

Matthew S. D'Abusco (SBN 251116)
Cynthia S. Sandoval (SBN 191390)
ARES LAW GROUP, P.C.
23 Corporate Plaza Drive, Suite 150
Newport Beach, California 92660
Telephone: (949) 629-2519
Email: Matt@areslawgroup.com
Email: Cynthia@areslawgroup.com

Attorneys for Plaintiff
AMBER BARRETT

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

AMBER BARRETT, as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA");

PLAINTIFF,

vs.

SIERRA PACIFIC MORTGAGE CO., INC., a
California Corporation, SIERRA PACIFIC
MORTGAGE, INC., a California Corporation;
and DOES 1 through 20,

Defendants.

) Case No.: CVRI2000156

) **PAGA ENFORCEMENT ACTION**

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

) Date: January 3, 2022

) Time: 8:30 a.m.

) Dept: 6

) [Reservation No. 199341625129]

) [Filed concurrently with Notice of Motion;
) Declaration of Cynthia S. Sandoval; Declaration
) of Matthew S. D'Abusco; Declaration of Amber
) Barrett; Declaration to Michael Bui; and
) [Proposed] Judgment]

) Complaint Filed: November 10, 2020

) Trial Date: None

TABLE OF CONTENTS

I. INTRODUCTION.....	6
II. CMO SECTION 2—SETTLEMENT POSTURE.....	6
A. CMO Section 2(a)—The Parties Executed a Written Settlement Agreement.....	6
B. CMO Section 2(b)—The Parties Utilized a Mediator.	7
C. CMO Section 2(c)—The Settlement Agreement Was Submitted to the LWDA.....	7
III. CMO SECTION 3—PAGA PENALTIES.....	7
A. CMO Section 3(a)—The Nature of PAGA Violations.	7
B. CMO Section 3(b)—Number of Alleged PAGA Violations.	7
C. CMO Section 3(c)—Total Potential PAGA Penalties.....	8
D. CMO Section 3(d)—Penalties Likely to Be Proven at Trial.	8
E. CMO Section 3(e)—Knowing and Intentional Penalties.....	8
F. CMO Sections 3(f) and (g)—The Penalty Calculation is Fair and Reasonable.	8
G. CMO Section 3(h)—Additional Considerations.	11
IV. CMO SECTION 4—PLAINTIFF’S REQUEST FOR REASONABLE ATTORNEYS’ FEES.	11
1. Plaintiff’s Counsel’s Request for Attorneys’ Fees and Costs is Equitable And Fair.....	13
2. Plaintiff’s Counsel’s Request For Attorneys’ Fees Equal to 33.33% of the Settlement Fund is Justified By the Circumstances of the Litigation.	14
3. The Parties’ Settlement Of Attorneys’ Fees Is Reasonable In Light Of Plaintiff’s Counsel’s Lodestar.	16
4. Plaintiff is Aware of the Agreed-Upon Fees.	18
5. Fee Splitting.....	19
B. Plaintiff’s Counsel Is Entitled to Reimbursement of Costs.....	19
V. CMO SECTION 5—INDIVIDUAL SETTLEMENT.....	20
VI. CMO SECTION 6—PLAINTIFF’S REQUEST FOR AN ENHANCEMENT FEE.....	20
A. CMO Sections 6(i) and (ii)—The Time and Work Plaintiff Invested in this Matter.....	20
B. CMO Sections 6(iii) and (iv)—The Risks of Serving as a PAGA Representative.....	20

1	C. CMO Section 6(v)—Plaintiff’s Actual Expenses.....	21
2	D. CMO Section 6(vi)—Plaintiff Has Never Been a Named Plaintiff in a PAGA Case.	21
3	E. The Service Award is Fair and Reasonable.....	21
4	VII. CMO SECTION 7—THE DISMISSAL OF REPRESENTATIVE CLAIMS.....	22
5	A. CMO Sections 7(a) and (b)—Aggrieved Employees Will Not Be Prejudiced.	22
6	VIII. CMO SECTION 8 RELEASE OF PAGA PENALTIES.....	23
7	A. CMO Section 8(a) through (c)—The Agreement Binds Only Plaintiff and the State.	23
8	B. CMO Section 8(d)—Draft Release Language.	23
9	IX. CMO SECTION NO. 9—SETTLEMENT ADMINISTRATOR.....	23
10	A. CMO Section No. 9(a)—Simpluris Was the Lowest TPA Bid.....	23
11	B. CMO Section No. 9(b)—Simpluris is an Experienced Administrator.....	23
12	X. CMO SECTION 10—THE PARTIES WILL USE AN ADMINISTRATOR.....	24
13	XI. CMO SECTION 11—UNCASHED CHECKS WILL GO TO THE STATE	
14	CONTROLLER’S OFFICE.....	24
15	XII. CMO SECTION 12—FINAL ACCOUNTING HEARING.	24
16	XIII. CONCLUSION.....	25

TABLE OF AUTHORITIES

United States Supreme Court Cases

<i>Fox v. Vice</i> (2011) 563 U.S. 826.....	17
<i>Hensley v. Eckerhart</i> (1983) 461 U.S. 424.....	12, 17

California Statutes

Labor Code §2699.....	5, 6, 8, 12, 18
-----------------------	-----------------

California State Cases

<i>Apple Computer Inc. v. Sup. Ct.</i> (2005) 126 Cal.App.4th 1253.....	12
<i>Beasley v. Wells Fargo Bank</i> (1991) 235 Cal.App.3d 1407	18
<i>Children’s Hospital & Med. Ctr. v. Bontá</i> (2002) 97 Cal.App.4th 740	16
<i>Glendora Community Redevelopment Agency v. Demeter</i> (1984) 155 Cal.App.3d 465.....	13, 14
<i>Gouskos v. Aptos Village Garage, Inc.</i> (2001) 94 Cal.App.4th 754	12
<i>Graciano v. Robinson Ford Sales</i> (2006) 144 Cal.App.4th 140.....	12, 15
<i>Harman v. City and County of San Francisco</i> (2007) 158 Cal.App.4th 407.....	15
<i>In re Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545.....	12
<i>In re Estate of Stauffer</i> (1959) 53 Cal.2d 124	12
<i>Iskanian v. CLS Transp. Los Angeles, LLC</i> (2014) 59 Cal.4th 348.....	5, 8
<i>Kerkeles v. City of San Jose</i> (2015) 243 Cal.App.4th 88.....	17
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.....	16
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	11
<i>MBNA Am. Bank v. Gorman</i> (2006) 147 Cal.App.4th Supp. 1.....	16
<i>Melendres v. City of Los Angeles</i> (1975) 45 Cal.App.3d 267.....	12
<i>Serrano v. Unruh</i> (1982) 32 Cal.3d 621.....	17
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	11, 12, 13
<i>Taylor v. Nabors Drilling U.S.A.</i> (2014) 222 Cal.App.4th 1228.....	16
<i>Weeks v. Baker & McKenzie</i> (1998) 63 Cal.App.4th 1128.....	17

