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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

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

Plaintiff,

vs.

THE MOCHI ICE CREAM COMPANY, a
California corporation; THE MOCHI ICE
CREAM COMPANY, LLC, an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 20STCV44789

Honorable Douglas W. Stern
Department 68

**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,
LITIGATION COSTS, ENHANCEMENT
AWARD, AND ADMINISTRATION
COSTS; MEMORANDUM OF POINTS
AND AUTHORITIES**

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

Reservation ID: 616475512624

Date: May 18, 2023

Time: 8:30 a.m.

Department: 68

Complaint Filed: November 20, 2020

FAC Filed: December 9, 2022

Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 18, 2023 at 8:30 a.m. or as soon thereafter as
2 the matter may be heard before the Honorable Douglas W. Stern in Department 68 of the
3 Superior Court of the State of California, for the County of Los Angeles, located at 111 North
4 Hill Street, Los Angeles, CA 90012, Plaintiff Osvaldo Martinez will and hereby does move for
5 entry of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the
7 settlement between Plaintiff and Defendants The Mochi Ice Cream Company, LLC
8 and The Mochi Ice Cream Company (together, “Defendant”) of the claims brought
9 pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as set forth in the
10 Private Attorneys General Act Settlement Agreement and Release (“Settlement,”
11 “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the
12 Declaration of Edwin Aiwarzian, including and not limited to, the plan of allocation
13 and distribution of the Gross Settlement Amount for payment of the LWDA Payment
14 to the California Labor and Workforce Development Agency (“LWDA”), Individual
15 Settlement Payments to the Settlement Group Members, Attorneys’ Fees Award and
16 Litigation Costs Award to Plaintiff’s Counsel, Administration Costs to the Settlement
17 Administrator, and Enhancement Award to Plaintiff;
- 18 2. Approving the PAGA Penalties Fund amount, estimated to be no less than
19 \$109,195.09 which will be distributed to the LWDA and the Settlement Group
20 Members, pursuant to California Labor Code section 2699(i), of which seventy-five
21 percent (75%) will be paid to the LWDA (“LWDA Payment”) and twenty-five percent
22 (25%) will be paid to the Settlement Group Members (“Settlement Group Fund”);
- 23 3. Appointing Simpluris, Inc. (“Simpluris”) as the Settlement Administrator;
- 24 4. Directing Defendant to transmit the Gross Settlement Amount of \$200,000.00 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 Gross Settlement Amount in accordance with the Settlement
28

Agreement;

5. Directing the mailing of Individual Settlement Payment checks to the Settlement Group Members along with the Cover Letter, which is 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, Litigation Costs, Enhancement Award, and Administration Costs (“[Proposed] Order and Judgement”) filed concurrently herewith;
6. Awarding \$7,500.00 to Plaintiff Osvaldo Martinez as an Enhancement Award;
7. Awarding up to \$2,000.00 to the Settlement Administrator as Administration Costs; and
8. Awarding to Plaintiff’s Counsel, Lawyers for Justice, PC, \$76,000.00 as compensation for reasonable attorneys’ fees (“Attorneys’ Fees Award”) and \$5,304.91 for reimbursement of litigation costs and expenses (“Litigation Costs Award”), 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.

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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 Aiwazian) and
3 Plaintiff (Osvaldo Martinez) in support thereof, as well as the pleadings and other records on
4 file with the Court in this matter, and such evidence and oral argument as may be presented at
5 the hearing on this motion.

6 Dated: April 26, 2023

LAWYERS for JUSTICE, PC

7
8 By: 
9 Annabel Blanchard
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Osvaldo Martinez (“Plaintiff”) seeks approval of the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and The Mochi Ice Cream Company, LLC and The Mochi Ice Cream Company (together, “Defendant” or “My/Mochi”), pursuant to California Labor Code section 2699(l)(2).¹

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 Gross Settlement Amount of \$200,000.00.²

The Gross Settlement Amount is inclusive of: (1) the Attorneys’ Fees Award and Litigation Costs Award to be paid to Lawyers *for* Justice, PC (“Plaintiff’s Counsel”), (2) an Enhancement Award to Plaintiff, (3) Administration Costs to be paid to the Settlement Administrator, and (4) the PAGA Penalties Fund to be paid to the California Labor and Workforce Development Agency (“LWDA”) and all current and former Warehouse Managers and all current and former non-exempt employees of the Mochi Ice Cream Company, LLC (or its predecessor entity The Mochi Ice Cream Company) who worked at My/Mochi in California at any time during the Settlement Period (“Settlement Group Members”).³

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

² Settlement Agreement, § 8(a). If the number of pay periods from September 16, 2019 to June 20, 2021 exceeds 3,420 by more than 10% (i.e. exceeds 3,762), the Gross Settlement Amount will increase pro rata per additional pay period above 3,762. *Id.*, at 8(c).

³ *Id.*, §§ 8(b)(i)-(iv). “Settlement Period” is defined as the period from September 16, 2019 to December 15, 2021. *Id.*, § 6(a).

1 The PAGA Penalties Fund will be the Gross Settlement Amount less the Court-approved
2 Attorneys' Fees Award, Litigation Costs Award, Administration Costs, and Enhancement
3 Award, and is currently estimated to be no less than \$109,195.09.⁴ The PAGA Penalties Fund
4 will be distributed as follows: seventy-five percent (75%) to the LWDA ("LWDA Payment")
5 and twenty-five percent (25%) to the Settlement Group Members ("Settlement Group Fund").⁵
6 Each Settlement Group Member will be entitled to payment of his or her *pro rata* share of the
7 Settlement Group Fund, based on the number of pay periods they each worked for Defendant in
8 California during the Settlement Period ("Covered Pay Periods").⁶

9 The payments to Settlement Group Members will be treated and reported for tax
10 purposes as one hundred percent (100%) penalties and the Settlement Administrator will be
11 responsible for issuing IRS Forms 1099 as required.⁷

12 Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the
13 requirements for approval by the Court based upon the relevant fairness factors, the relative
14 strengths of the PAGA claim, the risk, expense, and complexity of further litigation, the benefit
15 conferred by the Settlement, the scope of the release of claims, the experience and views of
16 counsel, and the reasonableness of the PAGA Penalties Fund (consisting of the LWDA Payment
17 and Settlement Group Fund), Attorneys' Fees Award, Litigation Costs Award, Administration
18 Costs, and Enhancement Award. Plaintiff respectfully requests that this Court approve the
19 Settlement, award the Attorneys' Fees Award, Litigation Costs Award, Administration Costs,
20 and Enhancement Award and approve the LWDA Payment, which are provided for by the
21 Settlement and requested herein.

