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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

TERRAL BROWN, individually, and on
behalf of other aggrieved employees
pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

BALFOUR BEATTY
INFRASTRUCTURE, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 21CV376175

Honorable Theodore C. Zayner
Department 19

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

[Declaration of Plaintiff's Counsel
(Edwin Aiwazian); Declaration of Plaintiff
(Terral Brown); and [Proposed] Order and
Judgment filed concurrently herewith]

Date: March 29, 2023
Time: 1:30 p.m.
Department: 19

Complaint Filed: February 17, 2021
Trial Date: None Set

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

1 **PLEASE TAKE NOTICE** that on March 29, 2023 at 1:30 p.m. or as soon thereafter as
2 the matter may be heard before the Honorable Theodore C. Zayner in Department 19 of the
3 Superior Court of the State of California, for the County of Santa Clara, located at 191 North
4 First Street, San Jose, California 95113, Plaintiff Terral Brown (“Plaintiff”) will and hereby does
5 move for entry of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the
7 settlement between Plaintiff and Defendant Balfour Beatty Infrastructure, Inc.
8 (“Defendant”) of the claim 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 Release (“Settlement,” “Agreement,” or “Settlement Agreement”),
11 attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwazian, including and not
12 limited to, the plan of allocation and distribution of the Total Settlement Amount for
13 payment of the LWDA Payment to the California Labor and Workforce Development
14 Agency (“LWDA”), Individual Settlement Shares to the Aggrieved Employees,
15 Attorneys’ Fees and Costs to Plaintiff’s Counsel, Settlement Administration Costs to
16 the PAGA Settlement Administrator, and General Release Fee to Plaintiff;
- 17 2. Approving the Net Settlement Amount, estimated to be no less than \$260,588.97
18 which will be distributed to the LWDA and the Aggrieved Employees, pursuant to
19 California Labor Code section 2699(i), of which seventy-five percent (75%) will be
20 paid to the LWDA (“LWDA Payment”) and twenty-five percent (25%) will be paid
21 to the Aggrieved Employees (“Employees’ Portion”);
- 22 3. Appointing Simpluris, Inc. (“PAGA Settlement Administrator”) as the PAGA
23 Settlement Administrator;
- 24 4. Directing Defendant to transmit the Total Settlement Amount of \$475,000.00 into a
25 qualified settlement account established by the PAGA Settlement Administrator for
26 administration of the Settlement, and directing the PAGA Settlement Administrator
27 to distribute the Total Settlement Amount in accordance with the Settlement
28 Agreement;

5. Directing the mailing of Individual Settlement Share checks to the Aggrieved Employees along with the Cover Letter, which is substantially similar in content and form to that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys’ Fees and Costs, General Release Fee, and Settlement Administration Costs (“[Proposed] Order and Judgement”) filed concurrently herewith;
6. Awarding \$7,500.00 to Plaintiff Terral Brown as a General Release Fee;
7. Awarding up to \$6,000.00 to the PAGA Settlement Administrator as Settlement Administration Costs; and
8. Awarding to Plaintiff’s Counsel, Lawyers *for* Justice, PC, \$190,000.00 as compensation for reasonable attorneys’ fees and \$10,911.03 for reimbursement of litigation costs and expenses (“Attorneys’ Fees and Costs”), pursuant to California Labor Code section 2699(g)(1).

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

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

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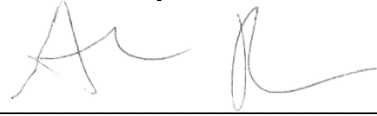
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1 This motion will be based upon the following Memorandum of Points and Authorities,
2 the Settlement Agreement, the Declarations of Plaintiff's Counsel (Edwin Aiwazian) and
3 Plaintiff (Terral Brown) in support thereof, as well as the pleadings and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

6 Dated: March 7, 2023

LAWYERS for JUSTICE, PC

7
8 By:



Alexandra Rose
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Terral Brown (“Plaintiff”) seeks approval of the Private Attorneys General Act Settlement Agreement and 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 Balfour Beatty Infrastructure, Inc. (“Defendant”), pursuant to California Labor Code section 2699(1)(2).¹

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 Total Settlement Amount of \$475,000.00.²

The Total Settlement Amount is inclusive of: (1) 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 PAGA Settlement Administrator, and (4) Net Settlement Amount to be paid to the California Labor and Workforce Development Agency (“LWDA”) and all current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California on the Caltrain project during the PAGA Period (“Aggrieved Employees”).³

The Net Settlement Amount will be the Total Settlement Amount less the Court-approved Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee, and is currently estimated to be no less than \$260,588.97.⁴ The Net Settlement Amount will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and

¹ The Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement”) is attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwasian.

² Settlement Agreement, § 3(a). If the actual number of Compensable Pay Periods during the period December 14, 2019 to April 18, 2022 is more than ten percent (10%) above 20,931, then either the Total Settlement Amount will be increased by the same proportion above one hundred ten percent (110%) or Defendant, at its sole discretion, may elect to cut off the PAGA Period as of the date the total Compensable Pay Periods worked by Aggrieved Employees exceeds ten percent (10%) of the 20,931 estimate. *See id.*, § 3(b).

³ *Id.*, §§ 3(a)(1)-(5). “PAGA Period” is defined as the period November 12, 2019, to May 31, 2022. *Id.*, § 3(a)(5).

⁴ *Id.*, § 3(a)(4).

