

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
Jared C. Osborne (State Bar No. 335968)
josborne@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff Jazzmin Cortez

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

JAZZMIN CORTEZ, individually, and on
behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act;

Plaintiff,

vs.

MILLARD MALL SERVICES, INC., an
Illinois corporation; and DOES 1 through 25,
inclusive,

Defendants.

Case No. CVRI2104010

Honorable Eric Keen
Department 6

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT AND
AWARD OF ATTORNEYS' FEES AND COSTS
AND SETTLEMENT ADMINISTRATION
COSTS; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Reservation ID: 621873577694
Date: October 31, 2024
Time: 8:30 a.m.
Dept.: 1

Complaint Filed: September 2, 2021
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on October 31, 2024 at 8:30 a.m. in Department 1 of the
3 above-captioned Court located at Riverside Historic Courthouse, 4050 Main Street, Riverside,
4 California 92501, Plaintiff Jazzmin Cortez (“Plaintiff”) will and hereby does move the Court for an
5 Order granting approval of the California Labor Code Private Attorneys General Act of 2004,
6 California Labor Code sections 2698, *et seq.* (“PAGA”) settlement. Specifically, Plaintiff requests
7 that the Court enter an Order:

- 8 1. Granting approval pursuant to California Labor Code section 2699(1)(2) of the Private
9 Attorneys General Act Settlement Agreement and Release (“PAGA Settlement” or
10 “PAGA Settlement Agreement”) attached as **Exhibit 2** to the Declaration of Jonathan M.
11 Genish in Support of Plaintiff’s Motion for Approval of PAGA Settlement and Award of
12 Attorneys’ Fees and Costs and Settlement Administration Costs (“Genish Decl.”);
- 13 2. Directing the distribution of the PAGA Settlement Amount of Four Hundred Seventy-
14 Five Thousand Dollars and Zero Cents (\$475,000.00) pursuant to the terms of the PAGA
15 Settlement;
- 16 3. Approving the Net Settlement Amount, estimated to be Two Hundred Eighty-Five
17 Thousand Four Hundred Twenty-Seven Dollars and Sixty-One Cents (\$285,427.61), of
18 which seventy-five percent (75%) will be distributed to the California Labor and
19 Workforce Development Agency (“LWDA”) and twenty-five percent (25%) of which
20 will be distributed to the Aggrieved Employees;
- 21 4. Approving an award of reasonable attorneys’ fees of One Hundred Fifty-Eight Thousand
22 Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$158,333.33) to Plaintiff’s
23 Counsel, Blackstone Law, APC;
- 24 5. Approving the amount of Twenty-Five Thousand Six Hundred Eighty-Nine Dollars and
25 Six Cents (\$25,689.06) to Plaintiff’s Counsel, Blackstone Law, APC, for reimbursement
26 of actual litigation costs and expenses pursuant to California Labor Code section
27 2699(g)(1);

28 ///

6. Appointing ILYM Group, Inc. as the Settlement Administrator; and
7. Approving an award of up to Five Thousand Five Hundred Dollars and Zero Cents (\$5,500.00) in anticipated costs to ILYM Group, Inc. for its settlement administration services.

Pursuant to California Labor Code section 2699(1)(2), a copy of the proposed PAGA Settlement Agreement, as well as information regarding the approval hearing in this matter, were submitted to the LWDA via online submission through its public portal concurrently with the filing of this Motion. (Genish Decl., ¶ 26).

This Motion is made pursuant to California Labor Code section 2699(1)(2), which provides review and approval by the Court of the settlement of a civil action filed pursuant to PAGA, and Rule 3.1113(e) of the California Rules of Court, which permits the Court to extend the page limit for memoranda.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Plaintiff's Counsel (Jonathan M. Genish), Plaintiff (Jazzmin Cortez), and the Settlement Administrator (Lisa Mullins), the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: September 6, 2024

BLACKSTONE LAW, APC

By: Jonathan M. Genish
Attorneys for Plaintiff Jazzmin Cortez

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	2
III.	THE PAGA SETTLEMENT TERMS	6
A.	Definition of the Aggrieved Employees	6
B.	Amount of PAGA Settlement	6
C.	Allocation and Funding of the PAGA Settlement Amount	6
IV.	STANDARD FOR APPROVAL OF PAGA SETTLEMENT	8
V.	THE PAGA SETTLEMENT IS FAIR AND SHOULD BE APPROVED	9
A.	The PAGA Settlement is Presumed to Be Fair	9
B.	The PAGA Settlement is Fair, Adequate, and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks	10
1.	Strength of Plaintiff's Case	10
2.	Risk, Expense, Complexity, and Likely Duration of Further Litigation 	12
3.	The Benefits Conferred by the PAGA Settlement Balance in Favor of Approval	13
4.	The Scope of the Release is Narrowly Tailored	14
5.	Experience and Views of Counsel Favor Approval	15
6.	The Extent of Discovery and Stage of Proceedings Favor Approval	15
VI.	THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE	16
VII.	THE REQUESTED ATTORNEYS' COSTS ARE FAIR AND REASONABLE	19
VIII.	THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE	19
IX.	CONCLUSION	20

TABLE OF AUTHORITIES

Cases

<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.</i> , 46 Cal.4th 993 (2009).....	9
<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008).....	11
<i>Arias v. Sup. Ct.</i> , 46 Cal.4th 969 (2009)	9
<i>Arias</i> , 46 Cal. 4th, at 987.....	14
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> 480 F.Supp. 1195 (S.D.N.Y. 1979)....	18
<i>Bernstein v. Virgin Am., Inc.</i> , 3 F.4th 1127, 1144 (9th Cir. 2021).....	12
<i>Casida v. Sears Holdings Corp.</i> , 2012 U.S. Dist. LEXIS 9302 (E.D. Cal. Jan. 25, 2012)	8
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	16, 18
<i>Chu v. Wells Fargo Investments, LLC</i> , 2011 U.S. Dist. LEXIS 15821 (N.D. Cal. Feb. 15, 2011)	14
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009).....	9
<i>Consumer Privacy Cases</i> , 175 Cal.App.4th 545 (2009)	18
<i>DCH Auto Wage and Hour Cases</i> , Los Angeles Superior Court, Case No. JCCP4833	14
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169 (C.D. Cal. 2008).....	11
<i>Franco v. Ruiz Food Prods.</i> , 2012 U.S. Dist. LEXIS 169057 (E.D. Cal. Nov. 27, 2021).....	14
<i>Garcia v. Gordon Trucking, Inc.</i> , 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. Oct. 29, 2012)	14
<i>In re Ampicillin Antitrust Litig.</i> , 526 F.Supp. 494 (D.D.C. 1981)	18
<i>In re Bluetooth Headset Prods. Liab. Litig.</i> , 654 F.3d 935, 942 (9th Cir. 2011)	17
<i>In re Pacific Enterprises Securities Litig.</i> , 47 F.3d 373 (9th Cir. 1995)	16
<i>In re TD Ameritrade Account Holder Litig.</i> , 2011 U.S. Dist. LEXIS 103222 (N.D. Cal. Sep. 12, 2011).....	8
<i>Ketchum v. Moses</i> , 24 Cal.4th 1122 (2001)	17
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	10
<i>Laffitte v. Robert Half Int'l, Inc.</i> , 1 Cal.5th 480 (2016).....	16, 17
<i>Lealao v. Beneficial Cal., Inc.</i> , 82 Cal.App.4th 19 (2000).....	17, 18
<i>Linney</i> , 151 F.3d at 1239	15
<i>Mallick v. Sup. Ct.</i> , 89 Cal.App.3d 434 (1979)	10