22 In order to efficiently present the Court with adequate information to determine whether
23 to grant approval of the Settlement, Plaintiff also moves for an order permitting the filing of this
24 memorandum, although it exceeds the page limit established by California Rules of Court, Rule
25 3.1113(d).

26 ⁴ Settlement Agreement, §§ 8(a) and 8(b)(i)-(v).

27 ⁵ *Id.*, §§ 8(b)(v)(A-B).

28 ⁶ *Id.*, § 8(b)(v)(B).

⁷ *Id.*, §§ 8(e)(ii)-(iii).

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant, The Mochi Ice Cream Company, LLC and its predecessor entity The Mochi Ice Cream Company (together also known as My/Mochi) is located in Vernon, California and is a producer of specialty frozen desserts. Plaintiff Osvaldo Martinez 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 provided the LWDA and Defendant with written notice of his intent to assert claims under PAGA and the basis for those claims (“PAGA Notice”), to which the LWDA did not respond.⁸ A true and correct copy of the PAGA Notice is attached to the Declaration of Edwin Aiwarzian as “EXHIBIT 2.”

On November 20, 2020, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Original Complaint”) against Defendant in the Los Angeles County Superior Court (“Court”), Case No. 20STCV44789 (the “Action”).

On January 4, 2021, Defendant filed an Answer to the Original Complaint.

On January 7, 2021, Defendant served sets of formal written discovery requests onto Plaintiff, including Request for Production of Documents (Set One) and Special Interrogatories (Set One).

On January 19, 2021, Plaintiff served multiple sets of formal written discovery requests onto Defendant, including Requests for Production of Documents (Set One), Special Interrogatories (Sets One and Two), and Form Interrogatories – General (Set One), and noticed the depositions of Person(s) Most Knowledgeable at Defendant along with accompanying requests for production of documents.

On February 16, 2021, Defendant provided responses and objections to Plaintiff’s deposition notices.

On March 3, 2021, Plaintiff responded to Defendant’s discovery requests.

On March 15, 2021, Defendant responded to Plaintiff’s discovery requests.

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

On December 9, 2022, Plaintiff filed a First Amended Complaint For Enforcement Under The Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”).

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 Settlement Group Members, of, *inter alia*, failing to: classify the Warehouse Manager position correctly; use non-discretionary shift differential, bonus, performance/incentive pay to calculate the correct regular rate of pay used to calculate overtime pay; provide compliant meal periods and/or a meal period penalty in lieu of a compliant meal period; provide compliant rest breaks and/or a rest period penalty in lieu of a compliant rest period; pay minimum wages; pay overtime wages; pay wages timely upon termination of employment and associated waiting time penalties; pay wages timely during employment; maintain required payroll records; provide wage statements and/or accurate wage statements; provide reporting time pay; provide one day’s rest in seven; and reimburse employees for necessary and reasonable business expenses.

Defendant maintained, and continues to maintain, that it has, and continues to have, legally compliant employment policies and practices throughout the time period at issue. Defendant also contended that the claims of other aggrieved employees whom Plaintiff seeks to represent are subject to enforceable arbitration agreements that include, *inter alia*, waiver of class, collective, and representative action claims and requirement to engage in binding individual arbitration. 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.

On August 16, 2021, the Parties participated in a full-day mediation conducted by Honorable Stephen Sundvold (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters and the Parties were able to reach a settlement by way of the mediator’s proposal.⁹ On August 25, 2021, the Parties filed a Notice of Settlement and

⁹ Aiwazian Decl., ¶ 13.

Request to Vacate All Remaining Dates.

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.¹⁰

III. SUMMARY OF THE SETTLEMENT TERMS

A. The Settlement Group

The Settlement Group Members who are covered by the Settlement (collectively, “Settlement Group”) are:

All current and former Warehouse Managers and all current and former non-exempt employees of The Mochi Ice Cream Company, LLC (or its predecessor entity The Mochi Ice Cream Company) who worked at My/Mochi in California at any time during the Settlement Period.¹¹

Based on information provided by Defendant, there are approximately one hundred and fifty (150) Settlement Group Members.¹²

B. Distribution of the Gross Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount of \$200,000.00.¹³ The PAGA Penalties Fund will be the Gross Settlement Amount less the following amounts: (1) the Attorneys’ Fees Award consisting of attorneys’ fees in the amount of \$76,000.00 (i.e., 38% of the Gross Settlement Amount) and the Litigation Costs Award consisting of reimbursement of litigation costs and expenses in the amount of \$5,304.91 to Plaintiff’s Counsel; (2) Enhancement Award of \$7,500.00 to Plaintiff; and (3) Administration Costs of up to \$2,000.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”).¹⁴ The PAGA Penalties Fund will be fully distributed to the Settlement Group Members and the LWDA, as described in Part III.C, *infra*.

¹⁰ The Court is referred to the concurrently-filed Proof of Service, which confirms submission of the papers to the LWDA.

¹¹ Settlement Agreement, § 6(b).

¹² Aiwazian Decl., ¶ 9.

¹³ Settlement Agreement, § 8(a), and Aiwazian Decl., ¶ 11.

¹⁴ Aiwazian Decl., ¶ 11.

1 **C. Distribution of the PAGA Penalties Fund**

2 Within fifteen (15) court days of the Effective Date as defined in the Settlement
3 Agreement¹⁵, Defendant will transmit the Gross Settlement Amount to a qualified settlement
4 account established by the Settlement Administrator for administration of the Settlement.¹⁶
5 Additionally, within fifteen (15) court days of the Effective Date as defined in the Settlement
6 Agreement, Defendant will provide the Settlement Administrator a list, containing the following
7 information for each Settlement Group Member: (i) last-known full name; (ii) address; (iii)
8 telephone number; (iv) Social Security number; and (v) number of Covered Pay Periods
9 (collectively, the “Settlement Group List”).¹⁷

10 Seventy-five percent (75%) of the PAGA Penalties Fund (or approximately \$81,896.32)
11 will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%) of the
12 PAGA Penalties Fund (or approximately \$27,298.77) (i.e., Settlement Group Fund) will be
13 distributed to the Settlement Group Members on a *pro rata* basis, based on their Covered Pay
14 Periods.¹⁸ To calculate each Settlement Group Member’s share of the Settlement Group Fund
15 (“Individual Settlement Payment”), the Settlement Administrator shall divide the Settlement
16 Group Fund by the total number of Covered Pay Periods attributable to the entire Settlement
17 Group to yield a “Per Pay Period Rate;” then multiply the Per Pay Period Rate by the number
18 of Covered Pay Periods attributable to the Settlement Group Member to yield the Individual
19 Settlement Payment owed to that Settlement Group Member.¹⁹ The payments to Settlement
20 Group Members for their Individual Settlement Payments are considered one hundred percent
21 (100%) penalties to be reported on IRS Form 1099, if required.²⁰

22 No later than fourteen (14) calendar days after the Settlement Administrator receives the
23 Gross Settlement Amount, the Settlement Administrator shall mail the agreed-upon Cover Letter
24 and Individual Settlement Payments checks (together, the “PAGA Settlement Package”) to all

25 ¹⁵ Settlement Agreement, § 4.

