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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

MARVIN KING, individually, and on behalf
of aggrieved employees pursuant to the
Private Attorneys General Act ("PAGA");

Plaintiff,

v.

IRWIN INTERNATIONAL, INC. D/B/A
AIRCRAFT SPRUCE AND SPECIALTY,
CO., a California Corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: CVRI2100045

Assigned for All Purposes to:
Honorable Harold W. Hopp
Department 10

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

[Reservation ID: 713280787662]

[Declaration of Counsel (Douglas Han);
Declaration of Plaintiff (Marvin King);
Declaration of Jodey Lawrence; and
[Proposed] Order and Judgment filed
concurrently herewith]

Hearing Date: February 2, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Department 10

Complaint Filed: January 11, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on February 2, 2023 at 8:30 a.m., or as soon as thereafter
2 as the matter may be heard, before the Honorable Harold W. Hopp in Department 10 of the
3 Riverside County Superior Court (Historic Courthouse) located at 4050 Main Street, Riverside,
4 California 92501, Plaintiff Marvin King (“Plaintiff”) will, and hereby does, move for entry of an
5 order and judgment approving the Parties’ Private Attorneys General Act of 2004 (“PAGA”)
6 Settlement Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
7 **Exhibit 2** to the declaration of Douglas Han, pursuant to Labor Code section 2699(l).

8 This motion is based upon this notice of motion and motion; the Settlement Agreement;
9 the Declarations of PAGA Counsel (Douglas Han), Plaintiff (Marvin King), and proposed
10 Settlement Administrator (Jodey Lawrence) in support thereof; proposed order approving the
11 Settlement Agreement; the pleadings and other records on file with the Court in this matter; and
12 such evidence and oral argument as may be presented at the hearing on this motion.

13
14 Dated: January 6, 2023

JUSTICE LAW CORPORATION

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16 B, 
17 Douglas Han
18 *Attorneys for Plaintiff*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 This is a representative PAGA action. Under Labor Code section 2699(1)(2), Plaintiff
4 Marvin King (“Plaintiff”) seeks approval of the Settlement Agreement entered between Plaintiff
5 and Defendant Irwin International, Inc. d/b/a Aircraft Spruce & Specialty Co. (“Defendant”).
6 Plaintiff entered the Settlement Agreement on behalf of himself and all current and former non-
7 exempt or hourly-paid employees who worked for Defendant in California from November 2,
8 2019 through December 8, 2022 (“Aggrieved Employees” and “PAGA Period”).

9 The Parties agreed to resolve this case for a Gross Settlement Amount of \$280,000
10 inclusive of the: (1) amount allocated for the Labor Workforce Development Agency (“LWDA”)
11 and for the Aggrieved Employees that will be distributed in accordance with Labor Code section
12 2699(i); (2) Attorney Fee Amount and Cost Amount, pursuant to Labor Code section 2699(g)(1);
13 (3) Enhancement Payment; and (4) Administration Costs.

14 Plaintiff submits the Settlement is fair, adequate, and reasonable, and meets requirements
15 for Court approval. Thus, Plaintiff requests this Court approve the Settlement.

16 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

17 Defendant, a supplier of aircraft parts, building materials, avionics, and pilot supplies to
18 aircraft builders, owners, pilots, and aviation businesses, employed Plaintiff as a Customer
19 Service Representative from September 2019 to July 2020 at its Corona, California location.

20 On November 2, 2020, Plaintiff served a notice letter to the LWDA and Defendant. On
21 January 11, 2021, Plaintiff filed this putative representative PAGA action. Defendant filed an
22 Answer to the Operative Complaint on March 18, 2021, in which it asserted a general denial of,
23 and various affirmative defenses to, the PAGA claim alleged.¹ Plaintiff seeks PAGA civil
24 penalties based on allegations that Defendant: (1) failed to pay minimum and overtime wages;
25 (2) failed to provide compliant breaks; (3) failed to timely pay wages; (4) failed to provide
26

27 _____
28 ¹ (Declaration of Douglas Han In Support of Plaintiff’s Motion for Approval of Private
Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement (“Han Decl.”), ¶ 11.)

compliant wage statements; and (5) failed to reimburse necessary business expenses.²

After conducting significant investigation, the Parties' counsel engaged in extensive negotiations to try to resolve the entire matter. The Parties participated in private mediation on September 8, 2022 before Jeffrey A. Ross that ultimately resulted in the settlement of this case.³

Plaintiff now moves for an order granting approval of the Settlement, pursuant to Labor Code section 2699(1)(2).

