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Attorneys for Plaintiffs Erika Maldonado and Cynthia Soriano and the proposed class

**In the Superior Court for the
County of Orange**

ERIKA MALDONADO and
CYNTHIA SORIANO,

Plaintiff,

vs.

BROKER SOLUTIONS, INC. d/b/a
NEW AMERICAN FUNDING; and
DOES 1 through 5,

Defendants.

Case No.: 30-2020-01175149-CU-OE-
CJC

**UNOPPOSED MOTION FOR
APPROVAL OF PAGA
SETTLEMENT AND ATTORNEYS'
FEES AND EXPENSES**

Date: 1-13-22

Time: 2:00 p.m.

Dept.: CX102

CIVIL COMPLEX CENTER
751 W. SANTA ANA BLVD.
SANTA ANA, CA 92701

Hon. Judge Peter Wilson

1 **I. INTRODUCTION**

2 In this action, Plaintiffs Erika Maldonado (“Maldonado”) and Cynthia Soriano
3 (“Soriano”) (Maldonado and Soriano collectively referred to as “Plaintiffs”) assert a
4 single cause of action for recovery of civil penalties under the Private Attorneys’
5 General Act of 2004, Labor Code section 2698 et seq. (“PAGA”) against their former
6 employer, Defendant Broker Solutions, Inc. dba New American Funding (“Defendant”)
7 (the “Action”) (Plaintiffs and Defendant collectively referred to as the “Parties”). The
8 Parties have entered into a settlement agreement that settles the entire Action. For the
9 reasons set forth below, and pursuant to Labor Code section 2699(1), Plaintiffs now seek
10 this Court’s approval of the Settlement Agreement, along with Plaintiffs’ attorneys’ fees
11 and expenses. Defendant does not oppose this Motion.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 **A. The Parties**

14 Defendant is a privately-owned direct mortgage lender headquartered in Orange
15 County, California. Plaintiffs worked as outside loan agents (“OLA”) for Defendant.
16 OLAs are responsible for originating mortgage loans on behalf of the Company’s
17 borrowers by actively networking with mortgage, real estate, and other related industry
18 professionals and establishing relationships in the purchase and refinance markets.

19 Plaintiff Maldonado commenced employment with Defendant on November 16,
20 2018, and Plaintiff Soriano on January 13, 2020. Both performed the work of an OLA
21 and held the position of Sales Manager. Plaintiffs’ employment relationships were
22 severed on June 2, 2020. Plaintiffs earned a bi-weekly draw and commissions based on
23 loan originations.

24 **B. Procedural History**

25 On October 2, 2020, Plaintiffs sent a letter to the Labor and Workforce
26 Development Agency (“LWDA”), notifying it of their intention to proceed with a
27 PAGA lawsuit against Defendant (“PAGA Notice Letter”). Plaintiffs’ PAGA Notice
28 Letter alleges that Plaintiffs and other OLAs have been misclassified as exempt, and

1 noticed their intent to seek representative relief on behalf of all other allegedly
2 misclassified OLAs, under the PAGA for claims of unpaid overtime wages; unpaid
3 minimum wages; unlawful withholdings; non-compliant meal and rest breaks;
4 unreimbursed necessary business expenses; and associated penalties under the Labor
5 Code. (Declaration of Jared Hartman (“Hartman Dec.”), ¶ 2, Ex. A).

6 After waiting the required minimum of 65 days, on December 18, 2020, Plaintiffs
7 filed a PAGA Complaint in the Orange County Superior Court. *See*, Register of Actions
8 (“ROA”) Entry No. 2. The Complaint alleges, in summary, that Plaintiffs and the
9 allegedly aggrieved employees are owed unreimbursed travel expenses, mobile phone
10 expenses and other business expenses; that NAF made certain unlawful deductions
11 from wages; and that OLAs were misclassified as “outside sales persons,” and as a
12 consequence are owed overtime; that OLAs were not provided meal periods and rest
13 breaks; and that OLAs are owed penalties arising from untimely payments during and
14 after employment and for inaccurate wage statements. Defendant disputes all of
15 Plaintiffs’ allegations.

16 Shortly after serving Defendant with the Complaint, the Parties stipulated to a
17 stay pending mediation. *See*, ROA Entry No. 28.