1 twenty-five percent (25%) to the Aggrieved Employees (“Employees’ Portion”).⁵ Each
2 Aggrieved Employee will be entitled to payment of his or her *pro rata* share of the Employees’
3 Portion, based on the number of pay periods they each worked during the PAGA Period
4 (“Compensable Pay Periods”).⁶

5 The payments to Aggrieved Employees will be treated and reported for tax purposes as
6 one hundred percent (100%) penalties and the PAGA Settlement Administrator will be
7 responsible for issuing IRS Forms 1099 as required.⁷

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

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

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27 ⁵ Settlement Agreement., § 3(a)(5).

28 ⁶ *Id.*, § 7(a).

⁷ *Id.*, § 7(a)(1).

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant is an industry-leading provider in the United States of general contracting, at-risk construction management, and design-build services for public and private sectors across the nation. The Caltrain project involves Defendant electrifying and upgrading the performance, operating efficiency, capacity, safety, sustainability, and reliability of Caltrain's commuter rail services through San Francisco, San Mateo, and Santa Clara Counties, as well as seventeen (17) cities along the corridor. Plaintiff Terral Brown is a former employee of Defendant who worked on the Caltrain project.

Prior to commencing this lawsuit, on December 14, 2020, as required by California Labor Code section 2699.3, Plaintiff Terral Brown provided the LWDA and Defendant with written notice of his intent to assert claims under PAGA and the basis for those claims ("PAGA Notice"), to which the LWDA did not respond.⁸ A true and correct copy of Plaintiff's December 14, 2020 PAGA Notice is attached to the Declaration of Edwin Aiwazian as "EXHIBIT 2."

On February 17, 2021, Plaintiff Terral Brown filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint") against Defendant in the Santa Clara County Superior Court ("Court"), Case No. 21CV376175 (the "Action"). Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and other aggrieved employees, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide compliant meal and rest periods and associated premiums, failing to pay timely wages during employment and upon termination of employment, failing to provide complete and accurate itemized wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

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

⁸ Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 10.

On April 20, 2022, the Parties participated in a full-day mediation conducted by Steven J. Serratore, Esq., a well-respected mediator experienced in mediating complex labor and employment matters, and with the aid of the mediator's evaluation, the Parties ultimately reached the Settlement to resolve the Action in its entirety.

Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(1)(2). The Settlement Agreement and moving and supporting papers for this motion are being submitted to the LWDA in conformity with California Labor Code section 2699(1)(2), concurrently with this filing.⁹

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Aggrieved Employees who are covered by the Settlement are:

All current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California on the Caltrain project during the PAGA Period.¹⁰

Based on information provided by Defendant, there are approximately six hundred thirty-three (633) Aggrieved Employees.¹¹

B. Distribution of the Total Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Amount of \$475,000.00.¹² The Net Settlement Amount will be the Total Settlement Amount less the following amounts: (1) Attorneys' Fees and Costs consisting of attorneys' fees of \$190,000.00 and reimbursement of litigation costs and expenses of \$10,911.03 to Plaintiff's Counsel; (2) General Release Fee of \$7,500.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$6,000.00 to Simpluris, Inc. ("Simpluris" or "PAGA Settlement Administrator").¹³ The Net Settlement Amount will be fully distributed to the Aggrieved

⁹ The Court is referred to the concurrently filed Proof of Service, which confirms submission of the papers to the LWDA.

¹⁰ Settlement Agreement, § 3(a)(5).

¹¹ Settlement Agreement, § 3(c), and Aiwazian Decl., ¶ 9.

¹² Settlement Agreement, § 3(a), and Aiwazian Decl., ¶ 11. See n. 2.

¹³ Aiwazian Decl., ¶ 11.

Employees and the LWDA, as described in Part III.C, *infra*.

C. Distribution of the Net Settlement Amount

Within thirty (30) calendar days of the Effective Date, Defendant will transmit the Total Settlement Amount to a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement.¹⁴ No later than thirty (30) calendar days after the Effective Date, Defendant will provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (“Aggrieved Employees List”), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) Social Security number; (vi) and the number of Compensable Pay Periods.¹⁵

Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$195,441.73) will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount (or approximately \$65,147.24) (i.e., Employees’ Portion) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods.¹⁶ To calculate each Aggrieved Employee’s share of the Employees’ Portion (“Individual Settlement Share”), the PAGA Settlement Administrator shall: (1) for each Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees’ Portion to arrive at each Aggrieved Employee’s Individual Settlement Share.¹⁷ The payments to Aggrieved Employees for their Individual Settlement Shares are considered one hundred percent (100%) penalties to be reported on IRS Form 1099, if required.¹⁸

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¹⁴ Settlement Agreement, § 5(a). The “Effective Date” is defined as the soonest court day after all of the following has occurred: (i) the Settlement Agreement is fully executed by all Parties and their counsel; (ii) Plaintiff has provided notice of the Settlement Agreement to the LWDA; (iii) the Court has entered an order approving the Settlement Agreement; and (iv) Plaintiff has provided notice of the Court’s approval to the LWDA; and (v) only if any objection has been made to Settlement approval, any time for which an appeal could be made to the Court’s approval of the Settlement has passed. *Ibid*.

¹⁵ *Id.*, § 7(b)(1).

¹⁶ *Id.*, § 3(a)(5).

¹⁷ *Id.*, § 7(a).

¹⁸ *Id.*, § 7(a)(1).

