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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

SALVADOR CHAVEZ, in his
representative capacity on behalf of the State
of California and fellow Aggrieved
Employees,

Plaintiffs,

vs.

HTL CONRAD DOMESTIC, LLC, a
Delaware limited liability company; HLT
CONRAD DOMESTIC EMPLOYER, LLC;
and DOES through 50, Inclusive,

Defendants.

Case No. 37-2020-00016193-CU-OE-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO APPROVE THE SETTLEMENT
AGREEMENT PURSUANT TO THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004;**

Date: April 29, 2022
Time: 10:30a.m.

Judge: Hon. John S. Meyer
Dept: C-64

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Salvador Chaves (“Chavez”), Rodger Capps (“Capps”) and Sergio Jimenez (“Jimenez”)
4 (collectively, “Plaintiffs”) commenced three separate representative actions under the Labor Code against
5 Defendants HTL CONRAD DOMESTIC, LLC and CONRAD DOMESTIC EMPLOYER, LLC
6 (“Defendants”). Plaintiffs’ operative complaints are representative actions under the Private Attorneys
7 General Act of 2004 (“PAGA”), Cal. Lab. Code § 2698 *et seq.*

8 After significant litigation and arm’s length negotiations at a private mediation and further
9 negotiations thereafter, the Parties have entered into a written Settlement Agreement and Release of All
10 Claims (the “Settlement Agreement”).¹

11 The principal terms of the Settlement Agreement are straightforward. Defendants have agreed to
12 pay the Gross Settlement Amount of \$850,000.00, for a release of claims. The Settlement Agreement
13 allocates up to one-third (1/3) of this amount (\$283,333.33) for Plaintiffs’ attorneys’ fees, attorneys’ costs
14 of up to \$25,000.00, PAGA Representative Enhancement Awards of up to \$5,000.00 for each Plaintiff
15 Chavez and Jimenez and \$7,500.00 to Plaintiff Capps, and Settlement Administrator’s costs of up to
16 \$12,000.00. The remainder is allocated to the PAGA Penalty Fund, with 75 percent of the civil penalties
17 for distribution to the Labor and Workforce Development Agency (the “LWDA”) and 25 percent of the
18 civil penalties for distribution to the PAGA Aggrieved Employees, on whose behalf Plaintiff filed this
19 action as required by PAGA.

20 Under the PAGA, the Settlement Agreement cannot become effective until it is “review[ed] and
21 approv[ed]” by this Court. *See* Cal. Lab. Code § 2699(l)(2). Accordingly, Plaintiffs bring this motion to
22 request approval of the Settlement Agreement on the grounds it is fundamentally fair, adequate, and
23 reasonable in light of PAGA’s policies and purposes.

24
25 ///

26
27 ¹ Unless specifically defined in this order and judgment, all capitalized terms in this order and judgment shall have the same
28 meaning given to those capitalized terms in the Settlement Agreement. The Settlement Agreement is attached as Exhibit #1
to the Declaration of Jean-Claude Lapuyade (“Lapuyade Decl.”) at ¶ 3.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties and Plaintiffs' Current Civil Actions against Defendants

On May 26, 2020, Plaintiff Chavez filed a wage and hour class action, alleging various causes of action pursuant to the California Labor Code. Thereafter, on August 20, 2020, Plaintiff Chavez filed a First Amended Complaint, alleging a single cause of action for Violations of the California Private Attorneys General Act on the basis of: (1) meal period violations; (2) rest period violations; (3) overtime regular rate violations; (4) wage statement violations; (5) failure to maintain true and accurate records; (6) failure to timely pay wages during employment; (7) waiting time penalties; and (8) minimum wage violations (the "Chavez Action").

On May 26, 2020, Plaintiff Chavez filed a Complaint in the San Diego Superior Court, Case No. 37-2020-00016193-CU-OE-CTL ("Chavez Action"). The Complaint asserted a single cause of action under PAGA.

