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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO—CENTRAL**

14 LIZBETH GARCIA, on behalf of herself and
15 all aggrieved employees,

16 Plaintiff,

17 v.

18 THE BAY CLUBS COMP[ANY, LLC; and
DOES 1 through 50, inclusive,

19 Defendants.
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CASE NO.: 37-2018-00029247-CU-OE-CTL

**PLAINTIFFS' UNOPPOSED EX PARTE
APPLICATION FOR COURT APPROVAL
OF THE PARTIES' PAGA SETTLEMENT**

Date: March 8, 2022
Time: 8:30 a.m.
Dept.: C-71
Judge: Hon. Gregory W. Pollack
Complaint Filed: June 13, 2018
Trial Date: January 14, 2022

[filed concurrently with Plaintiff Lizbeth Garcia's Notice of Unopposed Ex Parte Application; Declaration of Jeffrey L. Hogue; Declaration of Devon K. Roepcke; Declaration of Ernesto Sanchez; Declaration of William M. Turner; Declaration of Lizbeth Garcia; Declaration of Jeyson Pineda; Declaration of Patricia Calderon; Declaration of Caroline Salazar; Notice of Lodgment; Proposed Order; Proposed Judgement; Request for Judicial Notice]

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I. INTRODUCTION

Almost four years from inception, this PAGA action – now composed of four separate consolidated cases (“Actions”)¹– has resolved against defendant The Bay Clubs Company, LLC. (“Defendant”) via this joint PAGA settlement. The Actions were each brought under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), alleging overlapping Labor Code violations on behalf of a large group of hourly workers, and have been actively litigated and thoroughly investigated.

PAGA’s primary purpose is to impose sufficient civil penalties “to punish and deter” employers from committing any of the Labor Code violations alleged. (Labor Code § 2699(e)(2); *Iskanian v. CLS Transp. LLC* (2014) 59 Cal.4th 348, 384.) Here, the proposed PAGA Settlement provides the California Labor Workforce and Development Agency (“LWDA”) more than \$ 1.1 Million, amply meeting the statute’s objective. Furthermore, Plaintiff’s lawsuit resulted in Defendant changing its labor practices for the benefit of all non-exempt employees.

Plaintiffs were also able to fend off a woefully inadequate “reverse auction” against a top-filer whose counsel’s “candor” was questioned by the Court. Thereafter, the Parties banded together, organized, and participated in an all-day global mediation with Honorable Lisa Cole (Ret.) who is experienced in complex wage and hour issues. Although the mediation did not result in a settlement, the Parties continued the negotiations and ultimately resolved the Action for \$2.8 Million, with 2.455 Million allocated to the PAGA underlying PAGA case, and \$345,000.00 allocated to the twenty-three individual arbitrations brought by aggrieved employees.

The Parties now seek Court approval of their proposed PAGA Settlement Agreement pursuant to Labor Code section 2699(l)(2) which provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA].”² The proposed PAGA

¹ The Actions consist of four separate cases in four separate Superior Courts: (1) *Lizbeth Garcia v. The Bay Clubs Company, LLC*, case number 37-2018-00029247-CU-OE-CTL (S.D. Sup. Ct.) (*Garcia Action*); (2) *Allyson Klipa v. The Bay Clubs Company, LLC*, case number CGC-20-587892 (S.F. Sup. Ct.) (*Klipa Action*); *Carolina Salazar v. The Bay Clubs, LLC*, case no. YC073022 (S.M. Sup. Ct.) (*Salazar Action*); and *Jeyson Pineda, et al. v. The Bay Clubs Company, LLC*, case number 18CIV05996 (*Pineda Action*). All four lawsuits will be collectively referred to as the “Actions.”

² The Private Attorneys Generals Act (Labor Code § 2698, et. seq.) Settlement Agreement

settlement provides that Defendant pay the non-reversionary settlement of \$2.455 Million broken down as follows, subject to Court approval.

Total Settlement Amount	\$2,455,000.00
Attorneys' Fees (35%)	-\$859,250.00
Litigation Costs (capped at \$70,000)	-\$54,170.74
Settlement Administration Costs (to CPT Group, Inc.)	-\$17,500.00
Named Plaintiffs' Service Payments	-\$40,000.00
Remaining PAGA Penalty Fund	\$1,484,079.26

- Seventy Five Percent (75%) of the PAGA Penalty Fund (\$1,113,059.44) will be paid directly to the LWDA.
- Twenty Five Percent (25%) of the PAGA Penalty Fund (\$371,019.82) will be paid to the Aggrieved Employees, defined as “non-exempt employees of Defendants employed in California at any time between March 31, 2022, whichever is later, who will be paid pro-rata based on the number of workweeks during the Settlement Period.
- There are approximately 9,000 Aggrieved Employees.