III. SUMMARY OF THE SETTLEMENT TERMS

A. Allocation of the Gross Settlement Amount

The Settlement provides Defendant will pay a non-reversionary Gross Settlement Amount of \$280,000. The PAGA Penalties Fund will be the Gross Settlement Amount less the following: (1) Attorney Fee Amount of \$98,000; (2) Cost Amount of \$15,410.06; (3) Enhancement Payment of up to \$10,000; and (4) Administration Costs of up to \$5,000.

The amount of the PAGA Penalties Fund is estimated to be \$151,589.94. Twenty-five percent (25%) of the PAGA Penalties Fund will be distributed to each of the estimated three hundred four (304) Aggrieved Employees as their Individual PAGA Payment. The Settlement Administrator will calculate each Individual PAGA Payment by: (1) dividing the total amount of the PAGA Penalties Fund allocated for distribution to Aggrieved Employees as Individual PAGA Payments by the total number of PAGA Pay Periods of all Aggrieved Employees; and (2) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. The remaining seventy-five percent (75%) of the PAGA Penalties Fund will be transmitted to the LWDA as the LWDA PAGA Payment, pursuant to Labor Code section 2699(i).⁴

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² (*Id.* at ¶ 21.)

³ (Han Decl., *supra*, at ¶ 16.)

⁴ (See Settlement Agreement attached as **Exhibit 2** to the Declaration of Douglas Han In Support of Plaintiff's Motion for Approval of Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement filed concurrently herewith ("Settlement Agreement"), §§ I(2), I(7), I(8), I(13)-I(15), I(18), I(21), III(1), III(2).)

1 **B. Distribution of the PAGA Penalties Fund**

2 Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the
3 Settlement Administrator no later than twenty-one (21) calendar days after the Effective Date or
4 otherwise directed by the Court. Within fourteen (14) calendar days after Defendant funds the
5 Gross Settlement Amount, the Settlement Administrator will issue checks for the Attorney Fee
6 Amount, Cost Amount, Enhancement Payment, Administration Costs, LWDA PAGA Payment,
7 and all Individual PAGA Payments. Disbursement of the Attorney Fee Amount and Cost Amount
8 shall not precede disbursement of Individual PAGA Payments.⁵

9 The Settlement Administrator will issue checks for Individual PAGA Payments and send
10 them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid.⁶ Uncashed
11 settlement checks (180 calendar days after their mailing) will be cancelled and distributed to State
12 Controller's Office Unclaimed Property Division in the name of the Aggrieved Employees.⁷

13 **C. The Scope of the Releases in the Settlement Agreement**

14 Effective on the date when Defendant funds the entire Gross Settlement Amount, Plaintiff,
15 individually and in his capacity as a private attorney general proxy or agent of the State, and the
16 State of California, as real party in interest, release all claims for statutory penalties that could
17 have been sought by the Labor Commissioner for the violations identified in the PAGA Notice
18 and to the extent they are alleged in the Operative Complaint.⁸ (See *Arias v. Sup. Ct.* (2009) 46
19 Cal.4th 969, 980, 986 [a plaintiff suing under PAGA “does so as the proxy or agent of the state’s
20 labor law enforcement agencies,” and, as such, “represents the same legal right and interest as
21 state labor law enforcement agencies”].) A judgment in a PAGA action “binds not only that
22 [plaintiff] employee but also the state labor law enforcement agencies.” (*Ibid.*) Further,
23 “[b]ecause an aggrieved employee’s action under [PAGA] functions as a substitute for an action
24 brought by the government itself, a judgment in that action binds all those, including nonparty

25 ⁵ (Settlement Agreement, *supra*, at §§ IV(3), IV(4).)

26 ⁶ (*Id.* at § IV(4)(a).)

27 ⁷ (*Id.* at § IV(4)(c).)

28 ⁸ (*Id.* at § V(1).)

1 aggrieved employees, who would be bound by a judgment in an action brought by the
2 government.” (*Arias v. Sup. Ct.*, *supra*, 46 Cal.4th at p. 986.) “Accordingly, with respect to the
3 recovery of civil penalties, nonparty employees as well as the government are bound by the
4 judgment in an action brought under [PAGA]” (*Ibid.*)

5 Under the Settlement, although judgment entered upon the settlement of the Action is
6 binding on Aggrieved Employees with respect to any claims for civil penalties under PAGA,
7 Plaintiff and the State of California do not release any Aggrieved Employee’s individual, non-
8 representative claim for wages or damages. The Released PAGA Claims shall only apply to the
9 violations that occurred during the PAGA Period. In consideration of the Enhancement Payment,
10 Plaintiff also provides a general release and waiver of rights under Civil Code section 1542. The
11 Released Parties include Defendant together with its officers, directors, employees, and agents.⁹

