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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**
12

13 JUAN P. LOPEZ, on behalf of himself and all
14 others similarly situated,

15 Plaintiff,

16 v.

17 RGGD, INC. dba CRYSTAL ART GALLERY, a
18 California corporation; and DOES 1 through 100,
19 inclusive,

20 Defendants.
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Case No. 20STCV43367

Assigned for all purposes to:
Hon. William F. Highberger, Dept. 10

**NOTICE OF MOTION AND
PLAINTIFF'S MOTION FOR
APPROVAL OF PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declarations of Jennifer L. Connor and Julie
Green (for CPT Group, Inc) and [Proposed]
Order submitted concurrently herewith]

PAGA Approval Hearing

Date: October 24, 2022

Time: 2:30 p.m.

Dept: 10

Complaint Filed: November 12, 2020

Trial Date: None Set

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

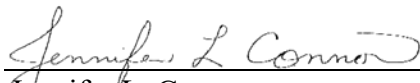
2 **PLEASE TAKE NOTICE** that on October 24, 2022 at 2:30 p.m., or as soon thereafter as
3 this matter may be heard by the Honorable William Highberger in Department 10 of the above-
4 captioned court located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Juan
5 Lopez (“Plaintiff”) will and hereby does move this Court for an order approving a settlement
6 pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.* (“PAGA”).

7 This Motion is based upon the attached Memorandum of Points and Authorities; the
8 Declarations of Jennifer L. Connor and Julie Green (for CPT Group, Inc.) in support thereof; the
9 Private Attorneys General Act Settlement Agreement and Release (the “Settlement Agreement”);
10 the Proposed Order granting approval of the PAGA settlement; all other records, pleadings, and
11 papers on file in this action, and upon such other evidence or argument as may be presented to the
12 Court at the hearing on this motion.

13
14 Dated: September 11, 2022

Respectfully submitted,

15 COUNSELONE, PC

16
17 By: 
18 Jennifer L. Connor
19 Anthony J. Orshansky
20 Attorneys for Plaintiff, the State of
21 California, and Aggrieved Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In this case, Plaintiff Juan Lopez (“Plaintiff” or “Lopez”) filed an action against RGGD, Inc.
4 d/b/a Crystal Art Gallery (“Defendant” or “Crystal Art”) for civil penalties under the Private
5 Attorneys General Act of 2014, Labor Code section 2698 *et seq.* (“PAGA”). Plaintiff claims that
6 Defendant owes PAGA penalties as a result of alleged violations of various Labor Code sections
7 and applicable Industrial Welfare Commission Wage Order(s). Plaintiff’s operative PAGA
8 representative action complaint seeks civil penalties as authorized by the PAGA on behalf of the
9 State of California’s Labor & Workforce Development Agency (“LWDA”), and on behalf of all
10 “*current and former hourly-paid or non-exempt employees who worked for Defendant, and/or its*
11 *predecessor or merged entities, within the State of California during the PAGA Period*” (hereafter,
12 “Aggrieved Employees”).¹ Plaintiff and Defendant are collectively referred herein as the “Parties.”

13 As will be explained in further detail below, based on the California Supreme Court’s
14 decision in *Arias v. Superior Court* (2009) 46 Cal.4th 969, Plaintiff can seek appropriate civil
15 penalties as called for under the PAGA on behalf of the State of California and other similarly
16 situated employees without seeking class certification or meeting the requirements of class
17 certification (*i.e.*, numerosity, typicality, commonality, and adequacy). (*See also Mendoza v.*
18 *Nordstrom, Inc.* (2017) 2 Cal.5th 1974.) As such, the usual two-step preliminary and final approval
19 process is not required.

20 Rather, as called for under Labor Code section 2699(l), all that is required is an approval by
21 this Court of the PAGA settlement. The Parties have reached such an agreement, and thus Plaintiff,
22 an “aggrieved employee” under the PAGA, now respectfully moves this Court for an order granting
23 approval of the Private Attorneys General Act Settlement Agreement and Release (“Settlement
24 Agreement”). A true and correct copy of the Settlement Agreement entered into by the Parties, along
25 with the accompanying Notice of PAGA Representative Action Settlement (“PAGA Payment
26 Letter”), are attached as **Exhibit “1”** and **Exhibit “2”** respectively to the Declaration of Jennifer L.

27 _____
28 ¹ The PAGA Period is defined as the period from September 9, 2019 until the date of approval of
the settlement.

1 Connor (“Connor Decl.”) filed concurrently herewith. As set forth herein, the settlement is fair,
2 reasonable, and adequate, and this Court should enter an order approving the settlement.

3 **II. FACTUAL AND PROCEDURAL HISTORY**

4 Defendant RGGD, Inc. doing business as Crystal Art Gallery is a designer and manufacturer
5 of home improvement products such as framed art, photo frames, wall clocks, mirrors, alternative
6 art and decorative products. (Connor Decl. ¶ 10.) Incorporated in 1994, Crystal Art designs, sources,
7 displays, warehouses, and distributes products from its headquarters in Vernon, California; Crystal
8 Art also has showrooms in Los Angeles, Atlanta, New York, Nashville, and Hong Kong. (Connor
9 Decl. ¶ 10.)

10 For about fourteen (14) years until his separation on March 20, 2020, Plaintiff worked as a
11 non-exempt, hourly-paid shipping/receiving agent employee for Defendant in its 4950 S. Santa Fe
12 Avenue, Vernon, California warehouse location. (Connor Decl. ¶ 11.) During the relevant time
13 period, Plaintiff alleges that Defendant engaged in a series of unlawful wage and hour practices,
14 including, but not limited to: (1) failure to pay minimum wages for all hours worked; (2) failure to
15 pay all overtime compensation; (3) failure to provide meal periods and/or pay premiums owed
16 thereon; (4) failure to authorize rest breaks and/or pay premiums owed thereon; (5) failure to timely
17 pay wages during employment and upon termination; and (6) failure to maintain and furnish
18 accurate itemized wage statements. (Connor Decl. ¶ 12.)