Plaintiffs' counsel believe the civil penalties secured by the settlement are fair, adequate, and reasonable and meet the requirements for Court approval based upon the relevant fairness factors: the relative strengths of the PAGA claims; the fact that Defendants have vigorously denied any wrongdoing or liability; the risk, expense, and complexity of further litigation; the benefit conferred by the PAGA Settlement; the experience and views of counsel; and the reasonableness of the net settlement amount (consisting of the payment to the LWDA and the Aggrieved Employees); the attorneys' fees and costs; Third Party Administrator Costs; and Service Payments. For the following reasons, Plaintiffs respectfully request the Court grant the Parties' Motion, and approve the proposed PAGA Settlement Agreement.

II. MATERIAL FACTUAL AND PROCEDURAL BACKGROUND

Defendant owns and operates approximately twenty-three high-end fitness and country clubs in California. Plaintiffs were all non-exempt hourly employees. The following is a brief synopsis of each of the Actions.

 (“PAGA Settlement Agreement”) is attached as Exhibit A to the Declaration of Jeffrey Hogue.

1 **Garcia Action.** On or about April 9, 2018, submitted a letter to the LWDA and Defendant
2 outlining various Labor Code violations against The Bay Clubs Company, LLC, including not
3 listing the correct legal entity of the employer, and failure to pay its non-exempt employees legally
4 mandated meal period premiums. (Roepcke Decl. ¶ 4.) On June 13, 2018, Garcia filed her PAGA
5 only action against Defendant, asserting claims for failure to provide meal periods and furnishing
6 inaccurate wage statements. (ROA No. 1.)

7 In total, there are 196 separate entries on the Register of Actions. (Roepcke Decl. ¶ 7.)
8 Plaintiff Garcia propounded three sets of interrogatories, and three sets of Requests for Production
9 of Documents, one set of Requests for Admission. (*Id.* at ¶ 8.) All the discovery Plaintiff
10 propounded required lengthy meet and confer efforts, and nearly everything in this action required
11 court intervention via motion practice or informal discovery conference. (*Id.*) Defendant
12 propounded upon Garcia one set of Requests for Production of Documents, and two sets of
13 interrogatories to which Garcia responded. (*Id.* at ¶ 9.) Garcia filed four discovery motions, and
14 initiated five informal discovery conferences to obtain necessary discovery. (*Id.* at ¶ 7.)

15 Plaintiff noticed the deposition of Defendant's Person Most Qualified ("PMQ") *ten times*,
16 starting in September of 2019, resulting in two non-appearances, three cancellations by Defendant
17 just days before the deposition, and one deposition that went forward but Defendant cut short,
18 forcing further unsuccessful attempts to reschedule, before Plaintiff was finally able to completed
19 the deposition on February 12, 2021. (*Id.* at ¶ 10.) Plaintiff Garcia's deposition was taken. (*Id.* at ¶
20 11.) Approximately 52,630 documents, including (without limitation) Defendants' Employee
21 Handbook, and other employment policies and procedures, time records, company emails, and
22 wage statements were exchanged during discovery. (*Id.* at ¶ 12.)

23 Plaintiffs' counsel also interviewed dozens of aggrieved employees, and filed twenty-three
24 different individual arbitration complaints on behalf of some of the aggrieved employees regarding
25 their Labor Code claims. (*Id.* at ¶ 13.) Interviewing and filing the aforementioned individual
26 arbitrations further helped Plaintiff's understanding of the inner workings of Defendant's
27 clubs. (*Id.*) The *Garcia Action* was set to trial for January 14, 2022. (*Id.* at ¶ 17.)

28 **Salazar Action.** On or about May 14, 2018, plaintiff Salazar transmitted her letter to the

1 LWDA outlining various labor code violations, including, but not limited to: (1) failure to pay all
2 wages earned, including overtime pay, within their respective pay period; (2) failure to pay all
3 wages owed upon discharge or resignation; (3) failure to furnish accurate wage statements; (4)
4 failure to pay for missed meal and rest periods; (5) failure to reimburse for their expenses incurred
5 in discharge of their duties; and (6) failure to provide a written agreement setting forth how her
6 commissions were computed and paid, in violation of Labor Code section 2751. (Turner Decl. ¶ 2.)
7 On July 19, 2018, Salazar filed her individual and PAGA civil complaint against Defendant for the
8 Labor Code violations described in her letter to the LWDA. (RJN No. 1.)

9 Shortly after Plaintiff Salazar filed her complaint, she propounded written discovery upon
10 Defendant. (*Id.* at ¶ 3.) Defendant failed to respond to Plaintiff Salazar's written discovery, forcing
11 her to file multiple motions, including a motion to compel compliance with a court order. (*Id.*) On
12 January 8, 2020, Defendants filed a motion to compel Plaintiff Salazar to arbitrate her individual
13 claims and for a stay of her PAGA claims pending arbitration of Plaintiff Salazar's individual
14 claims. (*Id.* at ¶ 4.) Salazar's individual claims were ultimately settled, and then on November 9,
15 2020 the stay was lifted to allow her to move forward on her PAGA claims. (*Id.* at ¶¶ 4-5.)