26 ¹⁶ *Id.*, § 9(ii).

27 ¹⁷ *Id.*, § 9(a)(i).

28 ¹⁸ *Id.*, §§ 8(b)(v)(A)-(B).

¹⁹ *Id.*, § 8(b)(v)(B)(3).

²⁰ *Id.*, § 8(e)(iii).

1 Settlement Group Members by first-class United States mail.²¹ For each PAGA Settlement
2 Package that is returned as undeliverable within thirty (30) calendar days of the initial mailing,
3 the Settlement Administrator shall promptly attempt to locate an alternate, updated address for
4 the Settlement Group Member at issue, by using a skip-trace search and shall attempt one (1)
5 re-mailing of the PAGA Settlement Package.²²

6 The Individual Settlement Payment checks issued to Settlement Group Members shall
7 remain valid for one hundred twenty (120) calendar days, and thereafter, shall be cancelled.²³
8 Funds associated with cancelled checks shall be transmitted to the State Controller's Office
9 Unclaimed Property Division in the name of the Settlement Group Member(s) at issue and in
10 the amount of their respective Individual Settlement Payment(s).²⁴

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

12 Upon the Effective Date as defined in the Settlement Agreement, the State of California
13 with respect to Defendant's employment of Plaintiff and Settlement Group Members, shall, for
14 the Settlement Period, fully and forever release the Released Parties from the Released Claims.

15 The "Released Claims" means any claims for civil penalties provided by the
16 California Labor Code that could have been asserted by the State of California,
17 Plaintiff on behalf of the State of California, and/or any Settlement Group Member
18 on behalf of the State of California based on the factual allegations set forth in the
19 First Amended Complaint and for violations of the sections of the California Labor
20 Code and Industrial Welfare Commission Wage Orders, including sections 201,
21 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1,
22 1198, 2800, and 2802, and related Industrial Welfare Commission Wage Orders
23 including *inter alia* Wage Orders 1-2001, 4-2001, and 7-2001, premised upon
24 various theories of liability, including Defendant's alleged failure to: classify the
25 Warehouse Manager position correctly (as well as any same or similar job title or
26 job position); use shift differentials, non-discretionary bonuses, and non-
27 discretionary performance pay to calculate the correct regular rate of pay used to
28 calculate overtime pay; provide compliant meal periods and/or a meal period
penalty in lieu of a compliant meal period; provide compliant rest breaks and/or a
rest period penalty in lieu of a compliant rest period; pay minimum wages; pay
overtime wages; pay wages timely upon termination of employment and associated
waiting time penalties; pay wages timely during employment; maintain required

²¹ Settlement Agreement, § 9(b).

²² *Id.*, § 9(c)(iv).

²³ *Id.*, § 9(c)(iii).

²⁴ *Ibid.*

1 payroll records; provide wage statements and/or accurate wage statements; provide
2 reporting time pay; indemnify employees with necessary and reasonable business
expenses; and provide one day's rest in seven.²⁵

3 The "Released Parties" means Defendant; each and all of Defendant's past, present,
4 and future parents, affiliates, subsidiaries, divisions, predecessors, successors,
5 managing members, divisions, affiliates, affiliated entities, related entities, and
6 assigns; the past, present, and future shareholders, owners, officers, directors, board
7 members, employees, agents, trustees, attorneys or legal representatives, insurers,
representatives, administrators, fiduciaries, beneficiaries, subrogees, partners, and
members of the foregoing; and/or any other entity or individual which could be
liable for the acts or omissions of Defendant.²⁶

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

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

24 "[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]"
25 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v.*
26 *Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29

27 ²⁵ Settlement Agreement, § 10.

28 ²⁶ *Ibid.*

Cal, 3d 462, 474.) A “judgment in such an action is binding not only on the named employee plaintiff but also on government agencies and any Settlement Group Member not a party to the proceeding” because “the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies[,]” “collateral estoppel applies [...] against those for whom the party acted as an agent or proxy[,]” and “[w]hen a government agency is authorized to bring an action on behalf of an individual or in the public interest, and a private person lacks an independent right to bring the action, a person who is not a party but who is represented by the agency is bound by the judgment as though the person were a party.” *Arias, supra*, at 985-86 (citations omitted); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (aggrieved employee cannot opt out of a PAGA settlement).

As such, the Settlement is consistent with the law, and there is no requirement that the Settlement Group Members 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.²⁷ See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576, 589.

In a PAGA case, the court’s focus is not the monetary amount which aggrieved employees or the State stand to receive, but instead, whether the total settlement amount achieves the PAGA’s objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.” See Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by way of a PAGA claim, is essentially a law enforcement action. See *Amalgamated, supra*, 46

²⁷ Aiwazian Decl., ¶ 7.

Cal.4th at 1003 (stating that the PAGA is a mechanism for “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies”); see also *Iskanian, supra*, at 381.

A PAGA settlement is a settlement of claims for penalties and other remedies which the LWDA could assess and collect on behalf of employees without their involvement or approval. “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *5. This renders the approval process of a PAGA settlement distinct from a class action settlement, and the Court need not employ the two-step approval process that applies to a 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, Honorable Stephen Sundvold (Ret.).²⁸ 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 claim, and the risks associated with possible arbitration proceedings and of

²⁸ Aiwazian Decl., ¶ 13.

litigating this claim through trial.²⁹

After engaging in significant formal and informal discovery, and exchange of information, the Parties participated in settlement negotiations to try to resolve the lawsuit.³⁰ These efforts included participating in formal mediation conducted by the Honorable Stephen Sundvold (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters.³¹ During mediation, the Parties discussed all aspects of the case, including the risks and delays of further litigation and proceeding with trial, arbitration agreements and possible efforts to compel arbitration, as well as the law relating to representative PAGA actions, off-the-clock theory, meal and rest breaks, overtime exempt status and misclassification as exempt, and wage-and-hour law and enforcement, the evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other things.³² During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³³

Based on all of the information available to the Parties and with the assistance of the experienced mediator, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim.³⁴ Plaintiff and Plaintiff's Counsel believe that the settlement is a fair, adequate, and reasonable resolution of this matter.³⁵ Plaintiff's Counsel has extensive experience handling representative and class action wage-and-hour litigation and used that experience to achieve a great result for Plaintiff, the State of California, and the Settlement Group Members.³⁶ Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to

²⁹ Aiwazian Decl., ¶¶ 4-7, 12-14, & 16-20.

