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

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES—NORTHWEST DISTRICT**

11 YESENIA AGUAYO, on behalf of herself and
12 all “aggrieved employees” pursuant to Labor
13 Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 ALL VALLEY WASHER SERVICE, INC., a
California corporation, and DOES 1 through
17 10, inclusive,

18 Defendants.

CASE NO: 21VECV00026

*Assigned to the Hon. Bernie C. La Forteza,
Dept. U*

**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,
GENERAL RELEASE PAYMENT, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
DISMISSING ACTION WITH PREJUDICE;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: December 13, 2021

Time: 8:30 a.m.

Dept.: U

Complaint Filed: January 11, 2021

Trial Date: None

1 **PLEASE TAKE NOTICE THAT** on December 13, 2021 at 8:30 a.m., or as soon
2 thereafter as the matter may be heard, in Department U of the above-entitled Court, located at 6230
3 Sylmar Avenue, Van Nuys, California 91401, Plaintiff Yesenia Aguayo will and hereby does move
4 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.*) set forth in
6 the parties' Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement
7 ("Settlement Agreement"); (2) appointing Phoenix Class Action Administration Solutions and
8 approving payment of its fees not to exceed \$4,000 from the Gross Settlement Amount; (3)
9 directing disbursement of the Gross Settlement Amount pursuant to the terms of the Settlement
10 Agreement; (4) directing payment of attorneys' fees and litigation costs from the Gross Settlement
11 Amount in the amount of \$52,386.82 to Plaintiff's counsel; (5) directing payment of a general
12 release payment from the Gross Settlement Amount in the amount of \$10,000 to Plaintiff Aguayo;
13 and (6) dismissing this action with prejudice.

14 This motion will be based on this Notice, the supporting memorandum of points and
15 authorities, the parties' Settlement Agreement, the Declarations of Daniel F. Gaines, Esq. and
16 Plaintiff Yesenia Aguayo, the documents and records on file in this matter, and such additional
17 arguments, authorities, and evidence and other matters as may be presented by the parties hereafter.

18
19 Date: November 16, 2021

Respectfully submitted,

20 GAINES & GAINES, APLC

21 By: Daniel F. Gaines

DANIEL F. GAINES

EVAN S. GAINES

Attorneys for Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Yesenia Aguayo (“Plaintiff” or “Aguayo”) and all Aggrieved Employees under the
4 Labor Code’s Private Attorneys General Act of 2004 (“PAGA”) respectfully move this Court for
5 an Order granting approval of the proposed Settlement Agreement of the above-captioned lawsuit
6 against Defendant All Valley Washer Service, Inc. (“Defendant”). The proposed Settlement will
7 dispose of the Released Claims asserted on behalf of Plaintiff and approximately 111 Aggrieved
8 Employees (defined as current and former non-exempt employees employed by Defendant in
9 California at any time during the Settlement Period (October 20, 2019 through August 18, 2021)).
10 Defendant represents that the total number of Aggrieved Employees is no more than 111 individuals
11 who worked a total of 4,175 pay periods during the Settlement Period.

12 This case addresses claimed violations of employee protections embodied in the California
13 Labor Code and penalties stemming therefrom for the violation of PAGA. Plaintiff alleged that
14 Defendant failed to pay Plaintiff and Aggrieved Employees all wages due including all overtime
15 wages in violation of Labor Code §§ 246, 510, and 1194; failed to provide legally compliant rest
16 breaks to Plaintiff and Aggrieved Employees in violation of Labor Code § 226.7; failed to provide
17 legally compliant meal breaks to Plaintiff and Aggrieved Employees in violation of Labor Code §§
18 226.7 and 512; failed to issue accurately itemized wage statements to Plaintiff and Aggrieved
19 Employees in violation of Labor Code §§ 226(a) and 226.3; and failed to timely pay wages to
20 Aggrieved Employees, in violation of Labor Code §§ 201-203. As a result of Defendant’s alleged
21 violations of the Labor Code, approximately 111 employees are claimed to have suffered Labor
22 Code violations for up to 4,175 aggregate pay periods at the rate of \$100 each based on PAGA’s
23 penalty provisions. Defendant denies that any of the Aggrieved Employees suffered any Labor
24 Code violations and denies that Plaintiff or the Aggrieved Employees are entitled to recover any
25 civil penalties under PAGA.

26 In deciding whether to grant approval of the proposed Settlement, the primary issue to be
27 decided is whether the Settlement is fair, adequate and reasonable. As set forth herein, the proposed
28 Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it:

(1) is the product of arms-length negotiations, (2) was negotiated by attorneys experienced in wage and hour issues, (3) occurred subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and likely duration of further litigation.