16 After the stay was lifted, litigation resumed, including a motion to compel the deposition of
17 Defendants' PMQ, and challenges to the pleadings. (*Id.* at ¶ 7.) Trial was set to commence on
18 February 8, 2022. (*Id.* at ¶ 7.)

19 **Pineda Action.** On or about August 1, 2018, plaintiffs Jeyson Pineda and Patricia Calderon
20 sent a letter to the LWDA outlining Defendant's alleged Labor Code violations, including: (1)
21 failure to pay all wages earned, including overtime pay, within their respective pay period; (2)
22 failure to furnish accurate wage statements; (3) failure to pay for missed meal and rest periods; and
23 (4) failure to pay all wages owed upon discharge or resignation. (Sanchez Decl. ¶ 2.)

24 On November 6, 2018, Pineda and Calderon filed their civil complaint alleging the following
25 claims: (1) Failure to Pay all Wages; (2) Failure to Pay Overtime Compensation; (3) Failure to
26 Permit Rest Periods; (4) Failure to Permit Meal Periods; (5) Failure to Furnish Accurate Wage
27 Statements; (6) Waiting Time Penalties; (7) Constructive Discharge in Violation of Public Policy;
28 (8) Private Attorneys General Act; and (9) Unfair Competition in Violation of Cal. Business and

1 Professions Code. (*Id.* at ¶ 3; RJN No. 2.) Extensive amounts of informal discovery was analyzed
2 in order to prepare damage models for mediation. (Sanchez Decl. ¶ 7.)

3 **Klipa Action.** On September 15, 2020, plaintiff Allyson Klipa sent a letter to the LWDA
4 outlining claims against the Defendant for failure to pay wages, failure to reimburse business
5 expenses, failure to provide accurate wage statements, and failure to pay all wages upon ending
6 employment. (Roepcke Decl. ¶ 19.) Klipa worked for Defendant as a fitness instructor for several
7 years. (*Id.* at ¶ 18.) Throughout her employment, Klipa had to work before and after the fitness
8 classes she taught, without compensation, and was required to purchase the music and
9 choreography for the classes she taught without reimbursement. (*Id.* at ¶ 18.)

10 On November 20, 2020, Klipa filed her civil complaint alleging a single cause of action
11 under for PAGA and asserting the claims discussed in her letter to the LWDA. (*Id.* at ¶
12 20.) Defendant was ultimately defaulted, and then Plaintiff stipulated to having it set aside. (*Id.* at
13 ¶¶ 21-22.) Thereafter, discovery ensued and Defendant produced approximately 300 pages of
14 responsive documents. (*Id.* at ¶ 23.)

15 **A. Plaintiffs' Counsel Conducted a Thorough Investigation of the Factual and Legal**
16 **Issues and Were Thus Able to Objectively Assess the Settlement's Reasonableness.**

17 Plaintiffs' Counsel have conducted a thorough and careful analysis of the facts and legal
18 issues in the Actions. (Hogue Decl. ¶¶ 3-7.) Plaintiffs' Counsel engaged in sufficient discovery that
19 allowed them to evaluate liability and value their PAGA claims. (*Id.* at ¶ 5; Roepcke Decl. ¶¶ 10-
20 16, 23.) Plaintiffs had information about the number of Aggrieved Employees, the number of pay
21 periods, and the relevant employment policies and practices during the PAGA period. (Roepcke
22 Decl. ¶ 12.) Plaintiffs also were armed with over 50,000 documents that allowed a detailed damage
23 analysis by their expert so they could intelligently negotiate a fair settlement. (*Id.* at ¶¶ 12, 14-16.)

24 Plaintiffs' Counsel additionally interviewed multiple former employees and twenty-three
25 individual arbitrations on behalf of some of these Aggrieved Employees. (Roepcke Decl. ¶ 13.)
26 These arbitrations permitted Plaintiffs' Counsel to thoroughly investigate even further into the inner
27 workings of Defendants' various facilities and employment practices. (*Id.*)

28 In sum, in Plaintiffs Counsels' opinion, the proposed settlement is fair and reasonable and
fulfills PAGA's objectives by securing "genuine and meaningful" penalties. (Hogue Decl. at ¶ 15;

1 Roepcke Decl. ¶ 39; Turner Decl. ¶ 13; Sanchez Decl. ¶¶ 12.) The PAGA Settlement also took into
2 consideration the risks both sides faced with the number of PAGA Actions as well as in pursuing
3 individual arbitrations. (*Id.*)

4 **B. The Failed “Reverse Auction.”**

5 Sometime on or around the summer of 2021, the above-referenced Plaintiffs, discovered
6 another PAGA action filed against Defendant (the “*Nichols* Action”). The *Nichols* Action was
7 filed *after* the *Garcia* and *Salazar* Actions. Although the *Nichols* Action was clearly related
8 because it asserted duplicative causes of action against the Defendant, Nichols did not file a Notice
9 of Related Case form as required by California Rule of Court, Rule 3.300.

