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Superior Court of California,
County of Alameda

08/02/2022 at 02:04:21 PM

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

CASEY TROYER, an aggrieved employee, on
behalf of himself and other current and former
employees,

Plaintiff,

v.

THE YERBA MATE CO., LLC, a limited
liability company; GUAYAKI SUSTAINABLE
RAINFOREST PRODUCTS, INC., a
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: RG20074741

[Assigned for all purposes to Hon. Patrick R.
McKinney II, Dept. 15]

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, ET SEQ.)
SETTLEMENT AGREEMENT AND
AWARD OF ATTORNEYS' FEES,
LITIGATION COSTS, AND INCENTIVE
PAYMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: August 23, 2022

Time: 1:30 p.m.

Place: Dept. 15

Reservation Number: 144871586153

1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on August 23, 2022, at 1:30 p.m., or as soon thereafter as
3 the matter may be heard in Department 15 of the Superior Court, County of Alameda,
4 Administration Building, located at 1221 Oak Street, Oakland, California, 94612, Plaintiff
5 Casey Troyer (“Plaintiff”) will, and hereby does, move for entry of the following orders:

6 1. Granting approval, pursuant to California Labor Code section 2699(1), of the
7 proposed settlement between Plaintiff and Defendants of the claims brought pursuant to the
8 Private Attorneys General Act of 2004 (“PAGA”) as set forth in the parties’ PAGA Settlement
9 and Release Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as
10 “EXHIBIT 1” to the Declaration of Kenneth H. Yoon;

11 2. Approving the Net PAGA Settlement Amount available for payment of PAGA
12 penalties, which is estimated to be \$71,014.91, of which seventy-five percent (75%) shall be
13 paid to the California Labor and Workforce Development Agency (“LWDA”) and twenty-five
14 percent (25%) shall be paid to PAGA Settlement Group Members in settlement of the Released
15 PAGA Claims;

16 3. Directing Defendants to deposit the Total PAGA Settlement Amount of
17 \$130,000 within fifteen (15) business days after the Effective Date into a settlement fund to be
18 established by the Settlement Administrator by wire transfer. Within five (5) business days after
19 Defendants deposit the Total PAGA Settlement Amount into a settlement fund, the Settlement
20 Administrator will issue payments to PAGA Settlement Group Members, the LWDA, Plaintiff,
21 and Plaintiff’s Counsel;

22 4. Directing the mailing of payments to PAGA Settlement Group Members under a
23 letter which is substantially similar in content and form as the Notice of PAGA Settlement and
24 Release Agreement attached as Exhibit A to the PAGA Settlement and Release Agreement;

25 5. Awarding \$10,000 to Plaintiff Casey Troyer as an incentive payment; and

26 6. Awarding to Plaintiff’s Counsel, Yoon Law, APC, \$43,333.33 as compensation
27 for reasonable attorneys’ fees, costs up to \$10,000 (actual requested amount being \$1,651.76)
28

1 incurred in litigating the PAGA claim pursuant to California Labor Code § 2699(g)(1) and
2 California Code of Civil Procedure § 1021.5;

3 This motion will be based upon the following Memorandum of Points and Authorities,
4 the Settlement Agreement, the Declarations of Plaintiff's Counsel (Kenneth Yoon) and Plaintiff
5 Casey Troyer in support thereof, the pleadings and other records on file with the Court in this
6 matter, and such evidence and oral argument as may be presented at the hearing on this motion.
7

8 Dated: August 1, 2022

YOON LAW, APC

9
10 /s/ Kenneth H. Yoon

11 Kenneth H. Yoon
12 Attorneys for Plaintiff Casey Troyer
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND BACKGROUND**

3 Under California Labor Code § 2699(l)(2), Plaintiff Casey Troyer (“Plaintiff”) seeks
4 approval of the Private Attorneys General Act (Cal. Lab. Code § 2698, et seq.) Settlement
5 Agreement and Release Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”)
6 entered into by and between Plaintiff, on behalf of himself, PAGA Settlement Group Members¹
7 and the State of California Labor and Workforce Development Agency (“LWDA”) and
8 Defendants The Yerba Mate Co., LLC and Guayaki Sustainable Rainforest Products, Inc.
9 (“Defendants”).²

10 Subject to Court approval, Plaintiff and Defendants have agreed to resolve Plaintiff’s
11 action, brought pursuant to the California Labor Code Private Attorneys General Act of 2004, as
12 amended, California Labor Code § 2698, et seq. (“PAGA”) for a Total PAGA Settlement
13 Amount of \$130,000. The Total PAGA Settlement Amount is inclusive of: (a) settlement
14 administrative costs; (b) Plaintiff’s incentive payment; (c) all PAGA Settlement Shares to
15 PAGA Settlement Group Members (d) payment to the LWDA, and (e) payments for Plaintiff’s
16 Counsel’s attorneys’ fees and costs. (Settlement at ¶ IV.C.)

17 The Net PAGA Settlement Amount shall be the Total PAGA Settlement Amount less
18 deduction for settlement administration costs, Plaintiff’s incentive payment, and Plaintiff’s
19 Counsel’s attorneys’ fees and costs, and is currently estimated to be \$71,014.91. Seventy-five
20 percent (75%) of the Net PAGA Settlement Amount will be paid to the LWDA (“LWDA
21 Payment”), and twenty-five percent (25%) will be paid to all PAGA Settlement Group Members
22 pursuant to Labor Code § 2699(i) (“Employee Portion”). (Settlement at ¶ IV.G.) The Employee
23 Portion will be paid out to PAGA Settlement Group Members pro rata, based on each PAGA
24 Settlement Group Members’ number of pay periods worked during the Covered Period.

25 To determine PAGA Settlement Group Member’s PAGA Settlement Share, the

26 _____
27 ¹ “PAGA Settlement Group Members” means delivery driver hacedores like plaintiff
28 classified as exempt from overtime under California’s outside salesperson
exemption during the Covered Period. (Settlement at ¶ I.N.)

² The Settlement Agreement is attached as “Exhibit 1” to the Declaration of Kenneth Yoon
 (“Settlement Agreement”).

1 Settlement Administrator will be based on their number of pay periods worked compared to all
2 pay periods worked by PAGA Settlement Group Members during the Covered Period.
3 (Settlement at ¶ IV.G.)

4 Plaintiff submits that the proposed Settlement is fair, adequate, and reasonable, and
5 meets the requirements for Court approval based upon the relevant fairness factors, the relative
6 strengths of the PAGA claim and range of outcomes in the litigation, the risk, expense, and
7 complexity of further litigation, the benefit conferred by the proposed Settlement, the scope of
8 the release, the experience and views of counsel, and the reasonableness of the Net PAGA
9 Settlement Amount, Attorneys' Fees and Costs, and Incentive Payment. Plaintiff respectfully
10 requests that this Court approve the Settlement and award the attorneys' fees and costs,
11 Settlement Administration costs, and Incentive Payment which are provided by the Settlement
12 and requested herein.

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

14 Plaintiff was a delivery driver (called a "hacedor" by Defendants) who has asserted a
15 single PAGA cause of action against Defendants, on behalf of himself and other current and
16 former hacedors who worked for Defendants in California.³ Plaintiff's core allegation is that
17 Defendants has systematically violated the California Labor Code, with respect to Plaintiff and
18 PAGA Settlement Group Members by improperly classifying them as exempt outside
19 salespersons and thus failed to comply with Labor Code provisions that require they be treated
20 and compensated as non-exempt employees.

