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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **FOR THE COUNTY OF SAN DIEGO**

20 PABLO MACIAS, individual, on behalf of
21 himself and on behalf of all persons similarly
22 situated,

23 Plaintiff,

24 vs.

25 ABM ELECTRICAL AND LIGHTING
26 SOLUTIONS, INC., a Corporation; and Does
27 1 through 50, Inclusive;

28 Defendants.

Case No. 37-2020-00033639-CU-OE-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF THE PAGA
SETTLEMENT**

Motion Date: March 18, 2022
Motion Time: 10:30 a.m.

Judge: Hon. Richard S. Whitney
Dept: C-68

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1 **I. INTRODUCTION**

2 This settlement covers an action brought under the California Private Attorneys General
3 Act, Cal. Labor Code §2699, et seq. (“PAGA”). The operative Complaint was filed by Plaintiff
4 Pablo Macias, (“Plaintiff”). Plaintiff brought claims on behalf of all individuals who, during the
5 time period of July 9, 2019, through September 19, 2021 (the “PAGA Period”), were employed and
6 classified by Defendant ABM Electrical Lighting & Solutions, Inc. (“Defendant”) as non-exempt,
7 in California (the “Aggrieved Employees”).

8 Plaintiff alleged that Defendant failed to pay minimum wages for all time worked, including
9 for rest breaks, failed to pay overtime wages at the correct rate, failed to provide meal and rest
10 periods, failed to provide accurate wage statements, failed to reimburse business expenses, and
11 failed to provide wages when due. Based upon the foregoing conduct, Plaintiff contends that
12 Defendant is liable for PAGA penalties for underlying violations of Labor Code sections 201, 202,
13 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
14 and the applicable Wage Orders. Defendant denies Plaintiff’s claims, any liability therefor, and that
15 Plaintiff can successfully proceed with his claims including on a representative basis.

16 After a full day of mediation with Steve Serratore, Esq., following an extensive informal
17 discovery exchange, the parties agreed to a mediator’s proposal to settle this PAGA action for the
18 total amount of One Hundred and Seventy Thousand Dollars and Zero Cents (\$170,000.00). In
19 accordance with California Labor Code §2699(l), Plaintiff now asks this Court to review and
20 approve the Parties’ mediated and agreed upon settlement of Plaintiff’s PAGA claims.¹

21 The PAGA settlement is set forth in the accompanying Private Attorney General Act (Labor
22 Code Section 2698 *et Seq.*) Settlement Agreement and Release of All Claims (“Settlement
23 Agreement”). A true and correct copy of the Settlement Agreement which sets forth the terms for
24 the settlement of the PAGA claims is attached as Exhibit #1 to the Declaration of Matthew M.

25 _____
26 ¹ Section 2699(l)(2) provides as follows: “The superior court shall review and approve any
27 settlement of any civil action filed pursuant to this part.” This is only a settlement of the PAGA
28 claims for civil penalties, and is not a class action settlement and does not release the individual
claims, if any, of the affected Aggrieved Employees. Cal. Labor Code § 2699(g)(1); Iskanian v.
CLS Transportation, 59 Cal. 4th 348, 381 (2014).

1 Blum, filed herewith. Capitalized terms shall have the same meaning as defined in the Settlement
2 Agreement. The LWDA has received notice of this Settlement and this motion as set forth in the
3 accompanying Declaration of Matthew M. Blum (“Blum Dec”).

4 A proposed order confirming review and approval of the PAGA settlement is submitted
5 herewith.

6 **II. RELEVANT FACTS**

7 On July 9, 2020, Plaintiff Pablo Macias gave written notice to the Labor and Workforce
8 Development Agency (“LWDA”) of his intent to assert a claim under the Private Attorneys General
9 Act of 2004 (“PAGA”) and his alleged bases for the claims. More than 65 days passed after the
10 notice letter was sent to the LWDA, and the LWDA did not indicate that it intended to investigate
11 the alleged violations referenced in the letter.

12 On September 23, 2020, Plaintiff filed the Action, a PAGA representative complaint, against
13 Defendant in the Superior Court of San Diego County, Case No. 37-2020-00033639-CU-OE-CTL.

