

Edwin Aiwarzian (SBN 232943)
Joanna Ghosh (SBN 272479)
Vartan Madoyan (SBN 279015)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

SEYED RAMIN ASBAGHI, individually, and
on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act;

Plaintiff,

vs.

PUTNAM CHEVROLET CADILLAC, INC.,
a California corporation; PUTNAM
CHEVROLET CADILLAC, LLC, a California
limited liability company; PUTNAM GM, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 21-CIV-04343

Honorable Jeffrey R. Finigan
Department 24

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (CAL. LABOR CODE § 2698,
ET SEQ.) SETTLEMENT AGREEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declaration of Plaintiff's Counsel (Vartan
Madoyan); Declaration of Plaintiff (Seyed
Ramin Asbaghi); and [Proposed] Order and
Judgment filed concurrently herewith]

Hearing Date: October 11, 2024
Time: 2:00 p.m.
Department: 24

Complaint Filed: August 12, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 11, 2024 at 2:00 p.m. or as soon thereafter as
2 the matter may be heard before the Honorable Jeffrey R. Finigan in Department 24 of the
3 Superior Court of the State of California, for the County of San Mateo, located at 400 County
4 Center, Redwood City, CA 94063, Plaintiff's Seyed Ramin Asbaghi ("Plaintiff") will and hereby
5 does move for entry of the following order:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the
7 settlement between Plaintiff and Defendant Putnam Chevrolet Cadillac, LLC
8 ("Defendant") of the claims brought pursuant to the Private Attorneys General Act of
9 2004 ("PAGA"), as set forth in the Private Attorneys General Act Settlement
10 Agreement and Limited Release ("Settlement," "Agreement," or "Settlement
11 Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Vartan Madoyan,
12 including and not limited to, the plan of allocation and distribution of the Gross
13 Settlement Fund for payment of the LWDA PAGA Payment to the California Labor
14 and Workforce Development Agency ("LWDA"), PAGA Employees Fund to the
15 PAGA Employees, Attorneys' Fees and Costs to Plaintiff's Counsel, Settlement
16 Administration Costs to the Settlement Administrator, and General Release Fee to
17 Plaintiff;
- 18 2. Approving the Net PAGA Settlement Fund, estimated to be approximately
19 \$320,363.14 which will be distributed to the LWDA and the PAGA Employees,
20 pursuant to California Labor Code section 2699(i), of which seventy-five percent
21 (75%) will be paid to the LWDA ("LWDA PAGA Payment") and twenty-five percent
22 (25%) will be paid to the PAGA Employees ("PAGA Employees Fund") as is
23 required by statute;
- 24 3. Appointing Simpluris, Inc. ("Simpluris" or "Settlement Administrator") as the
25 Settlement Administrator;
- 26 4. Directing Defendant to transmit the Gross Settlement Fund of \$570,000.00 into a
27 qualified settlement account established by the Settlement Administrator for
28 administration of the Settlement, and directing the Settlement Administrator to

- 1 distribute the Gross Settlement Fund in accordance with the Settlement Agreement;
- 2 5. Directing the mailing of PAGA Employee Fund checks to the PAGA Employees
- 3 along with the Letter, which is substantially similar in content and form to that
- 4 attached as “**EXHIBIT A**” to the [Proposed] Order and Judgment Granting Approval
- 5 of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement
- 6 Agreement (“[Proposed] Order and Judgement”) filed concurrently herewith;
- 7 6. Awarding \$7,500.00 to Plaintiff Seyed Ramin Asbaghi as his General Release Fee;
- 8 7. Awarding up to \$10,000.00 to the Settlement Administrator as Settlement
- 9 Administration Costs¹; and
- 10 8. Awarding Lawyers *for* Justice, PC (Plaintiff’s Counsel), the amount of forty percent
- 11 (40%) of the Gross Settlement Amount (i.e. \$228,000.00) as compensation for
- 12 reasonable attorneys’ fees, and up to \$11,386.86 for reimbursement of litigation costs
- 13 and expenses (“Attorneys’ Fees and Costs”), pursuant to California Labor Code
- 14 section 2699(g)(1)².

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(l)(2).

18 This motion is made pursuant to California Labor Code section 2699(l)(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.

22 This motion will be based upon the following Memorandum of Points and Authorities,

23 the Settlement Agreement, the Declarations of Plaintiff’s Counsel (Vartan Madoyan) and

24 Plaintiff Seyed Ramin Asbaghi in support thereof, as well as the pleadings and other records on

25

26 ¹ While the Settlement Agreement allocates up to \$10,000 for administration costs, the Settlement Administrator

27 estimated quote is \$2,750. Any amount below \$10,000 will be part of the Net PAGA Settlement Fund for payment

28 to the LWDA and PAGA Employees.

² While the Settlement Agreement allocates up to \$20,000 in litigation costs, Plaintiff’s Counsel only seeks to

recover litigation costs of \$11,386.86.

1 file with the Court in this matter, and such evidence and oral argument as may be presented at
2 the hearing on this motion.