Federal Court Cases

<i>Bellinghausen v. Tractor Supply Co.</i> (N.D. Cal. 2013) 306 F.R.D. 245.....	20
---	----

1	<i>Chalmers v. City of Los Angeles</i> (9th Cir. 1987) 796 F.2d 1205.....	16
2	<i>United Steelworkers of America v. Phelps Dodge Corp.</i> (9th Cir. 1990) 896 F.2d 403	16
3	<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F. Supp. 294	21
4	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043.....	11
5	<i>Staton v. Boeing Co.</i> (2003) 327 F.3d 938.....	13
6	<u>Trial Court Decisions—California State Court</u>	
7	<i>Blanchard v. BJ’s Restaurants, Inc.</i> , No. 30-2014-00761961-CU-OE-CXC.....	20
8	<i>Bui v. Vitamin Shoppe Industries Inc.</i> , No. BC518486.....	20
9	<i>Miranda v. HomeDeliveryLink, Inc.</i> , No. CIVDS1505393.....	20
10	<i>Najjar v. Calop Business Systems, Inc. d/b/a Calop Aeroground Service</i> , No. BC582290.....	20
11	<u>Trial Court Decisions—Federal Courts</u>	
12	<i>Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.</i> (S.D. Cal. 2009)	
13	2009 WL 2448430.....	8
14	<i>Guippone v. BH S&B Holdings LLC</i> (S.D.N.Y. Oct. 28, 2011) 2011 U.S. Dist. LEXIS 126026.....	20
15	<i>La Fleur v. Medical Management Intern, Inc.</i> (2014) 2014 WL 2967475.....	21
16	<i>Trang v. Turbine Engine Components Technologies Corp.</i> (C.D. Cal. 2012) 2012 WL 6618854.....	8
17	<u>Other Sources</u>	
18	<i>Williams v. Veolia Transp.</i> (Feb. 10, 2015) JAMS Ref. No.1220048226.....	16

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Following the exchange and analysis of voluminous and extensive information, detailed and
4 thorough discussions between counsel, and mediation, Plaintiff Amber Barrett (“Plaintiff”), as an
5 alleged aggrieved employee under the California Private Attorneys’ General Act (“PAGA”), and
6 Defendant Sierra Pacific Mortgage Company, Inc. (“Defendant”) agreed to resolve this case—which has
7 just a singular cause of action for PAGA civil penalties—for the total sum of \$175,000.00. This
8 settlement was negotiated by the parties at arms’ length, with the assistance of the Honorable Francisco
9 Firmat (Ret.), who is a well-known, notable, experienced, and respected mediator of wage and hour
10 class and representative actions, including PAGA claims. The civil penalties secured by the settlement
11 represent a fair compromise of Plaintiff’s PAGA claim in view of the risks of continued litigation and
12 the contested issues of law and fact relating to Plaintiff’s claim under the PAGA. The settlement
13 accomplishes PAGA’s objectives by imposing sufficient civil penalties “to punish and deter” Defendant
14 from future Labor Code violations, while also ensuring that the penalties are not “unjust, arbitrary and
15 oppressive, or confiscatory.” See Labor Code §2699(e)(2); *Iskanian v. CLS Transp. Los Angeles, LLC*
16 (2014) 59 Cal.4th 348, 384.

17 Consistent with the express requirements of the Court’s PAGA Case Management Order No. 1
18 (“CMO”), the following sets forth the reasons Plaintiff respectfully requests this Motion for Approval be
19 granted in its entirety.

20 **II. CMO SECTION 2—SETTLEMENT POSTURE.**

21 **A. CMO Section 2(a)—The Parties Executed a Written Settlement Agreement.**

22 On June 11, 2021, the Parties participated in a full day mediation with the Honorable Francisco
23 Firmat (Ret.). See the Declaration of Cynthia S. Sandoval (“See Sandoval Decl.”) at ¶3. Judge Firmat
24 assisted the Parties by providing a useful, neutral analysis of the issues and risks to both sides with
25 respect to legal liability. *Id.* As a result of the mediation, the Parties agreed to the principal terms of a
26 settlement of PAGA civil penalties. *Id.* At all times, the Parties’ negotiations were adversarial and non-
27 collusive, and the settlement thus constitutes a fair, adequate, and reasonable compromise of the claims
28 at issue. *Id.* The complete and final terms of the Parties’ settlement are now set forth in the PAGA

Settlement Agreement. See Sandoval Decl., at ¶3, Exhibit “1.”

B. CMO Section 2(b)—The Parties Utilized a Mediator.

As discussed in Section II(A), the Honorable Francisco Firmat (Ret.) from ADR Services, Inc. served as the mediator in this case. See Sandoval Decl., at ¶3. Judge Firmat retired from the bench in 2013 after a twenty-seven (27) year career as a jurist, which included an assignment to the Orange County Complex Litigation Panel. *Id.* Judge Firmat is recognized as a prominent employment litigation mediator in Southern California and, per his biography, his experience in completing over 6,000 settlement conferences or mediations comes with a specialty in employment and complex litigation. *Id.*

C. CMO Section 2(c)—The Settlement Agreement Was Submitted to the LWDA.

Consistent with Labor Code Section 2699 (l)(2), on December 2, 2021, the Settlement Agreement and all related Motion Paperwork was submitted to the California Labor and Workforce Development Agency. See Sandoval Decl., at ¶4.

III. CMO SECTION 3—PAGA PENALTIES.

A. CMO Section 3(a)—The Nature of PAGA Violations.

Defendant employed Plaintiff as a non-exempt employee from October 2019 to May 2020. See the Declaration of Amber Barrett (“Barrett Decl.”) at ¶3. Plaintiff contends Defendant failed to pay her for all hours worked because Defendant improperly calculated her regular rate of pay by dividing production bonuses and meal period premiums by Plaintiff’s total hours worked (including overtime), rather than just the straight time hours worked. *Id.*; See Sandoval Decl., at ¶5. When Defendant did so, the regular rate of pay necessary to properly calculate overtime was diminished. *Id.*; See Sandoval Decl., at ¶5. Defendant acknowledged this error and corrected it in August 2020. See Sandoval Decl., at ¶5. Nonetheless, Defendant maintains that, although these errors did occur, the damages and incidence rate were minor. *Id.*

B. CMO Section 3(b)—Number of Alleged PAGA Violations.

On July 23, 2020, Plaintiff submitted a PAGA letter to the California Labor and Workforce Development Agency (“LWDA”). See Sandoval Decl., at ¶6. The LWDA did not initiate the investigation. *Id.* Having thus exhausted her administrative remedies, on November 10, 2020, Plaintiff filed a Complaint in Riverside County Superior Court asserting a single cause of action for civil

