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6 Attorneys for Plaintiff Pamela Williams, on behalf of herself and all “aggrieved employees”
7 pursuant to Labor Code § 2698 *et seq.*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN MATEO**

10 PAMELA WILLIAMS, on behalf of herself
11 and all “aggrieved employees” pursuant to
12 Labor Code § 2698 *et seq.*,

13 Plaintiff,

14 v.

15 STONEMOR, INC., a Delaware corporation,
and DOES 1 through 10, inclusive,

16 Defendants.
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CASE NO: 20-CIV-05216

*Assigned to the Hon. V. Raymond Swope, Dept. 23,
Courtroom 8A*

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS’ FEES, COSTS,
ENHANCEMENT AND GENERAL RELEASE
PAYMENT, AND REIMBURSEMENT OF
SETTLEMENT ADMINISTRATION
EXPENSES, AND DISMISSING ACTION
WITH PREJUDICE; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: April 8, 2024

Time: 3:00 P.M.

Dept.: 23

Courtroom: 8A

Complaint Filed: November 24, 2020

FAC Filed: January 5, 2021

Trial Date: None

1 **PLEASE TAKE NOTICE THAT** on April 8, 2024 at 3:00 p.m., or as soon thereafter as
2 the matter may be heard, in Department 23, Courtroom 8A of the above-entitled Court, located at
3 400 County Center, Redwood City, CA 94063, Plaintiff Pamela Williams will and hereby does
4 move unopposed for an Order: (1) granting approval of the proposed settlement of claims brought
5 pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”)
6 set forth in the Parties’ Private Attorneys General Act (Cal. Labor Code § 2698 *et seq.*) Settlement
7 Agreement (the “Settlement Agreement”); (2) appointing Phoenix Settlement Administrators as the
8 Settlement Administrator and approving payment of its fees not to exceed \$2,925 from the PAGA
9 Gross Settlement Amount; (3) directing disbursement of the PAGA Gross Settlement Amount
10 pursuant to the terms of the Settlement Agreement; (4) directing payment of attorneys’ fees and
11 litigation costs from the PAGA Gross Settlement Amount not to exceed \$58,553.47 to Plaintiff’s
12 counsel; (5) directing an enhancement and general release payment from the PAGA Gross
13 Settlement Amount in the amount of \$7,500 to Plaintiff Pamela Williams; and (6) dismissing this
14 action with prejudice.

15 This motion will be based on this Notice, the supporting memorandum of points and
16 authorities, the Parties’ Settlement Agreement, the Declarations of Daniel F. Gaines, Plaintiff
17 Pamela Williams, and Kevin Lee, the documents and records on file in this matter, and such
18 additional arguments, authorities, and evidence and other matters as may be presented by the Parties
19 hereafter.

20 Date: February 8, 2024

Respectfully submitted,

GAINES & GAINES, APLC

23 By: _____

24 DANIEL F. GAINES
25 ALEX P. KATOFISKY
26 Attorneys for Plaintiff
27 PAMELA WILLIAMS
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Pamela Williams (“Plaintiff”) and aggrieved employees under the Labor Code’s
4 Private Attorneys General Act of 2004 (“PAGA”) respectfully move this Court for an Order
5 granting approval of the proposed Settlement of the above-captioned lawsuit against Defendant
6 STONEMOR GP, LLC (sued as STONEMOR, INC.) (“Defendant”). The proposed Settlement will
7 dispose of the Released Claims asserted on behalf of Plaintiff and approximately 103 individuals
8 who were employed by Defendant in California as hourly and/or non-exempt employees at any
9 time from September 11, 2019 through October 4, 2023 (the “PAGA Release Period”) (the
10 “Aggrieved Employees”). *See* Settlement Agreement, at § 1.01(a).

11 This case addresses claimed violations of employee protections embodied in the California
12 Labor Code and penalties stemming therefrom for the violation of the PAGA. Plaintiff alleged that
13 Defendant failed to properly compute commission wages and other non-base hourly wages earned
14 by Plaintiff and Aggrieved Employees into their regular rate for purposes of paying them overtime
15 and double time wages at the correct rates, in violation of Labor Code §§ 510, 558, and 1194; failed
16 to pay Plaintiff and Aggrieved Employees all minimum wages and overtime wages earned, in
17 violation of Labor Code §§ 510, 558, and 1194; failed to pay Plaintiff and Aggrieved Employees
18 all overtime and double-time wages due, in violation of Labor Code §§ 510, 558, and 1194; failed
19 to provide Plaintiff and Aggrieved Employees with legally compliant rest periods, or compensation
20 in lieu thereof, in violation of Labor Code §§ 226.7, 510, 558, and 1194; failed to provide Plaintiff
21 and Aggrieved Employees with legally compliant meal periods, or compensation in lieu thereof, in
22 violation of Labor Code §§ 226.7, 510, 558, and 1194; failed to issue accurately itemized wage
23 statements to Plaintiff and Aggrieved Employees, in violation of Labor Code §§ 226(a) and 226.3;
24 failed to reimburse Plaintiff and Aggrieved Employees for necessary business expenses incurred,
25 in violation of Labor Code § 2802; failed to pay Plaintiff and Aggrieved Employees all accrued,
26 but unused vacation wages both during and at the separation of employment, in violation of Labor
27 Code §§ 201-202 and 227.3; and failed to timely pay Plaintiff and Aggrieved Employees all wages
28 due at the separation of their employment, in violation of Labor Code §§ 201-202. As a result of

1 Defendant's alleged violations of the Labor Code, approximately 103 employees are claimed to
2 have suffered Labor Code violations for up to 1,749 aggregate pay periods at the rate of \$100 each
3 based on PAGA's penalty provisions. Gaines Decl., ¶ 26.

4 As discussed throughout the Motion, this Settlement achieves great value for Plaintiff,
5 Aggrieved Employees, and the State of California. While Defendant's potential liability could be
6 up to \$864,100, if penalties were stacked [*see* Motion at § II(D)], there is no California authority
7 that expressly permits the practice of stacking penalties [*see* Motion at § III(B)(2)]. Additionally,
8 Courts have held that a defendant may not be subject to heightened penalties if it was not notified
9 by the Labor Commissioner or any court in California that it was subject to the California Labor
10 Code [*see id.*]. Therefore, the more accurate measure of Defendant's potential liability is to multiply
11 the 1,749 aggregate pay periods by \$100 each, which totals approximately \$174,900 in theoretical
12 exposure. *See* Gaines Decl. at ¶¶ 30-31.

13 In deciding whether to grant approval of the proposed Settlement, the primary issue to be
14 decided is whether the Settlement is fair, adequate and reasonable. As set forth herein, the proposed
15 Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is
16 the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and
17 hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative
18 strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on
19 the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and
20 likely duration of further litigation.

21 The value achieved by the Settlement may be gleaned from the fact that the Labor and
22 Workforce Development Agency ("LWDA") and the approximately 103 Aggrieved Employees
23 encompassed by the Settlement will receive no less than \$61,021.53 under the terms of the
24 Settlement, which, pursuant to the operative statute, shall be allocated "75 percent to the Labor and
25 Workforce Development Agency . . . and 25 percent to the Aggrieved Employees." *See* Cal. Lab.
26 Code § 2699(i). This is a reasonable recovery, not only because further litigation may have resulted
27 in a net-zero recovery based on the defenses available to Defendant, but because the amount secured
28 by Plaintiff is sizable and in line with similar settlements of these types of claims under PAGA. It

1 is also important to underscore that all penalty amounts paid to Aggrieved Employees will be an
2 unexpected windfall, as employees typically do not bring individual lawsuits asserting only PAGA
3 penalties. Such employees preserve their right to assert claims against Defendant for unpaid wages
4 and statutory penalties.

5 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this
6 Court enter the Order submitted herewith.

7 **II. STATEMENT OF THE CASE AND THE SETTLEMENT**

8 **A. The Parties**

9 Defendant operated 13 cemeteries and funeral homes in California prior to November 2020,
10 when it ceased operating. Starting on January 3, 2020, Defendant began the process of selling its
11 properties, cemeteries, funeral establishments, and crematories in California and completed the sale
12 of all of its operations in California by the end of November 2020. Gaines Decl. at ¶ 8.

13 Defendant employed Plaintiff as a non-exempt employee from October 2019 through April
14 2020 in San Mateo County, California. The Aggrieved Employees are all individuals who were
15 employed by Defendant in California as hourly and/or non-exempt employees at any time from
16 September 11, 2019 through October 4, 2023. Gaines Decl. at ¶ 9.

