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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

10 LILIA OLAGUE, individually, and on behalf
11 of other aggrieved employees pursuant to the
California Private Attorneys General Act of
2004 ("PAGA");

12 Plaintiffs,

13 vs.

14 CIMINOCARE, INC.; a California domestic
15 stock corporation; and DOES 1 through 100,
16 inclusive,

17 Defendants.

Case No.: 34-2021-00298633-CU-OE-GDS

Honorable Richard Sueyoshi
Department 53

**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 Lilia Olague; filed concurrently
herewith]

Reservation ID: 2625453
Date: January 24, 2023
Time: 1:30 p.m.
Department: 53

Complaint Filed: April 13, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on January 24, 2023 at 1:30 p.m. or as soon thereafter as
2 the matter may be heard before the Honorable Richard Sueyoshi in Department 53 of the
3 Superior Court of the State of California, for the County of Sacramento, located at 720 9th St.
4 Sacramento, California 95814, Plaintiff Lilia Olague (“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 CiminoCare, Inc. (“Defendant”) of the
8 claims brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as
9 set forth in the Private Attorney General Act Joint Stipulation of Settlement and
10 Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as
11 “**EXHIBIT 1**” to the Declaration of Andre Sherman, including and not limited to, the
12 plan of allocation and distribution of the Gross Settlement Amount for payment of the
13 LWDA Payment to the California Labor and Workforce Development Agency
14 (“LWDA”), Individual Settlement Shares to the Aggrieved Employees, Attorneys’
15 Fees and Costs to Plaintiff’s Counsel, Settlement Administration Costs to the PAGA
16 Settlement Administrator, and General Release Fee to Plaintiff;
- 17 2. Approving the Net Settlement Amount, estimated to be no less than \$137,000.00
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 \$250,000.00 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. Defendant shall: deposit \$250,000 in two installments with the

- 1 Settlement Administrator. \$125,000 payable five (5) days after final court approval of
2 the settlement, and \$125,000 payable six (6) months thereafter;
- 3 5. Directing the mailing of Individual Settlement Share checks to the Aggrieved
4 Employees along with the Cover Letter, which is substantially similar in content and
5 form to that attached as “**EXHIBIT 2**” to the [Proposed] Order and Judgment
6 Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et*
7 *Seq.*) Settlement Agreement and Award of Attorneys’ Fees and Costs, General
8 Release Fee, and Settlement Administration Costs (“[Proposed] Order and
9 Judgement”) filed;
- 10 6. Awarding \$10,000.00 to Plaintiff Lilia Olague as a General Release Fee;
- 11 7. Awarding up to \$10,000.00 to the PAGA Settlement Administrator as Settlement
12 Administration Costs; and
- 13 8. Awarding to Plaintiff’s Counsel, Sherman and Sherman, APC, PC, \$87,500.00 as
14 compensation for reasonable attorneys’ fees and \$9,500.00 for reimbursement of
15 litigation costs and expenses (“Attorneys’ Fees and Costs”), pursuant to California
16 Labor Code section 2699(g)(1).

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

20 This motion is made pursuant to California Labor Code section 2699(l)(2), which
21 provides for review and approval by the Court of the settlement of a civil action filed pursuant to
22 PAGA, and Rule 3.1113(e) of the California Rules of Court, which permits the Court to consider
23 extended page limits for memoranda. Plaintiff respectfully requests this Court to do so here.

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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 Lilia Olague in support thereof, as well as the pleadings and other records on file with the Court
4 in this matter, and such evidence and oral argument as may be presented at the hearing on this
5 motion.

6 Dated: December 29, 2022

SHERMAN & SHERMAN, APC

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10 By: _____

Andre Sherman
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Plaintiff Lilia Olague (“Plaintiff”) seeks approval of the Private Attorney General Act
4 Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”)
5 entered into between Plaintiff, individually and on behalf of the State of California and other
6 aggrieved employees, and Defendant CiminoCare, Inc. (“Defendant”), pursuant to California
7 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 \$250,000.00.²

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 October 28, 2019 through December 31, 2021
18 (“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 \$137,000.00.⁴ 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 Joint Stipulation of Settlement and Release Agreement (“Settlement Agreement”) is attached as “**EXHIBIT**
26 **1**” to the Declaration of Andre Sherman.

27 ² Settlement Agreement, § 7(a).

28 ³ *Ibid.* See also, §§ 5.

⁴ *Id.*, § 7.

⁵ *Id.*, § 7.

1 Portion, based on the number of pay periods in which they were paid by Defendant for working
2 hours at the CiminoCare, Inc. and all of its subsidiaries located at 3401 Walnut Avenue,
3 Carmichael, et al in California during the PAGA Period (“Compensable Pay Periods”), based on
4 Defendant’s payroll records.⁶ The “PAGA Period” is the period October 28, 2019 through
5 December 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 moves for an order permitting the filing of this
21 memorandum, although it exceeds the page limit established by California Rules of Court, Rule
22 3.1113(d).

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27 ⁶ Settlement Agreement, § 7.

28 ⁷ *Id.*, § 5.

⁸ *Id.*, § 6.

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant is CiminoCare, Inc. and all of its subsidiaries located at 3401 Walnut Avenue, Carmichael, et al., California and is a senior living management company currently operating 11 senior living communities. Plaintiff Lilia Olague is a former employee of Defendant.

Prior to commencing this lawsuit, on October 28, 2020, as required by California Labor Code section 2699.3, Plaintiff Lilia Olague 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 April 13, 2021, Plaintiff Lilia Olague filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) against Defendant in the Sacramento County Superior Court (“Court”), Case No. 34-2021-00298633 (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 July 27, 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 December 23, 2021, the Parties participated in a mediation conducted by Eve Wagner, Esq. a well-respected mediator experienced in mediating complex labor and employment matters.¹⁰ On December 23, 2021, the Parties were able to reach a settlement by

⁹ Declaration of Andre Sherman (“Sherman Decl.”), ¶ 13.