18 The Parties thereafter entered into a Stipulated Protective Order governing the
19 exchange of confidential information and documents to assist the Parties in moving
20 forward with, and conducting, a meaningful mediation. *See*, ROA Entry No. 32.

21 Pursuant to the Stipulated Protective Order, the Parties agreed to and complied
22 with an initial pre-mediation disclosure of certain information concerning the PAGA
23 claims. The Parties thereafter exchanged several hundred pages of documents and
24 determined that there were 381 PAGA group members who performed work as OLAs
25 during the applicable time period, and that 11,620 pay periods were at issue. *See*,
26 Hartman Decl., ¶ 3.

27 ///

28 ///

1 **C. Settlement Negotiations**

2 On June 24, 2021, the Parties participated in an all-day mediation session, which
3 lasted approximately 9.5 hours, with experienced wage-and-hour mediator Joel
4 Grossman, Esq. The mediation resulted in settlement of the PAGA claims alleged in
5 Plaintiffs' Complaint. *See*, Hartman Decl., ¶ 4.

6 The Parties executed a Memorandum of Understanding ("MOU") memorializing
7 the terms of the settlement at the mediation and later executed a formal long-form
8 settlement agreement. The terms of this settlement are set forth in the parties' Private
9 Attorneys General Act Settlement Agreement and Release, which provides for the
10 payment of \$600,000.00 ("PAGA Settlement"). *See*, Hartman Decl., ¶ 7, Ex. B.

11 In accordance with Labor Code section 2699(l), the proposed settlement will be
12 submitted to the LWDA at the same time that it is submitted to the Court. *See*, Hartman
13 Decl., ¶ 8.

14 Furthermore, no settlement of any individual claims has yet been reached, which
15 further confirms that the Parties' settlement of the PAGA claims is not subject to any
16 possible collusion and the PAGA settlement has not been used as a means of obtaining
17 any particular influence over any individual settlement or vice versa.¹ *See*, Hartman
18 Decl., ¶ 9.

19 **D. Adequacy of Settlement Amount**

20 Plaintiffs' counsel estimated that Defendant's maximum exposure to liability for
21 the allegations asserted through the PAGA statute was up to \$9,296,000.00. This
22 calculation was based on the fact that informal discovery exchanged between the Parties
23 identified 381 aggrieved employees during the relevant period, of which 122 were no
24 longer employed by Defendant, and which added up to a total of 11,620 pay periods for
25 the group of aggrieved employees in question. Because Labor Code § 2699(f)(2)
26 imposes a civil penalty for each "alleged violation" of "one hundred dollars (\$100) for

27 _____
28 ¹ Both Plaintiffs Maldonado and Soriano have individual claims pending in arbitration before JAMS.

1 each aggrieved employee per pay period, Plaintiffs calculated that Defendant was
2 possibly liable for \$1,162,000 per violation of the Labor Code related to all aggrieved
3 employees within the scope of the operative complaint, and since Plaintiffs had alleged
4 eight discrete Labor Code violations in the complaint, Defendant was potentially liable
5 for \$9,296,000 in PAGA penalties as set forth in the operative complaint, *if* Plaintiffs
6 successfully argued that all of these penalties could be “stacked”.² *See*, Hartman Decl.,
7 ¶ 5.

8 However, based on arguments of Defendant, there are material legal and factual
9 disputes as to each of the alleged violations that are the basis of Plaintiffs’ PAGA claim.
10 For example, Defendant argues that it properly classified its sales employees as outside
11 sales agents because it had a reasonable expectation that they would, in fact, spend at
12 least half of their work time engaging in such activities. In addition, Defendant asserted
13 that insofar as the activities complained of by Plaintiffs constitute “management”
14 activities, they fall under the managerial exception and would not trigger the Labor
15 Code provisions in Plaintiffs’ complaint. *See*, Hartman Decl., ¶ 6.

