

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

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

Plaintiff,

vs.

TERRAVANT WINE COMPANY, LLC, a
California limited liability company;
SUMMERLAND WINE BRANDS, an
unknown business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 20CV03971

Honorable Timothy J. Staffel
Department 3

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

[Declaration of Plaintiff's Counsel
(Edwin Aiwazian); Declaration of Plaintiff
(William Hall); and [Proposed] Order and
Judgment filed concurrently herewith]

Date: April 27, 2022
Time: 8:30 a.m.
Department: 3

Complaint Filed: November 20, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 27, 2022, at 8:30 a.m. or as soon thereafter as
2 the matter may be heard before the Honorable Timothy J. Staffel in Department 3 of the Superior
3 Court of the State of California, for the County of Santa Barbara, Santa Maria – Cook Division,
4 located at 312 East Cook Street, Santa Maria, California 93454, Plaintiff William Hall
5 (“Plaintiff”) will and hereby does move for entry of an order:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(1)(2), of the
7 settlement between Plaintiff and Defendant Terravant Wine Company, LLC doing
8 business as Summerland Wine Brands (“Defendant”) of the claims brought pursuant
9 to the Private Attorneys General Act of 2004 (“PAGA”), as set forth in the Private
10 Attorneys General Act Settlement Agreement and Release (“Settlement,”
11 “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the
12 Declaration of Edwin Aiwasian, including and not limited to, the plan of allocation
13 and distribution of the Total Settlement Amount for payment of the LWDA Payment
14 to the California Labor and Workforce Development Agency (“LWDA”), Individual
15 PAGA Payments to the Allegedly Aggrieved Employees, Attorneys’ Fees and
16 Attorneys’ Costs to Plaintiff’s Counsel, Settlement Administration Costs to the
17 Settlement Administrator, and Enhancement Payment to Plaintiff;
- 18 2. Approving the Net Settlement Amount, estimated to be no less than \$58,989.07, of
19 which seventy-five percent (75%) will be paid to the LWDA (“LWDA Payment”)
20 and twenty-five percent (25%) will be paid to the Allegedly Aggrieved Employees
21 (“Allegedly Aggrieved Employees’ PAGA Portion”), pursuant to California Labor
22 Code section 2699(i);
- 23 3. Appointing Simpluris, Inc. (“Simpluris”) as the Settlement Administrator;
- 24 4. Directing Defendant to transmit the Total Settlement Amount of \$125,000.00 into a
25 qualified settlement account established by the Settlement Administrator for
26 administration of the Settlement, and directing the Settlement Administrator to
27 distribute the Total Settlement Amount in accordance with the Settlement Agreement;

5. Directing the mailing of Individual PAGA Payment checks to the Allegedly Aggrieved Employees along with the Cover Letter, substantially similar in content and form to that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys’ Fees, Costs, Enhancement Payment, and Settlement Administration Costs (“[Proposed] Order and Judgement”) filed concurrently herewith;
6. Awarding \$7,500.00 to Plaintiff William Hall as an Enhancement Payment;
7. Awarding up to \$4,500.00 to the Settlement Administrator as Settlement Administration Costs; and
8. Awarding to Plaintiff’s Counsel, Lawyers *for* Justice, PC, \$43,750.00 as compensation for reasonable attorneys’ fees (“Attorneys’ Fees”) and \$10,260.93 for reimbursement of litigation costs and expenses (“Attorneys’ Costs”), pursuant to California Labor Code section 2699(g)(1).

The Settlement Agreement and moving and supporting papers for this motion are being concurrently submitted to the California Labor and Workforce Development Agency in conformity with California Labor Code section 2699(l)(2).

This motion is made pursuant to California Labor Code section 2699(l)(2), which provides for 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.

///

///

///

///

///

///

1 This motion will be based upon the following Memorandum of Points and Authorities,
2 the Settlement Agreement, the Declarations of Plaintiff's Counsel (Edwin Aiwanian) and
3 Plaintiff (William Hall) in support thereof, as well as the pleadings and other records on file with
4 the Court in this matter, and such evidence and oral argument as may be presented at the hearing
5 on this motion.

6 Dated: April 5, 2022

LAWYERS for JUSTICE, PC

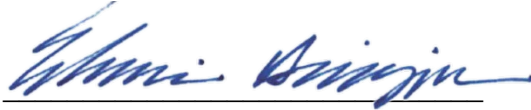
7
8 By: 
9 Edwin Aiwanian
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	1
II.	FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY	3
III.	SUMMARY OF THE SETTLEMENT TERMS	4
A.	Allegedly Aggrieved Employees.....	4
B.	Distribution of the Total Settlement Amount.....	5
C.	Distribution of the Net Settlement Amount.....	5
D.	The Scope of the Release in the Settlement Agreement.....	7
E.	No Right to Object to, or Opt Out of, the Settlement.....	8
IV.	STANDARDS FOR APPROVAL OF PAGA SETTLEMENT	9
V.	THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED.....	11
A.	The Factors Giving Rise to a Presumption of Fairness Exist	11
B.	The Relative Strength of the PAGA Claims and the Range of Possible Outcomes in the Litigation Strongly Favor Approval of the Settlement.....	12
C.	The Settlement Avoids Risky, Complex, and Lengthy Further Litigation.....	16
D.	The Settlement Is Fair, Adequate, and Reasonable.....	17
E.	The Experience and Views of Plaintiff’s Counsel Favor Approval of the Settlement	19
VI.	THE PROPOSED ATTORNEYS’ FEES PAYMENT IS FAIR AND REASONABLE, AND SHOULD BE APPROVED.....	20
A.	A Fee Award of a Percentage of the Entire Fund Is Appropriate.....	20
B.	The Fee Award Requested by Plaintiff’s Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards.....	24
1.	Time & Labor.....	25
2.	The Skill Required to Perform Legal Services Properly.....	26
3.	The Value of the Settlement	27

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

4.	Whether the Fee Is Fixed or Contingent.....	27
5.	The Amount Involved and the Results Achieved	28
6.	The Reputation and Ability of the Attorneys	28
C.	The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Plaintiff’s Counsel Has Performed Work That Is of Significant Value Based on Reasonable Hours and Prevailing Hourly Rates of Compensation	29
1.	Plaintiff’s Counsel Performed Work for a Reasonable Number of Hours.....	29
2.	The Fees Requested Represent a Reasonable Hourly Rate of Compensation in Light of Plaintiff’s Counsel’s Efforts and Experience	30
VII.	COSTS TO BE REIMBURSED TO PLAINTIFF’S COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED	33
VIII.	THE PROPOSED COVER LETTER TO THE AILEGEDLY AGGRIEVED EMPLOYEES SHOULD BE APPROVED	33
IX.	THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED	34
X.	THE PROPOSED ENHANCEMENT PAYMENT IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED	34
XI.	CONCLUSION	36

TABLE OF AUTHORITIES

Cases

<i>Ali v. U.S.A. Cab Ltd.</i> (2009) 176 Cal.App.4th 1333.....	14
<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court.</i> (2009) 46th Cal.4th 993	8
<i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969	8
<i>Bell v. Farmers Ins. Exch.</i> (2004) 115 Cal.App.4th 715	34
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F.Supp. 610.....	12
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004.....	13, 14
<i>Casida v. Sears Holdings Corp.</i> (E.D. Cal. Jan. 26, 2012) 2012 WL 253217.....	9
<i>City of Oakland v. Oakland Raiders</i> (1988) 203 Cal.App.3d 78.....	32
<i>Clark v. Am. Residential Servs., LLC</i> (2009) 175 Cal.App.4th 785	34
<i>Consumer Privacy Cases</i> (2009) 175 Cal. App. 4th 545.....	22
<i>Duran v. U.S. Bank Nat. Assn.</i> (2014) 59 Cal.4th 1.....	13
<i>edroza v. PetSmart, Inc.</i> (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667	9
<i>Fireside Bank v. Superior Court</i> (2007) 40 Cal.4th 1069.....	8
<i>Horton v. Jones</i> (1972) 26 Cal.App.3d 952	15
<i>Ingram v. The Coca-Cola Co.</i> (N.D. Ga. 2001) 200 F.R.D. 685.....	34
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> , (2014) 58 Cal.4th 348	8
<i>Kirkorian v. Borelli</i> (N.D. Cal. 1988) 695 F.Supp. 446	12
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	22, 29
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	21
<i>Ochoa-Hernandez v. CJADERS Foods, Inc.</i> (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777	10
<i>Resendez v. Bridgestone Retail Operations, LLC</i> , Los Angeles Superior Court, Case No. BC596892 (June 2016)	10
<i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal.3d 462,.....	8
<i>Safeway v. Superior Court</i> (2015) 238 Cal.App.4th 1138.....	13
<i>Satchell v. Fed. Express Corp.</i> (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010	12
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	13