¹⁰ *Id.*, ¶ 18.

way of the mediator's proposal.¹¹

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

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Aggrieved Employees who are covered by the Settlement are:

All current and former hourly-paid or non-exempt employees who have worked for Defendant and its subsidiaries at the 3401 Walnut Avenue, Carmichael in California during the period October 28, 2019 through December 31, 2021.¹³

Based on information provided by Defendant, and referenced in the executed MOU in this case, there are approximately 722 Aggrieved Employees and 10336 pay periods.¹⁵

B. Distribution of the Total Settlement Consideration

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount of \$250,000.00.¹⁶ Defendant shall: deposit \$250,000 in two installments with the Settlement Administrator. \$125,000 payable five (5) days after final court approval of the settlement, and \$125,000 payable six (6) months thereafter. The Net Settlement Amount will be the Gross Settlement Amount less the following amounts: (1) Attorneys' Fees and Costs consisting of attorneys' fees of \$87,500.00 and reimbursement of litigation costs and expenses up to \$9,500.00 to Plaintiff's Counsel; (2) General Release Fee of \$10,000.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$10,000.00 to Phoenix Class Action Administration Solutions ("Phoenix" or "PAGA Settlement Administrator").¹⁷ The Net Settlement Amount will be fully distributed to the Aggrieved Employees and the LWDA, as described in Section III.C,

¹¹ Sherman Decl., ¶ 18-19.

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

¹³ Settlement Agreement, p.3 at § 5(b).

¹⁵ Sherman Decl., ¶ 27.

¹⁶ Settlement Agreement, p.9 § 8; Sherman Decl., ¶ 20.

¹⁷ Settlement Agreement, § 7(b)(iii); Sherman Decl., ¶ 20.

1 *infra.*

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

3 Within five (5) business days after the Court's order granting approval of the Settlement,
4 Defendant shall transmit the first installment of \$125,000.00 of the Gross Settlement Amount to
5 a qualified settlement account established by the PAGA Settlement Administrator for
6 administration of the Settlement. The second installment of \$125,000.00 is payable six (6)
7 months thereafter.¹⁸ The parties have agreed to use Phoenix Class Action Administration
8 Solutions as the Settlement Administrator to facilitate and administer distribution of all
9 payments.¹⁹

10 Seventy-five percent (75%) of the Net Settlement Amount (or approximately
11 \$102,750.00) will be distributed to the LWDA (i.e., "LWDA Payment") and twenty-five percent
12 (25%) of the Net Settlement Amount (or approximately \$34,250.00) (i.e., "Employees' Portion")
13 will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable
14 Pay Periods.²⁰ To calculate each Aggrieved Employee's share of the Employees' Portion
15 ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (1) for each
16 Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually
17 worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved
18 Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each
19 Aggrieved Employee's Individual Settlement Share.²¹ The payments to Aggrieved Employees
20 for their Individual Settlement Shares are one hundred percent (100%) penalties to be reported
21 on IRS Form 1099 and will not be subject to local, state, or federal payroll tax withholding.²²

22 No later than fourteen (14) calendar days after the PAGA Settlement Administrator's
23 receipt of the Gross Settlement Amount, the PAGA Settlement Administrator shall mail the
24 agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA
25

26 ¹⁸ Settlement Agreement, § 8(a).

27 ¹⁹ *Id.*, § 6.

28 ²⁰ *Id.*, § 7.

²¹ *Ibid.*

²² *Id.*, § 7.

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 one-hundred and twenty (120) calendar days, and thereafter, any Individual Settlement Award checks that are not cashed, deposited, or negotiated after the Check Sale Date will be void and 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 Defendant, and its subsidiaries, during the period October 28, 2019 through December 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 pay wages upon termination and/or furlough, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, failure to reimburse necessary business-related expenses and costs, and for violations of Labor Code sections 201-204, 226, 226.3, 226.7, 256, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802; and claims for attorneys’ fees,

²³ Settlement Agreement, § 8.

²⁴ *Ibid.*

²⁵ *Id.*, § 8.

²⁶ *Ibid.*

costs, or interest resulting therefrom; and claims for attorneys' fees, costs, or interest resulting therefrom.²⁷

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

“[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546. “Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5. A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are “nonparty aggrieved employees who are not given notice of, and an opportunity to be heard in, a representative action that is not brought as a class action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other potentially aggrieved employees parties” to the action and no “due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and whatever personal claims the absent employees might have for relief are not at stake.” *Williams, supra*, 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

“[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]” *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29 Cal, 3d 462, 474.) A “judgment in such an action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding” because “the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies[.]” “collateral estoppel applies [...] against those for whom the party acted as an agent or proxy[.]” and “[w]hen a government agency is authorized to bring an action on behalf of an individual or in the public interest, and a private person lacks an

²⁷ Settlement Agreement, § 9.

1 independent right to bring the action, a person who is not a party but who is represented by the
2 agency is bound by the judgment as though the person were a party.” *Arias, supra*, at 985-86
3 (citations omitted).

4 As such, the Settlement is consistent with the law, and there is no requirement that the
5 Aggrieved Employees be provided with a mechanism to opt out of or object to the Settlement.

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

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

13 The settlement of a PAGA action requires court approval. *See* Cal. Lab. Code §
14 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed
15 pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis
16 . . . is not considered a class action but a law enforcement action” and therefore does not have to
17 meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26,
18 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011)
19 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding
20 that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v.*
21 *PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of
22 a PAGA settlement involves analysis of several unique features that render the approval process
23 distinct from, and simpler than, the process for approval of a class action settlement. A court
24 reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those
25 affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor
26 Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged,
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1 courts have approved settlements of PAGA claims.²⁹ See, e.g., *Resendez v. Bridgestone Retail*
2 *Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto*
3 *Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v.*
4 *Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David's Bridal,*
5 *Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D.
6 Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal Nov. 27,
7 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576,
8 589.