17 **B. The Claims Asserted**

18 Plaintiff asserts claims that Defendant failed to properly compute commission wages and
19 other non-base hourly wages earned by her and Aggrieved Employees into their regular rate for
20 purposes of paying them overtime and double time wages at the correct rates; failed to pay her and
21 Aggrieved Employees all minimum wages and overtime wages earned; failed to pay her and
22 Aggrieved Employees all overtime and double-time wages due; failed to provide her and Aggrieved
23 Employees with legally compliant rest periods, or compensation in lieu thereof; failed to provide
24 her and Aggrieved Employees with legally compliant meal periods, or compensation in lieu thereof;
25 failed to issue accurately itemized wage statements to her and Aggrieved Employees; failed to
26 reimburse her and Aggrieved Employees for necessary business expenses incurred; failed to pay
27 her and Aggrieved Employees all accrued, but unused vacation wages both during and at the
28 separation of employment; and failed to timely pay her and Aggrieved Employees all wages due at

1 the separation of their employment. Plaintiff asserts these claims under PAGA, on behalf of herself,
2 individually, and on behalf of the State of California and other Aggrieved Employees, seeking civil
3 penalties for the alleged Labor Code violations. Gaines Decl. at ¶ 10.

4 **C. Procedural Posture**

5 On September 11, 2020, pursuant to Labor Code section 2699.3, Plaintiff gave written
6 notice by online filing with the LWDA and by certified mail, return receipt requested, to Defendant
7 and Stonemor California, Inc. of the specific provisions of the Labor Code alleged to have been
8 violated, including the facts and theories to support the alleged violation. Gaines Decl., ¶¶ 6-7;
9 **Exhibit B** (LWDA Notice Letter). On November 24, 2020, and after the LWDA declined to take
10 action within the statutorily permissible time with respect to Plaintiff's September 11, 2020 letter,
11 Plaintiff filed her representative action complaint in this Court. Thereafter, Plaintiff filed a first
12 amended complaint on January 5, 2021 to clarify the claims alleged. Subsequently, Plaintiff filed a
13 Doe Amendment on December 23, 2021 to correct the name of Defendant from Stonemore, Inc. to
14 Stonemor GP, LLC. Plaintiff dismissed Defendant Stonemor California, Inc. on June 7, 2022.
15 Gaines Decl., ¶ 6.

16 **D. Plaintiff's Counsel's Investigation**

17 Counsel for Plaintiff engaged in targeted, informal discovery of Defendant's alleged Labor
18 Code violations, which specifically evaluated the strength and value of the PAGA claims in
19 preparation for a resolution of this Action. Gaines Decl. at ¶ 12.

20 Plaintiff's Counsel obtained and reviewed multiple documents, including (i) Plaintiff's
21 wage statements, (ii) policy documents relating to the employment of Plaintiff and Aggrieved
22 Employees, and (iii) data relating to the number of alleged violations and the value of the
23 recoverable penalties, including time and payroll data. Gaines Decl. at ¶ 13.

24 Based on the information received, as well as through discussions with Defendant's
25 Counsel, Plaintiff's Counsel was able to (i) determine the total number of distinct individuals falling
26 within the definition of "Aggrieved Employee" for the relevant statutory period, (ii) the number of
27 affected pay periods at issue among them, and (iii) construct a damage model that calculated the
28 maximum realistic amount of PAGA penalties that could be levied against Defendant within the

PAGA Release Period based on employee timekeeping and payroll data produced by Defendant. Gaines Decl. at ¶ 14. At all relevant times, Defendant has disputed Plaintiff's claims and contested both the existence of and extent of liability as alleged by Plaintiff. *Id.*

Plaintiff's Counsel's experience in litigating similar "representative" wage and hour claims, the degree of investigation that was conducted here, the amount of data that was obtained, and the discussions guided by mediation was sufficient to determine the potential value of the PAGA claim and to evaluate the strength of this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-5, 12-24, 30-33, 35-37. Defendant, however, disputed Plaintiff's claims and disputed both the existence of and extent of liability as alleged by Plaintiff.

Below is Plaintiff's PAGA damage model, which includes stacked penalties.

PAGA Penalties		
Number of PAGA Pay Periods	1,749	
Number of PAGA Pay Periods - Unpaid Wages	1,749	100.0%
Number of PAGA Pay Periods - Overtime (Regular Rate)	337	19.3%
Number of PAGA Pay Periods - Meal Breaks	988	56.5%
Number of PAGA Pay Periods - Rest Breaks	1,749	100.0%
Number of PAGA Pay Periods - Wage Statements	1,749	100.0%
Number of PAGA Pay Periods - Reimbursements	1,749	100.0%
Number of PAGA Pay Periods - Sick Pay (Regular Rate)	74	4.2%
Number of PAGA Pay Periods - Meal Premiums (Regular Rate)	200	11.4%
PAGA for Waiting Time (46 former employees in PAGA Period)	\$4,600	\$100/\$0
PAGA for Unpaid Wages (103 employees and all pay periods)	\$174,900	\$100/\$100
PAGA for Overtime (41 employees from 9/11/19 to 11/5/20)	\$33,700	\$100/\$100
PAGA for Meal Breaks (88 employees from 9/11/19 to 11/5/20)	\$98,800	\$100/\$100
PAGA for Rest Breaks (103 employees and all pay periods)	\$174,900	\$100/\$100
PAGA for Wage Statements (103 employees and all pay periods)	\$174,900	\$100/\$100
PAGA for Reimbursements (103 employees and all pay periods)	\$174,900	\$100/\$100
PAGA for Sick Pay (26 employees from 9/11/19 to 11/5/20)	\$7,400	\$100/\$100
PAGA for Meal Premiums (41 employees from 9/11/19 to 11/5/20)	\$20,000	\$100/\$100
Total PAGA Penalties	\$864,100	

Prior to settlement, Plaintiff's Counsel, with the assistance of an expert statistician, Bennett Berger of Berger Consulting Group, created the above comprehensive damage analysis using sampling information obtained through informal discovery. This damage analysis reveals that the negotiated settlement falls within a realistic range of recovery on Aggrieved Employees' claims. Gaines Decl. at ¶ 15.

Plaintiff alleges that Defendant failed to pay Aggrieved Employees all wages due in three ways. Plaintiff contends that (1) Defendant allegedly failed to properly compute commissions and other non-base hourly wages earned by Aggrieved Employees into their regular rate of pay for purposes of paying them meal period premiums, sick pay, overtime, and double-time wages at the

1 correct rates, in violation of Labor Code §§ 510, 558, and 1194; (2) Defendant allegedly required
2 Aggrieved Employees to work off-the-clock, before their shifts, without compensation, in violation
3 of Labor Code §§ 510, 558, and 1194; and (3) Defendant allegedly required Aggrieved Employees
4 to work seven consecutive days without any premium overtime adjustments, in violation of Labor
5 Code §§ 510, 558, and 1194. Gaines Decl. at ¶ 16.

6 As to Plaintiff's failure to blend claim, Defendant's liability was up to \$27,400 in civil
7 PAGA penalties, based on allegedly underpaid overtime wages, meal period premiums, and sick
8 pay. Plaintiff's expert found that there was no underpayment of overtime wages for failing to blend,
9 and only approximately 15% of pay periods exhibited some form of failure to blend sick pay and
10 meal period wages. Defendant also maintained numerous defenses to this claim, including that the
11 payments were discretionary, and that Aggrieved Employees rarely earned any commissions or
12 other non-base hourly wages, so liability, if any, would be minimal. However, because Defendant
13 did acknowledge that there may be some blending issues, this claim was a driving force in reaching
14 the resolution of all claims. Gaines Decl. at ¶ 16.

15 Based on 1,749 pay periods, Defendant's liability for the off-the-clock claim is up to
16 \$174,900 in theoretical civil PAGA penalties. But Defendant maintained numerous defenses to
17 Plaintiff's off-the-clock claim: among them, Defendant contends that it paid all employees for all
18 hours worked and that Defendant maintained written policies that stated that employees must
19 accurately record all hours worked and expressly forbode employees from working off-the-clock.
20 Gaines Decl. at ¶ 17.

21 Finally, as to Plaintiff's alleged failure to compensate Aggrieved Employees premium
22 overtime adjustments for working seven consecutive days, Plaintiff's expert found that only 8.6%
23 of pay periods worked exhibited an employee working seven consecutive days without any
24 premium overtime adjustments. This subjected Defendant to up to \$33,700 in theoretical civil
25 PAGA penalties. Again, Defendant maintained numerous defenses to this claim: among them,
26 Defendant contends that it properly paid all employees for working seven consecutive days in a
27 row. However, because Defendant did concede that there may be some issues, this claim was also
28 a driving force in reaching the resolution of all claims. Gaines Decl. at ¶ 18.