The value achieved by the Settlement may be gleaned from the fact that the Labor and Workforce Development Agency (“LWDA”) and the approximately 111 Aggrieved Employees encompassed by the Settlement will receive no less than \$44,613.18 under the terms of the Settlement, which, pursuant to the operative statute, shall be allocated “75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.” *See Cal. Lab. Code* § 2699(i). This is a reasonable recovery, not only because further litigation may have resulted in a net-zero recovery based on the defenses available to Defendant, but because the amount secured by Plaintiff is sizable and in line with similar settlements of these types of claims under PAGA. It is also important to underscore that all penalty amounts paid to Aggrieved Employees will be an unexpected windfall, as employees typically do not bring individual lawsuits asserting only PAGA penalties. Gaines Decl. at ¶ 13.

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

II. STATEMENT OF THE CASE AND THE SETTLEMENT

A. The Parties

Defendant All Valley Washer Service, Inc. provides Coin-op, Card-op & Phone-app laundry systems throughout California. Defendant primarily services and installs laundry machines. Gaines Decl. at ¶ 7.

Defendant employed Plaintiff from November 2018 through January 2020 as a non-exempt Sales Assistant in Van Nuys, California. The Aggrieved Employees are current and former non-exempt employees employed by Defendant in California at any time during the Settlement Period. Gaines Decl. at ¶ 7.

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1 **B. The Claims Asserted**

2 Plaintiff asserts claims that Defendant failed to pay Plaintiff and Aggrieved Employees all
3 wages due including all overtime wages in violation of Labor Code §§ 246, 510, and 1194; failed
4 to provide legally compliant rest breaks to Plaintiff and Aggrieved Employees in violation of Labor
5 Code § 226.7; failed to provide legally compliant meal breaks to Plaintiff and Aggrieved
6 Employees in violation of Labor Code §§ 226.7 and 512; failed to issue accurately itemized wage
7 statements to Plaintiff and Aggrieved Employees, in violation of Labor Code §§ 226(a) and 226.3;
8 and failed to timely pay wages to Aggrieved Employees in violation of Labor Code §§ 201-203.
9 Plaintiff asserts these claims under PAGA, seeking civil penalties for the alleged Labor Code
10 violations. Gaines Decl. at ¶ 8.

11 **C. Procedural Posture**

12 On October 20, 2020, pursuant to Labor Code § 2699.3, Plaintiff gave written notice by
13 online filing with the LWDA and by certified mail, return receipt requested, to Defendant of the
14 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
15 to support the alleged violation. Gaines Decl. at ¶ 6, **Exhibit B**. On January 11, 2021, and after the
16 LWDA declined to take action within the statutorily permissible time with respect to Plaintiff's
17 October 20, 2020 letter, Plaintiff filed her representative action complaint in this Court. Gaines
18 Decl., ¶ 6.

19 Concurrently with the filing of this Motion, Plaintiff submitted the Settlement Agreement,
20 together with this Motion and all supporting documents, to the LWDA via online upload on
21 November 16, 2021. Service of the LWDA is reflected on the Declaration of Service submitted
22 herewith. Gaines Decl. at ¶ 9.

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

24 Counsel for Plaintiff engaged in informal discovery of Defendant's alleged Labor Code
25 violations, which specifically targeted evaluating the strength and value of the PAGA claims in
26 preparation for a resolution of this Action. Gaines Decl. at ¶ 10.

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1 Plaintiff's Counsel obtained and reviewed multiple documents, including (i) Plaintiff's
2 employee file and wage statements, (ii) policy documents relating to the employment of Plaintiff
3 and other Aggrieved Employees, and (iii) data relating to the number of alleged violations and the
4 value of the recoverable penalties. Gaines Decl. at ¶ 11.

5 Based on the information received, as well as through discussions with Defendant's
6 Counsel, Plaintiff's Counsel were able to (i) determine the total number of distinct individuals
7 falling within the definition of "Aggrieved Employee" for the relevant statutory period, and (ii)
8 construct a damage model that calculated the maximum realistic amount of PAGA penalties that
9 could be levied against Defendant within the Release Period. Defendant, however, disputed
10 Plaintiff's claims and disputed both the existence of and extent of liability as alleged by Plaintiff.
11 Gaines Decl. at ¶ 12.

12 Based on Plaintiff's Counsel's experience in litigating similar "representative" wage and
13 hour claims, the degree of investigation that was conducted, and the amount of data that was
14 obtained, was sufficient to determine the potential value of the PAGA claim, and to evaluate the
15 strength of this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-5, 10-13.

16 **E. Settlement Negotiations**

17 On July 15, 2021, the Parties participated in a mediation session with respected mediator
18 Hon. Melinda A. Johnson (Ret.). During the mediation, the parties engaged in arm's-length
19 negotiations but reached an impasse. Thereafter, Judge Johnson successfully brought the parties to
20 agree on a resolution of the PAGA claims asserted in the action. Gaines Decl. at ¶ 16.