³⁰ *Id.*, ¶ 13.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Id.*, ¶ 27.

³⁵ *Ibid.*

³⁶ *Id.*, ¶¶ 4-7.

considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

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

In order for Plaintiff to prevail on the PAGA claim, he would have to prove that Defendant engaged in the alleged California Labor Code violations and demonstrate that Defendant's conduct warrants the imposition of penalties. See, e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of plaintiff's other claims fail as a matter of law, so does her PAGA claim.").

Plaintiff's core allegation is that Defendant has systematically violated the California Labor Code, with respect to Plaintiff and the Settlement Group Members, by, *inter alia*, failing to classify the Warehouse Manager position correctly, failing to use non-discretionary shift differential, bonus, performance/incentive pay to calculate the correct regular rate of pay used to calculate overtime pay, failing to properly pay minimum, regular, and overtime wages, failing to provide one day's rest in seven, failing to pay reporting time pay, 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,³⁷ some courts have also found that, for various reasons, the issues raised by Plaintiff raise

³⁷ 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

(Footnote continued)

individualized issues and/or are unmanageable and thus not suitable for adjudication as to a group of employees.³⁸

Defendant contended that courts have required, and that due process requires, that the adjudication of PAGA representative claims meets a “manageability” requirement. *See, e.g., Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 756 (“courts have inherent authority to ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike claims that cannot be rendered manageable”)³⁹; *but cf. Estrada v. Royalty*

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).

³⁸ 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 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).

³⁹ In *Wesson*, the appellate court determined that trial courts may dismiss PAGA actions if they are unmanageable. The employer moved to strike the PAGA claim, arguing that the misclassification allegations were “highly fact dependent” and would require individualized inquiries to evaluate the company’s affirmative defenses, and that the number of employees and the nature of the allegations made the PAGA action “unmanageable,” which would violate *Staples’* due process rights. *Wesson*, 68 Cal.App.5th 746, 755-756 and 772-773. The trial court invited the plaintiff

(Footnote continued)

Carpet Mills, Inc. (2022) 76 Cal.App.5th 685⁴⁰, 712, *petition for cert. pending* (May 2, 2022) (“[i]mposing a manageability requirement would create an extra hurdle in PAGA cases that does not apply to LWDA enforcement actions.”); *Litty v. Merrill Lynch & Co.* (C.D. Cal. Nov. 10, 2014) No. CV-14-0425-PA, WL 5904904 at **3-4 (Court dismissed the PAGA claim because a multitude of individualized assessments would be necessary, making the PAGA claim

to submit a trial plan showing that his PAGA action would be manageable at trial, but the plaintiff insisted the trial court lacked authority to require that his claim was manageable. *Id.* at 755-756. Following this response, the trial court concluded that the PAGA claim could not be managed at trial and granted the employer’s motion to strike the PAGA claim. *Ibid.* The appellate court affirmed, holding that trial “courts have inherent authority to ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike claims that cannot be rendered manageable;” “as a matter of due process, defendants are entitled to a fair opportunity to litigate available affirmative defenses, and a court’s manageability assessment should account for them;” and “given the state of the record and [plaintiff’s] lack of cooperation with the trial court’s manageability inquiry, the court did not abuse its discretion in striking his PAGA claim as unmanageable.” *Id.* at 755-756 and 764-766. The appellate court noted that because PAGA claims lack the basic requirements that control class actions, such as a well-defined community of interest and a showing that common questions predominate over individual ones, PAGA claims “may well present more significant manageability concerns than those involved in class actions.” *Id.* at 766. In other words, the appellate court noted, because PAGA actions may include “disparate groups of employees and involve different kinds of violations raising distinct questions,” there is a heightened need to consider manageability and that “a need for individualized proof pertaining to a very large number of employees will raise manageability concerns.” *Ibid.*

⁴⁰ In *Estrada*, the plaintiffs alleged representative claims under PAGA and class claims primarily based on purported meal and rest period violations. The trial court initially certified two classes and denied the employer’s pre-trial motion to decertify the class, due to the employer’s failure to show changed circumstances warranting decertification. *Estrada*, 76 Cal.App.5th 685, 700. However, following the presentation of evidence at trial, the trial court decertified one of the classes (and in relevant part, this also involved dismissing the PAGA meal period claims of this class, due to their being “unmanageable”), and entered judgment. *Id.* at 701-702. Both sides appealed. The Fourth District Court of Appeal determined, in relevant part, that the trial court erred in dismissing the PAGA claims as unmanageable, and in doing so, specifically acknowledged that it was reaching “the opposite conclusion” to that reached in *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746 (where it was concluded that courts have inherent authority to strike unmanageable PAGA claims). *Id.* at 697. The appellate court relied on *Arias v. Superior Court* (2009) 46 Cal.4th 969 and *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, to find that a court cannot strike a PAGA claim based on manageability, because:

“[t]hese cases have made clear that PAGA claims are unlike conventional civil suits and, in particular, are not class actions. Allowing dismissal of unmanageable PAGA claims would effectively graft a class action requirement onto PAGA claims, undermining a core principle of these authorities. It would also interfere with PAGA’s purpose as a law enforcement mechanism by placing an extra hurdle on PAGA plaintiffs that is not placed on the state. That said, courts are not powerless when facing unwieldy PAGA claims. Courts may still, where appropriate and within reason, limit the amount of evidence PAGA plaintiffs may introduce at trial to prove alleged violations to other unrepresented employees. If plaintiffs are unable to show widespread violations in an efficient and reasonable manner, that will just reduce the amount of penalties awarded rather than lead to dismissal.” *Id.* at 697.