1	<i>Stafford v. Dollar Tree Stores, Inc.</i> (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396	14
2	<i>Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal.App.4th 495.....	32
3	<i>Thomas v. Aetna Health of Cal., Inc.</i> (E.D. Cal. June 2, 2011) 2011 WL 2173715.....	9
4	<i>Vo v. Las Virgenes Municipal Water Dist.</i> (2000) 79 Cal.App.4th 440	29
5	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	11
6	<i>Williams v. Superior Court</i> (2017) 3 Cal.5th 531	8, 9, 20
7	Statutes	
8	Cal. Lab. Code § 2699(g)(1)(i)	20
9	Cal. Lab. Code § 2699(j).....	10
10	Cal. Lab. Code § 2699(l)(2).....	1, 9
11	Cal. Lab. Code § 2699.3	9
12	Cal. Lab. Code §§ 2698, <i>et seq.</i>	1

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff William Hall (“Plaintiff”) seeks approval of the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”)¹ entered into between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and Defendant Terravant Wine Company, LLC doing business as Summerland Wine Brands (“Defendant”), pursuant to California Labor Code section 2699(l)(2).

Subject to approval by the Court, Plaintiff and Defendant (together, the “Parties”) have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Total Settlement Amount of \$125,000.00.²

The Total Settlement Amount is inclusive of: (1) Attorneys’ Fees and Attorneys’ Costs to be paid to Lawyers *for* Justice, PC (“Plaintiff’s Counsel”), (2) Enhancement Payment to Plaintiff, (3) Settlement Administration Costs to be paid to the Settlement Administrator, and (4) Net Settlement Amount to be paid to the California Labor and Workforce Development Agency (“LWDA”) and all persons who worked for Defendant as a non-exempt employee in California during the PAGA Period (“Allegedly Aggrieved Employees”).³

The Net Settlement Amount will be the Total Settlement Amount less the Court-approved Attorneys’ Fees, Attorneys’ Costs, Settlement Administration Costs, and Enhancement Payment, and is currently estimated to be no less than \$58,989.07.⁴ The Net Settlement Amount will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and twenty-five percent (25%) to the Allegedly Aggrieved Employees (“Allegedly Aggrieved

¹ The Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement”) is attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwanian.

² Settlement Agreement, § I.1.01(cc).

³ *Id.*, §§ I.1.01(cc) & I.1.01(b). The “PAGA Period” is defined as the time period from September 16, 2019, through the earlier of either the date on which the Court enters the Approval Order or the last date that the total Pay Periods do not exceed 2,454. See *id.*, § I.1.01(s).

⁴ *Id.*, § I.1.01(q).

1 Employees' PAGA Portion").⁵ Each Allegedly Aggrieved Employee will be entitled to payment
2 of his or her *pro rata* share of the Allegedly Aggrieved Employees' PAGA Portion, based on the
3 number of pay periods each Allegedly Aggrieved Employee was employed during the PAGA
4 Period ("Pay Periods").⁶

5 The payment to Allegedly Aggrieved Employees will be treated and reported for tax
6 purposes as penalties and the Settlement Administrator will be responsible for issuing IRS Form
7 1099s as required.⁷

8 Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the
9 requirements for approval by the Court based upon the relevant fairness factors, the relative
10 strengths of the PAGA claims, the risk, expense, and complexity of further litigation, the benefit
11 conferred by the Settlement, the scope of the release of claims, the experience and views of
12 counsel, and the reasonableness of the Net Settlement Amount (consisting of the LWDA
13 Payment and Allegedly Aggrieved Employees' PAGA Portion), Attorneys' Fees, Attorneys'
14 Costs, Settlement Administration Costs, and Enhancement Payment. Plaintiff respectfully
15 requests that this Court approve the Settlement, award the Attorneys' Fees, Attorneys' Costs,
16 Settlement Administration Costs, and Enhancement Payment and approve the LWDA Payment,
17 which are provided for by the Settlement and requested herein.

18 In order to efficiently present the Court with adequate information to determine whether
19 to grant approval of the Settlement, Plaintiff also moves for an order permitting the filing of this
20 memorandum, although it exceeds the page limit established by California Rules of Court, Rule
21 3.1113(d).

22 ///

23 ///

24 ///

25 ///

26 ⁵ Settlement Agreement, § I.1.01(c), I.1.01(p), & II.2.02(v).

27 ⁶ *Id.*, § I.1.01(t).

28 ⁷ *Id.*, § II.2.05(b).

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant is Santa Barbara County’s largest winery and produces over 300,000 cases of premium, luxury, and boutique wines each year for more than twenty vineyards and wine brands. Defendant’s wines are sold at retail grocery stores and chain restaurants nationwide. Defendant’s headquarters are in Buellton, California. Plaintiff William Hall is a former employee of Defendant.

Prior to commencing this lawsuit, on September 16, 2020, as required by California Labor Code section 2699.3, Plaintiff William Hall provided the LWDA with written notice of his intent to assert claims under PAGA and the basis for those claims, to which the LWDA did not respond.⁸

On November 20, 2020, Plaintiff William Hall filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) against Defendant in the Santa Barbara County Superior Court (“Court”), Case No. 20CV03971 (the “Action”). Plaintiff’s core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and other aggrieved employees, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide compliant meal and rest periods and associated premiums, failing to pay timely wages during employment and upon termination of employment, failing to provide complete and accurate itemized wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

On January 6, 2021, Defendant filed an Answer to Plaintiff’s PAGA Complaint. Defendant maintained, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time period at issue. 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 the PAGA.

///

⁸ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 10.

On January 11, 2021, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories – General, (Set One), and noticed the deposition of Defendant’s Person Most Knowledgeable regarding job duties and organizational structure. Thereafter, on February 9 and 26, 2021, Defendant responded to Plaintiff’s discovery requests.

On December 7, 2021, the Parties participated in a full-day mediation conducted by Henry Bongiovi, Esq. a well-respected mediator experienced in mediating complex labor and employment matters.⁹ With the aid of the mediator, the Parties were able to reach the Settlement described herein.¹⁰

Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(l)(2). The Settlement Agreement and moving and supporting papers for this motion are being submitted to the LWDA in conformity with California Labor Code section 2699(l)(2), concurrently with this filing.¹¹

III. SUMMARY OF THE SETTLEMENT TERMS

A. Allegedly Aggrieved Employees

The Allegedly Aggrieved Employees who are covered by the Settlement are:

All persons who worked for Defendant as a non-exempt employee in California during the PAGA Period.¹²

Based on information provided by Defendant, as of February 2022, there are approximately seventy-six (76) Allegedly Aggrieved Employees.¹³

///

///

⁹ Aiwasian Decl., ¶ 12.

¹⁰ *Ibid.*

¹¹ The Court is referred to the concurrently-filed Proof of Service, which confirms submission of the papers to the LWDA.

¹² Settlement Agreement, § I.1.01(b). The time period from September 16, 2019, through the earlier of either the date on which the Court enters the Approval Order or the last date that the total Pay Periods do not exceed 2,454 is referred to as the “PAGA Period.” See *id.*, § I.1.01(s).

¹³ *Id.*, § II.2.01, and Aiwasian Decl., ¶ 9.

