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11 IN THE SUPERIOR COURT OF CALIFORNIA

12 IN AND FOR THE COUNTY OF ALAMEDA

13 THE CALIFORNIA LABOR AND)
14 WORKFORCE DEVELOPMENT)
15 AGENCY, a California governmental)
agency, *ex rel.* DARRELL HONRINE;)
16 and DARRELL HONRINE,)
17 individually,)

18 Plaintiffs,)

19 v.)

20 COAST COUNTIES TRUCK &)
21 EQUIPMENT COMPANY, a)
California corporation; and DOES 1-15,)
22 inclusive,)

23 Defendants.)
24)

Case No.: RG21088933

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (PAGA)
SETTLEMENT**

DATE: FEBRUARY 27, 2024

TIME: 2:30 PM

DEPT. 517

HON. SOMNATH RAJ CHATTERJEE

RESERVATION ID: 257764486866

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1 Plaintiff Darrell Honrine (“Plaintiff”) respectfully submits the following Memorandum
2 of Points and Authorities in Support of Plaintiff’s Motion for Approval of Settlement of PAGA
3 Claim.

4 I. INTRODUCTION

5 This action arises from the employment policies and practices of Defendant Coast
6 Counties Truck & Equipment Company (“Defendant”). The present motion seeks approval of
7 the settlement of Plaintiff’s claim for Defendant’s alleged violations of the Labor Code Private
8 Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”). The parties’ settlement
9 agreement is contained in their Private Attorneys General Act Settlement Agreement and
10 Release of Claims (“Settlement Agreement”), a copy of which is attached as Exhibit A to the
11 accompanying Declaration of Hallie Von Rock (“HVR Dec.”).¹

12 As more specifically described below, Plaintiff’s PAGA claim, which Plaintiff seeks to
13 settle on behalf of approximately 252 Aggrieved Employees, alleges that Defendant failed to
14 compensate for training time, failure to include non-discretionary bonuses in the regular rate of
15 pay, failure to provide compliant meal breaks, failure to provide accurate wage statements, and
16 failure to pay all wages due at separation.

17 Plaintiff alleges that Defendant’s conduct violates several provisions of the California
18 Labor Code and Wage Orders, and subjects Defendant to penalties under the PAGA, as well to
19 liability for costs and attorneys’ fees. The parties now seek to resolve all violations of the
20 PAGA alleged in this case.

21 Pursuant to the parties’ Settlement Agreement, Defendant will pay a non-reversionary
22 total of One Million Two Hundred Thousand Dollars (\$1,200,000) (the “Total Settlement
23 Amount”). Settlement Agreement at ¶ 2. From the Total Settlement Amount, Plaintiff’s
24 counsel requests approval of attorneys’ fees equal to one-third of the Total Settlement Amount,

25
26
27 ¹ A copy of the Settlement Agreement and this Motion were served on the Labor Workforce
28 and Development Agency (“LWDA”) the same date as this filing, in compliance with Labor
Code § 2699(1)(2). HVR Dec., ¶ 4.

1 or \$400,000, and reimbursement of costs incurred to prosecute this case, currently estimated at
2 \$40,228. *Id.* at ¶¶ 3.3, 5. Plaintiff also requests the Court to approve an incentive fee for
3 Plaintiff, for the risks he assumed in pursuing this litigation and his valuable participation in
4 this case on behalf of the LWDA, in the amount of \$500. *Id.* at ¶ 6. Plaintiff further requests
5 the Court to approve Atticus Administration as the Settlement Administrator with costs capped
6 at \$6,000 based upon the current number of Aggrieved Employees. HVR Dec., ¶ 26. After
7 deducting these amounts from the Total Settlement Amount, \$753,272 (the “Net Settlement
8 Amount”) will be distributed pursuant to the PAGA.

9 Per the PAGA, 75% of the \$753,272 Net Settlement Amount, or \$564,954, shall be paid
10 to the LWDA. Lab. Code § 2699(i); Settlement Agreement at ¶¶ 3.6, 8.3. The remaining 25%,
11 or \$188,318, shall be distributed among the Aggrieved Employees. *Id.* Defendants have
12 identified 252 Aggrieved Employees who worked during the PAGA Period through October
13 2023. HVR Dec., ¶¶ 21-22. Defendant’s records indicate these Aggrieved Employees worked
14 a total of 15,000 pay periods through October 2023. *Id.*

15 The Aggrieved Employees will be mailed their checks directly by the settlement
16 administrator. Settlement Agreement at ¶¶ 4.2. The Aggrieved Employees will have 180 days
17 to cash their checks. *Id.* at ¶ 4.5. Thereafter, pursuant to Code of Civil Procedure section 384,
18 any unpaid, unclaimed, or abandoned class member funds, plus any interest that has accrued
19 thereon, shall be donated to Legal Aid at Work, which is a nonprofit organization that provides
20 “civil legal services to the indigent” and is a proper recipient of *cy pres* funds. For more
21 information on Legal Aid at Work, the Court is directed to the website of Legal Aid at Work
22 at: <https://legalaidthatwork.org>. HVR Dec., ¶ 23.

23 The Settlement Agreement was the product of extensive arm’s-length negotiations, by
24 experienced counsel on both sides, which took into consideration the claims at issue in this
25 case, Defendant’s asserted defenses, and is a fair and reasonable resolution for the LWDA and
26 the Aggrieved Employees.

27 ///

28 ///

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Allegations, PAGA Notices, and Complaints

A PAGA action is commenced by “The aggrieved employee or representative [giving] written notice by certified mail to the LWDA and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.” (Labor Code § 2699.3 (c)(1)).