12 **D. No Right to Object to or Opt Out of the Settlement**

13 “[A] PAGA action is a statutory action for penalties brought as a proxy for the state, rather
14 than a procedure for resolving the claims of other employees, there is no need to protect absent
15 employees’ due process rights[.]” (*Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 546.) “Unnamed
16 employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out
17 of the representative PAGA claim.” (*Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr.
18 2, 2010), 2010 WL 3570777, at *5.) “PAGA does not make other potentially aggrieved
19 employees parties” and no “due process concerns arise under PAGA because absent employees
20 do not own a personal claim for PAGA civil penalties and whatever personal claims the absent
21 employees might have for relief are not at stake.” (*Williams*, at pp. 546-547 (internal references
22 omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46th
23 Cal.4th 993, 1003 and *Iskanian v. CLS Trans. Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.))

24 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
25 (*Williams v. Sup. Ct.*, *supra*, 3 Cal.5th at p. 548 (internal references omitted, citing *Arias v. Sup.*
26 *Ct.*, *supra*, at pp. 980-981; *Fireside Bank v. Sup. Ct.* (2007) 40 Cal.4th 1069, 1074 and *Richmond*
27 *v. Dart Indus., Inc.* (1981) 29 Cal, 3d 462, 474.)

28

⁹ (Settlement Agreement, *supra*, at §§ I(27), V(1), V(2).)

Consistent with this law, the Settlement does not provide for a procedure for Aggrieved Employees to opt out or otherwise exclude themselves from the Settlement.

IV. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT

The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself, other aggrieved employees and the State to recover civil penalties with respect to provisions of the Labor Code that do not otherwise provide for civil penalties (Lab. Code § 2699(g)), and also, civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must comply with Labor Code section 2699.3. (See Lab. Code § 2699(a).) Although PAGA penalties must be awarded by a court if a violation is found, a court “may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Lab. Code § 2699(e)(2).)

The settlement of a PAGA claim requires court approval. (See Lab. Code § 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action pursuant to this part.”).) However, “[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action” and, therefore, does not have to meet the requirements of a class action. (*Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias v. Sup. Ct., supra*, 46 Cal.4th at pp. 980-88 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15.) As such, a court’s review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from approval of a class action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those affected.” (*Williams v. Sup. Ct., supra*, 3 Cal.5th at p. 549 (citing Lab. Code § 2699(l)(2)).) Although Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved

1 settlements of a PAGA claim.¹⁰ The Court of Appeal has held that “a trial court should evaluate
2 a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s
3 purposes to remediate present labor law violations, deter future ones, and to maximize
4 enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)

5 In a PAGA case, the Court’s focus is not the amount which “aggrieved employees” are to
6 receive but whether the total settlement amount achieves PAGA’s objectives. PAGA’s purpose
7 “to incentivize private parties to recover civil penalties for the government that otherwise may
8 not have been assessed and collected by overburdened state enforcement agencies.” (See *Ochoa-
9 Hernandez, supra*, 2010 WL 3570777, at *4 (citing *Arias v. Sup. Ct., supra*, 46 Cal.4th at p. 986).)
10 Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for
11 enforcement of labor laws . . . and for education of employers and employees about their rights
12 and responsibilities under this code, to be continuously appropriated to supplement and not
13 supplant the funding to the agency for those purposes.” (See Lab. Code § 2699(j).) The recovery
14 of penalties on behalf of the state, by way of a PAGA claim, is essentially a law enforcement
15 action. (See *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct., supra*, 46 Cal.4th at
16 p. 1003 (stating the PAGA is mechanism for “an aggrieved employee to recover civil penalties –
17 for Labor Code violations – that otherwise would be sought by state labor law enforcement
18 agencies”); see also *Iskanian v. CLS Trans. Los Angeles, LLC, supra*, 58 Cal.4th at p. 381.)

19 **V. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED.**

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

21 A settlement agreement that is “the product of extensive and hard-fought adversarial
22 negotiations between the parties” is entitled to a presumption of fairness. (*Wershba v. Apple
23 Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)

24 ///

25 ¹⁰ (See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Sup. Ct., Case
26 No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No.
27 JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575,
28 at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu
v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz
Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case*
(2010) 186 Cal.App. 4th 576, 589.)