1 **B. Distribution of the Total Settlement Amount**

2 Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement
3 Amount of \$125,000.00.¹⁴ The Net Settlement Amount will be the Total Settlement Amount less
4 the following amounts: (1) Attorneys’ Fees consisting of attorneys’ fees of \$43,750.00 and
5 Attorneys’ Costs consisting of reimbursement of litigation costs and expenses of \$10,260.93 to
6 Plaintiff’s Counsel; (2) Enhancement Payment of \$7,500.00 to Plaintiff; and (3) Settlement
7 Administration Costs of up to \$4,500.00 to Simpluris, Inc. (“Simpluris” or “Settlement
8 Administrator”).¹⁵ The Net Settlement Amount will be fully distributed to the Allegedly
9 Aggrieved Employees and the LWDA, as described in Section III.C, *infra*.

10 **C. Distribution of the Net Settlement Amount**

11 No later than forty-five (45) calendar days after the Effective Date, Defendant shall
12 deposit the Total Settlement Amount into a qualified settlement account established by the
13 Settlement Administrator for administration of the Settlement.¹⁶ No later than thirty (30)
14 calendar days after the Court approves the Settlement, Defendant shall provide the Settlement
15 Administrator with a list of all Allegedly Aggrieved Employees (“Allegedly Aggrieved
16 Employees List”), containing the following information for each Allegedly Aggrieved
17 Employee: (i) first and last name; (ii) last known mailing address; (iii) social security number;
18 and (iv) the dates of employment during the PAGA Period.¹⁷

19 Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$44,241.80)
20 will be distributed to the LWDA (i.e., “LWDA Payment”) and twenty-five percent (25%) of the
21 Net Settlement Amount (or approximately \$14,747.27) (i.e., “Allegedly Aggrieved Employees’
22 PAGA Portion”) will be distributed to the Allegedly Aggrieved Employees on a *pro rata* basis,
23 based on their Pay Periods.¹⁸ To calculate each Allegedly Aggrieved Employee’s *pro rata* share
24 of the Allegedly Aggrieved Employees’ PAGA Portion (“Individual PAGA Payment”), the Net

25

¹⁴ Settlement Agreement, § I.1.01(cc), and Aiwazian Decl., ¶ 14.

26 ¹⁵ Aiwazian Decl., ¶ 14.

27 ¹⁶ Settlement Agreement, § II.2.05(a).

28 ¹⁷ *Id.*, § II.2.04(a)(1).

¹⁸ *Id.*, § II.2.05(b).

1 Settlement Amount shall be divided by the total Pay Periods of all Allegedly Aggrieved
2 Employees during the PAGA Period to yield the “Pay Period Value;” the Pay Period Value will
3 then be multiplied by each Allegedly Aggrieved Employee’s individual number of Pay Periods
4 to arrive at each Allegedly Aggrieved Employee’s Individual PAGA Payment.¹⁹ One hundred
5 percent (100%) of all Individual PAGA Payments are to be considered penalties and will not be
6 subject to local, state and/or federal payroll tax withholdings and are to be reported on IRS Form
7 1099 (if required).²⁰

8 No later than ten (10) calendar days after the Settlement Administrator receives the Total
9 Settlement Amount from Defendant, the Settlement Administrator shall mail the Cover Letter
10 together with an Individual PAGA Payment check (together, the “PAGA Settlement Package”) to all Allegedly Aggrieved Employees by first-class United States mail.²¹ For each PAGA
11 Settlement Package that is returned as undeliverable within thirty (30) calendar days of initial
12 mailing, the Settlement Administrator shall promptly attempt to locate an alternate, updated
13 address of the Allegedly Aggrieved Employee by conducting a skip trace search and shall
14 attempt one (1) re-mailing of the PAGA Settlement Package to an alternative address if one is
15 located.²²

16
17 The Individual PAGA Payment checks issued to Allegedly Aggrieved Employees shall
18 remain valid for one hundred eighty (180) calendar days, and thereafter, shall be cancelled.²³
19 Any funds remaining from the cancelled checks shall be distributed by the Settlement
20 Administrator to the California State Controller’s Office Unclaimed Property Division, in the
21 name of that Allegedly Aggrieved Employee and in the amount of his or her respective
22 Individual PAGA Payment.²⁴

23 ///

24
25 ¹⁹ Settlement Agreement, § I.1.01(n) & II.2.05(b).

26 ²⁰ *Id.*, § II.2.05(b).

27 ²¹ *Id.*, § II.2.04(a)(3).

28 ²² *Ibid.*

²³ *Id.*, § II.2.05(b).

²⁴ *Ibid.*

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

2 Upon the Effective Date and full funding of the Total Settlement Amount, Plaintiff,
3 actively and affirmatively, on behalf of himself and the State of California, and each Allegedly
4 Aggrieved Employee, shall fully release and forever discharge the Released Parties from the
5 Released Claims.²⁵

6 The “Released Claims” are any and all claims asserted in the Action or any other claims
7 that could have been raised or asserted in the Action, under PAGA, including, without limitation,
8 by Plaintiff and any and all Allegedly Aggrieved Employees, based on the facts alleged, arising
9 during the PAGA Period, including but not limited to any and all claims for PAGA penalties for
10 the failure to provide compliant meal and rest periods and associated premiums; the failure to
11 provide unpaid wages, including minimum wages, regular wages, overtime and double time
12 wages; the failure to timely pay wages during employment and upon termination; the failure to
13 keep complete and accurate payroll records; the failure to provide complete and accurate wage
14 statements; the failure to reimburse for necessary business-related expenses and costs, in violation
15 of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d),
16 1194, 1197, 1197.1, 1198, 2800 and 2802, as well as Industrial Welfare Commission Wage
17 Orders Nos. 4-2001, 7-2001, 8-2001, 13-2001, and 14-2001.²⁶

18 The “Released Parties” are Defendant Terravant Wine Company, LLC doing business as
19 Summerland Wine Brands and its past or present parents, subsidiaries, affiliates, insurers, related
20 entities and divisions, and their respective predecessors, successors, assigns, and/or any officers,
21 directors, employees, partners, agents, insurers, and/or any other individual or entity which could
22 be liable for the acts of omissions of Defendant in connection with the Action.²⁷

23 ///

24 ///

25 ///

26 ²⁵ Settlement Agreement, § IV.4.01.

27 ²⁶ *Id.*, § I.1.01(x).

28 ²⁷ *Id.*, § I.1.01(y).

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

2 “[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as
3 such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior*
4 *Court* (2017) 3 Cal.5th 531, 546. “Unnamed employees need not be given notice of the PAGA
5 claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-*
6 *Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5. A
7 representative PAGA action need not satisfy class action requirements, and no due process
8 concern arises from the fact that there are “nonparty aggrieved employees who are not given
9 notice of, and an opportunity to be heard in, a representative action that is not brought as a class
10 action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other
11 potentially aggrieved employees parties” to the action and no “due process concerns arise under
12 PAGA because absent employees do not own a personal claim for PAGA civil penalties and
13 whatever personal claims the absent employees might have for relief are not at stake.” *Williams,*
14 *supra*, 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756,*
15 *AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation*
16 *Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

17 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
18 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v.*
19 *Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29
20 Cal, 3d 462, 474.) A “judgment in such an action is binding not only on the named employee
21 plaintiff but also on government agencies and any aggrieved employee not a party to the
22 proceeding” because “the employee plaintiff represents the same legal right and interest as state
23 labor law enforcement agencies[.]” “collateral estoppel applies [...] against those for whom the
24 party acted as an agent or proxy[.]” and “[w]hen a government agency is authorized to bring an
25 action on behalf of an individual or in the public interest, and a private person lacks an
26 independent right to bring the action, a person who is not a party but who is represented by the
27 agency is bound by the judgment as though the person were a party.” *Arias, supra*, at 985-86
28

(citations omitted).

As such, the Settlement is consistent with the law, and there is no requirement that the Allegedly Aggrieved Employees be provided with a mechanism to opt out of or object to the Settlement.

IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT

The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or herself and on behalf of other aggrieved employees and the State of California to recover civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer (Cal. Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. See Cal. Lab. Code § 2699(a). Plaintiff has complied.

The settlement of a PAGA action requires court approval. See Cal. Lab. Code § 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”). 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.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from, and simpler than, the process for approval of a class action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims.²⁸ See, e.g., *Resendez v. Bridgestone Retail*

²⁸ Aiwasian Decl., ¶ 7.