19 On July 14, 2020, Plaintiff gave written notice on behalf of himself and other Aggrieved
20 Employees via certified mail to the LWDA and Defendant, outlining the facts and legal theories to
21 support the claims of Defendant’s alleged violations of wage-and-hour laws. (*See* Connor Decl. Exh.
22 1 [Settlement Agreement] at internal Exhibit A.) This notice is required under Labor Code section
23 2699.3(a)(1) as a prerequisite to bringing a PAGA representative claim against an employer.
24 (Connor Decl. ¶ 13.) The LWDA did not respond to this notice of its intent to investigate within the
25 allotted 65-calendar days timeframe, thus allowing Plaintiff to file the instant lawsuit against
26 Defendant. (*Ibid.*)

27 On November 12, 2020, Plaintiff filed his class and PAGA representative action in the Los
28 Angeles County Superior Court. In the Complaint, Plaintiff originally pled nine separate wage and

1 hour causes of action, alleged as a putative class action and PAGA representative action. (Connor
2 Decl. ¶ 14.) In advance of the initial case management conference, Defendant’s counsel produced to
3 Plaintiff’s counsel a purportedly binding arbitration agreement (in both Spanish and English) dated
4 January 25, 2017 signed by Plaintiff Lopez, which was unbeknownst to Plaintiff at the time of filing
5 the Complaint. While Plaintiff does not concede the enforceability of the arbitration agreement, the
6 decision was made to pursue a claim solely under the PAGA. (Connor Decl. ¶ 15.) After review,
7 Plaintiff agreed to the dismissal without prejudice of the first eight causes of action and related
8 putative class action allegations, which the Court granted. (*See* Minute Order entered May 19, 2021.)
9 Thus, Plaintiff’s ninth cause of action seeking representative relief under the PAGA, Labor Code
10 section 2698, *et seq.*, remains pending in the operative Complaint. (Connor Decl. ¶ 16.) Although
11 Defendant vowed to vigorously defend the action, given the limited size of the class and PAGA-only
12 claim, the Parties agreed to participate in mediation to explore early resolution. (Connor Decl. ¶ 17.)

13 Plaintiff’s counsel began their investigation into the at-issue allegations even prior to filing
14 the original complaint. (Connor Decl. ¶ 18.) Among the initial information and documents sought
15 and produced were those related to Plaintiff’s employee and personnel file. (*Ibid.*) Further, in
16 preparation for mediation, the Parties exchanged documents and information that allowed both sides
17 to evaluate the potential exposure and potential risk, such as a 16.7% (or, 27 out of 162 Aggrieved
18 Employees) random sampling of time and payroll records for Plaintiff and Aggrieved Employees,
19 Defendant’s employee handbooks, timekeeping and overtime policies, relevant meal and rest break
20 procedures, the total number of putative aggrieved employees during the PAGA period, along with
21 counts of former employees, pay periods, and average hourly pay rate. Over 3,000 pages of
22 documents were produced and 1,724 pay periods out of 11,308 pay periods were analyzed. (Connor
23 Decl. ¶ 19.)

24 The Parties met and conferred regarding the informal discovery. (Connor Decl. ¶ 19.)
25 Furthermore, Plaintiff’s Counsel analyzed, researched, and investigated the law as applied to the
26 facts and potential defenses to the claims, engaged in the calculation of potential damages,
27 interviewed Plaintiff, consulted with an expert, obtained supporting facts and documents, and
28 assessed trial management, appellate issues, and litigation risks. (*Id.* at ¶ 20.)

1 On November 4, 2021, the Parties attended a mediation session with Jill R. Sperber, Esq., a
2 well-respected mediator with considerable experience mediating wage and hour class actions and
3 PAGA representative actions. (Connor Decl. ¶ 21.) During the mediation, the Parties exchanged
4 further information and discussed all aspects of the case, including the risks and delays of litigation,
5 the risk associated with proceeding in a representative capacity, liability under the claims asserted,
6 and the ability to recover and measure penalties. (*Ibid.*) The settlement negotiations were at all times
7 at arm's-length and although conducted in a professional matter, were adversarial. (*Ibid.*) Although
8 the matter did not resolve on the day of their mediation session, approximately three weeks later,
9 after further facilitation by Ms. Sperber and based on a mediator's proposal, the Parties reached an
10 agreement to resolve the matter. (Connor Decl. ¶ 21.)

11 On January 11, 2022, the Parties set forth the relevant terms in a Memorandum of
12 Understanding. The Parties then spent many weeks thereafter negotiating the detailed terms of the
13 Settlement, and memorialized the terms in a long-form agreement to resolve this matter. (Connor
14 Decl. ¶ 22.) The Settlement was the culmination of protracted discussions between the Parties
15 following a thorough analysis of the pertinent facts and law at issue. (Connor Decl. ¶ 24.) The Parties
16 now present the Settlement Agreement to this Court for approval.

17 **III. THE PAGA AND ITS REQUIREMENTS**

18 Prior to the enactment of the PAGA, many of the penalties provided for violations of certain
19 Labor Code provisions were exclusively within the province of the State of California and its
20 agencies to seek, enforce, and assess. (*Arias, supra*, 46 Cal.4th at p. 980.) However, due to the lack
21 of financing for California's agencies, and the substantial number of Labor Code violations by
22 California employers, the California Legislature found that it was in the public interest to allow
23 aggrieved employees to act as "private attorneys general" to enforce and recover penalties on behalf
24 of similarly situated aggrieved employees for Labor Code violations committed by their employers.
25 (*Ibid.*)

26 The PAGA was enacted to allow such enforcement and recovery by private individuals who
27 have been aggrieved by their employers. The statute calls for 75 percent of any penalties recovered
28

1 to be paid to California's LWDA and the remaining 25 percent to the aggrieved employees. (*See*
2 Labor Code § 2699.3(a)(1).)

3 In order to enforce and seek penalties under the PAGA in a civil action, an aggrieved
4 employee must first provide written notice to the LWDA and the employer of the particular Labor
5 Code violations the aggrieved employee alleges the employer has violated. (*See* Labor Code §
6 2699.3(a)(1).) Once the LWDA notifies the aggrieved employee that it does not intend to investigate
7 the alleged violations, or if the LWDA does not respond within a certain period of time, the
8 aggrieved employee is then allowed to proceed in a civil action against the employer on behalf of
9 the LWDA and all other similarly situated aggrieved employees. (*See* Labor Code §
10 2699.3(a)(2)(A).)

11 In 2009, the California Supreme Court considered the issue of whether the aggrieved
12 employee who brings a PAGA representative claim needs to meet class action requirements. (*Arias*,
13 *supra*, 46 Cal.4th at p. 976.) After substantial review of the legislative history of the PAGA, the
14 Court held that an aggrieved employee's representative action brought on behalf of other aggrieved
15 employees against an employer for PAGA violations does not need to meet requirements for class
16 certification. (*Id.* at pp. 975, 980-988.) As the Court held, a plaintiff bringing suit under the PAGA
17 does so as a proxy or agent of California's labor law enforcement agencies. (*Id.* at p. 986.) Because
18 the employee's PAGA action functions as a substitute for an action brought by the government
19 itself, a judgment in the PAGA action binds all those who would be bound by a judgment in an
20 action brought by the government. (*Ibid.*)

21 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court shall
22 "review and approve any settlement of any civil action filed pursuant to this part." (Labor Code §
23 2699(l)(2).) The Parties to this current PAGA action have reached such a settlement and now seek
24 this Court's approval of the settlement. Plaintiff's Counsel have also submitted the proposed
25 settlement to the LWDA as required by section 2699(l)(2). (Connor Decl. ¶ 36.)