3
4 Dated: September 18, 2024

LAWYERS for JUSTICE, PC

5
6 By:

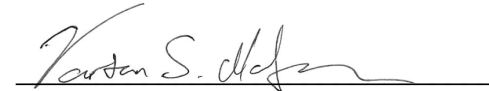

Vartan Madoyan
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Seyed Ramin Asbaghi (“Plaintiff”) seeks approval of the Private Attorneys General Act Settlement Agreement and Limited Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and Defendant Putnam Chevrolet Cadillac, LLC (“Defendant”), pursuant to California Labor Code section 2699(l).³

Subject to approval by the Court, Plaintiff and Defendant (together, the “Parties”) have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Gross Settlement Fund of \$570,000.⁴

The Gross Settlement Fund is inclusive of: (i) Attorneys' Fees and Costs to be paid to Lawyers for Justice, PC (“Plaintiff’s Counsel”), (2) General Release Fee to Plaintiff, (3) Settlement Administration Costs to be paid to the Settlement Administrator, and (4) Net PAGA Settlement Fund, of which 75% will be paid (by statute) to the California Labor and Workforce Development Agency (“LWDA”) and 25% will be paid to the PAGA Employees.⁵

The Net PAGA Settlement Fund will be the Gross Settlement Fund less the Court-approved Attorneys' Fees and Costs, Settlement Administration Costs, and Plaintiff’s General Release Fee, and is currently estimated to be approximately \$320,363.14.⁶ The Net PAGA Settlement Fund will be distributed (by statute) as follows: seventy-five percent (75%) to the

³ The Private Attorneys General Act Settlement Agreement and Limited Release (“Settlement Agreement”) is attached as “**EXHIBIT 1**” to the Declarations of Vartan Madoyan (“Madoyan Decl.”).

⁴ Settlement Agreement, §5

⁵ PAGA Employees is defined to consist of two categories of employees: (1) all current and former hourly-paid or non-exempt employees who were employed by Defendant within the State of California during the PAGA Period, including but not limited to such employees who earned commissions/shift differentials/non-discretionary bonuses/non-discretionary performance pay which were not used to calculate the correct regular rate of pay used to calculate the overtime rate (“Aggrieved Employees in Subgroup A”), and (2) all current and former salaried internet sales managers, internet directors, vehicle salespersons, or persons who held similar job titles and/or performed similar job duties, misclassified as “exempt” who were employed by Defendant within the State of California during the PAGA Period (“Aggrieved Employees in Subgroup B”) (Aggrieved Employees in Subgroup A and Aggrieved Employees in Subgroup B are collectively referred to as the “PAGA Employees”). “PAGA Period” is defined as the period of November 19, 2020 to May 31, 2023. *Id.* at ¶ 3 (Page 1 of Settlement Agreement)

⁶ *Id.*, § 5.

LWDA (“LWDA PAGA Payment”) and twenty-five percent (25%) to the PAGA Employees (“PAGA Employees Fund”).⁷ Each PAGA Employee will be entitled to payment of his or her *pro rata* share of the PAGA Employees Fund, based on the number of semi-monthly pay periods (or their equivalent) that he or she worked for Defendant (or any Released Party) in the State of California during the PAGA Period, calculated as follows: the total number of semi-monthly pay periods (or their equivalent) worked by each individual *divided by* the aggregate number of semi-monthly pay periods (or their equivalent) worked by all aggrieved employees.⁸

The payments to PAGA Employees will be treated and reported for tax purposes as one hundred percent (100%) penalties and the Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.⁹

Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the requirements for approval by the Court based upon the relevant fairness factors, the relative strengths of the PAGA claim, the risk, expense, and complexity of further litigation, the benefit conferred by the Settlement, the scope of the release of claims, the experience and views of counsel, and the reasonableness of the Net PAGA Settlement Fund (consisting of the LWDA PAGA Payment and PAGA Employees Fund), Attorneys' Fees and Costs, Settlement Administration Costs, and General Release Fee. Plaintiff respectfully requests that this Court approve the Settlement, award the Attorneys' Fees and Costs, Settlement Administration Costs, and Plaintiff's General Release Fee and approve the LWDA PAGA Payment, which are provided for by the Settlement and requested herein.

In order to efficiently present the Court with adequate information to determine whether to grant approval of the Settlement in conformity with California Labor Code Section 2699(1), Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

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⁷ *Ibid.*

⁸ Settlement Agreement, § 5 (¶ 4).

⁹ *Id.*, § 5(¶ 4).

1 **II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY**

2 Defendant is a car dealership located in Burlingame, California, focused on selling
3 primarily Chevrolet cars. Plaintiff Seyed Ramin Asbaghi is a former employee of Defendant.

4 Prior to commencing this lawsuit, on November 3, 2020, as required by California Labor
5 Code section 2699.3, Plaintiff Seyed Ramin Asbaghi provided the LWDA and Defendant with
6 written notice of his intent to assert claims under PAGA and the basis for those claims, and
7 subsequently submitted an amended letter on November 19, 2020 (together, the “PAGA
8 Notice”). The LWDA did not respond to the PAGA Notice.¹⁰ A true and correct copy of
9 Plaintiff’s November 3, 2020 letter is attached to the Declaration of Vartan Madoyan as
10 “**EXHIBIT 2.**” A true and correct copy of Plaintiff’s November 19, 2020 letter is attached to the
11 Declaration of Vartan Madoyan as “**EXHIBIT 3.**”

12 On August 12, 2021, Plaintiff Seyed Ramin Asbaghi filed a Complaint for Enforcement
13 Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative
14 Complaint”) against Defendant in the San Mateo County Superior Court (“Court”), Case No. 21-
15 CIV-04343 (the “Action”).

16 Plaintiff core allegation is that Defendant has violated the California Labor Code and is
17 subject to civil penalties pursuant to PAGA by engaging in a uniform practice and procedure,
18 with respect to Plaintiff and other aggrieved employees, of, *inter alia*, failing to pay overtime and
19 minimum wages, failing to provide compliant meal and rest periods and associated premiums,
20 failing to pay timely wages during employment and upon termination of employment, failing to
21 provide complete and accurate itemized wage statements, failing to keep complete and accurate
22 payroll records, and failing to reimburse necessary business-related expenses and costs.

23 On October 28, 2021, Defendants filed an Answer to the Operative Complaint.
24 Defendants maintained, and continue to maintain, that they had, and continue to have, legally-
25 compliant employment policies and practices throughout the time period at issue. Defendants
26 deny that they ever violated any provision of the California Labor Code, including, but not
27 limited to, those sections for which Plaintiff seeks penalties under the PAGA.