1	<i>Maria P. v. Riles</i> , 43 Cal.3d 1281 (1987)	16
2	<i>Mendez v. Tween Brands, Inc.</i> , 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010).....	8
3	<i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i> , 2010 U.S. Dist. LEXIS 32774 (Apr. 2, 2010).....	8, 9
4	<i>Officers for Justice v. Civil Service Com.</i> , 688 F.2d 615 (9th Cir. 1982)	8
5	<i>Resendez v. Bridgestone Retail Operations, LLC</i> , Los Angeles County Superior Court, Case No.	
6	BC596892.....	18
7	<i>Sandoval v. Roadlink United States Pac., Inc.</i> , 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal.	
8	Nov. 9, 2011).....	15
9	<i>Schiller v. David’s Bridal, Inc.</i> , 2012 U.S. Dist. LEXIS 80776 (E.D. Cal. June 11, 2012).....	14
10	<i>Serrano v. Priest</i> , 20 Cal.3d 25 (1977)	16
11	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112 (2012).....	11
12	<i>Westside Community for Independent Living, Inc. v. Obledo</i> , 33 Cal.3d 348 (1983).....	16
13	<i>Williams v. Superior Court</i> , 3 Cal. 5th 531 (2017)	15
14	Statutes	
15	California Labor Code sections 2698, <i>et seq.</i>	i, 1
16	Labor Code (“Lab. Code”) § 2699(l)	8
17	Labor Code §§ 2698 <i>et seq.</i>	14
18	Labor Code sections 2699 <i>et. seq.</i>	5
19	Other Authorities	
20	<i>Lealao</i>	17
21	Weil and Brown, California Practice Guide, <i>Civil Procedure Before Trial</i>	17
22		
23	Rules	
24	California Rules of Court Rule 3.769.....	8, 9
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the California Labor Code Private Attorneys General Act, California Labor Code sections 2698, *et seq.* (“PAGA”), Plaintiff Jazzmin Cortez (“Plaintiff”) seeks approval of the Private Attorneys General Act Settlement Agreement and Release (“PAGA Settlement” or “PAGA Settlement Agreement”) entered into with Defendant Millard Mall Services, Inc. (“Defendant”) (together with Plaintiff, the “Parties”), which is attached as Exhibit 2 to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Approval of PAGA Settlement and Award of Attorneys’ Fees and Costs and Settlement Administration Costs (“Genish Decl.”). The PAGA Settlement terms are outlined as follows:

- Number of Aggrieved Employees: 474 individuals.
- PAGA Settlement Amount: Four Hundred Seventy-Five Thousand Dollars and Zero Cents (\$475,000.00).
- Attorneys’ Fees: One Hundred Fifty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$158,333.33) (1/3 of the PAGA Settlement Amount), to be paid from the PAGA Settlement Amount.
- Attorneys’ Costs: Twenty-Five Thousand Six Hundred Eighty-Nine Dollars and Six Cents (\$25,689.06), to be paid from the PAGA Settlement Amount.
- Settlement Administration Costs: Not to exceed Five Thousand Five Hundred Dollars and Zero Cents (\$5,500.00), to be paid from the PAGA Settlement Amount.
- Estimated Net Settlement Amount: Two Hundred Eighty-Five Thousand Four Hundred Twenty-Seven Dollars and Sixty-One Cents (\$285,427.61), of which 75% (\$214,070.71) will be paid to the California Labor and Workforce Development Agency (“LWDA”) and the remaining 25% (\$71,356.90) will be paid to the Aggrieved Employees.

As set forth herein, the PAGA Settlement is the product of informed discovery, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the State of California and Aggrieved Employees. Plaintiff therefore respectfully requests that the Court grant approval of the proposed PAGA Settlement, among other requested relief.

///

1 In order to efficiently present the Court with adequate information to determine whether to grant
2 approval of the PAGA Settlement, Plaintiff also moves for an order permitting the filing of this
3 memorandum, although it exceeds the page limit established by California Rules of Court, Rule
4 3.1113(d).

5 **II. FACTUAL AND PROCEDURAL BACKGROUND**

6 Defendant is a company that provides janitorial and maintenance services to malls throughout
7 the State of California. (Genish Decl., ¶ 8). Defendant was acquired by Allied Universal on October
8 21, 2021. (Ibid). Defendant employed Plaintiff as an hourly-paid, non-exempt Assistant Project
9 Manager from approximately August 2019 to February 2020 at the Galleria at Tyler, a shopping mall in
10 Riverside, California. (Genish Decl., ¶ 8; Declaration of Jazzmin Cortez in Support of Plaintiff's Motion
11 for Approval of PAGA Settlement and Award of Attorneys' Fees and Costs and Settlement
12 Administration Costs ["Cortez Decl.," ¶ 2).

13 On August 27, 2020, Plaintiff provided written notice by electronic submission to the LWDA
14 and by Certified U.S. Mail to Defendant, pursuant to California Labor Code § 2699.3, providing notice
15 of the specific provisions of the California Labor Code which Plaintiff alleged Defendant violated,
16 including the facts and theories to support the allegations ("PAGA Notice"). (Genish Decl., ¶ 9 & Exh.
17 1).