1 The Settlement is presumptively fair. This is because the Settlement: (1) is the product of
2 non-collusive, arm's-length negotiations; (2) was negotiated by counsel with significant
3 experience in similar wage-and-hour litigation following a full-day mediation with an
4 experienced mediator; and (3) occurred after Parties' counsel engaged in significant investigation
5 of the strengths of this case and the risks of continued litigation. PAGA Counsel also have
6 extensive experience in representative and class action wage-and-hour litigation and used that
7 experience to achieve a reasonable result.¹¹

8 Therefore, the Court should give considerable weight to the competency, experience, and
9 opinion of counsel and the involvement of a neutral mediator in assuring the Settlement is a
10 product of hard-fought negotiations that was entered without collusion. (See *Kirkorian v. Borelli*
11 (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable
12 weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations
13 of plaintiffs' counsel should be given a presumption of reasonableness); see also *Satchell v. Fed.*
14 *Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating the "assistance of an
15 experienced mediator in the settlement process confirms that the settlement is non-collusive").)

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

18 Plaintiff contends the provisions of the Labor Code potentially triggering PAGA penalties
19 in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221,
20 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. For
21 Plaintiff to recover civil penalties, he must prove the underlying Labor Code violations with
22 respect to the Aggrieved Employees and show Defendant's conduct gave rise to penalties. (See,
23 e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82
24 ("Plaintiffs' claim under [PAGA] is wholly dependent upon her other claims. Because all of
25 Plaintiffs' other claims fail as a matter of law, so does her PAGA claim.").)

26 Defendant maintained it had legally compliant employment policies and practices
27 throughout the statutory period. Defendant also denied it ever violated any provision of the Labor
28

¹¹ (Han Decl., *supra*, at ¶¶ 24, 50.)

Code. Next, Defendant denied this case is appropriate for representative treatment for any purpose other than the Settlement. If this case had not settled, Defendant would likely have challenged Plaintiff's standing as an Aggrieved Employee and denied its other employees were aggrieved. Finally, Defendant argued the Court was unlikely to assess cumulative penalties for the maximum number of possible separate Labor Code violations because the "subsequent violation" theory of PAGA recovery would not be triggered in this case, and it would be unjust, arbitrary, oppressive, and/or confiscatory. (See, e.g., *Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144.) Collectively, this meant Plaintiff and PAGA Counsel had to consider the strengths and weaknesses of each side's position and the uncertainty of how the case might have ended.¹² Defendant asserted, regardless of any alleged liability for Labor Code violations, PAGA penalties are not mandatory but permissive and discretionary. Defendant also maintained it had a strong argument it would be unjust to award maximum PAGA penalties given the unsettled state of PAGA liability. (*Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)

Although wage-and-hour actions are amenable to class-wide resolution,¹³ courts have found certain Labor Code violations raise individualized issues and/or are unmanageable and are not suitable for class adjudication.¹⁴ Similarly, in PAGA-only actions, Defendant contends courts have found due process requires the adjudication of a PAGA claim meet a "manageability" requirement. (See, e.g., *Liuy v. Merrill Lynch & Co.* (C.D.Cal. Nov. 10, 2014) No. CV-14-0425-PA, WL 5904904 at **3-4 (Court dismissed the PAGA claim because a multitude of individualized assessments would be necessary, making the PAGA claim unmanageable); see also *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 766-767.)

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¹² (Han Decl., *supra*, at ¶¶ 22-24.)

¹³ (See, e.g., *Martinez vs. Joe's Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-84, modified on other grounds by *Martinez v. Joe's Crab Shack Holdings, et al.* (Dec. 3, 2014 B242807) 2014 Cal.App. LEXIS 1102, *1-2.)

¹⁴ (See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35.)

1 Plaintiff alleges, under Defendant’s argument that stacking penalties does not apply to the
2 PAGA claim, and limiting potential exposure to an initial violation only, PAGA penalties would
3 be **\$30,400** (304 employees x \$100 initial violation) on the low end and **\$182,400** (304 employees
4 x \$100 initial violation x 6 theories of recovery) on the high end.¹⁵

5 Plaintiff also recognized the risk any PAGA award could be significantly reduced. Many
6 of the claimed Labor Code violations underlying the PAGA claim were cumulative for which the
7 Court may or may not stack. Thus, a Gross Settlement Amount of \$280,000 for PAGA civil
8 penalties was reasonable and significant. When PAGA penalties are negotiated in good faith and
9 “there is no indication that [the] amount was the result of self-interest at the expense of other
10 Class Members,” such amounts are generally considered reasonable. (*Hopson v. Hanesbrands*
11 *Inc.* (N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900 at *24; see, e.g.,
12 *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its
13 discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).)
14 PAGA Counsel negotiated about an average of **\$33.03** in penalties per pay period would be fair
15 and reasonable [$\$280,000 \div 8,478$ total pay periods in PAGA Period]. Considering the recent
16 cases justifying \$5 per pay period, (see e.g., *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th
17 504), the recovery is reasonable.¹⁶

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

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

24 Both sides used the pre-mediation time to investigate the veracity, strength, and scope of
25 the PAGA claim. The Parties engaged in written discovery and exchanged documents and data
26 for purposes of mediation relevant to the claim of Labor Code violations and applicable defenses

27
28 ¹⁵ (Han Decl., *supra*, at ¶¶ 25-29.)

