

MELMED LAW GROUP P.C.

Jonathan Melmed (SBN 290218)

jm@melmedlaw.com

Kyle D. Smith (SBN 280489)

ks@melmedlaw.com

1801 Century Park East, Suite 850

Los Angeles, California 90067

Phone: (310) 824-3828

Fax: (310) 862-6851

Attorneys for Plaintiff and the Aggrieved Employees

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

EDWARD GRANILLO, an individual, on
behalf of himself and the State of California, as
a private attorney general,

Plaintiff,

v.

WEATHERFORD U.S., L.P., a Louisiana
Limited Partnership; and DOES 1 TO 50,

Defendants.

Case Number: 1:20-cv-01614-DAD-BAK (SKO)

**Plaintiff's Notice of Motion and Motion for
Approval of Settlement Pursuant to the
California Labor Code Private Attorneys
General Act of 2004 ("PAGA"); Memorandum
of Points and Authorities in Support Thereof**

Date: July 19, 2022

Time: 9:30 a.m.

Courtroom: 7

Magistrate Judge: Hon. Sheila K. Oberto

Action Filed: October 14, 2020

Removal Date: November 13, 2020

1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD**, please take notice that, on
3 July 19, 2022, at 9:30 a.m., or the earliest available date to be assigned by the Court, in Courtroom 7
4 of the United States District Court, Eastern District of California, at the Robert E. Coyle United States
5 Courthouse, 2500 Tulare Street, Fresno, California 93721, before the Honorable Sheila K. Oberto,
6 pursuant to section 2699, subdivision (1)(2), of the California Labor Code, Plaintiff Edward Granillo
7 (“Plaintiff”) on behalf of himself and all other aggrieved employees, will and hereby does move this
8 Court for entry of an order approving: **(1)** the terms of the *PAGA Settlement and Release Agreement*
9 (“Settlement Agreement”) entered into between Plaintiff, acting in his capacity as a private attorney
10 general for the State of California, and Defendant Weatherford U.S., L.P. (“Defendant”); **(2)** the
11 attorneys’ fees and costs described in the Settlement Agreement; **(3)** Plaintiff’s enhancement award of
12 \$7,500 in recognition of his service to the State of California and the other aggrieved employees; **(4)** the
13 settlement administrator’s costs, and **(5)** final judgment.

14 This motion is based on the included memorandum of points and authorities; the *Declaration*
15 *of Jonathan Melmed in Support of Motion to Approve the Settlement Pursuant to PAGA* (“Declaration
16 of Jonathan Melmed”); the Settlement Agreement attached to the Declaration of Jonathan Melmed as
17 **Exhibit 1**; the proposed order granting approval of the Settlement Agreement; all other records,
18 pleadings, and papers filed in this action; and upon such other evidence or argument as may be
19 presented to the court at the hearing of this motion.

20 Dated: June 7, 2022

MELMED LAW GROUP P.C.

/s/ Jonathan Melmed

JONATHAN MELMED

Attorney for Plaintiff and the Aggrieved Employees

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff Edward Granillo (“Plaintiff”) seeks approval of a settlement entered into pursuant to
4 the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) between Plaintiff and
5 defendant Weatherford U.S., L.P. (“Defendant”) (collectively, the “Parties”). Pursuant to Cal. Lab.
6 Code § 2699(1)(2) the court is required to “review and approve any settlement of any civil action filed
7 pursuant to [PAGA].” A true and correct copy of the *PAGA Settlement and Release Agreement*
8 (“Settlement Agreement”) is attached as **Exhibit 1** to the concurrently-filed *Declaration of Jonathan*
9 *Melmed in Support of Plaintiff’s Motion for Approval of Settlement Pursuant to PAGA* (“Declaration
10 of Jonathan Melmed” or “Melmed Decl.”). The Settlement Agreement, in its entirety, is incorporated
11 herein by reference.

12 The Settlement Agreement provides for a gross settlement amount of **\$325,000** (“Gross
13 Settlement Amount”), to be distributed to the California Labor and Workforce Development Agency
14 (“LWDA”) and a group of approximately 191 “Aggrieved Employees” defined as:

15 All current and former non-exempt employees employed in California by Weatherford
16 U.S., L.P. between October 12, 2019, through and including December 31, 2021 (the
17 “PAGA Period”). Settlement Agreement at 2.
18

19 The Settlement Agreement further provides for deductions from the Gross Settlement Amount
20 for: Plaintiff’s counsel’s fees of up to one-third of the Gross Settlement Amount (or \$108,333.33); an
21 enhancement award of \$7,500 for the Plaintiff in recognition of his service to the State of California
22 and the other aggrieved employees; Plaintiff’s counsel’s out-of-pocket costs, which Plaintiff expects
23 will not exceed \$20,000; and settlement administration costs, which Plaintiff estimates to total \$3,000
24 based on a quote received by the proposed settlement administrator. After deductions, the net settlement
25 amount of no less than **\$186,166.67** (“Net Settlement Amount”) will be distributed pursuant to PAGA
26 as follows: 75% to the California Labor and Workforce Development Agency (“LWDA”) and 25% to
27 the aggrieved employees. *See* Cal. Lab. Code § 2699, subd. (i) (“[C]ivil penalties recovered by
28

aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency . . . ; and 25 percent to the aggrieved employees.”); Settlement Agreement at 7.

If the Court grants approval of the Settlement Agreement, each Aggrieved Employee will receive a pro-rata share of approximately **\$46,541.66**, which is calculated as follows:

Gross Settlement Amount	\$325,000.00
Attorneys’ Fees	(\$108,333.33)
Litigation Costs	(\$20,000.00)
Settlement Administration Costs	(\$3,000.00)
Representative Service Award	(\$7,500.00)
PAGA payment to the LWDA	(\$139,625.00)
Employee Share of the Net Settlement Amount	\$46,541.67

The Settlement Agreement, which was negotiated in light of all known facts and circumstances—including the difficulty of proving some of Plaintiff’s claims and the potential defenses asserted by Defendant—represents an excellent result in this litigation based upon the risk factors associated with the claims and provides substantial benefits to the aggrieved employees and the State of California. Melmed Decl. ¶ 5. As such, Plaintiff believes the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the State of California and the aggrieved employees given the issues in this action. Accordingly, Plaintiff respectfully requests that the Court grant approval of the Parties’ proposed Settlement Agreement.

II. BACKGROUND

On October 12, 2020, Plaintiff submitted a letter to the California Labor and Workforce Development Agency (“LWDA”) to notify the LWDA of Plaintiff’s intent to seek civil penalties under PAGA for violations of Cal. Lab. Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, among other provisions of the California Labor Code. Melmed Decl. ¶ 14.

1 On October 14, 2020, Plaintiff filed a representative action complaint in the Superior Court of
2 California for the County of Kern case number BCV-20-102386. Melmed Decl. ¶ 15. On November
3 13, 2020, this action was removed by Defendant to the United States District Court for the Eastern
4 District of California. On January 22, 2021, Plaintiff filed his first amended complaint to add one cause
5 of action seeking penalties pursuant to PAGA for the violations underlying wage-and-hour claims of
6 the original complaint and remove all class claims based on an arbitration agreement with Defendant.
7 Cal. Lab. Code §§ 2699, 2699.3(a)(2); Melmed Decl. ¶ 15.