14 On July 19, 2020, the Parties engaged in a full-day mediation with Steve Serratore, Esq. In
15 anticipation of the mediation, the parties engaged in substantial informal discovery related to the
16 data and documents relevant to assess the value of the claims in the operative complaint. Based
17 upon information provided to Plaintiff’s counsel by Defendant as part of the exchange of informal
18 discovery in advance of and in support of mediation, as of the date of the parties’ mediation, there
19 were approximately 67 aggrieved employees who worked a total of approximately 3,278 pay
20 periods during the PAGA Period to the date of mediation on July 19, 2021. Defendant provided a
21 large sample of time records and payroll records for the mediation. Defendant also provided
22 Plaintiff with all relevant employment policies, sample employee schedules and break waivers, and
23 other relevant documentation, as well as Plaintiff’s complete personnel file.

24 At the mediation, the Parties engaged in extensive, arms-length negotiations. At the
25 conclusion of the full-day mediation, the parties had reached an agreement for settlement based on
26 a mediator’s proposal, which Plaintiff and Defendant ultimately accepted. The mediator’s proposal
27 called for this PAGA case to be resolved for the total amount of One Hundred and Seventy
28 Thousand Dollars and Zero Cents (\$170,000.00), the agreement was memorialized in a

1 Memorandum of Understanding. The Parties thereafter negotiated and entered into a long form
2 settlement agreement. Accordingly, the Parties now ask the Court to approve the Parties'
3 Settlement.

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

5 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699. The
6 Settlement Agreement negotiated by the parties provides for Defendant to pay One Hundred and
7 Seventy Thousand Dollars and Zero Cents (\$170,000.00) as the "Gross Settlement Amount".
8 (Settlement Agreement at §4.01) This Gross Settlement Amount includes the following: (i) any
9 payment to the LWDA; (ii) any payment to Aggrieved Employees; (iii) the payment of fees and
10 costs to Plaintiff's counsel, as approved by the Court; and (v) all fees, costs, and expenses of
11 administration of this Agreement. (*Id.*) The "PAGA Payment" is defined as the amount remaining
12 from the Gross Settlement Amount after the deduction of the Settlement Administration Fee,
13 Plaintiffs' Counsel's Fee Amount and Plaintiffs' Counsels' Cost Amount. *See the* Settlement
14 Agreement attached as Exhibit 1 to Blum Dec.

15 The Net PAGA Payment shall represent Labor Code Section 2699 penalties, of which 75%
16 of the payment will be paid to the LWDA as the LWDA Payment and 25% will be paid to Aggrieved
17 Employees as Individual PAGA Payments, unless the Court determines otherwise. A reallocation
18 of the settlement funds amongst PAGA claims directed by the Court shall not be a basis for either
19 side to void the Settlement Agreement. Aggrieved Employees will be issued a Form 1099 for their
20 share of the PAGA payments. The Individual PAGA Payment for each Aggrieved Employee shall
21 be based on the number of bimonthly payroll periods each Aggrieved Employee worked during the
22 PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during
23 the PAGA Period. *See* Blum Dec.

24 The "Aggrieved Employees" are defined as "all of Defendant's current and former non-
25 exempt employees employed in California between July 9, 2019, through September 19, 2021.
26 Defendant provided Plaintiff's Counsel with the number of pay periods. Defendant represented that
27 there are approximately 3,278 pay periods as of the Parties' mediation date. (Blum Dec). After
28 confirming the number of pay periods in the PAGA period if the Court grants approval of the

1 settlement, Defendant will provide a supplemental declaration confirming the number of pay
2 periods and Aggrieved Employees.

3 Notice shall be provided to the Aggrieved Employees in the following manner: No later than
4 fifteen (15) days after Effective Date² Defendant shall provide the Settlement Administrator with a
5 list of Aggrieved Employees (“Aggrieved Employees List”). The Aggrieved Employees List shall
6 state the first name and last name in separate columns for each Aggrieved Employee, the last known
7 home address for each such Aggrieved Employee, each Aggrieved Employee’s social security
8 number, and each Aggrieved Employee’s respective number of pay periods employed by Defendant
9 in California during the PAGA Period.

10 The individual PAGA Payments are considered penalties and will not be subject to local,
11 state or federal tax withholdings. All Aggrieved Employees who cash their settlement check may
12 receive an IRS Form 1099 reflecting this portion of the settlement. Settlement checks issued to
13 Aggrieved Employees shall remain valid for one hundred eighty (180) days. Thereafter, all
14 uncashed checks shall be voided, and the funds represented thereby shall be paid to the State
15 Controller Fund in the name of the Aggrieved Employee.