1 Plaintiff also alleges that Aggrieved Employees were routinely denied, and not authorized
2 to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded
3 five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift worked
4 that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first
5 or second meal period. Based on an analysis prepared by Plaintiff's expert based on a sampling of
6 wage and time data provided by Defendant, only 56.5% of the 1,749 pay periods during the PAGA
7 Release Period exhibited at least one unique meal break violation, exposing Defendant to up to
8 \$98,800 in civil PAGA penalties. However, Plaintiff's expert also found that Defendant paid meal
9 period premiums for 97.7% of all meal period violations and there were only 988 instances where
10 there was some form of a meal period violation where a premium was not paid. Defendant also
11 maintained various defenses to this claim: that employees always took their meal periods; that any
12 employee who did not take a meal period voluntarily waived it; that Defendant did not know or
13 have any reasonable reason to know that any employee was working through authorized meal
14 periods; that Defendant maintained legally compliant written meal period policies; and that this
15 claim had significant manageability issues. Gaines Decl. at ¶ 19.

16 Plaintiff also alleges that Aggrieved Employees were routinely denied, and not authorized
17 to take, a proper, timely, uninterrupted, rest period for every four hours worked, but were not paid
18 premium wages of one hour's pay for each missed rest period. Plaintiff further contends that
19 Defendant maintained unlawful written rest period policies. Because Defendant need not track its
20 employee's rest periods, Plaintiff's expert assumed a 100% violation rate based on Plaintiff's
21 experiences. This subjected Defendant to up to \$174,900 in theoretical civil PAGA penalties. As
22 with meal periods, Defendant maintained various defenses to this claim: that employees always
23 took their rest periods; that any employee who did not take a rest period voluntarily waived it; that
24 Defendant did not know or have any reasonable reason to know that any employee was working
25 through authorized rest periods; that Defendant maintained legally compliant written rest period
26 policies; and that this claim had significant manageability issues. Gaines Decl. at ¶ 20.

27 Plaintiff sought up to \$174,900 under PAGA for wage statement violations pursuant to
28 Labor Code § 226, premised primarily on "derivative" violations for failing to pay all wages due,

1 as discussed above. As to Plaintiff's non-derivative wage statement claims, Plaintiff's expert found
2 that there were minimal violations. Defendant argued that Plaintiff would not prevail on her
3 underlying unpaid wages and meal and rest period claims at all, so there would be no wage
4 statement penalties awarded. Defendant argued that employees were always appropriately
5 compensated and suffered no injury, such that a condition to recovery of penalties under Labor
6 Code § 226 was not satisfied. Gaines Decl. at ¶ 21.

7 Plaintiff also alleges that Aggrieved Employees were not reimbursed for all necessary
8 business expenses incurred. Plaintiff alleges that she was required to use her personal cellular phone
9 but was not reimbursed. Plaintiff's expert assumed a 100% violation rate per pay period based on
10 Plaintiff's experiences. This subjected Defendant to up to \$174,900 in theoretical civil PAGA
11 penalties. Defendant maintained various defenses to this claim: that employees were not required
12 to use their personal cellular phones in order to perform their job duties; that any employee who
13 did use their personal cellular phones did so voluntarily; and that Defendant maintained legally
14 compliant written expense reimbursement policies; and that this claim had significant
15 manageability issues. Gaines Decl. at ¶ 22.

16 Finally, Plaintiff asserted a claim for waiting time penalties under Labor Code § 203 which
17 was valued at up to \$4,600 for approximately 46 former employees (one violation per separated
18 employee). This claim also faced substantial risk because of the good faith defense proffered by
19 Defendant. Gaines Decl. at ¶ 23.

20 If Plaintiff stacked penalties, the maximum value of the PAGA claims would be
21 approximately \$864,100. However, recovery on these claims was not certain. PAGA claims are
22 discretionary, such that the Court could (and almost certainly would) decline to award their full
23 value. The Court could award far less than the maximum value on these penalty claims, particularly
24 where, as here, they greatly exceed the value of the underlying wage claims. Considering the
25 numerous claims asserted by Plaintiff and the obstacles to prevailing on many of them, it is possible
26 that she would not prevail on one or more of them, such that her PAGA claims as to some or all of
27 her claims would also fail. The compromised settlement amount takes these risks into account. A
28 discount on the maximum value of Aggrieved Employees' claims was required (and warranted) to

1 resolve the matter at this stage of the litigation. Gaines Decl. at ¶ 24.

2 **E. Settlement Negotiations**

3 On October 4, 2023, the Parties participated in a mediation session with a respected
4 mediator and retired jurist, Hon. Ronald Sabraw (Ret). During the mediation, the Parties engaged
5 in arm's-length negotiations and reached a resolution of the PAGA claims asserted in this Action.
6 Gaines Decl. at ¶ 25.

7 **F. The Proposed Settlement**

8 The Parties jointly prepared and executed a Private Attorneys General Act (Cal. Labor Code
9 § 2698 *et seq.*) Settlement Agreement (the “Settlement” or “Settlement Agreement”). Gaines Decl.,
10 ¶ 25; **Exhibit C**. The Settlement Agreement sets forth the terms of the Settlement reached by the
11 Parties, including the following key points:

12 1. Defendant agrees to settle this matter for the payment of \$130,000 (hereinafter the
13 “PAGA Gross Settlement Amount”), which shall be all inclusive, encompassing (i) all payments
14 to the LWDA and Aggrieved Employees, (ii) any and all costs of third-party administration of the
15 settlement, (iii) Plaintiff’s Counsel’s attorneys’ fees and costs of suit, and (iv) a modest
16 enhancement and general release payment to Plaintiff. *See* Settlement Agreement, at §§ 4.02(a)(1)
17 – (4).

18 2. The total sum available for payment of PAGA penalties shall be calculated by
19 deducting from the \$130,000 PAGA Gross Settlement Amount, \$58,553.47 for the payment of
20 Plaintiff’s Counsel’s fees and costs (\$43,333.33 in fees and \$15,220.14 in costs), \$7,500 for the
21 payment of Plaintiff’s enhancement and general release payment, and the costs of administration
22 not to exceed \$2,925, which yields \$61,021.53, and of which seventy-five percent (75%) or
23 \$45,766.15, shall be distributed to the LWDA, and the remaining twenty-five percent (25%) or
24 \$15,255.38, shall be distributed to the Aggrieved Employees. *See* Settlement Agreement, at §§
25 4.02(a)(1) – (4).

26 3. All Aggrieved Employees will receive a pro rata share of the \$15,255.38 allocated
27 to Aggrieved Employees, which shall be distributed based on the number of pay periods each
28 Aggrieved Employee worked for Defendant in California during the PAGA Release Period. *See*

1 Settlement Agreement, at § 4.02(a)(4). Although these calculations will not be made until after
2 approval, a rough estimation of the value to the approximately 103 individuals falling within the
3 definition of “Aggrieved Employee” may be gleaned from the fact that an equal division would
4 provide about \$148.11 to each Aggrieved Employee, net of payments to the LWDA, the Settlement
5 Administrator, attorney’s fees and costs, and an enhancement and general release payment to
6 Plaintiff. The LWDA will be paid a substantial \$45,766.15. *See* Gaines Decl., at ¶ 27.

7 4. In exchange for the above settlement consideration, Defendant and the Released
8 Parties shall be entitled to a limited release from each and every Aggrieved Employee, including
9 Plaintiff¹:

10 Upon Court approval of the Settlement, dismissal of the action, and subject to
11 Defendant’s funding in full of the PAGA Gross Settlement Amount, Plaintiff and
12 the Aggrieved Employees will fully and finally release and discharge Defendant and
13 its former, present, and future owners, parents, affiliates, and subsidiaries, and all of
14 their current, former, and future officers, directors, members, managers, partners,
15 shareholders, agents, employees, joint ventures, successors, assigns, attorneys,
16 accountants, insurers, or legal representatives (the “Released Parties”), from all
17 claims, rights, demands, liabilities, and causes of action for civil penalties under the
18 PAGA that arose during the PAGA Release Period that were alleged in the Action,
19 including but not limited to the following claims: (a) failure to pay all wages owed;
20 (b) failure to provide compliant meal periods, or premium pay for non-compliant
21 meal periods; (c) failure to authorize and permit complaint rest periods, or premium
22 pay for non-complaint rest periods; (d) failure to provide accurate, itemized wage
statements; (e) failure to timely pay wages upon separation of employment; (f)
23 failure to reimburse all necessary business expenses; (g) all claims for PAGA
24 penalties that could have been premised on the facts, claims, causes of action, or
25 legal theories described above; and (h) all other claims under PAGA that could have
26 been premised on the facts, claims, causes of action, or legal theories described
above and in Plaintiff’s First Amended Complaint, including but not limited to
27 California Labor Code sections 201, 202, 226(a), 226.3, 226.7, 227.3, 510, 512, 558,
28 1194, 2802, and 2699 (the “Released Claims”).