26 **IV. DEFENDANT'S DENIAL OF WRONGDOING OR LIABILITY**

27 From this case's inception, Defendant has denied and continues to deny any liability or
28 wrongdoing as to all of the claims alleged, and the settlement is not an admission by Defendant of

1 any fault, wrongdoing, or liability. (Settlement Agreement p. 2 [Preamble] and ¶ 17.) Defendant
2 further denied and continues to deny that the lawsuit is appropriate for representative treatment for
3 any purpose other than this settlement. There has been no determination by this Court or any other
4 court as to the merits of the claims asserted by Plaintiff against Defendant. (Connor Decl. ¶ 23.)
5 Defendant states that they have concluded that given the risks and costs of litigation, it is desirable
6 that the lawsuit be fully and finally settled in the manner and upon the terms and conditions set forth
7 in the Settlement Agreement.

8 **V. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES**

9 The following is a summary of the principal terms of the Settlement Agreement.

10 **A. Aggrieved Employees and Terms of the Settlement**

11 Aggrieved Employees are defined as all “current and former hourly-paid or non-exempt
12 employees who worked for RGGD, Inc. dba Crystal Art Gallery, and/or its predecessor or merged
13 entities, within the State of California from September 09, 2019 to the present.” (Settlement
14 Agreement p. 2 [Preamble]). The PAGA Period is defined as September 9, 2019 until the date of
15 approval of the settlement. (*Id.* at p. 2 [Preamble] and ¶ 1.) Defendant has estimated that there are
16 approximately 162 Aggrieved Employees (107 currents and 55 formers) as of the date of mediation.
17 (November 4, 2021). (*Ibid.*)

18 The settlement provides that Defendant will pay a *non-reversionary maximum settlement*
19 *amount of Three Hundred and Fifteen Thousand Dollars (\$315,000.00)* (the “Gross PAGA
20 Settlement Amount”), inclusive of payments to the LWDA and Aggrieved Employees, payment of
21 Plaintiff’s Counsel’s Attorneys’ Fees and Costs, PAGA Representative Incentive Award payment
22 to Plaintiff, as well as payment of Settlement Administration Costs. (Settlement Agreement ¶ 6.)
23 Plaintiff’s Counsel request a fee award of 35 percent (or \$110,250.00) of the Gross PAGA Settlement
24 Amount and costs in the amount of \$11,833.21.² (Settlement Agreement ¶ 6(a).) Plaintiff requests
25 a PAGA Representative Incentive Award of \$6,500.00 from the Gross PAGA Settlement Amount
26 in recognition of his time and service to the Aggrieved Employees and the State of California in

27
28 ² Notwithstanding that the Settlement Agreement allocated up to \$15,000, Plaintiff’s Counsel’s total
costs as of today are \$11,833.21. (Connor Decl. ¶ 70; Settlement Agreement ¶ 6.a.).

1 pursuing the Action and in fulfilling his obligations as the lead Aggrieved Employee, and in
2 exchange for his individual general release of claims. (Settlement Agreement ¶ 6(c).) The Parties
3 selected CPT Group, Inc. as the Settlement Administrator, and its costs allocated up to \$20,000 are
4 to be deducted from the Gross PAGA Settlement Amount. (Settlement Agreement ¶ 6(b).) After
5 payment of the attorneys' fees and costs, Plaintiff's incentive award payment, and administration
6 costs, approximately \$163,250³ will remain as the estimated net proceeds for distribution to the
7 LWDA and Aggrieved Employees (the "Net Settlement Amount"). (Settlement Agreement ¶ 6(d);
8 Connor Decl. ¶ 26.)

9 **B. Settlement Allocation to the LWDA and Aggrieved Employees**

10 Pursuant to the Settlement Agreement, the entire Net Settlement Amount shall be designated
11 as PAGA civil penalties to be allocated as follows: 75 percent (\$122,437.50) shall be distributed to
12 the LWDA and 25 percent (\$40,812.50) to Aggrieved Employees (divided *pro rata* based on each
13 employee's proportionate number of pay periods during the PAGA Period). (See Labor Code §
14 2699(i) ["Except as provided in subdivision (j), civil penalties recovered by aggrieved employees
15 shall be distributed as follows: 75 percent to the [LWDA] enforcement of labor laws and education
16 of employers and employees about their rights and responsibilities under this code...and 25 percent
17 to the aggrieved employees."].) (Settlement Agreement ¶ 6(e).)

18 Assuming *arguendo* that distribution was *pro rata* across an approximate 200 Aggrieved
19 Employees (there were 162 Aggrieved Employees as of November 4, 2021, thus, a conservative
20 buffer to the original estimate was added), the average payment to each Aggrieved Employee is
21 estimated to be \$204.06. In reality, distribution will be *pro rata* based on proportionate pay periods
22 worked. (Connor Decl. ¶ 28.)

23 **C. Settlement Payments and the Notice**

24 The settlement is non-reversionary and does not require Aggrieved Employees to submit a
25 claim form to reap financial benefit from the settlement. (Settlement Agreement ¶ 8.) Within twenty
26 (20) calendar days after the Effective Date, Defendant will tender to the Settlement Administrator

27 _____
28 ³ The Net PAGA Settlement Amount will be slightly higher because the actual litigation costs are
\$3,166.79 less than the amount allocated under the Settlement Agreement.

1 the Gross PAGA Settlement Amount (*see* Settlement Agreement ¶¶ 11(a), 27), and within ten (10)
2 calendar days after the Effective Date, Defendant will tender to the Settlement Administrator the
3 Aggrieved Employee List (which is an Excel spreadsheet containing each Aggrieved Employee's:
4 (a) full name, (b) last known mailing address, (c) Social Security number, and (d) the respective
5 number of pay periods that each Aggrieved Employee worked as a non-exempt employee for
6 Defendant in California during the PAGA Period). (*Id.* at ¶¶ 7, 11(a).)

7 Within ten (10) calendar days after the date the Gross PAGA Settlement Amount is deposited
8 with the Settlement Administrator, the Settlement Administrator will distribute payments to
9 Aggrieved Employees, along with the PAGA Payment Letter (*see* Exhibit "2" to Connor Decl.), via
10 First-Class U.S. Mail. (Settlement Agreement ¶ 11(b).) Before mailing, the Settlement
11 Administrator will perform a National Change of Address database search for information to locate
12 the most current addresses for Aggrieved Employees. (*Id.* at ¶ 11(a).) If any PAGA Payment Letters
13 are returned without a forwarding address, the Settlement Administrator shall attempt to locate a
14 current address by performing an additional skip-trace, if appropriate.