21 Prior to commencing this lawsuit, as required by Labor Code § 2699.3, on or about July
22 20, 2020 (amended on September 23, 2020), Plaintiff provided the LWDA with written notice
23 of his intent to assert a claim under PAGA and the basis for that claim. After more than sixty-
24 five (65) days elapsed without Plaintiff receiving any response from the LWDA, in conformity
25 with the requirements under the PAGA statute, on September 23, 2020, Plaintiff filed a
26

27 ³ Plaintiff's Complaint describes non-exempt employees. However, the Agreement
28 identifies the settlement being for delivery driver hacedores like plaintiff classified as exempt
from overtime under California's outside salesperson exemption during the Covered Period.
(Settlement at ¶ I.N.)

1 Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code §
2 2698, *et seq.* (“Complaint”).

3 Separately, on July 21, 2020, Plaintiff also filed a putative class action in Alameda
4 County Superior Court, Case No. RG20068307, on behalf of non-exempt employees. That case
5 was removed to the U.S. District Court for the Northern District of California and was assigned
6 to the Honorable William Alsup. The case was heavily litigated in a short period of time, with
7 the court certifying a class after contested motion. After two settlement conferences with
8 Magistrate Judge Donna M. Ryu and a mediation session with Steve Serratore, the parties
9 settled the class action as well as this Action. The terms of the class settlement were for the
10 class of delivery driver hacedores like Plaintiff classified as exempt from overtime under
11 California’s outside salesperson exemption from April 6, 2016 to April 11, 2021. Ultimately,
12 the class settlement was for a gross amount of \$2,579,287.20 for the class comprised of 450
13 members (448 after 2 opt outs). Plaintiff requested \$617,500 for fees and a \$10,000
14 enhancement. The enhancement granted was \$2,000. (Yoon Decl. ¶ 11.)

15 Plaintiff now moves for an order granting approval of the Settlement pursuant to Labor
16 Code § 2699(l)(2).

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

18 **A. Aggrieved Employees**

19 The aggrieved employees who are covered by the Settlement are labelled “PAGA
20 Settlement Group Members” and are defined as “delivery driver hacedores like plaintiff
21 classified as exempt from overtime under California’s outside salesperson exemption during the
22 Covered Period.” (Settlement at ¶ I.N.)

23 The number of PAGA Settlement Group Members, per communications with
24 Defendant’s counsel, are 361. (Settlement at ¶ IV.B.)

25 **B. Distribution of the Total PAGA Settlement Amount**

26 Under the terms of the proposed Settlement, Defendants will pay a Total PAGA
27 Settlement Amount of \$130,000. The Net PAGA Settlement Amount will be Total PAGA
28 Settlement Amount, less the following amounts: (1) settlement administration costs of \$4,000;

(2) Plaintiff's incentive payment of \$10,000; (3) Plaintiff's Counsel's attorneys' fees of \$43,333.33 and (4) litigation costs up to \$10,000 (the actual amount is \$1,651.76). Twenty-five percent (25%) of the Net PAGA Settlement Amount will be distributed pro rata to PAGA Settlement Group Members, with the remaining seventy-five percent (75%) of the Net PAGA Settlement Amount being transmitted to the LWDA, pursuant to Labor Code § 2699(i).

C. Distribution of Settlement Payments

The Settlement shall be effective 10 days after Plaintiff submits a copy of the Court Order approving the Settlement ("Effective Date"), assuming absence of any effort to obtain review of the order. (Settlement at ¶ I.H.) Within ten (10) business days after the Effective Date, Defendants shall provide the Settlement Administrator with a list of PAGA Settlement Group Members (the "PAGA Settlement Group Members List"). (*Id.* at ¶ IV.O.1.) The PAGA list shall state each person's (1) full name, (2) last known address, (3) last known phone number, (4) social security number, and (5) start and end dates of employment. (*Id.*)

Prior to mailing the Individual PAGA Settlement Shares with the PAGA Settlement Group Member Cover Letter (the "Letter," attached to the Settlement Agreement as "Attachment A"), the Settlement Administrator will perform a search based on National Change of Address database for information to update and correct for any known or identifiable address changes. (Settlement at ¶ IV.O.3.) If any Individual PAGA Settlement Shares and Letters are returned as undeliverable, the Settlement Administrator shall attempt one remailing to a forwarding address or an address discovered by skip trace search or to the original address. (*Id.*) With regard to any person whose Individual PAGA Settlement Share remains uncashed, the Settlement Administrator will distribute the funds to Legal Aid at Work. (*Id.* at ¶ IV.O.4.)

Within fifteen (15) business days after the Effective Date, Defendants will deposit the Total PAGA Settlement Amount into a settlement fund to be established by the Settlement Administrator by wire. (Settlement at ¶ IV.P.) The Settlement Administrator shall issue payments to PAGA Settlement Group Members, the LWDA, Plaintiff, and Plaintiff's Counsel within five (5) business days of receipt. (*Id.*)

The Net PAGA Settlement Amount is currently estimated to be \$71,014.91, assuming

1 \$1,651.76 for litigation costs. In conformity with the PAGA statute, seventy-five percent (75%)
2 of the Net PAGA Settlement Amount shall be distributed to the LWDA for its share of the
3 PAGA penalties (“LWDA Payment”), and the remaining twenty-five percent (25%) shall be
4 paid to PAGA Settlement Group Members in settlement of the Released PAGA Claims.
5 Individual Settlement Payments will be calculated and apportioned from the 25% portion based
6 on the number of Pay Periods a PAGA Settlement Group Member worked during the Settlement
7 Period. (Settlement at ¶ I.G.)

8 All Individual PAGA Settlement Shares will be allocated to alleged civil penalties. If the
9 Individual PAGA Settlement Shares exceeds the relevant threshold, an IRS Form 1099-MISC
10 will be issued, and the Settlement Administrator will issue all such forms. (Settlement at ¶ I.G.)
11 PAGA Settlement Group Members will be solely responsible for the payment of any and all tax
12 penalties assessed on the payments. (*Id.*)

13 **D. The Scope of the Release in the Settlement Agreement**

14 The “Released Parties” are Defendants The Yerba Mate Co., LLC and Guayaki
15 Sustainable Rainforest Products, Inc. as named by Plaintiff in the operative complaint, and their
16 past, present and/or future, direct and/or indirect, officers, directors, members, managers,
17 employees, agents, representatives, attorneys (excluding FordHarrison LLP), insurers,
18 reinsurers, partners, investors, shareholders, administrators, parent companies, subsidiaries,
19 divisions, predecessors, successors, assigns, and joint venturers. (Settlement at ¶ I.S.)

20 The “Released PAGA Claims” include: “any action under the California Labor Code
21 Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, et seq., against, the
22 Released Parties, alleged or that could have been alleged against Defendant and the Released
23 Parties based on or arising out of the facts, circumstances, and primary rights set forth in the
24 July 20, 2020 letter at issue in the Complaint.”

25 In addition, Plaintiff Troyer has, for himself only, agreed to a full release of Released
26 Claims, including his rights under Section 1542 of the California Civil Code. (Settlement at ¶
27 V.S.)