No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the “PAGA Settlement Package”) to all Aggrieved Employees by first-class United States mail.¹⁹ For each PAGA Settlement Package that is returned as undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.²⁰

The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for ninety (90) calendar days, and thereafter, shall be cancelled.²¹ Funds associated with cancelled checks shall be transmitted to the State Controller’s Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual Settlement Share(s).²²

D. The Scope of the Release in the Settlement Agreement

Upon the date the Court has entered an order approving the Settlement Agreement and the full funding of the Total Settlement Amount, Plaintiff and Aggrieved Employees, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns, and the State of California with respect to Aggrieved Employees, will be deemed to have knowingly and voluntarily released and forever discharged the Released Parties the Released Claims.²³

The “Released Claims” are any and all claims arising during the PAGA Period for civil penalties under California Labor Code section 2698, et seq. (“PAGA”) as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint and PAGA Notice, including but not limited to, for failure to pay minimum, regular, and overtime, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure

¹⁹ Settlement Agreement, § 7(b)(3).

²⁰ *Ibid.*

²¹ *Id.*, § 7(b)(4).

²² *Ibid.*

²³ *Id.*, § 8(a).

to timely pay wages upon termination, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, failure to reimburse necessary business-related expenses and costs, and for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia* Wage Orders 4-2001 and 16-2001.²⁴

The “Released Parties” are Defendant, Defendant’s parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors, and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs.²⁵

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.)

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²⁴ Settlement Agreement, § 8(a).

²⁵ *Ibid.*

1 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
2 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v.*
3 *Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29
4 Cal, 3d 462, 474.) A “judgment in such an action is binding not only on the named employee
5 plaintiff but also on government agencies and any aggrieved employee not a party to the
6 proceeding” because “the employee plaintiff represents the same legal right and interest as state
7 labor law enforcement agencies[.]” “collateral estoppel applies [...] against those for whom the
8 party acted as an agent or proxy[.]” and “[w]hen a government agency is authorized to bring an
9 action on behalf of an individual or in the public interest, and a private person lacks an
10 independent right to bring the action, a person who is not a party but who is represented by the
11 agency is bound by the judgment as though the person were a party.” *Arias, supra*, at 985-86
12 (citations omitted); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476
13 (aggrieved employee cannot opt out of a PAGA settlement).

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

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

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

23 The settlement of a PAGA action requires court approval. See Cal. Lab. Code §
24 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed
25 pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis
26 . . . is not considered a class action but a law enforcement action” and therefore does not have
27 to meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26,
28

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, supra*, 46 Cal.4th at 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, and simpler than, the process for 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, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims.²⁶ See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, 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.

In a PAGA case, the court’s focus is not the monetary amount which aggrieved employees or the State stand to receive, but instead, whether the total settlement amount achieves the PAGA’s objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those

²⁶ Aiwazian Decl., ¶ 7.

purposes.” See Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by way of a PAGA claim, is essentially a law enforcement action. See *Amalgamated*, *supra*, 46 Cal.4th at 1003 (stating that the PAGA is a mechanism for “an aggrieved employee to recover civil penalties—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 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, Steven J. Serratore, Esq.²⁷ 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

²⁷ Aiwazian Decl., ¶ 13.

of the PAGA claims, and the risks associated of litigating these claims through trial.²⁸

After engaging in significant investigations, informal discovery, and the exchange of information, the Parties participated in settlement negotiations to try to resolve the lawsuit.²⁹ These efforts included participating in formal mediation conducted by Steven J. Serratore, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁰ In the course of mediation and settlement negotiations, the Parties discussed all aspects of the case, including the risks and delays of further litigation and proceeding with trial, as well as the law relating to representative PAGA actions, off-the-clock theory, wage-and-hour enforcement, arbitration agreements, collective bargaining agreements, pre-emption, and exemption, the evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other things.³¹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³²

Based on all of the information available to the Parties and with the assistance of the experienced mediator, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim.³³ Plaintiff and Plaintiff's Counsel believe that the settlement is a fair, adequate, and reasonable resolution of this matter.³⁴ Plaintiff's Counsel has extensive experience handling representative and class action wage-and-hour litigation and used that experience to achieve a great result for Plaintiff, the State of California, and the Aggrieved Employees.³⁵ Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622

²⁸ Aiwazian Decl., ¶¶ 13-15.

²⁹ *Id.*, ¶ 13.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Id.*, ¶ 27.

³⁴ *Ibid.*

³⁵ *Id.*, ¶¶ 4-7.

(recommendations of plaintiffs' counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

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

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

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

Although wage-and-hour actions are amenable to resolution as to a group of employees,³⁶ some courts have also found that, for various reasons, the issues raised by Plaintiff raise

³⁶ 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 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of resolving wage-and-hour claims, including misclassification and overtime, recognizing that "statistical sampling may provide assistance in identifying the realistic demands of the job and illuminating whether the typical employee was able to meet those expectations" and that "[b]y refocusing its analysis on the policies and practices of the employer and the effect those policies and practices have on the [employees] . . . the trial court may in fact find class analysis a more efficient and effective means of resolving plaintiffs' overtime claim"); *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 330-31 (Court successfully managed and adjudicated wage-and-hour claims made on behalf of a group of employees, utilizing, among other things, statistics and surveying.); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033 ("Claims alleging that a uniform policy consistently applied to a

(Footnote continued)

individualized issues and/or are unmanageable and thus not suitable for adjudication as to a group of employees.³⁷

Defendant contended that courts have required, and that due process requires, that the adjudication of PAGA claims meets a “manageability” requirement. *See, e.g., Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 756 (“[C]ourts have inherent authority to ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike claims that cannot be rendered manageable”)³⁸; *but cf. Estrada v. Royalty Carpet Mills,*

group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment [...] The theory of liability – that [the employer] has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law - is by its nature a common question eminently suited for class treatment.”); *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (finding that real parties demonstrated that the existence of the practice and the fact of damage were matters suitable for determination on behalf of a group of employees and that, “[r]eal parties’ evidence supports the reasonable inference that [...] they could establish that petitioners engaged in the alleged practice, that is, they never paid meal break premium wages, even though a significant number of employees accrued them. Furthermore, in view of real parties’ theory of restitution, those facts would also suffice to demonstrate the fact of damage. Under that theory, the fact of damage does not require a showing that all -- or virtually all -- class members accrued unpaid meal break premium wages, but only that on a system-wide basis, petitioners denied the class members the benefits of the compensation guarantee and enhanced enforcement implemented by section 226.7.”); *Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036 (holding that statistical evidence is admissible to support class action certification because it is also admissible to prove liability and damages across a group of employees, where the defendant employer had not kept records of time spent by employees with respect to donning and doffing protective clothing).