28

¹⁰ Madoyan Decl. ¶ 15.

On April 12, 2023, the Parties participated in a full-day mediation conducted by Jill R. Sperber, Esq. a well-respected mediator experienced in mediating complex labor and employment matters.¹¹ With the aid of the mediator, the Parties reached the Settlement described herein.¹²

Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(l). 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(l), concurrently with this filing.¹³

III. SUMMARY OF THE SETTLEMENT TERMS

A. PAGA Employees

The PAGA Employees who are covered by the Settlement are:

All current and former hourly-paid or non-exempt employees who were employed by Defendant within the State of California, including but not limited to such employees who earned commissions/shift differentials/non-discretionary bonuses/non-discretionary performance pay which were not used to calculate the correct regular rate of pay used to calculate the overtime rate (“Aggrieved Employees in Subgroup A”), and all current and former salaried internet sales managers, internet directors, vehicle salespersons, or persons who held similar job titles and/or performed similar job duties, misclassified as “exempt” who were employed by Defendant within the State of California (“Aggrieved Employees in Subgroup B”)(Aggrieved Employees in Subgroup A and Aggrieved Employees in Subgroup B, collectively hereinafter referred to as the “PAGA Employees”)

¹¹ *Id.*, ¶ 12.

¹² *Ibid.*

¹³ The Court is referred to the concurrently filed Proof of Service, which confirms submission of the papers to the LWDA.

Based on information provided by Defendant, there are approximately one hundred and forty-one (141) PAGA Employees.¹⁴

B. Distribution of the Gross Settlement Fund

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Fund of \$570,000.00.¹⁵ The Net PAGA Settlement Fund will be the Gross Settlement Fund less the following amounts: (1) Attorneys' Fees and Costs consisting of attorneys' fees of \$228,000.00 and reimbursement of litigation costs and expenses of \$11,386.86 to Plaintiff's Counsel; (2) General Release Fee of \$7,500.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$10,000.00 to the Settlement Administrator.¹⁶ The Net PAGA Settlement Fund will be fully distributed to the PAGA Employees and the LWDA, as described in Part III.C, *infra*.

C. Distribution of the Net PAGA Settlement Fund

Within fourteen (14) calendar days of the Court's order granting approval of the Settlement, Defendant will transmit the Total Settlement Amount to a qualified settlement account established by the Settlement Administrator for administration of the Settlement.¹⁷ No later than twenty (20) after the Effective Date, Defendant shall provide the Settlement Administrator with a list of all PAGA Employees ("PAGA Employees List"), containing the following information for each PAGA Employee's: (1) full name; (2) last known address; (3) social security; (4) the total number of semi-monthly pay periods (or their equivalent) worked during the PAGA Period.¹⁸

Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$240,272.35) will be distributed to the LWDA (i.e., LWDA PAGA Payment) and twenty-five percent (25%) of the Net PAGA Settlement Fund (or approximately \$80,090.79) (i.e., PAGA

¹⁴ Settlement Agreement, ¶ 3, and Madoyan Decl., ¶ 8.

¹⁵ Settlement Agreement, § 5, and Madoyan Decl., ¶ 10.

¹⁶ Madoyan Decl., ¶ 10. While the Settlement Agreement allocates up to \$10,000 to the Settlement Administrator, the Settlement Administrator estimated quote is \$2,750. Any amount below \$10,000 will be part of the Net PAGA Settlement Fund for payment to the LWDA and PAGA Employees. The \$2,750 amount is utilized in this Motion as the basis for the estimate of the Net PAGA Settlement Fund.

¹⁷ Settlement Agreement, § 5.

¹⁸ *Id.*, § 4.

Employees Fund) will be distributed to the PAGA Employees on a *pro rata* basis, based on the number of semi-monthly pay periods (or their equivalent) that he or she worked for Defendant (or any Released Party) in the State of California during the PAGA Period.¹⁹ To calculate each PAGA Employee's share of the PAGA Employees Fund ("PAGA Employee Fund"), the Settlement Administrator will: the total number of semi-monthly pay periods (or their equivalent) worked by each individual divided by the aggregate number of semi-monthly pay periods (or their equivalent) worked by all aggrieved employees.²⁰ The payments to PAGA Employee's for their PAGA Employee Fund are considered one hundred percent (100%) penalties to be reported on IRS Form 1099, if required.²¹

No later than twenty (20) after receipt of Gross Settlement Fund from Defendant, the Settlement Administrator will mail settlement checks and a letter explaining why the check is being sent to the PAGA Employees identified on the PAGA List. Prior to mailing the Notice, the Settlement Administrator shall check the addresses provided using the National Change of Address database. For each Notice be returned as undeliverable, the Settlement Administrator will have five (5) calendar days after it receives the returned as undeliverable, mail to search for a more current address for the PAGA Employee (via a skip trace or other reasonable method) and to re-mail Notices to the traced address.²²

The settlement checks issued to PAGA Employees will remain valid for one hundred and eighty (180) from the date they are issued by the Settlement Administrator.²³ After the 180 days-period, the Settlement Administrator shall remit any unclaimed funds to the Unclaimed Property Fund with an identification of the PAGA Employees and the amount allocated to each.²⁴

D. The Scope of the Release in the Settlement Agreement

Upon the Effective Date and full funding of all payments described herein, the LWDA and Plaintiff, shall fully release and forever discharge claims for civil penalties under PAGA as

¹⁹ Settlement Agreement, § 5 (1)(2).

²⁰ *Id.*, § 5 ¶ 4.

²¹ *Id.*, § 5 ¶ 5.

²² *Id.*, § 4 ¶ 2.

²³ *Id.*, § 5 ¶ 6.

