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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DAVID GOLD, an individual; NELSON
HOANG, an individual, on behalf of
themselves and other aggrieved employees,

Plaintiffs,

v.

UNITED IMPORTS OF PUENTE HILLS,
INC., a California corporation; UNITED
IMPORTS FINANCIAL OF NORTH
AMERICA, a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO. 20PSCV00650

[Assigned for all purposes to the Hon.
Thomas C. Falls, Dept. R]

RESERVATION ID. # 951495841042

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT AGREEMENT,
FOR ATTORNEYS' FEES AND COSTS
AND ADMINISTRATIVE FEES;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Declarations of Aaron A. Bartz, Ross E.
Shanberg, and [proposed] Order filed
concurrently herewith]

Date: October 20, 2022

Time: 10:00 a.m.

Dept.: R

PLEASE TAKE NOTICE that on October 20, 2022, at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Thomas C. Falls, Dept. R of the Superior Court of the State of California, County of Los Angeles, Pomona Courthouse South, 400 Civic Center Plaza, Pomona, California 91766, Plaintiffs David Gold and Nelson Hoang (together, "Plaintiffs") will and hereby do move for entry of an order and judgment as follows:

1. Granting approval, pursuant to California Labor Code section 2699, subd. (1)(2) of the proposed settlement between Plaintiffs and Defendants United Imports of Puente Hills, Inc., United Imports Financial of North America, Capitol Infiniti USA, Inc. and Pedram Amin ("Defendants") of the claims brought pursuant to the Private Attorneys General Act of 2004 ("PAGA") as set forth in the PAGA Settlement Agreement ("Settlement Agreement"), attached as Exhibit 1 to the Declaration of Aaron A. Bartz;

2. Approving the Net Settlement Amount payable to the State of California and Aggrieved Employees as authorized by California Labor Code section 2699, subd. (i);

3. Appointing ILYM Group, Inc. as the Settlement Administrator;

4. Directing Defendant to transmit settlement funds to the Settlement Administrator in the total amount of \$150,000 pursuant to the Settlement Agreement;

5. Directing the Settlement Administrator to distribute the settlement funds to the Aggrieved Employees, and distributing funds to the Labor and Workforce Development Agency ("LWDA"), Plaintiffs' Counsel, and for Settlement Administration Costs, in accordance with the terms of the Settlement Agreement;

6. Awarding to Plaintiffs' Counsel the amount of \$50,000 as compensation for reasonable attorneys' fees ("Attorneys' Fees Payment"), \$14,019.22 for reimbursement of litigation costs and expenses ("Litigation Costs Payment"), and \$7,500 for Settlement Administration Costs.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Aaron A. Bartz and Ross E. Shanberg, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this Motion.

1
2 Dated: September 21, 2022

SHANBERG STAFFORD LLP
BARTZ LAW GROUP, APC

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5 By: /s/Aaron A. Bartz/s/
6 Ross E. Shanberg
7 Aaron A. Bartz
8 Attorneys for Plaintiffs
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I.

INTRODUCTION AND SUMMARY OF MOTION

This is an action brought by Plaintiffs David Gold and Nelson Hoang (together, “Plaintiffs”), pursuant to the Private Attorneys General Act of 2004 (“PAGA”), to recover civil penalties for themselves, other aggrieved employees and the State of California. Plaintiffs and the other aggrieved employees are non-exempt employees who worked for Defendants United Imports of Puente Hills, Inc., United Imports Financial of North America, Capitol Infiniti USA, Inc. and Pedram Amin (“Defendants”), and allege California wage and hour violations including failure to pay wages, failure to authorize and permit meal and rest periods, and related violations.

Plaintiffs have agreed to settle the PAGA penalties for a Gross Settlement Fund of **\$150,000**. The Gross Settlement Fund includes all attorneys’ fees and costs, settlement administration expenses, and penalties payments to the aggrieved employees and the Labor and Workforce Development Agency (LWDA). The Net Settlement Amount to be distributed to the aggrieved employees and the LWDA is approximately \$78,480. The Net Settlement Amount will be distributed 75% to the LWDA (\$58,860), and 25% to the aggrieved employees (\$19,620).