21 **F. The Proposed Settlement**

22 The Parties jointly prepared and executed the Settlement Agreement. Gaines Decl., ¶ 16,
23 **Exhibit C.** The Settlement Agreement sets forth the terms of the Settlement reached by the Parties,
24 including the following key points:

25 1. Defendant agrees to settle this matter for the payment of One Hundred Eleven
26 Thousand Dollars (\$111,000) (hereinafter the "Gross Settlement Amount"), which shall be all
27 inclusive, encompassing (i) all payments to the Labor and Workforce Development Agency and
28 Aggrieved Employees, (ii) any and all costs of third-party administration of the settlement, (iii)

1 Plaintiff's Counsel's attorneys' fees and costs of suit, and (iv) a general release payment to Plaintiff.
2 See Settlement Agreement, at § 3.02.

3 2. The total sum available for payment of PAGA penalties shall be calculated by
4 deducting \$52,386.82 for the payment of Plaintiff's Counsel's fees and costs (\$44,400 in fees and
5 \$7,986.82 in costs)¹, \$10,000 to Plaintiff Aguayo for her general release, and the costs of
6 administration (up to \$4,000) from the \$111,000 Gross Settlement Amount, yielding approximately
7 \$44,613.18. Seventy-five percent (75%) of this amount, or \$33,459.88, shall be distributed to the
8 LWDA, and the remaining twenty-five percent (25%) or \$11,153.30, shall be distributed to the
9 Aggrieved Employees. See Settlement Agreement, at § 3.02(a)(2).

10 3. All employees that performed work for Defendant during the Release Period will
11 receive a pro rata share of the \$11,153.30 allocated to Aggrieved Employees, which shall be
12 distributed based on the number of pay periods each Aggrieved Employee worked for Defendant
13 in California during the Release Period. See Gaines Decl., at ¶ 14; Settlement Agreement, at §
14 3.02(a)(3). Although these calculations will not be made until after approval, a rough estimation
15 of the value to the 111 individuals falling within the definition of "Aggrieved Employee" may be
16 gleaned from the fact that an equal division would provide about \$100.48 to each Aggrieved
17 Employee, net of payments to the LWDA, to the Settlement Administrator, attorney's fees and
18 costs. The LWDA will be paid \$33,459.88. See Gaines Decl. at ¶ 15.

19 4. In exchange for the above settlement consideration, Defendant and the Released
20 Parties shall be entitled to the following release from each and every Aggrieved Employee,
21 including Plaintiff²:

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24 ¹ Plaintiff's counsel's formal fee request is 40% of the Gross Settlement Amount and combined
25 total final costs of \$7,986.82, as discussed herein and set forth in **Exhibit E** to the Gaines
Declaration.

26 ² This comports with settled California Supreme Court authority. See *Arias v. Superior Court*
27 (2009) 46 Cal. 4th 969, 986 (concluding that "with respect to the recovery of civil penalties,
28 nonparty employees as well as the government are bound by the judgment in an action brought
under the act . . .").

1 Upon the Effective Date and subject to Defendant's full payment of
2 the Gross Settlement Amount, Plaintiff, on behalf of herself, her
3 heirs, executors, and assigns, the Aggrieved Employees, and the
4 State of California, fully releases and discharges Defendant, and each
5 of its present and former affiliates, parent companies, subsidiaries,
6 divisions, successors, predecessors, and assigns, and each of its
7 respective past and present shareholders, officers, partners, directors,
8 current and former employees, agents, attorneys, insurers,
9 successors, assigns, representatives, accountants, and all persons
10 acting under, by, through, or in concert with any of them
(collectively, "Released Parties") from any and all claims, rights,
demands, liabilities, and causes of action of every nature and
description, under PAGA, which were asserted in the Complaint or
which could have been asserted in the Complaint based on the facts
pled therein ("Released Claims") that accrued during the Settlement
Period (October 20, 2019 through August 18, 2021).

11 See Settlement Agreement, at § 5.01.

12 5. Settlement administration, which is to be paid from the Gross Settlement Amount,
13 will not exceed \$4,000. See Settlement Agreement, at § 3.04(a)(3). Phoenix Class Action
14 Administration Solutions, a reputable settlement administration company, has agreed to administer
15 the settlement for this amount, submitting a competitive bid.

16 6. As detailed herein, Plaintiff's counsel seek an award of attorneys' fees and litigation
17 costs of a combined \$52,386.82, and Plaintiff seeks a general release payment of \$10,000. See
18 Settlement Agreement, at § 3.02(a)(2).

19 7. Finally, under the terms of Settlement, the value of checks uncashed more than
20 180 days after issuance shall be remitted to the Office of the California State Controller –
21 Unclaimed Property Fund to be held in the name of the Aggrieved Employees. See Settlement
22 Agreement, at § 3.02(a)(7).