1 penalties under PAGA. *Id.*

2 Based upon the PAGA letter Plaintiff submitted to the LWDA and the filing of the Complaint,
3 the applicable statutory period is November 10, 2019, through the date Defendant corrected the unlawful
4 wage practices in August 2020. See Sandoval Decl., at ¶6. Since Defendant maintains a bi-weekly
5 payroll practice, there are twenty-nine (29) penalty periods at issue. *Id.*

6 Defendant employed a total of 243 aggrieved employees within the statutory period, however,
7 only 191 were subject to the wage violation. See Sandoval Decl., at ¶7. After an investigation and
8 review of the facts and records in this matter, Plaintiff concluded each employee suffered violations
9 during approximately fourteen (14) of the twenty-nine (29) penalty periods. *Id.*

10 **C. CMO Section 3(c)—Total Potential PAGA Penalties.**

11 If Plaintiff proved a violation for each of the 191 aggrieved employees who suffered a violation
12 for each of the fourteen (14) payroll periods, Defendant would be subject to a maximum penalty
13 assessment of \$267,400.00 (100.00 PAGA penalty x 14 penalty periods x 191 aggrieved employees).
14 See Sandoval Decl., at ¶8.

15 **D. CMO Section 3(d)—Penalties Likely to Be Proven at Trial.**

16 Plaintiff believes the total likely penalties at trial would be approximately \$267,400.00. See
17 Sandoval Decl., at ¶9. Defendant acknowledged and corrected the wage violation in dispute so there is
18 no continuing violation. *Id.* Considering Defendant corrected the issue, and the miscalculation in rate
19 resulted in actual damages being relatively minor, Plaintiff believes the penalties agreed upon by this
20 settlement thus represent a fair and reasonable settlement considering the cost and expense of going to
21 trial, particularly if an expert were to be retained to testify on the wage violations. *Id.*

22 **E. CMO Section 3(e)—Knowing and Intentional Penalties.**

23 Defendant acknowledged it improperly calculated Plaintiff's regular rate of pay by dividing
24 production bonuses and meal period premiums by Plaintiff's total hours worked (including overtime),
25 rather than just the straight time hours worked. See Sandoval Decl., at ¶10. This is a highly technical
26 error. *Id.* There is no evidence that Defendant's violation was knowing or intentional. *Id.*

27 **F. CMO Sections 3(f) and (g)—The Penalty Calculation is Fair and Reasonable.**

28 The civil penalties secured by the settlement represent a fair compromise of Plaintiff's PAGA

1 claim in view of the risks of continued litigation and the contested issues of law and fact relating to
2 Plaintiff's claim under the PAGA. The settlement accomplishes PAGA's objectives by imposing
3 sufficient civil penalties "to punish and deter" Defendants from future alleged Labor Code violations,
4 while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." See
5 Labor Code §2699(e)(2); *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 384.

6 In assessing whether the amount of civil penalties recovered is genuine and meaningful with
7 respect to those allegations, the Court may balance the amount in penalties with the risks of further
8 litigation. While Defendant acknowledged their error in calculating the regular rate of pay, they
9 steadfastly maintained that: (1) the violation rate was minimal; and (2) the issue was corrected such that
10 the penalty period was significantly shortened. Based on the evaluation of those issues, Plaintiff
11 obtained a strong settlement that results in a meaningful amount in civil penalties.

12 Analyzing the large sampling data provided by Defendants, Plaintiff calculated Defendants'
13 potential exposure for PAGA penalties according to the formula provided by Labor Code section
14 2699(f)(2). It should be noted that courts have interpreted Labor Code §2699(f)(2) to impose the
15 enhanced "subsequent violation penalty" or "heightened penalty" only after an employer has been
16 notified that its conduct violates the Labor Code. See *Trang v. Turbine Engine Components*
17 *Technologies Corp.* (C.D. Cal. Dec. 19, 2012) No. CV 12-07658 DDP (RZx), 2012 WL 6618854
18 ("courts have held that employers are not subject to heightened penalties for subsequent violations
19 unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code");
20 *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.* (S.D. Cal. 2009)
21 No. 05cv1199- IEG-CAB, 2009 WL 2448430 (finding that California law imposes the "subsequent
22 violation penalty" only after an employer has been notified its conduct violates the Labor Code). While
23 Plaintiff does not believe this determination is necessarily determinative, she nonetheless recognizes that
24 this interpretation has gained traction with courts and elected therefore to conservatively estimate
25 Defendant's potential exposure for PAGA penalties by assessing a \$100.00 penalty for the pay periods
26 during the statute of limitation period in which there was a violation. Incorporating the \$100.00 penalty,
27 Plaintiff then calculated the approximate number of pay periods in which aggrieved employees suffered
28 violations based on a review of the facts ascertained through Plaintiff's investigation and review of

relevant documents and records. See the Declaration of Matthew S. D’Abusco (“D’Abusco Decl.,”) at ¶6. Applying that information to create a fair and reasonable estimate of penalties, Plaintiff concluded fourteen (14) pay period violations—or 1/2 of the total possible pay periods—represented a reasonable damages assessment per aggrieved employee especially considering the technical violations at issue. See D’Abusco Decl., at ¶7. Accordingly, under this liability framework, Plaintiff calculated Defendants’ potential PAGA exposure at approximately \$267,400.00 for the relevant claims (\$100.00 PAGA Penalty x 14 violation pay periods x 191 aggrieved employees). *Id.*

After calculating Defendant’s exposure under PAGA, Plaintiff’s Counsel then discounted that exposure for settlement purposes to account for the risks of continued litigation, including: (i) the strength of Defendant’s defenses on the merits; (ii) the risk of losing on any of a number of dispositive motions that could have been brought between now and trial which may have eliminated all or some of the covered claims, or barred evidence necessary to prove such claims; (iii) the risk of the Court not allowing this action to proceed on a representative basis because of purported “manageability” concerns; (iv) the risk of losing at trial or prevailing only on some of the claims; (v) the risk that the Court would exercise its discretion under PAGA to significantly reduce the maximum civil penalties available by statute; and (vi) the chances of a favorable verdict being reversed on appeal. See D’Abusco Decl., at ¶8. Considering the above contingencies, Plaintiff’s Counsel determined a settlement in the range of 50% of Defendant’s potential exposure would prove to be a significant result that was warranted by the circumstances of the case. See D’Abusco Decl., at ¶9. Ultimately, the case settled in a far better range amount, at 65% of Defendant’s potential exposure—a settlement equal to an all-in penalty assessment of approximately \$916.23 per aggrieved employee (before costs and fees). *Id.*

Based on this valuation, Plaintiff and Plaintiff’s Counsel believe that the Settlement accomplishes PAGA’s objectives by imposing sufficient civil penalties “to punish and deter” Defendants from future Labor Code violations, while also ensuring that the penalties are not “unjust, arbitrary and oppressive, or confiscatory.” See D’Abusco Decl., at ¶9; See Sandoval Decl., at ¶15. The amount in PAGA civil penalties obtained here is “genuine and meaningful,” achieves PAGA’s statutory purposes, and seriously penalizes an offending business while continuing to allow it to operate rather than shut down. Therefore, as the settlement strongly achieves the purpose and intention of PAGA, it

1 should be approved.