The approximate number of aggrieved employees is 247. As such, each of the aggrieved employees will receiver, on average, approximately \$78 in penalties. In exchange for such payment, the aggrieved employees are giving up no rights whatsoever to recover for underlying violations of the Labor Code other than for PAGA penalties. Any aggrieved employee may file a claim against Defendants for such violations.

This settlement is fair, reasonable and adequate, and therefore should be approved by this Court.

II.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants own and operate car dealerships within the State of California, including in the County of Los Angeles. Plaintiffs and other aggrieved employees worked for Defendants as non-exempt employees working at Defendants’ dealerships during the applicable time period.

1 Plaintiffs served their PAGA letter on the Labor and Workforce Development Agency
2 (LWDA) on July 27, 2020. Thereafter, Plaintiffs filed their Complaint on October 5, 2020, on
3 behalf of themselves and other aggrieved employees for Civil Penalties under PAGA based on
4 Defendants' wage and hour violations, including failure to pay all wages, meal period and rest
5 break violations, and other wage violations. (Bartz Decl., ¶ 9).

6 Thereafter, Plaintiffs aggressively pursued this action, and propounded substantial
7 discovery, fought off a related action purporting to settle the PAGA claims for less than fair value,
8 engaged an expert to calculate the total penalties exposure, and attended two mediations before
9 finally reaching a settlement. (Bartz Decl., ¶¶ 10-17.)

10 III.

11 SUMMARY OF SETTLEMENT

12 A. Aggrieved Employees

13 The Settlement covers the following aggrieved employees:

14 Any and all current and former hourly-paid, non-exempt employees who worked for
15 Defendants in the State of California at any time from July 27, 2019 to the date the Court enters a
16 Judgment in this case. (Bartz Decl., ¶ 7, Ex. 1).

17 Based upon Defendants' records, there are approximately 247 aggrieved employees as of
18 the date of signing of the Settlement Agreement. (Bartz Decl., ¶ 7).

19 B. Settlement Fund

20 Defendants will pay into a common fund the total amount of \$150,000, such that
21 \$115,000 is paid by the later of November 15, 2022 or 30 days after the Court enters Judgment
22 on this settlement, and the remaining \$35,000 to be paid 90 days thereafter. (Bartz Decl., ¶ 3.)
23 Prior to distributing the settlement checks to aggrieved employees, the Settlement Administrator
24 shall review the addresses provided using the National Change of Address database. Should any
25 of the settlement checks be returned as undeliverable, the Settlement Administrator will have
26 seven (7) days after it receives the returned undeliverable mail to search for a more current
27 address for the Aggrieved Employee (via a skip trace or other reasonable method) and to re-mail
28 the settlement checks to any alternative or updated address obtained by the Settlement

1 Administrator. (Bartz Decl., ¶ 4). The Net Settlement Amount shall be calculated by deducting
2 the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the
3 Administration Expenses Payment from the Gross Settlement Amount.

4 A breakdown of the Gross Settlement Fund of **\$150,000** is provided below:

- 5 1. Individual PAGA Payments to Aggrieved Employees: \$19,620.22
- 6 2. LWDA PAGA Payment to the LWDA: \$58,860.66;
- 7 3. PAGA Counsel Fees Payment: \$50,000;
- 8 4. PAGA Counsel Litigation Expenses Payment: \$14,019.12;
- 9 5. Administration Expenses Payment: \$7,500.

10 **C. Release**

11 The “Released Parties” are the Defendants and each of their former and present directors,
12 officers, shareholders, owners, attorneys, insurers, predecessors, successors and assigns.

13 “Released Claims” include:

14 All claims for PAGA penalties that were alleged, or reasonably could have
15 been alleged, based on the PAGA Period facts stated in the Operative Complaint,
16 and the PAGA Notice.

17 (Exhibit 1 to Bartz Decl., ¶ 5.1).

18 **IV.**

19 **LEGAL STANDARD FOR APPROVAL OF PAGA SETTLEMENT**

20 The PAGA statute allows an “aggrieved employee” to bring a civil action on behalf of
21 himself or herself and on behalf of other aggrieved employees and the State to recover civil
22 penalties which are specifically established by the PAGA with respect to provisions of the
23 California Labor Code which does not otherwise provide for civil penalties (Lab. Code § 2699(g)),
24 and also, civil penalties which, outside of PAGA, only the LWDA can assess upon and collect
25 from an employer (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee
26 must comply with California Labor Code section 2699.3. *See* Labor Code § 2699(a).