²⁴ Settlement Agreement, § 2.

plead or that could have been plead arising out of the same operative facts set forth the Complaint or the predicate PAGA letter arising during the PAGA Period (“Released Claims”),²⁵ against Defendant and its past, present, and future parents, affiliated companies, subsidiaries, divisions, predecessors, successors, partners, joint venturers, shareholders, consultants, advisors, insurers, reinsurers and assigns, and each of their past, present and future officers, investors, directors, executives, trustees, agents, executive-level employees, attorneys, representatives, and any other persons or entities acting on behalf of or in concert with any of the foregoing, including, but expressly not limited to PUTNAM CHEVROLET CADILLAC, INC. (“Released Parties”).²⁶

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.*

²⁵ *Ibid.*

²⁶ *Ibid.*

1 *Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29
2 Cal, 3d 462, 474.) A “judgment in such an action is binding not only on the named employee
3 plaintiff but also on government agencies and any aggrieved employee not a party to the
4 proceeding” because “the employee plaintiff represents the same legal right and interest as state
5 labor law enforcement agencies[,]” “collateral estoppel applies [...] against those for whom the
6 party acted as an agent or proxy[,]” and “[w]hen a government agency is authorized to bring an
7 action on behalf of an individual or in the public interest, and a private person lacks an
8 independent right to bring the action, a person who is not a party but who is represented by the
9 agency is bound by the judgment as though the person were a party.” *Arias, supra*, at 985-86
10 (citations omitted); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476
11 (aggrieved employee cannot opt out of a PAGA settlement).

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

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

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

21 The settlement of a PAGA action requires court approval. See Cal. Lab. Code §
22 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed
23 pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis
24 . . . is not considered a class action but a law enforcement action” and therefore does not have to
25 meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26,
26 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011)
27 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding
28 that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v.*

1 *PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of
2 a PAGA settlement involves analysis of several unique features that render the approval process
3 distinct from, and simpler than, the process for approval of a class action settlement. A court
4 reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those
5 affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor
6 Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged,
7 courts have approved settlements of PAGA claims.²⁷ See, e.g., *Resendez v. Bridgestone Retail*
8 *Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto*
9 *Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v.*
10 *Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David’s Bridal,*
11 *Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D.
12 Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal Nov. 27,
13 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576,
14 589.

15 In a PAGA case, the court’s focus is not the monetary amount which aggrieved
16 employees or the State stand to receive, but instead, whether the total settlement amount achieves
17 the PAGA’s objectives. The purpose of the PAGA is “to incentivize private parties to recover
18 civil penalties for the government that otherwise may not have been assessed and collected by
19 overburdened state enforcement agencies.” See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at
20 *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to
21 “be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers
22 and employees about their rights and responsibilities under this code, to be continuously
23 appropriated to supplement and not supplant the funding to the agency for those purposes.” See
24 Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by way of a PAGA
25 claim, is essentially a law enforcement action. See *Amalgamated, supra*, 46 Cal.4th at 1003
26 (stating that the PAGA is a mechanism for “an aggrieved employee to recover civil penalties—
27

28 ²⁷ Madoyan Decl., ¶ 6.

for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies”); see also *Iskanian, supra*, at 381.

A PAGA settlement is a settlement of claims for penalties and other remedies which the LWDA could assess and collect on behalf of employees without their involvement or approval. “[U]nnamed 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, supra*, 2010 WL 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, Jill R. Sperber, Esq.²⁸ 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 claim, and of litigating this claim through trial.²⁹

After engaging in significant investigations, informal discovery, and the exchange of information, the Parties participated in settlement negotiations to try to resolve the lawsuit.³⁰

²⁸ Madoyan Decl., ¶ 12.

²⁹ Madoyan Decl., ¶¶ 3-6, 11-12, & 13-15.

³⁰ *Id.*, ¶ 12.

1 These efforts included participating in formal mediation conducted by Jill R. Sperber, Esq., a
2 well-respected mediator experienced in mediating complex labor and employment matters.³¹ In
3 the course of mediation and settlement negotiations, the Parties discussed all aspects of the case,
4 including the risks and delays of further litigation and proceeding with trial, as well as the law
5 relating to representative PAGA actions, misclassification, off-the-clock theory, and wage-and-
6 hour enforcement, the evidence produced and analyzed, and the possibility of bifurcation of
7 discovery and/or trial and appeals, among other things.³² During all settlement discussions, the
8 Parties conducted their negotiations at arm's length in an adversarial position.³³

9 Based on all of the information available to the Parties and with the assistance of the
10 experienced mediator, the Parties agree that this matter is well-suited for settlement given the
11 strengths and weaknesses of the PAGA claim.³⁴ Plaintiff and Plaintiff's Counsel believe that the
12 settlement is a fair, reasonable, and adequate resolution of this matter.³⁵ Plaintiff's Counsel have
13 extensive experience handling representative and class action wage-and-hour litigation and used
14 that experience to achieve a great result for Plaintiff, the State of California, and the PAGA
15 Employees.³⁶ Therefore, the Court should give considerable weight to the competency,
16 experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the
17 settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988)
18 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd*
19 *v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs'
20 counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express*
21 *Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an
22 experienced mediator in the settlement process confirms that the settlement is non-collusive").
23
24
25

26 ³¹ *Ibid.*

27 ³² *Ibid.*

28 ³³ *Ibid.*

³⁴ *Id.* generally.

³⁵ *Ibid.*

³⁶ *Id.*, ¶¶ 3-6 (nn).

1 **B. The Relative Strength of the PAGA Claim and the Range of Possible**
2 **Outcomes in the Litigation Strongly Favor Approval of the Settlement**

3 In order for Plaintiff to prevail on the PAGA claim, he would have to prove that
4 Defendants engaged in the alleged California Labor Code violations and demonstrate that
5 Defendants' conduct warrants the imposition of penalties. *See, e.g., Elliot v. Spherion Pac.*
6 *Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 ("Plaintiff's claim under [PAGA] is
7 wholly dependent upon her other claims. Because all of plaintiff's other claims fail as a matter
8 of law, so does her PAGA claim.").