10 Counsel for the *Nichols* Action filed a Motion for Approval of a PAGA Settlement that
11 proposed to essentially settle all Labor Code claims on behalf of *all* of the aggrieved employees,
12 including releasing the PAGA claims for Garcia, Salazar, Pineda, and Klips, for \$350,000 Dollars
13 (“*Nichols* Action Proposed PAGA Settlement.”) Briefly, the *Nichols* Action Proposed PAGA
14 Settlement’s terms were grossly inadequate:

Total Settlement Amount	\$350,000.00
Attorneys’ Fees claimed	-\$122,500.00
Litigation Costs (capped at \$70,000)	-\$7,462.00
Settlement Administration Costs (to CPT Group, Inc.)	-\$35,000.00
Named Plaintiff’s Individual and Service Payments	-\$45,000.00
Remaining PAGA Penalty Fund	\$140,038.00

20 Garcia, Salazar, Pineda, and Calderon then moved to intervene into the *Nichols* Action in
21 an attempt to disrupt the *Nichols* Action Proposed Settlement, which was granted. In the Order
22 granting the intervention motion, the Court stated that, “**there is substantial reason to question**
23 **whether plaintiff and his current counsel are adequately representing their interests or those**
24 **of the Sate of California.....nor did the parties disclose the existence or pendency of the**
25 **other actions to the Court....The Court views these omissions as a serious breach of counsel’s**
26 **duty of candor.”** (ROA No. 197.)

1 **C. Joint Mediation and Subsequent Settlement of the Garcia, Sanchez, Pineda, and**
2 **Klipa Actions.**

3 On October 1, 2021, the Parties participated in a joint mediation conducted by Honorable
4 Lisa Cole (Ret.) – an experienced complex litigation mediator. (Hogue Decl. ¶ 11.) The mediator
5 facilitated an objective analysis of the claims based on available data which allowed the Parties to
6 narrow the gap. (*Id.*) The parties were able to reach a global settlement for 2.8 Million, which
7 resolved all four cases PAGA Actions, and the twenty-three arbitrations. (*Id.* at ¶¶ 11-14.)

8 **III. ARGUMENT**

9 **A. The Court Approval Process in a PAGA Settlement.**

10 PAGA provides that “[t]he superior court shall review and approve any settlement of any
11 civil action filed pursuant to this part.” (Labor Code § 2699(l)(2).) The statute does not require the
12 two-step process utilized in class actions. (*see Salazar v. Sysco Central Cal.*, No. 15-01758-DAD,
13 2017 WL1135801, *2 (E.D. Cal. Feb. 2, 2017) (rejecting the application of class action settlement
14 rules and procedures for PAGA settlement approval); *Baumann v. Chase Inv. Servs. Corp.* (9th Cir.
15 2014) 747 F.3d 1117, 1123 (“a PAGA suit is fundamentally different than a class action” in that
16 PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt-
17 out of a PAGA action.”).)

18 The LWDA has explained that when trial courts review PAGA settlements, they should
19 consider whether “the relief provided for under the PAGA [is] genuine and meaningful, consistent
20 with the underlying purpose of the statute to benefit the public.” (*O’Connor v. Uber Techs, Inc.*
21 (N.D. Cal. Aug. 18, 2016) 13-03826-EMC, 201 F. Supp. 3d 1110, 1133.) That being said, nothing
22 in PAGA changes the strong judicial preference in support of approving settlements. (*See, e.g.,*
23 *Osumi v. Sutton* (2007) 151 Cal. App. 4th 1355, 1357 (confirming the “strong public policy in favor
24 of the settlement of civil cases.”).)

25 **B. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful, and**
26 **Fulfill PAGA’s Underlying Purpose to Benefit the Public.**

27 The California legislature enacted PAGA to “augment the limited enforcement capability of
28 the [LWDA] by empowering employees to enforce the Labor Code as representatives of the
 Agency.” (*Iskanian, supra*, at 383.) This statute authorizes an employee to bring an action for

1 “civil penalties on behalf of the state against his or her employer for Labor Code violations
2 committed against the employee and fellow employees.....” (*Id.* at 360.) The goal of a PAGA
3 enforcement action is to impose civil penalties for Labor Code violations “significant enough to
4 deter violations.” (*Id.* at 379.)