9 In a PAGA case, the court's focus is not the monetary amount which aggrieved
10 employees or the State stand to receive, but instead, whether the total settlement amount achieves
11 the PAGA's objectives. The purpose of the PAGA is "to incentivize private parties to recover
12 civil penalties for the government that otherwise may not have been assessed and collected by
13 overburdened state enforcement agencies." See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at
14 *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to
15 "be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers
16 and employees about their rights and responsibilities under this code, to be continuously
17 appropriated to supplement and not supplant the funding to the agency for those purposes." See
18 Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by way of a PAGA
19 claim, is essentially a law enforcement action. See *Amalgamated, supra*, 46 Cal.4th at 1003
20 (stating that the PAGA is a mechanism for "an aggrieved employee to recover civil penalties—
21 for Labor Code violations—that otherwise would be sought by state labor law enforcement
22 agencies"); see also *Iskanian, supra*, at 381.

23 A PAGA settlement is a settlement of claims for penalties and other remedies which the
24 LWDA could assess and collect on behalf of employees without their involvement or approval.
25 "[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the
26 ability to opt-out of the representative PAGA claim." *Ochoa-Hernandez, supra*, 2010 WL
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28 ²⁹ Sherman Decl., ¶ 3.

1340777, at *5. This renders the approval process of a PAGA settlement distinct from a class action settlement, and the Court need not employ the two-step approval process that applies to a class action settlement, under both state and federal law.

V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

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

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

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

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

After engaging in significant informal discovery, as well as formal discovery, the Parties participated in settlement negotiations to try to resolve the lawsuit.³² These efforts included participating in formal mediation conducted by Eve Wagner, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³³ During mediation, the Parties discussed all aspects of the case, including the risks and delays of further litigation, the risks to the Parties of proceeding with trial, possible arbitration proceedings, as well as the law

³⁰ Sherman Decl., ¶ 18, 25.

³¹ *Id.*, ¶¶ 7-9, 16-20.

³² Sherman Decl., ¶ 8, 17-18.

³³ *Ibid.* ¶ 19-20

1 relating to representative PAGA actions, off-the-clock theory, wage-and-hour enforcement, and
2 arbitration agreements, the evidence produced and analyzed, and the possibility of bifurcation of
3 discovery and/or trial and appeals, among other things.³⁴ During all settlement discussions, the
4 Parties conducted their negotiations at arm's length in an adversarial position.³⁵

5 Based on all of the information available to the Parties and with the assistance of the
6 experienced mediator, the Parties agree that this matter is well-suited for settlement given the
7 strengths and weaknesses of the PAGA claim.³⁶ Plaintiff and Plaintiff's Counsel believe that the
8 settlement is a fair, adequate, and reasonable resolution of this matter. Plaintiff's Counsel has
9 extensive experience handling representative and class action wage-and-hour litigation and used
10 that experience to achieve a positive result for Plaintiff, the State of California, and the
11 Aggrieved Employees. Therefore, the Court should give considerable weight to the competency,
12 experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the
13 settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988)
14 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd*
15 *v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs'
16 counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express*
17 *Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an
18 experienced mediator in the settlement process confirms that the settlement is non-collusive").

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

21 In order for Plaintiff to prevail on the PAGA claims, he would have to prove the
22 underlying California Labor Code violations, demonstrate that the Aggrieved Employees
23 suffered, and demonstrate that Defendant's conduct gives rise to penalties. See, e.g., *Elliot v.*
24 *Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 ("Plaintiff's claim
25 under [PAGA] is wholly dependent upon her other claims. Because all of plaintiff's other claims
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27 ³⁴ *Ibid.*

28 ³⁵ *Ibid.*

³⁶ *Id.*, ¶ 26.

1 fail as a matter of law, so does her PAGA claim.”).

2 Plaintiff’s core allegation is that Defendant has systematically violated the California
3 Labor Code, with respect to Plaintiff and the Aggrieved Employees, by, *inter alia*, failing to
4 properly pay minimum, regular, overtime wages, failing to provide compliant meal and rest
5 periods and associated premiums, failing to timely pay wages during employment and upon
6 termination of employment, failing to provide complete and accurate wage statements, failing to
7 keep complete and accurate payroll records, and failing to reimburse necessary business-related
8 expenses and costs.

9 Although wage-and-hour actions are amenable to resolution as to a group of employees,³⁹
10 some courts have also found that, for various reasons, the issues raised by Plaintiff raise
11 individualized issues and/or are unmanageable and thus not suitable for adjudication as to a
12 group of employees.⁴⁰