¹⁶ (Han Decl., *supra*, at ¶ 30.)

thereto to determine the potential value and strength of the PAGA claim. After engaging in extensive investigation and negotiations, PAGA Counsel believed it would be best to pursue a settlement rather than take the risky and uncertain trial route. In other words, the Settlement offers immediate recovery rather than only the possibility of recovery at some indeterminate later date.¹⁷

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 Serv. 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 p. 625.)

The Settlement provides a significant monetary benefit to the LWDA and Aggrieved Employees. Specifically, the PAGA Penalties Fund is currently estimated to equal \$151,589.94. In addition, the proposed plan of allocation of the PAGA Penalties Fund to the LWDA and Aggrieved Employees fully complies with Labor Code section 2699(i).

After their investigations and inquiries, Plaintiff and PAGA Counsel recognize the expense, length, risk, and uncertainty of continued proceedings necessary to litigate this dispute. To recover civil penalties, Plaintiff would have to prove the Aggrieved Employees suffered from the underlying Labor Code violations and that Defendant’s conduct gave rise to penalties, which could take several months or even years to prove, assuming liability is found, and Plaintiff could proffer a manageable trial plan to the Court to prove penalties. Plaintiff and PAGA Counsel are aware of the burdens of proof necessary to establish liability and the difficulties in establishing liability for penalties. Plaintiff and PAGA Counsel also considered Defendant’s agreement to enter a settlement that confers significant relief. Plaintiff and PAGA Counsel determined the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim.¹⁸

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¹⁷ (*Id.* at ¶¶ 13-16, 24.)

¹⁸ (Han Decl., *supra*, at ¶¶ 21, 24, 50.)

1 Therefore, the results achieved, and the PAGA allocation provided by the Settlement
2 Agreement, is within the range of acceptable settlement under the circumstances.¹⁹

3 **E. The Experience and Views of PAGA Counsel Favor Settlement Approval.**

4 PAGA Counsel are experienced in complex representative and class action wage-and-
5 hour litigation. PAGA Counsel believe the benefit conferred by the Settlement is eminently fair
6 and reasonable and in the best interests of the LWDA and Aggrieved Employees.²⁰

7 **VI. APPROVAL OF THE REQUESTED ATTORNEYS' FEES.**

8 **A. A Fee Award of Percentage of the Entire Fund is Appropriate.**

9 The Settlement provides for PAGA Counsel to apply for an Attorney Fee Amount \$98,000
10 (35% of the Gross Settlement Amount). Per the Settlement, Defendant does not oppose Court
11 approval of, but makes no claims or admissions with respect to, the reasonableness of the
12 Attorney Fee Amount, or the grounds and attorney billing rates supporting such Attorney Fee
13 Amount claimed by PAGA Counsel. The Attorney Fee Amount is commensurate with the: (1)
14 risks undertaken; (2) time, effort, and expense dedicated; (3) skills and determination shown; (4)
15 value achieved; and (5) other cases turned down.

16 PAGA Counsel are entitled to recover reasonable attorneys' fees and costs as a matter of
17 right under PAGA. (See Lab. Code § 2699(g)(1).) PAGA Counsel is entitled to fees and costs
18 under Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for
19 the benefit" of others and has secured monetary awards for Aggrieved Employees.²¹ The payment

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21 ¹⁹ (See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833
22 (May 2017) (approving \$15,000 out of \$4 million toward settlement of the PAGA claim); *Garcia*,
23 *supra*, 2012 WL 5364575, at *3 (approving \$10,000 out of \$3.7 million toward settlement of the
24 PAGA claim); *Schiller v. David's Bridal, Inc.*, *supra*, 2012 WL 2117001, at *14 (approving
25 \$10,000 out of \$518,245 toward settlement of the PAGA claim); *Chu v. Wells Fargo Invs.*, *supra*,
26 2011 WL 672645, at *1 (approving \$10,000 out of \$6.9 million toward settlement of the PAGA
claim); *Franco v. Ruiz Food Prods.*, *supra*, 2012 WL 5941801, at *14 (approving \$10,000 out of
\$2.5 million toward settlement of the PAGA claim); *Nordstrom Commissions Case*, *supra*, 186
Cal.App.4th at p. 589 (finding no abuse of discretion by the trial court in approving a settlement
that allocates \$0 toward the settlement of the PAGA claim at issue in the lawsuit).)