For this and other reasons, the appellate court reversed the trial court’s order decertifying the class and dismissing the related PAGA claim as unmanageable. However, the appellate court also acknowledged that “[s]ome PAGA claims involve hundreds or thousands of alleged aggrieved employees, each with unique factual circumstances” and to address this, where appropriate and within reason, trial courts may “limit witness testimony and other forms of evidence when determining the number of violations that occurred and the amount of penalties to assess[.]” and plaintiffs’ counsel should “work with the trial courts during trial planning to define a workable group or groups of aggrieved employees for which violations can be more easily shown[.]” *Id.* at 712-713. Otherwise, the appellate court noted, a PAGA plaintiff seeking to try their claim “risk[s] being awarded a paltry sum of penalties, if any,” due to problems of proof. *Id.* at 713. The appellate court’s comments regarding the practical limitations of actually trying a PAGA lawsuit are being used by employers to argue that PAGA lawsuits are unmanageable or that the scope of such lawsuits should be narrowed for purposes of trial.

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.⁴¹ 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.⁴² Defendant further denied, and continued to deny, that the lawsuit is appropriate for representative treatment for any purpose other than settlement.⁴³

Defendant also contended that the claims of other aggrieved employees whom Plaintiff seeks to represent are subject to enforceable arbitration agreements that included, *inter alia*, waiver of class, collective, and representative action claims and a requirement to engage in binding individual arbitration. Defendant contended that, taken together, these agreements could effectively be used to require aggrieved employees to engage in individual arbitration of their individual claims on which the PAGA claim is predicated, and that the California Supreme Court's decision in *Iskanian v. CLS Transportation* and the U.S. Supreme court's decision in *Epic Systems Corp. v. Lewis* could be read to thwart the ability to obtain victim-specific relief on behalf of a group of employees by way of court action.

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.⁴⁴ 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

⁴¹ Aiwazian Decl., ¶ 17.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶ 19.

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

Defendant also argued that an important feature of PAGA is that the Court retains discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors). 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.⁴⁵ Defendant denies that it ever violated any provision of the California Labor Code.⁴⁶ Even if, *arguendo*, such violations occurred, which Defendant denies, Defendant contended that said violations would only be considered “initial violations” and thus heightened “subsequent violation” penalties were not warranted. See Cal. Lab. Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 (“Until the employer has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”).

Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess cumulative penalties for the maximum number of possible, separate California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be regulated by multiple provisions of the California Labor Code that are interrelated and work in tandem. As such, Defendant contended that

⁴⁵ Aiwazian Decl., ¶ 19.

⁴⁶ *Ibid.*

1 cumulative penalties and heightened penalties would be unjust, arbitrary, oppressive, and
2 confiscatory.

3 There is also uncertainty regarding PAGA claims due to the United States Supreme
4 Court's decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S.
5 LEXIS 2940. As a result of that decision, it may be more likely that employer agreements
6 containing arbitration terms will impact the viability of adjudication of PAGA claims in the
7 judicial forum, which is relevant to this matter in light of arbitration agreements that Defendant
8 obtained from its employees. *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct.
9 1906, 2022 U.S. LEXIS 2940.⁴⁷

10 While Plaintiff disagrees with Defendant's contentions and maintains that his PAGA
11 claim has merit, in reaching the settlement, Plaintiff and his counsel took into account the
12 strengths and weaknesses of each side's position and the uncertainty of how the case might have
13 concluded as litigation continued, at trial, in arbitration proceedings, and/or appeals.⁴⁸

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

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

20 ⁴⁷ Aiwazian Decl., ¶ 18. In *Viking River Cruises*, the U.S. Supreme Court determined that PAGA claims can be
21 split into individual claims based on California Labor Code violations suffered by the plaintiff (that can then be
22 subject to arbitration) and non-individual claims (that are representative in nature) and that the "indivisibility rule"
23 recognized by the California Supreme Court in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348
24 is preempted by the Federal Arbitration Act (FAA) to the extent it circumscribes the freedom of parties to agree to
25 such contractual division or splitting of PAGA actions. *Viking River Cruises, Inc.*, 1923-1925. The U.S. Supreme
26 Court also determined that, important structural differences between PAGA actions and class actions preclude any
27 straightforward application of U.S. Supreme Court precedents invalidating prohibitions on class-action waivers, to
28 *Iskanian*'s ban on wholesale PAGA representative action waivers, and thus this aspect of *Iskanian* is not preempted
by the FAA. *Id.* at 1919, 1922-1925. The U.S. Supreme Court also expressed its understanding of California state
law, and the impact of its ruling on, PAGA's standing requirement, regarding which California courts will have the
last word, as noted by a concurring opinion. *Id.* at 1925-1926 (concurring opinion). Taken together, the substantive
statutory right to pursue a PAGA claim has not been eviscerated and has been preserved, however, arbitration
agreements may be used to select the forum and procedure to be used to resolve PAGA claims to some extent, and
the California courts and legislature have yet to weigh in on and articulate where California law stands.

⁴⁸ Aiwazian Decl., ¶ 19.

Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the PAGA claim.⁴⁹ In addition, the Parties exchanged a large volume of information, documents, and data relevant to Plaintiff's claims and Defendant's defenses thereto, including, and not limited to, the employment records of Plaintiff, a detailed sampling of Settlement Group Members' time and payroll records, exemplar wage statements and meal premium examples, employment and operations policies, practices and procedures, checklists, job descriptions, and internal memoranda, Defendant's Mutual Binding Arbitration Agreement, various forms, agreements, and acknowledgments (such as, Defendant's Employee Handbook Acknowledgment, Vacation/Sick Pay Request Form, Daily Attendance Roster, Training and Meeting Attendance Record, and Employee Confidentiality and Intellectual Property Agreement), and Defendant's employment and operations practices, policies, and procedures documents (such as, Defendant's Overtime Policy, Rest Periods Policy, and Meal Periods Policy), among other documents.⁵⁰ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant information, documents, and data to evaluate Plaintiff's claims, including, and not limited to, calculating the potential monetary recovery under PAGA.⁵¹ Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding the pleadings, case management, mediation, and settlement, among other issues; case strategy and analysis; drafting, reviewing, and revising the pleadings, court filings, mediation brief, settlement agreement, and settlement approval motion papers; preparing for and attending court proceedings; 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

⁴⁹ *Id.*, ¶ 14.