18 On September 2, 2021, Plaintiff filed a Complaint for Enforcement Action Under the Private
19 Attorneys General Act, California Labor Code §§ 2698 Et Seq ("Operative Complaint") in the action
20 entitled *Jazzmin Cortez vs. Millard Mall Services, Inc.*, Riverside County Superior Court Case No.
21 CVRI2104010 ("Action"). (*Id.*, ¶ 10). The Operative Complaint alleges one cause of action pursuant
22 to PAGA, alleging civil penalties for Defendant's alleged failure to pay overtime wages, failure to pay
23 minimum wages, failure to provide compliant meal periods and associated premiums, failure to provide
24 compliant rest periods and associated premiums, failure to timely pay wages during employment, failure
25 to timely pay wages upon termination, failure to provide compliant wage statements, failure to keep
26 requisite payroll records, and failure to reimburse necessary business expenses in violation of California
27 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198,
28 2800, and 2802, and the applicable Industrial Welfare Commission Wage Orders. (Ibid).

1 On September 27, 2021, Plaintiff propounded multiple sets of formal written discovery requests
2 onto Defendant (specifically, Form Interrogatories – General (Set One), Special Interrogatories (Set
3 One), and Requests for Production of Documents (Set One)). (Genish Decl., ¶ 11). On October 6, 2021,
4 Plaintiff noticed the deposition of Defendant’s Person Most Knowledgeable along with requests for
5 production of documents. (Genish Decl., ¶ 11).

6 On October 7, 2021, Defendant filed a Demurrer to Plaintiff’s Complaint (“Demurrer”) and
7 supporting documents. (*Id.*, ¶ 12). On October 12, 2021, Defendant filed a Motion to Strike Portions
8 of Plaintiff’s Complaint (“Motion to Strike”) and supporting documents. (*Ibid.*).

9 On November 5, 2021, Defendant responded to Plaintiff’s formal written discovery requests
10 (specifically, Plaintiff’s Form Interrogatories – General (Set One), Special Interrogatories (Set One), and
11 Request for Production of Documents (Set One)). (*Id.*, ¶ 13).

12 On November 10, 2021, Plaintiff filed an Opposition to Defendant’s Demurrer and an Opposition
13 to Defendant’s Motion to Strike along with supporting documents. (*Id.*, ¶ 14). On November 17, 2021,
14 Defendant filed a Reply to Plaintiff’s Opposition to Defendant’s Demurrer and a Reply to Plaintiff’s
15 Opposition to Defendant’s Motion to Strike along with supporting documents. (*Ibid.*).

16 On December 14, 2021, the Court entered Minute Orders, which overruled Defendant’s
17 Demurrer and denied Defendant’s Motion to Strike. (*Id.*, ¶ 15).

18 On April 7, 2022, Plaintiff filed a Class Action Complaint for Damages in the action entitled
19 *Jazzmin Cortez v. Millard Mall Services, Inc.*, Riverside County Superior Court Case No. CVRI2201397
20 (“Class Action”). (*Id.*, ¶ 16).

21 On June 8, 2022, Defendant filed a Motion to Dismiss Class Action, Compel Arbitration of
22 Plaintiff’s Individual Claims and Stay of the Related PAGA Action Pending Arbitration of Plaintiff’s
23 Individual Claims (“Motion to Dismiss”) and supporting documents in the Class Action. (*Id.*, ¶ 17). On
24 June 22, 2022, Plaintiff filed an Opposition to Defendant’s Motion to Dismiss and supporting documents
25 in the Class Action. (*Ibid.*). On June 28, 2022, Defendant filed a Reply to Plaintiff’s Opposition to
26 Defendant’s Motion to Dismiss in the Class Action. (*Ibid.*).

27 ///

28 ///

1 On July 6, 2022, the Court entered an Order in the Class Action, which granted Defendant's
2 Motion to Dismiss to the extent that it dismissed Plaintiff's class claims, ordered Plaintiff's individual
3 claims into arbitration, and stayed the Class Action pending resolution of the arbitration. (Genish Decl.,
4 ¶ 18).

5 On July 27, 2022, Defendant filed a Motion to Compel Arbitration of Plaintiff's Individual
6 PAGA Claims, to Dismiss Plaintiff's Representative PAGA Claims and to Stay This Action Pending
7 Arbitration of Plaintiff's Individual Claims ("Motion to Compel Arbitration") and supporting
8 documents. (*Id.*, ¶ 19). On August 12, 2024, Plaintiff filed an Opposition to Defendant's Motion to
9 Compel Arbitration. (*Ibid.*). On August 18, 2022, Defendant filed a Reply to Plaintiff's Opposition to
10 Defendant's Motion to Compel Arbitration. (*Ibid.*).

11 On October 6, 2022, the Court entered a Minute Order, which granted Defendant's Motion to
12 Compel Arbitration to the extent that it ordered Plaintiff's individual PAGA claims into arbitration,
13 denied Defendant's request to dismiss Plaintiff's representative PAGA claims, and stayed the
14 representative PAGA claims pending the resolution of the arbitration. (*Id.*, ¶ 20).

15 Subsequently, Parties initiated the arbitration process but then agreed to mediate. (*Id.*, ¶ 21). On
16 January 16, 2024, the Parties attended a formal mediation conducted by Paul Grossman, Esq., a neutral
17 and respected mediator with extensive experience in complex wage and hour matters, and with the aid
18 of the mediator's evaluation, the Parties were able to reach an agreement to resolve the Action and
19 Plaintiff's individual claims in their entirety. (*Id.*, ¶ 21 & Exhibits 2 & 3).

20 During the course of formal and informal discovery in the Action, Plaintiff's Counsel conducted
21 an intense investigation into the facts of the Action. (*Id.*, ¶ 22). This included obtaining data,
22 information, and documents relating to the underlying alleged violations, including, but not limited to
23 Plaintiff's employee files, Aggrieved Employees' time data and payroll data and records, Defendant's
24 Employee Handbook, and Aggrieved Employees' data points so that Plaintiff could assess the number
25 of alleged potential violations and value of the recoverable penalties, as well as evaluate the strengths
26 and weaknesses of the claims. (*Ibid.*).