1
2 **E. No Right to Object to, or Opt Out of, the Settlement**

3 “[A] PAGA action is a statutory action for penalties brought as a proxy for the state,
4 rather than a procedure for resolving the claims of other employees, there is no need to protect
5 absent employees’ due process rights[.]” *Williams v. Superior Court*, 3 Cal. 5th 531, 546
6 (2017). “[U]nlike a class action, PAGA has no notice requirements for unnamed aggrieved
7 employees, nor may such employees opt out of a PAGA action.” *Turrieta v. Lyft, Inc.*, 69 Cal.
8 App. 5th 955, 974 (2021). A representative PAGA action need not satisfy class action
9 requirements, and no due process concern arises from the fact that there are “nonparty aggrieved
10 employees who are not given notice of, and an opportunity to be heard in, a representative
11 action that is not brought as a class action.” *Arias v. Superior Court*, 46 Cal. 4th 969, 984
12 (2009). “PAGA does not make other potentially aggrieved employees parties” to the action and
13 no “due process concerns arise under PAGA because absent employees do not own a personal
14 claim for PAGA civil penalties, and whatever personal claims the absent employees might have
15 for relief are not at stake.” *Williams*, 3 Cal. 5th at 546-47 (cleaned up) (citing *Amalgamated*
16 *Transit Union, Local 1756, AFL-CIO v. Superior Court*, 46 Cal. 4th 993, 1003 (2009) and
17 *Iskanian v. CLS Trans. Los Angeles, LLC*, 58 Cal. 4th 348, 381 (2014)).

18 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
19 *Williams*, 3 Cal. 5th at 548. A “judgment in such an action is binding not only on the named
20 employee plaintiff but also on government agencies and any aggrieved employee not a party to
21 the proceeding” because “the employee plaintiff represents the same legal right and interest as
22 state labor law enforcement agencies[.]” “collateral estoppel applies [...] against those for
23 whom the party acted as an agent or proxy[.]” and “[w]hen a government agency is authorized
24 to bring an action on behalf of an individual or in the public interest, and a private person lacks
25 an independent right to bring the action, a person who is not a party but who is represented by
26 the agency is bound by the judgment as though the person were a party.” *Arias*, 46 Cal. 4th at
27 985-86 (citations omitted).

1 As such, consistent with the law, the Settlement does not provide for a procedure for
2 PAGA Settlement Group Members to opt out of, or object to, the Settlement.

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

4 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of herself
5 or herself and on behalf of other aggrieved employees and the State to recover civil penalties
6 which are specifically established by the PAGA with respect to provisions of the Labor Code
7 that do not otherwise provide for civil penalties (Cal. Lab. Code § 2699(g)), and also, civil
8 penalties which, outside of PAGA, only the LWDA can assess upon and collect from an
9 employer (Cal. Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee
10 must comply with Labor Code section 2699.3. *See* Cal. Lab. Code § 2699(a).

11 The settlement of a PAGA claim requires court approval. *See* Cal. Lab. Code §
12 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action
13 pursuant to this part.”). However, “PAGA suits exhibit virtually none of the procedural
14 characteristics of class actions,” and thus do not have to meet the requirements of a class action.
15 *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906, 1920 (2022); *Arias*, 46 Cal. 4th at 980-
16 88 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to
17 assert a PAGA claim); *Pedroza v. PetSmart, Inc.*, 2013 WL 1490667 at *15 (C.D. Cal. Jan. 28,
18 2013). As such, a court’s review of a PAGA settlement involves analysis of several unique
19 features that render the approval process distinct from approval of a class action settlement. A
20 court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to
21 those affected.” *Williams*, 3 Cal. 5th at 549 (citing Cal. Lab. Code § 2699(l)(2)). Although
22 Labor Code § 2699(l) does not set forth the criteria on which a PAGA settlement is to be
23 judged, courts have approved settlements of PAGA claims. In a PAGA case, the Court’s focus
24 is not the amount which “aggrieved employees” are to receive, but instead, whether the total
25 settlement amount achieves the PAGA’s objectives. The purpose of the PAGA is “to incentivize
26 private parties to recover civil penalties for the government that otherwise may not have been
27 assessed and collected by overburdened state enforcement agencies.” *Ochoa-Hernandez v.*
28 *Cjaders Foods, Inc.*, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010) (citing *Arias*, 46 Cal. 4th

1 at 986). Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for
2 enforcement of labor laws . . . and for education of employers and employees about their rights
3 and responsibilities under this code, to be continuously appropriated to supplement and not
4 supplant the funding to the agency for those purposes.” Cal. Lab. Code § 2699(j). The recovery
5 of penalties on behalf of the state, by way of a PAGA claim, is essentially a law enforcement
6 action. *See Amalgamated Transit*, 46 Cal. 4th at 1003 (stating that the PAGA is mechanism for
7 “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise
8 would be sought by state labor law enforcement agencies”); *see also Iskanian*, 58 Cal. 4th at
9 381.

10 A PAGA settlement is a settlement of claims for penalties and other remedies which the
11 LWDA could assess and collect on behalf of employees without their involvement or approval.
12 “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the
13 ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL 1340777 at
14 *5. This renders the approval process of a PAGA settlement distinct from a class action
15 settlement, as the Court need not employ the two-step approval process normally required for a
16 class action settlement.

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

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

19 The parties reached the proposed Settlement through arm’s-length negotiations between
20 counsel, with the assistance of a federal magistrate judge and an experienced and respected
21 private mediator, Steve Serratore, at a full-day mediation. (Yoon Decl. ¶ 16.) A settlement
22 agreement that is “the product of extensive and hard-fought adversarial negotiations between
23 the parties” is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.*, 91 Cal.
24 App. 4th 224, 245 (2001).

25 In addition, the district court has found the class action settlement preceding this
26 Settlement, fair, reasonable and adequate.

27 The proposed Settlement is presumptively fair because: (1) it is the product of non-
28 collusive, arm’s-length negotiations that were overseen by a federal magistrate judge and an

1 independent mediator knowledgeable in wage-and hour litigation; (2) it was negotiated by
2 counsel with significant experience in similar wage-and-hour litigation; and (3) it occurred after
3 counsel for the parties engaged in significant investigation which allowed them to evaluate the
4 strength and potential value of the PAGA claim and the risks of litigating this claim through
5 trial. (Yoon Decl. ¶ 17.)

6 After engaging in discovery and certification on the same issues that form the basis of
7 this PAGA action, the parties participated in settlement negotiations to try and resolve the
8 lawsuit. Per the requirements of the District Court, these efforts were conducted only after class
9 certification was granted. These efforts included participating in two settlement conferences
10 with the Honorable Donna M. Ryu and one mediation session with Steve Serratore, a well-
11 regarded mediator experienced in mediating complex employment matters. During each of these
12 sessions, the parties discussed all aspects of the case, including the risks and delays of further
13 litigation, the risks to both parties of proceeding with trial, the law relating to representative
14 PAGA actions, off-the-clock theory, and meal and rest periods, the evidence produced and
15 analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other
16 things. During all settlement discussions, the parties conducted their negotiations at arm's
17 length from an adversarial position. (Yoon Decl. ¶ 18.)