23 **III. LEGAL ARGUMENT**

24 **A. Standards for Approval of A PAGA Settlement**

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

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1 As with any settlement, the Court must be mindful in conducting its inquiry that
2 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
3 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222,
4 24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding of
5 absolutes and an abandoning of highest hopes’” [*Officers for Justice v. Civil Service Com.*, 688
6 F.2d 615, 624 (9th Cir., 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
7 of wasteful and expensive litigation that induce consensual settlements.” *See id.*, at 625. As such,
8 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
9 or “judged against a hypothetical or speculative measure of what might have been achieved by the
10 negotiators.” *See id.*

11 Although the operative PAGA statute does not set forth the criteria on which a PAGA
12 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for
13 review of a class action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. § 382 and Rule
14 3.769, Cal. Rules of Court, as courts within California have approved settlements of PAGA claims
15 encompassed within class action settlements using Rule 23 criteria.³ However, it is important to
16 underscore that not all Rule 23 factors can be applied, as “a PAGA claim asserted on a non-class
17 representative basis . . . is not considered a class action but a law enforcement action, and therefore
18 does not have to meet the requirements of Rule 23.” *See Casida v. Sears Holdings Corp.*, 2012
19 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan. 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011
20 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2, 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist.
21 LEXIS 66454 (E.D. Cal. June 30, 2010). Based thereon, a court’s review of a PAGA settlement

22 ³ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
23 balancing of several factors which may include, among others, some or all of the following: [1] the
24 strength of Plaintiffs’ case; [2] the risk, expense, complexity, and likely duration of further
25 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
26 in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the
27 experience and views of counsel; [7] the presence of a governmental participant; and [8] the
28 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).

1 necessarily implicates the following unique features that render the approval process completely
2 distinct from approval of a class action settlement under Rule 23 or C.C.P. § 382 and Rule 3.769,
3 Cal. Rules of Court.

4 First, in evaluating the adequacy of the settlement amount, the Court's focus is not
5 concerned with the amount which "aggrieved employees" are to receive, but rather, must focus on
6 the total settlement amount in achieving PAGA's objective.

7 While "[a PAGA] action is ... designed to protect the public and penalize the employer for
8 past illegal conduct" [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take
9 into account the fact that settlement of a PAGA claim – like any settlement – involves a
10 "compromise" that stops short of rendering findings of liability and damages. Moreover, the Court
11 must not lose sight of the fact that "[u]nlike a class action seeking damages or injunctive relief for
12 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties
13 for the government that otherwise may not have been assessed and collected by overburdened state
14 enforcement agencies." *See Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS 32774, at 12.

15 **B. The Settlement Meets All the Criteria For Approval**

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

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

21 In conducting a review of a settlement, it is generally recognized that an "agreement . . .
22 reached through arms-length negotiation between experienced parties . . . is entitled to a
23 presumption of fairness." *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377,
24 44 (C.D. Cal. Apr. 12, 2010).

25 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-
26 length negotiations brokered through a respected third party neutral [Gaines Decl. at ¶ 13], (2) that
27 was negotiated by Counsel with significant experience in similar wage and hour litigation [*see id.*,
28 at ¶¶ 2-5 and **Exhibit A**], (3) which occurred after Counsel had conducted sufficient investigation

1 to evaluate the strength and potential value of the PAGA claims, as well as evaluating the risks of
2 litigating this claim through trial. *See id.*, at ¶ 19-22. Based thereon, the court should give
3 considerable weight to the competency and integrity of counsel in assuring itself that the Settlement
4 Agreement represents an arm's-length transaction entered without self-dealing or other potential
5 misconduct.

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

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

12 This case addresses alleged violations of important employee protections embodied in the
13 California Labor Code – namely, that Defendant failed to compensate Plaintiff and Aggrieved
14 Employees with all overtime wages, failed to provide legally compliant rest breaks to Plaintiff and
15 Aggrieved Employees, in violation of Labor Code § 226.7, failed to provide legally compliant meal
16 breaks to Plaintiff and Aggrieved Employees, in violation of Labor Code §§ 226.7 and 512, failed
17 to timely pay wages to Plaintiff and Aggrieved Employees, in violation of Labor Code §§ 201-
18 203, and failed to issue accurately itemized wage statements to Plaintiff and Aggrieved Employees,
19 in violation of Labor Code §§ 226(a) and 226.3. Defendant's maximum theoretical exposure in
20 this action, without stacking potentially duplicative and oppressive penalties, totals approximately
21 \$417,500 computed by multiplying 4,175 pay periods by \$100 each. *See* Gaines Decl., ¶ 16.

22 Defendant contends it acted within the requirements of California law at all times as to all
23 Aggrieved Employees. It further contends that not every pay period at issue involved an alleged
24 Labor Code violation subject to civil penalties. Moreover, it maintained that even if the Court did
25 award penalties, the Court could and would *substantially* reduce the penalties awarded based on
26 the discretionary factors contained in Labor Code § 2699(e)(2) ("In action by an aggrieved
27 employee . . . , a court may award a lesser amount than the maximum civil penalty amount specified
28 by this part if, based on the facts and circumstances of the particular case, to do otherwise would

1 result in an award that is unjust, arbitrary and oppressive, or confiscatory.”). *See* Gaines Decl., ¶
2 17.

