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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – NORWALK COURTHOUSE

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

Plaintiff,

vs.

JARROW INDUSTRIES, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 20NWCV00662

Honorable Olivia Rosales
Department C

**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
AND COSTS, GENERAL RELEASE
PAYMENT, AND SETTLEMENT
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declaration of Plaintiff’s Counsel
(Edwin Aiwazian); Declaration of Plaintiff
(Eliseo Navarrete); and [Proposed] Order and
Judgment filed concurrently herewith]

Reservation ID: 335375409357
Date: January 19, 2022
Time: 1:30 p.m.
Department: C

Complaint Filed: November 19, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on January 19, 2022, at 1:30 p.m. or as soon thereafter
2 as the matter may be heard before the Honorable Olivia Rosales in Department C of the Superior
3 Court of the State of California, for the County of Los Angeles, located at Norwalk Courthouse,
4 12720 Norwalk Boulevard, Norwalk, California 90650, Plaintiff Eliseo Navarrete (“Plaintiff”)
5 will and hereby does move for entry of an order:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(1)(2), of the
7 settlement between Plaintiff and Defendant Jarrow Industries, LLC formerly Jarrow
8 Industries, Inc. (“Defendant”) of the claims brought pursuant to the Private Attorneys
9 General Act of 2004 (“PAGA”), as set forth in the Private Attorney General Act
10 Settlement and Release Agreement (“Settlement,” “Agreement,” or “Settlement
11 Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwazian,
12 including and not limited to, the plan of allocation and distribution of the Settlement
13 Sum for payment of the LWDA Payment to the California Labor and Workforce
14 Development Agency (“LWDA”), Individual Settlement Shares to the Aggrieved
15 Employees, Attorneys’ Fees and Costs to Plaintiff’s Counsel, Settlement
16 Administration Costs to the Settlement Administrator, and General Release Payment
17 to Plaintiff;
- 18 2. Approving the Net Settlement Sum, estimated to be no less than \$496,868.03, of
19 which seventy-five percent (75%) will be paid to the LWDA (“LWDA Payment”)
20 and twenty-five percent (25%) will be paid to the Aggrieved Employees
21 (“Employees’ Portion”), pursuant to California Labor Code section 2699(i);
- 22 3. Appointing Simpluris, Inc. (“Simpluris”) as the Settlement Administrator;
- 23 4. Directing Defendant to transmit the Settlement Sum of \$875,000.00 into a qualified
24 settlement account established by the Settlement Administrator for administration of
25 the Settlement, and directing the Settlement Administrator to distribute the Settlement
26 Sum in accordance with the Settlement Agreement;

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1 5. Directing the mailing of Individual Settlement Share checks to the Aggrieved
2 Employees along with the Cover Letter, substantially similar in content and form to
3 that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment Granting
4 Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*)
5 Settlement Agreement and Award of Attorneys’ Fees and Costs, General Release
6 Payment, and Settlement Administration Costs (“[Proposed] Order and Judgement”)
7 filed concurrently herewith;

8 6. Awarding \$8,500.00 to Plaintiff Eliseo Navarrete as a General Release Payment;

9 7. Awarding up to \$6,000.00 to the Settlement Administrator as Settlement
10 Administration Costs; and

11 8. Awarding to Plaintiff’s Counsel, Lawyers *for* Justice, PC, \$350,000.00 as
12 compensation for reasonable attorneys’ fees and \$13,631.97 for reimbursement of
13 litigation costs and expenses (collectively, “Attorneys’ Fees and Costs”), pursuant to
14 California Labor Code section 2699(g)(1).

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

18 This motion is made pursuant to California Labor Code section 2699(l)(2), which
19 provides for review and approval by the Court of the settlement of a civil action filed pursuant to
20 PAGA, and Rule 3.1113(e) of the California Rules of Court, which permits the Court to extend
21 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 (Eliseo Navarrete) in support thereof, as well as the pleadings and other records on file
4 with the Court in this matter, and such evidence and oral argument as may be presented at the
5 hearing on this motion.

6 Dated: December 23, 2021

LAWYERS for JUSTICE, PC

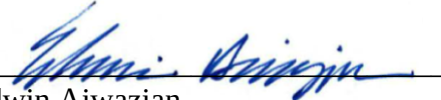
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8 By: 
9 Edwin Aiwazian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Eliseo Navarrete (“Plaintiff”) seeks approval of the Private Attorney General Act Settlement and Release Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”)¹ entered into between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and Defendant Jarrow Industries, LLC formerly Jarrow Industries, Inc. (“Defendant”)², pursuant to California Labor Code section 2699(1)(2).

Subject to approval by the Court, Plaintiff and Defendant (together, the “Parties”) have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Settlement Sum of \$875,000.00.³

The Gross Settlement Amount is inclusive of: (1) Attorneys’ Fees and Costs to be paid to Lawyers for Justice, PC (“Plaintiff’s Counsel”), (2) General Release Payment to Plaintiff, (3) Settlement Administration Costs to be paid to the Settlement Administrator, and (4) Net Settlement Sum to be paid to the California Labor and Workforce Development Agency (“LWDA”) and former and current employees of Defendant who worked in California as hourly-paid or non-exempt employees at any time during the period between September 15, 2019 and April 14, 2021 (“Aggrieved Employees”).⁴

The Net Settlement Sum will be the Settlement Sum less the Court-approved Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Payment, and is currently estimated to be no less than \$496,868.03.⁵ The Net Settlement Sum will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and twenty-five percent

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

² During the pendency of the action, Jarrow Industries, Inc. converted to Jarrow Industries, LLC. See § I.

³ Settlement Agreement, § II. In the event that the actual number of pay periods during the PAGA Period exceeds 6,728 pay periods by more than ten percent (10%) (i.e., if the pay periods exceed 7,401), the Settlement Sum shall be increased pro rata to the extent the pay periods exceed 7,401. See § II.E.

⁴ *Id.*, §§ II & IIA-E.

⁵ *Id.*, § II.D.