8 Thereafter, the Parties agreed to participate in mediation. Melmed Decl. ¶ 16. In preparation for
9 mediation, the Parties exchanged various documents and information that allowed both sides to
10 evaluate the potential exposure and potential risk, such as a review of Defendant's employee handbook,
11 policies and procedures related to the claims alleged in the Complaint, Plaintiff's personnel files,
12 payroll and time records, and a substantial sample of time and pay records for the alleged Aggrieved
13 Employees. Melmed Decl. ¶ 16. Plaintiff's counsel analyzed, researched, and investigated the potential
14 issues, including matters related to the calculation of PAGA damages, interviews of the Plaintiff and
15 other alleged Aggrieved Employees, trial management, and appellate issues and risks. Melmed Decl. ¶
16 16.

17 On October 19, 2021, the Parties attended an all-day mediation via Zoom with experienced
18 wage-and-hour mediator Steve Pearl. Melmed Decl. ¶ 17. The Parties, with the assistance of the
19 mediator, successfully reached an agreement to resolve the case in a PAGA settlement. On November
20 17, 2021, the Parties executed a Settlement Term Sheet memorializing the broad terms of the agreement
21 they reached during the mediation. Melmed Decl. ¶ 17. On March 21, 2022, after continued
22 negotiations about the detailed terms of the settlement, the Parties executed the long-form Settlement
23 Agreement now before this Court for approval. Melmed Decl. ¶ 17.

24 The Parties concluded that there were benefits associated with settling the matter, and
25 concluded—after taking into account the sharply disputed factual and legal issues involved in this
26 litigation, the risks associated with further prosecution, the substantial benefits to be received pursuant
27 to the compromise and settlement of the PAGA representative penalty claims, as well as Plaintiff's
28 individual claims—that settlement on the terms set forth in the Settlement Agreement was and is in the

1 best interest of the Plaintiff, Defendant, the LWDA, and the Aggrieved Employees. Melmed Decl. ¶
2 18.

3 The matter is now before this Court and Plaintiff respectfully requests that the Court grant
4 approval of the Parties' proposed Settlement Agreement.

5 **III. RELEVANT LAW**

6 PAGA provides an enforcement mechanism for California's labor laws by enlisting individual
7 plaintiffs as private attorneys general to recover civil penalties for the state, with a share also going to
8 the individual plaintiffs and other aggrieved employees. Cal. Lab. Code §§ 2698–2699.6. Due to the
9 lack of financing for California's agencies, and the substantial number of Labor Code violations by
10 California employers, the California Legislature found that it was in the public interest to allow
11 aggrieved employees to act as "private attorneys general" to enforce and recover civil penalties on
12 behalf of the State of California for Labor Code violations committed by employers. *Arias v. Superior*
13 *Court*, 46 Cal. 4th 969, 980 (2009). As the Legislature that adopted PAGA observed, "the only
14 meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties
15 as provided in the Labor Code." 2003 Cal. Legis. Serv. Ch. 906 (S.B. 796), § 1(b).

16 Moreover, the Labor Code's primary purpose is to "ensure employees are not required or
17 permitted to work under substandard unlawful conditions . . . and to protect employers who comply
18 with the law from those who attempt to gain a competitive advantage at the expense of their workers
19 by failing to comply with minimum labor standards." Cal. Lab. Code § 90.5(a). Therefore, the
20 Legislature determined that "adequate financing of labor law enforcement was necessary to achieve
21 maximum compliance with state labor laws, that staffing levels for labor law enforcement agencies had
22 declined and were unlikely to keep pace with the future growth of the labor market, and that it was
23 therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to
24 recover civil penalties for Labor Code violations, with the understanding that labor law enforcement
25 agencies were to retain primacy over private enforcement efforts." *Arias*, 46 Cal. 4th at 980. Thus,
26 Plaintiff, acting as a private attorney general and proxy for the State of California, filed this action
27 seeking civil penalties for Defendant's alleged violations of the Labor Code.
28

1 Penalties recovered under PAGA “shall be distributed as follows: 75 percent to the Labor and
2 Workforce Development Agency for enforcement of labor laws and education of employers and
3 employees about their rights and responsibilities under this code and 25 percent to the aggrieved
4 employees.” Cal. Lab. Code § 2699(i).

5 Before filing a PAGA action, an aggrieved employee must first provide written notice to the
6 LWDA and the employer of the particular Labor Code violations the aggrieved employee alleges the
7 employer has violated. Cal. Lab. Code § 2699.3(a)(1). This notice provides the LWDA with the
8 opportunity to investigate and prosecute the claim, if it so chooses. The employee may only sue on the
9 state’s behalf if the LWDA fails to respond to the notice within 65 days, responds that it does not intend
10 to investigate, or investigates and does not issue a citation within 185 days. Cal. Lab. Code §§ 2699,
11 2699.3(a)(2).

12 In this case, Plaintiff provided the LWDA with a notice letter advising it of the alleged Labor
13 Code violations, but the LWDA deferred the prosecution of these violations to Plaintiff and his
14 attorneys by failing to respond to Plaintiff’s notice within 65 days. Melmed Decl. ¶¶ 14–15.
15 Accordingly, the Settlement Agreement and the common fund created by it for the benefit of the State
16 of California and the Aggrieved Employees, is solely the result of the work performed by Plaintiff and
17 his attorneys on this case—all while the Aggrieved Employees will preserve their own separate
18 individual claims should they wish to pursue them.

19 Any settlement of a PAGA action brought by an aggrieved employee must be approved by the
20 Court. Cal. Lab. Code § 2699(l)(2). In 2009, the California Supreme Court held that an aggrieved
21 employee’s representative action brought on behalf of the state and other aggrieved employees against
22 an employer for PAGA violations does not need to meet the requirements for class certification nor
23 does there need to be notice to the other employees. *Arias*, 46 Cal.4th at 975. Thus, the court simply
24 reviews the settlement and approves it if it is deemed to be fair and adequate in view of the purposes
25 and policies of PAGA. *See Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d
26 1074, 1077 (C.D. Cal. 2017) (reviewing a PAGA settlement to determine whether it was “fair and
27 adequate in view of the purposes and policies of the statute”).
28

1 **IV. THE SETTLEMENT, NOTICE, AND DISTRIBUTION OF PAGA PENALTIES**

2 The following is a summary of the key terms of the Settlement Agreement.

3 **A. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

4 Pursuant to the Settlement Agreement, Defendant has agreed to pay the total sum of \$325,000
5 (the “Gross Settlement Amount”) in full settlement of the action. The Gross Settlement Amount is to
6 be allocated as follows:

7 1. Plaintiff’s counsel’s attorney fee request of one-third of the Gross Settlement Payment
8 (\$108,333.33). Settlement Agreement at 7. As will be explained below, the attorney fees are
9 reasonable based on case law, the experience and case work by Plaintiff’s counsel, and the effort put
10 into securing the Gross Settlement Amount for the State of California and the Aggrieved Employees.

11 2. Plaintiff’s counsel’s request for actual litigation costs and expenses up to the
12 additional amount of \$20,000. Settlement Agreement at 7.

13 3. Actual administration costs, which Plaintiff believes will not exceed \$3,000 based on
14 quotes from the proposed settlement administrator, ILYM Group, Inc. Settlement Agreement at 7;
15 Melmed Decl. ¶ 63; Melmed Decl., Exh. 2.

16 4. Plaintiff’s enhancement award of \$7,500. Settlement Agreement at 7.

17 5. The remainder of the Gross Settlement Amount (the “Net Settlement Amount”) after
18 deducting the items above shall be designated as PAGA penalties to be allocated between the LWDA
19 and the Aggrieved Employees pursuant to Cal. Lab. Code § 2699(i), with 75% paid to the LWDA
20 and 25% paid to the Aggrieved Employees on a pro rata basis. Settlement Agreement at 7. Each
21 Aggrieved Employee shall receive a pro rata value equal to the Aggrieved Employee share multiplied
22 by the quotient of the number of pay periods worked by that Aggrieved Employee during the PAGA
23 Period divided by the total number of pay periods worked by all Aggrieved Employees during the
24 PAGA Period. Settlement Agreement at 7.