3 Based on these disputes, which had the potential to completely eliminate Plaintiff’s
4 recovery, the range of realistic “litigation outcomes” on the Plaintiff’s PAGA claim was defined
5 by a “maximum possible liability” amount of approximately \$417,500 based on 4,175 pay periods
6 in the Release Period, without stacking claims, at \$100 per violation [Gaines Decl., ¶ 17], and a
7 net-zero recovery based on the defenses asserted by Defendant. *Id.* Notwithstanding the existence
8 of such issues, the Settlement achieves a significant benefit. As such, this factor weighs very
9 heavily in favor of resolution by way of the compromise set forth in the Settlement. Gaines Decl.,
10 ¶ 17.

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

13 Approval of the proposed Settlement Agreement is also appropriate in light of the risk,
14 expense, and complexity of further litigation. As discussed above, the proposed Settlement
15 Agreement takes into consideration the specific factual and legal hurdles faced by Plaintiff in
16 establishing Defendant’s penalty-liability in this case, which again, may have resulted in a net-zero
17 recovery. These risks – when balanced with the fact that the settlement achieved a very significant
18 recovery (as demonstrated below), and that further litigation posed a risk of diminishing such
19 recovery by increasing litigation expenses – weigh strongly in favor of settlement approval.

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

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

25 The proposed settlement is not to be judged against a hypothetical or
26 speculative measure of what might have been achieved by the
27 negotiators.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d at
28 625 (emphasis in original). Thus, “the very essence of a settlement is
compromise, ‘a yielding of absolutes and an abandoning of highest
hopes.’” *Id.* at 624 (citations omitted). As the Second Circuit has
pointed out: “The fact that a proposed settlement may only amount

1 to a fraction of the potential recovery does not, in and of itself, mean
2 that the proposed settlement is grossly inadequate and should be
3 disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 &
n.2 (2nd Cir. 1974).

4 *See Linney*, 151 F.3d at 1242.

5 Here, after all deductions are made for administration, a general release payment, attorneys’
6 fees and costs, \$44,613.18 will be paid out, of which \$33,459.88 (i.e. 75%) will go to the LWDA,
7 and \$11,153.30 (i.e. 25%) will go to the Aggrieved Employees, as required by Labor Code § 2699(i)
8 (“civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to
9 the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”).
10 Gaines Decl., ¶¶ 14-15.

11 This result is remarkable, as settlements of PAGA claims impacting thousands of
12 individuals have been approved as reasonable for amounts far less than the payment in this case.
13 *See Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012)
14 (“Defendant has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the \$10,000,
15 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will benefit
16 the class The Court finds that the PAGA payment is set at a reasonable amount, and it shall be
17 approved.”); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal.
18 Oct. 29, 2012) (“GTI agrees to allocate \$10,000 to Plaintiff’s PAGA claims, and will pay \$7,500
19 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports with
20 settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
21 allocation of the Settlement to Plaintiff’s PAGA claim.”); *Schiller v. David’s Bridal, Inc.*, 2012
22 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) (“Pursuant to the Settlement Agreement, the
23 parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .
24 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
25 be approved.”); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
26 2012) (“Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
27 California Labor and Workforce Development Agency The Court finds that the PAGA
28

1 payment is set at a reasonable amount, and it shall be approved.”).⁴

2 Thus, notwithstanding the existence of issues having the potential to completely eliminate
3 recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds
4 typical PAGA awards routinely approved by the courts, it recovers significant monies for
5 Aggrieved Employees which they otherwise would not receive. As such, this factor balances
6 strongly in favor of approval of the Settlement.

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

8 As discussed above, the California Supreme Court has concluded that in the context of
9 PAGA “the nonparty employees, because they were not given notice of the action or afforded any
10 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
11 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the release provided in exchange for
12 the foregoing consideration is limited to the civil penalties asserted in the Action under Labor Code
13 §§ 2698 *et seq.* See Settlement Agreement, at § 11.

14 As such, this factor balances strongly in favor of approval of the Settlement.

15 **6. The Experience and Views of Plaintiff’s Counsel Favor Approval of the**
16 **Settlement**

17 Plaintiff’s Counsel has a significant degree of experience in complex wage and hour
18 litigation. *See* Gaines Decl., ¶¶ 2-5, Gaines Decl. at **Exhibit A**. In Plaintiff’s Counsel’s view, the
19 benefit conferred by the proposed Settlement is fair, reasonable, and adequate under the
20 circumstances, as it reflects a reasoned compromise which takes into consideration the risks
21 inherent in this case which had the potential to completely eliminate recovery. Gaines Decl., ¶¶
22 14-17. As such, this factor balances in favor of approval of the Settlement.