(25%) to the Aggrieved Employees (“Employees’ Portion”).⁶ Each Aggrieved Employee will be entitled to payment of his or her *pro rata* share of the Employees’ Portion, based on the number of pay periods they each worked during the PAGA Period (“Compensable Pay Periods”), based on Defendant’s payroll records.⁷ The “PAGA Period” is the period September 15, 2019 through April 14, 2021.⁸

The payment to Aggrieved Employees will be treated and reported for tax purposes as non-wage payments and the Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.⁹

Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the requirements for approval by the Court based upon the relevant fairness factors, the relative strengths of the PAGA claims, the risk, expense, and complexity of further litigation, the benefit conferred by the Settlement, the scope of the release of claims, the experience and views of counsel, and the reasonableness of the Net Settlement Sum (consisting of the LWDA Payment and Employees’ Portion), Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Payment. Plaintiff respectfully requests that this Court approve the Settlement, award the Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Payment and approve the LWDA Payment, which are provided for by the Settlement and requested herein.

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

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⁶ Settlement Agreement, § II.E.

⁷ *Id.*, § III.B.

⁸ *Id.*, § II.E.

⁹ *Id.*, § II.F.

1 **II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY**

2 Defendant operates as a contract manufacturing organization for dietary supplements and
3 provides one-stop, full spectrum services for private label customers, including formulation,
4 encapsulation, manufacturing, packaging, and testing. Plaintiff Eliseo Navarrete is a former
5 employee of Defendant.

6 Prior to commencing this lawsuit, on September 15, 2020, as required by California
7 Labor Code section 2699.3, Plaintiff Eliseo Navarrete provided the LWDA with written notice of
8 his intent to assert claims under PAGA and the basis for those claims, to which the LWDA did
9 not respond.¹⁰

10 On November 19, 2020, Plaintiff Eliseo Navarrete filed a Complaint for Enforcement
11 Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative
12 Complaint”) against Defendant in the Los Angeles County Superior Court (“Court”), Case No.
13 20NWCV00662 (the “Action”). Plaintiff’s core allegation is that Defendant has violated the
14 California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff
15 and other aggrieved employees, of, *inter alia*, failing to pay overtime and minimum wages,
16 failing to provide compliant meal and rest periods and associated premiums, failing to pay timely
17 wages during employment and upon termination of employment, failing to provide complete and
18 accurate itemized wage statements, failing to keep complete and accurate payroll records, and
19 failing to reimburse necessary business-related expenses and costs.

20 On December 18, 2020, Defendant filed an Answer to the Operative Complaint.
21 Defendant maintained, and continues to maintain, that it had, and continues to have, legally-
22 compliant employment policies and practices throughout the time period at issue. Defendant
23 denies that it ever violated any provision of the California Labor Code, including, but not limited
24 to, those sections for which Plaintiff seeks penalties under the PAGA.

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

On April 14, 2021, the Parties participated in a full-day mediation conducted by Paul Grossman, Esq. a well-respected mediator experienced in mediating complex labor and employment matters.¹¹ With the aid of the mediator, the Parties were able to reach the Settlement described herein.¹²

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.¹³

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Aggrieved Employees who are covered by the Settlement are:

Former and current employees of Defendant who worked in California as hourly-paid or non-exempt employees at any time during the period between September 15, 2019 and April 14, 2021.¹⁴

Based on information provided by Defendant as of November 2021, there are approximately two hundred twenty-one (221) Aggrieved Employees.¹⁵

B. Distribution of the Settlement Sum

Under the terms of the Settlement Agreement, Defendant will pay a Settlement Sum of \$875,00.00.¹⁶ The Net Settlement Sum will be the Settlement Sum less the following amounts: (1) Attorneys' Fees and Costs consisting of attorneys' fees of \$350,000.00 and reimbursement of litigation costs and expenses of \$13,631.97 to Plaintiff's Counsel; (2) General Release Payment of \$8,500.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$6,000.00 to Simpluris, Inc. ("Simpluris" or "Settlement Administrator").¹⁷ The Net Settlement Sum will be

¹¹ Aiwazian Decl., ¶ 12.

¹² *Ibid.*

¹³ The Court is referred to the concurrently-filed Proof of Service, which confirms submission of the papers to the LWDA.

¹⁴ Settlement Agreement, § II.E.. The period September 15, 2019 through April 14, 2021 is referred to as the "PAGA Period." *See ibid.*

¹⁵ Settlement Agreement, § II.E, and Aiwazian Decl., ¶ 9.

¹⁶ Settlement Agreement, § II, and Aiwazian Decl., ¶ 14. *See n.2, supra.*

¹⁷ Aiwazian Decl., ¶ 14.

fully distributed to the Aggrieved Employees and the LWDA, as described in Section III.C, *infra*.

C. Distribution of the Net Settlement Sum

Within fourteen (14) calendar days of the Court's order granting approval of the Settlement, Defendant shall transmit the Settlement Sum to a qualified settlement account established by the Settlement Administrator for administration of the Settlement.¹⁸ No later than seven (7) calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the Settlement Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) social security number; and (v) Compensable Pay Periods.¹⁹

Seventy-five percent (75%) of the Net Settlement Sum (or approximately \$372,651.02) will be distributed to the LWDA (i.e., "LWDA Payment") and twenty-five percent (25%) of the Net Settlement Sum (or approximately \$124,217.01) (i.e., "Employees' Portion") will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods.²⁰ To calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), the Settlement Administrator shall: for each Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.²¹ One hundred percent (100%) of all Individual Settlement Shares are to be considered penalties and no deductions will be undertaken by the Settlement Administrator for any local, state or federal taxes or withholdings.²²

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¹⁸ Settlement Agreement, § III.A.

¹⁹ *Id.*, § III.C.(1).

²⁰ *Id.*, § III.B.