25 **B. TAX TREATMENT OF SETTLEMENT AMOUNTS**

26 Because this case is being resolved on a PAGA-only basis with all recovery arising from
27 penalties (rather than unpaid wages), IRS Form 1099 will be issued. With regard to settlement
28 payments to the Aggrieved Employees and Plaintiff, IRS Form 1099s will be issued. Settlement

1 Agreement at 9–10. Payment of Plaintiff’s counsel’s fees and litigation costs will also be reflected in
2 an IRS Form 1099 to Plaintiff’s counsel. Settlement Agreement at 10.

3 **C. PAGA PAYMENT AND NOTICE PROCEDURE**

4 Within 30 calendar days after this Court’s order granting approval of the PAGA settlement,
5 Defendant is required to provide the settlement administrator with a list of all Aggrieved Employees
6 (the “Aggrieved Employees List”), containing the following information for each Aggrieved
7 Employee: **(1)** their full name; **(2)** last known mailing address and telephone number, **(3)** number of
8 pay periods as an Aggrieved Employee during the PAGA Period, **(4)** each Aggrieved Employee’s
9 social security number. Settlement Agreement at 12. Within 45 calendar days after entry of the
10 judgment approving the PAGA settlement, Defendant is required to deposit the Gross Settlement
11 Amount with the settlement administrator. Settlement Agreement at 12.

12 6. Plaintiff, through counsel, has obtained bids from several settlement administration
13 companies for the settlement administration of this case. Melmed Decl. ¶ 63. Of those, ILYM Group,
14 Inc. presented the lowest qualified bid of \$3,000. Accordingly, Plaintiff proposes using ILYM Group,
15 Inc. as the settlement administrator. The settlement administrator will be responsible for processing the
16 settlement payments and providing notice to the Aggrieved Employees as outlined in the Settlement
17 Agreement. A bid for the costs of settlement administration from the proposed settlement administrator
18 ILYM Group, Inc. is attached as **Exhibit 2** to the Declaration of Jonathan Melmed filed concurrently
19 with this motion. Melmed Decl. ¶ 63. The Settlement Administrator will be responsible for processing
20 the settlement payments. Settlement Agreement at 12–13.

21 Within ten business days after the Effective Date, as that term is defined in the Settlement
22 Agreement, the Settlement Administrator will distribute all payments due to each Aggrieved Employee.
23 Settlement Agreement at 13. The Settlement Administrator will send the Aggrieved Employees their
24 share of the Net Settlement Amount and a letter agreed on by the Parties (the “Settlement Notice”)
25 explaining the terms of this settlement via U.S. First Class mail. Settlement Agreement at 13. A copy
26 of the Parties’ proposed Settlement Notice is attached to the Settlement Agreement as **Exhibit B**.

27 Settlement checks will expire 120 calendar days from the date of their issuance. Settlement
28 Agreement at 13. If any checks are returned as undeliverable to the Settlement Administrator or remain

1 uncashed more than 120 days after issuance, those settlement checks will be tendered to the State
2 Controller's Office, Unclaimed Property Division. Settlement Agreement at 13.

3 **D. THE RELEASE**

4 The California Supreme Court has explained that a judgment in "a representative action brought
5 by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding
6 not only on the named employee plaintiff but also on government agencies and any aggrieved employee
7 not a party to the proceeding." *Arias*, 46 Cal.4th at 985. In accordance with this rule, the PAGA claims
8 released by the Aggrieved Employees narrowly includes only the claims seeking civil penalties under
9 PAGA that arose during the PAGA Period. Settlement Agreement at 10.

10 In accordance with *Arias*, the order that the Parties request this Court to enter is intended to be
11 binding not only on the named employee plaintiffs but also on the State of California and any Aggrieved
12 Employee not a party to the proceeding. Settlement Agreement at 10. The "Release Claims" in the
13 Settlement Agreement are defined as follows:

14 "[A]ll claims for civil penalties and associated fees or costs related to claims for
15 unpaid regular or premium wages (as defined by the Labor Code), meal/rest period
16 violations and/or premium payments for meal and/or rest period violations, wage
17 statement violations, wage payment timing violations, record-keeping violations, and
18 to the extent not covered above, any and all claims pled in the Litigation or the
19 associated notices to the LWDA, including without limitation all associated claims for
20 civil penalties and associated fees or costs related to alleged or actual violations of
21 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174,
22 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2804, and 2699." Settlement
23 Agreement at 10.

24
25 Plaintiff has executed an additional general release, partially in exchange for his enhancement
26 award of \$7,500, which includes all claims, whether known or unknown, under federal law or state law
27 (including their individual wage and hour claims). Settlement Agreement at 8–9. This general release
28 does not bind other aggrieved employees. Settlement Agreement at 10.

1 **V. THE SETTLEMENT IS FAIR AND REASONABLE, AND WARRANTS COURT**
2 **APPROVAL**

3 **A. STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT**

4 The legislative history of PAGA makes little mention of the approval requirements in Cal. Lab.
5 Code § 2699(l). The original version of PAGA did not contain the court approval requirement now
6 codified in subdivision (l). That subdivision was added as part of the amendments to PAGA that became
7 effective on August 11, 2004. 2004 Cal. Legis. Serv. Ch. 221 (S.B. 1809), § 3. Senator Joseph L. Dunn
8 authored both the original PAGA bill (S.B. 796) and the amendments (S.B. 1809). On July 29, 2004,
9 during the consideration of the amendments in S.B. 1809, Senator Dunn sent a letter addressed to the
10 President Pro Tempore of the Senate, which was published in the Senate Daily Journal, “to clarify the
11 intent of subdivision (1)” of Cal. Lab. Code § 2699. 2003–2004 Sen. Daily J., Vol. 3, at 4754–4755
12 (July 29, 2004). In the letter, Senator Dunn stated:

13 “The purpose of the court review of penalties in subdivision (l) is to ensure that
14 settlements involving penalties arising under Labor Code Section 2699 do not
15 undercut the dual statutory purposes of punishment and deterrence, or result in unjust,
16 arbitrary and oppressive, or confiscatory settlements.” *Id.*

17
18 These broad criteria appear to give the Court wide latitude in determining whether to approve
19 the penalties proposes as part of a PAGA settlement. Interestingly, the criteria focus on the effect the
20 penalties may have on the defendant-employer rather than the LWDA or the aggrieved employees who
21 will receive the penalties. *See Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 383
22 (2014) (while the state has an interest “in receiving the proceeds of civil penalties,” the penalties are
23 “used to deter violations”). This is different than the analysis of a class action settlement, which
24 typically focuses on the amount received by the class and compares that to the reasonable range of
25 potential outcomes in this case. *See, e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130
26 (2008). Moreover, “there is not requirement that the Court certify a PAGA claim for representative
27 treatment” as in a class action. *Villalobos v. Calandri Sonrise Farm LP*, No. CV122615PSGJEMX
28 2015 WL 12732709, at *5 (C.D. Cal., July 22, 2015).

1 **B. THE CLAIMS, DEFENSES, AND DAMAGES**

2 Plaintiff's claims arise from several of Defendant's employment practices he alleged were
3 unlawful. Melmed Decl. ¶ 19. Specifically, Plaintiff alleged that Defendant failed to pay overtime
4 wages, provide compliant rest periods and pay missed rest period premiums, provide compliant meal
5 periods and pay missed meal period premiums, reimburse all necessary business expenses, and pay all
6 vacation wages. These violations resulted in a derivative allegation for failure to issue accurate and
7 complete wage statements. Melmed Decl. ¶ 19.