16
17 ² “Effective Date” means the date upon which the following have occurred: (a) approval of the
18 Settlement is granted by the Superior Court of California for the County of San Diego, or other
19 court assuming jurisdiction of this matter, (b) the Court’s Judgment approving the Settlement
20 becomes Final, and (c) the date of the time for filing or noticing any appeal of the Judgment has
21 expired. If there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal,
22 the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of
23 certiorari to the California Supreme Court shall be the date the Settlement is Final. If there is an
24 intervener, but no appeal is filed, the expiration date of the time for filing or noticing any appeal of
25 the Judgment shall be the date the Settlement is Final. If there is no intervener in the Action, the
26 date the Court enters an order approving this Settlement shall be the date the Settlement is Final.
27 For purposes of this Agreement, “becomes final and is no longer appealable” shall mean the later
28 of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of
the order and judgment approving this Agreement may be timely filed and none is filed (*i.e.*, 60
days from notice of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed
of by ruling, dismissal, denial, or in a any other manner that confirms the validity of the order and
judgment, the day after the last date for filing a request for further review of the order and judgment
approving this Agreement passes, and no further review is requested; or (c) if an appeal is filed and
the order approving this Agreement is affirmed and further review of the order is requested, the day
after the review is finally resolved and the order and judgment approving this Agreement is
affirmed.

1 The PAGA settlement releases the “Released Claims” which are any and all claims for civil
2 penalties under PAGA, of whatever kind or nature, whether known or unknown, arising during the
3 PAGA Period, based on the facts alleged in the operative complaint, as well as Plaintiffs’ notice
4 letters to the LWDA, and any resulting claim for attorneys’ fees and costs under PAGA, which
5 occurred during the PAGA Period. The release excludes individual claims and claims outside of
6 the PAGA Period.

7 Pursuant to California Labor Code Section 2699(1), Plaintiff will provide a copy of the
8 Settlement Agreement to the LWDA concurrently with the filing of the instant motion for settlement
9 approval as well as a declaration confirming that Plaintiff has submitted the Settlement Agreement
10 to the LWDA in compliance with Labor Code Section 2699(1). In addition, Plaintiff shall submit
11 to the LWDA a copy of the Court’s judgment and order approving the Settlement Agreement within
12 ten (10) days after entry of judgment or order.

13 The additional amounts to be paid from the Settlement Sum other than the Net PAGA
14 Payment, subject to Court approval, are as follows: (1) Fifty Six Thousand One Hundred Dollars
15 (\$56,100.00) shall be paid to Plaintiff’s Counsel for payment of attorneys’ fees, and up to Fifteen
16 Thousand Dollars and Zero Cents (\$11,000.00) shall be paid to Plaintiff’s Counsel for litigation
17 expenses as set forth in the client's billing statement (pursuant to Declaration(s) by Plaintiff’s
18 Counsel) in prosecuting the PAGA claims a Settlement Administrator Fee in an amount not to
19 exceed \$2,995. If any of these amounts end up being less than estimated, the remaining amounts
20 will be added to the PAGA Fund.³

21 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIM**

22 The claim before this court is the representative claim under PAGA on behalf of the State
23 of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this PAGA
24 claim in its entirety after informal discovery and arm’s length mediation. The settlement is intended
25 to fully and finally resolve the PAGA claims asserted by Plaintiff on behalf of the State of

26 ³ Plaintiff has entered into a separate confidential settlement agreement with Defendant in regards
27 to the settlement of his individual claims, which provides for payment to him in exchange for a
28 general release of all claims. Plaintiff will supply a copy of the individual settlement agreement
to the Court for in-camera review upon request.

1 California. This is only a settlement of the PAGA claims for civil penalties, and is not a class
2 settlement and does *not* release the individual claims, if any, of the Aggrieved Employees.
3 Attorneys' fees equal to one-third of the Settlement Sum and ligation expenses will also be paid to
4 Plaintiff's Counsel as part of the settlement in accordance with California Labor Code § 2699(g)(1)
5 as set forth in the Agreement.