²¹ *Ibid.*

²² *Ibid.*

No later than fourteen (14) calendar days after the Settlement Administrator's receipt of the Settlement Sum and Aggrieved Employees List, the Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail.²³ For each PAGA Settlement Package that is returned as undeliverable within thirty (30) calendar days of the initial mailing, the Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using an address refresher database and shall attempt one (1) re-mailing of the PAGA Settlement Package.²⁴

The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for ninety (90) calendar days, and thereafter, shall be cancelled.²⁵ Funds associated with cancelled checks shall be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of their respective Individual Settlement Share(s).²⁶

D. The Scope of the Release in the Settlement Agreement

Upon entry of the Approval Order and Judgment and full funding of the Settlement Sum, with the exception of the covenants and obligations of the Parties as set forth in the Settlement Agreement, Plaintiff for himself and his successors, heirs and assigns, and on behalf of the State of California with respect to the employment of Aggrieved Employees, will be deemed to have released and discharged Releasees from the following claims:

Any and all claims, arising during the period from September 15, 2019 through the Court's approval of the Settlement, for civil penalties under PAGA based on the factual allegations in the Complaint and the LWDA Notice, including but not limited to, for violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and IWC Wage Orders including *inter alia*, Wage Orders 1-2001, 4-2001, 5-2001, and 7-2001, arising from the alleged failure to pay minimum and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide complaint rest periods and associated premiums, failure to timely pay

²³ Settlement Agreement, § III.C.(3).

²⁴ *Ibid.*

²⁵ *Id.*, § III.C.(4).

²⁶ *Ibid.*

wages during employment and upon termination, failure to maintain requisite payroll records, and failure to reimburse for business expenses.²⁷

The “Releasees” are Defendant, their affiliated companies, divisions, parents, members, insurers, subsidiaries, related companies and business concerns, past and present, and each of them, as well as each of their partners, trustees, directors, officers, agents, attorneys, servants and employees, past and present and each of them.²⁸

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

“[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546. “Unnamed 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 v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5. A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are “nonparty aggrieved employees who are not given notice of, and an opportunity to be heard in, a representative action that is not brought as a class action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other potentially aggrieved employees parties” to the action and no “due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and whatever personal claims the absent employees might have for relief are not at stake.” *Williams, supra*, 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

“[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]” *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 474.) A “judgment in such an action is binding not only on the named employee

²⁷ Settlement Agreement, § V.A.

²⁸ *Ibid.*

plaintiff but also on government agencies and any aggrieved employee 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).

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

IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT

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

The settlement of a PAGA action requires court approval. *See* Cal. Lab. Code § 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action” and therefore does not have to meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from, and simpler than, the process for approval of a class action settlement. A court

reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims.²⁹ 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 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.

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²⁹ Aiwazian Decl., ¶ 7.

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, Paul Grossman, Esq.³⁰ A settlement that is “the product of extensive and hard-fought adversarial negotiations between the parties” is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

The Settlement is presumptively fair because: (1) it is the product of non-collusive, arm’s-length negotiations with the assistance of an independent mediator knowledgeable in complex labor and employment matters; (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters; and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claims, and the risks associated with possible arbitration proceedings and of litigating these claims through trial.³¹

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³⁰ Aiwazian Decl., ¶ 12.

³¹ *Id.*, ¶¶ 4-7, 11-13, & 16-20.

1 After engaging in extensive formal and informal discovery, the Parties participated in
2 settlement negotiations to try to resolve the lawsuit.³² These efforts included participating in
3 formal mediation conducted by Paul Grossman, Esq., a well-respected mediator experienced in
4 mediating complex labor and employment matters.³³ During mediation, the Parties discussed all
5 aspects of the case, including the risks and delays of further litigation, the risks to the Parties of
6 proceeding with trial, possible arbitration proceedings, as well as the law relating to
7 representative PAGA actions, off-the-clock theory, wage-and-hour enforcement, and arbitration
8 agreements, the evidence produced and analyzed, and the possibility of bifurcation of discovery
9 and/or trial and appeals, among other things.³⁴ During all settlement discussions, the Parties
10 conducted their negotiations at arm's length in an adversarial position.³⁵

11 Based on all of the information available to the Parties and with the assistance of the
12 experienced mediator, the Parties agree that this matter is well-suited for settlement given the
13 strengths and weaknesses of the PAGA claim.³⁶ Plaintiff and Plaintiff's Counsel believe that the
14 settlement is a fair, adequate, and reasonable resolution of this matter.³⁷ Plaintiff's Counsel has
15 extensive experience handling representative and class action wage-and-hour litigation and used
16 that experience to achieve a great result for Plaintiff, the State of California, and the Aggrieved
17 Employees.³⁸ Therefore, the Court should give considerable weight to the competency,
18 experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the
19 settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988)
20 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd*
21 *v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs'
22 counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express*
23 *Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an
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25 ³² Aiwazian Decl., ¶ 12.

26 ³³ *Ibid.*

27 ³⁴ *Ibid.*

28 ³⁵ *Ibid.*

³⁶ *Id.*, ¶ 26.

³⁷ *Ibid.*

³⁸ *Id.*, ¶¶ 4-7.

experienced mediator in the settlement process confirms that the settlement is non-collusive”).

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

In order for Plaintiff to prevail on the PAGA claims, he would have to prove the underlying California Labor Code violations, demonstrate that the Aggrieved Employees suffered, and demonstrate that Defendant’s conduct gives rise to 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 Aggrieved Employees, by, *inter alia*, failing to properly pay minimum, regular, overtime wages, failing to provide compliant meal and rest periods and associated premiums, failing to timely pay wages during employment and upon termination of employment, failing to provide complete and accurate wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

Although wage-and-hour actions are amenable to resolution as to a group of employees,³⁹ some courts have also found that, for various reasons, the issues raised by Plaintiff raise