8 Defendant has persistently denied all liability of any kind associated with the claims and
9 allegations, and further denied that Plaintiff or the Aggrieved Employees are entitled to any relief.
10 Defendant also denies that these allegations are appropriate for representative treatment for any purpose
11 other than the settlement. Defendant maintains, among other things, that they have complied with
12 California laws in all respects. Melmed Decl. ¶ 20.

13 These claims, defenses, and potential damages are summarized in more detail below.

14 **1. Overtime Allegations**

15 In California, overtime wages must generally be paid out at no less than one and one-half times
16 the employees' regular rate of pay or twice the employees' regular rate of pay, depending on the number
17 of hours worked. Cal. Lab. Code § 510; *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th
18 542, 553 (2018). The regular rate of pay is not merely the employee's base hourly rate, but must instead
19 include many different kinds of remuneration, for example: hourly earnings, salary, piece work
20 earnings, commissions, certain bonuses, and the value of meals and lodging. *General Atomics v.*
21 *Superior Court*, 64 Cal. App. 5th 987, 996 (2021).

22 Here, Plaintiff alleged that Defendant routinely miscalculated the overtime rates applicable to
23 Plaintiff and the Aggrieved Employees resulting in widespread underpayments of overtime wages.
24 Plaintiff alleged that Defendant miscalculated the overtime wages because Defendant used incorrect
25 overtime rates that were less than the one and one-half or two times the base rate. Plaintiff also alleged
26 that some of the regular rate violations occurred because Defendant failed to incorporate
27 nondiscretionary pay such as a hardship premium. Melmed Decl. ¶ 21.

1 Defendant vehemently disagreed with Plaintiffs’ allegations, arguing that the challenged bonus
2 category was purely discretionary and therefore did not trigger a right to upward adjustments in the
3 Aggrieved Employees’ overtime rate. Melmed Decl. ¶ 22.; *Huntington Memorial Hospital v. Superior*
4 *Court*, 131 Cal. App. 4th 893, 903 (2005) (bonuses that are determined in the employer’s sole discretion
5 are excluded from regular rate calculations). Defendant further argued that they maintained compliant
6 policies where it states that Defendant would “pay overtime to all non-exempt employees at the rate of
7 time and one-half for all hours worked in excess of 40 hours in one week.” Even if there were some
8 miscalculations for the regular rate, such underpayments are de minimis. Melmed Decl. ¶ 22.

9 **2. Rest Period Allegations**

10 Cal. Lab. Code § 226.7 provides that “[a]n employer shall not require an employee to work
11 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
12 regulation, standard, or order of the Industrial Welfare Commission” Cal. Lab. Code § 226.7(b).
13 The California Supreme Court has held that, during required rest periods, “employers must relieve their
14 employees of all duties and relinquish any control over how employees spend their break time.”
15 *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 260 (2016). Relinquishing control over
16 employees during rest periods requires that employees be “free to leave the employer’s premises” and
17 be “permitted to attend to personal business.” *Id.* at 275.

18 Here, Plaintiff alleged that Defendant failed to provide employees with duty-free rest periods
19 due to the demands of the job. Additionally, Plaintiff alleged that Defendant failed to compensate the
20 Aggrieved Employees with one hour’s worth of pay at their regular rate of compensation when they
21 were not provided with a compliant rest period. Melmed Decl. ¶ 23.

22 Defendant argued that they fully complied with the law. Defendant maintained compliant
23 policies where employees were expected to take two fifteen-minute paid breaks. Melmed Decl. ¶ 24.
24 Defendant’s facially-compliant written policies rendered any skipped meal and rest periods the fault of
25 the employees—not Defendant’s. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004
26 (2012) (an employer is required only to “provide” breaks, but is not required to ensure that they are
27 taken). Defendant further argued that even if any Aggrieved Employees were improperly deprived of
28

1 rest periods, such deprivations were unintentional on Defendant's part and had minimal, if any, effect
2 on the Aggrieved Employees. Melmed Decl. ¶ 24.

3 **3. Meal Period Allegations**

4 Under Cal. Lab. Code § 512, no employer may employ any person for a work period of more
5 than five hours without providing a meal period of not less than thirty minutes. Meal periods are
6 required to be duty-free, and the employee must be permitted to go about their business as they please.
7 *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269 (2016). Cal. Lab. Code § 226.7(c) further
8 obligates employers to pay employees one additional hour of pay at the employee's regular rate of
9 compensation for each workday that the meal period is not provided. *See also* Cal. Code of Regs., tit.
10 8, §§ 11050, 11070.

11 Here, Plaintiff alleged that Aggrieved Employees were denied legally compliant and timely off-
12 duty meal periods of at least thirty minutes due to Defendant's unlawful meal period policies and
13 practices. Plaintiff alleged that Aggrieved Employees were not permitted to take compliant first meal
14 periods before the end of the fifth hour of work, and second meal periods before the end of the tenth
15 hour of work. Plaintiff also alleged Aggrieved Employees were never compensated with one-hour's
16 worth of pay at their regular rate. Melmed Decl. ¶ 25.

17 Defendant argued that Aggrieved Employees were provided compliant meal breaks.
18 Defendant's policies states that lunch breaks are to be taken and established with the approval of a
19 supervisor. Melmed Decl. ¶ 26. Defendant also argued that meal breaks were the employee's
20 responsibility to take. In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012), the
21 California Supreme Court held an employer is required only to "provide" breaks, but is not required
22 (and, in its context, simply cannot as a practical matter) to ensure that they are taken. Given that
23 Defendant had a policy of offering the Aggrieved Employees compliant meal periods, any meal periods
24 that might appear noncompliant were presumably voluntarily waived by the Aggrieved Employees.
25 Melmed Decl. ¶ 26.

26 **4. Reimbursement Allegations**

27 Pursuant to Cal. Lab. Code § 2802, "[a]n employer shall indemnify his or her employee for all
28 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of

1 his or her duties, or of his or her obedience to the directions of the employer” And pursuant to
2 Cal. Lab. Code § 2802(c) “[f]or purposes of this section, the term ‘necessary expenditures or losses’
3 shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee
4 enforcing the rights granted by this section.”

5 Here, Plaintiff alleged that Defendant failed to reimburse the Aggrieved Employees for
6 necessary expenditures incurred as a direct consequence and requirement of performing their job duties,
7 including but not limited to the costs associated with using their personal cell phones. Melmed Decl. ¶
8 27. *See Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137 (2014) (holding that an
9 employer requiring its customer service managers to use their personal cell phones for business tasks
10 must reimburse the managers for a reasonable percentage of their cell phone bills).

11 Defendant argued that the Aggrieved Employees were not required to use their personal devices
12 for their job duties. Defendant also argued that to the extent that employees used their personal cell
13 phones for work-related purposes, they did so voluntarily and for their own convenience. Additionally,
14 Defendant argued company phones were provided if necessary. Melmed Decl. ¶ 28. Defendant further
15 argued that its written policy specifically states that use of personal cell phones during the workday
16 interferes with employee productivity and distracts others. As such, employees were discouraged to
17 bring and use their personal phones at work. Melmed Decl. ¶ 28.