16 Procedurally, because the issue of whether the outside salespersons were
17 misclassified as exempt from minimum wages, overtime wages, and meal/rest periods
18 could possibly need to be litigated as to each aggrieved employee, there existed a risk
19 that Plaintiffs’ PAGA claim could be stricken as unmanageable as a representative
20 action, effectively reducing or entirely eliminating the PAGA violations pursued by
21 Plaintiffs. *See Amiri v. Cox Communications California, LLC*, 272 F.Supp.3d
22 1187,1194 (finding “Plaintiff’s PAGA representative claim based on failure to provide
23 meal and rest periods . . . requires numerous individualized determinations that make
24 his claim unmanageable”).

25
26 ² *See Atempa v. Pedrazzani*, 27 Cal. App. 5th 809, 814 (2018) (affirming trial court’s
27 grant of civil penalties under California Labor Code section 558 (overtime violations)
28 and section 1197.1 (minimum wage violations)).

1 Additionally, Plaintiffs acknowledge there are risks with the amount of penalties
2 that could be awarded even if Plaintiffs were successful in prevailing on liability, as the
3 Court has ultimate discretion to reduce penalties pursuant to Labor Code § 2699(e)(2).
4 *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 529 (affirming trial court’s
5 reduction of PAGA penalties to just \$5.00 per pay period). On this point, Defendant
6 asserts that the PAGA penalties are designed to punish intentional, flagrant conduct,
7 and in light of the fact that a significant portion of the PAGA period covered the
8 unprecedented COVID-related lock-downs that required Defendant to require the
9 aggrieved employees to work remotely, thus rendering these employees potentially
10 misclassified for this time period, no Court would impose penalties under these facts.
11 In addition, Defendant asserts that, even if Plaintiffs could prove multiple Labor Code
12 violations, they would not be able to “stack” multiple Labor Code penalties. If correct,
13 this would reduce Plaintiffs’ total maximum recovery to \$1,162,000, a significant
14 reduction.

15 Because of these disputed legal and factual issues, Plaintiffs believe that further
16 litigation would pose a substantial risk of non-recovery, or at least a significantly
17 reduced recovery. *See*, Hartman Decl., ¶ 10.

18 **III. SUMMARY OF THE SETTLEMENT**

19 Attached as Exhibit B to the Declaration of Hartman is a true and correct copy of
20 the fully executed Settlement Agreement of the Parties. A summary of the material
21 terms is included below.

22 **A. The Aggrieved Employees and Effective Time Periods**

23 The PAGA Settlement Agreement covers Plaintiffs and “all current or former
24 California employees of Defendant classified as exempt pursuant to the outside sales
25 exemption at any time from October 2, 2019 through the date of approval of the PAGA
26 Settlement” (hereinafter, “PAGA Group Members”). The PAGA period is defined as
27 October 2, 2019 through the date of approval of the PAGA Settlement (hereinafter,
28 “PAGA Period”). The “Effective Date” of the PAGA settlement is to be the latter of

1 the following: i) the date the Court approves the PAGA settlement, or ii) the final
2 resolution (or withdrawal) of any filed appeal in a way that affirms the Court approval
3 of the PAGA Settlement. *See*, Settlement Agreement, § 1.01(e).

4 **B. Settlement Amount & Allocation**

5 The PAGA claims of the PAGA Group Members, as described above, shall be
6 settled for \$600,000.00 (the “Settlement Amount”), which is non-reversionary, and
7 which will be allocated as follows:

- 8 a) \$200,000.00 (1/3 of the Settlement Amount) to be awarded as Attorneys’
9 Fees;
10 b) Up to \$10,000.00 in litigation costs and expenses incurred by Plaintiffs;
11 c) Up to \$8,000 to be paid to Simpluris for any settlement administration
12 costs;
13 d) \$5,000.00 as an incentive award to Plaintiff Erika Maldonado (which shall
14 be reported on a Form 1099 issued by the Settlement Administrator);
15 e) \$5,000.00 as an incentive award to Plaintiff Cynthia Soriano (which shall
16 be reported on a Form 1099 issued by the Settlement Administrator);
17 f) After reduction of the Settlement Amount based on items a-e, above, 75%
18 of the remaining balance to be paid to the Labor and Workforce Development
19 Agency (hereinafter, “LWDA”);
20 g) After reduction of the Settlement Amount based on items a-e, above, 25%
21 of the remaining balance is to be paid to the PAGA Group Members, which is
22 to be paid as a pro-rated share, less applicable withholdings, based on the total
23 pay periods worked at Defendant in California during the PAGA period, and
24 the maximum amount that each PAGA Group Member is entitled to receive is
25 determined by dividing each of the PAGA Group Members’ total pay periods
26 working during the PAGA Period in California by the total number of pay
27 periods worked during the PAGA Period by all PAGA Group Members
28 employed by Defendant in California.