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24
25 ⁴ Significantly, each of the above-cited actions involved substantially more “aggrieved employees”
26 than the approximately 111 aggrieved employees in the instant Lawsuit. *See Franco*, 2012 U.S.
27 Dist. LEXIS 169057, 14 (“2,055 Class Members were ultimately identified”); *Garcia*, 2012 U.S.
28 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 **7. The Extent of Discovery Completed And The Stage Of The Proceedings**
2 **Favor Approval of the Settlement**

3 In evaluating this element, the Court should be mindful that ““formal discovery is not a
4 necessary ticket to the bargaining table”” [Linney, 151 F.3d at 1239], as the relevant consideration
5 is “whether ‘the parties have sufficient information to make an informed decision about
6 settlement.’” See *Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at
7 26 (C.D. Cal. Nov. 9, 2011).

8 Here, the extent of informal discovery conducted was sufficient to enable Plaintiff’s
9 Counsel to evaluate the strength and value of the claim for purposes of settlement. Gaines Decl.,
10 ¶¶ 10-12. As discussed above, Plaintiff’s Counsel’s investigation was sufficient to, among other
11 things, tabulate with precision the total number of alleged Labor Code violations at issue during
12 the Release Period and identify the total number of individuals falling within the definition of
13 “Aggrieved Employee” for the Release Period.

14 Based on Plaintiff’s Counsel’s experience litigating wage and hour claims, such
15 investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate
16 the strength of this claim for purposes of settlement. See Gaines Decl., ¶¶ 18-20.

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

19 In addition to the factors presented above, the proposed Settlement does not possess any
20 obvious deficiencies. The Settlement contemplates entry of an order (submitted concurrently
21 herewith) which approves the Settlement and dismisses the Action with prejudice. Section 6.11 of
22 the Settlement Agreement and paragraph 8 of the proposed order authorize the Court to retain
23 jurisdiction over the Action pursuant to Code of Civil Procedure section 664.6. This procedure
24 effectively disposes of the Action in its entirety, documents the Court’s approval of the Settlement
25 as required by PAGA, allows for Court intervention if necessary to enforce the terms of the
26 Settlement Agreement, and avoids any stigmas associated with the entry of a judgment against
27 Defendant. In sum, under the applicable standards for approval of PAGA settlements in California,
28 the settlement in this case meets the standards for approval.

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

3 Pursuant to the terms of the Settlement, Plaintiff's Counsel seeks attorneys' fees of \$44,400
4 and reimbursement of total litigation costs of \$7,986.82, falling within the bounds authorized by
5 the Settlement Agreement. *See* Settlement Agreement, at § 3.02(a)(2). Plaintiff's Counsel's
6 entitlement to an award of attorneys' fees and costs is warranted on multiple independent grounds.
7 Further, the amount of fees requested falls well within the range of reasonableness under applicable
8 standards, as the amount requested constitutes a "percentage of the fund" deemed reasonable in
9 similar wage and hour settlements of this size and approved by California courts, which is not only
10 warranted based on the contingency risk Plaintiff's Counsel has agreed to incur for the benefit of
11 the State of California and Aggrieved Employees, but also based on the significant results achieved,
12 as the Settlement obtains a recovery substantially above the range approved as reasonable by
13 California state and federal courts. Based thereon, Plaintiff's Counsel respectfully request that the
14 Court enter an order approving the fee and cost amounts requested.

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

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

21 Courts have long recognized the "common fund" or "common benefit" doctrine, under
22 which attorneys who create a common fund or benefit for a group of persons may be awarded their
23 fees and costs to be paid out of the fund. *Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25,
24 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
25 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
26 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
27 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

28 \\

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

10 Where the lawsuit results in the recovery of a fund or property
11 benefiting others as well as Plaintiffs (e.g., a class action), the court
12 has inherent equitable power to order Plaintiffs’ attorney fees paid
13 out of the common fund or property [citations]. Such fee spreading
14 assures that all of those benefited by the litigation pay their fair share
15 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 attorneys’ fee award based on a percentage of the
22 common benefit obtained in a lawsuit by a city employees’ 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
28 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).

29 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court
30 stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which
31 others derive benefits may require those passive beneficiaries to bear a fair share of the litigation

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

5 Numerous appellate courts have similarly found. *See e.g., Knoff v. City and County of San*
6 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
7 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable
8 powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and
9 expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
10 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit
11 created by action compelling state to claim dormant bank accounts).

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

18 Thus, as Plaintiff’s Counsel have expended a significant amount of time and money to
19 secure a \$111,000 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S.
20 Dist. LEXIS 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees
21 have resulted in the preservation or recovery of a certain or easily calculable sum of money—out of
22 which sum or ‘fund’ the fees are to be paid.’”)], and in doing so, have exclusively borne the risk of
23 loss for such expenditures of time and expenses (as the LWDA elected not to take the case after
24 receiving the PAGA Notice), Plaintiff’s Counsel are entitled to claim reasonable fees from that
25 fund under applicable precedent.⁵

26 ⁵ Plaintiff’s Counsel is also entitled to recover attorney’s fees and costs as a matter of right under
27 the PAGA statute [*Labor Code* § 2699(g)(1) (“Any employee who prevails in any action shall be
28 entitled to an award of reasonable attorney’s fees and costs.”)], and under *C.C.P.* § 1021.5, as the

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

2 In addition to the forgoing, Plaintiff's Counsel's request for attorneys' fees in the amount
3 of \$44,400, or 40% of the \$111,000 Gross Settlement Amount, falls well within the "zone of
4 reasonableness."