2 **G. CMO Section 3(h)—Additional Considerations.**

3 Defendant's agreement to be assessed PAGA penalties, along with the correction of the
4 underlying wage violation is exactly what the PAGA statutes sought to accomplish. See Sandoval Decl.,
5 at ¶16. Not only does this settlement recover penalties for the State and aggrieved employees,
6 importantly, it enforces the California Labor Code. *Id.* This is a material and meaningful addition to the
7 settlement approval.

8 **IV. CMO SECTION 4—PLAINTIFF'S REQUEST FOR REASONABLE ATTORNEYS'**
9 **FEES.**

10 Since the inception of this case, Counsel for Plaintiff commenced and continued to advance an
11 extensive and comprehensive investigation into the merits of the case. See Sandoval Decl., at ¶31.
12 After its initial investigation into the merits of Plaintiff's individual claims, Counsel for Plaintiff
13 sought additional records from Defendant and sent a PAGA letter to the LWDA. *Id.* Since contact
14 with Defendant was formally established, the parties have engaged in consistent, detailed, and
15 thorough discussions and evidentiary exchanges about the merits of this case. *Id.*

16 Overall, Counsel for Plaintiff performed an exhaustive investigation into the claims at issue,
17 which included: (1) determining Plaintiff's suitability as a private attorney general through legal
18 research, interviews, and analyses of her employment files and related records; (2) evaluating all of
19 Plaintiff's potential predicate claims for PAGA civil penalties; (3) researching similar wage and hour
20 actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing
21 each of the Defendant's employment policies and practices; (5) researching settlements in similar
22 cases as well as outstanding issues which could affect settlement approval; (6) analyzing time and
23 payroll records to determine Defendant's potential liability for each claim for purposes of settlement;
24 (7) preparing for mediation and drafting the mediation brief; and (8) participating in the mediation.
25 See Sandoval Decl., at ¶32. The extensive document and data exchanges have allowed Plaintiff's
26 Counsel to fully assess the nature and magnitude of the PAGA claims being settled, as well as the
27 impediments to recovery, to allow for an independent assessment of the reasonableness of the terms to
28 which the Parties have agreed. *Id.*

1 The Settlement Agreement specifically provides that Defendant shall not object to or oppose
2 an award of attorneys' fees in the amount of 33.33% of the settlement and actual costs incurred, which
3 is the amount sought by Plaintiff's Counsel, or \$58,275.00. See Exhibit "1" attached to Sandoval
4 Decl., at ¶2. Plaintiff also seeks \$5,600.65 in costs. See D'Abusco Decl., at ¶25.

5 Under California law, "when a number of persons are entitled in common to a specific fund,
6 and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or
7 preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund."
8 See *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ("*Serrano III*"). A common fund results when "the
9 activities of the party awarded fees have resulted in the preservation or recovery of a certain or easily
10 calculable sum of money-out of which sum or 'fund' the fees are to be paid." *Id.* at 35. Here, the
11 structure of the parties' Settlement Agreement creates a Maximum Settlement Amount that constitutes
12 a common fund (of \$175,000.00) out of which reasonable attorneys' fees will be paid.

13 California courts may employ the percentage-of-the-benefit method when calculating a
14 reasonable award of attorneys' fees in common fund actions. See *Lealao v. Beneficial Cal., Inc.* (2000)
15 82 Cal.App.4th 19, 26. The percentage-of-the-benefit method calculates attorneys' fees based on a
16 percentage of the benefit bestowed upon the class. *Id.* The percentage-of-the-benefit method is
17 generally preferred in common fund cases: "[B]ecause the percentage-of-the-benefit approach is
18 result-oriented rather than process-oriented, it better approximates the workings of the marketplace
19 than the lodestar approach." *Id.* at 48 (internal citations omitted).

20 Indeed, according to the Ninth Circuit "the primary basis of the fee award remains the
21 percentage method." See *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050; Silber and
22 Goodrich, Common Funds and Common Problems. Fee Objections and Class Counsel's Response, 17
23 Rev. Litig. 525, 534 (1998) (the percentage of the fund approach avoids numerous drawbacks of the
24 lodestar approach and is preferable because "the attorneys will receive the best fee when the attorneys
25 obtain the best recovery for the class. Hence, under the percentage approach, the class members and
26 the class counsel have the same interest - maximizing the recovery of the class."). It is thus well-
27 established law that counsel are entitled to a fee award based on a percentage of the total benefit
28 conferred on classes.

1 **1. Plaintiff's Counsel's Request for Attorneys' Fees and Costs is Equitable And**
2 **Fair.**

3 The Settlement provides attorneys' fees in the amount of \$58,275.00 to Plaintiff's Counsel. This
4 amount is fair and reasonable. Plaintiff is entitled to attorneys' fees as a matter of right under California
5 Labor Code §2699(g)(1), which provides that "[a]ny employee who prevails in any action shall be
6 entitled to an award of reasonable attorneys' fees and costs." See *Gouskos v. Aptos Village Garage, Inc.*
7 (2001) 94 Cal.App.4th 754, 765 (holding that attorneys' fees to prevailing party are mandatory when the
8 statute uses the word "shall"). It is undisputed that Plaintiff is the prevailing party. See *Graciano v.*
9 *Robinson Ford Sales* (2006) 144 Cal.App.4th 140, 153 ("[P]laintiffs may be considered 'prevailing
10 parties' for attorney's fee purposes if they succeed on any significant issue in the litigation that achieves
11 some of the benefit the parties sought in bringing suit." (internal citation omitted)).

12 In wage and hour class-action matters, as well as representative actions under the PAGA, the
13 calculation and award of attorneys' fees and costs from a common fund rests on equitable considerations
14 that assure fairness to the successful litigants and their counsel. See *Apple Computer Inc. v. Sup. Ct.*
15 (2005) 126 Cal.App.4th 1253, 126-1278. As stated in *In re Estate of Stauffer* (1959) 53 Cal.2d 124:

16 The bases of the equitable rule which permits surcharging a common fund with the
17 expenses of its protection or recovery, including counsel fees, appear to be these: fairness
18 to the successful litigant, who might otherwise receive no benefit because his recovery
19 might be consumed by the expenses; correlative prevention of an unfair advantage to the
20 others who are entitled to share in the fund and who should bear their share of the burden
21 of its recovery; encouragement of the attorney for the successful litigant, who will be
22 more willing to undertake and diligently prosecute proper litigation for the protection or
recovery of the fund if he is assured that he will be promptly and directly compensated
should his efforts be successful. *In re Estate of Stauffer*, 53 Cal. 2d at 132; See also
Serrano III, 20 Cal. 3d at 35; *Melendres v. City of Los Angeles* (1975) 45 Cal. App. 3d
267, 272-273.