³⁷ *See, e.g., Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35 (stating that even where it has been alleged “that the employer consistently imposed a uniform policy or de facto practice” as to its employees, “the party must still demonstrate that the illegal effects of this conduct can be proven efficiently and manageably” and in litigating representative actions the procedures utilized by the court “may not be used to abridge a party’s substantive rights,” including “abridge[ing the defendant’s] presentation of [a defense] simply because that defense was cumbersome to litigate,” because of “principles of due process”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1018 (stating that employers must authorize, permit, or “relieve the employee of all duty for [a] designated meal [or rest] period,” and “relinquish [full] control over [the employee’s] activities” and “afford” employees an “opportunity to take an *uninterrupted* thirty-minute break,” but are not obligated to affirmatively ensure that no work related tasks are performed during such periods).

³⁸ In *Wesson*, the appellate court determined that trial courts may dismiss PAGA actions if they are unmanageable. The employer moved to strike the PAGA claim, arguing that the misclassification allegations were “highly fact dependent” and would require individualized inquiries to evaluate the company’s affirmative defenses, and that the number of employees and the nature of the allegations made the PAGA action “unmanageable,” which would violate Staples’ due process rights. *Wesson*, 68 Cal.App.5th 746, 755-756 and 772-773. The trial court invited the plaintiff to submit a trial plan showing that his PAGA action would be manageable at trial, but the plaintiff insisted the trial court lacked authority to require that his claim was manageable. *Id.* at 755-756. Following this response, the trial court concluded that the PAGA claim could not be managed at trial and granted the employer’s motion to strike the PAGA claim. *Ibid.* The appellate court affirmed, holding that trial “courts have inherent authority to ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike claims that cannot be rendered manageable;” “as a matter of due process, defendants are entitled to a fair opportunity to litigate available affirmative defenses, and a court’s manageability assessment should account for them;” and “given the state of the record and [plaintiff’s] lack of cooperation with the trial court’s manageability inquiry, the court did not abuse its

(Footnote continued)

Inc. (2022) 76 Cal.App.5th 685³⁹, 712, *review granted* (June 22, 2022) (“Imposing a manageability requirement would create an extra hurdle in PAGA cases that does not apply to LWDA enforcement actions.”); *Litty 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).

Defendant also maintained several defenses to Plaintiff’s theory of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time

discretion in striking his PAGA claim as unmanageable.” *Id.* at 755-756 and 764-766. The appellate court noted that because PAGA claims lack the basic requirements that control class actions, such as a well-defined community of interest and a showing that common questions predominate over individual ones, PAGA claims “may well present more significant manageability concerns than those involved in class actions.” *Id.* at 766. In other words, the appellate court noted, because PAGA actions may include “disparate groups of employees and involve different kinds of violations raising distinct questions,” there is a heightened need to consider manageability and that “a need for individualized proof pertaining to a very large number of employees will raise manageability concerns.” *Ibid.*

³⁹ In *Estrada*, the plaintiffs alleged representative claims under PAGA and class claims primarily based on purported meal and rest period violations. The trial court initially certified two classes and denied the employer’s pre-trial motion to decertify the class, due to the employer’s failure to show changed circumstances warranting decertification. *Estrada*, 76 Cal.App.5th 685, 700. However, following the presentation of evidence at trial, the trial court decertified one of the classes (and in relevant part, this also involved dismissing the PAGA meal period claims of this class, due to their being “unmanageable”), and entered judgment. *Id.* at 701-702. Both sides appealed. The Fourth District Court of Appeal determined, in relevant part, that the trial court erred in dismissing the PAGA claims as unmanageable, and in doing so, specifically acknowledged that it was reaching “the opposite conclusion” to that reached in *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746 (where it was concluded that courts have inherent authority to strike unmanageable PAGA claims). *Id.* at 697. The appellate court relied on *Arias v. Superior Court* (2009) 46 Cal.4th 969 and *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, to find that a court cannot strike a PAGA claim based on manageability, because:

“[t]hese cases have made clear that PAGA claims are unlike conventional civil suits and, in particular, are not class actions. Allowing dismissal of unmanageable PAGA claims would effectively graft a class action requirement onto PAGA claims, undermining a core principle of these authorities. It would also interfere with PAGA’s purpose as a law enforcement mechanism by placing an extra hurdle on PAGA plaintiffs that is not placed on the state. That said, courts are not powerless when facing unwieldy PAGA claims. Courts may still, where appropriate and within reason, limit the amount of evidence PAGA plaintiffs may introduce at trial to prove alleged violations to other unrepresented employees. If plaintiffs are unable to show widespread violations in an efficient and reasonable manner, that will just reduce the amount of penalties awarded rather than lead to dismissal.” *Id.* at 697.