27 ²⁰ (Han Decl., *supra*, at ¶¶ 2-8; Exhibit 1.)

28 ²¹ (See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17

(Footnote continued)

1 to the LWDA will also benefit the agency in enforcing labor laws and educating “employers and
2 employees about their rights and responsibilities under [the Labor Code].” (Lab. Code § 2699(i).)

3 PAGA Counsel investigated and litigated this case for over one and one-half (1.5) years
4 before mediation with a real chance of not reaching a resolution. The ongoing work has been
5 extensive and successful in achieving a settlement. PAGA Counsel have borne all the risks and
6 costs of litigation and will not receive any compensation until recovery via this Settlement.²²

7 **B. The Requested Attorneys’ Fees is Reasonable Based on the Factors**
8 **Considered in Determination of Fee Awards.**

9 The factors courts consider in determining whether fee awards are reasonable are: (1) time
10 and labor required; (2) novelty and difficulty of the questions; (3) requisite skills to perform the
11 legal services; (4) preclusion of other employment by the attorney; (5) customary fee; (6) whether
12 the fee is fixed or contingent; (7) time limitation imposed; (8) amount involved and results
13 obtained; (9) experience, reputation and ability of the attorney; (10) undesirability of the case;
14 (11) nature and length of the professional relationship; and (12) awards in similar cases. (*Camden*
15 *I Condo. Ass’n, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.)

16 It should be highlighted the percentage award sought is commensurate with the: (1) results
17 obtained; (2) extraordinary risks undertaken; (3) novelty and difficulty of this case; and (4) skills
18 displayed and the quality of work, which are each addressed below.

19 **1. *The Results Obtained***

20 The results attorneys obtain for their clients is an important factor when determining the
21 reasonability of a percentage-based fee. (See *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th
22 480, 489.) Law firms that obtain exceptional results expect them to be reflected in their fees.

23 The results obtained are reasonable as PAGA Counsel obtained a settlement of \$280,000
24 without the need for extended litigation. If this case went to trial, there was no guarantee the trial
25 would have been short or either party would have prevailed. Even if the Parties reached a similar

26 _____
27 (recognizing that recovery obtained on behalf of 209 individual satisfies the “significant benefit,”
28 “public interest,” and “large class of persons” requirements of Code of Civil Procedure section
1021.5, regardless of plaintiff’s personal motivation).)

²² (Han Decl., *supra* at ¶ 46.)

1 settlement, it would have been undercut by additional expenses incurred. Resolution of this
2 dispute at this stage is preferred as the Parties were moving to the phase where significant time
3 and money would inevitably have to be spent to prepare for trial. Preparation for trial would have
4 also entailed preparing for and deposing persons most qualified, which would have been a lengthy
5 and expensive endeavor with no guarantee of a successful resolution.

6 Consequently, agreeing to settle this case prior to trial meant PAGA Counsel used their
7 skills and experience to obtain a reasonable result for the Aggrieved Employees at far less
8 expense. Also, by avoiding the uncertainties associated with conducting trial and Defendant's
9 responses to the allegations, PAGA Counsel obtained those results more quickly and surely than
10 if the matter had been litigated to final resolution. Under California law, this factor also supports
11 the requested fee. (See *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App. 4th 19, 51.)

12 **2. The Extraordinary Risk Taken by PAGA Counsel**

13 Whether or not representation is provided on a contingency basis is an important factor:

14 A contingent fee must be higher than a fee for the same legal services paid as they are
15 performed [and] [...] compensates the lawyer not only for the legal services he renders
16 but for the loan of those services. A lawyer who both bears the risk of not being paid and
17 provides legal services is not receiving the fair market value of his work if he is paid
only for the second of these functions. If he is paid no more, competent counsel will be
reluctant to accept fee award cases. (internal quotes and citations omitted)

18 (*Cates v. Chiang* (2013) 213 Cal.App.4th 791, 823.)

19 Plaintiff executed a contingent fee agreement. This meant no recovery would have equated
20 to no compensation for 366 hours of work and \$15,410.06 litigation costs incurred.²³ Several
21 factors also made this case difficult, thereby contributing to the risks undertaken. These factors
22 included: (1) size of Aggrieved Employees; (2) difficulties in pinning down job responsibilities,
23 wages paid, meal and rest breaks taken; (3) number of documents that had to be analyzed; (4)
24 shifting wage-and-hour laws; and (5) Defendant's firm resistance to the relief.²⁴

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27 ²³ (Han Decl., *supra*, at ¶¶ 42-43, 46.)