27 The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699, subd.
28 (1)(2) (“The superior court shall review and approve any settlement of any civil action pursuant to

1 this part”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
2 considered a class action but a law enforcement action” and therefore one does not have to meet
3 the requirements of a class action. *Casida v. Sears Holding Corp.*, 2012 WL 253217, at *3 (E.D.
4 Cal. Jan. 26, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 WL 2173715, at * 11 (E.D. Cal.
5 June 2, 2011); *Arias v. Superior Court*, 46 Cal.4th 969, 980-88 (2009) (affirming lower court’s
6 holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim);
7 *Pedroza v. PetSmart, Inc.*, 2013 WL 1490667, at *15 (C.D. Cal. Jan. 28, 2013). As such, a court’s
8 review of a PAGA settlement involves analysis of several unique features that render the approval
9 process distinct from approval of a class action settlement. A court reviewing a PAGA settlement
10 need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams v. Superior*
11 *Court*, 3 Cal.5th 531, 549 (2017).

12 In a PAGA case, the Court’s focus is not the monetary amount which aggrieved employees
13 or the State are to receive, but instead, whether the total settlement amount achieves the PAGA’s
14 objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties
15 for the government that otherwise may not have been assessed and collected by overburdened state
16 enforcement agencies.” *See Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *4
17 (N.D. Cal. Apr. 2, 2010) (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the
18 PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for
19 education of employers and employees about their rights and responsibilities under this code, to
20 be continuously appropriated to supplement and not supplant the finding to the agency for those
21 purposes.” *See Labor Code § 2699(j)*. The recovery of penalties on behalf of the state, by way of
22 a PAGA claim, is essentially a law enforcement action. *See Amalgamated Transit Union, Local*
23 *1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009) (stating that the PAGA is mechanism for
24 “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise
25 would be sought by state labor law enforcement agencies”).

26 V.

27 **THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE**

28 This Settlement resulted from Plaintiffs’ aggressive litigation stance to obtain a reasonable

1 recovery after making a full and fair evaluation of the case. This PAGA settlement should
2 therefore be approved.

3 **A. The Settlement Is Presumed Fair**

4 A representative settlement is presumed fair where: (1) the settlement is reached through
5 arm's length bargaining, (2) investigation and discovery are sufficient to allow counsel and the
6 court to act intelligently, (3) [and] counsel is experienced in similar litigation. *See Dunk v. Ford*
7 *Motor Company*, 48 Cal. App. 4th 1794, 1802 (1996). Similar to class actions, PAGA settlements
8 are subject to a court's approval under a fair, adequate and reasonable standard. *See Moniz v.*
9 *Adecco USA, Inc.*, 72 Cal.App.5th 56, 76-77 (2021). A court may also consider relevant factors
10 such as the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of
11 further litigation, the risk of maintaining class action status through trial, the amount offered in
12 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
13 views of counsel, [and] the presence of a governmental participant. . . . *See Officers of Justice v.*
14 *Civil Service Com'n of City and County of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1995). "This
15 list is not exhaustive and should be tailored to each case. Due regard should be given to what is
16 otherwise a private consensual agreement between the parties." (*Dunk, supra*, 48 Cal. App. 4th at
17 1801.) Moreover, the trial court has broad powers to determine whether a proposed [representative
18 action] settlement is fair. (*See Mallick v. Superior Court*, 89 Cal. App. 3d 434 (1979).

19 **B. The Settlement Is The Product of Arm's Length Negotiations**

20 In this action, Defendants have produced a sampling of personnel and policy documents,
21 detailed data regarding the aggrieved employees' pay records, and related employment
22 information for aggrieved employees. (Bartz Decl., ¶ 10). Plaintiffs also hired statistical expert
23 James Toney to analyze the data on the aggrieved employees to create models reflecting the total
24 exposure to PAGA penalties in this case. (Bartz Decl., ¶ 11).