5 It is important to highlight at the outset that the fee amount presently sought is not
6 extraordinary, but actually falls at the "average" fee deemed reasonable under California State court
7 authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in wage
8 and hour class actions that result in recovery of a common fund under \$10 million." *See e.g. Martin*
9 *v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). In fact, this fee
10 request is at the lower end of that range.

11 Moreover, taking into account the contingency risk Plaintiff's Counsel agreed to incur for
12 the benefit of the State of California (which elected not to take the case after receiving the PAGA
13 Notice), and the significant results achieved – facts which justify the requested fee – Plaintiff's
14 Counsel's requested fee is 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 also 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 First, the results achieved by Plaintiff's Counsel are significant, as Defendant has agreed to

24 _____
25 instant PAGA action was by definition "for the public benefit" and secured monetary awards for
26 approximately 188 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.*
27 (2007) 154 Cal. App. 4th 1, 16-17 (2007) ("Estrada's personal motivation does not diminish the
28 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 pay \$111,000 pursuant to the Settlement. This is a significant recovery given the risk of success in
2 obtaining any recoverable penalties. [Gaines Decl., ¶ 18], and further, as the settlement of PAGA
3 claims impacting much higher numbers of individuals have been approved as reasonable for
4 between \$7,500 and \$15,000. *See* Section III.B.4., *supra*.

5 Second, such results were achieved in the face of significant risks. As explained above,
6 Defendant maintained defenses to Plaintiff's PAGA claims that very well could have resulted in a
7 net-zero recovery at trial. Gaines Decl. at ¶ 19.

8 Third, notwithstanding this risk of loss, Plaintiff's Counsel undertook representation of the
9 instant PAGA claim for the benefit of the State of California on a contingency basis. Gaines Decl.
10 at ¶ 20. This not only required Plaintiff's Counsel to personally assume the risk of nonpayment in
11 securing the very substantial financial benefit the State of California stands to receive, but
12 constitutes a "loan" on Plaintiff's Counsel services – both of which are factors warranting fee
13 enhancement under applicable California Supreme Court authority:

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

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

24 Finally, the percentage requested by Plaintiff's Counsel falls within a typical range,
25 particularly in light of the modest settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796,
26 23 ("[C]ourts may award attorney's fees in the 30-40% range in wage and hour class actions that
27 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
11 Cal.5th 480, 506, that “[t]he percentage of fund method survives in California class action cases.”
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

1 failure.”).

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

10 Here, Plaintiff’s Counsel’s fee request of \$44,400 (40% of the Gross Settlement Amount) is
11 fair and reasonable based on a percentage of the recovery, and as well as when confirmed with a
12 lodestar cross-check. This is also consistent with Class Counsel’s experience in similar wage and
13 hour class action matters. *Gaines Decl.* at ¶¶ 2-5. Thus, the percentage sought by Plaintiff’s Counsel
14 here is reasonable.

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

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

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

7 In this case, Plaintiff’s Counsel is submitting an attorney fee request equaling \$44,400.
8 Based on a projected final lodestar of \$ 35,730, this yields a multiplier of 1.24 over the \$44,400 fee
9 request. Gaines Decl. at ¶ 2. The billing rates used to compute the lodestar are reasonable in view
10 of the evidence submitted herewith. Gaines Decl. at ¶¶ 22-31; **Exhibit D** to Gaines Decl.

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

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

18 In the course of this litigation, Plaintiff’s Counsel collectively incurred out-of-pocket costs
19 of \$7,986.82 through the conclusion of this matter. *See* Gaines Decl. at ¶ 32, **Exhibit E**.

20 As demonstrated in the Gaines Declaration submitted herewith, the incurred costs included
21 filing fees, mediation fees, photocopy charges, service of process fees, mailing charges, and other
22 charges typical of litigation of this nature. *Id.* Such costs are appropriate for cost reimbursement
23 in these types of cases. *See e.g., In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL
24 7321 1, *6 (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); *see also, In re GNC*
25 *Shareholder Litigation* (W.D. Pa. 1987) 668 F. Supp. 450, 452.

26 The costs incurred by Plaintiff’s Counsel in this litigation benefited Plaintiff, Aggrieved
27 Employees, and the State. In light of the litigation costs that Plaintiff’s Counsel was required to
28 incur to prosecute this action, Plaintiff’s cost request is reasonable and should be granted.