23 The percentage of the fund approach heeds the Supreme Court's admonition that "[a] request for
24 attorneys' fees should not result in a second major litigation." See *Hensley v. Eckerhart* (1983) 461 U.S.
25 424, 437. No one set of factors has been prescribed by the California courts to evaluate the
26 reasonableness of the percentage-of-the-benefit requested in common fund settlements; instead, the goal
27 is to assess the reasonableness of the requested fee. See *In re Consumer Privacy Cases* (2009) 175
28 Cal.App.4th 545, 557. The lodestar approach may (but need not always) be used to assess

1 reasonableness. *Id.* To award attorneys' fees to Plaintiff's Counsel as a percentage of a common fund,
2 the Court must be able to: (1) sufficiently identify the class of beneficiaries under the settlement; (2)
3 accurately trace the benefits to be paid; and (3) shift the fee to those benefitting with some exactitude.
4 *Staton v. Boeing Co.*, 327 F.3d 938, 972; *see also Dunk*, 48 Cal.App.4th at 1809 (award of attorneys'
5 fees based on a percentage of a common fund may be used where the amount was a "certain or easily
6 calculable sum of money"). All three prerequisites for awarding attorneys' fees as a percentage of the
7 common fund are present in this case. First, the identities of the Aggrieved Employees and the LWDA
8 who will benefit from the judgment are known from the Aggrieved Employees list that was generated by
9 Defendant. Second, the benefits to be paid to each Aggrieved Employee can be traced from each
10 Aggrieved Employee's employment with Defendant, and the resulting alleged harm therefrom. There is
11 a record of all Aggrieved Employees to whom checks will be issued under the Settlement and the
12 amounts thereof. Third, because both the Aggrieved Employees and the LWDA are benefitting under the
13 Settlement and the benefits received by them are fully identifiable, the attorneys' fees will be shifted to
14 those benefitting under the Settlement with complete exactitude.

15 **2. Plaintiff's Counsel's Request For Attorneys' Fees Equal to 33.33% of the**
16 **Settlement Fund is Justified By the Circumstances of the Litigation.**

17 The relevant factors considered in determining whether a request for attorneys' fees and
18 costs is justified include: (1) the time and labor required of the attorneys; (2) the contingent nature
19 of the fee agreement, both from the point of view of eventual success on the merits and from the
20 point of view of securing an award; (3) the extent to which the nature of the litigation precluded
21 other employment by the attorneys; (4) the experience, reputation, and ability of the attorneys who
22 performed the services, and the skill they displayed in litigation; (5) the amount involved and the
23 results obtained; and (6) the informed consent of the client to the fee agreement. *See Serrano III*, 20
24 Cal. 3d at 49; *Dunk*, 48 Cal.App.4th at 1810 n.21; *Glendora Commonwealth. Redev. Agency v.*
25 *Demeter* (1984) 155 Cal.App.3d 465, 474. Consideration of each of these factors strongly favors
26 granting the attorneys' fees and costs award requested by Plaintiff's Counsel in this case.

27 **a. Time And Labor Required.**

28 The first consideration in awarding attorneys' fees is the time and labor Plaintiff's Counsel

1 has invested in the litigation. Plaintiffs' wage and hour PAGA claim required development of
2 extensive factual evidence through, among other things, a detailed and continuing investigation,
3 communications with counsel for Defendant, a review of Defendant's policies and procedures, a
4 review of voluminous time and pay records of Plaintiff and other aggrieved employees. To that
5 effect, Plaintiff's Counsel has spent more than 128.2 hours in the prosecution of this case to date.¹
6 See Sandoval Decl., at ¶33. Plaintiff's Counsel expects to incur additional hours in finalizing this
7 settlement and overseeing the distribution of funds to Aggrieved Employees and the Labor and
8 Workforce Development Agency. *Id.*

9 **b. Contingent Nature Of The Case and The Informed Consent Of The**
10 **Client.**

11 Plaintiff brought this action as an Aggrieved Employees pursuant to PAGA and has agreed to the
12 requested award of attorneys' fees. Further, Plaintiff's Counsel undertook this matter solely on a
13 contingency basis, with no guarantee of recovery, and agreed to advance all costs. See Sandoval
14 Decl., at ¶33. *See Glendora Community Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d
15 465, 472 (holding contingency fee agreement is factor in attorney fee award). Hence, from the
16 outset to the present, prosecution of this case has involved significant financial risk for Plaintiff's
17 Counsel. For example, Plaintiff's Counsel has had to pay overhead and costs while the case was
18 pending. *Id.*; See D'Abusco Decl., at ¶25. Had the case not settled, Plaintiff's Counsel would have
19 had to continue funding the litigation and the cost of maintaining their representation for an
20 undetermined amount of time, possibly many years.

21 **c. Preclusion Of Other Employment.**

22 As California case law recognizes, Plaintiff's Counsel's commitment to this litigation
23 should not be assessed in a vacuum. The time span of litigation and negotiation required to
24 resolve this case has prevented Plaintiff's Counsel from pursuing other work, particularly when
25 faced with investigating the claims in detail, preparing reasonable liability analyses, and
26

27 ¹ Plaintiff's Counsel each have a billable rate of \$650.00 per hour. This rate was just approved by Los Angeles County
28 Superior Court (Case No. 19STCV39303) on June 10, 2021. See D'Abusco Decl., at ¶24. Plaintiff's Counsel's rates have
been previously approved by Courts in Riverside, Los Angeles, and San Bernardino Counties as well as the United States
District Court—Central District. *Id.* Thus, using the Lodestar Method, Plaintiff's Counsel's requested fee of 33.33% of the
Fund amounts to less than the total fees billed, and to be billed, on this matter (\$83,330.00) without a multiplier.

1 actively participating in mediation. See Sandoval Decl., at ¶34. Additional work was available
2 that Plaintiff's Counsel had to forego to devote the time necessary to pursue this litigation. *Id.*

3 **d. The Experience, Reputation, Ability, And The Skill Displayed By**
4 **Counsel In Litigation.**

5 The experience and ability of Plaintiff's Counsel was essential to success in this litigation.
6 See D'Abusco Decl., at ¶¶10-20; See Sandoval Decl., at ¶¶17-30. Only counsel well versed in
7 representative and complex litigation and employment law could effectively marshal the evidence
8 gathered in this complicated case to reach such a prompt and favorable resolution. Protracted
9 litigation would make settlement more cumbersome and uncertain because of the increased costs
10 and attorneys' fees invested in the case by the litigants. This settlement provides a fair, adequate
11 and reasonable recovery to the State of California and aggrieved employees.

12 **e. The Results Achieved.**

13 As provided above, the results of this Settlement are favorable to the Aggrieved Employees
14 and the LWDA. As set forth above, the agreed upon settlement represents a recovery of
15 approximately 65% of liability exposure for the State of California and Aggrieved employees. In
16 addition. Thus, this result fully ameliorates the alleged harm and represents a strong result that justifies
17 a fee of 33.33% of the settlement amount.