⁵⁰ *Ibid.*

⁵¹ Aiwazian Decl., ¶ 14.

litigate this case.⁵² Even if Defendant failed on their 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.⁵³ Additionally, there is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State of California or other Settlement Group Members 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 Settlement Group Members and falls well-within the range of acceptable settlements under the circumstances. Under the Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$200,000.00, which encompasses the PAGA Penalties Fund, Attorneys’ Fees Award, Litigation Costs Award, Administration Costs, and Enhancement Award.⁵⁴ Subject to approval by the Court, the following amounts will be subtracted from the Gross Settlement Amount to yield the PAGA Penalties Fund: (1) the Attorneys’ Fees Award in the amount of 38% of the Gross Settlement Amount (i.e., \$76,000.00) to Plaintiff’s Counsel, (2) the Litigation Costs Award of reimbursement of litigation costs and expenses in the amount of \$5,304.91 to Plaintiff’s Counsel⁵⁵; (2) the Administration Costs of up to \$2,000.00⁵⁶ to the Settlement

⁵² *Id.*, ¶ 17.

⁵³ *Id.*, ¶¶ 12, 13, 16 & 19.

⁵⁴ Settlement Agreement, § 8(a).

⁵⁵ *Ibid.* Although the Settlement Agreement provides that Plaintiff’s Counsel can seek up to \$25,000.00 for reimbursement of litigation costs and expenses, Plaintiff’s Counsel only seeks the amount of \$5,304.91 for this payment, which is less than \$25,000.00. The difference between the amount sought and the maximum allocated amount available under the settlement (i.e., the difference of \$19,695.09), will be a part of the PAGA Penalties Fund.

⁵⁶ *Id.*, § 8(b)(iii)(A).

Administrator; and (3) Enhancement Award of up to \$7,500.00 to Plaintiff.⁵⁷

The PAGA Penalties Fund is currently estimated to be \$109,195.09, of which an estimated \$27,298.77 is to be distributed to Settlement Group Members on a *pro rata* basis, based on their Covered Pay Periods and \$81,896.32 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the PAGA Penalties Fund 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.⁵⁸ 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.⁵⁹ 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 Settlement Group Members.⁶⁰ Plaintiff and his counsel have also taken into account Defendant's agreement to enter into a settlement that confers significant relief upon the Settlement Group Members and the State of California.⁶¹

Considering all of the facts in this case, Plaintiff and his counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the Settlement Group Members and the State of California.⁶²

The result achieved in this case, and the monetary recovery provided by this settlement, are well-within the range of an acceptable settlement under the circumstances, especially when compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012

⁵⁷ *Id.*, § 8(b)(iv)(A).

⁵⁸ Aiwazian Decl., ¶¶ 12, 16 & 19.

⁵⁹ *Id.*, ¶¶ 12, 16 & 19.

⁶⁰ Aiwazian Decl., ¶¶ 15 & 16.

⁶¹ *Id.*, ¶ 22.

⁶² *Id.*, ¶ 26.

WL 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit). Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

E. The Experience and Views of Plaintiff’s Counsel Favor Approval of the Settlement

Plaintiff’s Counsel is highly experienced in complex representative and class action wage-and-hour litigation.⁶³ In the view of Plaintiff’s Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the Settlement Group Members in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁶⁴ 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 Gross Settlement Amount of \$200,000.00.⁶⁵ The

⁶³ Aiwazian Decl., ¶¶ 4-7.

⁶⁴ *Id.*, ¶ 27.

⁶⁵ Settlement Agreement, § 8(a).

1 Settlement provides for attorneys' fees in an amount of thirty-eight percent (38%) of the Gross
2 Settlement Amount, which is \$76,000.00, subject to approval and award by the Court.⁶⁶ The
3 requested attorneys' fees award is commensurate with: (1) the risk that Plaintiff's Counsel took
4 in bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the
5 skill and determination that Plaintiff's Counsel has shown, (4) the results that Plaintiff's Counsel
6 has achieved throughout the litigation, (5) the value that Plaintiff's Counsel has achieved in the
7 case, and (6) the other cases that Plaintiff's Counsel has turned down in order to devote time
8 and effort to this case.

9 Plaintiff's Counsel is entitled to recover reasonable attorneys' fees and costs as a matter
10 of right under PAGA. See Cal. Lab. Code § 2699(g)(1) ("Any employee who prevails in any
11 [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs"). Plaintiff's
12 Counsel is also entitled to fees and costs under California Code of Civil Procedure section
13 1021.5, as the instant PAGA action is by definition "for the benefit" of others and secures
14 monetary recovery for a large number of Settlement Group Members, as well as the State of
15 California. See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
16 (recognizing that recovery obtained on behalf of 209 individuals satisfies the "significant
17 benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure
18 section 1021.5, regardless of plaintiff's personal motivation). The settlement will also benefit
19 the state labor agency in enforcing labor laws and educating "employers and employees about
20 their rights and responsibilities under [the California Labor Code]." Cal. Lab. Code § 2699(i).

21 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
22 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
23 confirmed by the California Supreme Court. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
24 480 at 486 & 506. While trial courts have discretion to apply either a lodestar method or
25 percentage-of-the-fund method, the California Supreme Court has taken the position that trial
26 courts also "retain the discretion to forgo a lodestar cross-check and use other means to evaluate

27 _____
28 ⁶⁶ *Id.*, § 8(b)(i).

1 the reasonableness of a requested percentage fee” and “[t]he percentage of fund method survives
2 in California.” *Id.* (internal quotes omitted); see also *Wershba, supra*, 91 Cal.App. 4th at 253.

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

8 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
9 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
10 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; see also *Laffitte, supra*, 1 Cal.5th 480 at 506
11 (holding that “trial court did not abuse its discretion in using [the percentage of fund method],
12 in part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is
13 the best judge of the value of professional services rendered in his court.” *Ketchum v. Moses*
14 (2001) 24 Cal.4th 1122, 1132.

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

21 The percentage fee method is preferred in representative actions because “it better
22 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
23 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be
24 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
25 based on the result achieved and risk incurred. See *Lealao, supra*, 82 Cal.App.4th at 47-50;
26 *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the
27 defendant will pay the plaintiff’s attorneys a percentage of the fund created by the settlement,
28

1 use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards
2 that are too small will “chill the private enforcement essential to the vindication of many legal
3 rights and obstruct the representative actions that often relieve the courts of the need to
4 separately adjudicate numerous claims.” *Id.* at 53. Therefore, fees in representative actions
5 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
6 attorney and client in comparable litigation. *Id.* at 48. “The ultimate goal . . . is the award of a
7 ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of
8 calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple*
9 *Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270).

10 Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and
11 circumstances surrounding the case is well-within the range of reasonableness. Historically,
12 courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions,
13 depending on the circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981)
14 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million Gross
15 Settlement Amount); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979)
16 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California
17 courts routinely approve attorneys’ fees awards “average[ing] around one-third of the recovery.”
18 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of
19 contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee
20 was appropriate).

