

ANDRE SHERMAN (SBN 198684)
SHERMAN & SHERMAN, APC
751 N. Fair Oaks Ave., Suite 101
Pasadena, California 91103
Telephone: (626) 517-3421
Email: asherman@shermanlawpc.com

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

TIGRAN GASPARIAN, individually, and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act of 2004 (“PAGA”);

Plaintiffs,

vs.

R & B MEDICAL GROUP, INC.; a California
domestic stock corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 21STCV20158

Honorable Colin P. Leis
Department 74

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (CAL. LABOR CODE § 2698,
ET SEQ.) SETTLEMENT AGREEMENT
AND AWARD OF ATTORNEYS’ FEES
AND COSTS, GENERAL RELEASE
FEE, AND SETTLEMENT
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declaration of Andre Sherman; Declaration
of Plaintiff Tigran Gasparian; and [Proposed]
Order and Judgment to be filed herewith]

Reservation ID: 550143895101
Date: February 16, 2023
Time: 8:30 a.m.
Department: 74

Complaint Filed: May 28, 2021
Trial Date:

1 **PLEASE TAKE NOTICE** that on February 16, 2023 at 8:30 a.m. or as soon thereafter
2 as the matter may be heard before the Honorable Colin P. Leis in Department 74 of the Superior
3 Court of the State of California, for the County of Los Angeles, located at 111 North Hill Street,
4 Los Angeles, CA 90012, Plaintiff Tigran Gasparian (“Plaintiff”) will and hereby does move for
5 entry of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the
7 settlement between Plaintiff and Defendant R & B Medical Group, Inc.
8 (“Defendant”) of the claims brought pursuant to the Private Attorneys General Act of
9 2004 (“PAGA”), as set forth in the Private Attorney General Act Settlement
10 Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”),
11 attached as “**EXHIBIT 1**” to the Declaration of Andre Sherman, including and not
12 limited to, the plan of allocation and distribution of the Gross Settlement Amount for
13 payment of the LWDA Payment to the California Labor and Workforce Development
14 Agency (“LWDA”), Individual Settlement Shares to the Aggrieved Employees,
15 Attorneys’ Fees and Costs to Plaintiff’s Counsel, Settlement Administration Costs to
16 the PAGA Settlement Administrator, and General Release Fee to Plaintiff;
- 17 2. Approving the Net Settlement Amount, estimated to be no less than \$19,900.00
18 which will be distributed to the LWDA and the Aggrieved Employees, pursuant to
19 California Labor Code section 2699(i), of which seventy-five percent (75%) will be
20 paid to the LWDA (“LWDA Payment”) and twenty-five percent (25%) will be paid
21 to the Aggrieved Employees (“Employees’ Portion”);
- 22 3. Appointing Phoenix Class Action Administration Solutions (“Phoenix”) as the PAGA
23 Settlement Administrator;
- 24 4. Directing Defendants to transmit the Gross Settlement Amount of \$55,000.00 into a
25 qualified settlement account established by the PAGA Settlement Administrator for
26 administration of the Settlement, and directing the PAGA Settlement Administrator to
27 distribute the Gross Settlement Amount in accordance with the Settlement
28 Agreement;

- 1 5. Directing the mailing of Individual Settlement Share checks to the Aggrieved
2 Employees along with the Cover Letter, which is substantially similar in content and
3 form to that attached as “**EXHIBIT 2**” to the [Proposed] Order and Judgment
4 Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et*
5 *Seq.*) Settlement Agreement and Award of Attorneys’ Fees and Costs, General
6 Release Fee, and Settlement Administration Costs (“[Proposed] Order and
7 Judgement”) filed concurrently herewith;
- 8 6. Awarding \$5,000.00 to Plaintiff Tigran Gasparian as a General Release Fee;
- 9 7. Awarding up to \$4,000.00 to the PAGA Settlement Administrator as Settlement
10 Administration Costs; and
- 11 8. Awarding to Plaintiff’s Counsel, Sherman & Sherman, APC, PC, \$17,600.00 as
12 compensation for reasonable attorneys’ fees and \$8,500.00 for reimbursement of
13 litigation costs and expenses (“Attorneys’ Fees and Costs”), pursuant to California
14 Labor Code section 2699(g)(1).

15 The Settlement Agreement and moving and supporting papers for this motion are being
16 concurrently submitted to the California Labor and Workforce Development Agency in
17 conformity with California Labor Code section 2699(1)(2).

18 This motion is made pursuant to California Labor Code section 2699(1)(2), which
19 provides for review and approval by the Court of the settlement of a civil action filed pursuant to
20 PAGA, and Rule 3.1113(e) of the California Rules of Court, which permits the Court to extend
21 the page limit for memoranda.

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1 This motion will be based upon the following Memorandum of Points and Authorities,
2 the Settlement Agreement, the Declarations of Plaintiff's Counsel Andre Sherman and Plaintiff
3 Tigran Gasparian in support thereof, as well as the pleadings and other records on file with the
4 Court in this matter, and such evidence and oral argument as may be presented at the hearing on
5 this motion.

6 Dated: 1/23/23

SHERMAN & SHERMAN, APC



7
8
9 By:

Andre Sherman
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Plaintiff Tigran Gasparian (“Plaintiff”) seeks approval of the Private Attorney General
4 Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement
5 Agreement”) entered into between Plaintiff, individually and on behalf of the State of California
6 and other aggrieved employees, and Defendant R & B Medical Group, Inc. (“Defendant”),
7 pursuant to California Labor Code section 2699(1)(2).¹

8 Subject to approval by the Court, Plaintiff and Defendant (together, the “Parties”) have
9 agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General
10 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Gross Settlement
11 Amount of \$55,000.00.²

12 The Gross Settlement Amount is inclusive of: (1) Attorneys’ Fees and Costs to be paid to
13 Sherman & Sherman, APC (“Plaintiff’s Counsel”), (2) General Release Fee to Plaintiff, (3)
14 Settlement Administration Costs to be paid to the PAGA Settlement Administrator, and (4) Net
15 Settlement Amount to be paid to the California Labor and Workforce Development Agency
16 (“LWDA”) and all current and former hourly-paid or non-exempt employees who have worked
17 for Defendant in California during the period May 28, 2020 through October 31,
18 2021 (“Aggrieved Employees”).³

19 The Net Settlement Amount will be the Gross Settlement Amount less the Court-
20 approved Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee,
21 and is currently estimated to be no less than \$19,900.00.⁴ The Net Settlement Amount will be
22 distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and
23 twenty-five percent (25%) to the Aggrieved Employees (“Employees’ Portion”).⁵ Each
24 Aggrieved Employee will be entitled to payment of his or her *pro rata* share of the Employees’

25 ¹ The Private Attorney General Act Settlement Agreement and Release (“Settlement Agreement”) is attached as
26 “EXHIBIT 1” to the Declaration of Andre Sherman.