18 **3. The Parties' Settlement Of Attorneys' Fees Is Reasonable In Light Of**
19 **Plaintiff's Counsel's Lodestar.**

20 In fixing fees under the lodestar method, successful attorneys should recover "all attorney fees
21 reasonably expended, without limiting the fees to a proportion of [the] actual recovery." See *Graciano v.*
22 *Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 164. "[T]here is 'no mathematical rule requiring
23 proportionality between compensatory damages and attorneys' fees award.'" *Harman v. City and*
24 *County of San Francisco* (2007) 158 Cal.App.4th 407, 421 (citation omitted). For instance, in *Harman*,
25 the court affirmed a fee award of \$1.1 million on damages of \$33,300 under the Civil Rights Act after
26 determining that it cannot be tied to a proportion of the recovery. *Id.* at 419-22.

27 The non-proportionality rule applies with equal force to PAGA cases. This was made clear by an
28 award in a relatively recent arbitration where retired Federal District Judge James Larson awarded

1 statutory fees of \$978,505.00 to plaintiffs on PAGA penalties totaling \$230,000.00, in an action that
2 initially sought recovery through the class action device. See *Williams v. Veolia Transp.* (Feb. 10, 2015)
3 JAMS Ref. No.1220048226. Likewise, the non-proportionality rule applies generally to attorneys
4 prosecuting employment cases. See, e.g., *Taylor v. Nabors Drilling U.S.A.* (2014) 222 Cal.App.4th 1228
5 (affirming \$680,520.00 in attorneys’ fees on a \$150,000.00 recovery in an employment discrimination
6 case). In determining the reasonableness of statutory fees, the court should apply the lodestar method.
7 See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136 (holding that the court should “presume that the
8 Legislature intended courts to use the prevailing lodestar adjustment method” in fixing statutory fees).
9 This method most effectively compensates successful counsel for “all the hours reasonably spent.” *Id.*
10 at 1133. The base lodestar is produced by multiplying the number of hours reasonably expended by
11 counsel by a reasonable hourly rate. *Id.* at 1134-36. The base lodestar then may be adjusted by a
12 multiplier to account for contingent risk and other factors.

13 For hourly rates, the Court must evaluate whether that rate is “within the range of reasonable
14 rates charged by and judicially awarded comparative attorneys for comparable work.” *Children’s*
15 *Hospital & Med. Ctr. v. Bontá* (2002) 97 Cal.App.4th 740, 783. Determination of a reasonable rate is
16 derived from the community “where the services are rendered.” *MBNA Am. Bank v. Gorman* (2006) 147
17 Cal.App.4th Supp. 1, 13. Plaintiff’s Counsel’s rates are reasonable and within the range of similar
18 attorneys in the Southern California area where the services are rendered and where the action was
19 litigated. Courts have recently approved Plaintiff’s counsel requested hourly rates in Los Angeles
20 County, Riverside County, San Bernardino County, and the United States District Court—Central
21 District of California (2018). See D’Abusco Decl., at ¶24. Likewise, Plaintiff’s counsel is aware that
22 their rates are commensurate with other attorneys with similar experience and expertise. *Id.* As the
23 requested rates are within the range of market rates, they should be approved. See *United Steelworkers*
24 *of America v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407, citing *Chalmers v. City of Los*
25 *Angeles* (9th Cir. 1986) 796 F.2d 1205, 1214, amended, 808 F.2d 1373 (9th Cir. 1987) (“Affidavits of
26 the plaintiff’s attorney and other attorneys regarding prevailing fees in the community, and rate
27 determinations in other cases, particularly those setting a rate for the plaintiff’s attorney are satisfactory
28 evidence of the prevailing market rate.”).

1 In evaluating hours worked, the general principle is that “the attorney who takes [a statutory fee-
2 shifting] case can anticipate receiving full compensation for every hour spent litigating a claim even
3 against the most polemical opponent.” See *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128,
4 1175. However, courts should not be “enmeshed in a meticulous analysis of every detailed facet of the
5 professional representation.” See *Serrano v. Unruh* (1982) 32 Cal.3d 621, 642. Rather, “[t]he essential
6 goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection.” See *Fox*
7 *v. Vice* (2011) 131 S.Ct. 2205, 2216. In determining the reasonableness of the hours expended, “the
8 court should defer to the winning lawyer’s professional judgment as to how much time he was required
9 to spend on the case; after all, he won, and might not have, had he been more of a slacker.” See *Kerkeles*
10 *v. City of San Jose* (2015) 243 Cal.App.4th 88, 196 (quoting *Moreno v. City of Sacramento* (9th Cir.
11 2008) 534 F.3d 1106, 1112). Whether attorneys expended reasonable hours in pursuit of the litigation is
12 the major building block of any fee award. See *Serrano v. Unruh*, 32 Cal.3d at 632 (“absent facts
13 rendering the award unjust, parties who qualify for a fee should recover for all hours reasonably
14 spent.”). Typically, all time reasonably spent by prevailing attorneys during the course of litigation
15 should be awarded if it is the type of work that would be paid by a fee-paying client. *Hensley v.*
16 *Eckerhart* (1983) 461 U.S. 424, 431.

17 Here, Plaintiff’s counsel, Matt D’Abusco and Cynthia Sandoval have spent over 128.2 hours
18 litigating this Action, not including the hours to be spent in efforts to finalize the settlement and oversee
19 distribution. See Sandoval Decl., at ¶33. Thus, multiplying Plaintiff’s Counsel’s hourly rates by hours
20 billed to the litigation to date (not including anticipated additional work on this case, such as supervising
21 the administration of the settlement) yields a lodestar of \$88,330.00, *with no multiplier*—which is
22 \$25,055.00 **more** than is being requested by this Motion. *Id.* Thus, although Plaintiff’s Counsel would
23 otherwise be entitled to a positive multiplier of 1.5 or higher on their lodestar to compensate them for
24 contingent risk, ***they have negotiated fees reflecting an amount less than their lodestar, underscoring***
25 ***the reasonableness of the negotiated amount.*** Therefore, in summary, the Court should find that
26 amount allocated in the settlement for attorneys’ fees is reasonable.

27 **4. Plaintiff is Aware of the Agreed-Upon Fees.**

28 Plaintiff was advised of the fee arrangement and agreed upon it in the written Settlement

Agreement. See Sandoval Decl., at ¶35.