Plaintiff and the State of California shall be deemed to have, and by operation of the
Order granting approval of this Agreement, shall have fully, finally, and forever
released, relinquished, and discharged each and all of the Released Parties from the
Released Claims that arose during the PAGA Release Period. As a result of this
release, Aggrieved Employees will be unable to bring a claim under, or recover in

¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*
(2009) 46 Cal. 4th 969, 986 (concluding that “with respect to the recovery of civil penalties,
nonparty employees as well as the government are bound by the judgment in an action brought
under the act . . .”).

1 any other claim brought under the PAGA for any violations of the Released Claims
2 that took place during the PAGA Release Period.

3 See Settlement Agreement, at § 6.01.

4 5. Settlement administration, which is to be paid from the PAGA Gross Settlement
5 Amount, shall not exceed \$2,925. See Declaration of Kevin Lee (“Lee Decl.”), ¶ 16; **Exhibit B** to
6 Lee Decl. Phoenix Settlement Administrators, a reputable settlement administration company, has
7 agreed to administer the settlement for this amount, submitting a competitive bid. *Id.* at ¶¶ 5-15;
8 **Exhibit A.**

9 6. As detailed herein, Plaintiff’s counsel seeks an award of attorneys’ fees and
10 litigation costs totaling \$58,553.47, and Plaintiff seeks an enhancement and general release
11 payment of \$7,500. See Settlement Agreement, at §§ 4.02(a)(2)-(3).

12 7. Finally, under the terms of the Settlement Agreement, the value of checks
13 uncashed more than 180 days after issuance shall be remitted to the Unclaimed Property Fund of
14 the California State Controller’s Office to be held in the name of the Aggrieved Employee. See
15 Settlement Agreement, at ¶ § 4.02(a)(8). The Parties agree that it is in the best interest of the
16 Aggrieved Employees for the value of checks uncashed more than 180 days after issuance to be
17 remitted to the Unclaimed Property Fund of the California State Controller’s Office to be held in
18 the name of the Aggrieved Employee. *Id.* Counsel for Plaintiff attests that their office regularly
19 receives calls from class members or aggrieved employees years after a case has settled to inquire
20 about obtaining their settlement share because they did not cash their check in time, lost their
21 check, or never received their check. Gaines Decl. at ¶ 29. By remitting the unclaimed checks to
22 the State Controller, the Aggrieved Employees have a chance to receive their individual
23 settlement payment after the check cashing deadline. *Id.*

24 *Cy pres*, expanded to its “full implication,” is *cy pres comme possible*, which means “as
25 near as possible.” *Estate of Jackson* (1979) 92 Cal.App.3d 486, 489. *Cy pres* “is the doctrine that
26 equity will, when a charity is originally or later becomes impossible, inexpedient, or
27 impracticable of fulfillment, substitute another charitable object which is believed to approach
28 the original purpose as closely as possible.” *Id.* Here, the nearest possibility for the Aggrieved

1 Employees to obtain their recoveries is to allow the uncashed checks to be remitted to the
2 Unclaimed Property Fund of the California State Controller’s Office to be held in the name of
3 the Aggrieved Employee.

4 **III. LEGAL ARGUMENT**

5 **A. Standards for Approval of a PAGA Settlement**

6 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
7 statute, which states that the “[t]he superior court shall review and approve any settlement of any
8 civil action filed pursuant to this part.” *See Labor Code* § 2699(1)(2).

9 As with any settlement, the Court must be mindful in conducting its inquiry that
10 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
11 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222,
12 24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding of
13 absolutes and an abandoning of highest hopes’” [*Officers for Justice v. Civil Service Com.*, 688
14 F.2d 615, 624 (9th Cir., 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
15 of wasteful and expensive litigation that induce consensual settlements.” *See id.*, at 625. As such,
16 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
17 or “judged against a hypothetical or speculative measure of what might have been achieved by the
18 negotiators.” *See id.*

19 Although the operative PAGA statute does not set forth the criteria on which a PAGA
20 settlement is to be judged, California law does state that some of the factors for review of a class
21 action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. section 382 and Cal. Rules of Court,
22 Rule 3.769, may be “useful in evaluating the fairness of a PAGA settlement” to the reviewing court.
23 *See Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56, 77 (“Thus, while PAGA does not require
24 the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for
25 settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public
26 and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors
27 used to evaluate class action settlements bear on a settlement's fairness—including the strength of
28 the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of

1 further litigation, and the settlement amount—these factors can be useful in evaluating the fairness
2 of a PAGA settlement.”) Courts within California have continued to approve settlements of PAGA
3 claims using Rule 23 criteria². However, it is important to underscore that not all Rule 23 factors
4 can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered
5 a class action but a law enforcement action, and therefore does not have to meet the requirements
6 of Rule 23.” *See Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan.
7 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2,
8 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010).
9 Based thereon, a court’s review of a PAGA settlement necessarily implicates the following unique
10 features that render the approval process completely distinct from approval of a class action
11 settlement under Rule 23 or C.C.P. § 382 and Cal. Rules of Court, Rule 3.769.

12 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
13 concerned with the amount which “Aggrieved Employees” are to receive, but rather, must focus on
14 the total settlement amount in achieving PAGA’s objective.

15 While “[a PAGA] action is . . . designed to protect the public and penalize the employer for
16 past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take
17 into account the fact that settlement of a PAGA claim – like any settlement – involves a
18 “compromise” that stops short of rendering findings of liability and damages. Moreover, the Court
19 must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for
20 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties
21 for the government that otherwise may not have been assessed and collected by overburdened state
22

23 ² As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
24 balancing of several factors which may include, among others, some or all of the following: [1] the
25 strength of plaintiffs’ case; [2] the risk, expense, complexity, and likely duration of further
26 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
27 in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the
28 experience and views of counsel; [7] the presence of a governmental participant; and [8] the
reaction of the class members to the proposed settlement.” *See Linney v. Cellular Alaska P’ship*,
151 F.3d 1234, 1242 (9th Cir., 1998). “Not all of these factors will apply to every class action
settlement” and “[u]nder certain circumstances, one factor alone may prove determinative in
finding sufficient grounds for court approval.” *See Nat’l Rural Telcoms. Coop. v. DIRECTV, Inc.*,
221 F.R.D. 523, 525-526 (C.D. Cal., 2004).

enforcement agencies.” *See Ochoa-Hernandez v. CJADER Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774, 12 (N.D. Cal. Apr. 2, 2010).

B. The Settlement Meets All the Criteria For Approval

Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA considerations detailed above – the proposed Settlement embodies all of the key features of a settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

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

In conducting a review of a settlement, it is generally recognized that an “agreement . . . reached through arms-length negotiation between experienced parties . . . is entitled to a presumption of fairness.” *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377, 44 (C.D. Cal. Apr. 12, 2010).

A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-length negotiations brokered through a respected third party neutral [Gaines Decl. at ¶ 25], (2) was negotiated by Counsel with significant experience in similar wage and hour litigation [*see id.*, at ¶¶ 2-5, 35-37 and **Exhibit A**], (3) which occurred after Counsel had conducted sufficient investigation to evaluate the strength and potential value of the PAGA claims, as well as evaluating the risks of litigating this claim through trial. *See id.*, at ¶¶ 12-24, 30-33. Based thereon, the Court should give considerable weight to the competency and integrity of counsel in assuring itself that the Settlement Agreement represents an arms-length transaction entered without self-dealing or other potential misconduct.

2. The Relative Strength Of The PAGA Claim, And the Realistic Range of Outcomes In The Litigation, Strongly Favor Approval of the Settlement

The relative strength of the PAGA claim brought by Plaintiff weighs in favor of the Court finding that the settlement is fair, adequate, and reasonable, as Defendant maintained numerous defenses to the theories of penalty-liability put forward by Plaintiff that, if successful, had the potential to completely eliminate any recovery.