25 The parties attended a first mediation before Michael Young on July 22, 2021. Despite the
26 parties' best efforts at that time, the mediation was unsuccessful. (Bartz Decl., ¶ 12). Thereafter,
27 the parties attended a second mediation before the Honorable Carl J. West (Ret.) on July 26, 2022.
28 The mediation was vigorously contested, and at all times, the settlement negotiations were non-

collusive, and involved considerable disputes over payment terms. After an all day mediation before Judge West, the parties successfully reached a settlement. (Bartz Decl., ¶ 16).

Plaintiffs did not settle this case until they had conducted sufficient investigation into the claims, interviewed current and former non-exempt employees, and reviewed sufficient data to make a settlement determination. Plaintiffs believe that this is a good settlement of the PAGA claims, which will not affect any aggrieved employee's right to pursue underlying Labor Code violations against Defendants if he or she chooses to do so. (Bartz Decl., ¶ 17).

C. Plaintiffs' Counsel Is Experienced In Similar Litigation And Endorse The Settlement

The view of attorneys in representative litigation is "entitled to significant weight." *Fisher Bros. v. Cambridge-Lee Industries, Inc.*, 630 F.Supp. 482, 488 (E.D. Pa. 1985); *see also Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). Plaintiffs' counsel have significant experience in complex representative and class action wage and hour litigation. (Bartz Decl., ¶¶ 18-20; Shanberg Decl., ¶¶ 5-9.) As such, they are experienced and qualified to evaluate the claims and defenses in this case, and unequivocally support the settlement reached herein.

D. The Strength of Plaintiffs' Case, The Amount Offered In Settlement, and The Risk, Expense, Complexity, and Duration of Further Litigation Favors Settlement

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Comm.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Moreover, "[t]he expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." *In re Mega Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000).

In this case, Plaintiffs seek PAGA penalties only. The sole PAGA claim that is at issue in this settlement concerns Defendants' failure to: (1) pay all wages owed and unlawful deductions from Plaintiffs' pay; (2) provide duty-free meal periods; (3) authorize and permit duty-free rest periods; (4) pay all wages due upon termination; and (5) properly maintain and submit accurate itemized wage statements. (Bartz Decl., ¶ 21).

1 1. Unpaid wages

2 California Labor Code § 510(a) and the applicable Wage Orders regulating payment of
3 wages in the State of California, provide that eight (8) hours of labor constitutes a day's work
4 and any work in excess of eight (8) hours in one (1) workday and any work in excess of forty
5 (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half
6 times the regular rate of pay for each employee and any work in excess of twelve (12) hours in
7 any one workday shall be compensated at the rate of no less than twice the regular rate of pay for
8 each employee. Plaintiffs and the aggrieved employees are also entitled to California's
9 minimum wage for each hour worked. Cal. Lab. Code § 1194.

10 Plaintiffs contend that Defendants have committed overtime and minimum wage
11 violations here based on several theories. *First*, despite Plaintiffs working overtime hours
12 weekly, Plaintiffs failed to pay overtime compensation for overtime hours worked. Plaintiffs
13 also reviewed payroll records showing, in certain instances, Defendants' failure to pay the
14 minimum wage. *Second*, Plaintiffs contend that Defendants violated agreements with employees
15 to pay rates higher than the minimum wage, thus violating Labor Code section 223. *Last*,
16 pursuant to *Peabody v. Time Warner Cable, Inc.*, 59 Cal.4th 662 (2014), Plaintiffs contend that
17 Defendants cannot borrow from pay periods in which Plaintiffs made above the minimum wage
18 to comply with the minimum wage requirements or the overtime exemption for inside
19 salespersons.

20 Defendants contend that they have numerous defenses to Plaintiffs' unpaid wage claims,
21 including that certain employees were objectively paid minimum wage and overtime, and for
22 others, including commissioned salespersons, they received well in excess of the minimum wage
23 for monthly pay periods.

24 The maximum potential PAGA penalties for the unpaid wage claim is \$2.5 million, as
25 calculated by Plaintiffs' expert. Based on the various issues raised above, Plaintiffs believe they
26 had a 10% chance of success on the various unpaid wage theories. Nevertheless, Labor Code
27 section 2699(e)(2) also gives a trial court broad discretion to reduce PAGA penalties: "[A] court
28 may award a lesser amount than the maximum civil penalty amount specified by this part if,

1 based on the facts and circumstances of the particular case, to do otherwise would result in an
2 award that is unjust, arbitrary and oppressive, or confiscatory.” Case law supports a trial court’s
3 discretion in downgrading penalties based on these factors. *See Thurman v. Bayshore Transit*
4 *Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no abuse of discretion by reducing
5 penalty by 30 percent). Thus, Plaintiffs believe that the real value of the unpaid wage penalties
6 are \$175,000 (\$2,500,000 x .1 [chances of success] x .7 [court discretion] = \$175,000). (Bartz
7 Decl., ¶ 21.a).