1 *See*, Settlement Agreement, §§ 3.01, 3.05, 3.06.

2 The 75% payment to the LWDA and the 25% payment to the PAGA Group
3 Members is to be allocated after deduction from the Settlement Amount for the
4 payments listed in items a-e, above. *See*, Settlement Agreement, § 3.06(a). The
5 payments made to PAGA Group Members out of the Net Settlement Amount shall be
6 allocated entirely as PAGA penalties and issued pursuant to Form 1099s filed with the
7 relevant taxing authorities by the Settlement Administrator. *See, id.*

8 PAGA Group Members are not required to submit claim forms for their share of
9 the Net Settlement Amount. Settlement Agreement, § 3.05(a)(2).

10 **C. Release of Claims**

11 “Released Claims” means all claims for civil penalties for violation of the PAGA,
12 as allowed by Labor Code § 2698, et seq., that were made within the corresponding
13 Notice sent to the LWDA and the complaint through the Effective Date. *See*,
14 Settlement Agreement, §§ 1.01(h), 5.01.

15 **D. Settlement Administration**

16 The Parties have engaged Simpluris to administer the settlement. *See* Settlement
17 Agreement, § 3.04(a). Defendant is to deposit with the Settlement Administrator within
18 30 calendar days after the Effective Date (defined above) any award of attorneys’ fees,
19 costs, and enhancement payments to Plaintiffs and Plaintiffs’ counsel, the PAGA
20 penalty payments to be paid to the LWDA, the Settlement Administrator costs, and the
21 PAGA Group Members’ payments to be paid to the PAGA Group Members. *See*,
22 Settlement Agreement, § 3.04(b).

23 The Administrator shall mail, within 45 calendar days of the Effective Date, any
24 awards of attorneys’ fees, litigation costs, and/or enhancement payments to Plaintiffs
25 and Plaintiffs’ Counsel. *See*, Settlement Agreement, § 3.06(b). The Administrator shall
26 mail, within 75 calendar days of the Effective Date, any penalties owed to the LWDA
27 (75% of any amount remaining from the Settlement Amount after reduction for items a-
28 e in Section III.B, above). *See*, Settlement Agreement, § 3.05(a)(3). At the same time,

1 The Administrator shall mail the payments to PAGA Group Members. *See*, Settlement
2 Agreement, § 3.05(a)(1)-(2).

3 PAGA Group Members are not required to submit claim forms for their
4 respective shares of the Net Settlement Amount. To the extent that 1) any PAGA
5 Group Member checks are undeliverable, or 2) any PAGA Group Member checks are
6 uncashed 180 days after the date listed on the check, the amount of those checks will be
7 remitted to the California Unclaimed Property Fund. In no way will any of the funds
8 revert back to Defendant. *See*, Settlement Agreement, § 3.06(a).

9 Prior to mailing the notice of settlement and settlement payments, the settlement
10 administrator is required to perform a National Change of Address check for each
11 Aggrieved Employee's most current address. Notices returned to the settlement
12 administrator will prompt further address verification and re-sending to any new
13 address identified. *See*, Settlement Agreement, § 3.05(a)(1).

14 **IV. ARGUMENT**

15 **A. THE COURT SHOULD GRANT APPROVAL OF THE PAGA** 16 **SETTLEMENT**

17 Pursuant to PAGA, “[t]he superior court shall review and approve any settlement
18 of any civil action filed pursuant to this part.” Lab. Code § 2699(1)(2). In addition to
19 requiring court approval, PAGA requires that concurrent notice of the terms of the
20 settlement be provided to the LWDA. *Ibid*.