21 Plaintiff’s Counsel has litigated this case since it was commenced, with the very real
22 possibility of an unsuccessful outcome and no fee recovery of any kind.⁶⁷ Counsel for the Parties
23 undertook significant investigation, and also invested time reviewing and analyzing relevant
24 information, documents, and data to evaluate the claims, including, and not limited to,
25 calculating the potential monetary recovery under PAGA.⁶⁸ Other work performed by Plaintiff’s
26 Counsel included, but was not limited to: meeting and conferring with Defendant’s counsel

27 ⁶⁷ Aiwazian Decl., ¶ 24.

28 ⁶⁸ *Ibid.*

1 regarding the mediation and settlement, among other issues; case strategy and analysis; drafting,
2 reviewing, and revising the pleadings, court filings, and mediation brief, settlement agreement,
3 and settlement approval motion papers; preparing for and attending court proceedings; and
4 preparing for and attending mediation and settlement negotiations.⁶⁹

5 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation and
6 will not receive any compensation until recovery is obtained.⁷⁰ Plaintiff's Counsel is
7 experienced in complex wage-and-hour litigation and used that experience to obtain a great
8 result for Plaintiff, the Settlement Group Members, and the State of California.⁷¹ Considering
9 the amount of fees requested, work performed, risks incurred, results obtained, and experience
10 of Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested
11 attorneys' fees are reasonable and should be awarded.

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

14 The factors which courts consider in determining whether fee awards are reasonable, all
15 of which support the fee award requested by Plaintiff's Counsel, are: (1) the time and labor
16 required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to
17 perform the legal services properly; (4) the preclusion of other employment by the attorney due
18 to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent;
19 (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and
20 results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability
21 of the case; (11) the nature and length of the professional relationship with the client; and (12)
22 awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991)
23 946 F. 2d 768, 772. Some of the most relevant factors to this Court's fee determination will be
24 addressed below.

25
26
27 ⁶⁹ *Ibid.*

⁷⁰ *Id.*, ¶ 24.

⁷¹ Aiwazian Decl., ¶¶ 4-7.

1 It should be highlighted that the percentage award sought is commensurate with the time,
2 effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel's
3 representation and the risks taken in commencing the Action, the skill and determination
4 required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that
5 Plaintiff's Counsel has obtained on behalf of Plaintiff, the Settlement Group Members, and the
6 State of California. For the reasons discussed herein, an award of attorneys' fees in the amount
7 of thirty-eight percent (38%) of the Gross Settlement Amount is reasonable.

8 **1. Time & Labor**

9 Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-
10 hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit,
11 Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal
12 issues, Defendant's business, and its operations and employment policies, practices, and
13 procedures.⁷² During the litigation of the Action, Plaintiff's Counsel interviewed and obtained
14 information from Plaintiff and Settlement Group Members, conducted legal research, reviewed
15 and analyzed a large amount of information, documents, and data, prepared for and attended
16 mediation, evaluated the PAGA claim, and calculated the potential monetary recovery under
17 PAGA.⁷³ Plaintiff's Counsel also met and conferred with Defendant's counsel over issues
18 relating to the pleadings, mediation, and settlement.⁷⁴ Plaintiff's Counsel performed other work
19 including, *inter alia*, case strategy and analysis; and engaging in extensive settlement
20 negotiations.⁷⁵

21 Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary
22 to prosecute the case with maximum efficiency and has fully and actively participated in the
23 litigation process. The Attorney Task and Time Chart, which is attached as "EXHIBIT 3" to
24 the accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Plaintiff's
25 Counsel has spent performing tasks in this matter. Attorneys at Lawyers for Justice, PC has

26 ⁷² Aiwarzian Decl., ¶ 13.

27 ⁷³ *Ibid.*

28 ⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

1 spent **278.20 hours** to obtain a recovery on behalf of Plaintiff, the Settlement Group Members,
2 and the State of California. These hours were required to bring the case to its successful
3 conclusion.

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

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

7 The skill required to properly litigate this case is evident not only in the results achieved,
8 but in the steps necessary to reach the same. Defendant retained highly respected counsel to
9 represent its defenses. Defendant and its counsel felt very strongly about Defendant's ability to
10 prevail on the merits and avoid representative adjudication of the PAGA claim. Plaintiff and
11 Plaintiff's Counsel believe that the PAGA claim has merit and that Plaintiff will prevail at trial.
12 Plaintiff's Counsel undertook extensive investigation, analysis, and research prior to filing the
13 lawsuit and during the litigation. Plaintiff's Counsel took steps to prepare the case for trial and
14 had every intention of taking the case to trial if Defendant did not offer an appropriate 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 claim, 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
20 for and obtain Settlement Group Members 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.⁷⁶

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

24 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty
25 and risks of further litigation.⁷⁷ Had the case not settled, Defendant would have vigorously
26 challenged manageability and liability, and sought a reduction in the amount assessed as

27 ⁷⁶ Aiwazian Decl., ¶¶ 16-19.

28 ⁷⁷ *Id.*, ¶¶ 15, 16, 19, & 27.

penalties. Defendant, however, faced risks too, including and not limited to, the risk of having the Court assess penalties. Additionally, preparing the case for trial would have been extraordinarily expensive for the Parties.

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

4. Whether the Fee Is Fixed or Contingent

The representation provided by Plaintiff's Counsel has been wholly contingent and Plaintiff's Counsel took on this matter without knowing whether any recovery would be obtained. Plaintiff's Counsel has invested **278.20 hours** of time to obtain relief on behalf of Plaintiff, the Settlement Group Members, and the State of California. Plaintiff's Counsel is also requesting reimbursement of litigation costs and expenses in the amount of \$5,304.91.⁷⁸

In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁹ If Plaintiff's Counsel had not been successful, the time that they have devoted to litigating the PAGA case would have been for naught and would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel is well-experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the Settlement Group Members, and the State of California.⁸⁰ The skill and determination that Plaintiff's Counsel has shown throughout the

⁷⁸ Aiwasian Decl., ¶ 24 and Exh. 4.

⁷⁹ *Id.*, ¶ 24.

⁸⁰ See Aiwasian Decl., ¶¶ 4-7.

Action justify the requested attorneys' fees and costs. Considering the amounts requested, work performed, and risks incurred, the requested fees and costs are reasonable and should be awarded.