9 Plaintiff's core allegation is that Defendants have systematically violated the California
10 Labor Code, with respect to Plaintiff and the PAGA Employee, by, *inter alia*, failing to properly
11 pay minimum, regular, overtime wages, failing to provide compliant meal and rest periods and
12 associated premiums, failing to timely pay wages during employment and upon termination of
13 employment, failing to provide complete and accurate wage statements, failing to keep complete
14 and accurate payroll records, and failing to reimburse necessary business-related expenses and
15 costs.

16 Although wage-and-hour actions are amenable to resolution as to a group of employees,
17 some courts have also found that, for various reasons, the issues raised by Plaintiff often involve
18 individualized issues that render proof at trial difficult with respect to a group of employees.

19 Defendants also maintained several defenses to Plaintiff's theory of liability, which, if
20 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
21 Throughout this litigation, Defendants maintained, and continue to maintain, that they had, and
22 continue to have, legally-compliant employment policies and practices throughout the time
23 period at issue.³⁷ Defendants deny that they ever violated any provision of the California Labor
24 Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the
25 PAGA.³⁸ Defendants further denied, and continue to deny, that the lawsuit is appropriate for
26 representative treatment for any purpose other than settlement.³⁹

27 ³⁷ Madoyan Decl., ¶ 16.

28 ³⁸ *Ibid.*

³⁹ *Ibid.*

1 Defendants also argued Plaintiff lacked standing as an aggrieved employee and denied
2 that any other employees whom Plaintiff seeks to represent are aggrieved.⁴⁰ Also, at the time
3 that this case commenced, multiple courts had previously taken an approach requiring a plaintiff
4 to establish standing and face the possibility of bifurcation of discovery and/or trial of the PAGA
5 claim. See *Amalgamated Transit Union, supra*, 46 Cal.4th at 1001 (noting that PAGA
6 “require[s] a plaintiff to have suffered an injury resulting from an unlawful action”); *Stafford v.*
7 *Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding that judicial
8 economy supported bifurcation because of the difficulties and inherent uncertainties of being
9 able to establish liability with respect to a large number of potentially aggrieved employees and
10 noted that “PAGA’s public purpose would be ill-served if the court finds [the plaintiff] has not
11 been aggrieved by a Labor Code violation”); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955
12 (stating that bifurcation and sequencing of litigation is allowed to avoid wasting time and money
13 on trial when litigation of issues could be rendered moot).

14 Defendants also argued that an important feature of PAGA is that the Court retains
15 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to
16 do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.”
17 See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.*
18 (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA
19 penalties awarded to an employee based upon discretionary factors). Defendants maintained,
20 and continue to maintain, that they had and continues to have, legally-compliant employment
21 policies and practices throughout the time period at issue.⁴¹ Defendants deny that they ever
22 violated any provision of the California Labor Code.⁴² Even if, *arguendo*, such violations
23 occurred, which Defendants deny, Defendants contended that said violations would only be
24 considered “initial violations” and thus heightened “subsequent violation” penalties were not
25 warranted. See Cal. Lab. Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163
26 Cal.App.4th 1157, 1208-09 (“Until the employer has been notified that it is violating a Labor

27 ⁴⁰ Madoyan Decl., ¶ 17

28 ⁴¹ *Id.*, ¶ 16.

⁴² *Ibid.*

Code provision [...], the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”).

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

While Plaintiff disagrees with Defendants’ 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, and/or upon appeal.⁴³

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).

Prior to reaching the Settlement, the Parties investigate the veracity, strength, and scope of the PAGA claim and allegations.⁴⁴ In addition, the Parties exchanged a large volume of information, documents, and data relevant to Plaintiff’s claim and Defendants’ defenses thereto, including, and not limited to, Plaintiff’s Personnel File; detailed samplings of PAGA Employees’ time, payroll, and earnings records; multiple iterations of applicable Employee Handbooks and relevant employment policies and practices; and relevant employment forms, agreements, and acknowledgments, among other documents.⁴⁵ Counsel for the Parties undertook significant investigation and analysis of the relevant documents and data to evaluate Plaintiff’s claim and

⁴³ Madoyan Decl., ¶ 18.

⁴⁴ *Id.*, ¶ 13.

⁴⁵ *Ibid.*

1 allegations, including, and not limited to, calculating the potential monetary recovery under
2 PAGA.⁴⁶ Other work performed by Plaintiff’s Counsel included, but was not limited to: meeting
3 and conferring with Defendant’s counsel regarding the pleadings, case management, the
4 mediation, and settlement, among other issues; case strategy and analysis; drafting, reviewing,
5 and revising the pleadings, court filings, the mediation brief, settlement agreement, and
6 settlement approval motion papers; and preparing for and appearing for court proceedings, the
7 mediation, and settlement negotiations.⁴⁷

8 Had the case not settled, the Parties would have conducted extensive formal written
9 discovery and depositions to prepare the case for trial. From the inception of this litigation,
10 Defendants indicated that they would aggressively litigate this case.⁴⁸ Even if Defendants failed
11 on their defenses, litigating a complex PAGA action is inherently expensive, and the litigation
12 could continue beyond entry of judgment if either party were to appeal adverse rulings.⁴⁹
13 Additionally, there is a real possibility that Plaintiff would recover nothing, either for himself or
14 on behalf of the State of California or other PAGA Employee s after years of costly and labor-
15 intensive litigation. Avoiding these risks and the likelihood of future contentious litigation,
16 which would involve significant costs, favors settlement.