21 Although PAGA does not provide a precise standard for approval, California
22 Supreme Court decisions interpreting the statute have explained how a PAGA action is
23 distinct from a class action. For example, PAGA “authorizes an employee to bring an
24 action for civil penalties on behalf of the state against his or her employer for Labor
25 Code violations committed against the employee and fellow employees . . .” *Iskanian v.*
26 *CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 360 (2014)). “An action
27 brought under the PAGA is a type of qui tam action.” *Iskanian*, at 382.
28

1 The purpose in enacting PAGA was to boost compliance with the state labor code
2 by adding civil penalties for particular violations and deputizing individual workers to
3 file a private claim for civil penalties where a “shortage of government resources”
4 might otherwise undercut enforcement. *Iskanian*, 59 Cal. 4th at 378-79.

5 Importantly, as distinguished from class actions, PAGA claims are intended to
6 serve a decidedly different purpose -- namely to protect the public, rather than for the
7 benefit of private parties. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009).

8 Numerous published and unpublished decisions from Federal District Courts in
9 California follow the guidance provided by the LWDA as to the appropriate standard of
10 review. *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal.
11 2016)). In *O'Connor*, the LWDA indicated that when a PAGA claim is settled, the
12 relief provided should be genuine and meaningful, and consistent with the underlying
13 purpose of the statute to benefit the public. 201 F.Supp.3d at 1133. Relying on
14 *O'Connor*, courts will approve PAGA settlements that: “(1) meet the statutory
15 requirements set forth by PAGA, and (2) are fundamentally fair, reasonable, and
16 adequate in view of PAGA's public policy goals.” *Gutilla v. Aerotek, Inc.* (E.D.Cal.
17 Mar. 21, 2017, No. 1:15-cv-00191-DAD-BAM) 2017 U.S.Dist.LEXIS 41655, at *6-7.

18 PAGA imposes two requirements for the settlement of a PAGA claim. Both are
19 met here. First, any civil penalties recovered, whether by judgment or settlement, must
20 be distributed as follows: after payment of fees and expenses, 75 percent to the LWDA,
21 and the remaining 25 percent to the aggrieved employees. *See Moorer v. Noble L.A.*
22 *Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i). The parties’
23 settlement so provides. *See*, Settlement Agreement, § 3.06(a). .

24 Second, the LWDA must be given notice of the settlement so that it may be heard
25 before the Court decides whether to grant approval. (Cal. Lab. Code § 2699(l)(2)).
26 Here, notice is being given to the LWDA concurrently with the filing of this motion.
27 *See*, Hartman Decl., ¶ 8.

28 **1. Notice to the LWDA of the Proposed Settlement**

1 As noted above, as required by California Labor Code section 2699(1)(2), the
2 proposed settlement has been submitted to the LWDA prior to it being submitted to the
3 court. Upon the Court's granting of approval to this settlement, Plaintiff will submit a
4 copy of the Order to the LWDA. *See*, Hartman Decl., ¶ 8.

5 **2. Adequacy of Relief, Given Strength of Case and the Risks of Further**
6 **Litigation.**

7 As explained above, the Maximum Settlement Amount of \$600,000.00 was
8 reached after an all-day, arm's-length mediation conducted by a well-known wage and
9 hour mediator.³

10 During the mediation, the Parties reached a settlement that reflects a compromise
11 of each party's respective positions because further litigation would result in delay and
12 substantial additional costs, and further litigation would pose a serious risk of non-
13 recovery or reduction of recovery to Plaintiffs and the PAGA Group Members due to
14 the disputed factual and legal issues outlined above.

15 The relief provided accomplishes the goal of PAGA as a law enforcement tool,
16 because this settlement ensures compliance with the Labor Code. Although the amount
17 of money to be paid to each individual PAGA Group Member is modest, the amount is
18 also not insignificant. Because PAGA is not meant to be used to recover private
19 damages and is not meant to recover compensatory damages, the amount achieved in
20 this settlement accomplishes the law enforcement mechanism of PAGA. *See*, *Brown v.*
21 *Ralphs Grocery Co.* (2011) 197 Cal. App. 4th 489, 499 (explaining that restitution is not
22 the goal of PAGA; it is law enforcement action designed to protect public interests);
23 *Arias*, 46 Cal. 4th at 986 (holding that a PAGA action to recover civil penalties "is

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³ Courts recognize that "a presumption of fairness exists where ... [a] settlement is reached
27 through arm's-length bargaining." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
28 224, 245 (2001).