8 2. Meal period violations

9 Plaintiffs contend that Defendants failed to provide Plaintiffs and other aggrieved
10 employees thirty-minute duty-free meal periods for every five hours of work as is required by
11 Labor Code § 512, the applicable wage orders, and in violation of *Brinker Restaurant Corp. v.*
12 *Superior Court*, 53 Cal.4th 1004 (2012). In *Brinker*, the California Supreme Court held that
13 “under ... Labor Code § 512, subdivision (a), an employer must relieve the employee of all duty
14 for the designated period.” *Id.* at 1034.

15 *First*, Plaintiffs contend that Defendants refused to allow Plaintiffs and other aggrieved
16 employees to eat lunch at their desks, did not have a designated area for eating lunch, and even on
17 the rare occasion when Plaintiffs were permitted to grab lunch from outside the dealership, they
18 were always on call. As such, Plaintiffs believe *Brinker* will control this case.

19 *Second*, Defendants produced time records in this case that Plaintiffs believe establish that
20 meal periods not only were not taken regularly, but they were not taken at all based on Defendants’
21 practices and procedures. Under *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021), the
22 California Supreme Court held that “noncompliant meal periods raise a rebuttable presumption of
23 meal period violations.” *Id.* at 74.

24 In response to such arguments, Defendants contend that they permit all aggrieved
25 employees more than 30 minute meal periods, and the aggrieved employees had substantial down
26 time at the car dealerships to take their meal periods. Defendants further contend that Plaintiffs
27 will be unable to establish why certain aggrieved employees did not take their meal periods, and
28 that in any event, Defendants had no duty to ensure that meal periods were taken, pursuant to

1 *Brinker*. Defendants further argue that individual issues will predominate because of the various
2 scenarios affecting different classes of employees working for Defendants. As such, Defendants
3 claim that PAGA claims must meet a manageability requirement. *See Wesson v. Staples The Office*
4 *Superstore, LLC*, 68 Cal.App.5th 746 (2021) (holding that courts have inherent authority to ensure
5 the manageability of PAGA claims).

6 The maximum potential PAGA penalties recoverable for meal period violations, as
7 calculated by Plaintiffs' expert, is \$910,000. Based on the various issues raised above regarding
8 proving meal period violations, Plaintiffs believe that they have a 10% chance of proving all of
9 those penalties. Thus, Plaintiffs believe that the real value of the meal period penalties are \$63,700.
10 (\$910,000 x .1 [chances of success] x .7 [court discretion] = \$63,700). (Bartz Decl., ¶ 21.b).

11 3. Rest period claims

12 Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and
13 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
14 each work period. The authorized rest period time shall be based on the total hours worked daily
15 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
16 a rest period need not be authorized for employees whose total daily work time is less than three
17 and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
18 there shall be no deduction from wages."

19 Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an
20 employee a rest period in accordance with the applicable provisions of this order, the employer
21 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for
22 each workday that the rest period is not provided."

23 Under *Brinker, supra*, the California Supreme Court found that employers have a "duty
24 to make a good faith effort to authorize and permit rest breaks in the middle of each work period.
25 ... " *Brinker, supra*, 53 Cal.4th at 1031. Plaintiffs allege that rest periods were not authorized or
26 permitted because Defendants understaffed their dealerships, and Plaintiffs were often unable to
27 take their rest periods.

28 Defendants contend that they complied with California's rest period requirements, and

1 produced a rest period policy that complies with California law.

2 Plaintiffs' damages expert calculates total penalties on the rest period claim of \$910,000.
3 Given Defendants' facially valid rest period policy, and potential individual issues relating to
4 proving rest break violations, Plaintiffs believe they had a 5% chance of recovering all of the
5 above penalties on the rest period claim, in the absence of other mitigating factors. Given that a
6 court has discretion regarding the amount of penalties to be assessed, Plaintiffs therefore believe
7 the real exposure of PAGA penalties on the rest period claim is approximately \$31,850.
8 (\$910,000 x .05 [chances of success] x .7 [court discretion] = \$63,700.) (Bartz Decl., ¶ 21.c).