17 **D. The Settlement Is Fair, Adequate, and Reasonable**

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

22 The Settlement provides significant benefits to the State of California and the PAGA
23 Employees and falls well-within the range of acceptable settlements under the circumstances.
24 Under the Agreement, Defendant has agreed to pay a Gross Settlement Fund of \$570,000.00,
25 which encompasses the Net PAGA Settlement Fund, Attorneys’ Fees and Costs, Settlement
26

27 ⁴⁶ Madoyan Decl., ¶ 13.

⁴⁷ *Ibid.*

⁴⁸ Madoyan Decl., ¶ 16.

⁴⁹ *Id.*, ¶ 17.

Administration Costs, and General Release Fee.⁵⁰ Subject to approval by the Court, the following amounts will be subtracted from the Gross Settlement Fund to yield the Net PAGA Settlement Fund: (1) Attorneys' Fees and Costs consisting of attorneys' fees in the amount of \$228,000.00 and reimbursement of litigation costs and expenses in the amount up to \$11,386.86 to Plaintiff's Counsel; (2) the Settlement Administration Costs of up to \$2,750.00; and (3) Plaintiff's General Release Fee of up to \$7,500.00 to Plaintiff.

The Net PAGA Settlement Fund is currently estimated to be \$320,363.14, of which an estimated \$80,090.79 is to be distributed to PAGA Employees on a *pro rata* basis, and \$240,272.35 is to be distributed to the LWDA, pursuant to the PAGA statute. There is no reason to doubt the fairness of the proposed plan of allocation of the Net PAGA Settlement Fund 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 through trial and any possible appeals.⁵¹ Plaintiff and his counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.⁵² Plaintiff and Plaintiff's Counsel also recognize Defendant's defenses, the costs of further litigation, and multiple risks to recovery.⁵³ Plaintiff and his counsel have also taken into account Defendant's agreement to enter into a settlement that confers significant relief upon the PAGA Employees and the State of California.⁵⁴

Considering all of the facts in this case, Plaintiff and his counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the PAGA Employees and the State of California.⁵⁵

The result achieved in this case, and the monetary recovery provided by this settlement, are well-within the range of an acceptable settlement under the circumstances, especially when

⁵⁰ Settlement Agreement, §5.

⁵¹ Madoyan Decl., ¶¶ 11 & 12

⁵² *Id.*, ¶ 14.

⁵³ *Id.*, ¶¶ 14 & 15.

⁵⁴ *Id.*, ¶ 11.

⁵⁵ *Id.*, ¶ 22.

1 compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and Hour*
2 *Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the amount of
3 \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL
4 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of
5 PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out
6 of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1
7 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims);
8 *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million
9 toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no
10 abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the
11 settlement of PAGA claims that were at issue in the lawsuit). Here, the value obtained for
12 settlement of the PAGA claim is significant, and it will be distributed in accordance with and in
13 fulfillment of the objectives of the PAGA statute.

14 **E. The Experience and Views of Plaintiffs' Counsel Favor Approval of the**
15 **Settlement**

16 Plaintiff's Counsel are highly experienced in complex representative and class action
17 wage-and-hour litigation.⁵⁶ In the view of Plaintiff's Counsel, the benefits conferred by the
18 settlement are eminently fair and reasonable, and in the best interests of the State of California
19 and the PAGA Employee s in light of the risk, delay, and uncertainty of continued litigation and
20 the substantial monetary benefits provided for by the Settlement.⁵⁷ Furthermore, courts have
21 acknowledged that "the interests of plaintiff, counsel and other potentially aggrieved employees
22 are largely aligned. All stand to gain from proving as convincingly as possible as many Labor
23 Code violations as the evidence will sustain[.]" *Williams, supra*, 548 (citing Cal. Lab. Code §
24 2699(g)(1)(i)).

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28 ⁵⁶ Madoyan Decl., ¶¶ 3-6(nn).

⁵⁷ *Id.*, ¶ 22.

VI. THE PROPOSED ATTORNEYS' FEES 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 Fund of \$570,000.00.⁵⁸ The Settlement provides for attorneys' fees in an amount of up to \$228,000.00 percent (40%) of the Gross Settlement Fund, (assuming the Gross Settlement Fund remains \$570,000.00 per the Settlement Agreement's Escalator Clause, which provides the additional benefit of potentially increasing the Gross Settlement Fund)⁵⁹, subject to approval and award by the Court.⁶⁰ The requested attorneys' fees award is commensurate with: (1) the risk that Plaintiff's Counsel took in bringing and litigating the 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 in the case, and (6) the other cases that Plaintiff's Counsel has turned down in order to devote its time and effort to this case.⁶¹

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 PAGA Employees, as well as the State of California. See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App4th 1, 16-17 (recognizing that recovery obtained on behalf of 209 individuals satisfies the "significant benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff's personal motivation). The settlement will also benefit the state labor

⁵⁸ Settlement Agreement, § 5 and 5.1.1.

⁵⁹ *Id.*, § 5 ¶ 5

⁶⁰ *Ibid.*

⁶¹ Madoyan Decl., ¶ 19.

1 agency in enforcing labor laws and educating “employers and employees about their rights and
2 responsibilities under [the California Labor 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 Courts award fees to serve as an economic incentive for lawyers to undertake litigation,
12 and thereby enhance and facilitate access to the judicial system for adjudication of meritorious
13 claims, and to deter wrongdoing. This is especially true in situations where multiple similar
14 alleged wrongs would not be economically feasible to pursue individually, such as here. See A.
15 Conte, *Attorney Fee Awards* (2d ed. 1993) 104, at 6.

16 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
17 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
18 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; see also *Laffitte, supra*, 1 Cal.5th 480 at 506
19 (holding that “trial court did not abuse its discretion in using [the percentage of fund method], in
20 part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is the
21 best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001)
22 24 Cal.4th 1122, 1132.