1 fundamentally a law enforcement action designed to protect the public and not to
2 benefit private parties.”).

3 Moreover, this result of \$600,000.00 is excellent, as settlements of PAGA claims
4 impacting thousands of individuals have been approved as reasonable for amounts far
5 less than the payment in this case. Federal courts have consistently approved
6 settlements that allocate very little to the settlement of PAGA claims, even where the
7 underlying claims result in much more substantial settlement amounts. See e.g., *Lopez*
8 *v. Bank of Am., N.A.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5064085, at *9 [granting final
9 approval of \$3,600,000 settlement that allocated payment of only \$15,000 to LWDA];
10 *Altamirano v. Shaw Industries, Inc.* (N.D. Cal. July 24, 2015) 2015 WL 4512372, at *2
11 [granting preliminary approval of \$500,000 settlement that allocated only \$1,500 to
12 LWDA]; *Boyd v. Bank of Am. Corp.* (C.D. Cal. Nov. 18), 2014 WL 6473804, at *12-13
13 [granting final approval of a \$5,800,000 settlement that allocated payment of only
14 \$18,750 to LWDA]; *Torchia v. W.W. Grainger, Inc.* (E.D. Cal. Aug. 13, 2014) 2014
15 WL 3966292, at *2 [granting preliminary approval of gross settlement amount of
16 \$2,750,000 that allocated only \$10,000 to PAGA claims]).

17 Finally, public policy strongly favors the settlement of litigation. See, *Consumer*
18 *Advocacy Group v. Kintetsu* (2006) 141 Cal. App. 4th 46, 63. Therefore, the settlement
19 should be approved as fair and consistent with the goals and spirit of PAGA.

20 **3. Extent of Discovery and Stage of Proceedings**

21 The Parties reached this Settlement Agreement after informal discovery in which
22 the Parties exchanged hundreds of pages of documents, including, but not limited to, wage
23 statements, time records, meal period waivers, and Defendant’s relevant policies. “For
24 wage-and-hour actions, such an exchange of information is sufficient to inform a reasoned
25 settlement process.” *Abelar, supra*, 2012 WL 60544607 at *5. The parties were well-
26 informed of each sides’ strengths and weaknesses.

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1 **4. Adequate Representatives and Counsel**

2 Plaintiffs' counsel have substantial experience in wage and hour claims,
3 including those brought through class and representative action proceedings and have
4 devoted significant time to this matter. *See*, Hartman Decl., ¶¶11-15; Declaration of
5 Matthew R. Wilson ("Wilson Dec."), ¶¶ 2-5.

6 **5. Arms-Length Negotiations and Absence of Collusion**

7 The settlement was reached after the Parties engaged in an informal exchange of
8 information and participated in a lengthy mediation process with an experienced neutral
9 which resulted in proposal accepted by all parties. *See*, Hartman Decl., ¶ 3.

10 **6. Equitable Treatment of PAGA Employees**

11 The approval of the PAGA Settlement Agreement will result in an award of
12 approximately \$93,000 to the PAGA Group Net Settlement Amount, assuming
13 Plaintiffs are awarded the attorneys' fees requested (\$200,000.00), the litigation costs
14 requested (\$9,179), service fees are awarded to each Plaintiff in the amount of
15 \$5,000.00 each, Administrator Costs in the amount of \$8,000, and penalties paid to the
16 LWDA in the amount of \$279,000. This method of allocation is reasonable and
17 equitable. *Abelar, supra*, 2012 WL 60544607 at *5.

18 **B. PLAINTIFFS' COUNSEL'S REQUESTED FEES ARE**
19 **REASONABLE**

20 "Any employee who prevails in any action shall be entitled to an award of
21 reasonable attorney's fees and costs." (Lab. Code § 2699, subd. (g).) Fee awards of one-
22 third of the settlement fund are routinely awarded in California state and federal courts.
23 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11.

24 As explained above, the settlement calls for Plaintiffs' counsel to receive 1/3 of
25 the Settlement Amount, which equates to \$200,000.00 in attorneys' fees, and to recover
26 out of pocket litigation costs of \$9,179.