On July 6, 2020, Plaintiff Capps filed a Complaint in the San Diego Superior Court, Case No. 37-2020-00023101-CU-OT-CTL ("Capps Action"). The Complaint asserted a single cause of action under PAGA.

On January 7, 2021, Plaintiff Jimenez filed a Complaint in the San Diego Superior Court, Case No. 37-2021-00000849-CU-OE-CTL. On March 29, 2021, Plaintiff Jimenez filed a First Amended Complaint asserting a single cause of action under PAGA ("Jimenez Action").

On May 7, 2021, the Parties stipulated to consolidate the Chavez, Capps, and Jimenez Actions into one case with the Chavez Action designated as the lead case for filing purposes. The Parties further agreed that the Chavez Action, Capps Action, and Jimenez Action would proceed before Honorable John S. Meyer in Department C-64.

On October 1, 2021, the Parties attended a full day mediation session with experienced wage and hour mediator Tripper Ortman, Esq. (Lapuyade Decl., ¶ 9). In connection with the mediation, Defendants provided the number of aggrieved employees, pay periods at issue, and more than 1 million unique cells of time and payroll data for the aggrieved employees from which Plaintiffs were able to conduct a penalty exposure analysis. (Lapuyade Decl., ¶ 10). The mediation concluded without a

1 settlement, but the Action settled subsequently after all sides agreed to a Mediator's proposal which was
2 memorialized in the form of a Memorandum of Understanding ("MOU"). Without admitting or
3 conceding any liability or damages whatsoever, the Parties have agreed to fully and finally resolve the
4 Action pursuant to the terms and conditions of this Settlement Agreement. (*Id.* at ¶ 12).

5 **B. Plaintiffs' Exhaustion of Administrative Remedies under the PAGA**

6 Pursuant to the PAGA's pre-filing notice and administrative exhaustion requirements, *see* Cal.
7 Lab. Code § 2699.3(a), Plaintiff Chavez sent a letter to the LWDA and Defendants on April 20, 2020,
8 asserting claims for violation of Labor Code §§ 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512, 558,
9 1194, 1197, 1197.1, and 1198. (Lapuyade Decl., ¶ 4, Ex. 2).

10 Plaintiff Capps sent a letter to the LWDA and Defendants on April 3, 2020, asserting claims for
11 violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 1194, 1194.2, 1197, 1197.1, 1198, and
12 1199. (Lapuyade Decl., ¶ 5, Ex. 3).

13 Plaintiff Jimenez sent a letter to the LWDA and Defendants on January 6, 2021, asserting claims
14 for violation of Labor Code §§ 201-204, 226 and 246. (Lapuyade Decl., ¶ 6, Ex. 4).

15 The 65-day "waiting period" on Plaintiffs' right to file a civil action under PAGA, *see* Cal. Lab.
16 Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiffs that they intended to investigate
17 the claims in the PAGA Notice. To date, the LWDA still has not advised any of the Plaintiffs of any
18 intent to take action with respect to the claims in the PAGA Notice. (Lapuyade Decl., ¶ 8).

19 **C. The Parties' Settlement Negotiations**

20 On October 1, 2021, the Parties attended a full day mediation session with experienced wage and
21 hour mediator Tripper Ortman, Esq. In advance of the mediation, the Parties discussed the basis of
22 Plaintiffs' legal claims under the Labor Code sections asserted and the legal authorities for and against
23 Plaintiffs' theories of liability. (Lapuyade Decl., ¶¶ 9-10). After independently analyzing and
24 investigating the facts and law relevant to the Plaintiffs' claims, the parties outlined their respective
25 positions in mediation briefs for Mr. Ortman. The Parties also engaged in informal discovery, where
26 Defendants provided Plaintiffs with data relating to the number of aggrieved employees, the number of
27 pay periods at issue with payment for shift differentials and/or overtime wages during the PAGA period,
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1 and the wage statements encompassed by Plaintiffs' claims. Based on the data produced by Defendants,
2 Plaintiffs subsequently conducted an exposure analysis. (*Id.* at ¶ 10) During the mediation, the Parties
3 debated the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses thereto and the scope
4 of employees whom Plaintiffs could represent even if Plaintiffs' legal claims had merit. (*Id.* at ¶ 11) The
5 mediation concluded without a settlement, but the Action settled subsequently after all sides agreed to a
6 Mediator's proposal which was memorialized in the form of a Memorandum of Understanding ("MOU").
7 Without admitting or conceding any liability or damages whatsoever, the Parties have agreed to fully and
8 finally resolve the Action pursuant to the terms and conditions of this Settlement Agreement. (*Id.* at ¶
9 12)