9 4. Failure to pay all wages on termination

10 Plaintiffs further allege that pursuant to Labor Code §203, aggrieved employees terminated
11 from Defendants' employment are entitled to a penalty pursuant to Labor Code §256, because
12 Defendants did not pay them all wages due upon separation. Such a claim is derivative, and for the
13 same reasons as stated above, Defendants contend no wages are due, and thus no penalties owed under
14 PAGA. Defendants further argue that their failure to pay wages upon separation was not "willful," in
15 that the law is uncertain as to claims asserted in this case or whether the failure to pay is due to a good
16 faith dispute. *See Barnhill v. Robert Saunders & Co.*, 125 Cal.App.3d 1, 8 (1981) (employer's failure
17 to pay is not willful if its failure is due to uncertainty in the law); *Road Sprinkler Fitters Local Union*
18 *No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal.App.4th 765, 782 (2002) (willfulness not met if
19 defendant's failure to pay a result of a "good faith mistaken belief that wages are not owed").

20 Plaintiffs' expert calculates PAGA penalties on this claim of \$816,000. Based on the
21 heightened willfulness standard, Plaintiffs estimate that the real exposure of this claim is 10% of
22 those total penalties. Moreover, Plaintiffs apply the same discounts as set forth above in the above
23 analysis as to the court's discretion to reduce penalties. As such, Plaintiffs believe the real
24 exposure on this claim to be \$57,100 (\$816,000 x .1 [chances of success] .70 [court discretion] =
25 \$57,100). (Bartz Decl., ¶ 21.d).

26 5. Improper pay stubs

27 Plaintiffs further allege that Defendants failed to provide proper pay statements that
28 complied with Labor Code § 226.

1 Plaintiffs allege similar theories of liability as above with respect to the paystub claim, i.e.
2 that the wage statements are defective because they do not reflect all wages owed, and fail to show
3 premium payments for missed meal and rest periods. *See Naranjo v. Spectrum Security Servs.,*
4 *Inc.*, 13 Cal.5th 93 (2022). Plaintiffs further allege that to obtain PAGA penalties for pay stub
5 violations, a plaintiff need not satisfy the “injury” or “knowing and intentional” requirements of
6 Labor Code section 226(e)(1). *See Raines v. Coastal Pacific Food Distributors, Inc.*, 23
7 Cal.App.5th 667 (2018).

8 On the other hand, Defendants argue derivative violations of Labor Code § 226 do not give
9 rise to pay stub violations upon which PAGA penalties arise. *See Maldonado v. Epsilon Plastics,*
10 *Inc.*, 22 Cal.App.5th 1308 (2018); *see also Culley v. Lincare Inc.*, 236 F.Supp.3d 1184, 1195-1196
11 (E.D. Cal. 2017). Defendants further argue that any such violations were inadvertent, and therefore
12 not actionable. *See Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement,*
13 *192 Cal.App.4th 75 (2011).*

14 Plaintiffs’ expert calculates pay stub penalties to be approximately \$910,000. Plaintiffs
15 believe they had a 20% chance of recovering all of the potentially recoverable civil penalties.
16 Moreover, Plaintiffs apply the same discounts as set forth above in the analysis as to the court’s
17 discretion to reduce penalties. As such, Plaintiffs believe the real exposure on this claim to be
18 \$127,400. ($\$910,000 \times .2$ [chances of success] $\times .7$ [court discretion] = \$191,100). (Bartz Decl.,
19 ¶ 21.e).

20 6. Total exposure to PAGA penalties

21 Based upon the alleged Labor Code violations, Plaintiffs’ believe the total actual PAGA
22 exposure is approximately \$455,050. Based on a settlement value of \$150,000, this amounts to
23 approximately 33% of the total exposure to PAGA penalties. Plaintiffs believe this to be a good
24 result, given that Defendants have valid defenses to Plaintiffs’ claims, and that there is a
25 substantial question as to whether a trial court will even award cumulative penalties sought by
26 Plaintiffs for alleged multiple Labor Code violations because there is no precedent for such an
27
28

award.¹ Moreover, even to the extent any violations are proven, Defendants argue that any heightened penalties from subsequent violations are not warranted. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-1209 (2008) (“Until the employer has been notified that it is violating a Labor Code provision. . . , the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties”). (Bartz Decl., ¶ 21.f).