13 ³⁹ See, e.g., *Martinez vs. Joe’s Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-84, *modified on other*
14 *grounds by Martinez v. Joe’s Crab Shack Holdings, et al.* (Dec. 3, 2014, B242807) 2014 Cal.App. LEXIS 1102, *1-
15 2 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of resolving
16 wage-and-hour claims, including misclassification and overtime, recognizing that “statistical sampling may provide
17 assistance in identifying the realistic demands of the job and illuminating whether the typical employee was able to
18 meet those expectations” and that “[b]y refocusing its analysis on the policies and practices of the employer and the
19 effect those policies and practices have on the [employees] . . . the trial court may in fact find class analysis a more
20 efficient and effective means of resolving plaintiffs’ overtime claim”); *Sav-On Drug Stores, Inc. v. Superior Court*
21 (2004) 34 Cal.4th 319, 330-31 (Court successfully managed and adjudicated wage-and-hour claims made on behalf
22 of a group of employees, utilizing, among other things, statistics and surveying.); *Brinker Restaurant Corp. v.*
23 *Superior Court* (2012) 53 Cal.4th 1004, 1033 (“Claims alleging that a uniform policy consistently applied to a group
24 of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for
25 class treatment [...] The theory of liability – that [the employer] has a uniform policy, and that that policy, measured
26 against wage order requirements, allegedly violates the law - is by its nature a common question eminently suited for
27 class treatment.”); *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (finding that real parties
28 demonstrated that the existence of the practice and the fact of damage were matters suitable for determination on
behalf of a group of employees and that, “[r]eal parties’ evidence supports the reasonable inference that [...] they
could establish that petitioners engaged in the alleged practice, that is, they never paid meal break premium wages,
even though a significant number of employees accrued them...Under that theory, the fact of damage does not
require a showing that all -- or virtually all -- class members accrued unpaid meal break premium wages, but only
that on a system-wide basis, petitioners denied the class members the benefits of the compensation guarantee and
enhanced enforcement implemented by section 226.7.”); *Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036

⁴⁰ See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35 (stating that even where it has
been alleged “that the employer consistently imposed a uniform policy or de facto practice” as to its employees, “the
party must still demonstrate that the illegal effects of this conduct can be proven efficiently and manageably” and in
litigating representative actions the procedures utilized by the court “may not be used to abridge a party’s
substantive rights,” including “abridge[ing the defendant’s] presentation of [a defense] simply because that defense
was cumbersome to litigate,” because of “principles of due process”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th
1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest
breaks demonstrated that individualized inquiries were required to show harm); *Brinker Restaurant Corp. v.*
Superior Court (2012) 53 Cal.4th 1004, 1018 (stating that employers must authorize, permit, or “relieve the

(Footnote continued)

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. 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. Defendant further denied, and continues to deny, that the lawsuit is appropriate for
13 representative treatment for any purpose other than settlement.

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 (finding that judicial
21 economy supported bifurcation because of the difficulties and inherent uncertainties of being
22 able to establish liability with respect to a large number of potentially aggrieved employees and
23 noted that “PAGA’s public purpose would be ill-served if the court finds [the plaintiff] has not
24 been aggrieved by a Labor Code violation”); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955
25 (stating that bifurcation and sequencing of litigation is allowed to avoid wasting time and money

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27 employee of all duty for [a] designated meal [or rest] period,” and “relinquish [full] control over [the employee’s]
activities” and “afford” employees an “opportunity to take an *uninterrupted* thirty-minute break,” but
are not obligated to affirmatively ensure that no work related tasks are performed during such periods).

28 ⁴⁴ Sherman Decl., ¶ 24.

1 on trial when litigation of issues could be rendered moot).

2 Defendant also argued that an important feature of PAGA is that the Court retains
3 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to
4 do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.”
5 *See* Cal. Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*
6 (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA
7 penalties awarded to an employee based upon discretionary factors). Defendant maintained, and
8 continues to maintain, that it had and continues to have, legally-compliant employment policies
9 and practices throughout the time period at issue.⁴⁵ Defendant denies that it ever violated any
10 provision of the California Labor Code.⁴⁶ Even if, *arguendo*, such violations occurred, which
11 Defendant denies, Defendant contended that said violations would only be considered “initial
12 violations” and thus heightened “subsequent violation” penalties were not warranted. *See* Cal.
13 Lab. Code § 2699(f)(2); *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157,
14 1208-09 (“Until the employer has been notified that it is violating a Labor Code provision [...],
15 the employer cannot be presumed to be aware that its continuing underpayment of employees is
16 a ‘violation’ subject to penalties.”).

17 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to
18 assess cumulative penalties for the maximum number of possible, separate California Labor
19 Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially
20 where certain conduct may be regulated by multiple provisions of the California Labor Code that
21 are interrelated and work in tandem. As such, Defendant contended that cumulative penalties
22 and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.

23 While Plaintiff disagrees with Defendant’s contentions and maintains that his PAGA
24 claim has merit, in reaching the settlement, Plaintiff and his counsel took into account the
25 strengths and weaknesses of each side’s position and the uncertainty of how the case might have
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27 ⁴⁵ *Id.*, ¶ 24.

28 ⁴⁶ *Ibid.*

1 concluded as litigation continued, at trial, in arbitration proceedings, and/or appeals.⁴⁷

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

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

8 Both sides used the pre-mediation time period to investigate the veracity, strength, and
9 scope of the PAGA claim.⁴⁸ In addition, the Parties exchanged a volume of documents and data
10 relevant to Plaintiff’s claims and Defendant’s defenses thereto, including, and not limited to,
11 employee paystubs, employee timesheets, and employee handbooks and policies among other
12 documents.⁴⁹ Counsel for the Parties undertook significant investigation, and also invested time
13 reviewing and analyzing relevant documents and data to evaluate Plaintiff’s claims, including,
14 and not limited to, calculating the potential monetary recovery under PAGA.⁵⁰ Other work
15 performed by Plaintiff’s Counsel included, but was not limited to: meeting and conferring with
16 Defendant’s counsel regarding the mediation and settlement, among other issues; participating in
17 case strategy and analysis; drafting, reviewing, and revising the mediation brief; preparing for
18 and attending the mediation and settlement negotiations; and conducting formal discovery,
19 including propounding written discovery requests.

20 Had the case not settled, the Parties would have conducted further extensive formal
21 discovery, such as conducting multiple depositions of party and percipient witnesses all over the
22 State of California, to prepare the case for trial. From the inception of this litigation, Defendant
23 indicated that it would aggressively litigate this case.⁵¹ Even if Defendant failed on its defenses,
24 litigating a complex PAGA action is inherently expensive, and the litigation could continue

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26 ⁴⁷ Sherman Decl., ¶ 18-25.