10 **D. The Terms of the Settlement Agreement**

11 On March 31, 2022, the Parties fully executed the Settlement Agreement which is being
12 concurrently filed with this Motion. The Settlement Agreement is made without an admission of liability
13 by Defendants and is conditioned upon court approval, a judgment approving the Settlement Agreement
14 becoming final. (Settlement Agreement at ¶ III.1 and 11)

15 Under the Settlement Agreement, Defendants will the pay Gross Settlement Amount of
16 \$850,000.00 (the "Gross Settlement Amount"). (Settlement Agreement at ¶ I.10) Pursuant to the
17 Settlement Agreement, PAGA Aggrieved Employees include "all current and former non-exempt
18 employees of Defendants employed in California at the Hilton San Diego Bayfront and/or Parc 55 Hotel
19 during the PAGA Period." The PAGA Period means "the period beginning on April 3, 2019 and ending
20 December 16, 2021." (Settlement Agreement at ¶ I.14.)

21 The Settlement Agreement allocates the Gross Settlement Amount to: (1) PAGA Representative
22 Enhancement Awards of up to \$5,000.00 for each Plaintiff Chavez and Jimenez and \$7,500.00 to Plaintiff
23 Capps; (2) Plaintiffs' counsel, 1/3 of the \$850,000.00 Gross Settlement Amount, or \$283,333.33; (3) up
24 to \$25,000.00 in actual costs for the reimbursement of Plaintiffs' litigation costs; (4) Settlement
25 Administrator Costs, in the amount of up to \$12,000.00 for the cost of calculating and distributing
26 payments and the notice of PAGA settlement required by the Settlement Agreement in accordance with
27 the Settlement Agreement and laws; and (6) the remainder of the Gross Settlement Amount after
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deduction of the afore-referenced amounts, which is at least \$512,166.67 (the “Net Settlement Amount” or “PAGA Penalty Fund”), for the civil penalties to the LWDA and the Aggrieved Employees, with 75 percent of the civil penalties for distribution to the Labor and Workforce Development Agency (the “LWDA Share”) and 25 percent of the civil penalties for distribution to the PAGA Aggrieved Employees (the “Employee Share”), on whose behalf Plaintiff filed this action as required by PAGA. (Settlement Agreement at ¶ III.6)

In accordance with PAGA, twenty-Five percent (25%) of the PAGA Penalty Fund will be allocated to the PAGA Aggrieved Employees and distributed based upon the total number of pay periods attributed to each PAGA Aggrieved Employee during the PAGA Period. (Settlement Agreement ¶ I.8) Specifically, the Individual PAGA Payments are to be apportioned by the Settlement Administrator based on the number of pay periods attributed to each Aggrieved Employee during the PAGA Period divided by the total number of pay periods attributed to all Aggrieved Employees during the PAGA Period. (*Id.* at ¶ III.5.)