After service of the aggrieved employee's notice, the LWDA has 60 days to notify an aggrieved employee it intends to investigate the alleged PAGA violation. If no notice of cure by the employer or investigation is provided, the aggrieved employee may commence a civil action 65 days after providing notice of the violations. (Labor Code § 2699.3(c)(2)).

On December 1, 2020, Plaintiff sent notice to Defendant and the LWDA giving notice of Plaintiff's intent to pursue a PAGA action on behalf of the State of California and a proposed group of Aggrieved Employees (“PAGA Notice”). HVR Dec, ¶ 5. Plaintiff's PAGA Notice alleged that Defendant is a California corporation, registered to and conducting business in California, with a principal place of business in San Jose, California, and engaged in the operation of truck and trailer dealerships, vehicle rental, parts sale, and service facilities. *Id.* Plaintiff's PAGA Notice defined the proposed group of Aggrieved Employees as “all non-exempt employees of Defendants working in California at any time during the Claim Period,” i.e. at any time from December 1, 2019. *Id.* Plaintiff alleged that Defendant's conduct with respect to the Aggrieved Employees violated Wage Order No. 9 and Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1182.12, 1194, 1194.2, 1197, and 1199. *Id.* The LWDA did not respond to Plaintiff's PAGA Notice or otherwise indicate that it intended to investigate Plaintiff's allegations. *Id.*

On January 13, 2021, Plaintiff submitted an amended notice to Defendant and the LWDA (“Amended PAGA Notice”). *Id.*, ¶ 6. Plaintiff's Amended PAGA notice alleged that, in addition to the violations alleged in Plaintiff's PAGA Notice, Defendant's conduct violated California Labor Code sections 1174 and the Wage Order by failing to maintain accurate

1 timekeeping records, including the start and end times of each shift and each meal period. *Id.*
2 The LWDA did not respond to Plaintiff's Amended PAGA Notice or otherwise indicate that it
3 intended to investigate Plaintiff's allegations. *Id.*

4 On March 4, 2021, Plaintiff submitted a second amended notice to Defendant and the
5 LWDA ("Second Amended PAGA Notice"). *Id.*, ¶ 7. Plaintiff's Second Amended PAGA
6 notice alleged that, in addition to the violations alleged in Plaintiff's PAGA Notice,
7 Defendant's conduct violated California Labor Code sections 1174, 1197, 510, 201, 202, 203,
8 204/204b, 226, and 558 by failing to include non-discretionary bonuses in the regular rate of
9 pay for purposes of paying wages to Aggrieved Employees. *Id.* The LWDA did not respond
10 to Plaintiff's Amended PAGA Notice or otherwise indicate that it intended to investigate
11 Plaintiff's allegations. *Id.*

12 On February 11, 2021, Plaintiff commenced an action against Defendant in the Superior
13 Court of the State of California for the County of Alameda, Case No. RG21088933, entitled
14 *The California Labor and Workforce Development Agency, a California governmental entity,*
15 *ex rel. Darrell Honrine; and Darrell Honrine, individually* (the "Action") alleging the
16 following claims: (1) Violations of the California Private Attorneys General Act; (2) Public
17 Injunctive Relief; (3) Failure to Pay Minimum, Overtime, and Contractual Wages; (4) Failure
18 to Pay Premium Meal Period Wages; (5) Failure to Provide Accurate Wage Statements; and (6)
19 Failure to Pay All Wages Due at Separation. Claims 2–6 were brought by DARRELL
20 HONRINE on an individual basis. On or about May 14, 2021, Plaintiff filed a First Amended
21 Complaint against Defendant that only included claims for (1) Violations of the California
22 Private Attorneys General Act; and (2) Public Injunctive Relief.

23 On June 15, 2021, Defendant filed its Answer to the First Amended Complaint denying
24 each and every material factual allegation and alleged claim asserted against it in the Action.

25 On July 7, 2022, Defendant filed a Motion to Compel Arbitration and on August 25,
26 2022, the Court granted Defendant's Motion to Compel Arbitration of Plaintiff's Individual
27 PAGA claims and denied Defendant's Motion to Dismiss Plaintiff's Representative PAGA
28 claim.

1 **B. Individual Claims and Settlement Agreement**

2 All causes of action subject to arbitration were brought by Plaintiff in his individual
3 capacity. *Id.*, ¶ 9. Those causes of action are not part of this PAGA settlement and have been
4 settled through an individual settlement agreement between Plaintiff and Defendant. If the
5 Court requests, Plaintiff will submit a copy of the individual settlement for *in camera* review.

6 In *Moniz*, the First District reviewed a contested PAGA settlement approval, and raised
7 no concerns that the settling representative plaintiff had separately agreed to a settlement of
8 their individual claims that was not placed on the record before trial court. *Moniz v. Adecco*
9 *USA, Inc.* (2021) 72 Cal.App.5th 56, 84, fn. 18. Accordingly, submission of the individual
10 settlement agreement for *in camera* review at the Court’s request comports with controlling
11 law.

12 However, if this Court believes the individual settlement agreement should nonetheless
13 be submitted on the record, the Parties request leave to file the individual settlement under
14 seal, with only the amount of consideration paid in the settlement agreement redacted and
15 subject to sealing.

16 **C. Defendant’s Asserted Defenses and the Risks of Continued Litigation**

17 From the beginning of this litigation, Defendant challenged the merits of Plaintiff’s
18 PAGA claim on several bases, including the assertion that Defendant maintains a
19 comprehensive employee handbook, which is updated consistently to incorporate changes in
20 the law. HVR Dec. ¶ 10. Defendant claims the handbook reflects that it uses an electronic
21 timekeeping system and requires employees to clock in whenever they are scheduled to work,
22 clock out for meal periods, and clock back in when they begin working again and that the
23 company’s policies prohibit employees from performing any work activities “off the clock,”
24 and requires them to notify a manager if they performed work while clocked out, or were
25 unable to take an uninterrupted thirty-minute meal period. Defendant further claims that a
26 large component of its workforce receives overtime pay that is set by contract, undermining
27 Plaintiff’s contentions that the company failed to appropriately calculate overtime rates during
28

1 pay periods when bonuses were received.