27 ⁴⁸ *Id.*, ¶ 17, 26.

28 ⁴⁹ Sherman Decl., ¶¶ 7-8, 16-17.

⁵⁰ *Ibid.* ¶¶ 7-8, 14, 16-17.

⁵¹ *Id.*, ¶ 23.

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 \$250,000.00, which encompasses the Net Settlement Amount, Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee.⁵³ Subject to approval by the Court, the following amounts will be subtracted from the Gross Settlement Amount to yield the Net Settlement Amount: (1) Attorneys’ Fees and Costs consisting of attorneys’ fees in the amount of \$87,500.00 and reimbursement of litigation costs and expenses in the amount up to \$9,500.00 to Plaintiff’s Counsel; (2) the Settlement Administration Costs of up to \$10,000.00 (currently estimated to be \$6,000.00); and (3) General Release Fee of up to \$10,000.00 to Plaintiff.⁵⁵

The Net Settlement Amount is currently estimated to be \$137,000.00, of which an estimated \$34,250.00 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods and \$102,750.00 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).

⁵² *Id.*, ¶¶ 14, 19, 23-25.

⁵³ Settlement Agreement, § 7.

⁵⁵ *Id.*

1 The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel
2 recognize the expense and length of continued proceedings necessary to litigate the matter
3 through trial and any possible appeals.⁵⁶ Plaintiff and his counsel have also taken into account
4 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
5 inherent in such litigation.⁵⁷ Plaintiff and his counsel are also aware of the burdens of proof
6 necessary to establish liability, both generally and in response to Defendant's defenses thereto,
7 and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on
8 behalf of Plaintiff, the State of California, and other Aggrieved Employees.⁵⁸ Plaintiff and his
9 counsel have also taken into account Defendant's agreement to enter into a settlement that
10 confers significant relief upon the Aggrieved Employees and the State of California.⁵⁹

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

14 The result achieved in this case, and the monetary recovery provided by this settlement,
15 are well-within the range of an acceptable settlement under the circumstances, especially when
16 compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and Hour*
17 *Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the amount of
18 \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL
19 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of
20 PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out
21 of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1
22 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims);
23 *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million
24 toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no
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26 ⁵⁶ Sherman Decl., ¶¶ 14, 19, 23-25.

27 ⁵⁷ *Id.*, ¶¶ 23, 25-26.

28 ⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

1 abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the
2 settlement of PAGA claims that were at issue in the lawsuit). Here, the value obtained for
3 settlement of the PAGA claims is significant, and it will be distributed in accordance with and in
4 fulfillment of the objectives of the PAGA statute.

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

7 Plaintiff’s Counsel is highly experienced in complex representative and class action
8 wage-and-hour litigation.⁶¹ In the view of Plaintiff’s Counsel, the benefits conferred by the
9 settlement are eminently fair and reasonable, and in the best interests of the State of California
10 and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation
11 and the substantial monetary benefits provided for by the Settlement.⁶² Furthermore, courts have
12 acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees
13 are largely aligned. All stand to gain from proving as convincingly as possible as many Labor
14 Code violations as the evidence will sustain[.]” *Williams, supra*, 548 (citing Cal. Lab. Code §
15 2699(g)(1)(i)).

16 **VI. THE PROPOSED ATTORNEYS’ FEES PAYMENT IS FAIR AND**
17 **REASONABLE, AND SHOULD BE APPROVED**

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

19 The Settlement provides for a Gross Settlement Amount of \$250,000.00.⁶³ The
20 Settlement provides for attorneys’ fees in an amount of thirty-five percent (35%) of the Gross
21 Settlement Amount, which is \$87,500.00, subject to approval and award by the Court.⁶⁴ The
22 requested attorneys’ fees award is commensurate with: (1) the risk that Plaintiff’s Counsel took
23 in bringing and litigating this case, (2) the time, effort, and expense dedicated to the case, (3) the
24 skill and determination that Plaintiff’s Counsel has shown, (4) the results that Plaintiff’s Counsel
25 has achieved throughout the litigation, (5) the value that Plaintiff’s Counsel has achieved for

26 ⁶¹ Sherman Decl., ¶¶ 2-5.

27 ⁶² *Id.*, ¶ 25, 37-38.

28 ⁶³ Settlement Agreement, § 7.

⁶⁴ *Id.*, § 7.

1 Plaintiff, the Aggrieved Employees, and the State of California, and (6) the other cases that
2 Plaintiff's Counsel has turned down in order to devote time and effort to this matter.

3 Plaintiff's Counsel is entitled to recover reasonable attorneys' fees and costs as a matter
4 of right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) ("Any employee who prevails in any
5 [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs"). Plaintiff's
6 Counsel is also entitled to fees and costs under California Code of Civil Procedure section
7 1021.5, as the instant PAGA action is by definition "for the benefit" of others and secures
8 monetary recovery for a large number of Aggrieved Employees, as well as the State of
9 California. *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
10 (recognizing that recovery obtained on behalf of 722 individuals satisfies the "significant
11 benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure
12 section 1021.5, regardless of plaintiff's personal motivation). The settlement will also benefit
13 the state labor agency in enforcing labor laws and educating "employers and employees about
14 their rights and responsibilities under [the California Labor Code]." Cal. Lab. Code § 2699(i).

15 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
16 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
17 confirmed by the California Supreme Court. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
18 480 at 486 & 506. While trial courts have discretion to apply either a lodestar method or
19 percentage-of-the-fund method, the California Supreme Court has taken the position that trial
20 courts also "retain the discretion to forgo a lodestar cross-check and use other means to evaluate
21 the reasonableness of a requested percentage fee" and "[t]he percentage of fund method survives
22 in California." *Id.* (internal quotes omitted); see also *Wershba, supra*, 91 Cal.App. 4th at 253.

