller of the State of California to be held pursuant to the Unclaimed Property Law,
5 California Civil Code section 1500. (*Id.*). The individual Aggrieved Employee Payments are 100%
6 penalties and shall be reported using IRS Form 1099s. Agreement § III(I)(2).

7 D. Release of Claims

8 Upon entry of Judgment and funding of the Total Settlement Amount, the State of California,
9 the Aggrieved Employees and Plaintiff shall release the Released Parties from any and all claims **for**
10 **civil penalties** under PAGA, arising during the PAGA Period, based on the facts alleged in the
11 operative complaint and Plaintiff's notice letter to the LWDA and any resulting claim for attorneys'
12 fees and costs under PAGA, which occurred during the PAGA Period. Agreement at §§ I(U) and
13 III(B).

14 **IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

15 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any
16 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
17 agency at the same time that it is submitted to the court." Further, the Court in *Moniz v. Adecco USA,*
18 *Inc.* (2021) 72 Cal.App.5th 56, 77 stated that "the trial court must review and approve a PAGA
19 settlement (§ 2699, subd.(l)(2)), and the Supreme Court has in dictum referred to this review as a
20 safeguard." (Citing *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88; internal
21 quotations omitted.) "The Supreme Court has also observed that trial court approval ensures that any
22 negotiated resolution is fair to those affected," leading the Court in *Moniz* to determine that "adoption
23 of a standard of review for settlements that prevents fraud, collusion or unfairness, and protects the
24 interests of the public and the LWDA in the enforcement of state labor laws is warranted." (*Moniz,*
25 *supra*, 72 Cal.App.5th at 77; citing *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549; *Dunk v.*
26 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations omitted.) In other words,
27 "[i]n review and approval of a proposed settlement under section 2699, subd. (l)(2), a trial court thus
28 must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the

1 state's interests, and hence the public interest.” (*Moniz, supra*, 72 Cal.App.5th at 88.) Consequently,
2 the parties respectfully ask the Court to review and approve the settlement of the PAGA claims and
3 the PAGA Payment to be paid as part of the proposed Settlement.

4 A. The Total Settlement Amount is Fair and Reasonable

5 The Total Settlement Amount of \$125,000 is fair and reasonable and therefore "shall" be
6 reviewed and approved. California Labor Code Section 2699(e)(1) permits a Court to award a lesser
7 amount than the maximum civil penalty if, based on the facts and circumstances, to do otherwise
8 would result in an award that is “unjust, arbitrary and oppressive or confiscatory.”

9 As a preliminary matter, prior to any recovery, Plaintiff would be required at trial to prove each
10 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
11 LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot
12 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
13 Code by the defendant.”). Here, if this case were to proceed to trial, Plaintiff would need to prove that
14 each Aggrieved Employee suffered a violation for each period the employee worked in relation to
15 alleged meal or rest period violations, failure to pay minimum or overtime wages, failure to provide
16 accurate itemized wage statements, failure to pay wages when due, failure to reimburse business
17 expenses, and/or failure to maintain required records. Throughout the litigation, Defendant has
18 maintained that Plaintiff and the Aggrieved Employees were properly compensated, and that it did not
19 violate the Labor Code. Thus, liability was far from certain in this case. JCL Dec., ¶ 13.

20 In advance of mediation, Plaintiff's Counsel, with the assistance of a forensic economist at the
21 Berger Consulting Group (“BCG”), analyzed Defendant's time and payroll data to develop various
22 damage models to estimate Defendant's liability exposure. To evaluate Defendant's **maximum**
23 liability exposure, Plaintiff's Counsel constructed a model which assumed a 100% violation rate for
24 each of Plaintiff's alleged PAGA claims notwithstanding the fact that the analyzed data did not support
25 a 100% violation rate. JCL Dec., ¶ 14. Based on that Maximum Exposure Model, Plaintiff's claims
26 and corresponding PAGA penalties can be broken down as follows:
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Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
1198, 558 (unpaid wages)	70 aggrieved employees	\$100	1,500	100% of total pay periods	\$150,000
226.2, 226.7, & 512 (rest break violations)	70 aggrieved employees	\$100	1,500	100% of total pay periods	\$150,000
226.7 (unpaid meal break violations)	70 aggrieved employees	\$100	1,500	100% of total pay periods	\$150,000
2802 (reimbursements)	70 aggrieved employees	\$100	1,500	100% of total pay periods	\$150,000
226 (wage statement violations)	70 aggrieved employees	\$100	1,500	100% of total pay periods	\$150,000

Thus, at the time of mediation, Plaintiff's Counsel estimated Defendant's maximum liability exposure at \$750,000.00. Consequently, the Total Settlement Amount of \$125,000 is 16.7% of Defendant's maximum liability exposure – before any reduction. JCL Dec., ¶¶ 15-17.