6 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
7 **SETTLEMENT OF THE PAGA CLAIM**

8 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of
9 any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to
10 the agency at the same time that it is submitted to the court." Consequently, the parties respectfully
11 ask the Court to review and approve the settlement of the PAGA claims and the PAGA Settlement
12 Sum to be paid as part of the proposed settlement.

13 **A. The Settlement Sum To Be Paid Is Fair And Reasonable**

14 The Parties believe that the Settlement Sum is fair and reasonable and therefore "shall" be
15 reviewed and should be approved. In the case of *Price v. Uber Technologies*, Los Angeles Superior
16 Court Case No. BC544512, where a PAGA penalty claim for misclassification of 300,000 Uber
17 drivers was approved for \$7.5 million in PAGA penalties plus some changes to Uber's policies to
18 allow drivers to drive for other companies like Lyft, California's Labor Commissioner was asked
19 by the court to submit an amicus brief about its views of the standards to evaluate the fairness of a
20 PAGA settlement (where the State is the real party in interest). In its amicus brief filed in response
21 to that request, the Labor Commissioner Julie Hsu specifically stated that the main purpose of
22 PAGA penalties in the eyes of the Labor and Workforce Development Agency is to enforce
23 California's Labor Code and obtain Labor Code compliance. Concerning the adequacy of PAGA
24 settlements, the Labor Commission noted that the purpose of PAGA penalties is to "promote
25 PAGA's compliance and deterrence goals," see Amicus Curiae Brief Submitted by the State Labor
26 Commissioner, *Price v. Uber Technologies*, Case No. BC544512 (June 16, 2017). As explained in
27 this Brief at page 1, the Labor Commissioner believes that labor issues are "best resolved by
28 applying principles of fairness and justice that have developed in other forms of representative

1 actions, as well as by considering PAGA's role in helping the Labor Commissioner discharge her
2 mandate", which is:

3 to vigorously enforce minimum labor standards in order to ensure employees are
4 not required or permitted to work under substandard unlawful conditions or for
5 employers that have not secured the payment of compensation, and to protect
6 employers who comply with the law from those who attempt to gain a competitive
advantage at the expense of their workers by failing to comply with minimum labor
standards.

7 Cal. Labor Code §90.5(a).

8 Where, as here, Labor Code compliance is obtained because an employer's policies have
9 changed, PAGA's purpose has been fulfilled and the monetary penalty components of the
10 Settlement become less significant or insignificant. Specifically, after the action was initiated,
11 Defendant adopted new practices to monitor and enforce its written policies to ensure that
12 employees receive paid rest-breaks consistent with California law, and receive the correct rate of
13 pay for overtime compensation. Based on the Labor Commissioner's logic, this change, which has
14 been implemented, has eliminated the issue of potential ongoing liability, and makes the Settlement
15 before the Court for approval fair and reasonable.

16 In addition, this Settlement Sum compares favorably to the estimated amount of PAGA
17 penalties owed. With the assistance of an expert, Plaintiff initially calculated that the maximum
18 amount of statutory PAGA civil penalties was potentially \$1,256,800 (based on maximum \$100 per
19 pay period for initial violations and \$200 per pay period for subsequent violations). Blum Dec.
20 Importantly, however, these calculations were performed at the maximum statutory rates for the
21 PAGA penalties, when in fact, it is likely that any penalties awarded would be at a lower rate. Blum
22 Dec.

23 California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the
24 maximum civil penalty if based on the facts and circumstances to do otherwise would result in an
25 award that is "unjust, arbitrary and oppressive or confiscatory." Before and during the mediation,
26 Defendant argued, among other things, that it was unlikely that any Judge would award more than
27 the actual amounts owed on the claims, let alone the full \$100 or \$200 per violation.
28

1 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming*
2 *v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA
3 penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum
4 penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually
5 awarded no civil penalties, even when Labor Code violations are established. *See also In re*
6 *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (affirming an award of \$0 in PAGA
7 penalties in a wage and hour class action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.
8 LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

9 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of
10 the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
11 LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot
12 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
13 Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee
14 suffered a violation for each pay period the employee worked.

15 The primary claims in this PAGA action are based on (1) Defendant's alleged failure to
16 provide compliant meal and rest breaks to the Aggrieved Employees when a break was missed,
17 short or late; (2) Failure to pay minimum wage and overtime; and (3) Failure to issue properly
18 itemized wage statements.