5. Fee Splitting.

Plaintiff's Counsel received this case by referral from another attorney. See Sandoval Decl., at ¶36. Plaintiff intends to pay the attorney a referral fee of \$11,650.00 (20% of the requested fees) out of its fee award. *Id.* The referral fee will only be paid from awarded fees and will not be deducted from any other amount in the settlement. *Id.*

B. Plaintiff's Counsel Is Entitled to Reimbursement of Costs.

Plaintiff's Counsel is also entitled to reimbursement of its discretionary litigation costs. California Labor Code Section 2699(g)(1). Out-of-pocket discretionary expenses are compensable if they would normally be billed to a fee-paying client. See *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1419, *overruled in part on other grounds in Olson v. Automobile Club of Southern Calif.* (2008) 42 Cal.4th 1142. Such discretionary costs may be claimed as part of an attorneys' fees motion when seeking statutory fees under the Labor Code. See *Amaral*, 163 Cal.App.4th at 1218, n. 27 (awarding costs that are necessarily incurred). The following chart reflects the costs incurred by Plaintiff's Counsel:

Date	Fee	Explanation
November 10, 2020	\$1,627.00	Initial PAGA Filing Fee (\$1,450.00) + First Legal Court Service Fee (\$177.00)
January 19, 2021	\$32.00	PAGA Joint Report Filing Fee
February 10, 2021	\$32.00	Notice of Acknowledgement of Service of Complaint Filing Fee
April 22, 2021	\$32.00	OSC Declaration Filing Fee
June 11, 2021	\$3,625.00	Judge Firmat Mediation Fee
July 2, 2021	\$66.00	Motion for Approval (July 2020) Filing Fee
July 28, 2021	\$100.95	Motion for Approval (October 2020) Filing Fee
October 4, 2021	\$85.70	PAGA Joint Report Filing Fee (\$34.95 + \$50.75 for courtesy copies)
TOTAL	\$5,600.65	

As indicated above, Plaintiff's Counsel advanced \$5,600.65 in out-of-pocket costs for filing fees and mediation fees. See D'Abusco Decl., at ¶25 (true and correct copies of all invoices for filing fees are attached as Exhibit "1" thereto). Because these reasonable costs were necessarily incurred during the case's pendency, they should be reimbursed to Plaintiff's Counsel.

V. CMO SECTION 5—INDIVIDUAL SETTLEMENT

On July 30, 2020, Plaintiff submitted a Demand for Arbitration against Defendant setting forth claims for: (1) pregnancy/sex discrimination in violation of the California Fair Employment and Housing Act ("FEHA"); (2) harassment in violation of FEHA; (3) retaliation in violation of FEHA; (4) failure to accommodate and failure to engage in the interactive process in violation of FEHA; (5) failure to prevent discrimination, harassment and retaliation in violation of FEHA; (6) wrongful termination in violation of public policy; (7) defamation; (8) failure to pay wages; (9) failure to timely pay wages; and (10) failure to provide accurate itemized wage statements. See Sandoval Decl., at ¶37. Plaintiff and Defendant resolved all these claims by way of a Confidential Settlement Agreement and General Release at mediation contingent upon the approval of this settlement. *Id.*

VI. CMO SECTION 6—PLAINTIFF'S REQUEST FOR AN ENHANCEMENT FEE.

A. CMO Sections 6(i) and (ii)—The Time and Work Plaintiff Invested in this Matter.

Both the State of California and all 191 Aggrieved Employees are beneficiaries of a settlement that would not have been made possible but for the effort and commitment of Plaintiff. Plaintiff significantly assisted in the prosecution of this matter, actively participating in the case and, among other things, serving as private attorney general under PAGA, assisting counsel with the investigation, litigation, and settlement, regularly conferring with counsel on the status of the case and the strategies for prosecuting the claims, participating in mediation, continuing to work through the settlement negotiation process, and reviewing the proposed settlement to ensure that its terms are fair and achieve PAGA's objectives. See Barrett Decl., at ¶¶4-7. Plaintiff estimates that, during this litigation, she has spent approximately thirty (30) hours working on her case against Defendant. See Barrett Decl., at ¶8.

B. CMO Sections 6(iii) and (iv)—The Risks of Serving as a PAGA Representative.

Plaintiff resides in the Coachella Valley, which is a relatively small community. See Barrett Decl., at 8. Plaintiff feared that her participation as a PAGA representative may result in repercussions

1 effecting her working career because she chose to stand up and pursue what she believed was right. *Id.*
2 Although Plaintiff has not suffered any adverse consequences to date, she remains concerned about
3 prospective employers may be able to find out whether she was involved in a lawsuit either through the
4 public nature of this litigation or future communications with Defendant and/or its employees. *Id.*

5 **C. CMO Section 6(v)—Plaintiff's Actual Expenses.**

6 Plaintiff did not suffer any actual expenses in proceeding with this litigation. See Barrett Decl.,
7 at 9. She did, however, miss the majority of a day of work while working closely with her attorneys
8 while participating in mediation. See Barrett Decl., at ¶9.

9 **D. CMO Section 6(vi)—Plaintiff Has Never Been a Named Plaintiff in a PAGA Case.**

10 Plaintiff has never been a named Plaintiff in any other PAGA case. See Barrett Decl., at ¶10.

11 **E. The Service Award is Fair and Reasonable.**

12 Here, Plaintiff requests a \$5,000.00 service award. The amount of the requested service award is
13 reasonable by reference to, and was negotiated in view of, amounts the California Superior Court has
14 repeatedly approved for PAGA settlements. See *Blanchard v. BJ's Restaurants, Inc.* (Orange County
15 Superior Court, Sept. 26, 2016) No. 30-2014-00761961-CU-OE-CXC (approving \$10,000 service
16 award); *Bui v. Vitamin Shoppe Industries Inc.*, No. BC518486 (Los Angeles County Superior Court,
17 Aug. 31, 2016) (approving \$10,000 service award); *Jesus Miranda v. HomeDeliveryLink, Inc.* (San
18 Bernardino County Superior Court, Aug. 9, 2016) No. CIV DS1505393 (approving \$10,000 service
19 award); *Mohamad Najjar v. Calop Business Systems, Inc. d/b/a Calop Aeroground Service* (Los Angeles
20 County Superior Court, April 5, 2016) No. BC582290 (approving \$10,000 service award).

21 Other considerations also support the service award. First, the service award is justified in light
22 of the reputational risk that Plaintiff has assumed by litigating claims against a former employer. See
23 *Bellinghausen v. Tractor Supply Co.*, (N.D. Cal. 2015) 306 F.R.D. 245, 267-68 (finding “personal
24 detriment” upon testimony that future employers can easily learn that a prospective employee served as
25 a plaintiff through the internet); *see also Guippone v. BH S&B Holdings LLC* (S.D.N.Y. Oct. 28, 2011)
26 No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026, at *4, 20 (“[T]he fact that a plaintiff has filed a
27 federal lawsuit is searchable on the internet and may become known to prospective employers when
28 evaluating the person . . . Even where there is not a record of actual retaliation, notoriety, or personal

difficulties, [representative Plaintiffs] merit recognition for assuming the risk of such for the sake of absent [parties].”). Employers commonly screen employee candidates to determine whether they have ever filed suit, and employee candidates who might be branded “litigious” are likely to be screened out of the process. In fact, an entire industry has developed for providing employers with background information on employee candidates. This included websites that specifically name plaintiffs who have brought PAGA claims. By bringing this action against an employer, Plaintiff has assumed considerable reputational risk that may impact her ability to find employment in the future. See *La Fleur v. Medical Management Intern, Inc.* (C.D. Cal. June 25, 2014) No. 13-00398-VAP, 2014 WL 2967475, *8 (awarding \$15,000 to each named plaintiff in part for attesting to their fear that the lawsuit will harm their future job prospects in the industry).