27 ///

28 ///

1 Based on the data, information, and documents received, as well as thorough discussions with
2 Defendant's counsel, Plaintiff's Counsel was able to (i) determine the total number of distinct individuals
3 falling within the definition of "Aggrieved Employees" for the relevant statutory period, (ii) the number
4 of affected pay periods at issue among them, and (iii) construct a damages model that calculated the
5 maximum realistic amount of PAGA penalties that could be levied against Defendant within the relevant
6 statutory period. (Genish Decl., ¶ 23). Defendant, however, disputed Plaintiff's claims and disputed
7 both the existence of and extent of liability as alleged by Plaintiff, which allowed Plaintiff's Counsel to
8 further assess the strength of Plaintiff's claims. (*Id.*, ¶ 23). Plaintiff's Counsel's experience in litigating
9 similar representative wage and hour claims, the degree of investigation that was conducted here, and
10 the amount of data, information, and documents that was obtained, was sufficient to determine the
11 potential value of the PAGA claims, and to evaluate the strength of these claims for purposes of
12 settlement. (*Ibid.*).

13 The Parties believe the PAGA Settlement is fair, reasonable, and adequate. (*Id.*, ¶ 24). The
14 Parties understand, acknowledge, and agree that the PAGA Settlement constitutes a compromise of
15 Plaintiff's PAGA claims, and that it is the desire and intention of the Parties to effect a final and complete
16 resolution of the Released Claims. (*Ibid.*).

17 Defendant denies all of the claims in the Action, and does not waive, but rather expressly
18 reserves, all rights to challenge all such claims and allegations upon all legal, procedural, and factual
19 grounds should the PAGA Settlement not become final. (*Id.*, ¶ 25). The PAGA Settlement reflects a
20 compromise reached to end litigation in the Action. (*Ibid.*). Following significant investigation and
21 extensive settlement negotiations, Plaintiff now seeks approval of the proposed PAGA Settlement
22 Agreement, which will resolve all representative claims alleged in the Operative Complaint. (*Ibid.*).

23 In accordance with California Labor Code sections 2699, *et. seq.*, Plaintiff's Counsel provided
24 notice of the proposed PAGA Settlement Agreement, as well as information regarding the approval
25 hearing in this matter, to the LWDA by uploading this Motion and the PAGA Settlement Agreement to
26 the LWDA's online portal concurrently with the filing of this Motion. (*Id.*, ¶ 26).

27 ///

28 ///

III. THE PAGA SETTLEMENT TERMS

A. Definition of the Aggrieved Employees

For purposes of settlement only, the Parties have agreed that “Aggrieved Employees” shall be defined as “all current and former hourly-paid and/or non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period.” (Genish Decl., ¶ 27; PAGA Settlement Agreement, ¶ 3(a)(4)). The “PAGA Period” is the period from August 27, 2019 to October 21, 2021. (Genish Decl., ¶ 27; PAGA Settlement Agreement, ¶ 3(a)(4)). Based on its records, Defendant represented that there are approximately 474 Aggrieved Employees who worked a total of 11,229 pay periods during the PAGA Period (“Pay Periods”). (Genish Decl., ¶ 27; PAGA Settlement Agreement, ¶¶ 3(a)(5) & 5(b)).

B. Amount of PAGA Settlement

The Parties have agreed to settle the PAGA claim at issue in the Operative Complaint for a non-reversionary PAGA Settlement Amount of Four Hundred Seventy-Five Thousand Dollars and Zero Cents (\$475,000.00). (Genish Decl., ¶ 28; PAGA Settlement Agreement, ¶ 3(a)).

C. Allocation and Funding of the PAGA Settlement Amount

The PAGA Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Genish Decl., ¶ 28). The PAGA Settlement Amount includes: (1) Plaintiff’s Counsel’s fees in the amount of one-third (1/3) of the PAGA Settlement Amount, equaling One Hundred Fifty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$158,333.33); (2) Plaintiff’s Counsel’s actual litigation costs and expenses of Twenty-Five Thousand Six Hundred Eighty-Nine Dollars and Six Cents (\$25,689.06); and (3) Settlement Administration Costs not to exceed Five Thousand Five Hundred Dollars and Zero Cents (\$5,500.00). (Genish Decl., ¶ 28; PAGA Settlement Agreement, ¶¶ 3(a)(1)-(2)).

After the above-estimated amounts are deducted from the PAGA Settlement Amount, the Net Settlement Amount will amount to approximately Two Hundred Eighty-Five Thousand Four Hundred Twenty-Seven Dollars and Sixty-One Cents (\$285,427.61), of which seventy-five percent (75%), or Two Hundred Fourteen Thousand Seventy Dollars and Seventy-One Cents (\$214,070.71), will be paid to the LWDA (“LWDA Payment”), and twenty-five percent (25%), or Seventy-One Thousand Three

1 Hundred Fifty-Six Dollars and Ninety Cents (\$71,356.90), will be distributed and paid to Aggrieved
2 Employees on a pro-rata basis based on their number of Pay Periods. (Genish Decl., ¶ 29; PAGA
3 Settlement Agreement ¶¶ 3(a)(3)-(4)).

4 No later than ten (10) calendar days after the Court's order granting approval of the PAGA
5 Settlement, Defendant will provide the Settlement Administrator with a list of all Aggrieved Employees
6 ("Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i)
7 first and last name; (ii) last known address; (iii) last known telephone number; (iv) Social Security
8 number; and (v) dates worked during the PAGA Period. (Genish Decl., ¶ 30; PAGA Settlement
9 Agreement, ¶ 5(c)(1)).

10 No later than thirty (30) calendar days after the Court's order granting approval of the PAGA
11 Settlement, Defendant will fund the PAGA Settlement Amount by transmitting the funds to a qualified
12 settlement account established by the Settlement Administrator for administration of the PAGA
13 Settlement. (Genish Decl., ¶ 31; PAGA Settlement Agreement, ¶ 5(a)).

14 No later than ten (10) calendar days after the Settlement Administrator receives the Aggrieved
15 Employees List and PAGA Settlement Amount, the Settlement Administrator will distribute the
16 Individual PAGA Payments to Aggrieved Employees, LWDA Payment to the LWDA, Attorneys' Fees
17 and Costs to Plaintiff's Counsel, and Settlement Administration Costs to itself. (Genish Decl., ¶ 32;
18 PAGA Settlement Agreement, ¶¶ 5(c)(3) & 5(c)(5)-(7)).

19 The Individual PAGA Payment checks issued to Aggrieved Employees will remain valid for up
20 to one hundred eighty (180) calendar days, and thereafter, will be canceled. (Genish Decl., ¶ 33; PAGA
21 Settlement Agreement, ¶ 4). Funds associated with such canceled checks will be transmitted to the State
22 Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and
23 in the amount of their respective Individual PAGA Payment(s). (Genish Decl., ¶ 33; PAGA Settlement
24 Agreement, ¶ 4).