28 ²⁴ (*Id.* at ¶ 32.)

1 **3. *The Difficulty of the Litigation***

2 The unsettled nature of the law, factual complexities underlying the policies and practices
3 in place, and other issues made this case complex and difficult. Yet, PAGA Counsel overcame
4 these obstacles by obtaining a settlement that is fair, adequate, and reasonable. PAGA Counsel
5 obtaining a fair settlement despite these roadblocks speaks volumes of their skill and experience.
6 (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p. 42 (the “special skill and
7 experience of counsel” is a relevant factor when determining fee award).)

8 Due to the novelty and difficulty of this case, PAGA Counsel devoted substantial hours
9 to this matter. The Task & Time Chart sets forth these hours, allocating the total time to the tasks
10 required to conclude this lawsuit. The chart is thorough, comprehensive, and demonstrates the
11 effort to diligently manage this case. The work commenced with the pre-filing case analysis and
12 research and continues up to the moment of the work for final approval.²⁵

13 As stated in the previous section, this was not a clear-cut case, and PAGA Counsel had to
14 overcome several roadblocks and obstacles before they could reach a reasonable settlement. The
15 fact this case has been litigated for almost two (2) years speaks volumes of the challenges PAGA
16 Counsel had to deal with and overcome.

17 **4. *The Skill Displayed and Quality of Work***

18 The level of skill displayed and the excellent quality of work it produced also justify the
19 requested fee. PAGA Counsel are skilled and experienced representative and class action wage-
20 and-hour litigators, and the Task & Time Chart further illustrates this assertion.

21 PAGA Counsel used the pre-mediation time period to investigate the veracity, strength,
22 and scope of the PAGA claim and to prepare for representative adjudication. This included,
23 among other things: (1) case strategy and analysis; (2) drafting, reviewing, and revising pleadings
24 and a mediation brief; (3) preparing for and appearing at court proceedings; (4) undertaking
25 calculations of potential damages; (5) preparing for and attending mediation and settlement
26 negotiations; and (6) working with Defense Counsel to draft, update and finalize the Settlement
27 Agreement following mediation. In addition to determining the scope of the Aggrieved
28

²⁵ (*Id.* at ¶ 42; Exhibit 4.)

1 Employees, PAGA Counsel undertook the time-consuming task of locating and interviewing
2 Aggrieved Employees to verify if the PAGA claim raised individualized issues.²⁶

3 Thus, PAGA Counsel's accumulated skill and expertise contributed to the Settlement in
4 this case. Under California law, this factor (skills displayed and quality of work) also supports
5 the Attorney Fee Amount. (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p. 51.)

6 **C. The Lodestar Methodology Justifies Approval of the Requested Fees.**

7 PAGA Counsel spent 366 hours litigating this matter. PAGA Counsel's hourly rates are
8 supported by the 2021 Real Rate Report that was compiled by Wolter Kluwer that surveyed the
9 hourly rates charged in 2021 by hundreds of attorneys in California. Likewise, PAGA Counsel's
10 hourly rates are also in line with the Laffey Matrix.²⁷

11 **1. *PAGA Counsel Performed Work for a Reasonable Number of Hours.***

12 This matter required a significant amount of time and labor, and Defendant disputed the
13 PAGA claim and questioned its manageability. The Task & Time Chart evidence the numerous
14 tasks that were performed to seek all necessary information. Specifically, the Task & Time Chart
15 illustrates PAGA Counsel spent a reasonable number of hours working on this case, thereby
16 demonstrating the application for the attorneys' fees is within the range of reasonableness.²⁸

17 The case involved, among other things, gathering and analyzing data from Defendant and
18 the Aggrieved Employees. PAGA Counsel undertook intense preparation to resolve the entire
19 matter through mediation. These intense preparations ranged from locating and interviewing
20 several putative aggrieved employees, reviewing a myriad of documents, determining the scope
21 of the Aggrieved Employees, verifying the strengths of the PAGA claim, etc.

22 **2. *The Fees Requested Represent a Reasonable Hourly Rate of Compensation.***

23 PAGA Counsel's hourly rates are well within the range of rates charged by comparably
24 qualified attorneys in California and the legal profession in general for comparably complex

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26 ²⁶ (Han Decl., *supra*, at ¶ 14.)

27 ²⁷ (*Id.* at ¶¶ 42-44; Exhibits 5-6.)