18 Based on all of the information available to the parties and with the assistance of the
19 experienced mediator, the parties have agreed that this matter is well-suited for settlement given
20 the strengths and weaknesses of the PAGA claim. Plaintiff and his counsel believe that the
21 proposed Settlement is a fair, adequate, and reasonable resolution of this matter. Plaintiff's
22 Counsel have extensive experience in representative and class action wage-and-hour litigation
23 and used that experience to achieve a great result for Plaintiff, PAGA Settlement Group
24 Members, and the LWDA. Therefore, the Court should give considerable weight to the
25 competency, experience, and opinion of counsel and the involvement of a neutral mediator in
26 assuring that the proposed Settlement is a product of hard-fought negotiations that was entered
27 without collusion. *See Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988) (opinion of
28 experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* 485 F. Supp. 610,

616-17, 622 (N.D. Cal. 1979) (recommendations of plaintiffs’ counsel should be given a presumption of reasonableness); *see also Satchell v. Fed. Express Corp.*, 2007 WL 1114010 at *4 (N.D. Cal. Apr. 13, 2007) (stating that the “assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive”).

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

In order for Plaintiff to recover civil penalties, he would have to prove the underlying Labor Code violations, demonstrate that PAGA Settlement Group Members suffered, and demonstrate that Defendants’ conduct gave rise to penalties. *See, e.g., Elliot v. Spherion Pac. Work, LLC*, 572 F. Supp. 2d 1169, 1181-82 (C.D. Cal. 2008) (“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiffs’ other claims fail as a matter of law, so does her PAGA claim.”).

Plaintiff’s core allegation is that Defendants have systematically violated the California Labor Code by, inter alia, misclassifying him and his co-workers as outside salespersons and exempt from overtime rather than as delivery drivers, and thus failing to properly pay minimum and overtime wages, provide non-compliant meal and rest periods and associated premium pay in lieu thereof, and associated waiting time penalties for the late payment of wages and associated wage statement penalties. (Yoon Decl. ¶ 19.)

Although there is no manageability requirement for PAGA lawsuits, defendants can still make the general argument that any particular person was classified correctly, or even if misclassified, that they had no violations because they did not work more than 8 hours a day and/or took breaks that qualify as non-exempt employee breaks despite their exempt misclassification. (Yoon Decl. ¶ 20.)

And of course, defendants can argue that they are not liable because each worker or all their workers were correctly classified as exempt. Defendants deny that they ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA. Defendants further denied, and continue to deny, that the lawsuit is appropriate for representative treatment for any purpose other than the Settlement

1 – though it is Plaintiff’s belief that the law on this is well-settled against them. (Yoon Decl. ¶
2 21.)

3 Defendants also argued that an important feature of PAGA is that a court retains
4 discretion to lower the penalties if, based on the facts and circumstances of the particular case,
5 to do otherwise would result in an award that is “unjust, arbitrary and oppressive, or
6 confiscatory.” Cal. Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit Mgmt., Inc.*,
7 203 Cal. App. 4th 1112, 1136 (2012). Defendants maintained and continue to maintain that they
8 had legally compliant employment policies and practices throughout the statutory period at all
9 of their California locations. Defendants deny that they ever violated any provision of the
10 California Labor Code, including, but not limited to, those sections for which Plaintiff seeks
11 penalties under the PAGA. Even if, *arguendo*, such violations occurred, which Defendants deny,
12 Defendants contend that said violations would only be considered to be “initial violations” and
13 thus heightened “subsequent violation” penalties were not warranted (Yoon Decl. ¶ 21). Cal.
14 Lab. Code §2699(f)(2); *see also Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1208-09
15 (2008) (employer cannot be presumed to be aware that its continuing underpayment of
16 employees is a violation subject to penalties until has been notified that it is a violation).

17 Defendants also contended that, with respect to a PAGA claim, the Court was unlikely
18 to assess cumulative penalties for separate Labor Code violations, because it would be unjust,
19 arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be regulated by
20 multiple provisions of the Labor Code that are interrelated and work in tandem. As such,
21 Defendants contended that cumulative penalties and heightened penalties would be unjust
22 arbitrary, oppressive, and confiscatory. (Yoon Decl. ¶ 23.)

23 While Plaintiff maintains that his PAGA claim has merit, in reaching the Settlement,
24 Plaintiff and his counsel took into account the strengths and weaknesses of each side’s position
25 and the uncertainty of how the case might have concluded as the litigation continued, at trial,
26 and/or appeals.

27 **C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation**
28

Courts favor the voluntary conciliation and settlement of complex litigation. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Generally, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. Jan. 5, 2004) (citation omitted).

Prior to the settlement, Plaintiff’s Counsel certified the misclassification issue to proceed toward a class-wide trial in the Northern District. Towards that, Plaintiff took multiple depositions and propounded and compelled multiple sets of written discovery requests. Plaintiff reviewed responses thereto and prepared responses to discovery requests. Plaintiff presented himself for deposition and Defendants produced several corporate designated witnesses for deposition. In addition, through discovery the parties formally exchanged documents and data relevant to Plaintiff’s claim and Defendants’ defenses, including and not limited to, time and payroll records, application data from Encompass (an app developer whose software Defendants’ employees used), and Defendants’ operations and employment policies, practices, and procedures. Had the case not settled, the parties would have to prepare for a class trial and then a possible subsequent PAGA trial. Trial preparation would have included depositions of percipient witnesses who are located throughout California. The litigation could continue beyond final judgment in the district court if either party were to appeal adverse rulings to the 9th Circuit. Any delay would have delayed the subsequent resolution of PAGA. Additionally, there is a real possibility that Plaintiff would recover nothing, for himself, or on behalf of the class or the PAGA Settlement Group Members and LWDA, after years of labor-intensive litigation. Avoiding these risks and future contentious litigation, involving significant costs, favors settlement. (Yoon Decl. ¶ 24.)

In addition, as the class action was removed to federal court, the interest rate in federal court is far less than the 10% available in state court. Given the current inflationary environment, delay of several years would not only deprive the aggrieved employees of payment now, but the payment later would be substantially less valuable.

D. The Settlement Is Fair, Adequate, and Reasonable

1 “[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an
2 abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 624.
3 (9th Cir. 1981) “The proposed settlement is not to be judged against a hypothetical or
4 speculative measure of what might have been achieved by the negotiators.” *Id.* at 625.

5 The Settlement provides a significant monetary benefit to the LWDA and PAGA
6 Settlement Group Members and falls well within the range of acceptable settlement under the
7 circumstances. Under the Agreement, Defendants have agreed to pay a Total PAGA Settlement
8 Amount of \$130,000, which encompasses settlement administrative costs, Plaintiff’s incentive
9 payment, and Plaintiff’s Counsel’s attorneys’ fees and costs. Subject to Court Approval, the
10 following amounts will be subtracted from the Total PAGA Settlement Amount to yield the Net
11 PAGA Settlement Amount: (1) settlement administration costs (\$4,000); (2) Plaintiff’s incentive
12 payment (\$10,000), and (3) Plaintiff’s Counsel’s attorneys’ fees (\$43,333.33) and costs (up to
13 \$10,000 but current actual costs are \$1,651.76). The Net PAGA Settlement Amount is currently
14 estimated to be \$71,014.91, of which seventy-five percent (75%) or \$53,261.18 will be paid to
15 the LWDA and twenty-five percent (25%) or \$17,753.73 will be distributed to PAGA
16 Settlement Group Members. (Yoon Decl. ¶ 15.) There is no reason to doubt the fairness of the
17 proposed plan of allocation of the Net PAGA Settlement Amount as it fully complies with
18 Labor Code § 2699(i).