2 In addition to challenging the merits of Plaintiff’s PAGA claim, Defendant contended
3 that numerous individualized inquiries would be required to determine liability in this case and
4 would render any trial unmanageable, which would deny Defendant its rights to due process
5 and a fair trial and subject the action to dismissal. HVR Dec., ¶ 11; *see, e.g., Raphael v.*
6 *Tesoro Refining and Marketing Co. LLC*, 2015 WL 5680310, at *3 (C.D. Cal. Sep. 25, 2015)
7 (granting motion for judgment on the pleadings with prejudice as to PAGA claim because
8 proof of the claim would be unmanageable). Defendant also claimed that even if Plaintiff
9 could present a manageable trial plan, and carry their burden of proving the merits of his
10 claims, the Court could exercise the discretion granted to it under the PAGA to “award a lesser
11 amount than the maximum civil penalty amount specified . . . if, based on the facts and
12 circumstances of a particular case, to do otherwise would result in an award that is unjust,
13 arbitrary and oppressive, or confiscatory.” *Id.*; Cal. Lab. Code § 2699(e)(2).

14 In conducting the settlement negotiations described below, the legal arguments detailed
15 above, and the associated risks of continued litigation, were considered extensively by all
16 parties.

17 **D. Discovery**

18 The parties engaged in significant discovery as part of the arbitration that related to
19 Defendant’s policies and procedures that affected the Aggrieved Employees. In May 2023,
20 Plaintiff served document demands and interrogatories. HVR Dec., ¶ 12. In June 2023,
21 Defendant served responses to Plaintiff’s discovery requests. *Id.* Additionally, in June 2023,
22 Defendant served interrogatories, document demands, and requests for admissions. Plaintiff
23 responded in August 2023. *Id.* In July 2023, Plaintiff served a second set of special
24 interrogatories, which Defendant responded to in August 2023. *Id.* Plaintiff served
25 supplemental responses to interrogatories in August 2023. *Id.*

26 Defendant took the deposition of Plaintiff in August 2023. *Id.* ¶ 13. Plaintiffs took the
27 depositions of three witnesses, Brian Farrell, Jonae Arias, and Nick Kangrga, and the
28 deposition of Defendant’s Person Most Knowledgeable, Mike Sorenson. *Id.*

1 Plaintiff also engaged the services of a statistician expert to review payroll records
2 provided by Defendant and to assess PAGA penalties. *Id.* ¶ 14.

3 In preparing for mediation, Defendant provided documents regarding the Aggrieved
4 Employees and updated data which was used to calculate potential PAGA liability for
5 settlement negotiations. *Id.* ¶ 15.

6 **E. Settlement Negotiations**

7 The Settlement was reached through extensive, arms-length negotiations with the
8 assistance of well-respected mediator Tripper Ortman, Esq. The parties engaged in a full-day
9 mediation that was facilitated by informal exchanges of documents, information, data,
10 discussions with plaintiff, an analysis of PAGA penalties, and the expertise of an experienced
11 mediator who set forth the risks for each side in further litigating the matter. HVR Dec., ¶ 16.

12 The case did not settle the day of the mediation and the parties, thereafter, engaged in
13 formal discovery, depositions, and preparation of the individual arbitration. *Id.* ¶ 17. On the
14 brink of arbitration, which was set to start on September 12, 2023, the parties engaged in
15 further negotiations with the assistance of Mr. Ortman. On September 8, 2023, Mr. Ortman
16 made a mediator's proposal that was accepted by both parties. *Id.*

17 During the settlement negotiations, each side, represented by its respective counsel,
18 recognized the substantial risk of an adverse result in the case given the claims and defenses
19 asserted. *Id.*, ¶ 18. It was by balancing these considerations that the parties came to the
20 agreement set forth in the Settlement Agreement, which represents a compromise and
21 settlement of highly disputed claims. *Id.*

22 Plaintiff contends that the result is fair, adequate, reasonable, and satisfies the PAGA's
23 intention of enforcing California's laws protecting employees and collecting civil penalties for
24 the State. *Id.*, ¶ 19. The settlement amount is consistent with Court-approved amounts in other
25 PAGA cases, and the requests for PAGA Counsel's attorneys' fees and costs and Plaintiff's
26 service payment are also fair and reasonable. *Id.*

27 The superior court "shall review and approve any settlement of any civil action filed
28 pursuant to" Labor Code § 2699(1)(2). Plaintiff requests the Court approve this PAGA

1 Settlement, order it be implemented according to the terms of the Agreement, and enter Final
2 Judgment. Defendant has reviewed the instant Motion and will not be opposing it. *Id.*, ¶ 20.

3 **III. THE PROPOSED SETTLEMENT**

4 **A. Overview of the Settlement**

5 The proposed settlement provides for a non-reversionary Total Settlement Amount of
6 \$1,200,000. Settlement Agreement at ¶ 2. Per the PAGA, 75% of the Net Settlement Amount
7 shall be paid to the LWDA. Lab. Code § 2699(i); Settlement Agreement at ¶ 3.6. The
8 remaining 25% of the Net Settlement Amount will be distributed by a direct mailing of checks
9 by the Settlement Administrator to the Aggrieved Employees. *Id.* at ¶¶ 4.2, 7.1.