³⁹ *See, e.g., Martinez vs. Joe’s Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-84, *modified on other grounds by Martinez v. Joe’s Crab Shack Holdings, et al.* (Dec. 3, 2014, B242807) 2014 Cal.App. LEXIS 1102, *1-2 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of resolving wage-and-hour claims, including misclassification and overtime, recognizing that “statistical sampling may provide assistance in identifying the realistic demands of the job and illuminating whether the typical employee was able to meet those expectations” and that “[b]y refocusing its analysis on the policies and practices of the employer and the effect those policies and practices have on the [employees] . . . the trial court may in fact find class analysis a more efficient and effective means of resolving plaintiffs’ overtime claim”); *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 330-31 (Court successfully managed and adjudicated wage-and-hour claims made on behalf of a group of employees, utilizing, among other things, statistics and surveying.); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033 (“Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment [...] The theory of liability – that [the employer] has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law - is by its nature a common question eminently suited for class treatment.”); *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (finding that real parties demonstrated that the existence of the practice and the fact of damage were matters suitable for determination on behalf of a group of employees and that, “[r]eal parties’ evidence supports the reasonable inference that [...] they could establish that petitioners engaged in the alleged practice, that is, they never paid meal break premium wages, even though a significant number of employees accrued them. Furthermore, in view of real parties’ theory of

(Footnote continued)

1 individualized issues and/or are unmanageable and thus not suitable for adjudication as to a
2 group of employees.⁴⁰

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

8 Defendant also maintained several defenses to Plaintiff’s theory of liability, which, if
9 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
10 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and
11 continues to have, legally-compliant employment policies and practices throughout the time
12 period at issue.⁴¹ Defendant denies that it ever violated any provision of the California Labor
13 Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the
14 PAGA.⁴² Defendant further denied, and continues to deny, that the lawsuit is appropriate for
15 representative treatment for any purpose other than settlement.⁴³

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18 restitution, those facts would also suffice to demonstrate the fact of damage. Under that theory, the fact of damage
19 does not require a showing that all -- or virtually all -- class members accrued unpaid meal break premium wages,
20 but only that on a system-wide basis, petitioners denied the class members the benefits of the compensation
21 guarantee and enhanced enforcement implemented by section 226.7.”); *Tyson Foods, Inc. v. Bouaphakeo* (2016) 136
22 S.Ct. 1036 (holding that statistical evidence is admissible to support class action certification because it is also
23 admissible to prove liability and damages across a group of employees, where the defendant employer had not kept
24 records of time spent by employees with respect to donning and doffing protective clothing).

25 ⁴⁰ 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
26 been alleged “that the employer consistently imposed a uniform policy or de facto practice” as to its employees, “the
27 party must still demonstrate that the illegal effects of this conduct can be proven efficiently and manageably” and in
28 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).

⁴¹ Aiwazian Decl., ¶ 17.

⁴² *Ibid.*

⁴³ *Ibid.*

Defendant also challenged Plaintiff's standing as an aggrieved employee and denied that any of Defendant's other employees whom Plaintiff seeks to represent are aggrieved.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 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,

⁴⁴ Aiwazian Decl., ¶ 18.

⁴⁵ *Id.*, ¶ 17.

⁴⁶ *Ibid.*

1 1208-09 (“Until the employer has been notified that it is violating a Labor Code provision [...],
2 the employer cannot be presumed to be aware that its continuing underpayment of employees is
3 a ‘violation’ subject to penalties.”).

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

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.⁴⁷

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 Both sides used the pre-mediation time period to investigate the veracity, strength, and
21 scope of the PAGA claim.⁴⁸ In addition, the Parties exchanged a large volume of documents and
22 data relevant to Plaintiff’s claims and Defendant’s defenses thereto, including, and not limited to,
23 the employment records of Plaintiff, sampling of employee time and pay data, Defendant’s
24 Employee Handbook, new hire checklists, various agreements and acknowledgments (such as,
25 Defendant’s Employee Acknowledgment and Agreement, Employment-At-Will and Arbitration
26 Agreement, and Confidentiality and Proprietary Rights Agreement), forms (such as, Defendant’s

27 ⁴⁷ Aiwazian Decl., ¶ 19.

28 ⁴⁸ *Id.*, ¶ 11.

Meal Break Waiver, Wage Adjustment Form, and Missed Punch Slip), and Defendant's operations, practices, policies (such as, Defendant's Attendance Policy, Attendance Awards Policy for Nonexempt Employees, and Attendance Point System for Nonexempt Employees) and procedures, among other documents.⁴⁹ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant documents and data to evaluate Plaintiff's claims, including, and not limited to, calculating the potential monetary recovery under PAGA.⁵⁰ Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding the mediation and settlement, among other issues; participating in case strategy and analysis; drafting, reviewing, and revising the mediation brief; and preparing for and attending the mediation and settlement negotiations.

Had the case not settled, the Parties would have conducted extensive additional formal discovery, including propounding additional written discovery requests as well as multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendant indicated that it would aggressively litigate this case.⁵¹ Even if Defendant failed on its defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.⁵² Additionally, there is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State of California or other Aggrieved Employees after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

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⁴⁹ Aiwazian Decl., ¶¶ 13 & 19.

⁵⁰ *Ibid.*

⁵¹ *Id.*, ¶ 17.

⁵² *Id.*, ¶¶ 12, 13, 16 & 19.

1 **D. The Settlement Is Fair, Adequate, and Reasonable**

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

6 The Settlement provides significant benefits to the State of California and the Aggrieved
7 Employees and falls well-within the range of acceptable settlements under the circumstances.
8 Under the Agreement, Defendant has agreed to pay a Settlement Sum of \$875,000.00, which
9 encompasses the Net Settlement Sum, Attorneys’ Fees and Costs, Settlement Administration
10 Costs, and General Release Payment.⁵³ Subject to approval by the Court, the following amounts
11 will be subtracted from the Settlement Sum to yield the Net Settlement Sum: (1) Attorneys’ Fees
12 and Costs consisting of attorneys’ fees in the amount of \$350,000.00 and reimbursement of
13 litigation costs and expenses in the amount of \$13,631.97 to Plaintiff’s Counsel⁵⁴; (2) the
14 Settlement Administration Costs of up to \$6,000.00; and (3) General Release Payment of up to
15 \$8,500.00 to Plaintiff.⁵⁵

16 The Net Settlement Amount is currently estimated to be \$496,868.03, of which an
17 estimated \$124,217.01 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on
18 their Compensable Pay Periods and \$372,651.02 is to be distributed to the LWDA. There is no
19 reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Sum as it
20 fully complies with California Labor Code section 2699(i).