Pursuant to PAGA, courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, as the court found maximum penalties “unjust” because the employees had suffered no injuries. 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*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial). In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties awarded in this case could be significantly less than Plaintiff's calculation, even had Plaintiff prevailed on the PAGA claim. Here, using *Carrington* as a guidepost, multiplying the

1 number of applicable pay periods (1,500) by \$5 results in a potential liability of merely \$7,500.
2 Therefore, even assuming Plaintiff would have prevailed on every claim at trial, the result obtained by
3 Plaintiff in the Settlement vastly exceeds the amount Plaintiff might have recovered had the Court
4 relied on *Carrington* in awarding the PAGA penalties. JCL Dec., ¶ 18.

5 Most importantly and relevant to this case, Defendant argued that the Supreme Court decision
6 in *Brinker v. Superior Court*, 53 Cal.4th 1004 (2012), weakened, if not eliminated, Plaintiff's claims,
7 on liability, value, and discretion with respect to the PAGA penalties, as to the meal and rest period
8 claims. A major component of the penalties alleged to have been owed by Defendant are attributed to
9 non-compliant meal and rest breaks. Before and during the mediation, Defendant aggressively argued
10 that Defendant's policies and culture afforded the Aggrieved Employees an opportunity to take timely
11 meal and rest breaks, and that employees like Plaintiff *chose* not to take compliant breaks. Specifically,
12 Defendant's written policies encouraged Aggrieved Employees to take meal periods and rest breaks
13 according to schedules compliant with the California Labor Code. The policy further *required* its
14 employees to sign blanket on-duty meal break agreements. Defendant argued, therefore, that under the
15 *Brinker* decision, it "provided" legally compliant meal and rest breaks, and that it has no liability for
16 any alleged missed breaks whatsoever. Defendant argued that it adopted and strictly enforced lawful
17 policies and afforded Plaintiff and the Aggrieved Employees compliant meal and rest breaks. Because
18 Plaintiff's claims were largely based on the missed meal and rest breaks, and because Defendant's
19 policies were, indeed, facially compliant, this presented a very real concern for Plaintiff. If successful,
20 this defense could eliminate or substantially reduce any recovery under PAGA. While Plaintiff
21 believes that this defense, and others, could be overcome, Defendant maintains that these defenses
22 have merit and therefore present a serious risk to recovery of penalties. JCL Dec., at ¶ 19.

23 Accordingly, Defendant disputes and denies Plaintiff's allegations and claims asserted in the
24 operative complaint which are resolved by the Settlement Agreement. Defendant asserted additional
25 defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties.
26 Defendant could argue that no penalties prior to the PAGA notification should be awarded because
27 the violations were not intentional, and at least one court has so ruled. These defenses present a risk
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1 to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be
2 awarded. JCL Dec., at ¶ 20.

3 Given Defendant's potential defenses to the violations at issue, the risks and costs of continued
4 litigation, Plaintiff and his attorneys believe that the Total Settlement Amount is fair and reasonable.
5 Plaintiff's Counsel have significant experience litigating wage and hour claims including claims for
6 PAGA penalties, and the Total Settlement Amount here is similar to or greater than similar settlements
7 that courts have approved. The Total Settlement Amount, along with the other terms of the proposed
8 settlement, were negotiated by experienced counsel at arm's length with the assistance of an
9 experienced and reputable mediator, Gig Kyriacou, Esq. JCL Dec., at ¶ 21.