18 **5. Vacation Wage Allegations**

19 Pursuant to Cal. Lab. Code § 227.3, “whenever a contract of employment or employer policy
20 provides for paid vacations, and an employee is terminated without having taken off his vested vacation
21 time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract
22 of employment or employer policy respecting eligibility or time served; provided, however, that an
23 employment contract or employer policy shall not provide for forfeiture of vested vacation time upon
24 termination.” Here, Plaintiff alleged that Defendant had a practice of refusing to pay Aggrieved
25 Employees all vacation wages accrued at the time of discharge. Defendant argued that any accrued
26 vacation wages were paid at the date of separation. Melmed Decl. ¶ 29.

1 **6. Wage Statement Allegations**

2 Cal. Lab. Code § 226(a) obligates employers, semi-monthly or at the time of each payment to
3 furnish an itemized wage statement. Plaintiff alleged that, by virtue of the allegations that Defendant
4 failed to properly pay the Aggrieved Employees their wages as described above, Defendant had
5 likewise failed to provide the Aggrieved Employees with compliant wage statements reflecting their
6 gross wages earned and their net wages earned. Melmed Decl. ¶ 30. As with Plaintiff's other claims,
7 Defendant argued that the Employees were fully compensated and that such violations were rare and
8 nominal in value, if they occurred at all. Defendant thus concluded that Plaintiff could not claim wage
9 statement penalties because there were no wage statement violations. Melmed Decl. ¶ 30.

10 **7. Exposure Analysis**

11 Under Cal. Lab. Code §§ 2699(f)(2) and 2699.5, employers that violate certain provisions of
12 the Labor Code are subject to penalties according to the following formula:

- 13 1. \$100.00 for the initial violation per employee per pay period; and
14 2. \$200.00 for each subsequent violation per employee per pay period.

15 These penalties must be allocated seventy-five percent (75%) to the LWDA and twenty-five
16 percent (25%) to the affected employees. Cal. Lab. Code § 2699(i). Plaintiff alleged that, because of
17 the violations described above, Defendant was liable for these penalties for each applicable pay period
18 during the PAGA period.

19 In ascertaining Defendant's exposure for the allegations described above, Plaintiff considered
20 several important cases. First, courts to consider the issue have refused to "stack" PAGA penalties,
21 severely limiting the recoverable PAGA penalties. *See Carrington v. Starbucks Corp.*, 30 Cal. App.
22 5th 504, 529 (2018) (approving PAGA penalty reduction to \$5 per pay period); *accord Atempa v.*
23 *Pedrazzani*, 27 Cal. App. 5th 809 (2018); see also *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144
24 (9th Cir. 2021) ("Under California law, '[a] good faith dispute' that an employer is required to comply
25 with a particular law 'will preclude imposition' of heightened penalties.").

26 Defendant also argued that Plaintiff is not entitled to recover PAGA penalties at the subsequent
27 violation rate of \$200 per pay period. Melmed Decl. ¶ 32. California's appellate courts have held that
28 "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the

1 commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware [of
2 the violation]” and therefore, until a Court or the Commissioner issues a finding of a violation, the
3 initial \$100 violation rate applies for each pay period in which the alleged violation occurred. *Amaral*
4 *v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008). Thus, Defendant argued that even if the
5 Plaintiff was able to establish any violation of the Labor Code, the PAGA penalties assessed for these
6 violations will be computed at the \$100 rate, as opposed to the \$200 per pay period rate at maximum,
7 and there is a likelihood that a further reduction of the penalty to \$5 per pay period as approved in
8 *Carrington* would apply given Defendant’s compliance with the Labor Code as discussed above.
9 Melmed Decl. ¶ 32.

10 Defendant further argued that even if Plaintiff was able to recover some PAGA penalties on
11 behalf of other aggrieved employees, courts frequently use their discretion under Cal. Lab. Code §
12 2699(e)(2), to significantly reduce PAGA penalties where such penalties would be unjust, arbitrary,
13 and improper. Melmed Decl. ¶ 33; *see, e.g., Carrington*, 30 Cal. App. 5th at 529.

14 Plaintiff also considered the possibility that PAGA relief could be denied entirely by a Court
15 due to Defendant’s argument that numerous individualized inquiries might have to be made into
16 whether particular violations were experienced by any given Aggrieved Employee, thus rendering the
17 case potentially unmanageable. *Wesson v. Staples the Office Superstore, LLC*, 68 Cal. App. 5th 746,
18 775 (2021) (trial court did not abuse its discretion in striking a PAGA claim due to unmanageability).

19 Here, there were approximately 7,715 pay periods within the applicable PAGA Period. Melmed
20 Decl. ¶ 35; Settlement Agreement at 3. However, given the likelihood that the pay period violation rate
21 was significantly lower than 100% and the very real risks that a factfinder might agree with Defendant’s
22 arguments or Defendant’s strong good faith defenses, Plaintiffs ascribed a 50% reduction to the number
23 of pay periods at issue. Plaintiff thus concluded that Defendant’s total realistic exposure in this case
24 was approximately **\$385,750**. Melmed Decl. ¶ 35.

25 **C. THE PAGA SETTLEMENT AGREEMENT IS REASONABLE**

26 Here, the penalties are appropriate when considered in light of the principles discussed in
27 Senator Dunn’s letter, discussed above. A non-reversionary Gross Settlement Amount of \$325,000.00
28 represents an excellent recovery that is large enough to punish or deter Defendant, while not being so

1 great as to be unjust, arbitrary, oppressive, or confiscatory. The proposed Settlement Agreement
2 provides a fair and reasonable monetary recovery for the LWDA and the Aggrieved Employees in the
3 face of hotly-disputed claims. Melmed Decl. ¶ 36. If approval is granted, Plaintiff will have recovered
4 84.3% of the estimated realistic settlement value in this case—a fair compromise of the claims, by any
5 measure. Melmed Decl. ¶ 36.

6 As mentioned above, courts can, and regularly do, exercise their discretion to reduce the amount
7 of PAGA penalties. *See, e.g., Fleming v. Covidien Inc.*, No. (OPX) 2011 WL 7563047, at *4 (C.D.
8 Cal., Aug. 12, 2011). For example, in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the
9 California Court of Appeals deemed it reasonable to award just five dollars per PAGA violation. *Id.* at
10 517. Here, with approximately 7,715 pay periods at issue among 191 Aggrieved Employees, under
11 *Carrington* an appropriate settlement amount could be as low as **\$38,575**. Melmed Decl. ¶ 37;
12 Settlement Agreement at 3. Instead, despite the risks of the case identified through mediation and
13 exchange of documents and information with opposing counsel, the Gross Settlement Amount of
14 \$325,000 represents a roughly \$42.13 penalty per pay period assuming a 100% violation rate for all
15 pay periods in the PAGA period. Melmed Decl. ¶ 37. Accordingly, the proposed settlement reflects a
16 better result than some actual PAGA trials that were litigated to completion. Thus, the PAGA
17 settlement amount is reasonable considering the significant risks and uncertainties associated with the
18 PAGA claims in this case.

19 This settlement is also in line with amounts regularly approved by District Courts in PAGA
20 cases. As explained above, the portion of the Net Settlement Amount to be distributed to the
21 approximately 191 Aggrieved Employees in this case is at least \$46,541.67—or roughly \$243.67 per
22 Aggrieved Employee. Melmed Decl. ¶ 37. In *Hartley v. On My Own, Inc.*, No. 2:17-CV-00353-KJM-
23 EFB, 2020 WL 5017608 (E.D. Cal. Aug. 25, 2020), Chief Judge Mueller of this District described a
24 settlement of “\$61.18 per PAGA Settlement Group member” to be “in line with several other court-
25 approved PAGA settlements.” *Id.* at *4 (citing *Patel v. Nike Retail Servs., Inc.*, No. 14-CV-04781-RS,
26 2019 WL 2029061, at *1 (N.D. Cal. May 8, 2019), which approved a settlement award amounting to
27 an average of roughly \$30 per aggrieved employee); *see also Singh v. Roadrunner Intermodal Servs.*,
28

1 *LLC*, No. 1:15-cv-01497-DAD-BAM, 2019 WL 316814, at *6 (E.D. Cal. Jan. 24, 2019) (approving a
2 PAGA settlement of approximately \$99.21 per aggrieved employee).