10 **1. Settlement Payout**

11 Subject to the terms and conditions of the Settlement Agreement, the Total Settlement
12 Amount that Defendant is obligated to pay in connection with the settlement is \$1,200,000.
13 Settlement Agreement at ¶ 2. This amount will cover (as approved by the Court): (1) all
14 PAGA settlement shares (“Individual Settlement Awards”) paid to the Aggrieved Employees;
15 (2) the PAGA Representative Service Award (\$500); (3) Plaintiff’s counsel’s attorneys’ fees
16 (\$400,000); (4) litigation costs (\$43,000); (5) payment to the LWDA; and (6) the Settlement
17 Administrator’s fees and expenses (\$6,000). *Id.* at ¶¶ 3.3, 3.4, 3.5, 3.6, 4.2, 5, 6. The Total
18 Settlement Amount is non-reversionary. *Id.* at ¶¶ 2, 4.5. The Net Settlement Amount, if the
19 Court awards the requested fees and costs, is \$753,272.

20 **2. Calculation and Distribution of Settlement Payments**

21
22 Per the PAGA, 75% of the \$753,272 Net Settlement Amount, or \$564,954, shall be paid
23 to the LWDA. Lab. Code § 2699(i); Settlement Agreement at ¶¶ 3.6, 8.3. The remaining 25%,
24 or \$188,318, shall be distributed among the Aggrieved Employees. *Id.* Defendants have
25 identified 252 Aggrieved Employees who worked during the PAGA Period through October
26 2023. HVR Dec., ¶ 21. Defendant’s records indicate these Aggrieved Employees worked a
27 total of 15,000 pay periods through October 2023. *Id.*

28 The Aggrieved Employees’ share of \$188,318 will be divided by the total number of

1 pay periods for a per-pay period amount of approximately \$12.55, which will be multiplied by
2 the number of pay periods each Aggrieved Employee worked during the PAGA Period to
3 determine the amount he or she will receive. *Id.*, ¶ 22; Settlement Agreement at ¶ 8.3. For
4 example, an Aggrieved Employee who worked 40 pay periods during the PAGA Period would
5 receive \$502 (40 x \$12.55). *Id.*

6 Each PAGA Individual Settlement Award shall be allocated as one hundred percent
7 (100%) penalties, from which there will be no tax withholdings and for which an IRS Form
8 1099 will be issued, as needed. Settlement Agreement at ¶ 4.4.

9 The timing of settlement is as follows: Defendant shall pay the Total Settlement
10 Amount to the Settlement Administrator in two installments. The first payment of \$450,000, is
11 to be paid within thirty (30) days of approval of the Effective Date. The second payment, of
12 \$750,000, is to be paid no later than four (4) months after the first payment date. Settlement
13 Agreement at ¶ 3.1. From the first payment, the funds will be distributed as follows: 37.5% of
14 the Claims Administration fees, 37.5% of the PAGA representative award, 37.5% of the
15 PAGA Attorney's fees and costs, and the remaining amount will fund 37.5% of the Net PAGA
16 Settlement Amount, of which 75% will be paid to the LWDA and 25% will be paid to the
17 PAGA Members. Settlement Agreement at ¶ 7.1. From the second payment, the funds will be
18 distributed as follows: the Claims Administrator shall pay the remaining amount of the PAGA
19 representative award, the remaining amount of the PAGA Attorney's fees and costs, and the
20 remaining amount of the Net PAGA Settlement Amount. *Id.*

21 Within thirty (30) calendar days of the Effective Date, Defendant shall provide the
22 Settlement Administrator with the name, last known mailing address of each Aggrieved
23 Employee, and the total PAGA pay periods for each Aggrieved Employee. The Settlement
24 Administrator shall mail the Individual Settlement Payments to the PAGA Members via first-
25 class regular U.S. mail. Prior to mailing, the Settlement Administrator will perform a search
26 based on the National Change of Address Database to update and correct for any known or
27 identifiable address changes. For each notice packet returned as undeliverable, without a
28 forwarding address, the Settlement Administrator will perform a single computer and/or

1 “skiptrace” search to obtain an updated address. *Id.* at ¶ 8.1.

2 The Settlement Administrator shall issue the payments as set forth above within thirty
3 (30) calendar days of receiving each payment. *Id.* at ¶ 7.1.

4 **3. Release of Claims**

5 The Settlement Agreement sets forth the Release of Claims as follows:

6 Upon the Effective Date, Plaintiff DARRELL HONRINE, as a representative
7 of the State of California, and on behalf of the group of Aggrieved Employees,
8 agrees to fully release and discharge Coast Counties, its and its agents, officers,
9 employees, directors, owners, subsidiaries, DBA’s, affiliates and parent
10 companies, (the “Released Parties”), from any and all claims, causes of action,
11 debts, liabilities, demands, damages, penalties, costs, and attorneys’ fees,
12 whether known or unknown, contingent or vested, arising from or based on a
13 claim for civil penalties under the Labor Code Private Attorneys General Act
14 of 2004 (“PAGA”) for any violations of the Labor Code or Wage Orders that
15 were alleged by Plaintiff in the Action, or that could have been alleged based
on the facts asserted in the Action or Plaintiff’s notices to the LWDA,
including but not limited to claims for alleged violations of Labor Code
sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1182.12, 1194,
1194.2, 1197, 1199 and the related IWC Wage Order No. 1-2001 (the
“Released Claims”), during the PAGA Period.

16 *Id.* at ¶ 13.1.