28 ²⁸ (Han Decl., *supra*, at ¶ 42; Exhibit 4.)

work. By extension, PAGA Counsel's hourly rates are also in line with the Laffey Matrix.²⁹

PAGA Counsel's hourly rates are also reasonable for the following reasons: (1) comparable hourly rates for similar services have been deemed to be reasonable in several cases in California; and (2) several surveys of legal rates have supported PAGA Counsel's hourly rates. This shows PAGA Counsel's hourly rates used for the lodestar calculation are well within the range of non-contingent rates charged by comparable attorneys for similar work performed in California.

Based on the attorney time expended, the base lodestar fees calculation is \$235,940, resulting in a negative multiplier of 0.42 when cross-checked to the Attorney Fee Amount.³⁰

VII. THE LITIGATION COSTS TO BE REIMBURSED SHOULD BE APPROVED

The Settlement provides for Cost Amount not to exceed \$20,000. PAGA Counsel have incurred \$15,410.06 in litigation costs and expenses, which were reasonable and necessary. Thus, PAGA Counsel request the Court order reimbursement for these costs and expenses.³¹

VIII. APPROVAL OF THE ENHANCEMENT PAYMENT TO PLAINTIFF

The Settlement provides for an Enhancement Payment of \$10,000 to Plaintiff for his claimed services and contributions on behalf of the Aggrieved Employees. Per the Settlement, Defendant will not oppose Plaintiff's request for an Enhancement Payment but makes no other admissions or concessions with respect to such request.

Plaintiff spent a substantial amount of time and effort in locating and producing relevant documents and past employment records, reviewing relevant documents alongside PAGA Counsel, and providing the facts and evidence supporting his allegations. Plaintiff was available whenever PAGA Counsel needed him and actively tried to obtain and provide as much information as he could (*i.e.*, giving the names and contact information of putative aggrieved employees, speaking to current and former employees of Defendant). In addition, Plaintiff spent numerous hours speaking with PAGA Counsel about Defendant's alleged Labor Code violations,

²⁹ (*Id.* at ¶¶ 43-44; Exhibits 5-6.)

³⁰ (*Id.* at ¶¶ 43, 45.)

³¹ (Han Decl., *supra*, at ¶ 46; Exhibit 7.)

1 discussing his work experiences and work environment, helping PAGA Counsel develop a
2 strategy to obtain additional documents, aiding PAGA Counsel to determine the importance of
3 the documents produced, and reviewing the operative complaint and Settlement. Plaintiff made
4 himself available all day to participate in and assist with mediation.³²

5 Plaintiff was advised of and accepted the risks and sacrifices associated with serving as
6 the named plaintiff (*i.e.*, risking a judgment entered against him for attorneys' fees and costs,
7 agreeing to a broad release). Plaintiff is also not related to anyone associated with PAGA Counsel,
8 has not entered any undisclosed agreement, and has not received undisclosed compensation.
9 Moreover, Plaintiff is not now, nor has he ever been, a named plaintiff in any other representative
10 PAGA action, pending or closed. This is further proof Plaintiff's interests are not averse to the
11 Aggrieved Employees. Thus, Plaintiff elected to serve as the named plaintiff to his own detriment
12 and should be properly compensated.³³

13 **IX. THE ADMINISTRATION COSTS SHOULD BE APPROVED**

14 The Agreement provides for the payment of Administration Costs of up to \$5,000 to the
15 Settlement Administrator. The Administration Costs are intended to cover the costs incurred by
16 the Settlement Administrator for performing its duties outlined in the Agreement. PAGA Counsel
17 has worked with the desired Settlement Administrator in the past and are familiar with its superior
18 reputation and work product. Thus, the Court should approve the payment of the Administration
19 Costs to the Settlement Administrator.

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26 ³² (Han Decl., *supra*, at ¶ 49; Declaration of Marvin King In Support of Plaintiff's Motion
27 for Approval of Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement
28 Agreement ("King Decl."), ¶¶ 6-10.)

³³ (Han Decl., *supra*, at ¶ 49; King Decl., *supra*, at ¶¶ 11-16.)

1 **X. CONCLUSION**

2 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise.
3 Based thereon, Plaintiff requests the Court approve the Settlement, including the plan of
4 allocation and distribution of the Gross Settlement Amount, Attorney Fee Amount, Cost
5 Amounts, Administration Costs, and Enhancement Payment.
6

7 Dated: January 6, 2023

JUSTICE LAW CORPORATION

8
9 By: 
10 Douglas Han
11 *Attorneys for Plaintiff*
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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is aokada@justicelawcorp.com

On January 6, 2023, I served the foregoing document described as

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

for the following case: **King v. Irwin International, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-811355-20**
Court Case No.: CVRI2100045
Riverside County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 6, 2023, at Pasadena, California.



Anna Okada