15 Aggrieved Employees will have 180 days to cash their checks. (Settlement Agreement ¶
16 11(c).) Any settlement checks remaining uncashed after 180 days shall be cancelled, and the funds
17 associated with such cancelled checks will be transmitted to the California State Controller's
18 Unclaimed Property division pursuant to Code of Civil Procedure section 1500 *et seq.* in the names
19 of the Aggrieved Employees who did not cash their settlement checks, until such time as they claim
20 their property. (Settlement Agreement ¶ 11(c).) In the event that an Aggrieved Employee does not
21 negotiate his or her check, the terms of the final judgment will nevertheless be binding upon that
22 Aggrieved Employee.

23 **D. The Releases and Settlement Payment to Plaintiff**

24 Importantly, the California Supreme Court has explained that other employees are bound by
25 a PAGA adjudication only with respect to civil penalties, just as they would be "bound by a
26 judgment in an action brought by the government." (*Arias, supra*, 46 Cal.4th at p. 986.) In
27 accordance with this rule, the release of Aggrieved Employees herein is narrowly tailored to release
28 from liability for "any and all claims for the recovery of civil penalties under PAGA only, that could

1 have been asserted in the Action based on the facts alleged,” which includes a full release of the
2 PAGA claim for underlying “violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3,
3 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, as well as the applicable
4 provisions of the IWC Wage Order 1-2001 and any other PAGA violations that were asserted or
5 could have been asserted in the Lawsuit based on the facts alleged in the Lawsuit and the PAGA
6 Notice, including all PAGA claims stated expressly or by implication in the PAGA Notice filed with
7 the LWDA.” (“PAGA Released Claims”). (See Settlement Agreement p. 1 (Preamble) and ¶ 2;
8 Connor Decl. ¶ 33.) The Parties are not aware of any potentially overlapping lawsuits other than the
9 matter *sub judice*.

10 Under the terms of the settlement, Plaintiff will request a PAGA Representative Incentive
11 Award, to be paid in recognition of his time and service to Aggrieved Employees and the State of
12 California in pursuing the Lawsuit and in fulfilling his obligations as the lead Aggrieved Employee,
13 and in exchange for his individual general release of claims (“Plaintiff’s Individual Release of
14 Claims”), in addition to the PAGA Released Claims, in the amount of \$6,500. (Settlement
15 Agreement ¶¶ 3-4, 6(c); Connor Decl. ¶ 34.)

16 E. Attorneys’ Fees and Costs

17 Plaintiff’s Counsel request 35 percent of the Gross PAGA Settlement Amount in attorneys’
18 fees and \$11,833.21 in reimbursement of litigation costs.⁴ (Settlement Agreement ¶ 6(a); Connor
19 Decl. ¶ 35.) Further discussion and support for the requested awards is set forth in section VII, *infra*,
20 and the accompanying Connor Decl. at paragraphs 55 through 71.

21 VI. THE PAGA SETTLEMENT SHOULD BE APPROVED

22 In 2016, PAGA was amended to require the Court to “review and approve any settlement of
23 any civil action filed pursuant to this part.” (Labor Code § 2699(1)(2).) The amendment to Labor
24 Code section 2699(1)(2) also requires that the “proposed settlement shall be submitted to the agency
25 at the same time that it is submitted to the court.” As such, on the day of filing of this Motion, the
26

27
28 ⁴ Notwithstanding that the Settlement Agreement allocated up to \$15,000, Plaintiff’s Counsel’s total costs as of today are \$11,833.21. (Connor Decl. ¶ 70; Settlement Agreement ¶ 6(a).)

1 Settlement is also being concurrently submitted to the LWDA in accordance with this section.
2 (Settlement Agreement ¶ 14; Connor Decl. ¶ 36.)

3 **A. Standards for Approval of a PAGA Settlement**

4 The legislative history of the PAGA makes little mention of the approval requirement in
5 section 2699, subdivision (l). The PAGA was passed by the legislature as Senate Bill (“SB”) 796,
6 and it was signed by the Governor and filed with the Secretary of State on October 12, 2003. (*See*
7 *Legislative Digest re Senate Bill No. 796*.) It took effect on January 1, 2004.

8 The original version of the act did not contain the court approval requirement now codified
9 in section 2699(l). That subdivision was added as part of the amendments to the Act that were
10 introduced as SB 1809 in February 2004 and signed by the Governor on August 11, 2004. (*See*
11 *Legislative Digest re Senate Bill No. 1809*.) Those amendments took effect immediately, and the
12 Court approval requirement of section 2699(l) was one of the provisions that the legislature made
13 retroactive to January 1, 2004. (*Legislative Digest re Senate Bill No. 1809*.)

14 Senator Joseph L. Dunn authored both the original PAGA bill (SB 796) and the amendments
15 (SB 1809). On July 29, 2004, during the consideration of the amendments in SB 1809, Senator Dunn
16 sent a letter addressed to the President Pro Tem of the Senate, which was published in the Senate
17 Daily Journal, “to clarify the extent of subdivision (l)” of what is now section 2699. He was sending
18 this letter “in response to an issue raised by the Judicial Council of California.” In the letter, Senator
19 Dunn stated:

20 The purpose of court review of the penalties in subdivision (l) is to ensure that
21 settlements involving penalties arising out of Labor Code Section 2699 do not
22 undercut the dual statutory purposes of punishment or deterrence, or result in unjust,
arbitrary, and oppressive, or confiscatory settlements.

23 (July 29, 2004 Letter from Senator Dunne to Senate President Pro Tem.) The broad criteria appear
24 to give the Court wide latitude in determining whether to approve the penalties proposed as part of
25 a PAGA settlement. Interestingly, the criteria focus on the effect the penalties may have on the
26 defendant-employer rather than the LWDA or the aggrieved employees who will receive the
27 penalties. (*See Iskanian v. CLS Transp. L.A., LLC* (2014) 59 Cal.4th 348, 383, abrogated on other
28 grounds by *Viking River Cruises, Inc. v. Moriana* (June 15, 2022) 142 S.Ct. 1906 [stating that while

1 the State clearly has an interest “in receiving the proceeds of civil penalties,” the penalties are “used
2 to deter violations.”].) This is different than the analysis of a class action settlement, which typically
3 focuses on the amount received by the class and compares that to the reasonable range of potential
4 outcomes in this case. (*C.f., e.g., Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
5 130.) Moreover, “there is not [*sic*] requirement that the Court certify a PAGA claim for
6 representative treatment” as in a class action. (*Villalobos v. Calandri Sonrise Farms LP* (C.D.Cal.
7 July 2015) 2015 WL 12732709, at *5.)

8 **B. The Penalties Are Appropriate Under the Circumstances**

9 Here, the penalties are appropriate when considered in light of the principles discussed in
10 Senator Dunn’s letter. Plaintiff contends that the *non-reversionary* Gross PAGA Settlement
11 Amount of \$315,000 represents an excellent recovery, and is large enough to punish or deter
12 Defendant. (Connor Decl. ¶ 37.)