17 Additionally, Plaintiff agreed to a general release, as set forth in the Settlement
18 Agreement. *Id.* at ¶ 13.3.

19 **4. Incentive Award to PAGA Representative**

20 Plaintiff requests, and Defendant does not oppose, that the Court award a PAGA
21 Representative Service Award in the amount of \$500 to Plaintiff, in consideration of his
22 initiating and pursuing this lawsuit, including by participating in discovery, undertaking the
23 risk of liability for attorney’s fees and expenses in the event he was unsuccessful in the
24 prosecution of this lawsuit, and agreeing to the general release as part of the Settlement
25 Agreement. *See, id.* at ¶ 6. The Settlement Administrator will pay the PAGA Representative
26 Service Award approved by the Court of up to a total of \$500 out of the Total Settlement
27 Amount. *Id.* at ¶ 6.

28 Awarding an incentive to a PAGA representative follows the same principle that applies

1 in the class action context. “[T]he rationale for making enhancement or incentive awards to
2 named plaintiffs is that they should be compensated for the expense or risk they have incurred
3 in conferring a benefit on other members of the class. An incentive award is appropriate if it is
4 necessary to induce an individual to participate in the suit.” *Cellphone Termination Fee Cases*
5 (2010) 186 Cal.App.4th 1380, 1395 (quoting *Clark v. Am. Residential Servs. LLC* (2009) 175
6 Cal.App.4th 785, 804-806). An award of \$500 falls well below the average enhancement
7 award according to one study. See, Theodore Eisenberg & Geoffrey P. Miller, *Incentive*
8 *Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1308
9 (concluding the average award per class representative was \$15,992).

10 An incentive award in a PAGA case is especially important where the plaintiff has filed
11 suit on behalf of the LWDA, and is thus providing a vital service for the State. As a result of
12 Plaintiff’s efforts here, the LWDA will receive \$564,954.

13 Plaintiff spent a significant amount of time helping counsel with the prosecution of this
14 action and performed the following tasks: (1) communicating extensively with counsel on
15 numerous occasions; (2) detailing his experiences and producing copies of documents; (3)
16 assisting in preparing the complaint and amended complaint; (4) engaging in discovery; (5)
17 preparing for and attending deposition; (6) preparing for mediation; and (7) reviewing the
18 terms of and signing the Settlement Agreement. HVR Dec., ¶ 24. Plaintiff also undertook
19 personal and financial risks as a PAGA representative that should be rewarded. *Id.*

20 In light of the work that Plaintiff performed on behalf of the LWDA and the Aggrieved
21 Employees, the requested PAGA Representative Service Award of \$500 for Plaintiff is
22 reasonable and appropriate. *Id.* at ¶ 25.

23 5. Administration Costs

24 The Settlement Administrator will pay out of the Total Settlement Amount to itself its
25 reasonable fees and expenses after such payment has been approved by the Court. Settlement
26 Agreement ¶ 3.5. Plaintiff sought multiple bids and Atticus Administration submitted the
27 lowest quote for its administration costs, capping those costs at \$6,000 based upon the current
28 number of Aggrieved Employees. HVR Dec., ¶ 26. Atticus is a well-known and respected

1 settlement administrator and should be approved by the Court. *See, id.*, Ex. B (Resume of
2 Atticus Administration).

3 **6. Attorneys' Fees and Litigation Costs**

4 In considering the overall fairness of the settlement, the Court may consider the
5 reasonableness of the amounts allocated for attorneys' fees and costs in the Settlement
6 Agreement. Plaintiff's counsel's litigation costs were all reasonable and necessary expenses in
7 litigating and resolving this action. An itemized list of Plaintiff's counsel's out-of-pocket
8 costs, in the amount of \$40,228.64, is attached as Exhibit C to the accompanying Declaration
9 of Hallie Von Rock. Defendant does not object to Plaintiff's counsel's request for these costs.
10 Settlement Agreement ¶ 3.3. Plaintiff also seeks one-third of the Total Settlement Amount, or
11 \$400,000, in attorneys' fees.

12 The attorneys' fees sought by Plaintiff will compensate Plaintiff's counsel for work
13 performed in recovering a significant benefit for the LWDA and the Aggrieved Employees.
14 As one court explained in approving the payment of attorneys' fees in the class action context:
15 "The fee was negotiated at arm's-length with sophisticated defendants by the attorneys who
16 were intimately familiar with the case, the risks, the amount and value of their time, and the
17 nature of the result obtained for the class." *In Re First Capital Holdings Corp. Fin. Prods.*
18 *Securities Litig.* (C.D. Cal. June 10, 1992) 1992 WL 226321, at *4 (awarding attorney's fees of
19 \$8 million). The same is true here.

20 Courts have long recognized the "common fund" or "common benefit" doctrine, under
21 which attorneys who create a common fund or benefit for a group of persons may be awarded
22 their fees and costs to be paid out of the fund. *See, Laffitte v. Robert Half Internat. Inc.* (2016)
23 1 Cal. 5th 480, 504; *see also, Serrano v. Priest* ("*Serrano III*") (1977) 20 Cal.3d 25, 34;
24 *Glendale City Employees' Assoc. v. City of Glendale* (1975) 15 Cal.3d 328, 341, fn. 19; *In re*
25 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557; *In re Sumitomo Copper Litig.*
26 (S.D.N.Y. 1999) 74 F.Supp.2d 393, 396-398 (describing the overwhelming weight of federal
27 authority in favor of the percentage fee method); *Mills v. Electric Auto-Lite Co.* (1970) 396
28 U.S. 375, 391-392 (United States Supreme Court endorsing the common fund approach to

1 class actions.)

2 The California Practice Guide: Civil Trials and Evidence (The Rutter Group) at
3 § 7.172.3 explains the common fund doctrine as follows:

4 Where the lawsuit results in the recovery of a fund or property benefiting others as
5 well as plaintiff (*e.g.*, a class action), the court has inherent equitable power to
6 order plaintiff's attorney fees paid out of the common fund or property [citations].
7 Such fee spreading assures that all of those benefited by the litigation pay their fair
8 share of obtaining the recovery.