The purpose of the PAGA is to “achieve maximum compliance with [California’s] labor laws.” *See Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). The penalties recovered here on behalf of the State and aggrieved employees achieve that purpose.

VI.

NOTICE OF THE SETTLEMENT IS NOT REQUIRED

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

¹ While there are cases allowing for the “stacking” of penalties when it comes to evaluating the “amount in controversy” where a case has been removed to federal court (*see Schiller v. David’s Bridal, Inc.*, 2010 WL 2793650 (E.D. Cal. July 14, 2010)), it appears to be an open question whether such “stacked” penalties may be awarded when they potentially overlap and “double count” remedies for similar violations.

Cal.4th 993, 1003 (2009) and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014).)

VII.

ATTORNEYS' FEES AND COSTS

A. Fees Can Be Awarded As A Percentage of the Common Fund

When a common fund is created, attorneys who secured the fund are entitled to a percentage of the fund. (*See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 [“the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created”]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 [“percentage fees have traditionally been allowed in . . . common fund cases”]). Plaintiffs’ request for one-third of the common fund is reasonable, falls within the Ninth Circuit’s historical benchmark for attorneys fees of 25% to 50% of a common fund, and is fair compensation for undertaking complex litigation on a contingent basis. (*See, e.g.,* Rubinstein, Conte and Newberg, Newberg on Class Actions at § 14:6 [surveying cases, and finding that 30-50% of fees awarded in cases in which the common fund is relatively small]; *see also In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494 [court approved attorney fee award equal to 45% of the settlement fund].)

Under the common fund doctrine, “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S.Ct. 745, 750, 62 L.Ed.2d 676 (1980). The Supreme Court explained:

The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant’s expense. Jurisdiction over the fund involved in litigation allows a court to prevent this inequity by assessing attorney’s fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit.” (Citations omitted.)

(*Id.*; *see also Laffitte, supra*, 1 Cal.5th at 503 [“the percentage method is a valuable tool that should not be denied our trial courts”]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [“one who

1 expends attorneys' fees in winning a suit which creates a fund from which other derive benefits,
2 may require those passive beneficiaries to bear a fair share of the litigation costs"].)

3 Thus, the common fund doctrine ensures that each member of the class contributes
4 proportionately to the payment of attorney's fees recovered from monetary payments that the
5 prevailing party recovered in the lawsuit. "Put another way, in common fund cases, a variant of
6 the usual rule applies and the winning party pays his or her own attorneys fees. . . ." *Stanton v.*
7 *Boeing*, 327 F.3d 938, 967 (9th Cir. 2003), citing *Wininger v. SI Mgmt L.P.*, 301 F.3d 1115 (9th
8 Cir. 2002).

9 Because Plaintiffs' attorneys secured a fund for Plaintiffs and the other aggrieved
10 employees, they are entitled to a reasonable percentage of that fund.

11 **B. Plaintiff's Attorneys Fees Are Also Recoverable Under The Lodestar**
12 **Adjustment Approach**

13 Fees in representative cases are also appropriate under the lodestar method, whereby the
14 number of hours reasonably expended is multiplied by a reasonable hourly rate. *See Lealao,*
15 *supra*, 82 Cal.App.4th at 26. Under PAGA, moreover, attorneys' fees and costs are statutorily
16 recoverable. See Cal. Labor Code § 2699, subd. (g)(1). Once a lodestar has been established, it
17 may "be adjusted, based on consideration of factors specific to the case, in order to fix the fee at
18 the fair market value for the legal services provided." *PLCM Group, Inc. v. Drexler*, 22 Cal.4th
19 1084, 1095 (2000). In evaluating the lodestar, and whether an upward adjustment is appropriate,
20 courts look to the qualifications of counsel, the reasonableness of the rates charged, the novelty
21 and difficulty of the case, the contingent nature of the case, the results achieved, and related
22 matters. *See, e.g., Serrano, supra*, 20 Cal.3d 25, 49; *see also Press v. Lucky Stores, Inc.*, 34
23 Cal.3d 311, 321-322 (1983). All such factors support the fee award here.