1 *Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto*
2 *Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v.*
3 *Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David's Bridal,*
4 *Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D.
5 Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal Nov. 27,
6 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576,
7 589.

8 In a PAGA case, the court's focus is not the monetary amount which aggrieved
9 employees or the State stand to receive, but instead, whether the total settlement amount achieves
10 the PAGA's objectives. The purpose of the PAGA is "to incentivize private parties to recover
11 civil penalties for the government that otherwise may not have been assessed and collected by
12 overburdened state enforcement agencies." See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at
13 *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to
14 "be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers
15 and employees about their rights and responsibilities under this code, to be continuously
16 appropriated to supplement and not supplant the funding to the agency for those purposes." See
17 Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by way of a PAGA
18 claim, is essentially a law enforcement action. See *Amalgamated, supra*, 46 Cal.4th at 1003
19 (stating that the PAGA is a mechanism for "an aggrieved employee to recover civil penalties—
20 for Labor Code violations—that otherwise would be sought by state labor law enforcement
21 agencies"); see also *Iskanian, supra*, at 381.

22 A PAGA settlement is a settlement of claims for penalties and other remedies which the
23 LWDA could assess and collect on behalf of employees without their involvement or approval.
24 "[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the
25 ability to opt-out of the representative PAGA claim." *Ochoa-Hernandez, supra*, 2010 WL
26 1340777, at *5. This renders the approval process of a PAGA settlement distinct from a class
27 action settlement, and the Court need not employ the two-step approval process that applies to a
28

class action settlement, under both state and federal law.

V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

The Settlement resulted from hard-fought negotiations, fulfills the objectives of the PAGA statute, is fair, adequate, and reasonable, and meets all of the criteria for approval for the reasons discussed below.

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

The Parties reached the Settlement through arm's-length negotiations, after a mediation with an experienced and respected mediator, Henry Bongiovi, Esq.²⁹ A settlement that is "the product of extensive and hard-fought adversarial negotiations between the parties" is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

The Settlement is presumptively fair because: (1) it is the product of non-collusive, arm's-length negotiations with the assistance of an independent mediator knowledgeable in complex labor and employment matters; (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters; and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claims, and the risks associated with possible arbitration proceedings and of litigating these claims through trial.³⁰

After engaging in extensive formal and informal discovery, the Parties participated in settlement negotiations to try to resolve the lawsuit.³¹ These efforts included participating in formal mediation conducted by Henry Bongiovi, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³² During mediation, the Parties discussed all aspects of the case, including the risks and delays of further litigation, the risks to the Parties of proceeding with trial, possible arbitration proceedings, as well as the law relating to representative PAGA actions, off-the-clock theory, wage-and-hour enforcement, and arbitration

²⁹ Aiwazian Decl., ¶ 12.

³⁰ *Id.*, ¶¶ 4-7, 11-13, & 16-20.

³¹ *Id.*, ¶ 12.

³² *Ibid.*

1 agreements, the evidence produced and analyzed, and the possibility of bifurcation of discovery
2 and/or trial and appeals, among other things.³³ During all settlement discussions, the Parties
3 conducted their negotiations at arm's length in an adversarial position.³⁴

4 Based on all of the information available to the Parties and with the assistance of the
5 experienced mediator, the Parties agree that this matter is well-suited for settlement given the
6 strengths and weaknesses of the PAGA claim.³⁵ Plaintiff and Plaintiff's Counsel believe that the
7 settlement is a fair, adequate, and reasonable resolution of this matter.³⁶ Plaintiff's Counsel has
8 extensive experience handling representative and class action wage-and-hour litigation and used
9 that experience to achieve a great result for Plaintiff, the State of California, and the Allegedly
10 Aggrieved Employees.³⁷ Therefore, the Court should give considerable weight to the
11 competency, experience, and opinion of counsel and the involvement of a neutral mediator in
12 assuring that the settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli*
13 (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to
14 considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622
15 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness); see
16 also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating
17 that the "assistance of an experienced mediator in the settlement process confirms that the
18 settlement is non-collusive").

19 **B. The Relative Strength of the PAGA Claims and the Range of Possible**
20 **Outcomes in the Litigation Strongly Favor Approval of the Settlement**

21 In order for Plaintiff to prevail on the PAGA claims, he would have to prove the
22 underlying California Labor Code violations, demonstrate that the Allegedly Aggrieved
23 Employees suffered, and demonstrate that Defendant's conduct gives rise to penalties. See, e.g.,
24 *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 ("Plaintiff's

25 ³³ Aiwazian Decl., ¶ 12.

26 ³⁴ *Ibid.*

27 ³⁵ *Id.*, ¶ 27.

28 ³⁶ *Ibid.*

³⁷ *Id.*, ¶¶ 4-7.

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 allegation is that Defendant has systematically violated the California Labor Code, with respect to Plaintiff and the Allegedly Aggrieved Employees, by, *inter alia*, failing to properly pay minimum, regular, overtime wages, failing to provide compliant meal and rest periods and associated premiums, failing to timely pay wages during employment and upon termination of employment, failing to provide complete and accurate wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

Although wage-and-hour actions are amenable to resolution as to a group of employees,³⁸ some courts have also found that, for various reasons, the issues raised by Plaintiff raise individualized issues and/or are unmanageable and thus not suitable for adjudication as to a group of employees.³⁹

³⁸ See, e.g., *Martinez vs. Joe's Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-84, *modified on other grounds by Martinez v. Joe's Crab Shack Holdings, et al.* (Dec. 3, 2014, B242807) 2014 Cal.App. LEXIS 1102, *1-2 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of resolving wage-and-hour claims, including misclassification and overtime, recognizing that "statistical sampling may provide assistance in identifying the realistic demands of the job and illuminating whether the typical employee was able to meet those expectations" and that "[b]y refocusing its analysis on the policies and practices of the employer and the effect those policies and practices have on the [employees] . . . the trial court may in fact find class analysis a more efficient and effective means of resolving plaintiffs' overtime claim"); *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 330-31 (Court successfully managed and adjudicated wage-and-hour claims made on behalf of a group of employees, utilizing, among other things, statistics and surveying.); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033 ("Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment [...] The theory of liability – that [the employer] has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law - is by its nature a common question eminently suited for class treatment."); *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (finding that real parties demonstrated that the existence of the practice and the fact of damage were matters suitable for determination on behalf of a group of employees and that, "[r]eal parties' evidence supports the reasonable inference that [...] they could establish that petitioners engaged in the alleged practice, that is, they never paid meal break premium wages, even though a significant number of employees accrued them. Furthermore, in view of real parties' theory of restitution, those facts would also suffice to demonstrate the fact of damage. Under that theory, the fact of damage does not require a showing that all -- or virtually all -- class members accrued unpaid meal break premium wages, but only that on a system-wide basis, petitioners denied the class members the benefits of the compensation guarantee and enhanced enforcement implemented by section 226.7."); *Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036 (holding that statistical evidence is admissible to support class action certification because it is also admissible to prove liability and damages across a group of employees, where the defendant employer had not kept records of time spent by employees with respect to donning and doffing protective clothing).

³⁹ See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35 (stating that even where it has been alleged "that the employer consistently imposed a uniform policy or de facto practice" as to its employees, "the

(Footnote continued)

Defendant contended that courts have required, and that due process requires, that the adjudication of PAGA claims meets a “manageability” requirement. *See, e.g., Liuy v. Merrill Lynch & Co.* (C.D. Cal. Nov. 10, 2014) No. CV-l4-0425-PA, WL 5904904 at **3-4 (Court dismissed the PAGA claim because a multitude of individualized assessments would be necessary, making the PAGA claim unmanageable).