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

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

17 Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and circumstances
18 surrounding the case is well-within the range of reasonableness. Historically, courts have
19 awarded fees as high as fifty percent (50%) of the settlement in complex actions, depending on
20 the circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp.
21 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million total settlement amount);
22 *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195
23 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely
24 approve attorneys’ fees awards “average[ing] around one-third of the recovery.” *Chavez v.*
25 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency
26 fees in marketplace to be 20 to 40 percent and determined such a percentage fee was
27 appropriate).

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.⁶² Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant information, documents, and data to evaluate the claims, including, and not limited to, calculating the potential monetary recovery under PAGA.⁶³ Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding the pleadings, case management, the mediation, and settlement, among other issues; case strategy and analysis; drafting, reviewing, and revising the pleadings, court filings, the mediation brief, settlement agreement, and settlement approval motion papers; and preparing for and appearing for court proceedings, mediation, and settlement negotiations.⁶⁴

In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation, has advanced all such costs and has not been compensated at all as of today, and will not receive any compensation until recovery is obtained.⁶⁵ Plaintiff's Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the PAGA Employees and the State of California.⁶⁶ Considering the amount of fees requested, work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees are reasonable and should be awarded.

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

The factors which courts consider in determining whether fee awards are reasonable, all of which support the fee award requested by Plaintiff's Counsel, are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due

⁶² Madoyan Decl., ¶ 22.

⁶³ *Id.*, ¶ 13.

⁶⁴ *Ibid.*

⁶⁵ *Id.*, ¶ 20.

⁶⁶ *Id.*, ¶¶ 3-6(nn).

1 to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent;
2 (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and
3 results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability
4 of the case; (11) the nature and length of the professional relationship with the client; and (12)
5 awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991)
6 946 F. 2d 768, 772. Some of the most relevant factors to this Court's fee determination will be
7 addressed below.

8 It should be highlighted that the percentage award sought is commensurate with the time,
9 effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel
10 representation and the risks taken in commencing the Action, the skill and determination
11 required, the results that Plaintiffs' Counsel has achieved, and the value of the settlement that
12 Plaintiffs' Counsel has obtained on behalf of Plaintiff, the PAGA Employees, and the State of
13 California. For the reasons discussed herein, an award of attorneys' fees in the amount of
14 \$228,000 percent (40%) of the Gross Settlement Fund is reasonable.

15 **1. Time & Labor**

16 Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour
17 actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit,
18 Plaintiffs' Counsel conducted a significant amount of investigation into the factual and legal
19 issues, Defendant's business, operations and employment policies, practices, and procedures.⁶⁷
20 During the litigation of the Action, Plaintiff's Counsel interviewed and obtained information
21 from Plaintiff, Defendants, and other sources, conducted legal research, reviewed and analyzed a
22 large volume of documents and data, prepared for and attended mediation, evaluated the PAGA
23 claim, and calculated the potential monetary recovery under PAGA.⁶⁸ Plaintiff's Counsel also
24 met and conferred with Defendant's counsel regarding the pleadings, case management, the
25 mediation, and settlement, among other issues; case strategy and analysis; drafting, reviewing,
26 and revising the pleadings, court filings, the mediation brief, memorandum of understanding, and

27 _____
28 ⁶⁷ Madoyan Decl., ¶ 13.

⁶⁸ *Ibid.*

1 settlement approval motion papers; and preparing for and appearing for court proceeding,
2 mediation, and settlement negotiations.⁶⁹

3 Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary
4 to prosecute the case with maximum efficiency and has fully and actively participated in the
5 litigation process.

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

7 The skill required to properly litigate this case is evident not only in the results achieved,
8 but in the steps necessary to reach the same. Defendants retained highly-respected counsel to
9 represent its defenses. Defendants and their counsel felt very strongly about Defendants' ability
10 to prevail on the merits and avoid representative adjudication of the PAGA claim. Plaintiff and
11 Plaintiff's Counsel believe that the PAGA claim has merit and that Plaintiff will prevail at trial.
12 Plaintiff's Counsel undertook extensive investigation, analysis, and research prior to filing the
13 lawsuit and during the litigation. Plaintiff's Counsel took steps to prepare the case for trial and
14 had every intention of taking the case to trial if Defendants did not offer an appropriate
15 settlement.

16 Plaintiff's Counsel's effort and skill were used to, among other things, investigate the
17 allegations and gather facts, research the legal issues, analyze data and information obtained
18 from Defendants, Plaintiff, and through other sources, evaluate the PAGA claim, and negotiate
19 the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used
20 their extensive experience and skill in the handling of complex wage-and-hour matters to
21 advocate for and obtain PAGA Employees and the State of California a recovery now, with
22 maximum efficiency, as opposed to the possibility of recovery in the future, after significant
23 expense and time.⁷⁰

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

25 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty
26 and risks of further litigation.⁷¹ Had the case not settled, Defendants would have vigorously

27 ⁶⁹ Madoyan Decl., ¶ 13

28 ⁷⁰ Madoyan Decl., ¶ 11.

⁷¹ *Id.*, ¶¶ 14, 18, & 22.

1 challenged standing, liability, ability to establish proof with respect to any and all aggrieved
2 employees, and sought a reduction in the amount assessed as penalties. Defendants, however,
3 faced risks too, including and not limited to, the risk of having the Court assess penalties.
4 Additionally, preparing the case for trial would have been extraordinarily expensive for the
5 Parties.

6 At this stage, the settlement is preferred over continued litigation because such resolution
7 saves time and money that would otherwise go to litigation. The risks and expenses of further
8 litigation outweighed any benefit that might have been gained otherwise. The Settlement
9 provides an immediate recovery, as opposed to an uncertain result in the future after prolonged
10 litigation involving expert discovery, trial preparation, and appellate review of those
11 proceedings. The Settlement offers present and considerable monetary relief to Plaintiff, the
12 PAGA Employees, and the State of California while avoiding additional expense, risk, and delay
13 in obtaining possible further recovery.