Second, the service award is reasonable because Plaintiff “remained fully involved and expended considerable time and energy during the course of the litigation.” See *In re Toys ‘R’ Us-Del FACTA Litig.* 295 F.R.D. at 471 (citation omitted). Plaintiff expended considerable time and effort assisting her attorneys with the prosecution of the claims, responding and participating in discovery, and her unique contributions to the litigation should be rewarded. The service award is appropriate because Plaintiff otherwise “will not gain any benefit beyond that he [or she] would receive as an ordinary [Aggrieved Employee].” See *In re Toys “R” Us FACTA Litig.* 295 F.R.D. at 472; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299 (holding that a substantial award is appropriate where a [representative’s] claim made up “only a fraction of the common fund.”). Here, absent the service award, Plaintiff will recover no more than other Aggrieved Employees in the PAGA settlement, despite undergoing personal sacrifice in bringing this suit on behalf of the State of California and Aggrieved Employees. Thus, the proposed service award is reasonable and justified.

VII. CMO SECTION 7—THE DISMISSAL OF REPRESENTATIVE CLAIMS.

A. CMO Sections 7(a) and (b)—Aggrieved Employees Will Not Be Prejudiced.

As discussed in Section VII, below, the release included in the Settlement Agreement only releases Plaintiff and the LWDA from the prosecution of claims for PAGA penalties related to the exact violations set forth in Plaintiff’s July 23, 2020 PAGA letter. As a result, the rights of individual aggrieved employees to prosecute any individual claims is unaffected. The only claim being released is

1 for PAGA penalties sought by Plaintiff’s PAGA letter. Neither Plaintiff, nor Plaintiff’s Counsel, have
2 communicated with aggrieved employees about this case since PAGA does not provide for individual
3 opt-outs. See *Sakkab v. Luxottica Retail North America, Inc.* (2015) 803 F.3d 405. Aggrieved
4 employees will, however, receive notice from the Third-Party Administrator explaining the case and
5 their specific recovery.

6 **VIII. CMO SECTION 8—RELEASE OF PAGA PENALTIES.**

7 **A. CMO Section 8(a) through (c)—The Agreement Binds Only Plaintiff and the State.**

8 The Settlement Agreement contains the following release language which mirrors the Section
9 8(d) of the Court’s CMO with revision only to specify the date of the PAGA Letter and Defendant’s
10 name: “Upon the Effective Date, Plaintiff on behalf of herself and the State of California only, releases
11 all claims and statutory penalties against Defendant Sierra Pacific Mortgage Company, Inc. (“Released
12 Party”) that could have been sought by the Labor Commissioner for the violations identified in
13 Plaintiff’s pre-filing January 23, 2020 letter to the LWDA (“Released Claims”). Plaintiff does not
14 release any aggrieved employee’s claim for wages or damages.” This releases only Plaintiff and the
15 State of California.

16 **B. CMO Section 8(d)—Draft Release Language.**

17 Plaintiff and Defendant agreed to a release that mirrors the Court’s CMO with revisions only to
18 include the date of Plaintiff’s PAGA letter and Defendant’s legal name.

19 **IX. CMO SECTION NO. 9—SETTLEMENT ADMINISTRATOR.**

20 **A. CMO Section No. 9(a)—Simpluris Was the Lowest TPA Bid.**

21 The Parties propose that the Court appoint Simpluris Settlement Administrators to serve as the
22 Settlement Administrator. See D’Abusco Decl., at ¶26. Counsel for Plaintiff sought three (3) separate,
23 updated bids for the administration of this PAGA Settlement. *Id.* All were from third party
24 administrators experienced in administering class action and representative settlements. *Id.* Simpluris
25 provided the lowest bid for administration and, in conjunction with their experience, was selected as the
26 third party administrator. *Id.*

27 **B. CMO Section No. 9(b)—Simpluris is an Experienced Administrator.**

28 Simpluris has extensive experience in class action matters, having provided services in class

1 action settlements involving antitrust, securities fraud, property damage, employment discrimination,
2 employment wage and hour, product liability, insurance and consumer issues. See the Declaration of
3 Michael Bui (“Bui Decl.”) at ¶2. Simpluris specializes in pre-settlement consultation, data
4 management, legal notification, call center support, claims processing and tax reporting. *Id.*

5 Simpluris has provided notification and/or claims administration services in more than 5,000
6 cases. Of these, more than 3,000 were Labor & Employment cases. See Bui Decl., at ¶3. Over the past
7 10 years, Simpluris has handled approximately \$600 million in settlements. *Id.* Thus, Simpluris is an
8 experienced, recognized, and effective third-party administrator in PAGA cases.

9 **X. CMO SECTION 10—THE PARTIES WILL USE AN ADMINISTRATOR.**

10 As discussed in Section IX, the parties intend to use a settlement administrator in this case.

11 **XI. CMO SECTION 11—UNCASHED CHECKS WILL GO TO THE STATE**
12 **CONTROLLER’S OFFICE.**

13 Section V(C)(6) of the Settlement Agreement provides that any aggrieved employee who does
14 not cash their penalty check will have it escheat to the California State Controller’s Office—Unclaimed
15 Property Division. See Sandoval Decl., at ¶38. On October 20, 2021, the State Controller’s Office—
16 Unclaimed Property Division confirmed to Counsel for Plaintiff that it would accept uncashed checks on
17 behalf of aggrieved employees. See D’Abusco Decl., at ¶27. Accordingly, the third-party administrator
18 will send any uncashed checks to the State Controller’s Office—Unclaimed Property Division to hold in
19 trust for each aggrieved employee.

20 **XII. CMO SECTION 12—FINAL ACCOUNTING HEARING.**

21 Plaintiff hereby requests the Court set a final accounting hearing for 240 days following the
22 approval of this settlement to allow for full execution of the settlement and a report to be prepared by the
23 administrator.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **XIII. CONCLUSION.**

2 The Parties have negotiated a fair and reasonable settlement of Plaintiff's claims. Having
3 appropriately presented the materials and information necessary for approval, the Parties request that the
4 Court approve the settlement and enter judgment as requested forthwith.

5 DATED: December 3, 2021

ARES LAW GROUP, P.C

6
7 By:



Matthew S. D'Abusco

Cynthia S. Sandoval

Attorneys for Plaintiff AMBER BARRETT, as an
aggrieved employee pursuant to the Private Attorneys
General Act ("PAGA")