1 **V. THE GENERAL RELEASE PAYMENT SOUGHT BY PLAINTIFF IS**
2 **REASONABLE AND SHOULD BE APPROVED**

3 The Parties have agreed that Plaintiff will be paid a general release payment in the amount
4 of \$10,000. These payments are intended to recognize both the time and effort that Plaintiff spent
5 on behalf of other Aggrieved Employees and the State and to compensate them for a full general
6 release of all claims. See Settlement Agreement at § 3.02(a)(2). See Gaines Decl., ¶ 33; Declaration
7 of Yesenia Aguayo (“Aguayo Dec.”) submitted herewith.

8 As to an incentive award, case law supports the award of incentive payments in private
9 attorney general actions. The Ninth Circuit has recognized that a named Plaintiff’s “willingness to
10 act as a private attorney general” may justify the award of an incentive payment. *Rodriguez v. West*
11 *Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub*
12 *LLC*, no. 2:12-CV-02716-TLN-CKD (E.D. Cal., Sep. 6, 2013), the United States District Court for
13 the Eastern District of California approved a similar PAGA-only settlement and awarded a service
14 payment to the representative Plaintiff in recognition of her efforts.

15 The traditional bases for awarding incentive awards in class settlements support the award
16 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
17 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive
18 awards and held that “the rationale for making enhancement or incentive awards to named Plaintiffs
19 is that he or she should be compensated for the expense or risk he has incurred in conferring a
20 benefit” on others. *Id.* at 806. This rationale applies in this Action exactly the same as it would in
21 a traditional class action.

22 Without Plaintiff’s efforts, there would be no recovery at all. The requested award is
23 appropriate to compensate Plaintiff for the risk and expense she incurred in conferring a benefit on
24 other of Defendant’s employees and the State of California in exchange for her broad release of
25 claims. See Settlement Agreement, § 5.02.

26 As a result of the named Plaintiff’s efforts, Aggrieved Employees will receive monetary
27 settlement payments, and the State of California will receive \$33,459.88 to be put toward education
28 about and enforcement of California’s labor laws.

1 In this case, Plaintiff performed the following tasks, among others: (1) assisted Counsel in
2 investigating and substantiating the claims alleged in this action, including multiple interviews with
3 counsel to review facts, documents, and Defendant's policies; (2) assisted in the preparation of the
4 complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the
5 settlement of this litigation. *See generally*, Aguayo Dec. Moreover, as with any plaintiff who files
6 a civil action, the named Plaintiff undertook the financial risk that, in the event of a judgment in
7 favor of Defendant in this action, she could have been personally responsible for any attorneys'
8 fees and costs awarded in Defendant's favor.

9 The award of such payment to Plaintiff is especially warranted in a case like this one. It is
10 necessary to ensure that employees, like Plaintiff, continue to bring claims like those brought here
11 to enforce the rights of employees. Individuals like Plaintiff (and most Aggrieved Employees)
12 would have little, if any, recourse without the representative action device. Most Aggrieved
13 Employees – like the Plaintiff—would be fearful of retaliation in response to filing any lawsuit,
14 much less a representative action suit. Plaintiff must be commended for pursuing her claims; a
15 modest payment like that 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 Ms. Aguayo is
19 releasing all Labor Code claims which underlie the PAGA claims she asserts. *See Settlement*
20 *Agreement* at § 5.02. No other Aggrieved Employee is subject to this broad form of release. *Gaines*
21 *Decl.* at ¶ 33. The value of Plaintiff's claims are substantial and merit the amount requested for
22 their general release. *Gaines Decl.* at ¶ 35.

23 This broad release was negotiated (and necessary) to resolve the Action. Plaintiff threatened
24 to assert her individual claims, either in arbitration or in litigation, and Defendant required that they
25 be resolved in connection with the resolution of the Action. Without the resolution and release of
26 Plaintiff's individual wage claims, litigation would continue in a piecemeal fashion, and Defendant
27 is buying peace with this settlement, such that its objectives would not be achieved absent the
28 general release. *Gaines Decl.* at ¶¶ 33-35.

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 Class Action Administration Solutions as the Settlement
9 Administrator and approve its administration fees up to \$4,000 for payment out of the Gross
10 Settlement Amount;

11 3. Approve the award of attorneys' fees and costs to Plaintiff's Counsel in the amount
12 of \$52,386.82 payment of which shall come from the Gross Settlement Amount;

13 5. Approve the award of a general release payment to Plaintiff Aguayo in the amount
14 of \$10,000 from the Gross Settlement Amount;

15 6. Direct disbursement of the remaining Gross Settlement Amount to the LWDA and
16 all Aggrieved Employees as provided for in the Settlement Agreement; and

17 7. Dismiss the Action with prejudice.
18

19 Date: November 16, 2021

Respectfully submitted,

20 GAINES & GAINES, APLC

21
22 By: Daniel F. Gaines

23 DANIEL F. GAINES

24 EVAN S. GAINES

25 Attorneys for Plaintiff
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