III. STANDARD OF REVIEW

The PAGA requires courts to “review and approve” the settlement of any civil action filed under PAGA. *See* Cal. Lab. Code § 2699(l)(2). In connection with approval of a PAGA settlement, the court must “ensur[e] that any negotiated resolution is fair to those affected.” *Turrieta v. Lyft, Inc.*, 69 Cal. App. 5th 955, 969 (2021); *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 76 (2021). As explained by the Court of Appeal:

[W]hile PAGA does not require the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for settlements that prevents “ ‘ ‘ ‘fraud, collusion or unfairness’ ” ’ ” [Citation], and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors used to evaluate class action settlements bear on a settlement’s fairness—including the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.

We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.

Moniz, 72 Cal. App. 5th at 77.

1 **IV. ARGUMENT**

2 **A. Notice of the Settlement Agreements Has Been Given to the LWDA Pursuant to**
3 **Labor Code section 2699(l)(2)**

4 When enacting PAGA, the Legislature intended to ensure that the LWDA retained “primacy”
5 over private enforcement actions. *See* 2003 Cal. Stat. ch. 906 § 1(d). To that end, PAGA requires parties
6 who seek approval of a proposed PAGA settlement to submit the proposed settlement to the LWDA
7 online “at the same time that it is submitted to the court,” presumably to give LWDA an opportunity to
8 comment on the proposed settlement. *See* Cal. Lab. Code §§ 2699(l)(2), 2699(l)(4). In satisfaction of
9 that requirement, Plaintiffs submitted a copy of the Settlement Agreement to the LWDA through the
10 LWDA’s online filing system on April 7, 2022. (Lapuyade Decl., ¶ 7, Ex 5)

11 **B. The Court Should Approve the Settlement Agreement**

12 **1. The Settlement Agreement Is Entitled to a Presumption of Fairness**

13 In class actions, judicial review of a settlement’s fairness is designed to protect class members
14 who had no say in the negotiation of the settlement by ensuring that the settlement is not the product of
15 “fraud,” “overreaching,” or “collusion” by the negotiating parties and that “due regard” was given to the
16 rights and interests of absent class members subject to the settlement. *See Dunk v. Ford Motor Co.*, 48
17 Cal. App. 4th 1794, 1800–01 (1996). Although PAGA actions and class action have certain
18 “fundamental” differences, *see Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425, 435 (9th
19 Cir. 2015), PAGA settlements present similar fairness concerns, because they bind “aggrieved
20 employees” who played no part in the settlement negotiation and who have no opportunity to object. *See*
21 *Arias v. Superior Court*, 46 Cal. 4th 969, 985 (2009) (discussing the scope of a judgment in a PAGA
22 action); *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016) (identifying the
23 risk of PAGA claims being used “merely as a bargaining chip”); *Ceja-Corona v. CVS Pharmacy, Inc.*,
24 No. 1:12-cv-01868, 2014 WL 4472691, at *9 (E.D. Cal. Sept. 11, 2014) (noting the risk of collusion in
25 PAGA settlements).

26 Against this backdrop, California courts have identified a set of circumstances entitling class
27 action settlements to a “presumption of fairness.” *See Dunk*, 48 Cal. App. 4th at 1802. In particular, a
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1 presumption of fairness arise where “(1) the settlement is reached through arm’s-length bargaining; (2)
2 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
3 is experienced in similar litigation; and (4) the percentage of objectors is small.” *See Id.*

4 All of the factors that would give rise to a presumption of fairness in the context of a class action
5 settlement are present in this PAGA action. The Settlement Agreement is the product after arms’ length
6 bargaining facilitated by neutral mediator, including a full-day mediation, at the conclusion of which the
7 case did not settle, and several months of follow-up negotiations through Mr. Ortman. (Lapuyade Decl.,
8 ¶ 13) The mediation was proceeded by a discussion of the facts and law applicable to Plaintiffs’ claims,
9 the exchange of data about the Aggrieved Employees sufficient for the Parties to meaningfully evaluate
10 the merits of Plaintiffs’ claims and the scope of any potential recovery under PAGA, and each party
11 independently analyzing Plaintiffs’ claims in a mediation brief prepared for the mediator. (*Id.* at ¶ 14)
12 Finally, Plaintiffs and Defendants were represented by counsel experienced in similar litigation.
13 (Lapuyade Decl., ¶¶ 38-45; Declaration of Larry W. Lee (“L. Lee Decl.”) at ¶¶ 3-5; Declaration of Edward
14 W. Choi (“Choi Decl”) at ¶¶ 3-4; Declaration of David J. Lee (“D. Lee Decl.”) at ¶¶ 3-7; Declaration of
15 Shani Zakay (“Zakay Decl.”) ¶ 3; Declaration of James M. Treglio (“Treglio Decl.”) ¶¶ 1-9). Therefore,
16 the Settlement Agreement is entitled to a presumption of fairness.