23 Courts award fees to serve as an economic incentive for lawyers to undertake litigation,
24 and thereby enhance and facilitate access to the judicial system for adjudication of meritorious
25 claims, and to deter wrongdoing. This is especially true in situations where multiple similar
26 alleged wrongs would not be economically feasible to pursue individually, such as here. *See A.*
27 *Conte, Attorney Fee Awards* (2d ed. 1993) 104, at 6.

28 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their

1 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
2 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *see also Laffitte, supra*, 1 Cal.5th 480 at 506
3 (holding that “trial court did not abuse its discretion in using [the percentage of fund method], in
4 part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is the
5 best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001)
6 24 Cal.4th 1122, 1132.

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

13 The percentage fee method is preferred in representative actions because “it better
14 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
15 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be
16 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
17 based on the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at 47-50;
18 *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the
19 defendant will pay the plaintiff’s attorneys a percentage of the fund created by the settlement, use
20 of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards that
21 are too small will “chill the private enforcement essential to the vindication of many legal rights
22 and obstruct the representative actions that often relieve the courts of the need to separately
23 adjudicate numerous claims.” *Id.* at 53. Therefore, fees in representative actions should
24 approximate the probable terms of a contingent fee contract negotiated by a sophisticated
25 attorney and client in comparable litigation. *Id.* at 48. “The ultimate goal . . . is the award of a
26 ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of
27 calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple*
28 *Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270).

1 Plaintiff's Counsel's application for attorneys' fees in light of the facts and circumstances
2 surrounding the case is well-within the range of reasonableness. Historically, courts have
3 awarded fees as high as fifty percent (50%) of the settlement in complex actions, depending on
4 the circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp.
5 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million total settlement amount);
6 *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195
7 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely
8 approve attorneys' fees awards "average[ing] around one-third of the recovery." *Chavez v.*
9 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency
10 fees in marketplace to be 20 to 40 percent and determined such a percentage fee was
11 appropriate); *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles
12 County Superior Court, Case No. BC596892 (June 2016) (citing *Chavez, supra*, 162 Cal.App.4th
13 at 66, n.11) (approving a fee award of one-third of the settlement amount of \$950,000, in a
14 PAGA action, because it was "reasonable and consistent with fee awards in class action cases").

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

26 ⁶⁵ Sherman Decl., ¶ 35.

27 ⁶⁶ Sherman Decl., ¶ 17-18, 25.

28 ⁶⁷ *Ibid.* ¶¶ 6-8, 14, 16

⁶⁸ *Ibid.* ¶¶ 6-8, 16

1 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation
2 and will not receive any compensation until recovery is obtained.⁶⁹ Plaintiff's Counsel is
3 experienced in complex wage-and-hour litigation and used that experience to obtain a great
4 result for Plaintiff, the Aggrieved Employees and the State of California.⁷⁰ Considering the
5 amount of fees requested, work performed, risks incurred, results obtained, and experience of
6 Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys'
7 fees are reasonable and should be awarded.

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

10 The factors which courts consider in determining whether fee awards are reasonable, all
11 of which support the fee award requested by Plaintiff's Counsel, are: (1) the time and labor
12 required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to
13 perform the legal services properly; (4) the preclusion of other employment by the attorney due
14 to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent;
15 (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and
16 results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability
17 of the case; (11) the nature and length of the professional relationship with the client; and (12)
18 awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991)
19 946 F. 2d 768, 772. Some of the most relevant factors to this Court's fee determination will be
20 addressed below.

21 It should be highlighted that the percentage award sought is commensurate with the time,
22 effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel's
23 representation and the risks taken in commencing the Action, the skill and determination
24 required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that
25 Plaintiff's Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees, and the State
26

27 ⁶⁹ *Id.*, ¶ 35.

28 ⁷⁰ *Id.*, ¶¶ 2-5.

1 of California. For the reasons discussed herein, an award of attorneys' fees in the amount of
2 \$87,500.00 percent (35%) of the Gross Settlement Amount is reasonable.

3 ***1. Time & Labor***

4 Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour
5 actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit,
6 Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal
7 issues, Defendant's business, and its operations and employment policies, practices, and
8 procedures.⁷¹ During the litigation of the Action, Plaintiff's Counsel interviewed and obtained
9 information from Plaintiff and Aggrieved Employees, conducted legal research, reviewed and
10 analyzed a volume of documents and data, prepared for and attended mediation, evaluated the
11 PAGA claims, and calculated the potential monetary recovery under PAGA.⁷² Plaintiff's
12 Counsel also met and conferred with Defendant's counsel over issues relating to the mediation
13 and settlement.⁷³ Plaintiff's Counsel performed other work including, *inter alia*, case strategy
14 and analysis; and engaging in extensive settlement negotiations.⁷⁵

15 Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary
16 to prosecute the case with maximum efficiency, and has fully and actively participated in the
17 litigation process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT 3**" to the
18 accompanying Declaration of Andre Sherman, sets forth the hours that Plaintiff's Counsel has
19 spent performing tasks in this matter. Plaintiff's Counsel has spent over **160 hours** to obtain a
20 recovery on behalf of Plaintiff, the Aggrieved Employees, and the State of California. These
21 hours were required to bring the case to its successful conclusion.

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

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

25 The skill required to properly litigate this case is evident not only in the results achieved,

26 ⁷¹ Sherman Decl., ¶ 15.

27 ⁷² *Ibid.*

28 ⁷³ *Ibid.* ¶¶ 15-17.

⁷⁵ *Ibid.* ¶¶ 15-17.