3 Moreover, the scope of the release of the PAGA Settlement is necessarily strictly confined to
4 those PAGA civil penalties that were or could have been alleged in the operative complaint. The
5 released claims do not, for example, release any Aggrieved Employee's non-PAGA claims for alleged
6 violations of the Labor Code. Settlement Agreement at 10. Individual Aggrieved Employees who
7 believe they have been denied, for example, minimum wages, overtime, meal periods, or rest periods
8 can maintain those rights and pursue those claims in another proceeding. In that respect, the Settlement
9 Agreement also requires that each Aggrieved Employee receive an explanatory letter with their check
10 that describes this litigation and the Settlement sum. Settlement Agreement at 13. This letter will
11 educate Aggrieved Employees as to the requirements of the Labor Code, something that is in the public
12 interest and consistent with PAGA's purposes. *See* Cal. Lab. Code § 2699(j) (stating that civil penalties
13 recovered under PAGA shall be distributed to the LWDA for, among other things, "education of
14 employers and employees about their rights and responsibilities under this code").

15 Additionally, the proposed Settlement, even with deductions, provides a substantial sum of
16 approximately \$139,625 to the State of California and \$46,541.67 to Aggrieved Employees. The
17 Settlement Agreement secured by Plaintiff and his counsel here is greater than other PAGA penalty
18 awards approved by California state courts, which often range between \$7,500 and \$15,000 for PAGA
19 claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty
20 payments on a per capita basis. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013
21 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of \$5,000.00
22 to class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013
23 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of \$10,000.00 for
24 class of approximately 3,000 members). Because the proposed Settlement Agreement is neither unjust
25 nor ignores the public interest, it should be approved.

26 The gross PAGA penalty payment is extremely reasonable considering the risks and
27 uncertainties associated with the PAGA claims in this case. The Settlement Agreement commits
28 Defendant to pay at least \$186,166.67 in PAGA penalties (after fees and costs), which is large enough

1 to punish Defendants for alleged violations and to deter such alleged conduct in the future. At the same
2 time, it is not so large as to be unjust, oppressive, or confiscatory. Based on the foregoing, the proposed
3 settlement is fair, reasonable, and in the best interest of the state of California and the Aggrieved
4 Employees.

5 **VI. THE REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS ARE FAIR**
6 **AND REASONABLE**

7 For their efforts and the risk that they undertook in obtaining a common fund settlement that
8 benefits the State of California and the Aggrieved Employees, the Parties allocated one-third of the
9 Gross Settlement Amount to Plaintiff's counsel for reasonable attorneys' fees, plus actual litigation
10 costs. These fees are warranted under the law and within the range of fees commonly awarded in similar
11 cases.

12 **A. A FEE OF ONE-THIRD OF THE GROSS SETTLEMENT AMOUNT IS FAIR**
13 **AND REASONABLE**

14 Because Plaintiff's claim is based on substantive California law, California law provides the
15 basis for his entitlement to an award of attorneys' fees. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
16 1047 (9th Cir. 2002). California recognizes the common fund doctrine for the award of attorneys' fees
17 to prevailing plaintiffs whose efforts result in creation of a fund benefitting others. *Serrano v. Priest*,
18 20 Cal. 3d 25, 35 (1977). Under both California and Ninth Circuit precedent, a court may exercise
19 discretion to award attorneys' fees from a common fund by applying either the lodestar method or the
20 percentage-of-the-fund method. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001);
21 *Fischel v. Equitable Life Assurance Soc'y of U.S.*, 307 F.3d 997, 1006 (9th Cir.2002) (citing *Vizcaino*
22 *v. Microsoft Corp.*, 290 F.3d 1043, 1047 ("Irrespective of the chosen method, 'the district court should
23 be guided by the fundamental principle that fee awards out of common funds be 'reasonable under the
24 circumstances.'")); *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 667 (E.D.Cal.2008).

25 **B. THE ATTORNEYS' FEES ARE WITHIN THE RANGE OF**
26 **REASONABLENESS UNDER THE COMMON FUND METHOD**

27 An award of fees from the gross settlement amount under the common fund doctrine prevents
28 unjust enrichment of those who benefit from the common fund created through the successful efforts

1 of Plaintiff's counsel and furthers the important goal of attracting competent counsel to handle
2 representative actions enforcing minimum labor standards. *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480,
3 503 (2016).

4 Among the factors considered in determining whether the requested fee percentage is
5 reasonable are: **(1)** the results achieved; **(2)** the risk of further litigation; **(3)** the skill required of
6 plaintiff's counsel and the quality of work performed by plaintiff's counsel; **(4)** the contingent nature
7 of the fee and the financial burden carried by the plaintiff; and **(5)** awards made in similar cases.
8 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–1050 (9th Cir. 2002). The typical range of acceptable
9 attorneys' fees in the Ninth Circuit is 20% to 33.33% of the total settlement value, with 25% considered
10 the benchmark. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *Hanlon v. Chrysler Corp.*, 150
11 F.3d 1011, 1029 (1998); *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). All these factors
12 support an award here of one-third of the common fund.

13 First, Plaintiff's counsel's efforts resulted in a common fund settlement amount of \$325,000.00.
14 As discussed above, this is an excellent PAGA settlement considering the contested issues, the number
15 of violations at issue, and the severity of those violations.

16 Second, Plaintiff and his counsel faced significant risks going forward with the litigation. As
17 discussed above, Defendant raised various defenses and, as such, Plaintiffs faced significant
18 uncertainty about recovery going forward with this litigation, as well as the potential for substantial
19 delays to realize any recovery in this action along with the possibility of post-trial appeals.

20 Moreover, Plaintiff's counsel took this case on a contingency basis. Melmed Decl., ¶ 39. There
21 are always risks attendant to billing cases on a contingency basis. It is not a foregone conclusion that
22 every case taken on a contingency fee basis will result in a recovery or that the attorneys' fees recovered
23 will actually compensate the attorneys' firm for the amount of time expended in an action. And, even
24 when successful, a PAGA representative action contingency law firm may only receive a small
25 percentage of the amount of attorneys' fees incurred during the prosecution of a case. Where Plaintiff's
26 counsel does succeed, therefore, it is appropriate to compensate the firm for the risks the firm regularly
27 undertakes. There is also always the possibility that the plaintiff will not prevail and plaintiff's counsel
28 will not receive any compensation whatsoever for its services or that the defendant will declare

1 bankruptcy or lack the assets necessary to satisfy any judgment obtained against it—as has happened
2 in cases handled by Plaintiff’s counsel’s firm. Melmed Decl, ¶ 41.

3 Third, Plaintiff’s counsel are experienced representative and class action litigators, and have
4 previously achieved significant PAGA and class action awards. Melmed Decl, ¶¶ 7–13. This
5 experience and expertise, combined with the high-quality of work performed in this case by Plaintiff’s
6 counsel, resulted in the settlement achieved.