21 The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel
22 recognize the expense and length of continued proceedings necessary to litigate the matter
23 through trial and any possible appeals.⁵⁶ Plaintiff and his counsel have also taken into account
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25 ⁵³ Settlement Agreement, §§ III & III.A-D. See n.2, *supra*.

26 ⁵⁴ *Id.*, § II.A. Although the Settlement Agreement provides that Plaintiff’s Counsel can seek up to \$16,000 for
27 reimbursement of litigation costs and expenses, Plaintiff’s Counsel only seeks the amount of \$13,631.97 for this
28 payment, which is less than \$16,000.00. The difference between the amount sought and the maximum allocated
amount available under the settlement (i.e., the difference of \$2,368.03), will be a part of the Net Settlement Sum.

⁵⁵ *Id.*, §§ II.A-D.

⁵⁶ Aiwazian Decl., ¶¶ 12, 16 & 19.

1 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
2 inherent in such litigation.⁵⁷ Plaintiff and his counsel are also aware of the burdens of proof
3 necessary to establish liability, both generally and in response to Defendant's defenses thereto,
4 and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on
5 behalf of Plaintiff, the State of California, and other Aggrieved Employees.⁵⁸ Plaintiff and his
6 counsel have also taken into account Defendant's agreement to enter into a settlement that
7 confers significant relief upon the Aggrieved Employees and the State of California.⁵⁹

8 Considering all of the facts in this case, Plaintiff and his counsel have determined that the
9 Settlement represents a fair, adequate, and reasonable resolution of the PAGA claims, and that it
10 is in the best interests of the Aggrieved Employees and the State of California.⁶⁰

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

26 ⁵⁷ Aiwazian Decl., ¶¶ 12, 16 & 19.

27 ⁵⁸ *Id.*, ¶¶ 15 & 16.

28 ⁵⁹ *Id.*, ¶ 22.

⁶⁰ *Id.*, ¶ 26.

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

3 Plaintiff’s Counsel is highly experienced in complex representative and class action
4 wage-and-hour litigation.⁶¹ In the view of Plaintiff’s Counsel, the benefits conferred by the
5 settlement are eminently fair and reasonable, and in the best interests of the State of California
6 and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation
7 and the substantial monetary benefits provided for by the Settlement.⁶² Furthermore, courts have
8 acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees
9 are largely aligned. All stand to gain from proving as convincingly as possible as many Labor
10 Code violations as the evidence will sustain[.]” *Williams, supra*, 548 (citing Cal. Lab. Code §
11 2699(g)(1)(i)).

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

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

15 The Settlement provides for a Gross Settlement Amount of \$875,000.00.⁶³ The
16 Settlement provides for attorneys’ fees in an amount of forty percent (40%) of the Settlement
17 Sum, which is \$350,000.00, subject to approval and award by the Court.⁶⁴ The requested
18 attorneys’ fees award is commensurate with: (1) the risk that Plaintiff’s Counsel took in bringing
19 and litigating this case, (2) the time, effort, and expense dedicated to the case, (3) the skill and
20 determination that Plaintiff’s Counsel has shown, (4) the results that Plaintiff’s Counsel has
21 achieved throughout the litigation, (5) the value that Plaintiff’s Counsel has achieved for
22 Plaintiff, the Aggrieved Employees, and the State of California, and (6) the other cases that
23 Plaintiff’s Counsel has turned down in order to devote time and effort to this matter.

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⁶¹ Aiwazian Decl., ¶¶ 4-7.

27 ⁶² *Id.*, ¶ 26.

28 ⁶³ Settlement Agreement, § II.

⁶⁴ *Id.*, § II.A.

1 Plaintiff's Counsel is entitled to recover reasonable attorneys' fees and costs as a matter
2 of right under PAGA. See Cal. Lab. Code § 2699(g)(1) ("Any employee who prevails in any
3 [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs"). Plaintiff's
4 Counsel is also entitled to fees and costs under California Code of Civil Procedure section
5 1021.5, as the instant PAGA action is by definition "for the benefit" of others and secures
6 monetary recovery for a large number of Aggrieved Employees, as well as the State of
7 California. See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
8 (recognizing that recovery obtained on behalf of 209 individuals satisfies the "significant
9 benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure
10 section 1021.5, regardless of plaintiff's personal motivation). The settlement will also benefit
11 the state labor agency in enforcing labor laws and educating "employers and employees about
12 their rights and responsibilities under [the California Labor Code]." Cal. Lab. Code § 2699(i).

13 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
14 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
15 confirmed by the California Supreme Court. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
16 480 at 486 & 506. While trial courts have discretion to apply either a lodestar method or
17 percentage-of-the-fund method, the California Supreme Court has taken the position that trial
18 courts also "retain the discretion to forgo a lodestar cross-check and use other means to evaluate
19 the reasonableness of a requested percentage fee" and "[t]he percentage of fund method survives
20 in California." *Id.* (internal quotes omitted); see also *Wershba, supra*, 91 Cal.App. 4th at 253.

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

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1 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
2 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
3 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *see also Laffitte, supra*, 1 Cal.5th 480 at 506
4 (holding that “trial court did not abuse its discretion in using [the percentage of fund method], in
5 part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is the
6 best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001)
7 24 Cal.4th 1122, 1132.

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

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

1 *Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270).

2 Plaintiff's Counsel's application for attorneys' fees in light of the facts and circumstances
3 surrounding the case is well-within the range of reasonableness. Historically, courts have
4 awarded fees as high as fifty percent (50%) of the settlement in complex actions, depending on
5 the circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp.
6 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million total settlement amount);
7 *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195
8 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely
9 approve attorneys' fees awards "average[ing] around one-third of the recovery." *Chavez v.*
10 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency
11 fees in marketplace to be 20 to 40 percent and determined such a percentage fee was
12 appropriate); *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles
13 County Superior Court, Case No. BC596892 (June 2016) (citing *Chavez, supra*, 162 Cal.App.4th
14 at 66, n.11) (approving a fee award of one-third of the settlement amount of \$950,000, in a
15 PAGA action, because it was "reasonable and consistent with fee awards in class action cases").