27 ² Settlement Agreement, § 3(a)(1) & (5).

28 ³ *Ibid.* See also, §§ 3(a)(1)-(5).

⁴ *Id.*, § 3(a)(4).

⁵ *Id.*, § 3(a)(5).

1 Portion, based on the number of pay periods in which they were paid by Defendant for working
2 hours at the R & B Medical Group, Inc. dba Universal Diagnostic Laboratories located at 6700
3 Valjean Avenue, Van Nuys in California during the PAGA Period (“Compensable Pay Periods”),
4 based on Defendant’s payroll records.⁶ The “PAGA Period” is the period May 28, 2020 through
5 October 31, 2021.⁷

6 The payment to Aggrieved Employees will be treated and reported for tax purposes as
7 non-wage payments and the PAGA Settlement Administrator will be responsible for issuing IRS
8 Forms 1099 as required.⁸

9 Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the
10 requirements for approval by the Court based upon the relevant fairness factors, the relative
11 strengths of the PAGA claims, the risk, expense, and complexity of further litigation, the benefit
12 conferred by the Settlement, the scope of the release of claims, the experience and views of
13 counsel, and the reasonableness of the Net Settlement Amount (consisting of the LWDA
14 Payment and Employees’ Portion), Attorneys’ Fees and Costs, Settlement Administration Costs,
15 and General Release Fee. Plaintiff respectfully requests that this Court approve the Settlement,
16 award the Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee
17 and approve the LWDA Payment, which are provided for by the Settlement and requested
18 herein.

19 In order to efficiently present the Court with adequate information to determine whether
20 to grant approval of the Settlement, Plaintiff also respectfully moves for an order permitting the
21 filing of this memorandum, to the extent it exceeds the page limit established by California Rules
22 of Court, consistent with Rule 3.1113(d).

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27 ⁶ Settlement Agreement, § 7(b).

28 ⁷ *Id.*, § 3(a)(5).

⁸ *Id.*, § 7(c).

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant is R & B Medical Group, Inc. dba as Universal Diagnostic Laboratories located in 6700 Valjean Avenue, Van Nuys, California and is a full-service laboratory with a focus in women's and men's health testing. Plaintiff Tigran Gasparian is a former employee of Defendant.

Prior to commencing this lawsuit, on October 27, 2020, as required by California Labor Code section 2699.3, Plaintiff Tigran Gasparian provided the LWDA with written notice of his intent to assert claims under PAGA and the basis for those claims, to which the LWDA did not respond.⁹

On May 28, 2021, Plaintiff Tigran Gasparian filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint") against Defendant in the Los Angeles County Superior Court ("Court"), Case No. 21STCV20158 (the "Action"). Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and other aggrieved employees, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide compliant meal and rest periods and associated premiums, failing to pay timely wages during employment and upon termination of employment, failing to provide complete and accurate itemized wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

On August 2, 2021, Defendant filed an Answer to the Operative Complaint. Defendant maintained, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time period at issue. Defendant denies that it ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.

On October 14, 2021, the Parties participated in a mediation conducted by Eve Wagner, Esq. a well-respected mediator experienced in mediating complex labor and employment

⁹ Declaration of Andre Sherman ("Sherman Decl."), ¶ 14.

1 matters.¹⁰ On October 14, 2021, the Parties were able to reach a settlement by way of the
2 mediator's proposal.¹¹

3 Plaintiff now moves for an order granting approval of the Settlement pursuant to
4 California Labor Code section 2699(1)(2). The Settlement Agreement and moving and
5 supporting papers for this motion are being submitted to the LWDA in conformity with
6 California Labor Code section 2699(1)(2), concurrently with this filing.¹²

7 **III. SUMMARY OF THE SETTLEMENT TERMS**

8 **A. Aggrieved Employees**

9 The Aggrieved Employees who are covered by the Settlement are:

10 All current and former hourly-paid or non-exempt employees who have worked
11 for Defendant at the 6700 Valjean Avenue, Van Nuys in California during the
12 period May 28, 2020 through October 31, 2021.¹³ ¹⁴

13 Based on information provided by Defendant, as of October 10, 2021 there are
14 approximately **130** Aggrieved Employees, and an estimated **2,100** pay periods.¹⁵ As discussed in
15 the accompanying Declaration of counsel, the settlement is estimated to payout over **\$26** per pay
16 period for the group of Aggrieved Employees. (*Id.*)

17 **B. Distribution of the Total Settlement Consideration**

18 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement
19 Amount of \$55,000.00.¹⁶ The Net Settlement Amount will be the Gross Settlement Amount less
20 the following amounts: (1) Attorneys' Fees and Costs consisting of attorneys' fees of \$17,600.00
21 and reimbursement of litigation costs and expenses of \$8,500.00 to Plaintiff's Counsel; (2)
22 General Release Fee of \$5,000.00 to Plaintiff; and (3) Settlement Administration Costs of up to
23

24 ¹⁰ *Id.*, ¶ 19.

25 ¹¹ Sherman Decl., ¶ 20.

26 ¹² The Court is referred to the concurrently filed Proof of Service, which confirms submission of the papers to the LWDA.

27 ¹³ *Id.*, § 3(a)(5).

28 ¹⁴ Settlement Agreement, § 3(a)(5). The period May 28, 2020 through October 31, 2021, is referred to as the "PAGA Period." *See ibid.*

¹⁵ Settlement Agreement, § 3(a)(5), and Sherman Decl., ¶ 29-30, Exh. 5 to Sherman Decl., signed MOU.

¹⁶ Settlement Agreement, § 3(a)(1) - (5), and Sherman Decl., ¶ 21.

1 \$4,000.00 to Phoenix Class Action Administration Solutions (“Phoenix” or “PAGA Settlement
2 Administrator”).¹⁷ The Net Settlement Amount will be fully distributed to the Aggrieved
3 Employees and the LWDA, as described in Section III.C, *infra*.