5 Fundamentally, “a PAGA action is a statutory action in which the penalties available are
6 measured by the number of Labor Code violations committed by the employer.” (*Sakkab v.*
7 *Luxottica Retail* (9th Cir. 2015) 803 F.3d 425, 435). Under PAGA, seventy-five percent (75%) of
8 the civil penalties recovered go to the State of California, while the remaining amount is given to
9 the aggrieved employees. (Labor Code § 2699(i).) Although PAGA penalties are mandatory and
10 must be awarded by a court if a violation is found, the court “may award a lesser amount than the
11 maximum civil penalty amount specified by this part if, based on the facts and circumstances of the
12 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
13 confiscatory.” (Labor Code § 2699(e)(2); *see Amaral v. Cintas* (2008) 163 Cal. App. 4th 1157,
14 1213.)

15 Moreover, the PAGA statute distinguishes and preserves the rights of employees to
16 separately (or concurrently) pursue their own individual causes of action against their employers
17 and to recover other available federal and state remedies. (Labor Code § 2699(g)(1); *see Baumann,*
18 *supra*, at 1123 (explaining the differences between the finality in class action judgments and the
19 limited res judicata effect of PAGA judgments).) “Unlike a class action seeking damages or
20 injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to
21 recover civil penalties for the government that otherwise may not have been assessed and collected
22 by overburdened state enforcement agencies.” (*McKenzie v. Federal Express Corp.* (C.D. Cal.
23 2011) 765 F. Supp. 2d 1222, 1233 (emphasis added).)

24 The LWDA has advised that courts should evaluate settlements of PAGA claims based on
25 whether “the relief provided for under the PAGA [is] genuine and meaningful, consistent with the
26 underlying purpose of the statute to benefit the public.” (*Salazar, supra*, at *2 (quoting *O’Connor,*
27 *supra*, at 1113.) As courts defer to the agency’s interpretation of a statute where authority has been
28 delegated to that agency (*see New Cingular Wireless v. Pub. Utilities Comm’n* (2016) 246 Cal.

1 App. 4th 784, 807), the Court should analyze the PAGA settlement by focusing on whether the
2 amount of civil penalties obtained is “genuine and meaningful” in light of PAGA’s statutory
3 purpose.

4 The Court’s evaluation of the settlement should therefore not focus on “restitution” (i.e., the
5 average recovery per aggrieved employee) as in a class action settlement, but rather take into
6 account PAGA’s statutory purpose in deterring Labor Code violations through the imposition of
7 civil penalties, with special attention on whether the relief is “genuine and meaningful.” (*Salazar*,
8 *supra*, at *2.)

9 **C. The Proposed PAGA Settlement is Reasonable Given the Risks of Further Litigation.**

10 **1. PAGA Penalties are Subject to Significant Reduction.**

11 In assessing whether the amount of civil penalties is genuine and meaningful, the Court may
12 balance the amount of penalties against the risks of further litigation. Here, Plaintiffs obtained a
13 meaningful amount of civil penalties despite facing hurdles had the litigation continued. Based on
14 information and evidence produced by Defendants during discovery, Plaintiffs’ counsel provided
15 that information to their expert to run certain algorithms and create variations of different damage
16 models in advance of the mediation. (Hogue Decl. ¶¶ 6-8.) Statutory penalties were calculated
17 pursuant to Labor Code section 2699(f)(2), which provides that, if at the time of the alleged
18 violation, the employer employs one or more employees, the civil penalty is one hundred dollars
19 (\$100.00) for each aggrieved employee per pay period, regardless if it was an “initial” or
20 “subsequent” violation.

21 While no reported case has addressed what constitutes an “initial” versus “subsequent”
22 violation, it has been held under PAGA that there must have been a prior notification to the
23 employer that the statute had been violated for the higher penalty for subsequent violations to apply.
24 (*Amaral, supra*, at 1209.) Other courts have “held that employers are not subject to heightened
25 penalties for subsequent violations unless and until a court or commissioner notifies the employer
26 that it is in violation of the Labor Code.” (*See e.g. Amalgamated Transit v. Laidlaw Transit Service*,
27 (S.D. Cal. Aug. 10, 2009) 2009 U.S. Dist. LEXIS 69842, 2009 WL 2448430, at *9; *see also Trang*
28

1 v. *Turbine Engine Components Technologies Corp.*, (C.D. Cal. Dec. 19, 2012) No. CV 12-07658
2 DDP (RZx), 2012 WL 6618854.).)