25 If the actual number of Pay Periods is more than ten percent (10%) above 11,229, Plaintiff has
26 the option to cancel the PAGA Settlement Agreement. (Genish Decl., ¶ 34; PAGA Settlement
27 Agreement, ¶ 3(a)(5)).

28 ///

IV. STANDARD FOR APPROVAL OF PAGA SETTLEMENT

The settlement of a PAGA claim requires court approval. (California Labor Code (“Lab. Code”) § 2699(l).) The Court must be mindful that a “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further.” (*In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222 at *24 (N.D. Cal. Sep. 12, 2011)). “[T]he very essence of a settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes,’” as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.” (*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-26 (9th Cir. 1982)). As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits,” or “judged against a hypothetical or speculative measure of what might have been achieved.” (*Ibid.*).

Although the California Labor Code does not set forth the criteria by which a PAGA settlement is to be evaluated, it is presumed that a reviewing court may take into consideration some of the factors that courts use when reviewing a class action settlement. However, “a PAGA claim asserted on a non-class representative basis...is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of [a class action].” (*Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302 at *8 (E.D. Cal. Jan. 25, 2012)).

A court’s review of a PAGA settlement necessarily implicates the following unique features that render the approval process distinct from approval of a class action settlement under Code of Civil Procedure Section 382 and California Rules of Court Rule 3.769. First, in evaluating the adequacy of the settlement amount, the Court’s focus is not concerned with the amount aggrieved employees are to receive, but rather, must focus on the total settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages,” and while a “[PAGA] action is ... designed to protect the public and penalize the employer for past illegal conduct,” a reviewing court must be mindful of the fact that settlement of a PAGA claim involves a compromise. (*Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 at *11 (E.D. Cal. June 30, 2010)). “Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action.” (*Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774 at *12 (Apr. 2, 2010)). The Court should not lose sight of the fact

1 that, “[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of
2 PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may
3 not have been assessed and collected by overburdened state enforcement agencies.” (Ibid).

4 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
5 claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
6 to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS 32774 at
7 *13). Indeed, “[PAGA] does not create property rights or any other substantive rights” as “[i]t is simply
8 a procedural statute allowing an aggrieved employees to recover civil penalties – for Labor Code
9 violations – that otherwise would be sought by state labor law enforcement agencies.” (*Amalgamated*
10 *Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009)). This renders the
11 approval process of a PAGA settlement distinct from a class action settlement, as there is no need for
12 the Court to employ the “two-step approval process” required under California Rules of Court Rule
13 3.769.

14 Finally, unlike class action settlements, the scope of release permitted in a PAGA settlement is
15 limited. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff but
16 also on government agencies and any aggrieved employee not a party to the proceeding...the non-party
17 employees, because they were not given notice of the action or afforded any opportunity to be heard,
18 would not be bound by the judgment as to remedies other than civil penalties.” (*Arias v. Sup. Ct.*, 46
19 Cal.4th 969, 985-87 (2009).) Thus, the scope of a release in a PAGA settlement is confined to the PAGA
20 penalties alleged in the plaintiff’s notice to the LWDA and only to the extent that they are alleged in the
21 complaint. In the case at hand, as the only claims at issue are PAGA claims, those will be the only
22 claims extinguished through the PAGA Settlement.

23 **V. THE PAGA SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

24 **A. The PAGA Settlement is Presumed to Be Fair**

25 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
26 reached through arm’s-length bargaining.” (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245
27 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009)). Here, the
28 PAGA Settlement is presumptively fair because: (1) it occurred after counsel for the Parties engaged in

1 significant investigation to evaluate the strength and potential value of the PAGA claims, and the risks
2 of litigating the PAGA claims through trial; and (2) it was negotiated at great length and effort by counsel
3 with significant experience in similar complex labor and employment matters. (Genish Decl., ¶ 35).

4 **B. The PAGA Settlement is Fair, Adequate, and Reasonable in Light of the Parties' Respective**
5 **Legal Positions and Recovery Risks**

6 In deciding whether to approve a proposed settlement, a trial court has broad powers to determine
7 if it is fair given the circumstances of the case. (*Mallick v. Sup. Ct.*, 89 Cal.App.3d 434, 438 (1979)).
8 In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair,
9 adequate, and reasonable.” (*Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted)). A settlement
10 is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the
11 settlement have to obtain one hundred percent of the damages sought to be fair and reasonable.
12 (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court
13 must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
14 further litigation, the risk of maintaining class action status through trial, the amount offered in
15 settlement, the extent of discovery completed and the stage of the proceedings, the experience and views
16 of counsel, the presence of a governmental participant, and the reaction of the class members to the
17 proposed settlement.”¹ (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)). Even
18 though a Kullar analysis is not required for approval of a PAGA settlement, a brief analysis is included
19 to support approval of the PAGA Settlement. (See Genish Decl., ¶¶ 36-56).

20 These factors require balancing and are non-exhaustive. Trial courts should therefore tailor the
21 factors to each case and give due regard to “what is otherwise a private consensual agreement between
22 the parties.” (*Dunk, supra*, 48 Cal. App. 4th at 1801).

23 1. Strength of Plaintiff’s Case

24 In order to prevail at trial, Plaintiff would have to prove violations of the California Labor Code
25 underlying her PAGA claims, demonstrate that Aggrieved Employees suffered, and demonstrate that
26 Defendant’s conduct gives rise to penalties. (See *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d

27
28 ¹ As this is not a class action, the *Kullar* factors pertaining to the risk of maintaining class action status through trial and the reaction of class members to the proposed settlement are inapplicable.

1169, 1181-82 (C.D. Cal. 2008) [“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff’s other claims fail as a matter of law, so does her PAGA claim.”]).

Plaintiff’s core allegations are that Defendant systematically violated the California Labor Code by, *inter alia*, failing to pay overtime wages, failing to pay minimum wages, failing to provide meal periods, failing to provide rest periods, failing to timely pay wages during employment, failing to timely pay wages upon termination, failing to provide compliant wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business expenses. (Genish Decl., ¶ 36).

Defendant maintained several defenses to Plaintiff’s theories of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. (*Id.*, ¶ 37). Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues to have, compliant employment policies and practices throughout the time period at issue. (*Ibid.*). Defendant denies that it ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under PAGA. (*Ibid.*). Defendant further denied, and continues to deny, that the lawsuit is appropriate for representative treatment for any purpose other than settlement. (*Ibid.*). Defendant also challenged Plaintiff’s standing as an aggrieved employee and denied that any of Defendant’s other employees whom Plaintiff seeks to represent are aggrieved. (*Ibid.*). Defendant also argued that an important feature of PAGA is that the Court retains discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (Genish Decl., ¶ 37; Cal. Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136 (2012) [holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors]).