27 The California Supreme Court has endorsed use of the percentage method of
28 awarding attorneys' fees as opposed to a lodestar analysis, citing the method's relative

1 ease of calculation, alignment of incentives between counsel and the class, a better
2 approximation of market conditions in a contingency case, and the encouragement it
3 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
4 litigation. *Laffitte v. Robert Half Intern. Inc.*, 376 P.3d 672, 686, 205 Cal.Rptr.3d 555,
5 573, 1 Cal.5th 480, 503 (Cal. 2016) (in wage and hour claims, approving attorneys' fee
6 award in the amount of one-third of gross settlement); *see also Russell v. EF*
7 *International Language Schools, Inc.*, 2016 WL 6304628, at *9 (Cal.App. 2 Dist., Oct.
8 27, 2016) (affirming one-third fee award over objection and noting that “[s]ome
9 appellate courts have questioned whether the percentage-of-the-benefit method is a
10 valid justification for an award of attorneys' fees in a class action settlement. Our
11 Supreme Court recently resolved the issue.”) (internal citation omitted); *Sobel*, 53
12 F.Supp.3d at 1330 (approving Plaintiffs right to seek fees from common fund in fee
13 shifting case).

14 Similarly, the percentage method better approximates the workings of the
15 marketplace by ensuring that attorneys receive compensation for the true value of their
16 services and skills. *Id.* at 307 (“Another point is worth making: because the [percentage
17 of fund] technique is result-oriented rather than process-oriented, it better approximates
18 the workings of the marketplace . . . the market pays for the result achieved”) (quoting
19 *In re Continental Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992)); *see also Fleury v.*
20 *Richemont N. Am., Inc.*, 2009 WL 1010514, *3 (N.D. Cal. Apr. 14, 2009) (“Contingent
21 fees that may far exceed the market value of the services if rendered on a non-
22 contingent basis are accepted in the legal profession as a legitimate way of assuring
23 competent representation for plaintiffs who could not afford to pay on an hourly basis
24 regardless whether they win or lose.... [i]f this ‘bonus’ methodology did not exist, very
25 few lawyers could take on the representation of a class client given the investment of
26 substantial time, effort, and money, especially in light of the risks of recovering
27 nothing”) (internal citation omitted).

1 Plaintiffs' law firms have taken the case on a pure contingency, which means
2 there is significant risk of no recovery and loss of significant litigation expenses if the
3 litigation were to fail on the merits. *See*, Hartman Decl., ¶ 11; Wilson Dec., ¶ 10.

4 Further, the declarations of Plaintiffs' attorneys of record confirm that the
5 attorneys have litigation experience in wage and hour cases and representative actions
6 in general. *See*, Hartman Decl., ¶ 11-15; Wilson Dec. ¶¶ 2-5.

7 Even though a percentage of the common fund approach is most favorable, even
8 a lodestar cross-check confirms that the \$200,000.00 amount is reasonable because the
9 law firm of Semnar & Hartman, LLP has incurred \$51,270.00 in fees on a lodestar basis
10 and the law firm of Meyer Wilson Co., LP has incurred \$139,754 in fees on a lodestar
11 basis—adding up to over \$190,000 in lodestar. *See*, Hartman Decl., ¶¶ 11-15; Wilson
12 Dec, ¶ 14.

13 As such, the Parties have agreed that the requested amount of 1/3 of the
14 Settlement Amount (in other words, \$200,000.00) for attorneys' fees is fair and
15 reasonable.

16 The expenses incurred by Semnar & Hartman, LLP total \$5,772.87, which
17 consists of \$2,264.61 in court filing fees and e-filing fees, \$3,144.12 in mediation
18 expenses, \$95.00 for process sever, and \$269.14 in printing and copying/mailing. *See*,
19 Hartman Decl., ¶ 13.

20 The expenses incurred by Meyer Wilson total \$3,157. *See*, Wilson Decl., ¶ 12.
21 Therefore, the total expenses to be reimbursed out of the settlement are \$8,929.87,
22 which is less than the \$10,000.00 amount negotiated.

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1 **V. CONCLUSION**

2 In light of the above, the Parties respectfully request that the Court approve the
3 PAGA Settlement Agreement and the requested fees and expenses.

4
5 DATED: 12-10-21

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