Defendant also maintained several defenses to Plaintiff’s theory of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time period at issue.⁴⁰ 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 the PAGA.⁴¹ Defendant further denied, and continues to deny, that the lawsuit is appropriate for representative treatment for any purpose other than settlement.⁴²

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.⁴³ Also, at the time that this case commenced, multiple courts had taken an approach requiring a plaintiff to establish standing and face the possibility of bifurcation of discovery and/or trial of the PAGA claim. *See Amalgamated Transit Union, supra*, 46 Cal.4th at 1001 (noting that PAGA “require[s] a plaintiff to have suffered an injury resulting from an unlawful action”); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding that judicial

party must still demonstrate that the illegal effects of this conduct can be proven efficiently and manageably” and in litigating representative actions the procedures utilized by the court “may not be used to abridge a party’s substantive rights,” including “abridge[ing the defendant’s] presentation of [a defense] simply because that defense was cumbersome to litigate,” because of “principles of due process”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1018 (stating that employers must authorize, permit, or “relieve the employee of all duty for [a] designated meal [or rest] period,” and “relinquish [full] control over [the employee’s] activities” and “afford” employees an “opportunity to take an *uninterrupted* thirty-minute break,” but are not obligated to affirmatively ensure that no work related tasks are performed during such periods).

⁴⁰ Aiwazian Decl., ¶ 17.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Id.*, ¶ 19.

1 economy supported bifurcation because of the difficulties and inherent uncertainties of being
2 able to establish liability with respect to a large number of potentially aggrieved employees and
3 noted that “PAGA’s public purpose would be ill-served if the court finds [the plaintiff] has not
4 been aggrieved by a Labor Code violation”); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955
5 (stating that bifurcation and sequencing of litigation is allowed to avoid wasting time and money
6 on trial when litigation of issues could be rendered moot).

7 Defendant also argued that an important feature of PAGA is that the Court retains
8 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to
9 do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.”
10 See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.*
11 (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA
12 penalties awarded to an employee based upon discretionary factors). Defendant maintained, and
13 continues to maintain, that it had and continues to have, legally-compliant employment policies
14 and practices throughout the time period at issue.⁴⁴ Defendant denies that it ever violated any
15 provision of the California Labor Code.⁴⁵ Even if, *arguendo*, such violations occurred, which
16 Defendant denies, Defendant contended that said violations would only be considered “initial
17 violations” and thus heightened “subsequent violation” penalties were not warranted. See Cal.
18 Lab. Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157,
19 1208-09 (“Until the employer has been notified that it is violating a Labor Code provision [...],
20 the employer cannot be presumed to be aware that its continuing underpayment of employees is
21 a ‘violation’ subject to penalties.”).

22 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to
23 assess cumulative penalties for the maximum number of possible, separate California Labor
24 Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially
25 where certain conduct may be regulated by multiple provisions of the California Labor Code that
26

27 ⁴⁴ Aiwazian Decl., ¶ 17.

28 ⁴⁵ *Ibid.*

are interrelated and work in tandem. As such, Defendant contended that cumulative penalties and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.

While Plaintiff disagrees with Defendant's contentions and maintains that his PAGA claim has merit, in reaching the settlement, Plaintiff and his counsel took into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded as litigation continued, at trial, in arbitration proceedings, and/or appeals.⁴⁶

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

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

Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the PAGA claim.⁴⁷ In addition, the Parties exchanged a large volume of documents and data relevant to Plaintiff's claims and Defendant's defenses thereto, including, and not limited to, the employment records of Plaintiff, employees' time and pay data, Defendant's Employment Agreement, job descriptions, internal memorandum, termination checklist, various agreements and acknowledgments (such as, Defendant's Agreement to Arbitrate Disputes and Agreement and Acknowledgement of Employee Handbook), forms (such as, Defendant's Employee Performance Review Form and Employee Warning Notice Form), and Defendant's operations, practices, policies (such as, Defendant's Headphone and Cell Phone Policy, Attendance policy, Meal & Rest Periods policy, Overtime – (Non-Exempt Employees Only) policy, Dress Code Policy, Car Allowance & Gas Policy, Travel, Entertainment, Business Meals, and Related Expenses Policy, and Working "Off-the-Clock" Policy) and procedures, among other documents.⁴⁸ Counsel for the Parties undertook significant investigation, and also invested time

⁴⁶ Aiwazian Decl., ¶ 20.

⁴⁷ *Id.*, ¶ 13.

⁴⁸ *Id.*, ¶¶ 13 & 20.

reviewing and analyzing relevant documents and data to evaluate Plaintiff's claims, including, and not limited to, calculating the potential monetary recovery under PAGA.⁴⁹ Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding the mediation and settlement, among other issues; participating in case strategy and analysis; drafting, reviewing, and revising the mediation brief; and preparing for and attending the mediation and settlement negotiations.

Had the case not settled, the Parties would have conducted extensive additional formal discovery, including propounding additional written discovery requests as well as multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendant indicated that it would aggressively litigate this case.⁵⁰ Even if Defendant failed on its defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.⁵¹ Additionally, there is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State of California or other Allegedly Aggrieved Employees after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

D. The Settlement Is Fair, Adequate, and Reasonable

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

The Settlement provides significant benefits to the State of California and the Allegedly Aggrieved Employees and falls well-within the range of acceptable settlements under the circumstances. Under the Agreement, Defendant has agreed to pay a Total Settlement Amount

⁴⁹ Aiwazian Decl., ¶¶ 13 & 20.

⁵⁰ *Id.*, ¶ 17.

⁵¹ *Id.*, ¶¶ 12, 13, 16 & 20.

of \$125,000.00, which encompasses the Net Settlement Amount, Attorneys' Fees, Attorneys' Costs, Settlement Administration Costs, and Enhancement Payment.⁵² Subject to approval by the Court, the following amounts will be subtracted from the Total Settlement Amount to yield the Net Settlement Amount: (1) Attorneys' Fees, consisting of attorneys' fees in the amount of \$43,750.00, and Attorneys' Costs, consisting of reimbursement of litigation costs and expenses in the amount of \$10,260.93 to Plaintiff's Counsel⁵³; (2) the Settlement Administration Costs of up to \$4,500.00; and (3) Enhancement Payment of up to \$7,500.00 to Plaintiff.⁵⁴

The Net Settlement Amount is currently estimated to be \$58,989.07, of which an estimated \$14,747.27 is to be distributed to Allegedly Aggrieved Employees on a *pro rata* basis, based on their Pay Periods and \$44,241.80 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel recognize the expense and length of continued proceedings necessary to litigate the matter through trial and any possible appeals.⁵⁵ Plaintiff and his counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.⁵⁶ Plaintiff and his counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other Alleged Aggrieved Employees.⁵⁷ Plaintiff and his counsel have also taken into account Defendant's agreement to enter into a settlement

⁵² Settlement Agreement, §§ I.1.01(e), I.1.01(f), I.1.01(m), & I.1.01(cc).

⁵³ *Id.*, §§ I.1.01(e) & I.1.01(f). Although the Settlement Agreement provides that Plaintiff's Counsel can seek up to \$13,000 for reimbursement of litigation costs and expenses, Plaintiff's Counsel only seeks the amount of \$10,260.93 for this payment, which is less than \$13,000.00. The difference between the amount sought and the maximum allocated amount available under the settlement (i.e., the difference of \$2,739.07), will be a part of the Net Settlement Amount.

⁵⁴ *Id.*, §§ I.1.01(m), I.1.01(q), & I.1.01(aa).

⁵⁵ Aiwasian Decl., ¶¶ 12, 16 & 20.

⁵⁶ *Ibid.*

⁵⁷ *Id.*, ¶¶ 15 & 16.

1 that confers significant relief upon the Allegedly Aggrieved Employees and the State of
2 California.⁵⁸

3 Considering all of the facts in this case, Plaintiff and his counsel have determined that the
4 Settlement represents a fair, adequate, and reasonable resolution of the PAGA claims, and that it
5 is in the best interests of the Allegedly Aggrieved Employees and the State of California.⁵⁹

6 The result achieved in this case, and the monetary recovery provided by this settlement,
7 are well-within the range of an acceptable settlement under the circumstances, especially when
8 compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and Hour*
9 *Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the amount of
10 \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL
11 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of
12 PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out
13 of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1
14 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims);
15 *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million
16 toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no
17 abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the
18 settlement of PAGA claims that were at issue in the lawsuit). Here, the value obtained for
19 settlement of the PAGA claims is significant, and it will be distributed in accordance with and in
20 fulfillment of the objectives of the PAGA statute.