Even if violations of the California Labor Code occurred, which Defendant denies, Defendant contended that said violations would only be considered “initial violations” and thus heightened “subsequent violation” penalties were not warranted. (Genish Decl., ¶ 38). (Cal. Lab. Code § 2699(f)(2); *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) [“Until the employer has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”]).

1 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess
2 cumulative penalties for the maximum number of possible, separate California Labor Code violations,
3 because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct
4 may be regulated by multiple provisions of the California Labor Code that are interrelated and work in
5 tandem. (Genish Decl., ¶ 39). As such, Defendant contended that cumulative penalties and heightened
6 penalties would be unjust, arbitrary, oppressive, and confiscatory. (*Ibid*). While the PAGA does provide
7 the potential for a heightened penalty for subsequent violations, courts are often hesitant to award a
8 heightened penalty where there is no prior citation by the Labor Commissioner, as is the case here. (*See*
9 *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no heightened penalty where
10 defendant was not notified by Labor Commissioner or any court that it was subject to the California
11 Labor Code)). The Ninth Circuit’s holding in *Bernstein* also supports that a settlement valuation that
12 does not “stack” penalties. (*Ibid*).

13 While Plaintiff maintains that her PAGA claims have merit, in reaching the PAGA Settlement,
14 Plaintiff and her counsel took into account the strengths and weaknesses of each side’s position and the
15 uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon appeal.
16 (Genish Decl., ¶ 40). Based on these disputes, which had the potential to completely eliminate Plaintiff’s
17 recovery, the range of realistic “litigation outcomes” on Plaintiff’s PAGA claims was defined by a
18 “maximum possible liability” amount of approximately \$1,122,900 and a “risk-adjusted realistic value”
19 of approximately \$550,221. (*Id.*, ¶ 56). Notwithstanding the existence of these issues, the PAGA
20 Settlement achieves a sizeable benefit obtained. (*Id.*, ¶ 40).

21 2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

22 Approval of the PAGA Settlement Agreement is also appropriate in light of the risk, expense,
23 and complexity of further litigation. As discussed above, the PAGA Settlement Agreement takes into
24 consideration the specific factual and legal hurdles faced by Plaintiff in establishing Defendant’s
25 penalty-liability in this case, which may have resulted in a net-zero recovery. Any recovery on these
26 claims is not certain. And even when liability is found, PAGA claims are discretionary, such that the
27 Court could decline to award their full value. Some of Plaintiff’s claims are also derivative, and as such,
28 Plaintiff must prevail on her underlying California Labor Code claims in order to prevail on the

1 derivative claims. These risks – when balanced with the fact that the PAGA Settlement achieved a very
2 significant recovery (as demonstrated below), and that further litigation posed a risk of diminishing such
3 recovery by increasing litigation expenses – weigh strongly in favor of settlement approval.

4 3. The Benefits Conferred by the PAGA Settlement Balance in Favor of Approval

5 The PAGA Settlement Agreement provides a *significant* monetary benefit that falls well within
6 “the range of an acceptable settlement” under the circumstances, which is the standard on which the
7 instant PAGA Settlement must be judged. As held by the Ninth Circuit: “The proposed settlement is
8 not to be judged against a hypothetical or speculative measure of what might have been achieved by the
9 negotiators.” (*Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d at 625 (emphasis in original)). As
10 the Second Circuit has pointed out: “The fact that a proposed settlement may only amount to a fraction
11 of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly
12 inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2
13 (2nd Cir. 1974)).

14 The Net Settlement Amount is currently estimated to be Two Hundred Eighty-Five Thousand
15 Four Hundred Twenty-Seven Dollars and Sixty-One Cents (\$285,427.61). (Genish Decl., ¶ 57). After
16 the deductions from the PAGA Settlement Amount are made for the Attorneys’ Fees and Costs and
17 Settlement Administration Costs, Two Hundred Fourteen Thousand Seventy Dollars and Seventy-One
18 Cents (\$214,070.71) (i.e. 75% of the Net Settlement Amount) will go to the LWDA, and Seventy-One
19 Thousand Three Hundred Fifty-Six Dollars and Ninety Cents (\$71,356.90) (i.e. 25% of the Net
20 Settlement Amount) will go to the Aggrieved Employees. (Ibid). There is no reason to doubt the fairness
21 of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California
22 Labor Code section 2699(i). (Ibid).

23 The PAGA Settlement is a compromise of highly disputed claims. (*Id.*, ¶ 58). Plaintiff and her
24 counsel recognize the expense and length of continued proceedings necessary to litigate the matter
25 through trial and any possible appeals. (Ibid). Plaintiff and her counsel have also taken into account the
26 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such
27 litigation. (Ibid). Plaintiff and her counsel are also aware of the burdens of proof necessary to establish
28 liability, both generally and in response to Defendant’s defenses thereto, and the difficulties in

1 establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the State
2 of California, and other Aggrieved Employees. (Genish Decl., ¶ 58). Plaintiff and her counsel have also
3 taken into account Defendant's agreement to enter into a settlement that confers significant relief upon
4 the Aggrieved Employees and the State of California. (Ibid). Considering all of the facts in this case,
5 Plaintiff and her counsel have determined that the PAGA Settlement represents a fair, adequate, and
6 reasonable resolution of the PAGA claims, and that it is in the best interests of the Aggrieved Employees
7 and the State of California. (Ibid).

8 The result achieved in this case is well within the range of what is considered an acceptable
9 settlement under the circumstances, especially when compared to the settlement of PAGA claims in
10 other cases. (*Id.*, ¶ 59). (*See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case
11 No. JCCP4833 (May 2017) [approving \$15,000 out of \$4 million toward settlement of PAGA claims];
12 *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal. Oct. 29, 2012)
13 [approving \$10,000 out of \$3.7 million toward settlement of PAGA claims]; *Schiller v. David's Bridal,*
14 *Inc.*, 2012 U.S. Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving \$7,500 out of \$518,245
15 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC*, 2011 U.S. Dist. LEXIS
16 15821, at *4 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 out of \$6.9 million toward settlement of
17 PAGA claims]; *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, at *14 (E.D. Cal. Nov. 27,
18 2021) [approving \$10,000 out of \$2.5 million toward settlement of PAGA claims]). Here, the value
19 obtained for settlement of the PAGA claims is significant, and it will be distributed in accordance with
20 and in fulfillment of the objectives of the PAGA statute.