For this and other reasons, the appellate court reversed the trial court’s order decertifying the class and dismissing the related PAGA claim as unmanageable. However, the appellate court also acknowledged that “[s]ome PAGA claims involve hundreds or thousands of alleged aggrieved employees, each with unique factual circumstances” and to address this, where appropriate and within reason, trial courts may “limit witness testimony and other forms of evidence when determining the number of violations that occurred and the amount of penalties to assess[.]” and plaintiffs’ counsel should “work with the trial courts during trial planning to define a workable group or groups of aggrieved employees for which violations can be more easily shown[.]” *Id.* at 712-713. Otherwise, the appellate court noted, a PAGA plaintiff seeking to try their claim “risk[s] being awarded a paltry sum of penalties, if any,” due to problems of proof. *Id.* at 713. The appellate court’s comments regarding the practical limitations of actually trying a PAGA lawsuit are being used by employers to argue that PAGA lawsuits are unmanageable or that the scope of such lawsuits should be narrowed for purposes of trial.

1 period at issue.⁴⁰ Defendant denies that it ever violated any provision of the California Labor
2 Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the
3 PAGA.⁴¹ Defendant further denied, and continues to deny, that the lawsuit is appropriate for
4 representative treatment for any purpose other than settlement.⁴²

5 Defendant also challenged Plaintiff's standing as an aggrieved employee and denied that
6 any of Defendant's other employees whom Plaintiff seeks to represent are aggrieved.⁴³ Also, at
7 the time that this case commenced, multiple courts had taken an approach requiring a plaintiff
8 to establish standing and face the possibility of bifurcation of discovery and/or trial of the PAGA
9 claim. See *Amalgamated Transit Union, supra*, 46 Cal.4th at 1001 (noting that PAGA
10 "require[s] a plaintiff to have suffered an injury resulting from an unlawful action"); *Stafford v.*
11 *Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding that judicial
12 economy supported bifurcation because of the difficulties and inherent uncertainties of being
13 able to establish liability with respect to a large number of potentially aggrieved employees and
14 noted that "PAGA's public purpose would be ill-served if the court finds [the plaintiff] has not
15 been aggrieved by a Labor Code violation"); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955
16 (stating that bifurcation and sequencing of litigation is allowed to avoid wasting time and money
17 on trial when litigation of issues could be rendered moot).

18 Defendant also argued that an important feature of PAGA is that the Court retains
19 discretion to lower the penalties if, based on the facts and circumstances of the particular case,
20 to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or
21 confiscatory." See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit*
22 *Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the
23 amount of PAGA penalties awarded to an employee based upon discretionary factors).
24 Defendant maintained, and continues to maintain, that it had and continues to have, legally-

26 ⁴⁰ Aiwazian Decl., ¶ 17.

27 ⁴¹ *Ibid.*

28 ⁴² *Ibid.*

⁴³ *Id.*, ¶ 18.

compliant employment policies and practices throughout the time period at issue.⁴⁴ Defendant denies that it ever violated any provision of the California Labor Code.⁴⁵ Even if, *arguendo*, such violations occurred, which Defendant denies, Defendant contended that said violations would only be considered “initial violations” and thus heightened “subsequent violation” penalties were not warranted. *See* Cal. Lab. Code § 2699(f)(2); *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 (“Until the employer has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”).

Defendant 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, Defendant contended that cumulative penalties and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.

There is also uncertainty regarding PAGA claims due to the United States Supreme Court’s decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940. As a result of that decision, it may be more likely that employer agreements containing arbitration terms will impact the viability of adjudication of PAGA claims in the judicial forum, which is relevant to this matter in light of Defendant’s collective bargaining agreements (which included arbitration provisions) that the claims of the Aggrieved Employees are subject to. *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940.⁴⁶

⁴⁴ Aiwazian Decl., ¶ 17.

⁴⁵ *Ibid.*

⁴⁶ *Id.*, ¶ 18. In *Viking River Cruises*, the U.S. Supreme Court determined that PAGA claims can be split into individual claims based on California Labor Code violations suffered by the plaintiff (that can then be subject to arbitration) and non-individual claims (that are representative in nature) and that the “indivisibility rule” recognized by the California Supreme Court in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348 is preempted by the Federal Arbitration Act (FAA) to the extent it circumscribes the freedom of parties to agree to such

(Footnote continued)

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

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

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

In the course of litigation and in connection with mediation and settlement negotiations, the Parties investigated the veracity, strength, and scope of the PAGA claim and allegations.⁴⁸ In addition, the Parties exchanged a large volume of pages of information, documents, and data relevant to Plaintiff's claims and Defendant's defenses thereto, including, and not limited to, employment records of Plaintiff, a detailed sampling of aggrieved employees' time data and records, aggrieved employees' pay data and records, Defendant's Collective Bargaining Agreements, orientation checklist, and various forms and agreements (including, but not limited to, Defendant's New Hire/Rehire Form, Termination Form, and Confidentiality Agreement), among other documents.⁴⁹ Counsel for the Parties undertook significant investigation and evaluation of Plaintiff's claim and allegations, including, and not limited to, calculating the

contractual division or splitting of PAGA actions. *Viking River Cruises, Inc.*, 1923-1925. The U.S. Supreme Court also determined that, important structural differences between PAGA actions and class actions preclude any straightforward application of U.S. Supreme Court precedents invalidating prohibitions on class-action waivers, to *Iskanian*'s ban on wholesale PAGA representative action waivers, and thus this aspect of *Iskanian* is not preempted by the FAA. *Id.* at 1919, 1922-1925. The U.S. Supreme Court also expressed its understanding of California state law, and the impact of its ruling on, PAGA's standing requirement, regarding which California courts will have the last word, as noted by a concurring opinion. *Id.* at 1925-1926 (concurring opinion). Taken together, the substantive statutory right to pursue a PAGA claim has not been eviscerated and has been preserved, however, arbitration agreements may be used to select the forum and procedure to be used to resolve PAGA claims to some extent, and the California courts and legislature have yet to weigh in on and articulate where California law stands.