3 Plaintiffs' damage calculation was of course done with an eye to the fact that courts have
4 discretion to reduce PAGA penalties. (Labor Code § 2699(e)(2).) Thus, given the potential
5 exposure, Plaintiffs likely would have had their penalties substantially reduced. Indeed, some
6 Courts take drastic reductions. (*See Carrington v. Starbucks* (2018) 30 Cal. App. 5th 504, 517
7 (approving award of 0.21% of what Plaintiffs requested).) In *Carrington*, the plaintiff requested
8 PAGA penalties in the amount of approximately \$70 Million dollars. (*Carrington, supra*, at 517.)
9 The trial court instead awarded only \$150,000.00 – or 0.21% of the maximum – and stated that this
10 reduction was warranted because imposing the maximum penalty would be “unjust, arbitrary, and
11 oppressive” based on Starbucks’ “good faith attempts” to comply with meal period obligations, and
12 because the court found the violations “were minimal.” (*Id.*) The Court of Appeal affirmed the
13 lower court’s reduced award of a \$150,000.00 penalty under PAGA. (*Id.* at 529.)

14 Likewise, in *Fleming v. Covidien*, the Court reduced the potential penalties by over 82%,
15 awarding \$500,000.00 instead of maximum penalties of \$2.8 Million. (*Fleming v. Covidien* (C.D.
16 Cal. Aug. 12, 2001) 2011 WL 7563047 at *4; *see also Aguirre v. Genesis Logistics* (C.D. Cal. Dec.
17 30, 2013) 2013 WL 10936035, at *3 (reducing the original penalty of \$1.8 Million by 72% to
18 \$500,000.00, noting among other reasons the maximum penalty would be punitive without
19 evidence that the employer intentionally violated the wage order).)

20 Hence, the calculation of an exact exposure number for the PAGA claim is of limited utility
21 and is inherently speculative because, unlike class claims, the Court has discretion to reduce a
22 PAGA penalty on grounds that it is “unjust” or “oppressive.” (Labor Code § 2699(e)(2).)
23 Therefore, after calculating Defendants’ maximum exposure under PAGA, Plaintiffs discounted
24 that exposure for settlement purposes to account for the risks of continued litigation, including: (1)
25 the strength of Defendants’ defenses on the merits; (2) the risk of some or all of the actions losing at
26 trial and creating issue and claim preclusion issues;³ (3) the risk that the Court would exercise its
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28 ³ These separate actions were not of Plaintiffs’ doing. Defendant did not file a notice of
related cases, despite knowing that they all had overlapping PAGA claims. (*see* RJN Nos. 1-3.)

1 discretion under PAGA to significantly reduce the maximum civil penalties available under the
2 statute; (4) the risk of having PAGA claims struck down later in the litigation as “unmanageable⁴,”
3 (5) the risk of having to expend thousands upon thousands in appellate fees for inevitable appeals;
4 (6) the chances of a favorable verdict being reversed on appeal; and (7) the risk that Defendants
5 would file bankruptcy if any significant penalties were assessed.

6 Considering the issues, defenses, and the aforementioned discount factors, a \$2.455 Million
7 total settlement where the LWDA receives seven figures (over \$1.1 Million dollars) is a very large
8 PAGA settlement by any standard.⁵ Moreover, Plaintiffs’ Counsel are skilled and experienced in
9 the area of representative litigation, and all believe this PAGA Settlement is fair and just and
10 furthers PAGA objectives based on sufficient data provided by Defendants. (Hogue Decl. ¶ 15,
11 Roepcke Decl. ¶ 39; Turner Decl. ¶ 13; Sanchez Decl. ¶ 12.) Plaintiffs’ claims and the damage
12 exposure Defendant faced and how the risks were accounted for are outlined in the declaration of
13 Jeffrey L. Hogue.

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17 Defendants’ failure placed all four separate actions in a peculiar position. All four actions would
18 have to petition the Judicial Council to coordinate them, since they were pending in different
19 Counties. Any petition would likely be denied, however, because three out of the four actions had
20 been pending for years, and two of the actions were brought on the eve of trial when the PAGA
21 Settlement Agreement was reached (*Garcia* action was set for trial on January 14, 2022 and trial for
22 the *Sanchez* action was scheduled for February 8, 2022).

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⁴ See *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 766-767
29 (“[g]iven that PAGA actions involve comparable or greater manageability concerns than other
30 representative claims, we hold that trial courts may similarly exercise their inherent authority to
31 ensure the manageability of PAGA claims and, if necessary, may preclude the use of this
32 procedural device.” (emphasis added).)

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⁵ The result achieved in this case, and the monetary recovery provided by the instant PAGA
39 Settlement, far exceeds the range of an acceptable settlement under the circumstances, especially
40 when compared to the settlement of PAGA claims in other cases. (See, e.g., *Garcia v. Gordon*
41 *Trucking, Inc.* (E.D. Cal., Oct. 31, 2012) 2012 WL 5364575, at *3 (approving \$10,000.00 out of \$
42 3.7 million toward settlement of PAGA claims); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal.,
43 Feb. 16, 2011) 2011 WL672645, at *1 (approving \$10,000.00 out of \$6.9 Million toward settlement
44 of PAGA claims); *Franco v. Ruiz Food Products, Inc.* (E.D. Cal., Nov. 27, 2012) 2012 WL
45 5941801, at *14 (approving the amount of \$10,000.00 out of \$ 2.5 Million toward settlement of
46 PAGA claims).)