19 Here, a number of defenses asserted by Defendant presented serious threats to the claims of
20 the Plaintiff and the Aggrieved Employees. Defendant asserted that the employment practices
21 complied with all applicable Labor Laws. Most importantly and relevant to this case, Defendant
22 argued that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
23 weakened, if not eliminated, Plaintiffs' claims, on liability, value, and manageability as to the meal
24 period and rest break claims. A major component of the damages alleged to have been suffered by
25 the Aggrieved Employees are attributed to missed meal breaks and rest breaks. Before and during
26 the mediation, Defendant aggressively argued that Defendant's policies and culture afforded the
27 Aggrieved Employees an opportunity to take timely meal periods and rest breaks, and that
28 employees like the Plaintiff *chose* not to take compliant breaks. Specifically, Defendant's written

1 policies encouraged Aggrieved Employees to take meal periods according to schedules compliant
2 with the California Labor Code, and included an outline of employees' rights with respect to breaks
3 based on the length of their shift. Defendant argued, therefore, that under the *Brinker* decision it
4 has no liability for the missed breaks whatsoever. Defendant argued that it adopted and strictly
5 enforced lawful policies, and thus afforded Plaintiff and the Aggrieved Employees the opportunity
6 to take compliant meal breaks. Because Plaintiff's claims were largely based on the missed meal
7 breaks, and because Defendant's policies were, indeed, compliant, this presented a very real concern
8 for Plaintiff and the Aggrieved Employees. If successful, this defense could eliminate or
9 substantially reduce any recovery. While Plaintiff believes that this defense, and others, could be
10 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
11 recovery.

12 Defendant asserted additional defenses to the PAGA claim, not only as to liability but also
13 as to the amount of the penalties, reduction, and manageability. Defendant could argue that no
14 penalties prior to the PAGA notification and/or a Court finding of liability should be awarded
15 because the violations were not intentional, and at least some Courts have so ruled. In addition,
16 Defendant argued that any Court would substantially reduce the PAGA penalty awards in light of
17 decisions like *Carrington*.

18 These defenses present a significant risk to the PAGA claim and the potential that some or
19 all of the PAGA penalties sought may not be awarded. Given Defendant's potential defenses to the
20 violations at issue, the risks and costs of continued litigation, Plaintiff and his attorneys believe that
21 the PAGA Settlement Sum is fair and reasonable. This is particularly true given the changes that
22 Defendant has now made to its policies as described above. Plaintiff's Counsel have significant
23 experience litigating wage and hour claims including claims for PAGA penalties, and the Gross
24 Settlement Amount here is similar to or greater than similar settlements that courts have approved.
25 The Gross Settlement Amount was negotiated by experienced counsel at arm's length with the
26 assistance of a private mediator, Steve Serratore, Esq.

27 As set forth in the exhibit to the declaration of Matthew M. Blum, Esq. submitted
28 concurrently herewith, the LWDA has been provided notice of this motion and the PAGA

1 settlement. The decision of LWDA to accept the PAGA settlement and not oppose or object to this
2 motion should be given considerable weight. This is not a situation where the Court needs to be
3 concerned about the rights of absent employees as in a class settlement, as this PAGA-only
4 settlement does not release the individual claims of absent employees, and the LWDA is a
5 sophisticated government entity that is more than able to look out for its own rights.

6 **B. The Remaining Settlement Terms Are Fair And Reasonable**

7 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code
8 § 2699(1) does not require that a court approve any other elements of the proposed settlement.
9 Because there are no class allegations, the approval provisions applicable to class settlements under
10 Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs to approve the
11 settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the
12 settlement terms for attorneys' fees and costs are reasonable.

13 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

14 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position
15 is that the payment of attorneys' fees and costs in this settlement is a matter of contract for a
16 contingent representation. Nevertheless, should this Court review the requested attorneys' fees, it
17 is clear that the requested fees and costs are reasonable.