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

15 The representation provided by Plaintiff's Counsel has been wholly contingent and
16 Plaintiff's Counsel took on this matter without knowing whether any recovery would be
17 obtained.

18 Plaintiff's Counsel is also requesting reimbursement of litigation costs and expenses in
19 the amount of \$11,386.86.⁷²

20 In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will
21 not receive any compensation until recovery is obtained.⁷³ If Plaintiff's Counsel had not been
22 successful, the time that they have devoted to litigating the case would have been for naught and
23 would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel
24 is well-experienced in complex wage-and-hour litigation and used that experience to obtain a
25 great result for Plaintiff, the PAGA Employees, and the State of California.⁷⁴ The skill and
26

27 ⁷² While the Settlement Agreement allocates up to \$20,000 in litigation costs, Plaintiff's Counsel only seeks to
recover litigation costs of \$11,386.86. Settlement Agreement, §5 ¶ 7.

28 ⁷³ Madoyan Decl., ¶ 20.

⁷⁴ *Id.*, ¶¶ 3-6(nn).

determination that Plaintiff's Counsel has shown throughout the Action justify the requested attorneys' fees and costs. Considering the amounts requested, work performed, and risks incurred, the requested fees and costs are reasonable and should be awarded.

5. The Amount Involved and the Results Achieved

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this case, are considerable. Here, the results achieved, and the recovery obtained on behalf of Plaintiff, the PAGA Employees, and the State of California represent a fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a settlement that provides for a Gross Settlement Fund of \$570,000.00, and it is currently estimated that the Net PAGA Settlement Fund available for distribution to the PAGA Employees and the State of California, as set forth in Part III.C *infra*, is approximately \$320,363.14.⁷⁵

6. The Reputation and Ability of the Attorneys

Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its attorneys employed their knowledge, skill, and experience to bring the case to a successful conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and representative action cases.⁷⁶

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 \$20,000.00. As set forth in the Declaration of Vartan Madoyan, Plaintiff's Counsel seeks reimbursement of only \$11,386.86 in litigation costs and expenses.⁷⁷ These expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement, and the amount sought for reimbursement is less than the maximum amount allocated under the Settlement Agreement for reimbursement of litigation costs and expenses.⁷⁸

⁷⁵ Settlement Agreement, § 5(a).

⁷⁶ Madoyan Decl., ¶¶ 3-6(nn).

⁷⁷ Madoyan Decl., ¶ 20.

⁷⁸ *Ibid*.

VIII. THE PROPOSED LETTER TO THE PAGA EMPLOYEES SHOULD BE APPROVED

Although PAGA does not require notice to unnamed aggrieved employees of a settlement, the Parties' Agreement acknowledges, and Plaintiff now presents, for the Court's consideration and approval, a cover letter for transmission to the PAGA Employees along with their PAGA Employee Fund check, substantially in the form attached as "EXHIBIT 1" to the [Proposed] Order and Judgment. The Cover Letter serves the purpose of informing the PAGA Employees about the Action and the Settlement. Accordingly, Plaintiff respectfully requests that the Court approve the Cover Letter for transmission to the PAGA Employees at the time of disbursing their PAGA Employee Funds.

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, Simpluris to handle the administration of the Settlement. The Settlement Agreement provides for fees and expenses up to \$10,000.00 for administration costs, and Simpluris' estimated quote is only for \$2,750. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Letter and PAGA Employee Fund checks to the PAGA Employees; performing skip-trace searches; re-mailing the returned letter and check to any updated addresses located; and handling inquiries from PAGA Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to a maximum of \$10,000.00 to Simpluris, 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 \$7,500.00 in recognition of his efforts and work in spearheading the litigation of this matter, as well as for his broader individual release of claims with a California Civil Code Section 1542

waiver.⁷⁹ 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 PAGA Employees. Plaintiff discussed his employment with his counsel, gathered and produced relevant documents and information, and provided the facts and evidence necessary to attempt to prove the allegations.⁸⁰ Plaintiff was available whenever his counsel needed him and tried to obtain and provide documents and information that would aid in the litigation of the PAGA claims and pursuit of recovery on behalf of the State of California and PAGA Employees.⁸¹

Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the amount of \$7,500.00, in addition to the PAGA Employee Funds he will receive as an PAGA Employee s for his share of the Net PAGA Settlement Fund.

XI. CONCLUSION

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise of disputed claims that has been reached through arm’s-length negotiations, in light of the risks, complexity, and expense of further litigation. Plaintiff respectfully requests that the Court

⁷⁹ Settlement Agreement, § 2 ¶ 2

⁸⁰ Madoyan Decl., ¶ 21; Declaration of Seyed Ramin Asbaghi (“Asbaghi Decl.”), ¶¶ 3 & 4.

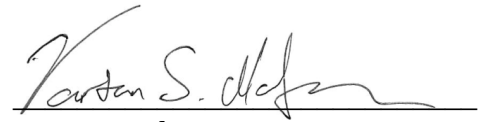
⁸¹ *Ibid.*

1 approve the Settlement, including the plan of allocation and distribution of the Gross Settlement
2 Fund for the LWDA PAGA Payment to the LWDA, PAGA Employee Funds to the PAGA
3 Employees, Attorneys' Fees and Costs to Plaintiff's Counsel, Settlement Administration Costs to
4 the Settlement Administrator, and General Release Fee to Plaintiff, and permit the filing of a
5 memorandum that exceeds the page limit.

6
7
8 Dated: September 18, 2024

LAWYERS for JUSTICE, PC

9
10 By:



Vartan Madoyan
Attorneys for Plaintiff