17 **2. The Scope of the Settlement Agreement is Fair, Adequate, and Reasonable**

18 Because the fairness inquiry is concerned, in part, with concerns over “overreaching,” it is
19 important to note that the Settlement Agreement contains three important limitations, each of which
20 represents a fair and reasonable compromise.

21 First, the transmission of the PAGA notices by Plaintiff Chavez on April 20, 2020, Plaintiff Capps
22 on April 3, 2020 and Plaintiff Jimenez on January 6, 2021 gives rise to a statute of limitations running
23 from April 3, 2019 through the present, *see* Cal. Code Civ. Proc. § 340(a) (providing a one-year statute
24 of limitations for “[a]n action upon a statute for a penalty”); *see also* Cal. Lab. Code 2699.3(d) (tolling
25 the statute of limitations while exhausting administrative remedies with the LWDA), the Settlement
26 Agreement is limited to the period running from April 3, 2019 through December 16, 2021. (Settlement
27 Agreement at ¶ I.1-2) Therefore, limiting the Settlement Agreement to the statute of limitations is thus a
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1 fair, reasonable, and adequate compromise negotiated by the parties.

2 Second, the Settlement Agreement’s release is limited to the “facts alleged” against Defendants
3 for violation of the PAGA predicated on violation of Labor Code § 201, 202, 203, 204, 210, 218.5, 218.6,
4 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802. (See
5 Settlement Agreement ¶ III.7)

6 Moreover, the release is further limited by the fact that a judgment in a PAGA action only extends
7 to claims actually alleged in that action. See *Uribe v. Crown Building Maintenance Co.*, 70 Cal. App. 5th
8 986, 1005 (2021). The settlement provides that it shall not be construed as a release of any PAGA
9 Aggrieved Employees’ underlying Labor Code or Wage Order claims and it is limited to the claims pled.

10 **3. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable**
11 **Amount to the Payment of Civil Penalties under PAGA**

12 Citing a decline in “[s]taffing levels for state labor law enforcement” and finding the “vigorous
13 assessment and collection of civil penalties as provided in the Labor Code” to sometimes be “the only
14 meaningful deterrent to unlawful conduct,” the Legislature enacted PAGA in 2003 to deter violations of
15 the Labor Code by augmenting the limited enforcement capability of the LWDA with private
16 enforcement actions by “aggrieved employees” acting as private attorneys general. See 2003 Cal. Stat.
17 ch. 906 § 1; see also *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 383 (2014).
18 Thus, a PAGA is in the nature of in the nature of an enforcement action, where the named plaintiff acts
19 as a proxy of the LWDA to collect penalties otherwise recoverable only by the LWDA. See *Arias*, 46
20 Cal. 4th at 986; see also *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 381–82
21 (2014). In that role, the named plaintiff “take[s] on a special responsibility to their fellow aggrieved
22 workers who are effectively bound by any judgment.” See *O'Connor*, 201 F. Supp. 3d at 1134.