This case addresses violations of important employee protections embodied in the

1 California Labor Code – namely, that Defendant failed to properly compute commission wages and
2 other non-base hourly wages earned by Plaintiff and Aggrieved Employees into their regular rate
3 for purposes of paying them overtime and double time wages at the correct rates, in violation of
4 Labor Code §§ 510, 558, and 1194; failed to pay Plaintiff and Aggrieved Employees all minimum
5 wages and overtime wages earned, in violation of Labor Code §§ 510, 558, and 1194; failed to pay
6 Plaintiff and Aggrieved Employees all overtime and double-time wages due, in violation of Labor
7 Code §§ 510, 558, and 1194; failed to provide Plaintiff and Aggrieved Employees with legally
8 compliant rest periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7, 510,
9 558, and 1194; failed to provide Plaintiff and Aggrieved Employees with legally compliant meal
10 periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7, 510, 558, and 1194;
11 failed to issue accurately itemized wage statements to Plaintiff and Aggrieved Employees, in
12 violation of Labor Code §§ 226(a) and 226.3; failed to reimburse Plaintiff and Aggrieved
13 Employees for necessary business expenses incurred, in violation of Labor Code § 2802; failed to
14 pay Plaintiff and Aggrieved Employees all accrued, but unused vacation wages both during and at
15 the separation of employment, in violation of Labor Code §§ 201-202 and 227.3; and failed to
16 timely pay Plaintiff and Aggrieved Employees all wages due at the separation of their employment,
17 in violation of Labor Code §§ 201-202. *See* Gaines Decl. at ¶ 30.

18 Defendant’s realistic maximum theoretical exposure in this Action, without stacking
19 penalties, totals approximately \$174,900 computed by multiplying 1,749 aggregate pay periods by
20 \$100 each. *See* Gaines Decl. at ¶ 30. There is no California authority that expressly permits the
21 practice of counting multiple violations/penalties that occur within the same pay period, known as
22 “stacking” penalties. Plaintiff’s Counsel is aware of no court that has actually stacked such PAGA
23 penalties for multiple violations (meaning the “market” for PAGA settlements is based on no
24 stacking of penalties) and given the circumstances of this case, it is unlikely that this Court would
25 impose a massive penalty by stacking the PAGA penalty claims against Defendant. *See* Gaines
26 Decl. at ¶ 31. Although stacking penalties is not unlawful, the majority of cases that address awards
27 of PAGA penalties focus on the court’s discretion to reduce awards. *See Romo v. GMRI, Inc.*, 2014
28 WL 11320647, at *7 (C.D. Cal. Feb. 18, 2014) (“The court retains discretion over awards under a

1 PAGA claim”); *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413, at *4 (C.D. Cal.
2 Jan. 31, 2011) (“The PAGA text also provides the Court with the discretion to limit the amount
3 Plaintiffs may recover from the employer.”); *Bright v. 99c Only Stores* (2010) 189 Cal. App. 4th
4 1472, 1480 n.8 (“The trial court has discretion to award less than the maximum amount of the civil
5 penalty”). Based thereon, the non-stacking/one penalty per pay period is an appropriate
6 evaluation for maximum potential exposure in this case.

7 Additionally, the Ninth Circuit has held that heightened penalties are not appropriate where
8 the defendant was not notified by the Labor Commissioner or any court that it was subject to the
9 California Labor Code. *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021). *See also*
10 *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 340 (reversing heightened penalties
11 awarded by trial court for Labor Code § 226.3 because “the plain language of the statute [Labor
12 Code § 226.3] provides that heightened penalties apply only where the employer fails to provide
13 wage statements or fails to keep required records.”) Further, courts are often hesitant to award a
14 heightened penalty where there is no prior citation by the Labor Commissioner. *See Bernstein* at
15 1144. *See also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (holding that
16 “[u]ntil the employer has been notified that it is violating a Labor Code provision...the employer
17 cannot be presumed to be aware that its continuing underpayment of employee’s is a violation
18 subject to penalties.”) (internal quotations omitted). Defendant was not notified by the Labor
19 Commissioner or any court that it was subject to the California Labor Code, and has not been
20 previously cited by the Labor Commissioner for Labor Code violations. Therefore, any violations
21 prior to Plaintiff’s September 11, 2020 LWDA letter are not subject to heightened penalties.

22 Furthermore, Defendant contends it acted within the requirements of California law at all
23 times as to all Aggrieved Employees. In particular, Defendant contends that it paid all employees
24 all wages due. Defendant also contends that it has compliant meal and rest break and expense
25 reimbursement practices. Defendant further contends that not every pay period at issue involved
26 an alleged Labor Code violation subject to civil penalties. Moreover, Defendant maintained that
27 even if the Court did award penalties, the Court could and would *substantially* reduce the penalties
28 awarded based on the discretionary factors contained in Labor Code § 2699(e)(2) (“In any action

1 by an aggrieved employee . . . , a court may award a lesser amount than the maximum civil penalty
2 amount specified by this part if, based on the facts and circumstances of the particular case, to do
3 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”).
4 Defendant also argued that it had valid and enforceable arbitration agreements, which could
5 preclude the litigation of PAGA claims on a representative basis altogether, given the United States
6 Supreme Court’s ruling in *Viking River Cruises v. Moriana*, 142 S.Ct. 734 (2022). See Gaines Decl.,
7 ¶ 32.

8 Based on these disputes, which had the potential to completely eliminate Plaintiff’s
9 recovery, the range of realistic “litigation outcomes” on the Plaintiff’s PAGA claim was defined
10 by a “maximum possible liability” amount of approximately \$174,900 [Gaines Decl., ¶ 33], and a
11 net-zero recovery based on the defenses asserted by Defendant. Notwithstanding the existence of
12 such issues, the Settlement achieves a significant benefit – approximately 74% recovery of the
13 maximum possible liability. As such, this factor weighs very heavily in favor of resolution by way
14 of the compromise set forth in the Settlement Agreement. Gaines Decl., ¶ 33.

15 **3. The Risk, Expense, and Complexity of Further Litigation Balances**
16 **Strongly in Favor of Approval of the Settlement**

17 Approval of the Settlement Agreement is also appropriate in light of the risk, expense, and
18 complexity of further litigation. As discussed above, the Settlement Agreement takes into
19 consideration the specific factual and legal hurdles faced by Plaintiff in establishing Defendant’s
20 penalty-liability in this case, which again, may have resulted in a net-zero recovery. Any recovery
21 on these claims is not certain. And even when liability is found, PAGA claims are discretionary,
22 such that the Court could decline to award their full value. Some of Plaintiff’s claims are also
23 derivative, and as such, Plaintiff must prevail on her underlying Labor Code claims in order to
24 prevail on the derivative claims. These risks – when balanced with the fact that the settlement
25 achieved a very significant recovery (as demonstrated below), and that further litigation posed a
26 risk of diminishing such recovery by increasing litigation expenses – weigh strongly in favor of
27 settlement approval.
28

1 **4. The Benefits Conferred by the Settlement Balance in Favor of Approval**

2 The Settlement Agreement provides a significant monetary benefit that falls well within
3 “the range of an acceptable settlement” under the circumstances, which is the standard on which
4 the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and
5 reasonable even where it only provides a fraction of what could have been obtained at trial:

6 The proposed settlement is not to be judged against a hypothetical or
7 speculative measure of what might have been achieved by the
8 negotiators.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d at
9 625 (emphasis in original). Thus, “the very essence of a settlement is
10 compromise, ‘a yielding of absolutes and an abandoning of highest
11 hopes.’” *Id.* at 624 (citations omitted). As the Second Circuit has
12 pointed out: “The fact that a proposed settlement may only amount
 to a fraction of the potential recovery does not, in and of itself, mean
 that the proposed settlement is grossly inadequate and should be
 disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 &
 n.2 (2nd Cir. 1974).

13 *See Linney, supra*, 151 F.3d at 1242.

14 Here, after all deductions are made for administration, an enhancement award, attorneys’
15 fees and costs, \$61,021.53 will be paid out, of which \$45,766.15 (i.e. 75%) will go to the LWDA,
16 and \$15,255.38 (i.e. 25%) will go to the Aggrieved Employees, as required by Labor Code § 2699(i)
17 (“civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to
18 the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”).
19 *See Settlement Agreement*, at §§ 4.02(a)(1) – (4).