1 **D. This Court Should Approve the Requested Attorneys’ Fees.**

2 An employee who prevails in a PAGA action “shall be entitled to an award of reasonable
3 attorneys’ fees and costs.” (Cal. Labor Code § 2699.) In *Laffitte v. Robert Half Int’l, Inc.* (2016) 1
4 Cal.5th 480, 504, the Court expressly stated “[t]he choice of a fee calculation method is generally
5 one within the discretion of the trial court, the goal under either the percentage or lodestar approach
6 being the award of a reasonable fee to compensate counsel for their efforts.”

7 In *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557, the court examined the two
8 different methodologies – lodestar-adjustment and percentage of the fund – in the context of a
9 “clear sailing” fee settlement (i.e., a class settlement specifying a set amount for the class and
10 agreeing not to oppose a fee of up to a specified amount, to be paid in addition to the class
11 recovery; see 175 CA4th at 553). The Court summarized the California rule as follows:
12 “Regardless of whether attorney fees are determined using the lodestar method or awarded based on
13 a “percentage-of-the-benefit” analysis under the common fund doctrine, ‘[t]he ultimate goal.....is
14 the award of a ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of
15 calculation... It is not an abuse of discretion to choose one method over another....” (175
16 Cal.App.4th at 557 (internal citations omitted).)

17 The parties agreed that the If approved, the PAGA settlement provides the four firms will
18 receive an aggregate total of \$859,250.00, or 35% of the gross settlement value. To date, the total
19 lodestar for the four different actions that are included in the PAGA Settlement Agreement are
20 **\$1,029,232.00.** (Hogue Decl. ¶ 30; Roepcke Decl. ¶¶ 35-36; Turner Decl. ¶ 18; Sanchez Decl. ¶ 14.)
21 Attorneys’ fees here result in a negative lodestar. As explained, this was a complex case with
22 constantly evolving legal issues, and full of procedural difficulties. Plaintiffs Action also prompted
23 Defendant to adjust their payroll software to come into compliance with the California Labor Code,
24 meaning thousands of its employees will continue to benefit in the future. Plus, Plaintiffs
25 collectively worked together to prevent a reverse auction that would have settled out the claims for
26 the aggrieved employees and the State of California for over 2 million dollars *less* than the instant
27 settlement. Now, the State of California and the aggrieved employees added over 2 Million Dollars
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1 to the settlement and over 1.3 Million to the PAGA Penalty Fund because of Plaintiffs hard work.
2 Accordingly, Plaintiffs submit that 35% is a reasonable fee.⁶

3 **E. Plaintiffs Requested Litigation Costs Should Be Approved.**

4 PAGA permits litigants to recover costs incurred in the prosecution of an action. (Labor
5 Code § 2699(g)(1).) “There is no doubt that an attorney who has created a common fund for the
6 benefit of the class is entitled to reimbursement of reasonable litigation expenses from that fund.”
7 (*West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006), 2006 U.S. LEXIS 76558, at *25.) In
8 California, attorneys are reimbursed for out-of-pocket expenses “such as ‘1) meals, hotels, and
9 transportation; 2) photocopies; 3) postage, telephone, and fax; 4) filing fees; 5) messenger and
10 overnight delivery; 6) online legal research; 7) class action notices; 8) experts, consultants, and
11 investigators; and 9) mediation fees.’” (*Johnson v. General Mills, Inc.* (C.D. Cal. June 17, 2013)
12 2013 U.S. Dist. LEXIS 90338, *20-21.)

13 Pursuant to PAGA, Plaintiffs ask this Court to grant their request for reimbursement of
14 reasonable expenses advanced and/or incurred by them in connection with the prosecution of these
15 actions. As indicated by the concurrently filed declarations from Plaintiffs’ Counsel, they have
16 already incurred for a total of approximately **\$54,170.74** in costs on behalf of the State for, *inter*
17 *alia*, filing fees, litigation vendor fees, deposition fees, expert fees, and mediation fees. (Hogue
18 Decl. ¶ 34, Roepcke Decl. ¶¶ 37-38; Turner Decl. ¶ 21; Sanchez Decl. ¶ 15.) Because these
19 reasonable costs were necessarily incurred during the case’s pendency, they should be reimbursed
20 to Plaintiffs’ counsel.