19 The Settlement is a compromise of disputed claims. Plaintiff and his counsel recognize
20 the expense and length of continued proceedings necessary to litigate the disputes through trial
21 and any possible appeals. Plaintiff and his counsel have also taken into account the uncertainty
22 and risk of the outcome of further litigation, and the difficulties and delays inherent in such
23 litigation. Plaintiff and his counsel are also aware of the burdens of proof necessary to establish
24 liability, both generally and in response to Defendants’ defenses, and the difficulties in
25 establishing Defendants’ liability for, and the right to recover, penalties on behalf of Plaintiff
26 and other PAGA Settlement Group Members. Plaintiff and his counsel have also taken into
27 account Defendants’ agreement to enter into a settlement that confers significant relief upon the
28 LWDA and PAGA Settlement Group Members. (Yoon Decl. ¶ 25.)

1 Considering all of the facts in this case, Plaintiff and his counsel have determined that
2 the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and
3 that it is in the best interests of the LWDA and PAGA Settlement Group Members. (Yoon
4 Decl. ¶ 43.)

5 As discussed above, payment of these penalties is conditioned on a limited release of
6 claims under PAGA. The Settlement does not include a general release of claims on behalf of
7 the nonparty PAGA Settlement Group Members, nor does it release their non-PAGA
8 substantive claims for the underlying Labor Code violations. As explained above, those claims
9 have already been released by the District Court as part of the class action settlement, which has
10 already been through the fairness process. It is Plaintiff's Counsel's understanding, heard from a
11 prior Labor Commissioner in a large public gathering, that it is the Labor Commissioner's
12 understanding and policy that PAGA is intended to help restore money to employees for lost
13 wages, and that the state does not favor penalties to itself over wages to workers. The bulk of
14 settlement money has been provided to workers through the class action settlement. This
15 settlement for PAGA is fair because it resolves a secondary issue under the PAGA and provides
16 fair relief to the subset of workers who worked in the relevant time period for the PAGA statute
17 of limitation. (Yoon Decl. ¶ 26.)

18 The result achieved in this case, and the PAGA allocation provided by this Settlement, is
19 well within the range of acceptable settlement under the circumstances, especially when
20 compared to the settlement of PAGA claims approved as reasonable in other cases. Here, the
21 value obtained for settlement of the PAGA claim is not insignificant, and it will be distributed in
22 accordance with the PAGA statute, to supplement the LWDA's budget to educate employees
23 and employers and seek enforcement of labor laws.

24 The amount on average for each of the 361 PAGA Settlement Group Members is \$49
25 (\$17,753.73/361). Especially considering the \$98.98 a workweek already provided in the class
26 action settlement, this is fair, reasonable and adequate.

27 **E. The Experience and Views of Plaintiff's Counsel Favor Approval of the**
28 **Settlement**

1 Plaintiff's Counsel are highly experienced in complex representative and class action
2 wage-and hour litigation. In the view of Plaintiff's Counsel, the benefit conferred by the
3 Settlement is eminently fair and reasonable and is in the best interests of the LWDA and PAGA
4 Settlement Group Members in light of the risk, delay, and uncertainty of continued litigation
5 and the substantial monetary benefits provided for by the Settlement as well as the prior class
6 action settlement. Furthermore, courts have acknowledged that "the interests of plaintiff,
7 counsel and other potentially aggrieved employees are largely aligned. All stand to gain from
8 proving as convincingly as possible as many Labor Code violations as the evidence will
9 sustain[.]" *Williams*, 3 Cal. 5th at 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

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

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

12 The Settlement establishes a Total PAGA Settlement Amount of \$130,000. The
13 Settlement provides for Plaintiff's Counsel to apply to the Court for an award of attorneys' fees
14 of up to one-third (33 1/3%) of the Total PAGA Settlement Amount, which is \$43,333.33. The
15 requested attorneys' fee award is commensurate with (1) the risk Plaintiff's Counsel took in
16 bringing and litigating this case, (2) the time, effort and expense dedicated to the case, (3) the
17 skill and determination Plaintiff's Counsel have shown, (4) the results Plaintiff's Counsel have
18 achieved throughout the litigation, (5) the value that Plaintiff's Counsel have achieved for
19 Plaintiff, the LWDA, and PAGA Settlement Group Members, and (6) the other cases Plaintiff's
20 Counsel could not pursue in order to devote its time and efforts to this matter.

21 Plaintiff's Counsel are entitled to recover reasonable attorneys' fees and costs as a
22 matter of right under the PAGA. *See* Cal. Lab. Code § 2699(g)(1). Plaintiff's Counsel is also
23 entitled to fees and costs under California Code of Civil Procedure § 1021.5, as the instant
24 PAGA action is by definition "for the benefit" of others and has secured monetary awards for a
25 large number of PAGA Settlement Group Members, as well as the LWDA. The LWDA
26 Payment will also benefit the agency in enforcing labor laws and educating "employers and
27 employees about their rights and responsibilities under [the Labor Code]." Cal. Lab. Code §
28 2699(i).

1 The propriety of calculating and awarding attorneys’ fees as a percentage of a monetary
2 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
3 confirmed by the California Supreme Court in recent years. *Laffitte v. Robert Half Int’l, Inc.*, 1
4 Cal. 5th 480, 486, 506 (2016). While trial courts have discretion to apply either a lodestar
5 method or percentage of-the-fund method, the California Supreme Court has taken the position
6 that trial courts also “retain the discretion to forgo a lodestar cross-check and use other means to
7 evaluate the reasonableness of a requested percentage fee[,]” and “[t]he percentage of fund
8 method survives in California.” *Id.* (internal quotes omitted); *see also Wershba*, 91 Cal. App.
9 4th at 253.

10 Courts award fees to serve as an economic incentive for lawyers to undertake litigation
11 in order to achieve increased access to the judicial system for meritorious claims and to enhance
12 deterrents to wrongdoing. This is especially true in situations where multiple similar alleged
13 wrongs would not be economically feasible to pursue individually, such as here. *See A. Conte*,
14 *Attorney Fee Awards* § 1041, at 6 (2d ed. 1993).

15 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
16 decisions will “‘not be disturbed on appeal absent a manifest abuse of discretion.’” *Lealao v.*
17 *Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 41 (2000); *see also Laffitte*, 1 Cal. 5th at 506. Indeed,
18 it is long settled that the “experienced trial judge is the best judge of the value of professional
19 services rendered in his court.” *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001).

20 The percentage method is particularly appropriate where a common monetary fund has
21 been recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset*
22 *Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). Where the amount of a settlement is a
23 “certain easily calculable sum of money,” California courts may calculate attorneys’ fees as a
24 reasonable percentage of the settlement created. Robert I. Weil & Ira A. Brown, *California*
25 *Practice Guide, Civil Procedure Before Trial* § 14:145.2 (2022); *Dunk v. Ford Motor Co.*, 48
26 Cal. App. 4th 1794, 1808 (1966).