9 Numerous appellate courts have similarly endorsed the "percentage fee" method for
10 determining reasonable attorneys' fees in common benefit cases.²

11 In the *Laffitte* decision, the California Supreme Court held that, "when class action
12 litigation establishes a monetary recovery fund for the benefit of the class members, and the
13 trial court in its equitable powers awards class counsel a fee out of that fund, the court may
14 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
15 created." *Laffitte*, 1 Cal.5th at 503. The California Supreme Court also noted that the
16 percentage of the fund method "more accurately reflects the results achieved" than the lodestar
17 method, serves as a "better approximation of market conditions in a contingency case," and
18 encourages "counsel to seek an early settlement and avoid unnecessarily prolonging the
19 litigation." *Id.* at 503-504.

20 The attorneys' fees requested here are in line with other fee awards in California wage
21

22 ² See, *e.g.*, *Knoff v. City and County of San Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court
23 upheld a "contingent percentage" award of attorneys' fees in a representative action as the
24 proper exercise of the court's equitable powers); *Rider v. County of San Diego* (1992) 11
25 Cal.App.4th 1410, 1423 (attorneys' fees and expenses properly awarded from common benefit
26 composed of illegally imposed sales and use tax); *Bank of America v. Cory* (1985) 164
27 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action compelling state
28 to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556, 567-568
(court upheld fee award equal to one-third of the damages to owners of residential property in
an inverse condemnation action).

and hour cases. For example, in *Smiles v. Walgreens Co.*, Alameda Superior Court Case Number RG17862495, the court awarded attorneys' fees of 35% of the settlement amount in a PAGA case, plus costs; in *Pearce v. Linens 'N Things, Inc.*, Orange County Superior Court Case No. 00CC04830, the court awarded attorneys' fees equal to 33.33 % of the settlement fund, plus costs; in *Albrecht v. Rite Aid Corp.*, San Diego Superior Court Case No. 729129, Judge Haden awarded attorneys' fees equal to 35% of the settlement fund, plus costs; in *Crandall v. U-Haul International*, L.A. Superior Court Case No. BC 178775, the court awarded plaintiff's counsel attorneys' fees equal to 40% of the settlement fund; and in *Graubard v. Goodyear Tire Rubber Company*, LA Superior Court Case No. BC 230520, the court awarded attorneys' fees equal to 32.1% of the settlement fund, plus costs. These cases illustrate that California courts recognize that the 33.33% fee requested here is appropriate in a wage and hour common fund case.

Given the results achieved under the circumstances of this litigation, the requested fee award is reasonable. As discussed in *Sumitomo Copper Litigation*, *supra*, 74 F.Supp.2d at 396:

No one expects a lawyer whose compensation is contingent on the success of his services to charge, when successful, as little as he would charge a client who in advance of the litigation has agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

In that vein, this Court should consider the contingent nature of this case, the uncertainty of the outcome, the quality of the counsel, and counsel's preclusion from other employment.

a. *The Contingent Nature of this Case*

Plaintiff's counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. HVR Dec., ¶ 31. With no guarantee of success, Plaintiff's counsel placed their own resources at risk, including over 1,218 hours of their time, to prosecute this action. *Id.* If Plaintiff's counsel were unsuccessful in the prosecution of this case, they would receive nothing in return for this time, or for their out-of-pocket costs. Despite these risks, Plaintiff's counsel took their duty to represent the LWDA and the Aggrieved Employees seriously, and expended all of the time and resources necessary to vigorously prosecute this case. As a result,

1 Plaintiff's counsel were able to demonstrate to Defendant that it faced potential exposure
2 sufficient to engage in serious settlement negotiations and to settle Plaintiff's claim on behalf
3 of the LWDA.

4 ***b. The Experience, Reputation, and Ability of Counsel, and the Skill***
5 ***Displayed in Litigation***

6 Plaintiff's counsel has substantial experience in complex and representative action
7 litigation, including many wage and hour cases. *See*, HVR Dec., Ex. D (Firm Resume). The
8 quality of opposing counsel is also important in evaluating the quality of the work done by
9 Plaintiff's counsel. The complexity and potential duration of this case, in the face of
10 experienced and resourceful opposition, weigh in favor of awarding the requested attorneys'
11 fees.

12 ***c. The Results Achieved***

13 The results achieved by the settlement also support Plaintiff's counsel's request for
14 attorneys' fees. As noted, the settlement will result in a total payment of \$1,200,000. This is a
15 significant sum of money in light of Defendant's affirmative defenses and the risks of
16 continued litigation.

17 Further, the efficiency with which this litigation was conducted and resolved should be
18 rewarded. The LWDA and the Aggrieved Employees will directly benefit from the prompt
19 and fair resolution of their claims. They will receive a significant award in a reasonable period
20 of time, as opposed to waiting years to recover an undetermined amount.

21 ***d. Preclusion of Other Employment***

22 As California law recognizes, Plaintiff's counsel's commitment to this litigation should
23 not be assessed in a vacuum. *See*, *Serrano*, 20 Cal.3d at 49. A relevant factor in determining
24 attorneys' fees is whether the litigation required Plaintiff's counsel to forego other
25 employment. *Id.* Additional work was available that Plaintiff's counsel had to forgo to devote
26 the time necessary to pursue this litigation. HVR Dec., ¶ 32.