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

23 Plaintiff's Counsel is highly experienced in complex representative and class action
24 wage-and-hour litigation.⁶⁰ In the view of Plaintiff's Counsel, the benefits conferred by the
25 settlement are eminently fair and reasonable, and in the best interests of the State of California

26 ⁵⁸ Aiwazian Decl., ¶ 14.

27 ⁵⁹ *Id.*, ¶ 26.

28 ⁶⁰ *Id.*, ¶¶ 4-7.

and the Allegedly Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁶¹ Furthermore, courts have acknowledged that “the interests of 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, supra*, 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

VI. THE PROPOSED ATTORNEYS’ FEES PAYMENT IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

A. A Fee Award of a Percentage of the Entire Fund Is Appropriate

The Settlement provides for a Total Settlement Amount of \$125,000.00.⁶² The Settlement provides for attorneys’ fees in an amount of thirty-five percent (35%) of the Total Settlement Amount, which is \$43,750.00, subject to approval and award by the Court.⁶³ The requested attorneys’ fees award is commensurate with: (1) the risk that Plaintiff’s Counsel took in bringing and litigating this case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that Plaintiff’s Counsel has shown, (4) the results that Plaintiff’s Counsel has achieved throughout the litigation, (5) the value that Plaintiff’s Counsel has achieved for Plaintiff, the Allegedly Aggrieved Employees, and the State of California, and (6) the other cases that Plaintiff’s Counsel has turned down in order to devote time and effort to this matter.

Plaintiff’s Counsel is entitled to recover reasonable attorneys’ fees and costs as a matter of right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) (“Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney’s fees and costs”). Plaintiff’s Counsel is also entitled to fees and costs under California Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition “for the benefit” of others and secures monetary recovery for a large number of Aggrieved Employees, as well as the State of California. *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17

⁶¹ Aiwasian Decl., ¶ 27.

⁶² Settlement Agreement, § I.1.01(cc).

⁶³ *Id.*, § I.1.01(f).

(recognizing that recovery obtained on behalf of 209 individuals satisfies the “significant benefit,” “public interest,” and “large class of persons” requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff’s personal motivation). The settlement will also benefit the state labor agency in enforcing labor laws and educating “employers and employees about their rights and responsibilities under [the California Labor Code].” Cal. Lab. Code § 2699(i).

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

Courts award fees to serve as an economic incentive for lawyers to undertake litigation, and thereby enhance and facilitate access to the judicial system for adjudication of meritorious claims, and to deter wrongdoing. This is especially true in situations where multiple similar alleged wrongs would not be economically feasible to pursue individually, such as here. See A. Conte, *Attorney Fee Awards* (2d ed. 1993) 104, at 6.

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; see also *Laffitte, supra*, 1 Cal.5th 480 at 506 (holding that “trial court did not abuse its discretion in using [the percentage of fund method], in part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.

///

///

1 The percentage method is particularly appropriate where a monetary settlement has been
2 recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset Prods.*
3 *Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a “certain
4 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
5 percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil*
6 *Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.

7 The percentage fee method is preferred in representative actions because “it better
8 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
9 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be
10 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
11 based on the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at 47-50;
12 *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the
13 defendant will pay the plaintiff’s attorneys a percentage of the fund created by the settlement, use
14 of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards that
15 are too small will “chill the private enforcement essential to the vindication of many legal rights
16 and obstruct the representative actions that often relieve the courts of the need to separately
17 adjudicate numerous claims.” *Id.* at 53. Therefore, fees in representative actions should
18 approximate the probable terms of a contingent fee contract negotiated by a sophisticated
19 attorney and client in comparable litigation. *Id.* at 48. “The ultimate goal . . . is the award of a
20 ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of
21 calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple*
22 *Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270).

23 Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and circumstances
24 surrounding the case is well-within the range of reasonableness. Historically, courts have
25 awarded fees as high as fifty percent (50%) of the settlement in complex actions, depending on
26 the circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp.
27 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million total settlement amount);
28

Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp. (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve attorneys' fees awards "average[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee was appropriate); *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles County Superior Court, Case No. BC596892 (June 2016) (citing *Chavez, supra*, 162 Cal.App.4th at 66, n.11) (approving a fee award of one-third of the settlement amount of \$950,000, in a PAGA action, because it was "reasonable and consistent with fee awards in class action cases").

Plaintiff's Counsel has litigated this case since it was commenced, with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.⁶⁴ The data and documents reviewed and analyzed by Plaintiff's Counsel included, and was not limited to, the employment records of Plaintiff, employees' time and pay data, Defendant's Employment Agreement, job descriptions, internal memorandum, termination checklist, various agreements and acknowledgments (such as, Defendant's Agreement to Arbitrate Disputes and Agreement and Acknowledgement of Employee Handbook), forms (such as, Defendant's Employee Performance Review Form and Employee Warning Notice Form), and Defendant's operations, practices, policies (such as, Defendant's Headphone and Cell Phone Policy, Attendance policy, Meal & Rest Periods policy, Overtime – (Non-Exempt Employees Only) policy, Dress Code Policy, Car Allowance & Gas Policy, Travel, Entertainment, Business Meals, and Related Expenses Policy, and Working "Off-the-Clock" Policy) and procedures, among other documents.⁶⁵ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant documents and data to evaluate Plaintiff's claims, including, and not limited to, calculating the potential monetary recovery under PAGA.⁶⁶ Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with

⁶⁴ Aiwazian Decl., ¶ 23.

⁶⁵ *Id.*, ¶ 13.

⁶⁶ *Ibid.*

Defendant's counsel regarding the mediation and settlement, among other issues; participating in case strategy and analysis; drafting, reviewing, and revising the mediation brief; and preparing for and attending mediation and settlement negotiations.⁶⁷

In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁸ Plaintiff's Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the Allegedly Aggrieved Employees and the State of California.⁶⁹ Considering the amount of fees requested, work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees are reasonable and should be awarded.

B. The Fee Award Requested by Plaintiff's Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards

The factors which courts consider in determining whether fee awards are reasonable, all of which support the fee award requested by Plaintiff's Counsel, are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772. Some of the most relevant factors to this Court's fee determination will be addressed below.

///

///

⁶⁷ Aiwazian Decl., ¶ 13.

⁶⁸ *Id.*, ¶ 25.

⁶⁹ *Id.*, ¶¶ 4-7.

It should be highlighted that the percentage award sought is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel's representation and the risks taken in commencing the Action, the skill and determination required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that Plaintiff's Counsel has obtained on behalf of Plaintiff, the Allegedly Aggrieved Employees, and the State of California. For the reasons discussed herein, an award of attorneys' fees in the amount of thirty-five percent (35%) of the Total Settlement Amount is reasonable.

1. Time & Labor

Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁷⁰ During the litigation of the Action, Plaintiff's Counsel interviewed and obtained information from Plaintiff, conducted legal research, reviewed and analyzed a volume of documents and data, prepared for and attended mediation, evaluated the PAGA claims, and calculated the potential monetary recovery under PAGA.⁷¹ Plaintiff's Counsel also met and conferred with Defendant's counsel over issues relating to the mediation and settlement.⁷² Plaintiff's Counsel performed other work including, *inter alia*, case strategy and analysis; and engaging in extensive settlement negotiations.⁷³

Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary to prosecute the case with maximum efficiency, and has fully and actively participated in the litigation process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT 2**" to the accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Plaintiff's Counsel has spent performing tasks in this matter. Plaintiff's Counsel has spent **312.10 hours** to

⁷⁰ Aiwarzian Decl., ¶ 13.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

1 obtain a recovery on behalf of Plaintiff, the Allegedly Aggrieved Employees, and the State of
2 California. These hours were required to bring the case to its successful conclusion.

3 In light of the value of time expended and the carrying of costs involved in this litigation,
4 the requested attorneys' fees award is fair, adequate, and reasonable.