1 **1. Plaintiffs’ Counsel Are Well-Qualified To Represent The Aggrieved**
2 **Employees And Their Rates Are Reasonable**

3 Counsel for Plaintiffs are experienced employment lawyers, and have extensive
4 experience in the specific subcategory of wage and hour claims. (Bartz Decl. ¶¶ 18-20;
5 Shanberg Decl., ¶¶ 5-9). Moreover, counsel for Plaintiffs have hourly rates that are reasonable in
6 the relevant market, and below that found with other class action employment lawyers with
7 similar expertise. (Bartz Decl., ¶ 22).

8 **2. Plaintiffs’ Counsel’s Lodestar Is Well Documented**

9 A properly supported motion for attorney's fees is prima facie evidence that the expenses
10 and services were necessarily incurred. *Hadley v. Krepel*, 167 Cal.App.3d 677, 682 (1985).
11 Here, counsel provide appropriately detailed declarations and detailed, contemporaneous billing
12 statements in support of the lodestar amounts. (Bartz Decl., ¶ 22, Ex. 5; Shanberg Decl., ¶ 10,
13 Ex. 1).

14 **3. Novelty And Difficulty Of The Case**

15 Plaintiffs and their counsel were able to secure a favorable settlement only after
16 investigating the claims and researching the theories of potential liability in this case, and
17 fighting off another potential settlement undervaluing the claims in this case. Plaintiffs filed a
18 motion to intervene in a related action, unwound another unfavorable settlement, and achieved a
19 settlement that was over 40% greater than the proposed settlement in the related action. (Bartz
20 Decl., ¶ 16.) Despite long odds, Plaintiffs persevered and secured a very favorable settlement for
21 the aggrieved employees and the LWDA.

22 **4. Plaintiffs’ Counsel Worked Efficiently And Skillfully**

23 Plaintiffs propounded significant representative discovery, conducted extensive witness
24 outreach, and secured informal discovery to evaluate and investigate the alleged wage and hour
25 violations. Plaintiffs and their counsel resolved the case only after challenging Defendants at
26 every turn to obtain the highest and best settlement possible from Defendants.

1 **5. Plaintiffs' Counsel Worked Entirely On A Contingency Basis**

2 Plaintiffs' counsel worked on a complete contingency and advanced all expenses and
3 costs. The contingent risk included liability issues, damage issues, and evolving changes under
4 PAGA. According to the California Supreme Court:

5 A contingent fee must be higher than a fee for the same legal services paid as they
6 are performed. The contingent fee compensates the lawyer not only for the legal
7 services he renders but for the loan of those services. The implicit interest rate on
8 such a loan is higher because the risk of default (the loss of the case, which
9 cancels the debt of the client to the lawyer) is much higher than that of
10 conventional loans.

11 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, *Economic Analysis of*
12 *Law* (4th ed. 1992) pp. 534, 567.)

13 **6. Plaintiffs' Counsel Achieved A Good Result**

14 Plaintiffs' counsel obtained a \$150,000 settlement, which would not have been achieved
15 but for Plaintiffs' and their attorneys' ability to efficiently prosecute the case to a successful
16 conclusion.

17 **C. Plaintiffs' Counsel's Costs Are Documented and Reasonable**

18 Plaintiffs' counsel are also entitled to their reasonable out-of-pocket costs incurred in
19 prosecuting this action, in the amount of \$14,019.12, which includes mediation and expert
20 witness fees, and other costs necessary to the prosecution of this case. (Bartz Decl., ¶ 22, Ex. 6;
21 Shanberg Decl., ¶ 11, Ex. 2). Moreover, ILYM Group, Inc. has agreed to provide settlement
22 administration services in the amount of \$7,500, including preparing and mailing the notices to
23 the aggrieved employees, distributing the payments, and performing other administration duties
24 for this PAGA settlement. (Bartz Decl., ¶ 23, Ex. 7). All such amounts should be deducted from
25 the common fund created, and Defendants do not oppose Plaintiffs' counsel's request for costs
26 and administration expenses.

VIII.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court grant its Motion to Approve the PAGA Settlement.

Dated: September 21, 2022

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