21 4. The Scope of the Release is Narrowly Tailored

22 As discussed above, the California Supreme Court has concluded that in the context of PAGA
23 "the nonparty employees, because they were not given notice of the action or afforded any opportunity
24 to be heard, would not be bound by the judgment as to remedies other than civil penalties." (*See Arias*,
25 46 Cal. 4th, at 987). Thus, the scope of the limited release provided in exchange for the foregoing
26 consideration is limited to the civil penalties asserted in PAGA Notice and only to the extent that that
27 they are alleged in the Operative Complaint under California Labor Code §§ 2698 *et seq.* (*See PAGA*
28 *Settlement Agreement*, ¶ 6).

As such, this factor balances strongly in favor of approval of the PAGA Settlement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. Experience and Views of Counsel Favor Approval

Plaintiff's Counsel is experienced in complex representative and class action wage-and-hour litigation. (Genish Decl., ¶¶ 2-7 & 64). In the view of Plaintiff's Counsel, the benefits conferred by the PAGA Settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the PAGA Settlement. (*Id.*, ¶ 60). Furthermore, courts have acknowledged that "the interests of a plaintiff, counsel, and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]" (*Williams v. Superior Court*, 3 Cal. 5th 531, 548 (2017) [citing Labor Code § 2699(g)(1)(i)]).

6. The Extent of Discovery and Stage of Proceedings Favor Approval

In evaluating this element, the Court should be mindful that "'formal discovery is not a necessary ticket to the bargaining table'" [*Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239], as the relevant consideration is "whether 'the parties have sufficient information to make an informed decision about settlement.'" (*See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal. Nov. 9, 2011)).

Here, the extent of formal and informal discovery conducted was sufficient to enable Plaintiff's Counsel to evaluate the strength and value of the PAGA claims for purposes of settlement. (Genish Decl., ¶ 61). Plaintiff's Counsel's investigation into the facts of the Action included obtaining data, information, and documents relating to the underlying alleged violations, including, but not limited to Plaintiff's employee files, Aggrieved Employees' time data and payroll data and records, Defendant's Employee Handbook, and Aggrieved Employees' data points so that Plaintiff could assess the number of alleged potential violations and value of the recoverable penalties, as well as evaluate the strengths and weaknesses of the claims. (*Id.*, ¶ 22). As discussed above, Plaintiff's Counsel's investigation was sufficient to, among other things, tabulate with precision the total number of alleged California Labor Code violations at issue during the relevant statutory period and identify the total number of individuals falling within the definition of "Aggrieved Employees" for the relevant statutory period. (*Id.*, ¶ 23).

1 Based on Plaintiff's Counsel's experience litigating wage and hour claims, such investigation
2 was sufficient to determine the potential value of the PAGA claims, and to evaluate the strength of this
3 claim for purposes of settlement. (Genish Decl., ¶ 23).

4 **VI. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE**

5 As the prevailing party in settlement, Plaintiff is entitled to recover attorneys' fees and costs for
6 bringing her PAGA claims. (Lab. Code § 2699(g) ["Any employee who prevails in any action shall be
7 entitled to an award of reasonable attorney's fees and costs."]). Plaintiff's Counsel is also entitled to
8 attorneys' fees pursuant to Code of Civil Procedure section 1021.5(a), as the instant action has resulted
9 in the enforcement of important rights benefitting the public and secures monetary recovery for the State
10 of California as well as the Aggrieved Employees. A fee award is justified where the legal action has
11 produced its benefits by way of a voluntary settlement. (See, e.g., *Maria P. v. Riles*, 43 Cal.3d 1281,
12 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53
13 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ["when a number of persons are entitled in common
14 to a specific fund, and an action brought by a plaintiff ... for the benefit of all results in the creation or
15 preservation of that fund, such plaintiff ... may be awarded attorney's fees out of the fund."])).

16 In *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016), the California Supreme Court
17 confirmed that "[t]he percentage of fund method survives in California class action cases." Specifically,
18 the *Laffitte* Court held:

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

25 (*Id.*, at 503 [internal citation omitted]). Fee awards of roughly one-third of the settlement fund are
26 routinely awarded in California state and federal courts in class actions. (*Chavez v. Netflix, Inc.*, 162
27 Cal.App.4th 43, 66, fn. 11 (2008); see also, e.g., *In re Pacific Enterprises Securities Litig.*, 47 F.3d 373,
28 379 (9th Cir. 1995) [affirming 33% fee award]).

///

///

1 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
2 method, the California Supreme Court has taken the position that trial courts also “retain the discretion
3 to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested
4 percentage fee.” (*Laffitte*, 1 Cal.5th at 506; *see also Wershba*, 91 Cal.App. 4th at 253). Courts award
5 fees to serve as an economic incentive for lawyers to undertake litigation, and thereby enhance and
6 facilitate access to the judicial system for adjudication of meritorious claims, and to deter wrongdoing.
7 This is especially true in situations where multiple similar alleged wrongs would not be economically
8 feasible to pursue individually, such as here. Trial courts have “wide latitude” in assessing the value of
9 attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of
10 discretion.” (*Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000); *see also Laffitte*, 1 Cal.5th at
11 506 [holding that “trial court did not abuse its discretion in using [the percentage of fund method], in
12 part to approve the fee request”]). Indeed, it is long settled that the “experienced trial judge is the best
13 judge of the value of professional services rendered in his court.” (*Ketchum v. Moses*, 24 Cal.4th 1122,
14 1132 (2001)).