4 **C. Distribution of the Net Settlement Amount**

5 Within fourteen (14) calendar days of the Court’s order granting approval of the
6 Settlement, Defendant shall transmit the Gross Settlement Amount to a qualified settlement
7 account established by the PAGA Settlement Administrator for administration of the
8 Settlement.¹⁸ No later than ten (10) calendar days after the Court’s order granting approval of
9 the Settlement, Defendant shall provide the PAGA Settlement Administrator with a list of all
10 Aggrieved Employees (“Aggrieved Employees List”), containing the following information for
11 each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known
12 telephone number; (iv) email address if available; (v) social security number; (vi) and
13 Compensable Pay Periods.¹⁹

14 Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$14,925.00)
15 will be distributed to the LWDA (i.e., “LWDA Payment”) and twenty-five percent (25%) of the
16 Net Settlement Amount (or approximately \$4,975.00) (i.e., “Employees’ Portion”) will be
17 distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay
18 Periods.²⁰ To calculate each Aggrieved Employee’s share of the Employees’ Portion
19 (“Individual Settlement Share”), the PAGA Settlement Administrator shall: (1) for each
20 Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually
21 worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved
22 Employees, and then (ii) multiply this amount by the Employees’ Portion to arrive at each
23 Aggrieved Employee’s Individual Settlement Share.²¹ The payments to Aggrieved Employees
24 for their Individual Settlement Shares are one hundred percent (100%) penalties to be reported
25

26 ¹⁷ Sherman Decl., ¶ 21.

27 ¹⁸ Settlement Agreement, § 7(a).

28 ¹⁹ *Id.*, § 7(d)(1).

²⁰ *Id.*, § 7(b).

²¹ *Ibid.*

on IRS Form 1099 and will not be subject to local, state, or federal payroll tax withholding.²²

No later than fourteen (14) calendar days after the PAGA Settlement Administrator's receipt of the Gross Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail.²³ For each PAGA Settlement Package that is returned as undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.²⁴

The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for ninety (90) calendar days, and thereafter, shall be cancelled.²⁵ Funds associated with cancelled checks shall be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual Settlement Share(s).²⁶

D. The Scope of the Release in the Settlement Agreement

Upon the date the Court has entered an order approving the Settlement Agreement, Plaintiff and the State of California with respect to Aggrieved Employees will be deemed to have knowingly and voluntarily released and forever discharged Released Parties from the following claims:

Any and all claims, based on the factual allegations in the Operative Complaint arising from Aggrieved Employees' work at 6700 Valjean Ave. Van Nuys, CA 91606 during the period May 28, 2020 through October 31, 2021, for civil penalties under California Labor Code section 2698, *et seq.* (PAGA) as well as any interest, fees, and costs available under PAGA, including but not limited to, for failure to pay minimum wage, regular wages, and overtime wages at the correct rate, failure to provide compliant meal periods and associated premiums at the correct rate, failure to provide compliant rest periods and associated premiums at the correct rate, failure to timely pay wages during employment, failure to timely

²² *Id.*, § 7(c).

²³ Settlement Agreement, § 7(d)(3).

²⁴ *Ibid.*

²⁵ *Id.*, § 7(d)(4).

²⁶ *Ibid.*

1 pay wages upon termination and/or furlough, failure to provide compliant and
2 accurate wage statements, failure to maintain complete and accurate payroll
3 records, failure to reimburse necessary business-related expenses and costs, and for
4 violations of Labor Code sections 201-204, 226, 226.7, 256, 510, 512, 516, 558,
1174, 1182.12, 1194, 1194.2, 1197, 1198; and claims for attorneys' fees, costs, or
5 interest resulting therefrom.²⁷

6 **E. No Right to Object to, or Opt Out of, the Settlement**

7 “[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as
8 such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior*
9 *Court* (2017) 3 Cal.5th 531, 546. “Unnamed employees need not be given notice of the PAGA
10 claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-*
11 *Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5. A
12 representative PAGA action need not satisfy class action requirements, and no due process
13 concern arises from the fact that there are “nonparty aggrieved employees who are not given
14 notice of, and an opportunity to be heard in, a representative action that is not brought as a class
15 action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984

16 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
17 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v.*
18 *Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29
19 Cal, 3d 462, 474.) As such, the Settlement is consistent with the law, and there is no requirement
20 that the Aggrieved Employees be provided with a mechanism to opt out of or object to the
21 Settlement.

22 **IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT**

23 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself
24 or herself and on behalf of other aggrieved employees and the State of California to recover civil
25 penalties which, outside of PAGA, only the LWDA can assess upon and collect from an
26 employer (Cal. Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee
27 must comply with California Labor Code section 2699.3. *See* Cal. Lab. Code § 2699(a).
28 Plaintiff has complied.

²⁷ Settlement Agreement, § 8(a).

1 The settlement of a PAGA action requires court approval. See Cal. Lab. Code §
2 2699(1)(2) (“The superior court shall review and approve any settlement of any civil action filed
3 pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis
4 . . . is not considered a class action but a law enforcement action” and therefore does not have to
5 meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26,
6 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011)
7 2011 WL 2173715, at *11. As such, a court’s review of a PAGA settlement involves analysis of
8 several unique features that render the approval process distinct from, and simpler than, the
9 process for approval of a class action settlement. A court reviewing a PAGA settlement need
10 only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing
11 Cal. Lab. Code § 2699(1)(2)).

12 In a PAGA case, the court’s focus is not the monetary amount which aggrieved
13 employees or the State stand to receive, but instead, whether the total settlement amount achieves
14 the PAGA’s objectives. The purpose of the PAGA is “to incentivize private parties to recover
15 civil penalties for the government that otherwise may not have been assessed and collected by
16 overburdened state enforcement agencies.” See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at
17 *4 (citing *Arias, supra*, 46 Cal.4th at 986).

18 A PAGA settlement is a settlement of claims for penalties and other remedies which the
19 LWDA could assess and collect on behalf of employees without their involvement or approval.
20 “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the
21 ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010 WL
22 1340777, at *5. This renders the approval process of a PAGA settlement distinct from a class
23 action settlement, and the Court need not employ the two-step approval process that applies to a
24 class action settlement, under both state and federal law.

25 **V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

26 The Settlement resulted from hard-fought negotiations, fulfills the objectives of the
27 PAGA statute, is fair, adequate, and reasonable, and meets all of the criteria for approval for the
28 reasons discussed below.