16 Plaintiff's Counsel has litigated this case since it was commenced, with the very real
17 possibility of an unsuccessful outcome and no fee recovery of any kind.⁶⁵ The data and
18 documents reviewed and analyzed by Plaintiff's Counsel included, and was not limited to, the
19 employment records of Plaintiff, sampling of employee time and pay data, Defendant's
20 Employee Handbook, new hire checklists, various agreements and acknowledgments (such as,
21 Defendant's Employee Acknowledgment and Agreement, Employment-At-Will and Arbitration
22 Agreement, Confidentiality and Proprietary Rights Agreement), forms (such as, Defendant's
23 Meal Break Waiver, Wage Adjustment Form, Missed Punch Slip), and Defendant's operations,
24 practices, policies (such as, Defendant's Attendance Policy, Attendance Awards Policy for
25 Nonexempt Employees, and Attendance Point System for Nonexempt Employees) and
26 procedures, among other documents.⁶⁶ Counsel for the Parties undertook significant

27 ⁶⁵ Aiwazian Decl., ¶ 24.

28 ⁶⁶ *Id.*, ¶ 13.

1 investigation, and also invested time reviewing and analyzing relevant documents and data to
2 evaluate Plaintiff's claims, including, and not limited to, calculating the potential monetary
3 recovery under PAGA.⁶⁷ Other work performed by Plaintiff's Counsel included, but was not
4 limited to: meeting and conferring with Defendant's counsel regarding the mediation and
5 settlement, among other issues; participating in case strategy and analysis; drafting, reviewing,
6 and revising the mediation brief; and preparing for and attending mediation and settlement
7 negotiations.⁶⁸

8 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation
9 and will not receive any compensation until recovery is obtained.⁶⁹ Plaintiff's Counsel is
10 experienced in complex wage-and-hour litigation and used that experience to obtain a great
11 result for Plaintiff, the Aggrieved Employees and the State of California.⁷⁰ Considering the
12 amount of fees requested, work performed, risks incurred, results obtained, and experience of
13 Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys'
14 fees are reasonable and should be awarded.

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

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

26 ⁶⁷ Aiwazian Decl., ¶ 13.

27 ⁶⁸ *Ibid.*

28 ⁶⁹ *Id.*, ¶ 24.

⁷⁰ *Id.*, ¶¶ 4-7.

1 946 F. 2d 768, 772. Some of the most relevant factors to this Court’s fee determination will be
2 addressed below.

3 It should be highlighted that the percentage award sought is commensurate with the time,
4 effort, and expense dedicated to the case, the contingent nature of Plaintiff’s Counsel’s
5 representation and the risks taken in commencing the Action, the skill and determination
6 required, the results that Plaintiff’s Counsel has achieved, and the value of the settlement that
7 Plaintiff’s Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees, and the State
8 of California. For the reasons discussed herein, an award of attorneys’ fees in the amount of
9 forty percent (40%) of the Settlement Sum is reasonable.

10 **1. Time & Labor**

11 Plaintiff’s Counsel has used its experience and skills in litigating complex wage-and-hour
12 actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit,
13 Plaintiff’s Counsel conducted a significant amount of investigation into the factual and legal
14 issues, Defendant’s business, and its operations and employment policies, practices, and
15 procedures.⁷¹ During the litigation of the Action, Plaintiff’s Counsel interviewed and obtained
16 information from Plaintiff and Aggrieved Employees, conducted legal research, reviewed and
17 analyzed a volume of documents and data, prepared for and attended mediation, evaluated the
18 PAGA claims, and calculated the potential monetary recovery under PAGA.⁷² Plaintiff’s
19 Counsel also met and conferred with Defendant’s counsel over issues relating to the mediation
20 and settlement.⁷³ Plaintiff’s Counsel performed other work including, *inter alia*, case strategy
21 and analysis; and engaging in extensive settlement negotiations.⁷⁴

22 Plaintiff’s Counsel dedicated the full extent of staffing and monetary resources necessary
23 to prosecute the case with maximum efficiency, and has fully and actively participated in the
24 litigation process. The Attorney Task and Time Chart, which is attached as “**EXHIBIT 2**” to the
25 accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Plaintiff’s

26 ⁷¹ Aiwarzian Decl., ¶ 13.

27 ⁷² *Ibid.*

28 ⁷³ *Ibid.*

⁷⁴ *Ibid.*

Counsel has spent performing tasks in this matter. Plaintiff's Counsel has spent **374.40 hours** to obtain a recovery on behalf of Plaintiff, the Aggrieved Employees, and the State of California. These hours were required to bring the case to its successful conclusion.

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

2. The Skill Required to Perform Legal Services Properly

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

Plaintiff's Counsel's effort and skill were used to, among other things, investigate the allegations and gather facts, research the legal issues, analyze data and information obtained from Defendant, Plaintiff, and through other sources, evaluate the PAGA claims, and negotiate the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used its extensive experience and skill in the handling of complex wage-and-hour matters to advocate for and obtain Aggrieved Employees and the State of California a recovery now, with maximum efficiency, as opposed to the possibility of recovery in the future, after significant expense and time.⁷⁵

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⁷⁵ Aiwasian Decl., ¶¶ 16-19.

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

2 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty
3 and risks of further litigation.⁷⁶ Had the case not settled, Defendant would have vigorously
4 challenged manageability and liability, and sought a reduction in the amount assessed as
5 penalties. Defendant, however, faced risks too, including and not limited to, the risk of having
6 the Court assess penalties. Additionally, preparing the case for trial would have been
7 extraordinarily expensive for the Parties.