7 Fourth, as discussed above, the request for attorney’s fees in the amount of one-third of the
8 common fund falls well-within the norms accepted by state and federal courts in California in
9 comparable wage and hour actions. *See, e.g., Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th at 503; *see*
10 *also Martin v. FedEx Ground Package Sys., Inc.*, No. C 06-6883 VRW, 2008 WL 5478576, at *8 (N.D.
11 Cal. Dec. 31, 2008) (federal district court approved attorneys’ fees of one-third of the common fund);
12 *Stuart v. Radioshack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645, at *6 (N.D. Cal. Aug. 9, 2010)
13 (approving fee award of one-third of the total maximum settlement and noting that the fee award of
14 one-third of the total settlement was “well within the range of percentages which courts have upheld
15 as reasonable”); *Romero v. Producers Dairy Foods, Inc.*, No. 1:05CV0484 DLB, 2007 WL 3492841,
16 at *4 (E.D. Cal. Nov. 14, 2007) (awarding fees of one-third of common fund in a wage and hour class
17 action, noting: “[f]ee awards in class actions average around one-third of the recovery.”); *McCrory v.*
18 *Elations Co., LLC*, No. EDCV130242JGBSPX, 2016 WL 769703, at *10 (C.D. Cal. Feb. 25, 2016);
19 *Petersen v. CJ Am., Inc.*, No. 14-CV-2570 DMS JLB, 2016 WL 5719823, at *1 (S.D. Cal. Sept. 30,
20 2016); *McClellan v. Chase Home Finance LLC*, No. SACV 12-1331-JGB, 2015 U.S. Dist. LEXIS
21 118005, at *20 (C.D. Cal. Aug. 31, 2015) (explaining that, while the attorneys’ fee award that
22 approximated 32% of all sums paid under the settlement was reasonable after citing numerous other
23 cases, finding that an award of 33% of the common fund was common in class actions); *In re Activision*
24 *Securities Litigation*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989) (“nearly all common fund awards range
25 around 30%”).

26 In reaching its decision in *McClellan*, the court recognized that courts in California “routinely
27 award attorneys’ fees in the range of 30–40% in class actions that result in the recovery of a common
28 fund under \$10 million.” *McClellan v. Chase Home Finance LLC*, 2015 U.S. Dist. LEXIS 118005, at

1 *20 (quoting *Miller v. CEVA Logistics USA, Inc.*, No. 2:13-CV-01321-TLN, 2015 WL 4730176, at *8
2 (E.D. Cal., Aug. 10, 2015) and citing *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454,
3 463 (9th Cir. 2000); *see also Romero v. Producers Dairy Foods, Inc.*, No. 1:05CV0484 DLB, 2007
4 WL 3492841, at *4 (E.D. Cal., Nov. 14, 2007) (awarding 33% of the settlement fund in a wage-and-
5 hour case involving allegations of unpaid wages after explaining that “fee awards in class actions
6 average around one-third of the recovery.”); *Singer v. Becton Dickinson and Co.*, No. 08-CV-821-IEG
7 (BLM), 2010 WL 2196104, at *8 (S.D. Cal., June 1, 2010) (approving fee award of 33.33% of the
8 common fund); *Boyd v. Bank of America Corp.*, No. SACV 13-0561-DOC) 2014 WL 6473804, at *12
9 (C.D. Cal., Nov. 18, 2014) (awarding a 33.34% fee on a \$5,800,000 settlement). Although this case is
10 a PAGA representative action, and not a class action, there is no reason for the attorney fee standards
11 to deviate from the norms established in class action cases. *See, e.g., Wise v. Ulta Salon, Cosmetics &*
12 *Fragrance, Inc.*, No. 117CV00853DADEPG, 2020 WL 1492672, at *9 (E.D. Cal., Mar. 27, 2020)
13 (awarding attorneys’ fees of one-third the gross settlement amount, which included both PAGA
14 penalties and class damages); *Singh v. Roadrunner Intermodal Services, LLC*, No.
15 115CV01497DADBAM, 2019 WL 316814, at *11 (E.D. Cal., Jan. 24, 2019) (same); *Shahbazian v.*
16 *Fast Auto Loans, Inc.*, No. 218CV03076ODWKSX, 2019 WL 8955420, at *2 (C.D. Cal., June 20,
17 2019) (preliminarily approving the same).

18 Plaintiff’s counsel’s diligent and efficient litigation of this action resulted in the creation of an
19 ascertainable gross settlement amount of \$325,000 that will substantially benefit the State of California
20 and the Aggrieved Employees. As explained above and based on Plaintiff’s counsel’s extensive
21 experience in litigating PAGA representative actions, Plaintiff’s counsel’s request is consistent with
22 fee awards in other similar cases. Melmed Decl, ¶ 45. Consistent with numerous cases, including those
23 identified above, Plaintiff’s counsel’s seeks approval of an award of attorneys’ fees in the amount of
24 \$108,333.33 representing one-third of the Gross Settlement Amount. Melmed Decl, ¶ 45.

25 For all of the above reasons, a common fund fee award here in the amount of one-third of the
26 \$325,000.00 common fund created by Plaintiff and his attorneys is fair and reasonable.
27
28

1 **C. THE LODESTAR METHOD CONFIRMS THE REASONABLENESS OF THE**
2 **ATTORNEYS’ FEES**

3 The “lodestar-multiplier” method approach of evaluating the reasonableness of attorneys’ fees
4 is when the court computes the “lodestar” amount by multiplying the number of hours reasonably
5 expended by each attorney or legal staff member by their hourly rates, and then enhances this lodestar
6 figure by a “multiplier” to account for a range of factors, such as the novelty or difficulty of the case,
7 its contingent nature, and the degree of success achieved. *See PLCM Grp. v. Drexler*, 22 Cal. 4th 1084,
8 1095–1096 (2000); *Press v. Lucky Stores, Inc.*, 34 Cal. 3d 311, 322 (1983); *Serrano*, 20 Cal. 3d at 48–
9 49. As noted, using the loadstar approach, the court first computes the reasonable market value of the
10 service rendered. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1138, n.3 (2001). The first step is to calculate
11 the lodestar, which is determined by multiplying the time spent by the attorneys and other timekeepers
12 by their reasonable hourly rates. *Id.* at 1132.

13 When a court adopts the “lodestar multiplier” method, after initially calculating the combined
14 total lodestar, the court may then adjust the lodestar based on several factors in order to “fix a fee at
15 the fair market value for the particular action.” *Id.* at 1132; *Graham v. DaimlerChrysler Corp.*, 34 Cal.
16 4th 553, 574 (2004). As noted, these additional factors include the contingent risk of the litigation, the
17 novelty and complexity of the issues, and exceptional results obtained. *Ketchum*, 24 Cal. 4th at 1132;
18 *Serrano*, 20 Cal. 3d at 48.

19 A lodestar calculation need not be supported by detailed time records. *Wershba v. Apple*
20 *Computer, Inc.*, 91 Cal. App. 4th 224, 229 (2001), disapproved of by *Hernandez v. Restoration*
21 *Hardware, Inc.*, 4 Cal. 5th 260, 409 P.3d 281 (2018). Declarations by counsel as to time spent, even if
22 only estimates, are enough. *See Wershba*, 91 Cal. App. 4th at 254–255 (“Here plaintiff’s attorneys
23 submitted declarations evidencing the reasonable hourly rate for their services and establishing the
24 number of hours spent working on the case”); *see also Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
25 1810 (1196) (stating that lodestar calculation could be based on counsel’s estimate of time spent); *Syers*
26 *Properties III, Inc. v. Rankin*, 226 Cal. App. 4th 691, 698 (2014) (“It is well established that ‘California
27 courts do not require detailed time records, and trial courts have discretion to award fees based on
28

1 declarations of counsel describing the work they have done and the court's own view of the number of
2 hours reasonably spent. [Citations]''').