20 This result is exceptional, as settlements of PAGA claims impacting thousands of
21 individuals have been approved as reasonable for amounts far less than the payment in this case.
22 *See e.g., Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27,
23 2012) (“Defendant has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the
24 \$10,000, 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will
25 benefit the class The Court finds that the PAGA payment is set at a reasonable amount, and it
26 shall be approved.”); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D.
27 Cal. Oct. 29, 2012) (“GTI agrees to allocate \$10,000 to Plaintiff’s PAGA claims, and will pay
28 \$7,500 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports

1 with settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
2 allocation of the Settlement to Plaintiff's PAGA claim."); *Schiller v. David's Bridal, Inc.*, 2012
3 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) ("Pursuant to the Settlement Agreement, the
4 parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .
5 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
6 be approved."); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
7 2012) ("Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
8 California Labor and Workforce Development Agency The Court finds that the PAGA
9 payment is set at a reasonable amount, and it shall be approved.").³

10 Thus, notwithstanding the existence of issues having the potential to completely eliminate
11 recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds
12 typical PAGA awards routinely approved by the courts, but it also recovers monies for Aggrieved
13 Employees which they otherwise would not receive. As such, this factor balances strongly in favor
14 of approval of the Settlement.

15 **5. The Scope of the Release is Narrowly Tailored**

16 As discussed above, the California Supreme Court has concluded that in the context of
17 PAGA "the nonparty employees, because they were not given notice of the action or afforded any
18 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
19 penalties." *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in
20 exchange for the foregoing consideration is limited to the civil penalties asserted in the Action
21 under Labor Code §§ 2698 *et seq.* *See* Settlement Agreement, at § 6.01. As such, the scope of the
22 release in the Settlement Agreement is narrowly tailored and favors approval of the Settlement.

23 **6. The Experience and Views of Plaintiff's Counsel Favor Approval of the Settlement**

24 Plaintiff's Counsel has a significant degree of experience in complex wage and hour
25

26 ³ Significantly, each of the above-cited actions involved a *higher* number of "aggrieved employees"
27 than at issue here. *See Franco*, 2012 U.S. Dist. LEXIS 169057, 14 ("2,055 Class Members were
28 ultimately identified"); *Garcia*, 2012 U.S. Dist. LEXIS 160052, at 12 (class comprised of
"approximately 1,869 individuals"); *Schiller*, 2012 U.S. Dist. LEXIS 80776, 16 ("3,327 California
Class members were ultimately identified"); *Gong-Chun*, 2012 U.S. Dist. LEXIS 96828, 18 ("2,051
California Class Members were ultimately identified").

1 litigation. *See* Gaines Decl., ¶¶ 2-5, 35-37, 41, Gaines Decl. at **Exhibit A**. In the view of Plaintiff's
2 Counsel, the benefit conferred by the proposed Settlement is fair, reasonable, and adequate under
3 the circumstances, as it reflects a reasoned compromise which takes into consideration the risks
4 inherent in this case, which had the potential to completely eliminate recovery. Gaines Decl., ¶¶
5 12-24, 30-33, 40. As such, this factor balances in favor of approval of the Settlement.

6 **7. The Extent of Discovery Completed And The Stage Of The Proceedings**
7 **Favor Approval of the Settlement**

8 In evaluating this element, the Court should be mindful that "formal discovery is not a
9 necessary ticket to the bargaining table" [*Linney*, 151 F.3d at 1239], as the relevant consideration
10 is "whether 'the parties have sufficient information to make an informed decision about
11 settlement.'" *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at
12 26 (C.D. Cal. Nov. 9, 2011).

13 Here, the extent of informal discovery conducted was sufficient to enable Plaintiff's
14 Counsel to evaluate the strength and value of the claim for purposes of settlement. Gaines Decl.,
15 ¶¶ 12-24. Prior to mediation, Defendant provided Plaintiff with documents related to the policies
16 and practices at issue in this PAGA action. As discussed above, Plaintiff's Counsel's investigation
17 was sufficient to, among other things, tabulate with precision the total number of alleged Labor
18 Code violations at issue during the PAGA Release Period and identify the total number of
19 individuals falling within the definition of "Aggrieved Employee" for the PAGA Release Period.

20 Based on Plaintiff's Counsel's experience litigating wage and hour claims, such
21 investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate
22 the strength of this claim for purposes of settlement. *See* Gaines Decl., ¶¶ 2-5; 35-37.

23 **8. Additional Factors Weigh In Favor Of Finding The Terms Of The Proposed**
24 **Settlement To Be Fair, Adequate, And Reasonable**

25 In addition to the factors presented above, the proposed Settlement does not possess any
26 obvious deficiencies. The Settlement contemplates entry of an Order (submitted concurrently
27 herewith) which approves the Settlement and dismisses the Action with prejudice. Section 7.14 of
28 the Settlement Agreement and paragraph 8 of the Proposed Order authorize the Court to retain
jurisdiction to enforce the Settlement Agreement. This procedure effectively disposes of the Action

1 in its entirety, documents the Court's approval of the Settlement as required by PAGA, and allows
2 for Court intervention if necessary to enforce the terms of the Settlement Agreement. In sum, under
3 the applicable standards for approval of PAGA settlements in California, the settlement in this case
4 meets the standards for approval.

5 **IV. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER THEIR**
6 **REASONABLE FEES AND COSTS**

7 Pursuant to the terms of the Settlement, Plaintiff's Counsel seeks attorneys' fees of one-
8 third of the PAGA Gross Settlement Amount (\$43,333.33) and reimbursement of litigation costs
9 of \$15,220.14, falling within the bounds authorized by the Settlement Agreement. *See* Settlement
10 Agreement, at § 4.02(a)(2). Plaintiff's Counsel's entitlement to an award of attorneys' fees and
11 costs is warranted on multiple independent grounds. Further, the amount of fees requested falls
12 well within the range of reasonableness under applicable standards, as the amount requested
13 constitutes a "percentage of the fund" deemed reasonable in similar wage and hour settlements of
14 this size and approved by California courts, which is not only warranted based on the contingency
15 risk Plaintiff's Counsel has agreed to incur for the benefit of the State of California and Aggrieved
16 Employees, but also based on the significant results achieved, as the Settlement obtains a recovery
17 substantially above the range approved as reasonable by California state and federal courts. Based
18 thereon, Plaintiff's Counsel respectfully requests that the Court enter an order approving the fee
19 and cost amounts requested.

20 **A. Plaintiff's Counsel Are Entitled To Recover Their Reasonable Fees And**
21 **Costs As A Matter Of Right**

22 Plaintiff's Counsel are entitled to recover attorneys' fees and costs under the "common
23 fund" doctrine as a matter of right. As held by the U.S. Supreme Court, "a lawyer who recovers a
24 common fund for the benefit of persons other than herself or his client is entitled to a reasonable
25 attorney's fee from the fund as a whole." *See Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.

26 Courts have long recognized the "common fund" or "common benefit" doctrine, under
27 which attorneys who create a common fund or benefit for a group of persons may be awarded their
28 fees and costs to be paid out of the fund. *Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25,
34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
Association v. City of Glendale (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)

1 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
2 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

3 The California Supreme Court has held that, “when a number of persons are entitled in
4 common to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all
5 results in the creation or preservation of that fund, such Plaintiff or Plaintiffs may be awarded
6 attorneys’ fees out of the fund.” *Serrano III, supra*, 20 Cal.3d at 34, quoting *D’Amico*, 11 Cal.3d
7 1; *see also Boeing, supra*, 444 U.S. at 478 (“[A] lawyer who recovers a common fund for the benefit
8 of persons other than herself or his client is entitled to a reasonable attorney’s fee from the fund as
9 a whole.”); *Mills, supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common
10 fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter
11 Group) at § 17:172.3 explains the common fund doctrine as follows:

12 Where the lawsuit results in the recovery of a fund or property
13 benefiting others as well as Plaintiffs (e.g., a class action), the court
14 has inherent equitable power to order Plaintiffs’ attorney fees paid
15 out of the common fund or property [citations]. Such fee spreading
assures that all of those benefited by the litigation pay their fair share
of obtaining the recovery.

16 The percentage-of-the-fund approach appears to be the preferred method of awarding fees
17 in traditional common fund cases, such as this case. Where the settlement amount is a “certain or
18 easily calculable sum of money,” use of the percentage-of-the-fund method is appropriate. *Serrano*
19 *III*, 20 Cal. 3d at 35.

20 In *Glendale City Employees’ Association v. City of Glendale* (1975) 15 Cal.3d 328, 341
21 fn.19, the California Supreme Court upheld an attorney’s fee award based on a percentage of the
22 common benefit obtained in a lawsuit by a city employee’s association for retroactive wages:

23 It is not necessary to find this suit a proper class action in order to
24 uphold the portion of the judgment awarding counsel for Plaintiffs
25 25 percent of all retroactive salaries and wages received. That award
26 may be sustained under the rule that a litigant who creates a fund in
27 which others enjoy beneficial rights may require those beneficiaries
to pay their fair share of the expense of litigation. (*See Sprague v.*
Ticonic National Bank (1939) 307 U.S. 161, 159; *Estate of Stauffer*
(1959) 53 Cal.2d 124, 132).