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

2 The parties reached the Settlement through arm’s-length negotiations, after a mediation
3 with an experienced and respected mediator, Eve Wagner, Esq.³⁰ A settlement that is “the
4 product of extensive and hard-fought adversarial negotiations between the parties” is entitled to a
5 presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

6 The Settlement is presumptively fair because: (1) it is the product of non-collusive,
7 arm’s-length negotiations with the assistance of an independent mediator knowledgeable in
8 complex labor and employment matters; (2) it was negotiated by counsel with significant
9 experience in similar complex labor and employment matters; and (3) it occurred after counsel
10 for the Parties engaged in significant investigation to evaluate the strength and potential value of
11 the PAGA claims, and the risks associated with possible arbitration proceedings and of litigating
12 these claims through trial.³¹

13 After engaging in significant informal discovery, the Parties participated in settlement
14 negotiations to try to resolve the lawsuit.³² These efforts included participating in formal
15 mediation conducted by Eve Wagner, Esq., a well-respected mediator experienced in mediating
16 complex labor and employment matters.³³ During mediation, the Parties discussed all aspects of
17 the case, including the risks and delays of further litigation, the risks to the Parties of proceeding
18 with trial, possible arbitration proceedings, as well as the law relating to representative PAGA
19 actions, off-the-clock theory, wage-and-hour enforcement, and arbitration agreements, the
20 evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and
21 appeals, among other things.³⁴ During all settlement discussions, the Parties conducted their
22 negotiations at arm’s length in an adversarial position.³⁵

23 Based on all of the information available to the Parties and with the assistance of the
24 experienced mediator, the Parties agree that this matter is well-suited for settlement given the

25 ³⁰ Sherman Decl., ¶ 19-20.

26 ³¹ *Id.*, ¶¶ 8-9, 16-20.

27 ³² Sherman Decl., ¶ 8, 17-18.

28 ³³ *Ibid.* ¶ 19-20

³⁴ *Ibid.*

³⁵ *Ibid.*

1 strengths and weaknesses of the PAGA claim.³⁶ Plaintiff and Plaintiff's Counsel believe that the
2 settlement is a fair, adequate, and reasonable resolution of this matter.³⁷ Plaintiff's Counsel has
3 extensive experience handling representative and class action wage-and-hour litigation and used
4 that experience to achieve a great result for Plaintiff, the State of California, and the Aggrieved
5 Employees.³⁸ Therefore, the Court should give considerable weight to the competency,
6 experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the
7 settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988)
8 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd*
9 *v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs'
10 counsel should be given a presumption of reasonableness).

11 **B. The Relative Strength of the PAGA Claims and the Range of Possible**
12 **Outcomes in the Litigation Strongly Favor Approval of the Settlement**

13 In order for Plaintiff to prevail on the PAGA claims, he would have to prove the
14 underlying California Labor Code violations, demonstrate that the Aggrieved Employees
15 suffered, and demonstrate that Defendant's conduct gives rise to penalties. See, e.g., *Elliot v.*
16 *Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 ("Plaintiff's claim
17 under [PAGA] is wholly dependent upon her other claims. Because all of plaintiff's other claims
18 fail as a matter of law, so does her PAGA claim.").

19 Plaintiff's core allegation is that Defendant has systematically violated the California
20 Labor Code, with respect to Plaintiff and the Aggrieved Employees, by, *inter alia*, failing to
21 properly pay minimum, regular, overtime wages, failing to provide compliant meal and rest
22 periods and associated premiums, failing to timely pay wages during employment and upon
23 termination of employment, failing to provide complete and accurate wage statements, failing to
24 keep complete and accurate payroll records, and failing to reimburse necessary business-related
25 expenses and costs.

26
27 ³⁶ *Id.*, ¶ 26.

28 ³⁷ *Ibid.* ¶ 26, 38-39

³⁸ *Id.*, ¶¶ 2-5.

1 Defendant contended that courts have required, and that due process requires, that the
2 adjudication of PAGA claims meets a “manageability” requirement. *See, e.g., Liuy v. Merrill*
3 *Lynch & Co.* (C.D. Cal. Nov. 10, 2014) No. CV-14-0425-PA, WL 5904904 at **3-4 (Court
4 dismissed the PAGA claim because a multitude of individualized assessments would be
5 necessary, making the PAGA claim unmanageable).

6 Defendant also maintained several defenses to Plaintiff’s theory of liability, which, if
7 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
8 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and
9 continues to have, legally-compliant employment policies and practices throughout the time
10 period at issue.⁴¹ Defendant denies that it ever violated any provision of the California Labor
11 Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the
12 PAGA.⁴² Defendant further denied, and continues to deny, that the lawsuit is appropriate for
13 representative treatment for any purpose other than settlement.⁴³

14 Defendant also challenged Plaintiff’s standing as an aggrieved employee and denied that
15 any of Defendant’s other employees whom Plaintiff seeks to represent are aggrieved.⁴⁴ Also, at
16 the time that this case commenced, multiple courts had taken an approach requiring a plaintiff to
17 establish standing and face the possibility of bifurcation of discovery and/or trial of the PAGA
18 claim. *See Amalgamated Transit Union, supra*, 46 Cal.4th at 1001 (noting that PAGA
19 “require[s] a plaintiff to have suffered an injury resulting from an unlawful action”); *Stafford v.*
20 *Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4; *Horton v. Jones*
21 (1972) 26 Cal.App.3d 952, 955.

22 Defendant also argued that an important feature of PAGA is that the Court retains
23 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to
24 do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.”
25 *See* Cal. Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*

26 ⁴¹ Sherman Decl., ¶ 24.

27 ⁴² *Ibid.*

28 ⁴³ *Ibid.*

⁴⁴ Sherman Decl., ¶ 25.

(2012) 203 Cal.App.4th 1112, 1136 Even if, *arguendo*, such violations occurred, which Defendant denies, Defendant contended that said violations would only be considered “initial violations” and thus heightened “subsequent violation” penalties were not warranted. *See* Cal. Lab. Code § 2699(f)(2); *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09. As such, Defendant contended that cumulative penalties and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.

While Plaintiff disagrees with Defendant’s contentions and maintains that his PAGA claim has merit, in reaching the settlement, Plaintiff and his counsel took into account the strengths and weaknesses of each side’s position and the uncertainty of how the case might have concluded as litigation continued, at trial, in arbitration proceedings, and/or appeals.⁴⁷

C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation

Courts favor the voluntary conciliation and settlement of complex litigation. *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan. 5, 2004) 221 F.R.D. 523, 526 (citation omitted).

Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the PAGA claim.⁴⁸ In addition, the Parties exchanged a volume of documents and data relevant to Plaintiff’s claims and Defendant’s defenses thereto, including, and not limited to, employee paystubs, employee timesheets, and employee handbooks and policies among other documents.⁴⁹ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant documents and data to evaluate Plaintiff’s claims, including, and not limited to, calculating the potential monetary recovery under PAGA.⁵⁰

Had the case not settled, the Parties would have conducted extensive formal discovery, including propounding written discovery requests as well as multiple depositions of party and

⁴⁷ Sherman Decl., ¶ 26.

⁴⁸ *Id.*, ¶ 17.

⁴⁹ Sherman Decl., ¶¶ 7-8, 17-18.

⁵⁰ *Ibid.* ¶¶ 7-8, 15, 17-18

percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendant indicated that it would aggressively litigate this case.⁵¹ Even if Defendant failed on its defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.⁵² Additionally, there is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State of California or other Aggrieved Employees after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

D. The Settlement Is Fair, Adequate, and Reasonable

“[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Service Comm’n* (9th Cir. 1981) 688 F.2d 615, 624. “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625.

The Settlement provides significant benefits to the State of California and the Aggrieved Employees and falls well-within the range of acceptable settlements under the circumstances. Under the Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$55,000.00, which encompasses the Net Settlement Amount, Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee.⁵³ The Net Settlement Amount is currently estimated to be \$19,900.00, of which an estimated \$4,975.00 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods and \$14,925.00 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel recognize the expense and length of continued proceedings necessary to litigate the matter

⁵¹ *Id.*, ¶ 24.

⁵² *Id.*, ¶¶ 15, 20, 24-26.

⁵³ Settlement Agreement, §§ 3(a)(1)-(5).

1 through trial and any possible appeals.⁵⁶ Plaintiff and his counsel have also taken into account
2 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
3 inherent in such litigation.⁵⁷ Plaintiff and his counsel are also aware of the burdens of proof
4 necessary to establish liability, both generally and in response to Defendant's defenses thereto,
5 and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on
6 behalf of Plaintiff, the State of California, and other Aggrieved Employees.⁵⁸

7 Considering all of the facts in this case, Plaintiff and his counsel have determined that the
8 Settlement represents a fair, adequate, and reasonable resolution of the PAGA claims, and that it
9 is in the best interests of the Aggrieved Employees and the State of California.⁶⁰

10 The result achieved in this case, and the monetary recovery provided by this settlement,
11 are well-within the range of an acceptable settlement under the circumstances, especially when
12 compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and Hour*
13 *Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the amount of
14 \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL
15 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of
16 PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out
17 of \$518,245 toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589
18 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0
19 toward the settlement of PAGA claims that were at issue in the lawsuit). Here, the value
20 obtained for settlement of the PAGA claims is significant, and it will be distributed in
21 accordance with and in fulfillment of the objectives of the PAGA statute.

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

24 Plaintiff's Counsel is highly experienced in complex representative and class action
25

26 ⁵⁶ Sherman Decl., ¶¶ 15, 20, 24-26.

27 ⁵⁷ *Id.*, ¶¶ 23, 25-26

28 ⁵⁸ *Id.*, ¶¶ 24 & 25.

⁶⁰ *Id.*, ¶¶ 26, 38-39.

wage-and-hour litigation.⁶¹ In the view of Plaintiff's Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁶²

VI. THE PROPOSED ATTORNEYS' FEES PAYMENT IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

A. A Fee Award of a Percentage of the Entire Fund Is Appropriate

The Settlement provides for a Gross Settlement Amount of \$55,000.00.⁶³ The Settlement provides for attorneys' fees in an amount of thirty-two percent (32%) of the Gross Settlement Amount, which is \$17,600.00, subject to approval and award by the Court.⁶⁴ The requested attorneys' fees award is commensurate with: (1) the risk that Plaintiff's Counsel took in bringing and litigating this case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that Plaintiff's Counsel has shown, (4) the results that Plaintiff's Counsel has achieved throughout the litigation, (5) the value that Plaintiff's Counsel has achieved for Plaintiff, the Aggrieved Employees, and the State of California, and (6) the other cases that Plaintiff's Counsel has turned down in order to devote time and effort to this matter.

Plaintiff's Counsel is entitled to recover reasonable attorneys' fees and costs as a matter of right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) ("Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs"). Plaintiff's Counsel is also entitled to fees and costs under California Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for the benefit" of others and secures monetary recovery for a large number of Aggrieved Employees, as well as the State of California. *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17. The settlement will also benefit the state labor agency in enforcing labor laws and educating

⁶¹ Sherman Decl., ¶¶ 2-5.

⁶² *Id.*, ¶¶ 26, 38-39.

⁶³ Settlement Agreement, § 3(a).

⁶⁴ *Id.*, § 3(a)(1).

1 “employers and employees about their rights and responsibilities under [the California Labor
2 Code].” Cal. Lab. Code § 2699(i).

3 The propriety of calculating and awarding attorneys’ fees as a percentage of a monetary
4 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
5 confirmed by the California Supreme Court. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th
6 480 at 486 & 506. While trial courts have discretion to apply either a lodestar method or
7 percentage-of-the-fund method, the California Supreme Court has taken the position that trial
8 courts also “retain the discretion to forgo a lodestar cross-check and use other means to evaluate
9 the reasonableness of a requested percentage fee” and “[t]he percentage of fund method survives
10 in California.” *Id.* (internal quotes omitted); see also *Wershba, supra*, 91 Cal.App. 4th at 253.

11 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
12 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
13 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; see also *Laffitte, supra*, 1 Cal.5th 480 at 506.
14 Indeed, it is long settled that the “experienced trial judge is the best judge of the value of
15 professional services rendered in his court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.

16 The percentage method is particularly appropriate where a monetary settlement has been
17 recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset Prods.*
18 *Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a “certain
19 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
20 percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil*
21 *Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.

22 The percentage fee method is preferred in representative actions because “it better
23 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
24 Cal.App.4th at 49. In cases where the settlement agreement provides that the defendant will pay
25 the plaintiff’s attorneys a percentage of the fund created by the settlement, use of that percentage
26 method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards that are too small will
27 “chill the private enforcement essential to the vindication of many legal rights and obstruct the
28 representative actions that often relieve the courts of the need to separately adjudicate numerous

claims.” *Id.* at 53. “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court*, *supra*, 126 Cal.App.4th at 1270).

Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and circumstances surrounding the case is well-within the range of reasonableness. California courts routinely approve attorneys’ fees awards “average[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee was appropriate); *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles County Superior Court, Case No. BC596892 (June 2016) (citing *Chavez, supra*, 162 Cal.App.4th at 66, n.11) (approving a fee award of one-third of the settlement amount of \$950,000, in a PAGA action, because it was “reasonable and consistent with fee awards in class action cases”).

Plaintiff’s Counsel has litigated this case since it was commenced, with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.⁶⁵ The data and documents reviewed and analyzed by Plaintiff’s Counsel included, and was not limited to employee paystubs, employee timesheets, and employee handbooks and policies among other documents.⁶⁶ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant documents and data to evaluate Plaintiff’s claims, including, and not limited to, calculating the potential monetary recovery under PAGA.⁶⁷ Other work performed by Plaintiff’s Counsel included, but was not limited to: meeting and conferring with Defendant’s counsel regarding the mediation and settlement, among other issues; participating in case strategy and analysis; drafting, reviewing, and revising the mediation brief; and preparing for and attending mediation and settlement negotiations.⁶⁸

In the present case, Plaintiff’s Counsel has borne all of the risks and costs of litigation

⁶⁵ Sherman Decl., ¶¶ 22, 31.

⁶⁶ Sherman Decl., ¶¶ 18-19, 26.

⁶⁷ *Ibid.* ¶¶ 7, 15, 17

⁶⁸ *Ibid.* ¶¶ 7, 17

1 and will not receive any compensation until recovery is obtained.⁶⁹ Considering the amount of
2 fees requested, work performed, risks incurred, results obtained, and experience of Plaintiff's
3 Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees are
4 reasonable and should be awarded.

5 **B. The Fee Award Requested by Plaintiff's Counsel Is Reasonable Based on the**
6 **Factors Considered in Determination of Fee Awards**

7 The factors which courts consider in determining whether fee awards are reasonable, all
8 of which support the fee award requested by Plaintiff's Counsel, are: (1) the time and labor
9 required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to
10 perform the legal services properly; (4) the preclusion of other employment by the attorney due
11 to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent;
12 (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and
13 results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability
14 of the case; (11) the nature and length of the professional relationship with the client; and (12)
15 awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991)
16 946 F. 2d 768, 772. Some of the most relevant factors to this Court's fee determination will be
17 addressed below.

18 It should be highlighted that the percentage award sought is conservatively
19 commensurate with the time, effort, and expense dedicated to the case, the contingent nature of
20 Plaintiff's Counsel's representation and the risks taken in commencing the Action, the skill and
21 determination required, the results that Plaintiff's Counsel has achieved, and the value of the
22 settlement that Plaintiff's Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees,
23 and the State of California. For the reasons discussed herein, an award of attorneys' fees in the
24 amount of \$17,600.00 percent (32%) of the Gross Settlement Amount is reasonable.

25 ***1. Time & Labor***

26 Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour
27

28 ⁶⁹ *Id.*, ¶ 36.

1 actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit,
2 Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal
3 issues, Defendant's business, and its operations and employment policies, practices, and
4 procedures.⁷¹ During the litigation of the Action, Plaintiff's Counsel interviewed and obtained
5 information from Plaintiff and Aggrieved Employees, conducted legal research, reviewed and
6 analyzed a volume of documents and data, prepared for and attended mediation, evaluated the
7 PAGA claims, and calculated the potential monetary recovery under PAGA.⁷² Plaintiff's
8 Counsel also met and conferred with Defendant's counsel over issues relating to the mediation
9 and settlement.⁷³ Plaintiff's Counsel performed other work including, *inter alia*, case strategy
10 and analysis; and engaging in extensive settlement negotiations.⁷⁴

11 Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary
12 to prosecute the case with maximum efficiency, and has fully and actively participated in the
13 litigation process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT 2**" to the
14 accompanying Declaration of Andre Sherman, sets forth in detail the hours that Plaintiff's
15 Counsel has spent performing tasks in this matter. Plaintiff's Counsel has spent over 150 hours
16 to obtain a recovery on behalf of Plaintiff, the Aggrieved Employees, and the State of California.
17 These hours were required to bring the case to its successful conclusion.

18 In light of the value of time expended and the carrying of costs involved in this litigation,
19 the requested attorneys' fees award is fair, adequate, and reasonable.

20 ***2. The Skill Required to Perform Legal Services Properly***

21 The skill required to properly litigate this case is evident not only in the results achieved,
22 but in the steps necessary to reach the same. Defendant retained highly-respected counsel to
23 represent its defenses. Defendant and its counsel felt very strongly about Defendant's ability to
24 prevail on the merits and avoid representative adjudication of the PAGA claims. Plaintiff and
25 Plaintiff's Counsel believe that the PAGA claims have merit and that Plaintiff will prevail at

26 ⁷¹ Sherman Decl., ¶ 16.

27 ⁷² *Ibid.*

28 ⁷³ *Ibid.* ¶¶ 16-18.

⁷⁴ *Ibid.* ¶ 17.

1 trial. Plaintiff's Counsel undertook extensive investigation, analysis, and research prior to filing
2 the lawsuit and during the litigation. Plaintiff's Counsel took some initial steps to prepare the
3 case for trial and had every intention of taking the case to trial if Defendant did not offer an
4 appropriate settlement.

5 Plaintiff's Counsel's effort and skill were used to, among other things, investigate the
6 allegations and gather facts, research the legal issues, analyze data and information obtained
7 from Defendant, Plaintiff, and through other sources, evaluate the PAGA claims, and negotiate
8 the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used its
9 extensive experience and skill in the handling of complex wage-and-hour matters to advocate for
10 and obtain Aggrieved Employees and the State of California a recovery now, with maximum
11 efficiency, as opposed to the possibility of recovery in the future, after significant expense and
12 time.⁷⁵

13 ***3. The Value of the Settlement***

14 The Settlement represents a very good resolution of this lawsuit, given the uncertainty
15 and risks of further litigation.⁷⁶ Had the case not settled, Defendant would have vigorously
16 challenged manageability and liability, and sought a reduction in the amount assessed as
17 penalties. Defendant, however, faced risks too, including and not limited to, the risk of having
18 the Court assess penalties. Additionally, preparing the case for trial would have been
19 extraordinarily expensive for the Parties.