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

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

17 The representation provided by Plaintiff's Counsel has been wholly contingent and
18 Plaintiff's Counsel took on this matter without knowing whether any recovery would be
19 obtained. Plaintiff's Counsel has invested **374.40 hours** of time to obtain relief on behalf of
20 Plaintiff, the Aggrieved Employees, and the State of California. Plaintiff's Counsel is also
21 requesting reimbursement of litigation costs and expenses in the amount of \$13,631.97.⁷⁷

22 In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will
23 not receive any compensation until recovery is obtained.⁷⁸ If Plaintiff's Counsel had not been
24 successful, the time that they have devoted to litigating the case would have been for naught and
25 would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel
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27 ⁷⁶ Aiwazian Decl., ¶¶ 15, 16, 19, & 26.

28 ⁷⁷ *Id.*, ¶ 24 and Exh. 3.

⁷⁸ *Id.*, ¶ 24.

1 is well-experienced in complex wage-and-hour litigation and used that experience to obtain a
2 great result for Plaintiff, the Aggrieved Employees, and the State of California.⁷⁹ The skill and
3 determination that Plaintiff's Counsel has shown throughout the Action justify the requested
4 attorneys' fees and costs. Considering the amounts requested, work performed, and risks
5 incurred, the requested fees and costs are reasonable and should be awarded.

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

7 The results achieved, in light of the difficulties inherent in similar cases and the specific
8 difficulties faced in this case, are considerable. Here, the results achieved, and the recovery
9 obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent a
10 fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a
11 settlement that provides for a Settlement Sum of \$875,000.00, and it is currently estimated that
12 the Net Settlement Sum available for distribution to the Aggrieved Employees and the State of
13 California, as set forth in Part III.C *infra*, is approximately \$496,868.03.⁸⁰

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

15 Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its
16 attorneys employed their knowledge, skill, and experience to bring the case to a successful
17 conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation
18 experience, has recovered millions of dollars on behalf of thousands of individuals in California,
19 and has successfully handled numerous significant wage-and-hour class action and representative
20 action cases.⁸¹

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27 ⁷⁹ See Aiwazian Decl., ¶¶ 4-7.

⁸⁰ Settlement Agreement, § II.

28 ⁸¹ Aiwazian Decl., ¶¶ 4-7.

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

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

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

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

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

As discussed above, this case was highly contested and required a significant amount of time and labor. Defendant made it clear very early on that it disputed all of Plaintiff’s allegations and disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*, that it had facially-compliant employment policies and practices throughout the time period at issue.⁸² Defendant raised affirmative defenses and denied liability, and the pursuit of this case

⁸² Aiwazian Decl., ¶ 17.

involved gathering and analyzing data from Defendant as well as other sources.⁸³ The handling of this litigation involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Plaintiff's Counsel has, as a result of its extensive experience in complex wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward trial, including taking and defending declarant and expert depositions, depositions of person most knowledgeable designees, conducting additional formal discovery, and engaging in extensive motion practice. As Plaintiff's Counsel geared up for these battles, Plaintiff's Counsel undertook intense preparation in an attempt to resolve the entire matter through settlement negotiations.

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

As set forth above in Part VI.B.1 *supra*, attached to the Declaration of Edwin Aiwazian is the Attorney Task and Time Chart that sets forth in detail the numerous tasks that Plaintiff's Counsel performed in this matter, and the time required for completing those tasks.⁸⁴ The chart demonstrates that Plaintiff's Counsel has spent a total of **374.40 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 Aggrieved Employees, and the State of California, Plaintiff's Counsel has spent a reasonable number of hours on this matter.

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

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In

⁸³ Aiwazian Decl., ¶¶ 13 & 19.

⁸⁴ *Id.*, Exh. 2.

1 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market
2 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
3 normal hourly rates for winning contingency cases." *See id.*

4 Plaintiff's Counsel has been actively involved in the prosecution of this case, prior to the
5 commencement of the Action and all the way up to approval of the settlement, and their
6 dedication to the representation of Plaintiff, the Aggrieved Employees, and the State of
7 California has precluded other employment. Here, Plaintiff's Counsel bore the risk that, despite
8 all of their efforts and skills employed, there may be no recovery. Ultimately, Plaintiff's Counsel
9 was successful in reaching a settlement of \$875,000.00.

10 As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and
11 experience of Plaintiff's Counsel support a reasonable hourly rate of compensation of at least
12 \$750 per hour for services provided by Plaintiff's Counsel.⁸⁵ Lawyers for Justice, PC has been
13 awarded attorneys' fees, compensating the firm at the rate of at least \$750 for legal services
14 performed, by courts of this state.⁸⁶ While the circumstance of every case is unique, the fact
15 remains that the work performed and efforts undertaken by Plaintiff's Counsel in this matter
16 justify the requested attorneys' fees award.

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20 ⁸⁵ Aiwarzian Decl., ¶ 22.

21 ⁸⁶ For example, 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 a higher 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 a higher 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 a higher 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 a higher hourly rate of \$845.64. Aiwarzian Decl., ¶ 26.

1 **3. *The Risks Involved, Skill Required, Complexity of the Matter, and***
2 ***Results Obtained Warrant Upward Enhancement of the Lodestar.***

3 Even when courts have opted to award fees in settlement fund cases based on time
4 reasonably expended on the action, courts have generally awarded these fees based on the actual
5 time expended (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v. Screen*
6 *Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67. Such a multiplier is warranted in this matter.

7 Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved,
8 the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051;
9 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of the most common fee
10 enhancers [...] is for contingency risk.”). Such an enhancement “mirrors the established practice
11 in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying
12 them a premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 290
13 F.3d at 1051; *accord Ketchum*, 24 Cal.4th at 1132-33. A risk multiplier also serves to bring the
14 financial incentives for enforcing important rights “into line with incentives [attorneys] have to
15 undertake claims for which they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal. 4th at
16 1132.

17 In determining whether or not to enhance the lodestar, California courts take into account
18 multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See,
19 *Cates* at 822-23. Multiple factors warrant enhancement in this case, including the following:

- 20 • The time and labor required
- 21 • The skill requisite to perform the legal services properly
- 22 • The preclusion of other employment by the attorney due to the acceptance of the case
- 23 • The contingent nature of the fee
- 24 • The amount involved and results obtained
- 25 • The experience, reputation, and ability of the attorney
- 26 • Awards in similar cases

27 *Ketchum* at 1134.