3 As set forth above, Plaintiff's counsel is not requesting attorneys' fees under the lodestar
4 multiplier approach. Nevertheless, Plaintiff's counsel has provided a summary of the hours they
5 expended throughout the course of the litigation, including drafting and filing of the complaint,
6 defending the pleadings, engaging in discovery, preparing damages analyses, reviewing the formal and
7 informal discovery, preparing and negotiating the settlement agreement, preparing the notice packets,
8 preparing papers for and moving for preliminary approval (including supplemental briefing), preparing
9 papers and moving for final approval, and attorneys' fees, amongst other things.

10 To date, Plaintiff's counsel's lodestar to date is approximately \$50,113.00 after collectively
11 expending 108.1 hours on this matter. Melmed Decl. ¶¶ 51–52. Thus, the fees sought here reflect a
12 lodestar multiplier of only 2.16 (i.e., \$108,333.33 ÷ \$50,113). Moreover, it is anticipated that Plaintiff's
13 counsel will expend time which cannot yet be accounted for in the hours in Plaintiff's counsel's
14 declarations. Therefore, the unadjusted lodestar will increase and the multiplier will decrease by the
15 conclusion of this matter.

16 Historically, courts in California have commonly approved multipliers between two and four.
17 *See, e.g., Coalition for L. County Planning etc. Interest v. Board of Supervisors*, 76 Cal. App. 3d 241,
18 251 (1977) (multiplier of 2+ approved); *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986)
19 (directing the trial court “to enhance the lodestar award by such factor (two, three, four or otherwise)
20 that the court, in its discretion shall deem proper”); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp.
21 294, 298 (N.D. Cal. 1995) (“Multipliers in the 3–4 range are common in lodestar awards for lengthy
22 and complex class action litigation.”). The fact that Plaintiff's counsel's lodestar multiplier falls within
23 the range approved by courts further confirms the reasonableness of the fee request.

24 **D. THE CONTINGENT NATURE OF PLAINTIFF'S COUNSEL'S**
25 **REPRESENTATION FURTHER SUPPORTS THE FEE AWARD**

26 An additional factor in favor of the granting of the requested fee award is the fact that this case
27 was both legally and financially risky for Plaintiff's counsel, who accepted this representation on a
28 contingency basis. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–1049 (9th Cir. 2002) (noting

1 that “[r]isk is a relevant circumstance” when considering attorneys’ fees). Specifically, there was the
2 prospect of enormous cost inherent in PAGA litigation, and the many additional risks. Those risks
3 include the risk of Defendant prevailing on the merits; the risk that a court may not award the damages
4 or penalties sought; difficulties in establishing bad faith; and the difficulty in proving a sustainable
5 injury. In light of these risks, the chances of recovery were far from certain.

6 This risk further justifies the requested fee award. As explained by the California Supreme
7 Court, “[a] lawyer who both bears the risk of not being paid and provides legal services is not receiving
8 the fair market value of his work if he is paid only for the second of these functions. If he is paid no
9 more, competent counsel will be reluctant to accept fee award cases.” *Ketchum*, 24 Cal. 4th at 1133,
10 quotation marks omitted; *see also Crommie v. State of Cal., Public Utilities Com’n*, 840 F. Supp. 719,
11 725 (N.D. Cal. 1994) (“The purpose of contingent risk inquiry is to determine a fee that is likely to
12 entice competent counsel to undertake difficult public interest cases.”).

13 **VII. THE REQUESTED LITIGATION COSTS ARE FAIR AND REASONABLE**

14 Plaintiff’s counsel requests reimbursement of their actual out-of-pocket expenses incurred to
15 prosecute this action. These expenses were incidental and necessary to the effective representation of
16 the employees. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). Plaintiff’s counsel is permitted
17 to recover their litigation costs and expenses under PAGA as well as the common fund doctrine. Cal.
18 Lab. Code § 2699(g)(1) (“Any employee who prevails in any action shall be entitled to an award of
19 reasonable attorney’s fees and costs, including any filing fee paid”); *Munoz v. Chipotle Mexican*
20 *Grill, Inc.*, 238 Cal. App. 4th 291, 311 (2015) (“A prevailing PAGA plaintiff may recover his or her
21 attorney fees and costs as well.”); *Miranda v. Anderson Enterprises, Inc.*, 241 Cal. App. 4th 196, 202
22 n.4 (2015) (same); *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977) (common fund doctrine permits recovery
23 of fees and costs from the fund); *Rider v. County of San Diego*, 11 Cal. App. 4th 1410, 1424 n.6 (1992)
24 (costs are recoverable from the common fund “[o]f necessity, and for precisely the same reasons
25 discussed above with respect to the recovery of attorneys’ fees by . . . [Plaintiffs’] attorneys”).

26 The Settlement Agreement authorizes Plaintiff’s counsel to recover their actual litigation costs.
27 Settlement Agreement at 7–8. The actual litigation costs in this case by Plaintiff’s counsel to date
28

1 amounts to \$11,090.04. Melmed Decl. ¶¶ 59. Plaintiff's counsel is therefore requesting that the Court
2 approve a distribution of \$11,090.04 from the Gross Settlement Amount. Melmed Decl. ¶¶ 59–60.

3 **VIII. THE REQUESTED ENHANCEMENT AWARD IS FAIR AND REASONABLE**

4 The Settlement Agreement contemplates an enhancement award to Plaintiff in the amount of
5 \$7,500.00 to recognize the time, effort, and risk that he undertook in bringing this case and helping to
6 secure the relief obtained for the State of California and the Aggrieved Employees. *See Bell v. Farmers*
7 *Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding “service payment” to named plaintiff for his
8 efforts in bringing class case); *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009)
9 (explaining that enhancement awards are “intended to compensate class representatives for work done
10 on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
11 and, sometimes, to recognize their willingness to act as a private attorney general.”).

12 Here, Plaintiff actively and aggressively represented the State of California and the Aggrieved
13 Employees throughout this litigation. Melmed Decl. ¶ 61. Plaintiff was an essential element in the
14 successful prosecution and ultimate settlement of this case and was always available to provide his
15 input on the litigation, gather evidence and provide other information that proved critical to the
16 prosecution. Melmed Decl. ¶ 62. The proposed service award is also fair given the amount of time and
17 effort Plaintiff spent on assisting in the prosecution of this case and the personal hardship and pressure
18 faced as a result of filing this lawsuit against his former employer. Melmed Decl. ¶ 62. Moreover,
19 Plaintiff executed a general release that far exceeds the scope of the claims being released by the
20 Aggrieved Employees. Melmed Decl. ¶ 62. Additionally, the requested enhancement award falls well
21 within the range of incentive payments typically awarded in wage and hour cases. *See Bond v. Ferguson*
22 *Enterprises, Inc.*, No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. 2011) (approving
23 \$11,250 service awards).

24 **IX. SUBMISSION TO THE LWDA**

25 The Settlement Agreement and this Motion are concurrently being submitted to the LWDA in
26 accordance with Cal. Lab. Code § 2699(1)(2). Melmed Decl. ¶ 64. The proof of electronic submission
27 is attached as **Exhibit 3** to the Declaration of Jonathan Melmed filed concurrently with this motion.
28

1 **X. CONCLUSION**

2 For the foregoing reasons, Plaintiff requests the Court approve the Settlement Agreement.

3 Dated: June 7, 2022

MELMED LAW GROUP P.C.

5 /s/ Jonathan Melmed

6 **JONATHAN MELMED**

7 Attorney for Plaintiff and the Aggrieved Employees