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

6 The skill required to properly litigate this case is evident not only in the results achieved,
7 but in the steps necessary to reach the same. Defendant retained highly-respected counsel to
8 represent its defenses. Defendant and its counsel felt very strongly about Defendant's ability to
9 prevail on the merits and avoid representative adjudication of the PAGA claims. Plaintiff and
10 Plaintiff's Counsel believe that the PAGA claims have merit and that Plaintiff will prevail at
11 trial. Plaintiff's Counsel undertook extensive investigation, analysis, and research prior to filing
12 the lawsuit and during the litigation. Plaintiff's Counsel took steps to prepare the case for trial
13 and had every intention of taking the case to trial if Defendant did not offer an appropriate
14 settlement.

15 Plaintiff's Counsel's effort and skill were used to, among other things, investigate the
16 allegations and gather facts, research the legal issues, analyze data and information obtained
17 from Defendant, Plaintiff, and through other sources, evaluate the PAGA claims, and negotiate
18 the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used its
19 extensive experience and skill in the handling of complex wage-and-hour matters to advocate for
20 and obtain Allegedly Aggrieved Employees and the State of California a recovery now, with
21 maximum efficiency, as opposed to the possibility of recovery in the future, after significant
22 expense and time.⁷⁴

23 ///

24 ///

25 ///

26 ///

27 ⁷⁴ Aiwasian Decl., ¶¶ 16-19.

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

2 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty
3 and risks of further litigation.⁷⁵ Had the case not settled, Defendant would have vigorously
4 challenged manageability and liability, and sought a reduction in the amount assessed as
5 penalties. Defendant, however, faced risks too, including and not limited to, the risk of having
6 the Court assess penalties. Additionally, preparing the case for trial would have been
7 extraordinarily expensive for the Parties.

8 At this stage, the settlement is preferred over continued litigation because such resolution
9 saves time and money that would otherwise go to litigation. The risks and expenses of further
10 litigation outweighed any benefit that might have been gained otherwise. The Settlement
11 provides an immediate recovery, as opposed to an uncertain result in the future after prolonged
12 litigation involving expert discovery, trial preparation, and appellate review of those
13 proceedings. The Settlement offers present and considerable monetary relief to Plaintiff, the
14 Allegedly Aggrieved Employees, and the State of California while avoiding additional expense,
15 risk, and delay in obtaining possible further recovery.

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

17 The representation provided by Plaintiff's Counsel has been wholly contingent and
18 Plaintiff's Counsel took on this matter without knowing whether any recovery would be
19 obtained. Plaintiff's Counsel has invested **312.10 hours** of time to obtain relief on behalf of
20 Plaintiff, the Allegedly Aggrieved Employees, and the State of California. Plaintiff's Counsel is
21 also requesting reimbursement of litigation costs and expenses in the amount of \$10,260.93.⁷⁶

22 In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will
23 not receive any compensation until recovery is obtained.⁷⁷ If Plaintiff's Counsel had not been
24 successful, the time that they have devoted to litigating the case would have been for naught and
25 would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel

26 ⁷⁵ Aiwazian Decl., ¶¶ 15, 16, 19, & 27.

27 ⁷⁶ *Id.*, ¶ 25 and Exh. 3.

28 ⁷⁷ *Id.*, ¶ 25.

1 is well-experienced in complex wage-and-hour litigation and used that experience to obtain a
2 great result for Plaintiff, the Allegedly Aggrieved Employees, and the State of California.⁷⁸ The
3 skill and determination that Plaintiff's Counsel has shown throughout the Action justify the
4 requested attorneys' fees and costs. Considering the amounts requested, work performed, and
5 risks incurred, the requested fees and costs are reasonable and should be awarded.

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

7 The results achieved, in light of the difficulties inherent in similar cases and the specific
8 difficulties faced in this case, are considerable. Here, the results achieved, and the recovery
9 obtained on behalf of Plaintiff, the Allegedly Aggrieved Employees, and the State of California
10 represent a fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have
11 resulted in a settlement that provides for a Total Settlement Amount of \$125,000.00, and it is
12 currently estimated that the Net Settlement Amount available for distribution to the Allegedly
13 Aggrieved Employees and the State of California, as set forth in Part III.C *infra*, is
14 approximately \$58,989.07.⁷⁹

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

16 Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its
17 attorneys employed their knowledge, skill, and experience to bring the case to a successful
18 conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation
19 experience, has recovered millions of dollars on behalf of thousands of individuals in California,
20 and has successfully handled numerous significant wage-and-hour class action and representative
21 action cases.⁸⁰

22 ///

23 ///

24 ///

25 ///

26 ⁷⁸ See Aiwazian Decl., ¶¶ 4-7.

27 ⁷⁹ *Id.*, ¶ 14.

28 ⁸⁰ *Id.*, ¶¶ 4-7.

C. **The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Plaintiff’s Counsel Has Performed Work That Is of Significant Value Based on Reasonable Hours and Prevailing Hourly Rates of Compensation**

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to “cross-check” the results of the other. *See Laffitte, supra*, 1 Cal.5th at 505 (explaining that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court’s reasonableness determination”); *see also, e.g., Vizcaino*, 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination of the fee as a percentage” and “does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

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

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

As discussed above, this case was highly contested and required a significant amount of time and labor. Defendant made it clear very early on that it disputed all of Plaintiff’s allegations and disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*, that it had facially-compliant employment policies and practices throughout the time period at issue.⁸¹ Defendant raised affirmative defenses and denied liability, and the pursuit of this case

⁸¹ Aiwazian Decl., ¶ 17.

involved gathering and analyzing data from Defendant as well as other sources.⁸² The handling of this litigation involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Plaintiff's Counsel has, as a result of its extensive experience in complex wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward trial, including taking and defending declarant and expert depositions, depositions of person most knowledgeable designees, conducting additional formal discovery, and engaging in extensive motion practice. As Plaintiff's Counsel geared up for these battles, Plaintiff's Counsel undertook intense preparation in an attempt to resolve the entire matter through settlement negotiations.

Plaintiff's Counsel had to bring together a volume of data and documents that were produced by Defendant and obtained from Plaintiff, Allegedly Aggrieved Employees, and through other sources. Plaintiff's Counsel conducted extensive review and analysis of these documents and data to strategize and evaluate the case and engage in settlement discussions.

As set forth above in Part VI.B.1 *supra*, attached to the Declaration of Edwin Aiwasian is the Attorney Task and Time Chart that sets forth in detail the numerous tasks that Plaintiff's Counsel performed in this matter, and the time required for completing those tasks.⁸³ The chart demonstrates that Plaintiff's Counsel has spent a total of **312.10 hours** on this matter. In light of the facts and circumstances of this case, as well as the results Plaintiff's Counsel has achieved on behalf of Plaintiff, the Allegedly Aggrieved Employees, and the State of California, Plaintiff's Counsel has spent a reasonable number of hours on this matter.

***2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation
in Light of Plaintiff's Counsel's Efforts and Experience***

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights

⁸² Aiwasian Decl., ¶¶ 13 & 19.

⁸³ *Id.*, Exh. 2.

1 and protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In
2 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market
3 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
4 normal hourly rates for winning contingency cases." *See id.*

5 Plaintiff's Counsel has been actively involved in the prosecution of this case, prior to the
6 commencement of the Action and all the way up to approval of the settlement, and their
7 dedication to the representation of Plaintiff, the Allegedly Aggrieved Employees, and the State
8 of California has precluded other employment. Here, Plaintiff's Counsel bore the risk that,
9 despite all of their efforts and skills employed, there may be no recovery. Ultimately, Plaintiff's
10 Counsel was successful in reaching a settlement of \$125,000.00.

11 As set forth in the Declaration of Edwin Aiwasian, the professional backgrounds and
12 experience of Plaintiff's Counsel support a reasonable blended hourly rate of compensation of at
13 least \$500 per hour for services provided by Plaintiff's Counsel.⁸⁴ Lawyers for Justice, PC has
14 been awarded attorneys' fees, compensating the firm at the blended rate of at least \$500 for legal
15 services performed, by courts of this state.⁸⁵ While the circumstance of every case is unique, the

16 ⁸⁴ Aiwasian Decl., ¶ 23.