28 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court
stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which

1 others derive benefits may require those passive beneficiaries to bear a fair share of the litigation
2 costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111,
3 the California Supreme Court recognized that the common benefit doctrine has been applied
4 “consistently in California when an action brought by one party creates a fund in which other
5 persons are entitled to share.”

6 Numerous appellate courts have ruled similarly. *See e.g., Knoff v. City and County of San*
7 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
8 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable
9 powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and
10 expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
11 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit
12 created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974)
13 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners
14 of residential property in an inverse condemnation action).

15 Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth,
16 Tenth, Eleventh and the D.C. Circuit—have endorsed the “percentage fee” method for determining
17 reasonable attorneys’ fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.* 74 F.
18 Supp. 2d 393, 396-398 (S.D.N.Y. 1999) (describing the overwhelming weight of federal authority
19 in favor of the percentage fee method); *see also, Lealao v. Beneficial California, Inc.* (2000) 82
20 Cal.App.4th 19, 30-31 (describing same).

21 Thus, as Plaintiff’s Counsel has expended a significant amount of time and money to secure
22 a \$130,000 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S. Dist.
23 LEXIS 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees have
24 resulted in the preservation or recovery of a certain or easily calculable sum of money-out of which
25 sum or ‘fund’ the fees are to be paid.”)], and in doing so, has exclusively borne the risk of loss for
26 such expenditures of time and expenses (as the LWDA elected not to take the case after receiving
27 the PAGA Notice), Plaintiff’s Counsel is entitled to claim reasonable fees from that fund under
28

1 applicable precedent.⁴

2 **B. The Fee Amount Requested Is Reasonable**

3 In addition to the forgoing, Plaintiff's Counsel's request for attorneys' fees in the amount
4 of one-third of the \$130,000 PAGA Gross Settlement Amount falls well within the "zone of
5 reasonableness." It is important to highlight at the outset that the fee amount presently sought is
6 not extraordinary, but actually falls at the "average" fee deemed reasonable under California State
7 court authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in
8 wage and hour class actions that result in recovery of a common fund under \$10 million." *See e.g.,*
9 *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). This fee
10 falls directly within that range.

11 Moreover, Plaintiff's Counsel agreed to incur the contingency risk for the benefit of the
12 State of California (which elected not to take the case after receiving the PAGA Notice). Gaines
13 Decl., ¶¶ 38-43. The significant results achieved, and the underlying facts therefrom, justify
14 Plaintiff's Counsel's requested fee as reasonable under all applicable standards.

15 **C. The Fee Amount Allocated by The Settlement Agreement Is Within the**
16 **Zone of Reasonableness Under the "Percentage of the Fund" Method**

17 The amount of fees requested by Plaintiff's Counsel is reasonable based on standards
18 applicable to the "percentage of the fund" method. "When assessing whether the percentage
19 requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of
20 litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the
21 financial burden; and (f) the awards made in similar cases." *See Vasquez v. Coast Valley Roofing,*
22 *Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

23
24 ⁴ Plaintiff's Counsel is also entitled to recover attorney's fees and costs as a matter of right under
25 the PAGA statute [*Labor Code* § 2699(g)(1) ("Any employee who prevails in any action shall be
26 entitled to an award of reasonable attorney's fees and costs.")], and under *C.C.P.* § 1021.5, as the
27 instant PAGA action was by definition "for the public benefit" and secured monetary awards for
28 approximately 300 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.*
(2007) 154 Cal.App.4th 1, 16-17 (2007) ("Estrada's personal motivation does not diminish the fact
that he pursued this public interest class action not only for himself but on behalf of a class
comprised of FedEx's past and present drivers and ultimately obtained awards for 209 drivers. []
No more is required to satisfy the 'significant benefit,' 'public interest,' and 'large class of persons'
requirements of Code of Civil Procedure section 1021.5.").

1 First, the results achieved by Plaintiff's Counsel are significant as Defendant has agreed to
2 pay \$130,000 under the Settlement. This is a significant recovery given the risks associated with
3 obtaining any recoverable penalties. Gaines Decl., ¶¶ 12-24, 30-33. Further, the settlement of
4 PAGA claims impacting a comparable number of individuals have been approved as reasonable for
5 between \$7,500.00 and \$15,000.00. *See* Section III.B.4., *supra*.

6 Second, such results were achieved in the face of significant risks. As explained above,
7 Defendant maintained defenses to Plaintiff's PAGA claims that very well could have resulted in a
8 net-zero recovery at trial.

9 Third, notwithstanding this risk of loss, Plaintiff's Counsel undertook representation of the
10 instant PAGA claim for the benefit of the State of California on a contingency basis. *See* Gaines
11 Decl. at ¶¶ 38-43. This required Plaintiff's Counsel to personally assume the risk of nonpayment
12 in securing the substantial financial benefit the State of California stands to receive, and also
13 constitutes a "loan" on Plaintiff's Counsel services – both of which are factors that warrant fee
14 enhancement under applicable California Supreme Court authority:

15 One of the most common fee enhancers . . . is for contingency risk.
16 We reaffirmed the propriety of a contingency risk enhancement in
17 Ketchum: "The economic rationale for fee enhancement in
18 contingency cases has been explained as follows: 'A contingent fee
19 must be higher than a fee for the same legal services paid as they are
20 performed. The contingent fee compensates the lawyer not only for
21 the legal services he renders but for the loan of those services. The
22 implicit interest rate on such a loan is higher because the risk of
23 default (the loss of the case, which cancels the debt of the client to
24 the lawyer) is much higher than that of conventional loans.' (Posner,
25 *Economic Analysis of Law* (4th ed. 1992) pp. 534, 567.) 'A lawyer
26 who both bears the risk of not being paid and provides legal services
27 is not receiving the fair market value of his work if he is paid only
28 for the second of these functions. If he is paid no more, competent
counsel will be reluctant to accept fee award cases."

Graham v. DaimlerChrysler Corp. (2004) 34 Cal.4th 553, 579-580.

25 Finally, the percentage requested by Plaintiff's Counsel falls within a typical range,
26 particularly in light of the modest settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796,
27 23 ("[C]ourts may award attorney's fees in the 30-40% range in wage and hour class actions that
28 result in recovery of a common fund under \$10 million." *See also Crandall v. U-Haul*

1 *International, Inc.*, LASC Case No. BC178775 (awarding attorneys’ fees of 40% of a common
2 fund).

3 Attorneys’ fee awards in the amount sought here are well-established by California law and
4 practice. Accordingly, Plaintiff’s Counsel’s fee request is fair and reasonable, and is consistent with
5 the awards in California and the Ninth Circuit. It is also reasonable given the history of this action
6 and the results obtained.

7 **D. While the Requested Award of Attorneys’ Fees is Reasonable as a**
8 **Percentage of the Common Fund, It is Further Confirmed by a**
9 **Lodestar Cross-Check**

10 The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* (2016) 1
Cal.5th 480, 506, that “[t]he percentage of fund method survives in California class action cases.”
11 Specifically, the *Laffitte* Court held:

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

15 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when
16 a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff
17 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or
18 plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d
19 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties, the trial
20 court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v.*
21 *Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
22 method for calculating attorneys’ fees more accurately reflects the results achieved for the putative
23 class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’
24 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
25 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
26 percentage-of-recovery method is generally favored in common fund cases because it allows courts
27 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
28 failure.’”).

1 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with
2 tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar
3 (hours worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed
4 to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-
5 06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold
6 further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the
7 court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to
8 evaluate the reasonableness of a requested percentage fee.”)

9 Here, Plaintiff’s Counsel’s fee request of one-third of the PAGA Gross Settlement Amount
10 is fair and reasonable based on a percentage of the recovery, and as well as when confirmed with a
11 lodestar cross-check. First, “regardless whether the percentage method or the lodestar method is
12 used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*
13 (2008) 162 Cal.App.4th 43, 66, fn. 11. This is also consistent with Plaintiff’s Counsel’s experience
14 in similar wage and hour class action matters. *Gaines Decl.*, ¶¶ 2-5; 35-37. Thus, the percentage
15 sought by Plaintiff’s Counsel here is reasonable.