13 Procedurally, in addition to asserting that any putative class claims would fail due to
14 arbitration agreements signed by Defendant’s workforce (including Plaintiff), the Supreme Court’s
15 *Viking River, supra*, 142 S. Ct. at p. 1906 decision posed significant risk. Post-*Viking River*, the
16 landscape of PAGA litigation statewide is significantly altered, and the ramifications will take
17 months, if not years, in California trial and appellate courts to realize. (Connor Decl. ¶ 38; *see, e.g.,*
18 *Adolph v. Uber Technologies, Inc.* (Cal. Ct. App., Apr. 11, 2022) 2022 WL 1073583, review granted
19 (July 20, 2022);⁵ *see also Jarobe v. Hanlees Auto Group* (2020) 53 Cal.App.5th 539 [recognizing
20 courts are vested with discretion to stay inarbitrable claims pending arbitration].) This Settlement
21 obviates those risks and delays.

22 Substantively, Plaintiff faced significant challenges to his Labor Code section 226.7 meal
23 period claims because a majority of the records for Aggrieved Employees showed lunch breaks,
24 even if untimely and short. Moreover, Defendant relied on arguments akin to a bell system, *to wit*,

25 ⁵ The issue to be briefed and argued in *Adolph, supra*, 2022 WL 1073583, is limited to the following:
26 “Whether an aggrieved employee who has been compelled to arbitrate claims under the Private
27 Attorneys General Act (PAGA) that are ‘premised on Labor Code violations actually sustained by’
28 the aggrieved employee [citation] maintains statutory standing to pursue ‘PAGA claims arising out
of events involving other employees’ [citation] in court or in any other forum the parties agree is
suitable.”

1 that its warehouse ceased operations between 12:00 p.m. and 12:30 p.m. to provide meal periods.
2 (Connor Decl. ¶ 39.) Like most employers facing meal period litigation, Defendant argued that
3 Aggrieved Employees were apprised of their right to take meal periods, but voluntarily waived them.
4 (*Ibid.*) With respect to Defendant’s rest break policies, the legality depends on which of three
5 employee handbook versions in circulation (including in English and Spanish languages) was
6 distributed to which Aggrieved Employee.

7 Plaintiff’s off-the-clock allegations similarly posed unique challenges. Given that
8 Defendant’s written policies and employee handbooks explicitly stated that each employee is
9 required to accurately record his or her hours of work using a time clock on a centralized computer,
10 it was vigorously contested between the Parties just how much off-the-clock work occurred. For
11 Plaintiff to establish the quantity of specific disputed and unrecorded work activities—especially
12 over multiple job titles, at differing pay rates—would have been costly, time-consuming, and
13 daunting. Although Plaintiff argues that Defendant had an impermissible top-down practice of
14 requiring Aggrieved Employees to work during meal breaks and during pre-/post-shift hours, in
15 light of its written policies and other evidence suggesting an intent to follow those policies,
16 establishing the alleged unlawful business practice as a rule rather than exception might prove
17 daunting. (Connor Decl. ¶ 40.)

18 Thus, the Settlement provides a fair and reasonable monetary recovery for the LWDA and
19 Aggrieved Employees in the face of hotly disputed claims. (Connor Decl. ¶ 41.)

20 **First**, although PAGA and its legislative history do not seem to require a comparison with
21 the “maximum” value of the claims to the actual settlement amount, the penalties are reasonable
22 when considered in this context as well. As of November 4, 2021, the number of Aggrieved
23 Employees in the PAGA Period is approximately 162 and the number of PAGA-eligible pay periods
24 totals 11,308. (Settlement Agreement p. 2 [Preamble]; Connor Decl. ¶ 42.) Using the most
25 straightforward formulation of applying the “catch-all” \$100 penalty specified in Labor Code section
26 2699(f)(2) to each of the estimated 11,308 pay periods through mediation, the maximum plausible
27 exposure under that direct approach is **\$1,130,800**. The Settlement of **\$315,000** is about **27.8%** of
28 that roughly estimated maximum exposure value. (Connor Decl. ¶ 42.) When considering the serious

1 risks discussed herein, and the Court’s inherent power to adjust penalties downward to reflect an
2 employer that sought to be in compliance with wage and hour laws, the compromise figure is
3 reasonable.

4 In order for Plaintiff to prevail on the PAGA claim, Plaintiff’s Counsel would have to prove
5 the underlying California Labor Code violations, demonstrate that Aggrieved Employees suffered,
6 and demonstrate that Defendant’s conduct gives rise to penalties. (Connor Decl. ¶ 43; *see, e.g., Elliot*
7 *v. Spherion Pac. Work, LLC* (C.D.Cal. 2008) 572 F.Supp.2d 1169, 1181-82 [“Plaintiff’s claim under
8 [PAGA] is wholly dependent upon her other claims. Because all of plaintiff’s other claims fail as a
9 matter of law, so does her PAGA claim.”].)

10 Although wage-and-hour actions are amenable to resolution as to a group of employees,
11 some courts have also found that, for various reasons, the issues raised by Plaintiff here are
12 individualized issues and/or are unmanageable and thus not suitable for adjudication as to a group
13 of employees. (Connor Decl. ¶ 44.) Defendant contended that courts have required, and that due
14 process requires, that the adjudication of PAGA claims meet a “manageability” requirement.
15 (Connor Decl. ¶ 44; *see, e.g., Liu v. Merrill Lynch & Co.* (C.D.Cal. Nov. 10, 2014, No. CV-14-0425-
16 PA) 2014 WL 5904904, at *3-4 [Court dismissed the PAGA claim because a multitude of
17 individualized assessments would be necessary, making the PAGA claim unmanageable].)

18 Defendant maintained several defenses to Plaintiff’s theory of liability, which, if successfully
19 argued and proven, had the potential to eliminate or substantially reduce recovery. (Connor Decl. ¶
20 45.) Defendant maintained, and continues to maintain, that it had legally compliant employment
21 policies and practices throughout the time period at issue. (*Ibid.*) Defendant denied, and continues
22 to deny, that it ever violated any provision of the California Labor Code, including, but not limited
23 to, those sections for which Plaintiff seeks penalties under the PAGA. (*Ibid.*) Defendant further
24 denied, and continues to deny, that Plaintiff’s lawsuit is appropriate for representative treatment for
25 any purpose other than the settlement. (*Ibid.*)

26 Defendant contended that the work experiences of Aggrieved Employees varied because they
27 have different job positions with widely varying responsibilities across different locations, and that
28

1 these factors would pose a challenge to proving injuries to all Aggrieved Employees and to the
2 manageability and viability of representative adjudication of the PAGA claim. (Id. at ¶ 46.)