⁴⁷ Aiwazian Decl., ¶ 19.

⁴⁸ *Id.*, ¶ 14.

⁴⁹ *Id.*, ¶¶ 13 & 14.

1 potential monetary recovery under PAGA.⁵⁰ Other work performed by Plaintiff's Counsel
2 included, but was not limited to: meeting and conferring with Defendant's counsel regarding the
3 pleadings, case management, the mediation, and settlement, among other issues; case strategy
4 and analysis; drafting, reviewing, and revising the pleadings, court filings, the mediation brief,
5 settlement agreement, and settlement approval motion papers; and preparing for and appearing
6 for court proceedings and mediation and settlement negotiations.

7 Had the case not settled, the Parties would have conducted extensive discovery,
8 including propounding written discovery requests as well as multiple depositions of party and
9 percipient witnesses all over the State of California, to prepare the case for trial. From the
10 inception of this litigation, Defendant indicated that it would aggressively litigate this case.⁵¹
11 Even if Defendant failed on its defenses, litigating a complex PAGA action is inherently
12 expensive, and the litigation could continue beyond entry of judgment if either party were to
13 appeal adverse rulings.⁵² Additionally, there is a real possibility that Plaintiff would recover
14 nothing, either for himself or on behalf of the State of California or other Aggrieved Employees
15 after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of
16 future contentious litigation, 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)
20 688 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 Aggrieved
23 Employees and falls well-within the range of acceptable settlements under the circumstances.
24 Under the Agreement, Defendant has agreed to pay a Total Settlement Amount of \$475,000.00,
25 which encompasses the Net Settlement Amount, Attorneys’ Fees and Costs, Settlement
26

27 ⁵⁰ Aiwazian Decl., ¶¶ 13 & 14.

⁵¹ *Id.*, ¶ 17.

28 ⁵² *Id.*, ¶¶ 12, 13, 16 & 19.

Administration Costs, and General Release Fee.⁵³ Subject to approval by the Court, the following amounts will be subtracted from the Total Settlement Amount to yield the Net Settlement Amount: (1) Attorneys' Fees and Costs consisting of attorneys' fees in the amount of \$190,000.00 and reimbursement of litigation costs and expenses in the amount of \$10,911.03 to Plaintiff's Counsel⁵⁴; (2) the Settlement Administration Costs of up to \$6,000.00; and (3) General Release Fee of up to \$7,500.00 to Plaintiff.⁵⁵

The Net Settlement Amount is currently estimated to be \$260,588.97, of which an estimated \$65,147.24 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods and \$195,441.73 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

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

⁵³ Settlement Agreement, §§ 3(a)(1)-(4).

⁵⁴ Settlement Agreement, § 3(a)(1). Although the Settlement Agreement provides that Plaintiff's Counsel can seek up to \$19,000.00 for reimbursement of litigation costs and expenses, Plaintiff's Counsel only seeks the amount of \$10,911.03 for this payment, which is less than \$19,000. The difference between the amount sought and the maximum allocated amount available under the settlement (i.e., the difference of \$8,088.97), will be a part of the Net Settlement Amount.

⁵⁵ *Id.*, §§ 3(a)(2)-(3).

⁵⁶ Aiwazian Decl., ¶¶ 12, 16 & 19.

⁵⁷ *Ibid.*

⁵⁸ *Id.*, ¶¶ 15 & 16.

⁵⁹ *Id.*, ¶ 12.

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

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

⁶² *Id.*, ¶ 27.

have acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]” *Williams, supra*, 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

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

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

The Settlement provides for a Total Settlement Amount of \$475,000.00.⁶³ The Settlement provides for attorneys’ fees in an amount of forty percent (40%) of the Total Settlement Amount, which is \$190,000.00, subject to approval and award by the Court.⁶⁴ The requested attorneys’ fees award is commensurate with: (1) the risk that Plaintiff’s Counsel took in bringing and litigating 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 time and effort to this case.

Plaintiff’s Counsel is entitled to recover reasonable attorneys’ fees and costs as a matter of right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) (“Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney’s fees and costs”). Plaintiff’s Counsel is also entitled to fees and costs under California Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition “for the benefit” of others and secures monetary recovery for a large number of Aggrieved Employees, as well as the State of California. *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App4th 1, 16-17 (recognizing that recovery obtained on behalf of six hundred thirty-three (633) 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

⁶³ Settlement Agreement, § 3(a).

⁶⁴ *Id.*, § 3(a)(1).

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

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

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

17 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
18 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
19 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; see also *Laffitte, supra*, 1 Cal.5th 480 at 506
20 (holding that “trial court did not abuse its discretion in using [the percentage of fund method],
21 in part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is
22 the best judge of the value of professional services rendered in his court.” *Ketchum v. Moses*
23 (2001) 24 Cal.4th 1122, 1132.

24 The percentage method is particularly appropriate where a monetary settlement has been
25 recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset Prods.*
26 *Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a “certain
27 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
28

percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.

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

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

1 contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee
2 was appropriate).