27 ***e. Lodestar Comparison***

28 Plaintiff's counsel seeks approval of attorneys' fees based on a percentage of the

1 recovery, not a lodestar. While a percentage fee may be compared against a lodestar increased
2 by a risk multiplier, courts are not required to engage in this exercise, and many California
3 courts decline to do so. *See, e.g., Glass v. UBS Financial Services, Inc.*, No. 06-4066-MMC,
4 2007 WL 221862 (N.D. Cal. Jan. 26, 2007) (finding “no need to conduct a lodestar cross-check
5 [as] [c]lass counsel’s prompt action in negotiating a settlement while the state of the law
6 remained uncertain should be fully rewarded”); *Lopez v. Youngblood*, No. 07-0474-DLB, 2011
7 WL 10483569 (E.D. Cal. Sept. 2, 2011) (“A lodestar cross-check is not required in this circuit,
8 and in a case such as this, is not a useful reference.”)

9 Where the cross-check is used, the “calculation need entail neither mathematical
10 precision nor bean-counting” and is not intended to be a “full-blown lodestar inquiry.” “Where
11 the use of the lodestar method is used as a cross-check, it can be performed with a less
12 exhaustive cataloguing and review of counsel’s hours.” *Barbosa v. Cargill Meat Solutions*
13 *Corp*, 297 F.R.D. 431, 451 (E.D. Cal. July 2, 2013).

14 A comparison of the lodestar of Plaintiff’s counsel with the amount of attorneys’ fees
15 sought here also supports the propriety of the fees requested. Plaintiff’s counsel spent a total
16 of 1,218.7 hours to date prosecuting this action and calculated the resulting lodestar fee on
17 those hours at \$739,850. HVR Dec., ¶ 33. The time spent on the arbitration was crucial to the
18 settlement as it was the discovery and depositions conducted that fleshed out the policies and
19 practices of Defendant that affected not just Plaintiff, but all Aggrieved Employees. HVR
20 Dec., ¶ 34.

21 Accordingly, attorneys’ fees in the amount of \$400,000 (one-third of the Total
22 Settlement Amount) are fair and reasonable under the circumstances, and in line with
23 California precedent, along with \$40,228.64 in litigation costs. *Id.*, ¶ 38, Ex. C (Costs Index).

24 **IV. THE STANDARD FOR APPROVAL OF PAGA SETTLEMENTS**

25 Labor Code § 2699(l)(2) requires court approval of PAGA actions. However, because
26 PAGA claims are not class actions, the rules and findings required by Rule 23 and CCP § 382
27 do not apply. *See, Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519 (“statutory
28 class action requirements are not applicable to PAGA claims”); *see also, Williams v. Superior*

1 Court (2017) 3 Cal.5th 531, 546-547 and n. 4; *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir.
2 2015) 803 F.3d 425, 436. “An employee bringing a PAGA action does so ‘as the proxy or
3 agent of the state’s labor law enforcement agencies,’ who are the real parties in interest.”
4 *Sakkab*, 803 F.3d at 435 (quoting *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59
5 Cal.4th 348, 380).³ Accordingly, the “bulk of any recovery goes to the LWDA, not to the
6 aggrieved employees ... A PAGA action is at heart a civil enforcement action filed on behalf
7 of and for the benefit of the state, not a claim for class relief.” *Baumann v. Chase Inv. Servs.*
8 *Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123-1124.

9 In a PAGA action, there is no requirement to provide notice to the aggrieved
10 employees; aggrieved employees do not have the right to object to or opt out of the settlement;
11 and there is no need for separate preliminary and final hearings. See, *Sakkab*, 803 F.3d 425 at
12 435-36; *Baumann*, 747 F.3d at 1122; *Harvey v. Morgan Stanley Smith Barney LLC* (N.D.Cal.
13 Sep. 5, 2019) 2019 U.S.Dist.LEXIS 159258, at *20-2; *Ochoa-Hernandez v. CJADERS Foods,*
14 *Inc.* (N.D.Cal. Apr. 2, 2010) 2010 U.S.Dist.LEXIS 32774, at *13.⁴

15 Although the PAGA itself does not provide instruction on how courts are to evaluate a
16 settlement under the Act, California law provides some general guidance concerning judicial
17 approval of any settlement. First, California courts recognize a strong public policy in favor of
18 settlements. See, *Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 735 (“there is well-
19 established policy in the law to discourage litigation and favor settlement. Pretrial settlements
20 are highly favored because they diminish the expense of litigation”). Here, the settlement
21 proposed by the parties not only avoids the complexities and legal uncertainties of continued
22

23
24
25
26 ⁴ The only potential objector to a PAGA action is the LWDA itself, whose comments, if any,
27 will be submitted to the court in advance of the approval hearing. The PAGA requires the
28 parties to a PAGA suit to submit any proposed settlement to the LWDA at the same time it is
filed with the court, and then, if the settlement is approved, to submit the judgment to the
LWDA within 10 days after entry. Lab. Code § 2699(1)(3).

1 litigation, but also the delay, expense, and drain on judicial resources that would result from a
2 lengthy trial. Second, in all circumstances, the decision to approve or reject a settlement is
3 committed to the trial court's sound discretion. *Wershba v. Apple Computer, Inc.* (2001) 91
4 Cal.App.4th 224, 234-235. This basic principle coincides with the discretion the Legislature
5 specifically afforded courts under sections 2699(e)(1) and (2) of the PAGA, granting to the
6 courts the same discretion as that held by the LWDA in assessing civil penalties and
7 specifically authorizing courts the ability to award lesser amounts than the maximum civil
8 penalties set forth in section 2699. Third, although the court possesses discretion in approving
9 a PAGA settlement, it seems logical that the court's role "must be limited to the extent
10 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
11 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as
12 a whole, is fair, reasonable and adequate to all concerned." *In re Microsoft I-V Cases* (2006)
13 135 Cal.App.4th 706, 723 (quoting *Officers for Justice v. Civil Service Com.* (9th Cir. 1982)
14 688 F.2d 615, 625). Here, the parties agree that settlement, on the terms set forth in the
15 Settlement Agreement, is fair, reasonable, and adequate to the LWDA and Aggrieved
16 Employees.