21 **F. Plaintiffs’ Private Attorneys General Service Payments Should Be Approved.**

22 Courts have held that named plaintiffs in PAGA actions can request service awards, which
23 are intended to compensate class representatives for work done on behalf of the class, to make up
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25 ⁶ *Jones v. J.C. Penney Corporation*, Los Angeles Superior Court, Case No. BC451823
26 (approving fee award from PAGA-only settlement of \$1,375,000.00 against a common fund of
27 \$3,200,000.00 (42% fees)); *see also Warner v. Fry’s Electronics, Inc.*, Contra Costa Superior Court,
28 Case No. MSC14-02052 (approving fee award from PAGA-only settlement of \$999,000.00 of a
\$2,700,000.00 common fund, or 37% fees); *Leal v. Wyndham Worldwide Corp.*, No. 37-2009-
00084708 (San Diego Super. Ct.) (38% fee award); *Phillips v. So-Cal Dominoids, Inc., et al.*, San
Diego Superior Court, Case No. 37-2013-00056664 (35% fee award)

1 for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize
2 plaintiffs' willingness to act as private attorneys general. (*Rodriguez v. W. Publ'g Corp.* (9th Cir.
3 2009) 563 F.3d 948, 958-59.) Indeed, the Ninth Circuit has consistently recognized incentive
4 awards are "fairly typical" way to "compensate class representatives for work done on behalf of the
5 class" or "to make up for financial or reputational risk undertaken in bringing the action." (*Id.*)

6 Criteria courts consider in determining whether to make an incentive award include: (1) the
7 risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety
8 and personal difficulties encountered by the class representative; (3) the amount of time and effort
9 spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or
10 lack thereof) enjoyed by the class representative as a result of the litigation. (*In re Cellphone Fee*
11 *Termination Cases* 1395 (2010) 186 Cal.App.4th 1380, 1394-95.)

12 Here, the private attorneys general for three of the four actions are requesting an
13 enhancement of \$7,500.00, and Plaintiff Lizbeth Garcia requests a \$10,000.00 enhancement for her
14 participation and close involvement in the case for approximately 4 years.⁷ Plaintiff Garcia has had
15 her deposition taken, and has spent significant amounts of time participating in this case and has
16 exposed herself to significant reputational and professional risks by tying her name to a class action
17 lawsuit against her former employer. (See, generally, Garcia Decl.) Meanwhile, Plaintiffs Salazar,
18 Pineda, Calderon, and Klipa make similar representations. (See, generally, Salazar, Pineda,
19 Calderon, Klipa Decls.) An additional benefit from Plaintiffs bringing the Actions is that
20 Defendants have made certain programmatic changes, like, for instance, configuring the time clock
21 correctly to comport with the law. (Hogue Decl. ¶ 8(c).)

22 In sum, the Plaintiffs (1) signed broader releases than the other Aggrieved Employees, (2)
23 they waited, actively participated, and persevered for (in some cases) multiple years, (3) they have
24 benefited Defendant's current employees prospectively, and (4) the enhancements equate to less
25 than one-half of one-percent of the common fund. Thus, the \$7,500.00 private attorney general
26 service awards for Salazar, Pineda, Calderon, and Klipa, and \$10,000.00 for Garcia are well-

28 ⁷ A \$7,500.00 service award equates to 0.31% of the Common Fund each, and the
\$10,000.00 service award equates to 0.41% of the Common Fund.

1 deserved, warranted, and should be finally approved as requested. (*See, e.g., Fulford v. Logitech,*
2 *Inc.* (N.D. Cal. 2010) 2010 WL 807448, at *3 n.1 (collecting cases awarding incentive payments
3 ranging from \$5,000.00 to \$40,000.00).

4 **G. The Explanatory Notice to the Aggrieved Employees.**

5 Although PAGA “has no notice requirements for unnamed aggrieved employees, nor may
6 such employees opt out of a PAGA action,” the Settlement outlines an explanatory letter to be sent
7 out to the aggrieved employees. (*See, Ex. A, to Ex. “A” in Hogue Decl.*) The aforementioned
8 letter advises the Aggrieved Employees of the instant action, why they are receiving a check for
9 their share of the PAGA penalties, and to contact either Plaintiffs’ counsel or defense counsel for
10 more information.

11 **IV. CONCLUSION**

12 The Parties have negotiated a fair and reasonable settlement of Plaintiffs’ PAGA claims.
13 Having appropriately presented the materials and information necessary for approval, the Parties
14 request that the Court approve the PAGA Settlement Agreement, including the \$859,250.00 in
15 attorneys’ fees, \$54,170.74 in costs, and service enhancements of \$10,000.00 for plaintiff Garcia,
16 and \$7,500.00 each for plaintiffs Salazar, Calderon, Pineda, and Klipa.

17
18 Dated: March 3, 2022

HOGUE & BELONG

19 By s/ Jeffrey L. Hogue
20 JEFFREY L. HOGUE
21 Attorneys for the Plaintiffs
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