1 but in the steps necessary to reach the same. Defendant retained highly-respected counsel to
2 represent its defenses. Defendant and its counsel felt very strongly about Defendant's ability to
3 prevail on the merits and avoid representative adjudication of the PAGA claims. Plaintiff and
4 Plaintiff's Counsel believe that the PAGA claims have merit and that Plaintiff will prevail at
5 trial. Plaintiff's Counsel undertook extensive investigation, analysis, and research prior to filing
6 the lawsuit and during the litigation. Plaintiff's Counsel took some initial steps to prepare the
7 case for trial and had every intention of taking the case to trial if Defendant did not offer an
8 appropriate settlement.

9 Plaintiff's Counsel's effort and skill were used to, among other things, investigate the
10 allegations and gather facts, research the legal issues, analyze data and information obtained
11 from Defendant, Plaintiff, and through other sources, evaluate the PAGA claims, and negotiate
12 the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used its
13 extensive experience and skill in the handling of complex wage-and-hour matters to advocate for
14 and obtain Aggrieved Employees and the State of California a recovery now, with maximum
15 efficiency, as opposed to the possibility of recovery in the future, after significant expense and
16 time.⁷⁶

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

18 The Settlement represents a very good resolution of this lawsuit, given the uncertainty
19 and risks of further litigation.⁷⁷ Had the case not settled, Defendant would have vigorously
20 challenged manageability and liability, and sought a reduction in the amount assessed as
21 penalties. Defendant, however, faced risks too, including and not limited to, the risk of having
22 the Court assess penalties. Additionally, preparing the case for trial would have been
23 extraordinarily expensive for the Parties.

24 At this stage, the settlement is preferred over continued litigation because such resolution
25 saves time and money that would otherwise go to litigation. The risks and expenses of further
26 litigation outweighed any benefit that might have been gained otherwise. The Settlement

27 ⁷⁶ Sherman Decl., ¶¶ 2-5, 15-20.

28 ⁷⁷ *Id.*, ¶¶ 18-20, 22, & 25.

1 provides an immediate recovery, as opposed to an uncertain result in the future after prolonged
2 litigation involving expert discovery, trial preparation, and appellate review of those
3 proceedings. The Settlement offers present and considerable monetary relief to Plaintiff, the
4 Aggrieved Employees, and the State of California while avoiding additional expense, risk, and
5 delay in obtaining possible further recovery.

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

7 The representation provided by Plaintiff's Counsel has been wholly contingent and
8 Plaintiff's Counsel took on this matter without knowing whether any recovery would be
9 obtained. Plaintiff's Counsel has invested **over 160 hours** of time to obtain relief on behalf of
10 Plaintiff, the Aggrieved Employees, and the State of California. Plaintiff's Counsel is also
11 requesting reimbursement of litigation costs and expenses in the amount of up to \$9,500.00.⁷⁸

12 In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will
13 not receive any compensation until recovery is obtained.⁷⁹ If Plaintiff's Counsel had not been
14 successful, the time that they have devoted to litigating the case would have been for naught and
15 would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel
16 is well-experienced in complex wage-and-hour litigation and used that experience to obtain a
17 great result for Plaintiff, the Aggrieved Employees, and the State of California.⁸⁰ The skill and
18 determination that Plaintiff's Counsel has shown throughout the Action justify the requested
19 attorneys' fees and costs. Considering the amounts requested, work performed, and risks
20 incurred, the requested fees and costs are reasonable and should be awarded.

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

22 The results achieved, in light of the difficulties inherent in similar cases and the specific
23 difficulties faced in this case, are considerable. Here, the results achieved, and the recovery
24 obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent a
25 fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a
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27 ⁷⁸ *Id.*, ¶ 35 and Exh. 5.

28 ⁷⁹ *Id.*, ¶ 35.

⁸⁰ See Sherman Decl., ¶¶ 2-5.

1 settlement that provides for a Gross Settlement Amount of \$250,000.00, and it is currently
2 estimated that the Net Settlement Amount available for distribution to the Aggrieved Employees
3 and the State of California, as set forth in Part III.C *infra*, is approximately \$137,000.00.⁸¹

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

5 Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its
6 attorneys employed their knowledge, skill, and experience to bring the case to a successful
7 conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation
8 experience, has recovered millions of dollars on behalf of thousands of individuals in California,
9 and has successfully handled numerous significant wage-and-hour class action and representative
10 action cases.⁸²

11 **C. The Lodestar Methodology Also Justifies Approval of the Requested Fees,** 12 **Because Plaintiff's Counsel Has Performed Work That Is of Significant** 13 **Value Based on Reasonable Hours and Prevailing Hourly Rates of** 14 **Compensation**

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

25
26
27 ⁸¹ Settlement Agreement, § 7.

28 ⁸² Sherman Decl., ¶¶ 2-5.

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

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

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

8 As discussed above, this case was highly contested and required a significant amount of
9 time and labor. Defendant made it clear very early on that it disputed all of Plaintiff's allegations
10 and disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*,
11 that it had facially-compliant employment policies and practices throughout the time period at
12 issue.⁸³ Defendant raised affirmative defenses and denied liability, and the pursuit of this case
13 involved gathering and analyzing data from Defendant as well as other sources.⁸⁴ The handling
14 of this litigation involved a great amount of effort, and also required and involved the exercise of
15 a high level of skill, which Plaintiff's Counsel has, as a result of its extensive experience in
16 complex wage-and-hour litigation. Long and difficult battles would have followed as the case
17 moved toward trial, including taking and defending declarant and expert depositions, depositions
18 of person most knowledgeable designees, conducting additional formal discovery, and engaging
19 in extensive motion practice. As Plaintiff's Counsel geared up for these battles, Plaintiff's
20 Counsel undertook intense preparation in an attempt to resolve the entire matter through
21 settlement negotiations.

22 Plaintiff's Counsel had to bring together a volume of data and documents that were
23 produced by Defendant and obtained from Plaintiff, Aggrieved Employees, and through other
24 sources. Plaintiff's Counsel conducted extensive review and analysis of these documents and
25 data to strategize and evaluate the case and engage in settlement discussions.