3 Plaintiff's Counsel has litigated this case since it was commenced, with the very real
4 possibility of an unsuccessful outcome and no fee recovery of any kind.⁶⁵ Counsel for the Parties
5 undertook significant investigation, and also invested time reviewing and analyzing relevant
6 information, documents, and data to evaluate the claims, including, and not limited to,
7 calculating the potential monetary recovery under PAGA.⁶⁶ Other work performed by Plaintiff's
8 Counsel included, but was not limited to: meeting and conferring with Defendant's counsel
9 regarding the mediation and settlement, among other issues; case strategy and analysis; drafting,
10 reviewing, and revising the mediation brief; and preparing for and attending mediation and
11 settlement negotiations.⁶⁷

12 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation and
13 will not receive any compensation until recovery is obtained.⁶⁸ Plaintiff's Counsel is
14 experienced in complex wage-and-hour litigation and used that experience to obtain a great
15 result for Plaintiff, the Aggrieved Employees and the State of California.⁶⁹ Considering the
16 amount of fees requested, work performed, risks incurred, results obtained, and experience of
17 Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys'
18 fees are reasonable and should be awarded.

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

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

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26 ⁶⁵ Aiwazian Decl., ¶ 16.

27 ⁶⁶ *Id.*, ¶ 14.

28 ⁶⁷ *Ibid.*

⁶⁸ *Id.*, ¶ 25.

⁶⁹ *Id.*, ¶¶ 4-7.

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

It should be highlighted that the percentage award sought is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel's representation and the risks taken in commencing the Action, the skill and determination required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that Plaintiff's Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California. For the reasons discussed herein, an award of attorneys' fees in the amount of forty percent (40%) of the Total Settlement Amount is reasonable.

1. Time & Labor

Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁷⁰ During the litigation of the Action, Plaintiff's Counsel interviewed and obtained information from Plaintiff, conducted legal research, reviewed and analyzed a large amount of documents and data, prepared for and attended mediation, evaluated the PAGA claim, and calculated the potential monetary recovery under PAGA.⁷¹ Plaintiff's Counsel also met and conferred with Defendant's counsel over issues relating to the mediation and settlement.⁷² Plaintiff's Counsel performed other work including, *inter alia*, case strategy and analysis; and

⁷⁰ Aiwazian Decl., ¶ 14.

⁷¹ *Ibid.*

⁷² *Ibid.*

engaging in extensive settlement negotiations.⁷³

Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary to prosecute the case with maximum efficiency and has fully and actively participated in the litigation process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT 3**" to the accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Plaintiff's Counsel has spent performing tasks in this matter. Attorneys at Lawyers *for* Justice, PC have spent **291.80 hours** to obtain a recovery on behalf of Plaintiff, the Aggrieved Employees, and the State of California. These hours were required to bring the case to its successful conclusion.

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

2. The Skill Required to Perform Legal Services Properly

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

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

⁷³ Aiwarzian Decl., ¶ 14.

time.⁷⁴

3. *The Value of the Settlement*

The Settlement represents an excellent resolution of this lawsuit, given the uncertainty and risks of further litigation.⁷⁵ Had the case not settled, Defendant would have vigorously challenged manageability and liability, and sought a reduction in the amount assessed as penalties. Defendant, however, faced risks too, including and not limited to, the risk of having the Court assess penalties. Additionally, preparing the case for trial would have been extraordinarily expensive for the Parties.

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

4. *Whether the Fee Is Fixed or Contingent*

The representation provided by Plaintiff's Counsel has been wholly contingent and Plaintiff's Counsel took on this matter without knowing whether any recovery would be obtained. Plaintiff's Counsel has invested **291.80 hours** of time to obtain relief on behalf of Plaintiff, the Aggrieved Employees, and the State of California. Plaintiff's Counsel is also requesting reimbursement of litigation costs and expenses in the amount of \$10,911.03.⁷⁶

In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁷ If Plaintiff's Counsel had not been successful, the time that they have devoted to litigating the case would have been for naught and

⁷⁴ Aiwasian Decl., ¶¶ 16-19.

⁷⁵ Aiwasian Decl., ¶¶ 15, 16, 19, & 27.

⁷⁶ *Id.*, ¶ 25 and Exh. 3.

⁷⁷ *Id.*, ¶ 25.

would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel is well-experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the Aggrieved Employees, and the State of California.⁷⁸ The skill and 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 Aggrieved 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 Total Settlement Amount of \$475,000.00, and it is currently estimated that the Net Settlement Amount available for distribution to the Aggrieved Employees and the State of California, as set forth in Part III.C *infra*, is approximately \$260,588.97.⁷⁹

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.⁸⁰

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⁷⁸ Aiwazian Decl., ¶¶ 4-7.

⁷⁹ Settlement Agreement, § 3(a)(1)-(4).

⁸⁰ Aiwazian Decl., ¶¶ 4-7.

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

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

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

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

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

As discussed above, this case was highly contested and required a significant amount of time and labor. Defendant made it clear very early on that it disputed all of Plaintiff’s allegations and disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*, that it had facially-compliant employment policies and practices throughout the time period at issue.⁸¹ Defendant raised affirmative defenses and denied liability, and the pursuit of this case

⁸¹ Aiwazian Decl., ¶ 17.

involved gathering and analyzing data from Defendant as well as other sources.⁸² The handling of this litigation involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Plaintiff's Counsel has, as a result of its extensive experience in complex wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward trial, including taking and defending declarant and expert depositions, depositions of person most knowledgeable designees, conducting formal discovery, and engaging in extensive motion practice. As Plaintiff's Counsel geared up for these battles, Plaintiff's Counsel undertook intense preparation in an attempt to resolve the entire matter through settlement negotiations.

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

As set forth above in Part VI.B.1 *infra*, attached to the Declaration of Edwin Aiwazian is the Attorney Task and Time Chart that sets forth in detail the numerous tasks that Plaintiff's Counsel performed in this case, and the time required for completing those tasks.⁸³ The chart demonstrates that Lawyers for Justice, PC has spent a total of **291.80 hours** on this matter. In light of the facts and circumstances of this case, as well as the results Plaintiff's Counsel has achieved on behalf of Plaintiff, the Aggrieved Employees, and the State of California, Plaintiff's Counsel has spent a reasonable number of hours on this matter.