15 The percentage method is particularly appropriate where a monetary settlement has been
16 recovered and “the benefit [recovered can be] easily quantified.” (*In re Bluetooth Headset Prods. Liab.*
17 *Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)). Where the amount of a settlement is a “certain or easily
18 calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable percentage of
19 the settlement created. (Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*,
20 Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808). The percentage fee method is
21 preferred in representative actions because “it better approximates the workings of the marketplace than
22 the lodestar approach.” (*Lealao, supra*, 82 Cal.App.4th at 49). California law provides that the award
23 for attorneys’ fees should be equivalent to fees freely negotiated in the legal marketplace and paid in
24 comparable litigation based on the result achieved and risk incurred. (*See Lealao*, 82 Cal.App.4th at 47-
25 50; *Laffitte*, 1 Cal.5th 480 at 503). In cases where the settlement agreement provides that the defendant
26 will pay the plaintiffs’ attorneys a percentage of the fund created by the settlement, use of that percentage
27 method is appropriate. (*Lealao*, 82 Cal.App.4th at 32). Fee awards that are too small will “chill the
28 private enforcement essential to the vindication of many legal rights and obstruct the representative

1 actions that often relieve the courts of the need to separately adjudicate numerous claims.” (*Id.* at 53).
2 Therefore, fees in representative actions should approximate the probable terms of a contingent fee
3 contract negotiated by a sophisticated attorney and client in comparable litigation. (*Id.* at 48). “The
4 ultimate goal ... is the award of a ‘reasonable’ fee to compensate counsel for their efforts, irrespective of
5 the method of calculation.” (*Consumer Privacy Cases*, 175 Cal.App.4th 545, 557-58 (2009) [quoting
6 *Apple Computer, Inc. v. Superior Court*, *supra*, 126 Cal.App.4th at 1270]).

7 Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and circumstances
8 surrounding the case is within the range of reasonableness. Historically, courts have awarded fees as
9 high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of the
10 case. (*See In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) [awarding attorneys’ fees in
11 the amount of 45% of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v. Twentieth-*
12 *Century Fox Film Corp.* 480 F.Supp. 1195 (S.D.N.Y. 1979) [awarding approximately 53% of the
13 settlement as attorneys’ fees]). California courts routinely approve attorneys’ fees awards “average[ing]
14 around one-third of the recovery.” (*Chavez*, 162 Cal.App.4th at 66 [trial court found the range of
15 contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee was
16 appropriate]; *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles County
17 Superior Court, Case No. BC596892 (June 2016) [approving a fee award of one-third of the settlement
18 amount of \$950,000 in a PAGA action, because it was “reasonable and consistent with fee awards in
19 class action cases”]).

20 Here, Plaintiff’s Counsel’s fee request of one-third (1/3) of the PAGA Settlement Amount (i.e.,
21 \$158,333.33) is fair and reasonable based on the percentage of the recovery method. Plaintiff’s Counsel
22 has vigorously litigated this case since it was commenced, with the very real possibility of an
23 unsuccessful outcome and no fee recovery of any kind. (Genish Decl., ¶ 62). Counsel for Plaintiff
24 undertook significant investigation and invested a significant amount of time analyzing relevant
25 documents and data to evaluate the nature and extent of the alleged underlying California Labor Code
26 violations and calculation of the potential monetary recovery as they relate to Plaintiff’s PAGA claims
27 under PAGA. (Genish Decl., ¶¶ 22-23 & 43-56). The attorneys at Blackstone Law, APC possess
28 combined extensive experience litigating wage and hour and other complex litigation matters, and the

1 attorneys who worked on this matter have been approved as class counsel and/or have had their billable
2 rates approved in the settlement of other class and PAGA actions, numerous times. (Genish Decl., ¶
3 64).

4 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will
5 not receive any compensation until recovery is obtained. (*Id.*, ¶ 63). Plaintiff's Counsel is experienced
6 in complex wage-and-hour litigation and used that experience to obtain a favorable result for Plaintiff,
7 the Aggrieved Employees, and the State of California. (*Id.*, ¶¶ 2-7 & 64). Considering the amount of
8 fees requested, work performed, risks incurred, and experience of Plaintiff's Counsel in handling similar
9 matters, Plaintiff maintains that the requested attorneys' fees of one-third (1/3) of the PAGA Settlement
10 Amount (i.e., \$158,333.33) are reasonable and should be awarded. (*Id.*, ¶ 63).

11 **VII. THE REQUESTED ATTORNEYS' COSTS ARE FAIR AND REASONABLE**

12 The PAGA Settlement provides for reimbursement of actual litigation costs and expenses up to
13 the amount of Thirty Thousand Dollars and Zero Cents (\$30,000.00). (Genish Decl., ¶ 67; PAGA
14 Settlement Agreement, ¶ 3(a)(1)). Plaintiff's Counsel only seeks reimbursement of a total of Twenty-
15 Five Thousand Six Hundred Eighty-Nine Dollars and Six Cents (\$25,689.06) in litigation costs and
16 expenses. (Genish Decl., ¶ 67 & Exh. 4). Accordingly, Plaintiff's Counsel respectfully requests that
17 the Court reimburse Blackstone Law, APC for actual litigation costs and expenses in the amount of
18 Twenty-Five Thousand Six Hundred Eighty-Nine Dollars and Six Cents (\$25,689.06). This amount
19 was reasonable and necessary in the prosecution of this matter, and is less than the maximum amount
20 allocated under the PAGA Settlement. (*Ibid.*).

21 **VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND 22 REASONABLE**

23 After obtaining competing bids from multiple potential settlement administrators, which
24 included ILYM Group, Inc. (\$5,550 bid), Apex Class Action LLC (\$6,990 bid), and CPT Group, Inc.
25 (\$8,000 bid), the Parties agreed to retain ILYM Group, Inc., which was the lowest bidder, to handle the
26 administration of the PAGA Settlement. (*Id.*, ¶ 72). These costs include, but are not limited to, expenses
27 for preparing, printing, and mailing the Cover Letter and Individual PAGA Payment checks to the
28 Aggrieved Employees, re-mailing the returned Individual PAGA Payment checks to any new addresses

1 obtained, and handling inquiries from Aggrieved Employees regarding the PAGA Settlement, among
2 other things. (Genish Decl., ¶ 72). Accordingly, the Court should grant approval of the Settlement
3 Administration Costs in the amount of up to \$5,550.00 to IYLM Group, Inc., a necessary third-party for
4 handling the settlement process. (*Ibid*).

5 **IX. CONCLUSION**

6 For all of the foregoing reasons, Plaintiff respectfully requests that this Court approve the PAGA
7 Settlement, including the plan of allocation and distribution of the PAGA Settlement Amount for the
8 LWDA Payment to the LWDA, Individual PAGA Payments to the Aggrieved Employees, Attorneys'
9 Fees and Costs to Plaintiff's Counsel, and Settlement Administration Costs to the Settlement
10 Administrator, and permit the filing of a memorandum that exceeds the page limit.

11 Respectfully submitted,

12 Dated: September 6, 2024

BLACKSTONE LAW, APC

13 By:



14 Jonathan M. Genish
15 Attorneys for Plaintiff Jazzmin Cortez
16
17
18
19
20
21
22
23
24
25
26
27
28