17 ⁸⁵ For example, final approval of the class and representative action settlement in *Seth Swan v. Pace Supply*
18 (*Sonoma County Superior Court Case No. SCV258764*) was granted on February 6, 2019, and the award of
19 attorneys' fees involved a higher hourly rate of \$855.96; final approval of the class and representative action
20 settlement in *Stanley Bland, et al. v. Telecare Corporation* (*Alameda County Superior Court Case No. RG16811450*)
21 was granted on November 21, 2018, and the award of attorneys' fees involved a higher hourly rate of \$831.38;
22 approval of the Private Attorneys General Act settlement in *Roberta Robles v. Altamed Health Services Corporation*
23 (*Los Angeles County Superior Court Case No. BC639623*) was granted on October 31, 2018, and the award of
24 attorneys' fees involved a higher hourly rate of \$602.22; final approval of the class and representative action
25 settlement in *Samuel Guerra, et al. v. Graphic Packaging International, Inc.* (*Sacramento County Superior Court*
26 *Case No. 34-2016-00203789*) was granted on June 5, 2018, and the award of attorneys' fees involved a higher
27 hourly rate of \$600; final approval of the class and representative action settlement in *Maryjo Ungerbuhler*
28 *Anderson v. Boyett Petroleum* (*Stanislaus County Superior Court Case No. 2020582*) was granted on May 15, 2018,
and the award of attorney's fees involved a higher hourly rate of \$780.77; final approval of the class and
representative action settlement in *Rebekah Perez, et al. v. Nestlé USA, Inc., et al.* (*Alameda County Superior Court*
Case No. RG15773654) was granted on August 18, 2017; final approval of the class and representative action
settlement in *Elizabeth Ortiz, et al. v. Ghirardelli Chocolate Company* (*Alameda County Superior Court Case No.*
RG15764300) was granted on July 19, 2017; final approval of the class and representative action settlement in
Demetrius Camarillo v. Blue Diamond Growers (*Sacramento County Superior Court Case No. 34-2015-00175871*)
was granted on June 30, 2017, and the award of attorneys' fees involved a higher hourly rate of \$845.64; final
approval of the class and representative action settlement in *Mark Aceves v. Cambro Manufacturing Company*
(*Orange County Superior Court Case No. 30-2015-00810013-CU-OE-CXC*) was granted on April 14, 2017; final
approval of the class and representative action settlement in *East West Bank Wage and Hour Cases* (*San Francisco*

(Footnote continued)

fact remains that the work performed and efforts undertaken by Plaintiff's Counsel in this matter justify the requested attorneys' fees award.

The lodestar method, as a cross-check to the percentage fee sought, strongly supports the reasonableness of the requested attorneys' fees award. Applying the rate of \$500 per hour to 312.10 hours worked by Plaintiff's Counsel, would place a base lodestar value of \$156,050.00 on the services provided by Plaintiff's Counsel. However, Plaintiff's Counsel only seeks an attorneys' fee award of \$43,750.00 (equal to 35% of the Total Settlement Amount based on the Settlement Agreement).

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba*, *supra*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez*, *supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

County Superior Court Case No. CJC-13-004839) was granted on November 18, 2016; approval of the Private Attorneys General Act settlement in Tatiana Kemp v. The Irvine Company Apartment Communities, Inc. (Orange County Superior Court Case No. 30-2015-00775439) was granted on November 4, 2016; and final approval of the class and representative action settlement in Kevin Coonce v. Ferguson Enterprises, Inc. (Sacramento County Superior Court Case No. 34-2021-00136285) was granted on May 22, 2014, and the award of attorneys' fees involved a higher hourly rate of \$625. Aiwazian Decl., ¶ 24.

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that the Court approve and grant an attorneys' fees award in the amount of \$43,750.00 to Plaintiff's Counsel, which is reasonable and justified on a percentage-basis, but also based on a lodestar cross-check.

VII. COSTS TO BE REIMBURSED TO PLAINTIFF'S COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for reimbursement of litigation costs and expenses of up to \$13,000.00. As set forth in the Declaration of Edwin Aiwarzian, Plaintiff's Counsel has incurred a total of \$10,260.93 in litigation costs and expenses.⁸⁶ This amount was reasonable and necessary in the prosecution of this matter, and is less than the maximum amount allocated under the Settlement Agreement.⁸⁷ The cost savings of \$2,739.07 will be part of the Net Settlement Amount.⁸⁸ Accordingly, Plaintiff's Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$10,260.93 to Plaintiff's Counsel.

VIII. THE PROPOSED COVER LETTER TO THE ALLEGEDLY AGGRIEVED EMPLOYEES SHOULD BE APPROVED

Although PAGA does not require notice to unnamed aggrieved employees of a settlement, the Parties prepared, and now present for the Court's consideration and approval, the Cover Letter for transmission to the Allegedly Aggrieved Employees along with their Individual PAGA Payment check (together, "PAGA Settlement Package"), substantially in the form attached as "EXHIBIT 1" to the [Proposed] Order and Judgment. The Cover Letter informs the Allegedly Aggrieved Employees about the Action and the Settlement. Accordingly, Plaintiff respectfully requests that the Court approve the Cover Letter for transmission to the Allegedly Aggrieved Employees at the time of disbursing their Individual PAGA Payment.

///

⁸⁶ Aiwarzian Decl., ¶ 25.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

IX. **THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED**

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Simpluris, Inc. to handle the administration of the Settlement. The fees and expenses of the Settlement Administrator are estimated not to exceed \$4,500.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual PAGA Payment checks to the Allegedly Aggrieved Employees (i.e., PAGA Settlement Package); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages to any updated addresses located; and handling inquiries from Allegedly Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to \$4,500.00 to Simpluris, a necessary third-party for handling the settlement process.

X. **THE PROPOSED ENHANCEMENT PAYMENT IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED**

The Settlement provides for an Enhancement Payment to be paid to Plaintiff in the amount of \$7,500.00.⁸⁹ The purpose of such an award is to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce an individual to participate in the suit’”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) (“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the [...] litigation.”); *see also, e.g., Resendez, supra*, Los Angeles County Superior Court, Case No. BC59689 (approving \$10,000 enhancement award in a PAGA action).

⁸⁹ Settlement Agreement, § I.1.01(m).

1 Here, Plaintiff contributed considerable time and effort to the litigation of this case in
2 order to enforce the California Labor Code on behalf of the State of California and for the benefit
3 of other Allegedly Aggrieved Employees. Plaintiff gathered and produced relevant documents
4 and information, provided the facts and evidence necessary to attempt to prove the allegations,
5 and discussed his employment with his counsel.⁹⁰ Plaintiff was available whenever his counsel
6 needed him and tried to obtain documents and information that would aid in the litigation of the
7 PAGA claims and pursuit of recovery on behalf of the State of California and Allegedly
8 Aggrieved Employees.⁹¹ Additionally, as a part of the Settlement, Plaintiff has agreed to a
9 broader release of claims than the release of claims that applies to the Allegedly Aggrieved
10 Employees.

11 Accordingly, it is reasonable and just for Plaintiff to receive an Enhancement Payment in
12 the amount of \$7,500.00, in addition to the Individual PAGA Payment he will receive as an
13 Allegedly Aggrieved Employee.

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25
26
27 ⁹⁰ Aiwazian Decl., ¶ 26; Declaration of William Hall (“Hall Decl.”), ¶¶ 3 & 4.

28 ⁹¹ Aiwazian Decl., ¶ 26; Hall Decl., ¶¶ 3 & 4.

XI. CONCLUSION

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise of disputed claims that has been reached through arm's-length negotiations, in light of the risks, complexity, and expense of further litigation. Plaintiff respectfully requests that the Court approve the Settlement, including the plan of allocation and distribution of the Total Settlement Amount for the LWDA Payment to the LWDA, Individual PAGA Payments to the Allegedly Aggrieved Employees, Attorneys' Fees and Attorneys' Costs to Plaintiff's Counsel, Settlement Administration Costs to the Settlement Administrator, and Enhancement Payment to Plaintiff, and permit the filing of a memorandum that exceeds the page limit.

Dated: April 5, 2022

LAWYERS for JUSTICE, PC

By:


Edwin Aiwasian
Attorneys for Plaintiff