3 Defendant also argued that an important feature of the PAGA is that the Court retains
4 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do
5 otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (See
6 Labor Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
7 Cal.App.4th 1112, 1136 [holding that a court may reduce the amount of PAGA penalties awarded
8 to an employee based upon discretionary factors].) (Connor Decl. ¶ 47.) Again, Defendant denies
9 that it ever violated any provision of the California Labor Code. (Connor Decl. ¶ 47.) Even if,
10 *arguendo*, such violations occurred, which Defendant denies, Defendant contended that said
11 violations would only be considered “initial violations” and thus heightened “subsequent violation”
12 penalties were not warranted. (See Labor Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2*
13 (2008) 163 Cal.App.4th 1157, 1208-09 [“Until the employer has been notified that it is violating a
14 Labor Code provision [...], the employer cannot be presumed to be aware that its continuing
15 underpayment of employees is a ‘violation’ subject to penalties.”].) (Connor Decl. ¶ 47.)

16 Moreover, Defendant contended that the Court was unlikely to assess cumulative PAGA
17 penalties for the maximum number of possible, separate California Labor Code violations, because
18 it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may
19 be regulated by multiple provisions of the California Labor Code that are interrelated and work in
20 tandem. (Connor Decl. ¶ 48.) As such, Defendant contended that cumulative penalties and
21 heightened penalties would be unjust, arbitrary, oppressive, and confiscatory. Finally, many of the
22 claims were derivative of each other, which tended to undermine any stacking of penalties. (Ibid.)

23 While Plaintiff disagrees with Defendant’s contentions and maintains that his PAGA claim
24 has merit, in reaching the settlement, Plaintiff and his counsel took into account the strengths and
25 weaknesses of each side’s position and the uncertainty of how the case might have concluded as
26 litigation continued, at trial, and/or appeals. (Id. at ¶ 49.) The PAGA settlement amount is reasonable
27 in light of significant risks and uncertainties associated with the PAGA claim in this case.

28 ///

1 **Second**, the scope of the release is necessarily strictly confined to those PAGA civil penalties
2 that are asserted in the Lawsuit or could have been asserted based on the facts alleged in the Lawsuit.
3 (Settlement Agreement p. 1 [Preamble] and ¶ 2.) The PAGA Released Claims do not release any
4 Aggrieved Employee’s non-PAGA claims for alleged violations of the Labor Code. (*Ibid.*) The
5 Settlement also requires that each Aggrieved Employee receive a notice, *i.e.*, the PAGA Payment
6 Letter, which describes this litigation and the settlement. (Settlement Agreement ¶ 12.) Plaintiff
7 contends that this notice will educate Aggrieved Employees as to the requirements of the Labor
8 Code, something that is in the public interest and consistent with the PAGA’s purposes. (*See* Labor
9 Code § 2699(j) [stating that civil penalties recovered under PAGA shall be distributed to the LWDA
10 for [among other things] “education of employers and employees about their rights and
11 responsibilities under this code.”].) (Connor Decl. ¶ 50.)

12 **Third**, “the very essence of a settlement is compromise, ‘a yielding of absolutes and an
13 abandoning of highest hopes.’” (*Officers for Justice v. Civil Service Comm’n* (9th Cir. 1981) 688
14 F.2d 615, 624.) “The proposed settlement is not to be judged against a hypothetical or speculative
15 measure of what might have been achieved by the negotiators.” (*Id.* at p. 625.) Here, the settlement,
16 even with deductions, provides a substantial sum of approximately \$122,437.50 to the State and
17 \$40,812.50 to Aggrieved Employees. (Connor Decl. ¶ 51.) The settlement is a compromise of highly
18 disputed claims. (*Ibid.*) Plaintiff and his counsel recognize the expense and length of continued
19 proceedings necessary to litigate the matter through trial and any possible appeals. (*Ibid.*) They have
20 also considered the uncertainty and risk of the outcome of further litigation, and the difficulties and
21 delays inherent in such litigation. (*Ibid.*) Plaintiff and his counsel are also aware of the burdens of
22 proof necessary to establish liability, both generally and in response to Defendant’s defenses thereto,
23 and the difficulties in establishing Defendant’s liability for, and the right to recover, penalties on
24 behalf of Plaintiff, the State of California, and other Aggrieved Employees. (*Ibid.*) Plaintiff and his
25 counsel have also taken into account Defendant’s agreement to enter into a settlement that confers
26 significant relief upon Aggrieved Employees and the State of California. (*Ibid.*)

27 Considering all of the facts in this case, Plaintiff and his counsel have determined that the
28 settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in

1 the best interests of Aggrieved Employees and the State of California. (Connor Decl. ¶ 52.) The
2 settlement secured by Plaintiff here is greater than other PAGA penalty awards approved by
3 California state courts, which often range between \$7,500.00 and \$15,000.00 for PAGA claims
4 impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments
5 on a per capita basis. (See, e.g., *Penaloza v. PPG Industries Inc.* (Super. Ct. L.A. County, May 20,
6 2013, Case No. BC471369) 2013 WL 2917624, at *2 [approving PAGA penalties of \$5,000.00 to
7 class of 667 members]; *Cabrera v. Advantage Sale & Marketing, LLC* (Super. Ct. L.A. County,
8 March 12, 2013, Case No. BC485259) 2013 WL 1182822 [approving PAGA penalties of \$10,000.00
9 for class of approximately 3,000 members].) The result achieved in this case, and the monetary
10 recovery provided by this settlement, are well within the range of an acceptable settlement under the
11 circumstances, especially when compared to the settlement of PAGA claims in other cases.⁶ (Connor
12 Decl. ¶ 53.)

13 **Fourth**, public policy strongly favors the settlement of litigation. (*Consumer Advocacy*
14 *Group v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.) Because the proposed
15 settlement is neither unjust nor ignores the public interest, it should be approved. (Connor Decl. ¶
16 54.)

17 **VII. THE ATTORNEYS' FEES AND COSTS ARE REASONABLE**

18 Here, Plaintiff moves for approval of attorneys' fees of 35 percent (or \$110,250) of the
19 common fund. (Settlement Agreement ¶ 6(a).) Pursuant to Labor Code section 2699(g)(1), the
20 prevailing party in a PAGA action is entitled to reasonable attorney's fees and costs. Plaintiff is not

21 ⁶ (See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833
22 (May 2017) [approving the amount of \$15,000 out of \$4 million toward settlement of PAGA
23 claims]; *Garcia v. Gordon Trucking, Inc.* (E.D.Cal. Oct. 31, 2012) 2012 WL 5364575, at *3
24 [approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims]; *Schiller*
25 *v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14 [approving the amount
26 of \$10,000 out of \$518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments,*
27 *LLC* (N.D.Cal. Feb. 16, 2011) 2011 WL 672645, at *1 [approving the amount of \$10,000 out of
28 \$6.9 million toward settlement of PAGA claims]; *Franco v. Ruiz Food Products, Inc.* (E.D. Cal.
Nov. 27, 2012) 2012 WL 5941801, at *14 [approving the amount of \$10,000 out of \$2.5 million
toward settlement of PAGA claims]; *Nordstrom Commission Cases* (Cal. Ct. App. Jul. 7, 2010) No.
G042772 [finding no abuse of discretion by the trial court in approving a settlement that allocates
\$0 toward the settlement of PAGA claims that were at issue in the lawsuit].) Here, the value obtained
for settlement of the PAGA claims is significant, and it will be distributed in accordance with and
in fulfillment of the objectives of the PAGA statute.