10 Further, on March 28, 2022, Plaintiff's Counsel provided the LWDA with a copy of the
11 Settlement Agreement and of the instant motion for Approval of the PAGA Settlement. JCL Dec, ¶
12 5. Assuming the LWDA does not register an objection to this Settlement, the decision of the LWDA
13 to accept the Total Settlement Amount and not oppose the motion should be given considerable weight.
14 This is not a situation where the Court needs to be concerned about the rights of absent employees as
15 in a class settlement, as this PAGA-only settlement does not release the individual claims of absent
16 employees, if any, and the LWDA is a sophisticated government entity that is more than able to look
17 out for its own rights. JCL Dec., ¶ 22

18 Based on investigation, analysis and discounts for risk factors, Plaintiff adequately represented
19 the interests of both the State and the public in resolving this action and reaching the proposed PAGA
20 settlement.

21 B. The Remaining Settlement Terms Are Fair and Reasonable

22 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
23 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
24 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to
25 class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs
26 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
27 herein, the settlement terms for attorneys' fees and costs are reasonable.

28 ///

1 **V. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

2 Plaintiff's Counsel seeks approval of the Plaintiff's Counsel Award in the amount of
3 **\$56,666.66**, comprised of comprised of \$41,666.66 for attorneys' fees (one-third of the Total
4 Settlement Amount) and up to \$15,000³ for reimbursement of actually incurred litigation expenses.
5 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that
6 the payment of attorneys' fees and costs in this Settlement is a matter of contract for a contingent
7 representation. Nevertheless, should this Court review the requested attorneys' fees, it is clear that the
8 requested fees and costs are reasonable for experience wage and hour counsel. JCL Dec., ¶¶ 23, 33-
9 39.

10 **A. The Requested Attorneys' Fee is Fair and Reasonable**

11 The requested attorneys' fee is justified by the result achieved. Plaintiff's Counsel negotiated
12 a recovery of \$125,000, and this result justifies the requested fees equal to one third of this recovery.
13 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
14 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
15 480, 504, (2016). At the time this case was brought, the result was far from certain. Defendant's
16 defenses to the merits of the case created difficulties with proof and complex legal issues for Counsel
17 to overcome. Here, a number of defenses asserted by Defendant present serious threats to the claims
18 of Plaintiff and the Aggrieved Employees. Defendant asserted that its employment practices complied
19 with all applicable Labor laws. If successful, Defendant's factual and legal defenses would eliminate
20 any recovery to the Aggrieved Employees. While Plaintiff believes that these defenses could be
21 overcome, Defendant maintains that these defenses have merit and therefore present a serious risk to
22 recovery. The Settlement was possible because, in Counsel's eyes, Counsel was able to persuade
23 Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and legal issues
24 underlying liability and overcome difficulties in proof as to monetary relief.

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³ As detailed *infra*, at the time of filing this motion, Plaintiff's Counsel incurred \$10,439.78 litigating this matter.
28 Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion but it is
expected to be much less than the \$15,000.00 provided for in the Agreement.

Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

As detailed in Plaintiff Counsel's time and billing records submitted herewith, Plaintiff's Counsel's current combined loadstar is \$82,931.75 – far exceeding the requested fee. JCL Dec., ¶¶ 24-28; Declaration of Nicholas De Blouw ("De Blouw Dec.") at ¶¶ 1-3. Thus, Class Counsel's fee request is equal to Class Counsel's loadstar with a negligible multiplier of .50 – well below the 2.13 multiplier approved in *Laffitte* – and well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

B. Plaintiff's Counsel Are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. See *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to

1 paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also*
2 *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation
3 costs for consultants, online legal research, copying, postage, long distance charges, travel expenses,
4 filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this motion,
5 Plaintiff's Counsel collectively expended \$10,439.78 prosecuting this action (JCL Law Firm, APC -
6 \$9,664.01 and BNBD - \$775.77). JCL Decl. ¶¶ 29-31; De Blouw Dec., ¶¶ 1-3. All of Plaintiff
7 Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients
8 including the following: filing fees; copying; telephone; postage; factual and legal research charges;
9 mediation fees; expert costs and travel expenses, which were all incurred during, and were necessary
10 for the successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec. ¶¶
11 30-31.

12 VI. CONCLUSION

13 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA settlement
14 as set forth in the Settlement Agreement and enter the proposed order and judgment submitted
15 herewith.

16 Dated: March 28, 2022

JCL LAW FIRM, APC

17 By:  _____

18 Jean-Claude Lapuyade, Esq.