17 **V. THE PAGA SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

18 The settlement proposed by the parties here was reached only after extensive, arm's-
19 length negotiations. HVR Dec., ¶ 39. The parties engaged in discovery and exchanged
20 documents supporting their claims and defenses, exchanged letters and conducted meet-and-
21 confer conferences in which the parties' claims and defenses and supporting legal authorities
22 and documentary evidence were discussed at length, took multiple depositions, engaged
23 experts, and conducted additional informal discovery for mediation. *Id.* As a result of these
24 activities, the parties had sufficient information to evaluate the strengths and weaknesses of
25 their claims and defenses, the risks involved in continued litigation for both sides, and the
26 appropriate settlement value of Plaintiff's PAGA claim. Despite zealous advocacy on both
27 sides, the parties determined that the risks of continued litigation favored the compromise
28 contained in the Settlement Agreement.

1 Given these factors, the parties agreed that the Total Settlement Amount set forth in the
2 Settlement Agreement, i.e., \$1,200,000, was a fair and reasonable sum for the resolution of
3 Plaintiff's PAGA claim. At mediation, Plaintiff calculated that Defendant's likely liability at
4 trial was estimated at \$5,500,000. HVR Dec., ¶ 40. However, given the dearth of trials of
5 PAGA claims where penalties are actually awarded, Plaintiff's counsel's experience is that in
6 mediations for PAGA claims, the Defendant and Mediator look at the total amount of pay
7 periods involved with a maximum per pay period penalty of \$100. *Id.* Here, with 15,000 pay
8 periods, that is a maximum of \$1,500,000. *Id.* Accordingly, a settlement of \$1,200,000 results
9 in a per pay period penalty of \$80 per pay period, or 80% of the total penalty amount
10 considered in typical settlement negotiations. *Id.*

11 The PAGA grants trial courts discretion to reduce the amount of civil penalties imposed,
12 thus injecting further uncertainty into the outcome of any trial of Plaintiff's PAGA claim. *See*,
13 Labor Code § 2699(e)(2). All of these factors were considered and/or discussed extensively
14 during the parties' settlement negotiations.

15 The reasonableness of the Total Settlement Amount set forth in the Settlement
16 Agreement is also demonstrated by other cases in which plaintiffs have resolved PAGA claims
17 for amounts less than the maximum penalty amount available. In *Carrington v. Starbucks*
18 *Corp.* (2018) 30 Cal.App.5th 504, 517, 529, for example, the trial Court reduced the PAGA
19 penalty amount to only \$150,000 (\$5 per violation) from a maximum penalty amount of
20 \$50,000,000 to \$70,000,000. The trial court stated that this reduction was warranted because
21 imposing the maximum penalty would be unjust, arbitrary, and oppressive based on
22 Starbucks's "good faith attempts" to comply with meal period obligations and because the
23 court found the violations were minimal. *Id.*

24 Similarly, here, Defendant argued that it implemented lawful policies that foreclosed the
25 violations alleged by Plaintiff, and made every effort to comply with minimum wage,
26 overtime, bonus structure, and meal period requirements by implementing time keeping
27 policies that assured payment for all hours worked and for any missed meal periods. HVR
28 Dec., ¶¶ 41. Plaintiff has strong arguments against these defenses, but even if Plaintiff proved

1 Defendant's liability, the possibility of a penalty reduction due to Defendant's asserted good
2 faith attempt to comply with the law would remain. *Id.*

3 Other courts have also reduced PAGA penalties, often substantially. *See, Singh v.*
4 *Roadrunner Intermodal Servs., LLC* (E.D.Cal. Jan. 24, 2019) 2019 U.S.Dist.LEXIS 11724, at
5 *16-19 (approving settlement of PAGA claim for \$100,000 where penalties were estimated at
6 \$14,224,000); *Fleming v. Covidien, Inc.* (C.D.Cal. Aug. 12, 2011) 2011 U.S.Dist.LEXIS
7 154590, at *8-9 (reducing PAGA penalties for wage statement violations from \$2,800,000 to
8 \$500,000); *Viceral v. Mistras Grp., Inc.* (N.D.Cal. Oct. 11, 2016) 2016 U.S.Dist.LEXIS
9 140759, at *25-30) (approving settlement of PAGA claim for \$20,000 where penalties were
10 estimated at \$12,952,000); *see also, Shames v. Hertz Corp.* (S.D.Cal. Nov. 5, 2012) 2012
11 U.S.Dist.LEXIS 158577, at *20 (noting, in the class action context, that "settlements for
12 substantially less than the plaintiff's claimed damages may be fair and reasonable, especially
13 when taking into account the uncertainties involved with litigation").

14 Here, the Total Settlement Amount reflects a fair and reasonable compromise of
15 Plaintiff's PAGA claim, especially given Defendant's defenses, the uncertainty of continued
16 litigation, and the Court's discretion to discount any penalties awarded at trial.

17 VI. CONCLUSION

18 Because the proposed settlement is fair, reasonable, and adequate, Plaintiff respectfully
19 requests that the Court grant approval of all terms of the settlement, as set forth in the
20 Settlement Agreement attached to as Exhibit A to the accompanying declaration of Hallie Von
21 Rock.

22
23 Respectfully submitted,

24 Date: January 8, 2024

AIMAN-SMITH & MARCY
A PROFESSIONAL CORPORATION

25 /s/ Hallie Von Rock
26 _____

27 Hallie Von Rock
28 Attorneys for Plaintiff