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

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this matter. See *Ketchum, supra*, 24 Cal.4th at 1132-33. In

⁸² Aiwazian Decl., ¶¶ 17 & 20.

⁸³ *Id.*, Exh. 3.

1 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market
2 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
3 normal hourly rates for winning contingency cases." *See id.*

4 Plaintiff's Counsel has been actively involved in the prosecution of this case, prior to the
5 commencement of the Action and all the way up to approval of the settlement, and their
6 dedication to the representation of Plaintiff, the Aggrieved Employees, and the State of
7 California has precluded other employment. Here, Plaintiff's Counsel bore the risk that, despite
8 all of their efforts and skills employed, there may be no recovery. Ultimately, Plaintiff's
9 Counsel was successful in reaching a settlement of \$475,000.00.

10 As set forth in the Declaration of Edwin Aiwazian, the professional backgrounds and
11 experience of Plaintiff's Counsel support a reasonable blended hourly rate of compensation of
12 at least \$700 per hour for services provided by Plaintiff's Counsel.⁸⁴ Lawyers for Justice, PC
13 has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$700 for
14 legal services performed, by courts of this state.⁸⁵ While the circumstance of every case is
15 unique, the fact remains that the work performed and efforts undertaken by Plaintiff's Counsel
16 in this matter justify the requested attorneys' fees award.

17 ⁸⁴ Aiwazian Decl., ¶ 24.

18 ⁸⁵ For example, final approval of the class and representative action settlement in *David Dugan v. TEC*
19 *Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and
20 the award of attorneys' fees involved an hourly rate of \$936.47; final approval of the class and representative
21 action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No.
22 BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57;
23 final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC*
24 (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21,
25 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and
26 representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County
27 Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved
28 an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace*
Supply Corp. (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the
award of attorneys' fees involved an hourly rate of \$855.96; final approval of the class and representative action
settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No.
RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved an hourly rate of
\$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v.*
Boyet Petroleum (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the
award of attorney's fees involved an hourly rate of \$780.77; and final approval of the class and representative
action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case
No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved an hourly rate
of \$845.64. Aiwazian Decl., ¶ 24.

1 The lodestar method, as a cross-check to the percentage fee sought, strongly supports
2 the reasonableness of the requested attorneys' fees award. Applying the rate of \$700 per hour
3 to 291.80 hours worked by Plaintiff's Counsel, would place a base lodestar value of \$204,260.00
4 on the services provided by Plaintiff's Counsel. However, Plaintiff's Counsel only seeks an
5 attorneys' fee award of \$190,000.00 (equal to 40% of the Total Settlement Amount based on
6 the Settlement Agreement).

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

22 The lodestar method as a cross-check to the percentage figure sought strongly supports the
23 reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that
24 the Court approve and grant an attorneys' fees award in the amount of \$190,000.00 to Plaintiff's
25 Counsel, which is reasonable and justified on a percentage-basis, but also based on a lodestar
26 cross-check.

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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 \$19,000.00. As set forth in the Declaration of Edwin Aiwasian, Plaintiff’s Counsel seeks reimbursement of \$10,911.03 for litigation costs and expenses incurred in this case.⁸⁶ 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.⁸⁷ The cost savings of \$8,088.97 will be part of the Net Settlement Amount.⁸⁸ Accordingly, Plaintiff’s Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$10,911.03 to Plaintiff’s Counsel.

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

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

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⁸⁶ Aiwasian Decl., ¶ 25.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

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, Inc. to handle the administration of the Settlement. The fees and expenses of the PAGA Settlement Administrator are estimated not to exceed \$6,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual Settlement Shares checks to the Aggrieved Employees (i.e., PAGA Settlement Package); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages to any updated addresses located; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to \$6,000.00 to Simpluris, Inc., 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 waiver and release of claims with a California Civil Code Section 1542 waiver (set forth in Section 8(b) of the Settlement Agreement).⁸⁹ 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

⁸⁹ Settlement Agreement, § 3(a)(2).

they provided and the risks they incurred during the course of the [...] litigation.”); *see also*, *e.g.*, *Resendez, supra*, Los Angeles County Superior Court, Case No. BC59689 (approving \$10,000 enhancement award in a PAGA action).

Here, Plaintiff contributed considerable time and effort to the litigation of this case in order to enforce the California Labor Code on behalf of the State of California and for the benefit of other Aggrieved Employees. Plaintiff 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.⁹⁰ 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 claim and pursuit of recovery on behalf of the State of California and Aggrieved Employees.⁹¹

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 Individual Settlement Share he will receive as an Aggrieved Employee.

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⁹⁰ Aiwazian Decl., ¶ 26; Declaration of Terral Brown (“Brown Decl.”), ¶¶ 3 & 4.

⁹¹ Aiwazian Decl., ¶ 26; Brown Decl., ¶¶ 3 & 4.

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 approve the Settlement, including the plan of allocation and distribution of the Total Settlement Amount for the LWDA Payment to the LWDA, Individual Settlement Shares to the Aggrieved Employees, Attorneys' Fees and Costs to Plaintiff's Counsel, Settlement Administration Costs to the PAGA Settlement Administrator, and General Release Fee to Plaintiff, and permit the filing of a memorandum that exceeds the page limit.

Dated: March 7, 2023

LAWYERS for JUSTICE, PC

By: _____


Alexandra Rose
Attorneys for Plaintiff