27 The percentage fee method is preferred in representative actions because “it better
28 approximates the workings of the marketplace than the lodestar approach.” *Lealao*, 82 Cal. App.

1 4th at 49. California law provides that the award for attorneys’ fees should be equivalent to fees
2 freely negotiated in the legal marketplace and paid in comparable litigation based on the result
3 achieved and risk incurred. *See id.* at 47-50; *Laffitte*, 1 Cal. 5th at 503. In cases where the
4 settlement agreement provides that the defendant agrees to pay the attorneys a percentage of the
5 fund created by the settlement, use of that percentage method is appropriate. *Lealao*, 82 Cal.
6 App. 4th at 32. Fee awards that undercompensate counsel for their work will “chill the private
7 enforcement essential to the vindication of many legal rights and obstruct the representative
8 actions that often relieve the courts of the need to separately adjudicate numerous claims,” *Id.* at
9 53. Therefore, fees in class and representative actions should approximate the probable terms of
10 a contingent fee contract negotiated by a sophisticated attorney and client in comparable
11 litigation. *Id.* at 48. “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate
12 counsel for their efforts, irrespective of the method of calculation.” *Consumer Privacy Cases*,
13 175 Cal. App. 4th 545, 557. Historically, courts have awarded fees as high as fifty percent
14 (50%) of the settlement recovered, depending on the circumstances of the case.⁴

15 Plaintiff’s Counsel’s application for attorneys’ fees, in light of the facts and
16 circumstances surrounding the case, is well within the range of reasonableness. Plaintiff’s
17 Counsel heavily litigated this case for many months before settlement, with the real possibility
18 of an unsuccessful outcome and no fee recovery of any kind. The ongoing work has been
19 extensive, and ultimately successful in achieving a settlement resolution.

20 In the present case, Plaintiff’s Counsel have borne all of the risks and costs of litigation
21 and will not receive any compensation until recovery is obtained. (Yoon Decl. ¶ 33.) Plaintiff’s
22 Counsel are well-experienced in complex wage-and-hour litigation and used that experience to
23 obtain a favorable result for Plaintiff, PAGA Settlement Group Members, and the LWDA.
24 Considering the amount of the fees requested, work performed, risks incurred, success of this

25 ⁴ *See In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494 (D.D.C. 1981) (awarding
26 attorneys’ fees of 45% of the \$7.3 million settlement fund); *Beech Cinema, Inc. v. Twentieth-*
27 *Century Fox Film Corp.*, 480 F. Supp. 1195 (S.D.N.Y. 1979) (awarding approximately 53% of
28 the settlement fund as attorney fees). California courts routinely approve attorneys’ fee awards
“average[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43,
66 n.11 (2008) (lower court found the range of contingency fees in marketplace to be 20 to 40
percent and determined such a percentage fee was appropriate).

litigation, and experience of Plaintiff's Counsel in handling similar matters, the requested attorneys' fees and costs are reasonable and should be awarded.

B. The Requested Attorneys' Fees Are Reasonable Based on the Factors Considered in Determination of Fee Awards

The factors which courts consider in determining whether fee awards are reasonable, support the fee award requested by Plaintiff's Counsel: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condo. Ass'n, Inc. v. Dunkel*, 946 F. 2d 768, 772 (11th Cir. 1991). Each of these factors favors the attorney fee award sought herein; however, some of the most relevant factors to this Court's fee determination will be addressed below. It should be highlighted that the percentage award sought is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of the fee and the risks taken in commencing this action, the skill and determination required, the results achieved by Plaintiff's Counsel, and the value of the Settlement that Plaintiff's Counsel have obtained on behalf of Plaintiff, the LWDA, and PAGA Settlement Group Members. As such, an award of one-third of the Total PAGA Settlement Amount is reasonable.

1. Time & Labor

This case has an unusual procedural posture because it follows a class action that was litigated to certification in the Northern District of California with Plaintiff's counsel spending about 1,000 hours and a total lodestar equivalent of \$783,935. This PAGA lawsuit was stayed pending resolution of the class action. (Order dated 2/26/2021.) (Yoon Decl. ¶ 27.)

Although the time spent in the District Court was for the class action, this PAGA action was entirely derivative of the substantive claims certified in the class action. Thus, the time

1 spent for the benefit of the class also benefited the PAGA aggrieved employees that are subject
2 to this Settlement. (Yoon Decl. ¶ 28.)

3 As part of the litigation in District Court, Plaintiff's counsel had prepared the case
4 essentially to the point where the remaining work was preparing for trial (i.e., summary
5 judgment motions and expert witness preparation). (Yoon Decl. ¶ 29.)

6 In light of the value of time expended for the benefit of the aggrieved employees, the
7 requested attorneys' fee award is fair, adequate, and reasonable.

8 **2. The Skill Required to Perform Legal Services Properly**

9 The skill required to properly litigate this case is evident not only in the results achieved,
10 but in the steps necessary to reach the same. Defendants retained well-respected counsel to
11 represent their defenses. Defendants and their counsel felt very strongly about Defendants'
12 ability to prevail on the merits and avoid representative adjudication of PAGA penalties.
13 Plaintiff and Plaintiff's Counsel believe that the PAGA claim has merit and that Plaintiff would
14 prevail at trial. Plaintiff's Counsel litigated the class action in the District Court to certification,
15 and was working towards trial when the case settled. (Yoon Decl. ¶ 30.)

16 Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used their
17 extensive experience and skill in the handling of complex wage-and-hour matters to advocate
18 for and obtain a recovery now, with maximum efficiency, as opposed to the possibility of future
19 recovery, after great expense and time.

20 **3. The Value of the Settlement**

21 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty
22 and risks of further litigation. Had the case not settled, Defendants would have filed a motion
23 for summary judgment in the District Court and then would have defended themselves in a jury
24 trial. Depending how the class action was resolved would have affected how the PAGA action
25 resolved here. Defendants, however, faced risks as well, including and not limited to, losing on
26 summary judgment or at trial. Additionally, preparing for trial would have been extraordinarily
27 expensive for the parties. (Yoon Decl. ¶ 31.)
28

1 At this stage, the Settlement is preferred over continued litigation because the class
2 action settlement was not a determination on the merits. Thus, continuing the litigation here
3 would not be in anyone's best interest as the key questions that were avoided by settlement in
4 the District Court and in this proposed settlement would have to be litigated. The Parties agreed
5 to settle the class action and this PAGA action with the class action portion being approved by
6 the District Court and the PAGA portion by this Court. The value of the total amount that the
7 aggrieved employees will receive as part of the class action settlement and the further amount
8 they will received as part of the Settlement is fair value for the claims being released. (Yoon
9 Decl. ¶ 32.)

10 The Settlement offers present and considerable monetary relief to PAGA Settlement
11 Group Members. The Settlement offers present and considerable monetary relief to the LWDA
12 as it provides \$53,261.18 to the government, while the settlement of the PAGA action as well as
13 the class action provided the actual workers real benefits. In particular, Defendants have now
14 classified their workers as non-exempt. (Yoon Decl. ¶ 26.) The purpose of PAGA is to benefit
15 workers and encourage compliance with the Labor Code. This Settlement has done that, while
16 avoiding further expense, risk, and delay in obtaining possible further recovery.