18 In *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480, 503 (2016), the California Supreme
19 Court unequivocally held that when "litigation established a monetary fund for the benefit of the
20 class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
21 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of
22 the fund created" without considering the amount of hours expended on the case. *Id.* The Court
23 further held that "[t]he recognized advantages of the percentage method – including relative ease of
24 calculation, alignment of incentives between counsel and the class, a better approximation of market
25 conditions in a contingency case, and the encouragement it provides counsel to seek an early
26 settlement and avoid unnecessarily prolonging litigation – convince us the percentage method is
27 a valuable tool that should not be denied by our trial courts." *Id.* Consistent with *Laffitte*, the Ninth
28 Circuit has held that PAGA and/or Class Counsel should not be penalized for achieving a timely

1 result. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002) (“We do not mean to imply that
2 class counsel should necessarily receive a lesser fee for settling a case quickly; in many instances,
3 it may be a relevant circumstance that counsel achieved a timely result for class members.”).

4 California Courts have consistently recognized “that most fee awards based on either a
5 lodestar or percentage calculation are 33%.” *McCrary v. Elations Co., LLC*, No. EDCV 13-0242
6 JGB (SPx), 2016 U.S. Dist. LEXIS 24050, at *2 (C.D. Cal. Feb. 25, 2016); *McClellan v. Chase*
7 *Home Fin. LLC*, No. SACV 12-1331-JGB (JEMx) 2015 U.S. Dist. LEXIS 118005, at *20 (C.D. Cal.
8 Aug. 31, 2015) (explaining that while the attorneys’ fee award that approximated 32% of all sums
9 paid under the Settlement Agreement was reasonable after citing numerous other cases finding that
10 an award of 33% of the common fund was common in class actions)⁴

11 Plaintiff’s Counsel’s diligent and efficient litigation of this action resulted in the creation of
12 an ascertainable common fund of \$170,000.00 that will substantially benefit the state of California
13 and the aggrieved employees. Thus, Plaintiff’s Counsel obtained greater Labor Code compliance
14 and Defendant’s policies have changed, which means the primary objective of PAGA as set forth
15 by the Labor Commissioner in the *Uber* case has been achieved.

16 Plaintiff’s Counsel seek approval of an award of attorneys’ fees in the amount of \$56,100.00
17 representing 1/3 of the common fund. As set forth in the Parties’ Settlement Agreement, the
18 attorneys’ fees shall be allocated between Plaintiff’s Counsel as follows: Blumenthal Nordrehaug
19 Bhowmik De Blouw, LLP’s share will be 50%; and The Law Office of Matt Blum’s share will be
20 50%.

21 Plaintiff’s Counsel have also each provided information about the tasks that the two law
22 firms performed on this case by and through their respective declarations. Plaintiff’s Counsel’s
23 request for attorneys’ fees in the amount of 1/3 of the monetary common fund is consistent with the
24 amount awarded in other cases as described in detail above. Under *Laffitte*, the Court need not

25
26 ⁴ In reaching its decision in *McClellan*, the court recognized that "California district courts routinely
27 award attorneys' fees in the range of 30-40% in class actions that result in the recovery of a common
28 fund under \$10 million." *McClellan*, No. SACV 12-1331-JGB (JEMx) 2015 U.S. Dist. LEXIS
118005, at *20 (quoting *Miller v. CEVA Logistics USA, Inc.*, No. 2:13-CV-01321-TLN, 2015 U.S.
Dist. LEXIS 104704, 2015 WL 4730176, at *8 (E.D. al. Aug. 10, 2015) and citing *In re Mego Fin.*
Corp. Sec. Litig., 213 F.3d 454, 463 (9th Cir. 2000).

1 undertake any lodestar cross-check where, as here, the percentage of the common fund sought
2 equates to 1/3 of the common fund obtained.

3 Finally, as set forth in the accompanying Declaration of Matthew Blum, Plaintiff's Counsel
4 will be recovering litigation expenses in the total amount of approximately \$10,450.00. These
5 expenses are documented in the accompanying Declaration of Matthew Blum and Declaration of
6 Nicholas De Blouw.

7
8 **VII. CONCLUSION**

9 Based on the foregoing, Plaintiff respectfully requests that the Court approve the PAGA
10 settlement and the Settlement Sum as set forth in the Settlement Agreement and enter the proposed
11 order submitted herewith.

12
13 DATED: December 6, 2021

14
15 **THE LAW OFFICE OF MATT BLUM**

16
17 By:  _____

18
19 Matthew M. Blum
Attorney for Plaintiff