27 ⁸³ Sherman Decl., ¶ 23.

28 ⁸⁴ Sherman Decl., ¶ 23-25.

1 As set forth above in Part VI.B.1 *supra*, attached to the Declaration of Andre Sherman is
2 the Attorney Task and Time Chart that sets forth in detail the numerous tasks that Plaintiff's
3 Counsel performed in this matter, and the time required for completing those tasks.⁸⁵ The chart
4 demonstrates that Plaintiff's Counsel has spent a total of **over 160 hours** on this matter. In light
5 of the facts and circumstances of this case, as well as the results Plaintiff's Counsel has achieved
6 on behalf of Plaintiff, the Aggrieved Employees, and the State of California, Plaintiff's Counsel
7 has spent a reasonable number of hours on this matter.

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

10 Both California and federal courts recognize that attorneys should be compensated for
11 providing representation on a contingency basis and for taking on the risks associated with said
12 representation, as well as being provided with financial incentives to enforce important rights
13 and protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In
14 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market
15 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
16 normal hourly rates for winning contingency cases." *See id.*

17 Plaintiff's Counsel has been actively involved in the prosecution of this case, prior to the
18 commencement of the Action and all the way up to approval of the settlement, and their
19 dedication to the representation of Plaintiff, the Aggrieved Employees, and the State of
20 California has precluded other employment. Here, Plaintiff's Counsel bore the risk that, despite
21 all of their efforts and skills employed, there may be no recovery. Ultimately, Plaintiff's Counsel
22 was successful in reaching a settlement of \$250,000.00.

23 As set forth in the Declaration of Andre Sherman, the professional backgrounds and
24 experience of Plaintiff's Counsel support a reasonable hourly rate of compensation ranging from
25 at least \$500-\$850 per hour for services provided by Plaintiff's Counsel.⁸⁶ While the
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27 ⁸⁵ *Id.* ¶ 33, Exh. 3.

28 ⁸⁶ Sherman Decl., ¶ 2-5, 10.

1 circumstance of every case is unique, the fact remains that the work performed and efforts
2 undertaken by Plaintiff's Counsel in this matter justify the requested attorneys' fees award.

3 The lodestar method, as a cross-check to the percentage fee sought, strongly supports the
4 reasonableness of the requested attorneys' fees award. Applying the rate of \$850 per hour to
5 attorney Sherman's hours worked, and the rate of \$500 per hour to attorney Ventura's hours
6 worked, by Plaintiff's Counsel, would place a base lodestar value of approximately \$101,000 on
7 the services provided by Plaintiff's Counsel, assuming no multiplier. However, Plaintiff's
8 Counsel only seeks an attorneys' fee award of \$87,500.00 (equal to 35% of the Gross Settlement
9 Amount based on the Settlement Agreement).

10 It also bears noting that a court may apply a multiplier in consideration for risk, efficiency,
11 and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See
12 *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate
13 contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established
14 practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by
15 paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*,
16 290 F.3d at 1051; *accord Ketchum, supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves
17 to bring the financial incentives for enforcing important rights "into line with incentives [attorneys]
18 have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th
19 at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g.,
20 *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without
21 remand); *Wershba, supra*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even
22 higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a
23 2.52 multiplier on a lodestar cross-check); *Chavez, supra*, 162 Cal.App.4th at 66 (applying a 2.5
24 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
27 the Court approve and grant an attorneys' fees award in the amount of \$87,500.00 to Plaintiff's
28

Counsel, which is reasonable and justified on a percentage-basis, but also based on a lodestar cross-check.

VII. COSTS TO BE REIMBURSED TO PLAINTIFF’S COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for reimbursement of litigation costs and expenses of up to \$9,500.00. As set forth in the Declaration of Andre Sherman, Plaintiff’s Counsel has incurred a total of \$9,399.23 in litigation costs and expenses.⁸⁸ This amount was reasonable and necessary in the prosecution of this matter.⁸⁹ Accordingly, Plaintiff’s Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$9,399.23 up to \$9,500.00 to Plaintiff’s Counsel.

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

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

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

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Phoenix Class Action Administration Solutions Settlement Administrators to handle the administration of the Settlement. The fees and expenses of the

⁸⁸ Sherman Decl., ¶ 35.

⁸⁹ *Ibid.*

Settlement Administrator are currently estimated at \$6,000.00 but not to exceed \$10,000.00. 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 \$10,000.00 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 to be paid to Plaintiff in the amount of \$10,000.00.⁹¹ 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”); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce an individual to participate in the suit’”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) (“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the [...] litigation.”); *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

⁹¹ Settlement Agreement, § 7.

1 information, provided the facts and evidence necessary to attempt to prove the allegations, and
2 extensively discussed her employment with his counsel.⁹² Plaintiff was available whenever her
3 counsel needed her and tried to obtain documents and information that would aid in the litigation
4 of the PAGA claims and pursuit of recovery on behalf of the State of California and Aggrieved
5 Employees.⁹³ Additionally, as a part of the Settlement, Plaintiff has agreed to a broader release
6 of claims than the release of claims that applies to the Aggrieved Employees.

7 Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the
8 amount of \$10,000.00, in addition to the Individual Settlement Share he will receive as an
9 Aggrieved Employee.

10 **XI. CONCLUSION**

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

19
20 Dated: December 29, 2022

SHERMAN & SHERMAN, APC

21
22 

23
24 By: _____

Andre Sherman
Attorneys for Plaintiffs

25
26
27 _____
⁹² Declaration of Lilia Olague Decl., ¶¶ 3-4 & 6.

28 ⁹³ Olague Decl., ¶¶ 7-8.