17 **4. Whether the Fee Is Fixed or Contingent**

18 The representation provided by Plaintiff's Counsel have been wholly contingent and
19 Plaintiff's Counsel took on this matter without knowing whether it would obtain any recovery.
20 Plaintiff's Counsel has invested about 1,000 hours litigating against Defendants to obtain relief
21 on behalf of Plaintiff, PAGA Settlement Group Members, and the LWDA. (Yoon Decl. ¶ 27.)

22 Plaintiff's Counsel have borne all of the risks and costs of litigation and will not receive
23 any compensation until recovery is obtained. If Plaintiff's Counsel have not been successful, the
24 time that it has devoted to litigating the case would have been for naught, and would not have
25 produced any fee or reimbursement of costs. (Yoon Decl. ¶ 33.) Plaintiff's Counsel are well-
26 experienced in complex wage- and-hour litigation and used that experience to obtain a great
27 result for PAGA Settlement Group Members and the LWDA. The skill and determination that
28 Plaintiff's Counsel have shown justify the requested attorneys' fees and costs. Considering the

1 amounts requested, work performed, and risks incurred, the requested fees and costs are
2 reasonable and should be awarded.

1 **5. The Amount Involved and the Results Achieved**

2 The results achieved, particularly in light of the difficulties inherent in similar cases and
3 the specific difficulties faced in this case, are considerable. Here, the results achieved and the
4 recovery obtained on behalf of Plaintiff, PAGA Settlement Group Members, and the LWDA
5 represent a fair and reasonable resolution of this lawsuit. Plaintiff’s Counsel’s efforts have
6 resulted in a settlement that provides for a Total PAGA Settlement Amount of \$130,000, and it
7 is currently estimated that the Net PAGA Settlement Amount available for distribution to
8 PAGA Settlement Group Members and the LWDA, is \$71,014.91.

9 **6. The Reputation and Ability of the Attorneys**

10 Plaintiff’s Counsel are a recognized class action and complex litigation law firm that
11 employed its attorneys’ knowledge, skills, and experience in bringing the case to a successful
12 conclusion. Plaintiff’s Counsel have years of wage-and-hour class action and complex litigation
13 experience, have recovered millions of dollars on behalf of thousands of individuals in
14 California, and have successfully handled numerous significant wage-and-hour class action and
15 representative action cases. (Yoon Decl. ¶¶ 2-7.)

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

17 Plaintiff’s Counsel have performed work that is of significant value based on reasonable
18 hours and prevailing hourly rates of compensation. While the percentage-of-the-benefit
19 approach is endorsed as the better approximation of the workings of the marketplace than the
20 lodestar approach, courts may also use the lodestar method to “cross-check” the results of the
21 other. *See Laffitte*, 1 Cal. 5th at 505 (“A lodestar cross-check is simply a quantitative method for
22 bringing a measure of the time spent by counsel into the trial court’s reasonableness
23 determination”); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002)
24 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may
25 provide a useful perspective[.]”). The lodestar calculation “does not override the trial court’s
26 primary determination of the fee as a percentage” and “does not impose an absolute maximum
27 or minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at 505. The lodestar is calculated
28 using reasonable hours and reasonable prevailing hourly rates for the attorneys—counsel is

entitled to compensation for every hour reasonably spent on the matter. *Ketchum*, 24 Cal. 4th at 1131-33.

1. Plaintiff's Counsel Performed Work for a Reasonable Number of Hours

The reasonableness of hours is assessed by “the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las Virgenes Mun. Water Dist.*, 79 Cal. App. 4th 440, 447 (2000).

As discussed above, this case (including the class action) was highly contested and required a significant amount of time and labor. Defendants made it clear soon after the action was filed that they disputed all of Plaintiff's allegations and disputed that a class or representative action was appropriate. Defendants also argued that they had facially-compliant employment policies and practices throughout the statutory period at all of their locations. Defendant raised affirmative defenses and denied liability. The handling of this litigation involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Plaintiff's Counsel have, as a result of its extensive experience in complex and class action wage-and-hour litigation.

Although not attached to this Motion, the Declaration of Kenneth H. Yoon details the work that was performed before the District Court on the related class action. The District Court reviewed the time and lodestar presented to it and granted approval of the fees in the class settlement. (Yoon Decl. ¶ 27.)

2. The Fees are Based on a Reasonable Hourly Rate of Compensation

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this matter. *Ketchum*, 24 Cal. 4th at 1132-33. In awarding attorneys' fees, the aim is to mirror “the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases.” *Id.*

1 Plaintiff's Counsel have been actively involved in the prosecution of this case, prior to
2 the commencement of the lawsuit and all the way up to approval of the Settlement, and its
3 dedication to the representation of PAGA Settlement Group Members and the LWDA has
4 precluded other employment. Plaintiff's Counsel bore the risk that, despite all of its efforts and
5 skills employed, there may be no recovery. Ultimately, Plaintiff's Counsel successfully reached
6 a settlement, which included \$130,000 for PAGA.

7 As set forth in the Declaration of Kenneth H. Yoon, the professional backgrounds and
8 experience of Plaintiff's Counsel support a reasonable hourly rate of compensation of \$700-
9 \$900 per hour for services provided by Plaintiff's Counsel (which were approved by the District
10 Court). (Yoon Decl. ¶ 27.) While the circumstance of every case is unique, the fact remains that
11 the work performed and efforts undertaken by Plaintiff's Counsel in this matter justifies the
12 requested attorneys' fee award.

13 The lodestar method as a cross-check to the percentage fee sought strongly supports the
14 reasonableness of the requested fee award. The lodestar for the class case in the District Court
15 was \$783,935. The District Court granted \$617,500 for fees. (Yoon Decl., ¶ 12, Exh. 4.) The
16 requested fee before this Court is \$43,333.33. The lodestar justifies the requested fee.

17 Focusing simply on the time spent on this PAGA matter and excluding time in the
18 related class action, my firm has spent approximately 20 hours of time for a lodestar of
19 \$15,202.50. That is time related to the PAGA complaints, and LWDA letters, the stay issue,
20 drafting the PAGA settlement and drafting this motion. However, it would be reasonable and to
21 be fair, it would be required, to allocate a portion of the time spent for in the class action as
22 resulting in this Settlement. (Yoon Decl. ¶ 38.)

23 Plaintiff's Counsel request for one third of the Total PAGA Settlement Amount in an
24 attorneys' fees award of \$43,333.33, is reasonable and justified based on the percentage method
25 and a lodestar cross-check, and should be approved and granted.

26 **VII. LITIGATION COSTS ARE FAIR AND REASONABLE**

27 As set forth in the Declarations of Kenneth Yoon, Plaintiff's Counsel have incurred
28 \$1,651.76 in litigation costs and expenses, which is less than the maximum amount allocated
under the Settlement Agreement. (Yoon Decl. ¶ 39.) Class Counsel will be reimbursed only for

1 the litigation costs and expenses it actually incurred. Class Counsel’s litigation costs and
2 expenses incurred were reasonable and necessary in the prosecution of this matter. Specifically,
3 these costs are separate from the costs incurred in the class action in the District Court.

4 Accordingly, Class Counsel respectfully request that the Court order reimbursement of
5 the costs and expenses in the amount of \$1,651.76.