20 At this stage, the settlement is preferred over continued litigation because such resolution
21 saves time and money that would otherwise go to litigation. The risks and expenses of further
22 litigation outweighed any benefit that might have been gained otherwise. The Settlement
23 provides an immediate recovery, as opposed to an uncertain result in the future after prolonged
24 litigation involving expert discovery, trial preparation, and appellate review of those
25 proceedings. The Settlement offers present and considerable monetary relief to Plaintiff, the
26

27 ⁷⁵ Sherman Decl., ¶¶ 2-5, 18-20.

28 ⁷⁶ *Id.*, ¶¶ 19-20, 23, 26.

1 Aggrieved Employees, and the State of California while avoiding additional expense, risk, and
2 delay in obtaining possible further recovery.

3 **4. Whether the Fee Is Fixed or Contingent**

4 The representation provided by Plaintiff's Counsel has been wholly contingent and
5 Plaintiff's Counsel took on this matter without knowing whether any recovery would be
6 obtained. Plaintiff's Counsel has invested over 150 hours of time to obtain relief on behalf of
7 Plaintiff, the Aggrieved Employees, and the State of California. Plaintiff's Counsel is also
8 requesting reimbursement of litigation costs and expenses in the amount of at least \$8,500.00.⁷⁷

9 In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will
10 not receive any compensation until recovery is obtained.⁷⁸ If Plaintiff's Counsel had not been
11 successful, the time that they have devoted to litigating the case would have been for naught and
12 would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel
13 is well-experienced in complex wage-and-hour litigation and used that experience to obtain a
14 very good result for Plaintiff, the Aggrieved Employees, and the State of California.⁷⁹ The skill
15 and determination that Plaintiff's Counsel has shown throughout the Action justify the requested
16 attorneys' fees and costs. Considering the amounts requested, work performed, and risks
17 incurred, the requested fees and costs are reasonable and should be awarded.

18 **5. The Amount Involved and the Results Achieved**

19 The results achieved, in light of the difficulties inherent in similar cases and the specific
20 difficulties faced in this case, are considerable. Here, the results achieved, and the recovery
21 obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent a
22 fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a
23 settlement that provides for a Gross Settlement Amount of \$55,000.00, and it is currently
24 estimated that the Net Settlement Amount available for distribution to the Aggrieved Employees
25 and the State of California, as set forth in Part III.C *infra*, is approximately \$19,900.00.⁸⁰

26 ⁷⁷ *Id.*, ¶ 36 and Exh. 4.

27 ⁷⁸ *Id.*, ¶ 36.

28 ⁷⁹ See Sherman Decl., ¶¶ 2-5.

⁸⁰ Settlement Agreement, § 3(a).

1 **6. The Reputation and Ability of the Attorneys**

2 Plaintiff’s Counsel is a recognized in class action and complex litigation, and its attorneys
3 employed their knowledge, skill, and experience to bring the case to a successful conclusion.
4 Plaintiff’s Counsel has years of wage-and-hour class action and complex litigation experience,
5 has recovered millions of dollars on behalf of thousands of individuals in California, and has
6 successfully handled numerous significant wage-and-hour/PAGA class action and representative
7 action cases.⁸¹

8 **C. The Lodestar Methodology Also Justifies Approval of the Requested Fees,**
9 **Because Plaintiff’s Counsel Has Performed Work That Is of Significant**
10 **Value Based on Reasonable Hours and Prevailing Hourly Rates of**
11 **Compensation**

12 While the percentage-of-the-benefit approach is endorsed as the better approximation of
13 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
14 method to “cross-check” the results of the other. *See Laffitte, supra*, 1 Cal.5th at 505 (explaining
15 that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time
16 spent by counsel into the trial court’s reasonableness determination”); *see also, e.g., Vizcaino*,
17 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method,
18 the lodestar may provide a useful perspective on the reasonableness of a given percentage
19 award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary
20 determination of the fee as a percentage” and “does not impose an absolute maximum or
21 minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

22 The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates
23 for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is
24 entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

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26
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28

⁸¹ Sherman Decl., ¶¶ 2-5.

1 **1. Plaintiff's Counsel Performed Work for a Reasonable Number of Hours**

2 The reasonableness of hours is assessed by “the entire course of the litigation, including
3 pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v.*
4 *Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

5 As discussed above, this case was highly contested and required a significant amount of
6 time and labor. Defendant made it clear very early on that it disputed all of Plaintiff's allegations
7 and disputed that representative adjudication was appropriate. The handling of this litigation
8 involved a considerable amount of effort, and also required and involved the exercise of a high
9 level of skill, which Plaintiff's Counsel has, as a result of its extensive experience in complex
10 wage-and-hour litigation. Plaintiff's Counsel had to bring together a volume of data and
11 documents that were produced by Defendant and obtained from Plaintiff, Aggrieved Employees,
12 and through other sources. Plaintiff's Counsel conducted extensive review and analysis of these
13 documents and data to strategize and evaluate the case and engage in settlement discussions.

14 As set forth above in Part VI.B.1 *supra*, attached to the Declaration of Andre Sherman is
15 the Attorney Task and Time Chart that sets forth the numerous tasks that Plaintiff's Counsel
16 performed in this matter, and the time required for completing those tasks.⁸⁴ In light of the facts
17 and circumstances of this case, as well as the results Plaintiff's Counsel has achieved on behalf
18 of Plaintiff, the Aggrieved Employees, and the State of California, Plaintiff's Counsel has spent a
19 reasonable number of hours on this matter.

20 **2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation**
21 **in Light of Plaintiff's Counsel's Efforts and Experience**

22 Both California and federal courts recognize that attorneys should be compensated for
23 providing representation on a contingency basis and for taking on the risks associated with said
24 representation, as well as being provided with financial incentives to enforce important rights
25 and protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33.
26 Here, Plaintiff's Counsel bore the risk that, despite all of their efforts and skills employed, there
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28 ⁸⁴ *Id.* ¶ 34, Exh. 2.

1 may be no recovery. Ultimately, Plaintiff's Counsel was successful in reaching a settlement of
2 \$55,000.00.