1 claiming that he is the prevailing party, but nevertheless the settlement of a PAGA action must
2 consider the fees that have been incurred as an element of the liability analysis and ultimate
3 settlement. (Connor Decl. ¶ 55.)

4 This request for attorneys' fees is supported by California law under the common fund
5 doctrine. The main advantage of the settlement here is that it creates a significant fund to benefit the
6 LWDA and Aggrieved Employees. As noted by the trial court in *Harrington v. Payroll*
7 *Entertainment Services, Inc.* (2008) 160 Cal.App.4th 589, plaintiff's attorneys should share in this
8 recovery. These circumstances are analogous to cases, like wage and hour class actions, where the
9 common fund doctrine is applied. The common fund doctrine has been applied "consistently in
10 California when an action brought by one party creates a fund in which other persons are entitled to
11 share." (*City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110; Connor Decl. ¶ 56.)

12 An award of fees from the gross settlement amount under the common fund doctrine
13 prevents unjust enrichment of those who benefit from the common fund through the successful
14 efforts of plaintiff's counsel and furthers the important goal of attracting competent counsel to
15 handle representative actions enforcing minimum labor standards. (*Laffitte v. Robert Half Int'l, Inc.*
16 (2016) 1 Cal.5th 480, 503.) In affirming the use of the common fund doctrine in California, the
17 California Supreme Court summarized the benefits of the percentage method of recovery stating:

18 The recognized advantages of the percentage method – including relative ease of
19 calculation, alignment of incentives between counsel and the class, a better
20 approximation of market conditions in a contingency case, and the encouragement it
21 provides counsel to see an early settlement and avoid unnecessarily prolonging the
litigation [citations] – convince us the percentage method is a valuable tool that should
not be denied our trial courts.

22 (*Laffite, supra*, 1 Cal.5th at p. 503; *see also Lealao v. Beneficial Cal. Ins.* (2000) 82 Cal.App.4th 19,
23 48 [observing that the key advantage of the common fund method is that it focuses on the total
24 benefit conferred on the beneficiaries resulting from the efforts of counsel.]) Thus, the common fund
25 approach is the most reasonable one here, given the nature of the case and of the Parties' settlement.
26 (Connor Decl. ¶¶ 57-60.)

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1 The attorney fee award requested is also consistent with what courts have awarded in other
2 representative action cases. The following list shows PAGA actions and PAGA/class action cases
3 where attorney's fees were awarded on a common fund basis in a range between 33.33% and 40%:

4 • *Banda v. Verizon California, Inc.*, Los Angeles Superior Court Case No. BC434587
5 (**35% fee awarded** on \$15,000,000 settlement of mixed PAGA/class claims);

6 • *Padilla v. Staffmark Investment, Inc.*, San Bernardino County Superior Court Case
7 No. CIVDS1408641 (**33.33% fee awarded** on \$2,000,000 settlement of a PAGA only case);

8 • *Birch v. Office Depot*, United States District Court for the Southern District of
9 California, Case No. CV06-1690-DMS (**40% fee awarded** on \$16,000,000 settlement of mixed
10 PAGA/class claims);

11 • *Zelada v. Majestic Terminal Services*, San Bernardino Superior Court Case No.
12 CIVDS1916968 (**38% fee awarded** on \$1,800,000 settlement of a PAGA only case); and

13 • *Garcia v. The Pep Boys*, Orange County Superior Court Case No. 30-2014-
14 007205740-CU-OE-CJC (**33.33% fee awarded** on \$1,030,000 settlement of a PAGA only case).

15 Plaintiff's Counsel's application for attorneys' fees in light of the facts and circumstances
16 surrounding the case is well within the range of reasonableness. In fact, historically, courts have
17 awarded fees as high as fifty percent (50%) of the settlement in complex actions. (*See In re*
18 *Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 [**awarding attorneys' fees in the**
19 **amount of 45%** of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v. Twentieth-*
20 *Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 [awarding approximately **53% of the**
21 **settlement as attorneys' fees**].) California courts routinely approve attorneys' fees awards
22 "average[ing] around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
23 43, 66 fn. 11 [lower court found the range of contingency fees in marketplace to be up to 40 percent
24 and determined such a percentage fee was appropriate].)

25 Based on the foregoing, awarding attorneys' fees based on a percentage of the settlement
26 amount is favored by California Courts when a fund established for the common benefit of other is
27 involved, such as here. (*See Laffitte, supra*, 1 Cal.5th at p. 503 [finding trial court did not abuse its
28 discretion in approving fee award of 1/3 of the common fund].)

1 Here, Plaintiff's Counsel represented Plaintiff (and the State of California) in this matter on
2 a strictly contingency basis and, as such, had to forego other financial opportunities to litigate other
3 cases (contingency and hourly), incurred the risk of non-recovery after investment of time, money,
4 and resources, and have done so since the inception of this case without payment or compensation.
5 (Connor Decl. ¶ 61.) This is not an easy burden for Plaintiff's Counsel and, if the best that could be
6 hoped for is merely to be paid the customary hourly rate, such would not sufficiently incentivize
7 future similar private attorney general/qui tam cases with contingency risks. (*Id.* at ¶ 62.) Given that
8 the request for attorneys' fees here falls well within the norms accepted in comparable California
9 court cases, Plaintiff's request for \$110,250 in attorneys' fees is fair and reasonable.

10 Significantly, *Laffitte* also held that trial courts have discretion to assess reasonableness of
11 fee awards with tools such as the lodestar cross-check, though they need not do so. (*Laffitte, supra*,
12 1 Cal.5th at p. 506.) This Court can and should award attorneys' fees and costs based on the
13 percentage fee alone in light of the excellent results achieved and for the reasons stated.
14 Nevertheless, the lodestar "cross-check" here also supports the requested contingency-fee
15 percentage. (*Serrano v. Priest* (1975) 20 Cal.3d 25, 48.) Specifically, Plaintiff's Counsel, with a
16 total lodestar of \$64,275, requires a multiplier of approximately **1.72** to yield the requested fees.
17 (Connor Decl. ¶¶ 63-68.)