6 **VIII. APPROVAL OF THE PROPOSED COVER LETTER**

7 Although PAGA does not require notice to unnamed PAGA Settlement Group Members
8 of the Settlement, the parties prepared, and now present for the Court’s consideration and
9 approval, a cover letter for transmission to PAGA Settlement Group Members along with their
10 payments, substantially in the form attached as Exhibit A to the Settlement Agreement. The
11 cover letter accurately informs PAGA Settlement Group Members about this action and the
12 Settlement. Accordingly, Plaintiff respectfully requests that the Court approve the Cover Letter.

13 **IX. APPROVAL OF THE PROPOSED INCENTIVE PAYMENT TO PLAINTIFF**

14 The Settlement provides for an incentive payment of \$10,000 to be paid to Plaintiff as an
15 Incentive Payment. The purpose of such an award is to incentivize PAGA Settlement Group
16 Members to step into the shoes of the state labor agency and undertake the risks associated with
17 initiating a lawsuit and serving in a representative capacity. *See Bell v. Farmers Ins. Exch.* 115
18 Cal. App. 4th 715, 726 (2004) (“service payments” compensate named plaintiff “for [her]
19 efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC*, 175 Cal. App. 4th 785,
20 804(2009) (“an incentive award is appropriate ‘if it is necessary to induce an individual to
21 participate in the suit’”); *accord Ingram v. The Coca-Cola Co.* 200 F.R.D. 685, 694 (N.D. Ga.
22 2001) (internal quotation marks omitted) (“Courts routinely approve incentive awards to
23 compensate named plaintiffs for the services they provided and the risks they incurred during
24 the course of the [. . .] litigation.”).

25 Here, Plaintiff contributed considerable time and effort to the litigation in order to
26 enforce the Labor Code on behalf of the LWDA and for the benefit of other PAGA Settlement
27 Group Members, producing relevant documents and past employment records, providing the
28 facts and evidence necessary to support the allegations asserted in this action, and taking time
from her work to prepare for her deposition and also give her deposition testimony.⁸⁷ Plaintiff

1 was available whenever her counsel needed her and tried to obtain documents and information
2 that would aid the litigation of the PAGA claim and recovery of benefits for the LWDA and
3 PAGA Settlement Group Members. Additionally, as a part of the Settlement, Plaintiff has
4 agreed to a broader release of claims than the release of claims that applies to PAGA Settlement
5 Group Members. Accordingly, it is reasonable and just for Plaintiff to receive an enhancement
6 payment of \$10,000, in addition to the Employee PAGA Payment she will receive as a PAGA
7 Settlement Group Member, for her services in litigating this action to enforce California wage-
8 and-hour laws.

9 Judge Alsup in the District Court rigorously reviewed the class action settlement, as that
10 court did for all motions before it. It ultimately decided in favor of all terms of the class action
11 settlement, excepting Plaintiff Troyer's enhancement before it as part of the class settlement.
12 The District Court granted only \$2,000 for Mr. Troyer's work, rather than the \$10,000
13 requested, and that was based not on a lack of effort or dedication, but rather, that the District
14 Court was hostile to enhancements. (Yoon Decl. ¶ 11.)

15 However, the District Court knew that this Court would be reviewing this Settlement
16 and was given notice of and aware the terms of this Settlement. (Order Granting Final Approval
17 at ¶14, attached as Exhibit 4 to the Yoon Decl.)

18 It is fair that this Court grant a customary enhancement to Mr. Troyer for the work he
19 has done and the benefits he has generated for the people that comprise the PAGA Settlement
20 Group Members.

21 **X. THE ADMINISTRATION FEE PAYMENT IS FAIR AND REASONABLE AND**
22 **SHOULD BE APPROVED**

23 As set forth in the bid submitted by Phoenix Settlement Administrators (Yoon Decl. at
24 ¶42, Exh. 5), the total estimated costs to for administration of the settlement is \$3,951.⁵ The
25 costs incurred include, but are not limited to, expenses for the preparing, printing, and mailing
26 of the Cover Letter and Individual PAGA Settlement Shares to the PAGA Settlement Group
27 Members; performing skip-trace searches; re-mailing the Cover Letter to forwarding addresses

28 ⁵ The amount contemplated in the Settlement as \$4,000. To the extent that the Settlement
Administrator Costs are less, the difference will flow through to the Net PAGA Settlement
Amount

1 and any new addresses obtained; handling inquiries from Class Members regarding the
2 Settlement; calculating Individual PAGA Settlement Shares and preparing the associated tax
3 forms; and transmitting payments; among other things. Accordingly, the Court should grant
4 final approval of payment of \$3,951 to Phoenix Settlement Administrators, a necessary third-
5 party to the notice and settlement process.

6 **XI. CONCLUSION**

7 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise
8 reached through arm's-length negotiations and considers the risks, complexity, and expense of
9 further litigation. Based thereon, Plaintiff respectfully requests that the Court approve the
10 Settlement, including the plan of allocation and distribution of the Settlement Fund for
11 payments to the LWDA, to PAGA Settlement Group Members, the attorneys' fees, the litigation
12 costs, Settlement Administration Costs, and the Incentive Payment.

13
14 Dated: August 1, 2022

YOON LAW, APC

15
16 /s/ Kenneth H. Yoon

17 Kenneth H. Yoon
18 Attorneys for Plaintiff Casey Troyer
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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is One Wilshire Boulevard, Suite 2200, Los Angeles, California 90017.

On August 1, 2022, I served the following documents described as:

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEY'S GENERAL ACT (LABOR CODE § 2698, ET SEQ.)
SETTLEMENT AGREEMENT AND AWARD OF ATTORNEYS' FEES,
LITIGATION COSTS, AND INCENTIVE PAYMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF**

on all interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as shown on the attached mailing list.

☐ (BY FACSIMILE)

I am readily familiar with the business practices of this office. The telephone number of the facsimile machine I used was (213) 489-9961. This facsimile machine complies with Rules 2003(3) of the California Rules of Court. Upon transmission, no error was reported by the facsimile machine and a printed copy of the machine's transmission record indicating that the transmission was successfully completed is attached to this declaration.

☐ (BY PERSONAL SERVICE)

By having copies personally delivered to the designated party(ies).

☒ (BY E-MAIL)

The documents were sent as an attachment to an email, with two types of delivery confirmation: Delivery Receipt and Read Receipt. Upon sending, no error was reported and I received a Delivery Receipt, confirming that the message and documents reached the above email address.

☐ (BY MAIL)

I am familiar with my employer's mail collection and processing practices; know that mail is collected and deposited with the United States Postal Services on the same day it is deposited in the interoffice mail; and know that postage thereon is fully prepaid.

☐ (BY FEDERAL EXPRESS COURIER AND COURTESY EMAIL)

I am "readily familiar" with the firm's practice of collection and processing correspondence for Federal Express delivery. Under that practice it would be deposited with the Federal Express Courier on that same day at Los Angeles, California in the ordinary course of business.

☒ (State) I declare under penalty of perjury that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member the Bar of this Court at whose direction the service was made.

Executed on August 1, 2022, at Los Angeles, California.

Savannah Lorenzo
SAVANNAH LORENZO

1 *Casey Troyer v. The Yerba Mate Co., LLC, et al.*
2 **Superior Court of California, County of Alameda, No. RG20074741**

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