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Adjustment of the base lodestar figure to compute an award of attorneys' fees for a claim under the California Labor Code is appropriate. See *Id.*, at 1135-36; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49. "The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate." *Wershba, supra*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment method, the trial court determines the reasonable hourly rate of compensation for counsel, which it then multiplies by the number of hours the court finds were reasonably spent preparing the case, to obtain the lodestar figure. *Ketchum, supra*, 24 Cal.4th at 1131-32. The lodestar figure is the "basic fee for comparable legal services in the community" based upon the "hourly amount to which attorneys of like skill in the area would typically be entitled." *Id.*, at 1132-33 (quotation marks and citation omitted).

As discussed above, this was a highly-contested matter which required an extensive amount of time and labor. Defendant raised defenses and denied liability, and the case involved gathering and analyzing documents and data from Defendant and obtained through other sources. The handling of this matter involved a great amount of effort, and required the exercise of high-level of skill, which Plaintiff's Counsel has as a result of extensive experience in employment wage-and-hour litigation. Plaintiff's Counsel has been actively involved in the prosecution of this matter, prior to its commencement and Plaintiff's Counsel's work has continued all the way up to the present. Plaintiff's Counsel's dedication to the representation of Plaintiff, the Aggrieved Employees, and the State of California has precluded other employment.

Most importantly, all services were performed by Plaintiff's Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Plaintiff's Counsel bore the risk that, despite all of its efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Plaintiff's Counsel is entitled to a risk multiplier. The results obtained by way of Plaintiff's Counsel's efforts are significant here. Plaintiff's Counsel was successful in achieving substantial results in

the form of a settlement of \$875,000.00. Also, Plaintiff's Counsel's efforts throughout the matter demonstrate dedication to the interests of both the Aggrieved Employees and the State of California.

Plaintiff's Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, Plaintiff's Counsel devoted the hours in legal time summarized above and detailed in the Attorney Task and Time Chart which is attached as an exhibit to the Declaration of Edwin Aiwezian.⁸⁷ As the Declaration indicates, Plaintiff's Counsel has worked 374.40 hours in the pursuit of this matter. Applying a reasonable blended rate of \$750 per hour to 374.40 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$280,000.00, and applying a modest multiplier of 1.25, the total enhanced lodestar fees are \$351,000.00, for Plaintiff's Counsel's services. However, Plaintiff's Counsel seek an attorneys' fee award of \$350,000.00 (equal to 40% of the Settlement Sum based on the Settlement Agreement). Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Plaintiff's Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even higher.**" *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with cross-check **multipliers ranging from 4.5 to 19.6**).

Therefore, application of a modest multiplier of 1.25 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award. Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$350,000.00 to Plaintiff's Counsel.

⁸⁷ Aiwezian Decl., Exh. 2.

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 \$16,000.00. As set forth in the Declaration of Edwin Aiwazian, Plaintiff’s Counsel has incurred a total of \$13,631.97 in litigation costs and expenses.⁸⁸ This amount was reasonable and necessary in the prosecution of this matter, and is less than the maximum amount allocated under the Settlement Agreement.⁸⁹ The cost savings of \$2,368.03 will be part of the Net Settlement Sum.⁹⁰ Accordingly, Plaintiff’s Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$13,631.97 to Plaintiff’s Counsel.

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

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

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

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Simpluris to handle the administration of the Settlement. The fees and expenses of the Settlement Administrator are estimated not to exceed \$6,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and

⁸⁸ Aiwazian Decl., ¶ 24.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

Individual Settlement Shares checks to the Aggrieved Employees (i.e., PAGA Settlement Package); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages to any updated addresses located; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to \$6,00.00 to Simpluris, a necessary third-party for handling the settlement process.

X. THE PROPOSED GENERAL RELEASE PAYMENT IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for a General Release Payment to be paid to Plaintiff in the amount of \$8,500.00.⁹¹ 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 Aggrieved Employees. Plaintiff gathered and produced relevant documents and information, provided the facts and evidence necessary to attempt to prove the allegations, and discussed his employment with his counsel.⁹² Plaintiff was available whenever his counsel needed him and tried to obtain documents and information that would aid in the litigation of the

⁹¹ Settlement Agreement, § II.B.

⁹² Aiwazian Decl., ¶ 25; Declaration of Eliseo Navarrete (“Navarrete Decl.”), ¶¶ 3 & 4.

PAGA claims and pursuit of recovery on behalf of the State of California and Aggrieved Employees.⁹³ Additionally, as a part of the Settlement, Plaintiff has agreed to a broader release of claims than the release of claims that applies to the Aggrieved Employees.

Accordingly, it is reasonable and just for Plaintiff to receive a General Release Payment in the amount of \$8,500.00, in addition to the Individual Settlement Share he will receive as an Aggrieved Employee.

XI. CONCLUSION

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

Dated: December 23, 2021

LAWYERS for JUSTICE, PC

By: 
Edwin Aiwanian
Attorneys for Plaintiff

⁹³ Aiwanian Decl., ¶ 25; Navarrete Decl., ¶¶ 3 & 4.



Make a Reservation

ELISEO NAVARRETE vs JARROW INDUSTRIES, INC.

Case Number: 20NWCV00662 Case Type: Civil Unlimited Category: Other Employment Complaint Case

Date Filed: 2020-11-19 Location: Norwalk Courthouse - Department F

Reservation

Case Name: ELISEO NAVARRETE vs JARROW INDUSTRIES, INC.	Case Number: 20NWCV00662
Type: Motion re: (Motion for PAGA Approval)	Status: RESERVED
Filing Party: Eliseo Navarrete (Plaintiff)	Location: Norwalk Courthouse - Department C
Date/Time: 01/19/2022 1:30 PM	Number of Motions: 1
Reservation ID: 335375409357	Confirmation Code: CR-MCPK6EHB6VAHAJDXF

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: MasterCard
Account Number: XXXX1861	Authorization: 71719J

Print Receipt

[Reserve Another Hearing](#)