18 The requested multiplier in this case is within even the modest multipliers that are approved
19 by California courts. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050-1051
20 [looking to multipliers awarded in comparable cases as evidence of reasonableness; affirming 3.65
21 multiplier].) Multipliers routinely range from 3 to 5, and it is not uncommon that multipliers of
22 between 5 and 10, or higher, are applied. (*See, e.g., Wilson v. Bank of Am. Natl. Trust & Savs. Assn.*
23 (Cal. Sup. Ct., Aug. 16, 1982) Case No. 643872 [multiplier of 10]; *Glendora Comm. Redev. Agency*
24 *v. Demeter* (1984) 155 Cal.App.3d 456, 465 [affirming multiplier of 12, and expressly rejecting
25 argument that fee was either exorbitant or unconscionable]; *Wershba v. Apple Computer, Inc.* (2001)
26 91 Cal.App.4th 224, 255 [noting that "[m]ultipliers can range from 2 to 4 or even higher"]; *Van*
27 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 298 [3-4 are in the "range [of]
28 common" multipliers for class actions]; *Laffitte, supra*, 1 Cal. 5th at pp. 487-88 [multiplier of 2.03

1 to 2.13]; *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 [affirming a 2.34 multiplier
2 without remand]; *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512
3 [applying a 2.52 multiplier]; *Chavez, supra*, 162 Cal.App.4th at p. 66 [applying a 2.5 multiplier];
4 *Chau, et al v. CVS RX Services, Inc.*, Los Angeles County Superior Court No. BC349224, Order
5 Granting Final Approval of Class Action Settlement, Reasonable Attorneys’ Fees and Costs and
6 Service Payments to the Class Representatives [a 3.8 multiplier was applied based primarily on
7 contingent risk and the “excellent results [] obtained [] with relative efficiency”).) Recently, on
8 October 23, 2020, the California Court of Appeal issued its ruling in *Santana v. FCA US, LLC*, Case
9 Nos. G057244, G058020, affirming the trial court’s award of fees to plaintiff’s attorneys in a
10 contingency case utilizing a 2.0 multiplier explaining:

11 Under our precedents, the unadorned lodestar reflects the general local hourly rate
12 for a fee-bearing case; it does not include any compensation for contingent risk,
13 extraordinary skill, or any other factors a trial court may consider under *Serrano III*.
14 The adjustment to the lodestar figure, *e.g.*, to provide a fee enhancement reflecting
15 the risk that the attorney will not receive payment if the suit does not succeed,
constitutes earned compensation; unlike a windfall, it is neither unexpected nor
fortuitous. Rather, it is intended to approximate market-level compensation for such
services, which typically includes a premium for the risk of nonpayment or delay in
payment of attorney fees.

16 (*Id.* at p. 20 [citing *Ketchum v. Moss* (2001) 24 Cal.4th 1122, 1138].) The *Santana* court concluded
17 a multiplier was appropriate to account for the contingency factor. Accordingly, the lodestar cross-
18 check affirms that the fee award requested does in fact fall within the range of reasonableness.
19 (Connor Decl. ¶¶ 67-69.)

20 The Settlement Agreement authorized Plaintiff’s Counsel to recover actual litigation costs
21 of up to \$15,000. (Settlement Agreement ¶ 6(a).) In actuality, Plaintiff’s Counsel have incurred an
22 aggregated \$11,833.21 in litigation costs. (Connor Decl. ¶ 70.) This amount does not include costs
23 to incurred in connection with filing and serving approval papers and appearing at the PAGA
24 approval hearing estimated at \$175.00, thus, Plaintiff’s Counsel are seeking a rounded \$12,000.00.
25 (*Ibid.*) These expenses include: (1) court filing, service, and messenger fees; (2) LWDA filing fees;
26 (3) mediation fees; (4) expert fees; and (4) postage. (Connor Decl. ¶ 70.) The expenses incurred by
27 Plaintiff’s Counsel in this matter benefited Plaintiff, the LWDA, and Aggrieved Employees, and are
28

1 of the type routinely billed by attorneys in such litigation. (*Id.* at ¶ 71.) Given that the \$11,833.21 in
2 litigation costs are reasonable and uncontested, they should be approved.

3 **VIII. THE INCENTIVE AWARD PAYMENT TO PLAINTIFF IS REASONABLE**

4 As part of the settlement, the Parties seek a PAGA Representative Incentive Award to be
5 paid to Plaintiff in recognition of his time and service to Aggrieved Employees and the State of
6 California in pursuing this action, and in fulfilling his obligations as the lead Aggrieved Employee,
7 in the amount of \$6,500. (Settlement Agreement ¶ 6(c); Connor Decl. ¶ 72.) The Parties
8 acknowledge that Plaintiff took significant risks in bringing this litigation and actively supported its
9 prosecution. (Connor Decl. ¶ 73.) Numerous other state courts have previously approved service
10 awards and/or individual settlement payments to PAGA representatives in amounts that demonstrate
11 the reasonableness of Plaintiff's request. (Connor Decl. ¶ 73; *see, e.g. Garrett v. Bank of America*
12 (Oct. 28, 2016) Alameda County Superior Court Case No. RG13699027 [awarding three PAGA
13 plaintiffs \$25,000.00 each as service awards]; *Brewer v. Connell Chevrolet*, Orange County
14 Superior Court Case No. 30-2016-00852123 [approving a PAGA representative awarded as an
15 individual settlement payment of \$15,000.00]; *Jones v. J.C. Penny Corp.*, Los Angeles Superior
16 Court Case No. BC451823 [awarding PAGA representative a service award of \$10,000.00]; and
17 *Garcia v. Macy's West Stores*, San Bernardino Superior Court Case No. CIVDS1516007 [approving
18 a PAGA settlement and service award of \$10,000.00].)

19 Here, Plaintiff spent a significant amount of time helping Plaintiff's Counsel with the
20 prosecution of this action and performing the following tasks: (1) regularly speaking with his
21 attorneys; (2) providing relevant legal and factual information; (3) evaluating and producing relevant
22 documents; (4) identifying potential witnesses; (5) discussing discovery, damages, and penalties
23 issues; (6) participating and being available during the mediation process; (7) reviewing, discussing,
24 evaluating the terms of and signing the Settlement Agreement; and (8) regularly requesting updates
25 on the status of the case. (Connor Decl. ¶ 74.) Plaintiff will not "benefit financially" from this
26 settlement in any meaningful sense, yet he has obtained a substantial payment for the State of
27 California and for other Aggrieved Employees. (Connor Decl. ¶ 75.) Thus, the PAGA Representative
28

1 Incentive Award in the amount of \$6,500 is modest, reasonable, and should be approved. (Connor
2 Decl. ¶ 75.)

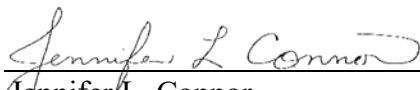
3 **IX. CONCLUSION**

4 For the foregoing reasons, Plaintiff requests that the Court approve the PAGA settlement of
5 this matter.

6 Dated: September 11, 2022

Respectfully submitted,

COUNSELONE, PC

8
9 By: 
10 Jennifer L. Connor
11 Anthony J. Orshansky
12 Attorneys for Plaintiff, the State of
13 California, and Aggrieved Employees
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