3 As set forth in the Declaration of Andre Sherman, the professional background and
4 experience of Plaintiff's Counsel support a reasonable hourly rate of compensation for services
5 provided by Plaintiff's Counsel.⁸⁵ Counsel has been awarded attorneys' fees, compensating at
6 the rate of at least \$450 to \$800 per hour for legal services performed, by courts of this state.
7 While the circumstance of every case is unique, the fact remains that the work performed and
8 efforts undertaken by Plaintiff's Counsel in this matter justify the requested attorneys' fees
9 award.

10 The lodestar method, as a cross-check to the percentage fee sought, strongly supports the
11 reasonableness of the requested attorneys' fees award. Applying the rate of \$750 per hour to
12 attorney Andre Sherman's 54 hours worked, and the rate of \$450 per hour to attorney David
13 Ventura's over 100 hours worked, by Plaintiff's Counsel, would place a base lodestar value of
14 over \$85,000.00 on the services provided by Plaintiff's Counsel. However, Plaintiff's Counsel
15 only seeks an attorneys' fee award of \$17,600.00 (equal to 32% of the Gross Settlement Amount
16 based on the Settlement Agreement).

17 It also bears noting that a court may apply a multiplier in consideration for risk, efficiency,
18 and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See
19 *Ketchum*, 24 Cal.4th at 1133-34 Courts have approved fee awards with multipliers of 2 and higher.
20 See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34
21 multiplier without remand); *Wershba, supra*, 91 Cal.App.4th at 255 ("Multipliers can range from 2
22 to 4 or even higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512
23 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez, supra*, 162 Cal.App.4th at 66
24 (applying a 2.5 multiplier in a consumer class action).

25 The lodestar method as a cross-check to the percentage figure sought strongly supports the
26 reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that
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28 ⁸⁵ Sherman Decl., ¶¶ 2-5, 11.

1 the Court approve and grant an attorneys' fees award in the amount of \$17,600.00 to Plaintiff's
2 Counsel, which is reasonable and justified on a percentage-basis, but also based on a lodestar
3 cross-check.

4 **VII. COSTS TO BE REIMBURSED TO PLAINTIFF'S COUNSEL ARE FAIR AND**
5 **REASONABLE, AND SHOULD BE APPROVED**

6 The Settlement provides for reimbursement of litigation costs and expenses of up to
7 \$8,500.00. As set forth in the Declaration of Andre Sherman, Plaintiff's Counsel has incurred a
8 total of \$8,649.63 in litigation costs and expenses.⁸⁷ This amount was reasonable and necessary
9 in the prosecution of this matter. Plaintiff's Counsel stands to lose \$149.63 as a result of
10 litigation costs and expenses. Nonetheless, Plaintiff's Counsel requests that the Court award
11 reimbursement of litigation costs and expenses in the amount of \$8,500.00 to Plaintiff's
12 Counsel.

13 **VIII. THE PROPOSED COVER LETTER TO THE AGGRIEVED EMPLOYEES**
14 **SHOULD BE APPROVED**

15 Although PAGA does not require notice to unnamed aggrieved employees of a
16 settlement, the Parties prepared, and will present for the Court's consideration and approval, the
17 Cover Letter for transmission to the Aggrieved Employees along with their Individual Settlement
18 Share check (together, "PAGA Settlement Package"), substantially in the form attached as
19 "EXHIBIT 1" to the [Proposed] Order and Judgment. The Cover Letter informs the Aggrieved
20 Employees about the Action and the Settlement. Accordingly, Plaintiff respectfully requests that
21 the Court approve the Cover Letter for transmission to the Aggrieved Employees at the time of
22 disbursing their Individual Settlement Shares.

23 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND**
24 **REASONABLE, AND SHOULD BE APPROVED**

25 As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to
26 approval by the Court, Phoenix Class Action Administration Solutions Settlement
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28 ⁸⁷ Sherman Decl., ¶ 36.

Administrators to handle the administration of the Settlement. The fees and expenses of the Settlement Administrator are currently estimated at \$3,000.00 but not to exceed \$4,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual Settlement Shares checks to the Aggrieved Employees (i.e., PAGA Settlement Package); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages to any updated addresses located; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to \$4,000.00 to Phoenix Class Action Administration Solutions Settlement Administrators, a necessary third-party for handling the settlement process.

X. THE PROPOSED GENERAL RELEASE FEE IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for a General Release Fee (representative enhancement award) to be paid to Plaintiff in the amount of \$5,000.00.⁹⁰ The purpose of such an award is to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate named plaintiff “for [her] efforts in bringing the action”); *see also, e.g., Resendez, supra*, Los Angeles County Superior Court, Case No. BC59689 (approving \$10,000 enhancement award in a PAGA action).

Here, Plaintiff contributed considerable time and effort to the litigation of this case in order to enforce the California Labor Code on behalf of the State of California and for the benefit of other Aggrieved Employees. Plaintiff gathered and produced relevant documents and information, provided the facts and evidence necessary to attempt to prove the allegations, and discussed his employment with his counsel.⁹¹ Plaintiff was available whenever his counsel needed him and tried to obtain documents and information that would aid in the litigation of the

⁹⁰ Settlement Agreement, § 3(a)(2).

⁹¹ Declaration of Tigran Gasparian Decl.”), ¶¶ 3-4, 6, 8.

1 PAGA claims and pursuit of recovery on behalf of the State of California and Aggrieved
2 Employees.⁹² Additionally, as a part of the Settlement, Plaintiff has agreed to a broader release
3 of claims than the release of claims that applies to the Aggrieved Employees.

4 Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the
5 amount of \$5,000.00, in addition to the Individual Settlement Share he will receive as an
6 Aggrieved Employee.

7 **XI. CONCLUSION**

8 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise
9 of disputed claims that has been reached through arm's-length negotiations, in light of the risks,
10 complexity, and expense of further litigation. Plaintiff respectfully requests that the Court
11 approve the Settlement, including the plan of allocation and distribution of the Gross Settlement
12 Amount for the LWDA Payment to the LWDA, Individual Settlement Shares to the Aggrieved
13 Employees, Attorneys' Fees and Costs to Plaintiff's Counsel, Settlement Administration Costs to
14 the PAGA Settlement Administrator, and General Release Fee to Plaintiff, and permit the filing
15 of a memorandum that exceeds the page limit.

16 Dated: 1/23/2023

SHERMAN & SHERMAN, APC

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18 

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20 By: _____

Andre Sherman
Attorneys for Plaintiffs

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⁹² Gasparian Decl., ¶¶ 7 & 8.