16 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
17 multiplying the number of hours reasonably expended by each attorney or legal staff member by
18 their reasonable hourly rates. *See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 48. The court then
19 enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty
20 and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49;
21 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92
22 Cal.App.4th 819, 834 (“There is no hard-and-fast rule limiting the factors that may justify an
23 exercise of judicial discretion to increase or decrease a lodestar calculation”).

24 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
25 *Chavez, supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of*
26 *Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (approving multiplier of ~2.34); *Coalition*
27 *for L. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving
28 multiplier of ~2.04). In representative actions such as this one, where the value of the benefit

1 conferred to the class “can be monetized with a reasonable degree of certainty,” a court may “adjust
2 the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
3 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
4 litigation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557. In doing so, “the court
5 determines, retrospectively, whether the litigation involved a contingent risk or required
6 extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate
7 the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at 503-05.

8 In this case, Plaintiff’s Counsel is submitting an attorney fee request equaling \$43,333.33.
9 Based on a projected final lodestar of \$55,155, this yields a “negative multiplier” of approximately
10 0.78 under the \$43,333.33 fee request. Gaines Decl., ¶ 34; **Exhibit D** to Gaines Decl. The billing
11 rates used to compute the lodestar are reasonable in view of the evidence submitted herewith.
12 Gaines Decl., ¶¶ 2-5; 35-37; **Exhibit D**.

13 Based thereon, and for the reasons discussed above (the significant risk in continuing to
14 litigate this matter and in seeking to obtain penalties based on the claims asserted; the risks and
15 burden involved in representation on a contingency basis; the knowledge and experience of
16 Plaintiff’s Counsel; and the value obtained by Plaintiff’s Counsel for the Aggrieved Employees), it
17 is fair and reasonable to account for these risks and compensate Plaintiff’s Counsel with a fee award
18 of \$43,333.33 (one-third of the PAGA Gross Settlement Amount).

19 **E. Plaintiff’s Counsel’s Request for Costs is Reasonable**

20 In the course of this litigation, Plaintiff’s Counsel incurred out-of-pocket costs of
21 \$15,220.14.⁵ *See* Gaines Decl. at ¶ 44, **Exhibit E**. As demonstrated in the Gaines Declaration
22 submitted herewith, the incurred costs included filing fees, postage, expert analysis fees, and
23 mediation fees. *Id.* Such costs are appropriate for cost reimbursement in these types of cases. *See*
24 *e.g., In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (C.D. Cal. 1989)
25 (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); *see also, In re GNC Shareholder*
26 *Litigation* 668 F.Supp. 450, 452 (W.D. Pa. 1987).

27
28 ⁵ Plaintiff’s Counsel incurred out-of-pocket costs lower than what is allocated for in the Settlement Agreement. *See* Settlement Agreement at § 4.02(a)(2).

1 The costs incurred by Plaintiff's Counsel in this litigation benefited Plaintiff, Aggrieved
2 Employees, and the State. Plaintiff's cost request is reasonable and represents the costs that
3 Plaintiff's Counsel was required to incur to prosecute this action and should therefore be granted.

4 V. **THE ENHANCEMENT AND GENERAL RELEASE PAYMENT SOUGHT BY**
5 **PLAINTIFF IS REASONABLE AND SHOULD BE APPROVED**

6 The Parties have agreed that Plaintiff will be paid an enhancement and general release
7 payment in the amount of \$7,500. This payment is intended to recognize the time and effort that
8 Plaintiff spent on behalf of other Aggrieved Employees and the State and for Plaintiff's full general
9 release of claims against Defendant. See Settlement Agreement at §§ 4.02(a)(3) and 6.02. See
10 Declaration of Pamela Williams, submitted herewith. See Gaines Decl., ¶ 45.

11 As to an incentive award, case law supports the award of incentive payments in private
12 attorney general actions. The Ninth Circuit has recognized that a named plaintiff's "willingness to
13 act as a private attorney general" may justify the award of an incentive payment. *Rodriguez v. West*
14 *Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub*
15 *LLC*, 2013 WL 12415482 (E.D. Cal., Sep. 6, 2013), the United States District Court for the Eastern
16 District of California approved a similar PAGA-only settlement and awarded a service payment to
17 the representative plaintiff in recognition of his efforts.

18 The traditional bases for awarding incentive awards in class settlements support the award
19 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
20 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive
21 awards and held that "the rationale for making enhancement or incentive awards to named Plaintiffs
22 is that he or she should be compensated for the expense or risk he has incurred in conferring a
23 benefit" on others. *Id.* at 806. That rationale applies synonymously in this Action.

24 Without Plaintiff's efforts, there would be no recovery at all. The requested award is
25 appropriate to compensate Plaintiff for the risk and expense she incurred in conferring a benefit on
26 the Aggrieved Employees and the State of California, as well as for her full general release of all
27 claims against Defendant. As a result of the named Plaintiff's efforts, the Aggrieved Employees
28 will receive monetary settlement payments, and the State of California will receive \$45,766.15 to

1 be put toward education about and enforcement of California's labor laws. *See* Gaines Decl., ¶ 46.

2 In this case, Plaintiff performed the following tasks, among others: (1) assisted Counsel in
3 investigating and substantiating the claims alleged in this action, including multiple interviews with
4 counsel to review facts, documents, and Defendant's policies; (2) assisted in the preparation of the
5 Complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the
6 settlement of this litigation. *See generally*, Williams Declaration. Moreover, as with any plaintiff
7 who files a civil action, the named Plaintiff undertook the financial risk that, in the event of a
8 judgment for Defendant in this action, she could have been personally responsible for any
9 attorneys' fees and costs awarded in Defendant's favor. The award of such payment to Plaintiff is
10 especially warranted in a case like this one. It is necessary to ensure that employees continue to
11 bring forth claims that enforce their rights. Individuals like the named Plaintiff (and most aggrieved
12 employees) would have little, if any, recourse without the representative action device. Most
13 aggrieved employees – like the named Plaintiff – would be fearful of retaliation in response to filing
14 any lawsuit, much less a representative action suit. Plaintiff must be commended for pursuing her
15 claims; the modest payment sought here is an appropriate means of doing so.

16 Plaintiff is also entering into a full general release against Defendant and its Released
17 Parties, which is far broader than the release by other Aggrieved Employees. Specifically,
18 Aggrieved Employees are releasing only limited PAGA civil penalty claims, while Plaintiff is
19 releasing all claims which she asserts or could assert against Defendant. *See* Settlement Agreement
20 at § 6.02. The value of her individual wage and hour claims is substantial. Gaines Decl. at ¶ 47;
21 **Exhibit F**. No other Aggrieved Employee is subject to this broad form of release. *Id.* This broad
22 release by Plaintiff was negotiated (and necessary) to resolve the Action. To resolve the Action,
23 Defendant sought a full general release of Plaintiff's claims. *Id.* at ¶ 49.

24 Without the resolution and release of Plaintiff's individual claims, litigation would continue
25 in a piecemeal fashion. The Parties wished to avoid further litigation, and agreed that a global
26 resolution of Plaintiff's individual claims and the PAGA claims asserted in the Complaint was in
27 the best interest of all parties involved, and thus, a general release by Plaintiff was appropriate.
28 Gaines Decl. at ¶ 50.

1 **VI. CONCLUSION**

2 As shown herein, the Settlement Agreement is fair, adequate and reasonable, as it represents
3 a reasoned compromise obtained through arms-length negotiations. For all the reasons set forth
4 above, Plaintiff respectfully requests that this Court, as set forth in the proposed Order Approving
5 Settlement, do the following:

6 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
7 2699, subpart 1;

8 2. Appoint Phoenix Settlement Administrators as the Settlement Administrator and
9 approve its administration fees up to \$2,925 for payment out of the PAGA Gross Settlement
10 Amount;

11 3. Approve the award of attorneys' fees of \$43,333.33, and costs of \$15,220.14, to
12 Plaintiff's Counsel, payment of which shall come from the PAGA Gross Settlement Amount;

13 4. Approve the enhancement and general release payment to Plaintiff Pamela Williams
14 in the amount of \$7,500 from the PAGA Gross Settlement Amount;

15 5. Direct disbursement of the Net Settlement Fund to the LWDA and all Aggrieved
16 Employees as provided for in the Settlement Agreement; and

17 6. Dismiss the Action with prejudice.

18
19 Date: February 8, 2024

Respectfully submitted,

20 GAINES & GAINES, APLC

21
22 By: _____

23 DANIEL F. GAINES
24 ALEX P. KATOFISKY
25 Attorneys for Plaintiff
26 PAMELA WILLIAMS
27
28