5. *The Amount Involved and the Results Achieved*

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this case, are considerable. Here, the results achieved, and the recovery obtained on behalf of Plaintiff, the Settlement Group Members, and the State of California represent a fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$200,000.00, and it is currently estimated that the PAGA Penalties Fund available for distribution to the Settlement Group Members and the State of California, as set forth in Part III.C *infra*, is approximately \$109,195.09.⁸¹

6. *The Reputation and Ability of the Attorneys*

Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its attorneys employed their knowledge, skill, and experience to bring the case to a successful conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and representative action cases.⁸²

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

⁸¹ Settlement Agreement, §§ 8 (a)-(b).

⁸² Aiwazian Decl., ¶¶ 4-7.

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.⁸³ Defendant raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and analyzing data from Defendant as well as other sources.⁸⁴ 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,

⁸³ Aiwazian Decl., ¶ 17.

⁸⁴ *Id.*, ¶¶ 13 & 19.

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 large volume of information, data and documents that were produced by Defendant and obtained from Plaintiff, Settlement Group Members, and through other sources. Plaintiff's Counsel conducted extensive review and analysis of the information, documents, and data to strategize and evaluate the case and engage in settlement discussions.

As set forth above in Part VI.B.1 *infra*, 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 case, and the time required for completing those tasks.⁸⁵ The chart demonstrates that Lawyers for Justice, PC has spent a total of **278.20 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 Settlement Group Members, 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 and protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *See id.*

Plaintiff's Counsel has been actively involved in the prosecution of this case, prior to the commencement of the Action and all the way up to approval of the settlement, and their dedication to the representation of Plaintiff, the Settlement Group Members, and the State of

⁸⁵ *Id.*, Exh. 3.

California has precluded other employment. Here, Plaintiff's Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, Plaintiff's Counsel was successful in reaching a settlement of \$200,000.00.

As set forth in the Declaration of Edwin Aiwazian, the professional backgrounds and experience of Plaintiff's Counsel support a reasonable blended hourly rate of compensation of at least \$625.00 per hour for services provided by Plaintiff's Counsel.⁸⁶ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$625.00 for legal services performed, by courts of this state.⁸⁷ While the circumstance of every case is unique, the 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 \$625.00 per hour to 278.20 hours worked by Plaintiff's Counsel, would place a base lodestar value of \$173,875.00 on the services provided by Plaintiff's Counsel. However, Plaintiff's Counsel only seeks an attorneys' fee award of \$76,000.00 (equal to 38% of the Gross Settlement Amount based on the Settlement Agreement).

⁸⁶ Aiwazian Decl., ¶ 23.

⁸⁷ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys' fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57; final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved an hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler 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 an hourly rate of \$780.77; and 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 an hourly rate of \$845.64. Aiwazian Decl., ¶ 24.

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).

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 \$76,000.00 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 \$25,000.00. As set forth in the Declaration of Edwin Aiwazian, Plaintiff’s Counsel seeks has \$5,304.91 for reimbursement of litigation costs and expenses incurred in this case.⁸⁸ These expenses were reasonable and necessary in the prosecution of this matter and to obtain the

⁸⁸ Aiwazian Decl., ¶ 25 and Exh. 4.

Settlement, and is less than the maximum amount allocated under the Settlement Agreement for reimbursement of litigation costs and expenses.⁸⁹ Accordingly, Plaintiff's Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$5,304.91 to Plaintiff's Counsel.

VIII. THE PROPOSED COVER LETTER TO THE SETTLEMENT GROUP MEMBERS 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 Settlement Group Members along with their Individual Settlement Payment check (together, the "PAGA Settlement Package"), substantially in the form attached as "EXHIBIT 1" to the [Proposed] Order and Judgment and as "EXHIBIT A" to the Settlement Agreement. The Cover Letter informs the Settlement Group Members about the Action and the Settlement. Accordingly, Plaintiff respectfully requests that the Court approve the Cover Letter for transmission to the Settlement Group Members at the time of disbursing their Individual Settlement Payments.

IX. THE PROPOSED 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 \$2,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual Settlement Payment checks to the Settlement Group Members (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 Settlement Group Members regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Administration Costs in the amount of up to \$2,000.00 to Simpluris, a necessary

⁸⁹ *Ibid.*

third-party for handling the settlement process.

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

The Settlement provides for an Enhancement Award to be paid to Plaintiff in the amount of \$7,500.00.⁹⁰ 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).

Here, Plaintiff contributed considerable time and effort to the litigation of this case in order to enforce the California Labor Code on behalf of the State of California and for the benefit of other Settlement Group Members. Plaintiff discussed his employment with his counsel, gathered and produced relevant documents and information, and provided the facts and evidence necessary to attempt to prove the allegations.⁹¹ For example, Defendant propounded discovery requests on Plaintiff, and he spent time reviewing said discovery requests and providing information and documents in response thereto.⁹² Plaintiff was available whenever his counsel needed him and tried to obtain and provide documents and information that would aid in the litigation of the PAGA claim and pursuit of recovery on behalf of the State of California and Settlement Group Members.⁹³ The Enhancement Award to Plaintiff is both in recognition of his

⁹⁰ Settlement Agreement, § 8(b)(iv)(A).

⁹¹ Aiwezian Decl., ¶ 26; Declaration of Osvaldo Martinez (“Martinez Decl.”), ¶¶ 3 & 4.

⁹² Aiwezian Decl., ¶ 26;

⁹³ Aiwezian Decl., ¶ 26; Martinez Decl., ¶¶ 3 & 4.

1 efforts in spearheading the litigation in this matter, and consideration for his broader, general
2 release of claims with a California section 1542 waiver.

3 Accordingly, it is reasonable and just for Plaintiff to receive an Enhancement Award in
4 the amount of \$7,500.00, in addition to the Individual Settlement Payment he will receive as a
5 Settlement Group Member.

6 **XI. CONCLUSION**

7 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise
8 of disputed claims that has been reached through arm's-length negotiations, in light of the risks,
9 complexity, and expense of further litigation. Plaintiff respectfully requests that the Court
10 approve the Settlement, including the plan of allocation and distribution of the Gross Settlement
11 Amount for the LWDA Payment to the LWDA, Individual Settlement Payments to the
12 Settlement Group Members, Attorneys' Fees Award and Litigation Costs Award to Plaintiff's
13 Counsel, Administration Costs to the Settlement Administrator, and Enhancement Award to
14 Plaintiff, and permit the filing of a memorandum that exceeds the page limit.

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16 Dated: April 26, 2023

LAWYERS for JUSTICE, PC

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18 By: 
19 Annabel Blanchard
20 Attorneys for Plaintiff
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