23 The data provided by Defendants allowed Plaintiffs’ counsel to calculate the maximum exposure
24 in Labor Code penalties in preparation for mediation. (Lapuyade Decl., ¶ 10). There are approximately
25 1,358 aggrieved employees who worked a collective total of approximately 32,372 pay periods during
26 the PAGA period in the data set provided. (Lapuyade Decl., at ¶ 15; Settlement Agreement ¶ III.3).
27 Without stacking the PAGA penalties, the total maximum exposure is estimated at approximately
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1 \$3,237,200 in PAGA penalties (32,372 pay periods X \$100 per pay period). (*Id.*) (Lapuyade Decl., ¶
2 16).

3 When reviewing a settlement agreement, however, “the test is not the maximum amount
4 plaintiffs might have obtained at trial on the complaint,” *see Wershba v. Apple Computer, Inc.*, 91 Cal.
5 App. 4th 224, 250 (2001), nor is it “whether the settlement agreement is perfect in the estimation the
6 reviewing court.” *See Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). The test is “whether
7 the settlement is reasonable under all of the circumstances.” *See Wershba*, 91 Cal. App. 4th at 250.
8 Relevant considerations include, the strength of a plaintiff’s case and the risk and the expense,
9 complexity and likely duration of further litigation. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
10 4th 116, 130 (2008); *see also Smith*, 2018 WL 1899912 at *2. In PAGA settlements, courts also consider
11 their authority to award less than the maximum penalty authorized by PAGA. *See Cal. Lab. Code* §
12 2699(e)(2); *see also Smith*, 2018 WL 1899912 at *3.

13 The Gross Settlement Amount of \$850,000 reflects a compromise of the parties’ respective
14 positions rather than a finding of liability at trial and awarding of maximum penalties under the PAGA.
15 In this regard, Defendants have denied and continue to deny all allegations of wrongdoing arising out of
16 the employment relationship between the Parties including the Aggrieved Employees. Moreover,
17 Defendants have raised several defenses to the PAGA claims that could be persuasive to the Court.
18 (Lapuyade Decl., ¶ 17).

19 Further, there is always the possibility of the Court reducing civil penalties significantly if
20 Plaintiffs were to prevail at trial on the grounds that it would be “unjust, arbitrary and oppressive, or
21 confiscatory. *See Cal. Lab. Code* § 2699(e)(2). Indeed, as recently shown in the Court of Appeal’s
22 decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on
23 his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
24 the employer’s good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of
25 Appeal found such reduction to be proper. *Id.* at 539.

26 Ultimately, litigating this case to judgment could require significant time and expense and
27 potential risk that the Court may not award the full penalties requested. Plaintiffs’ Counsel are
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1 experienced and fully understand the inherent risks and uncertainty involved with such matters as the
2 outcome of the potential trial and the outcome of any appeals that would inevitably follow should
3 Plaintiffs prevail at trial. (Lapuyade Decl., ¶ 18).

4 The Gross Settlement Amount is approximately 26.26% of the maximum penalties that could
5 have been awarded by this Court which is consistent with settlements approved by numerous courts. *See,*
6 *e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000); *Bellinghausen v. Tractor*
7 *Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015); *Van Ba Ma v.*
8 *Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014).

9 In sum, based on the reasoning and analysis above, this settlement is fair, reasonable, and
10 consistent with the PAGA’s policies and purposes under these circumstances. (Lapuyade Decl., ¶¶ 19-
11 20).

12 **4. The Settlement Agreement Apportions Civil Penalties between the LWDA**
13 **and the Aggrieved Employees as Required by PAGA**

14 Except when civil penalties are recovered from a defendant who did not have any employees at
15 the time of an alleged violation, civil penalties recovered under PAGA must be distributed so that 75
16 percent of the civil penalties are paid to the to LWDA and 25 percent are paid to the “aggrieved
17 employees” on whose behalf the PAGA action was brought. *See* Cal. Lab. Code § 2699(i). In full
18 compliance with that rule, the Settlement Agreement requires the PAGA Penalty Fund to be paid to the
19 LWDA and 25 percent of the Net Settlement Fund to be paid to the PAGA Settlement Employees.
20 (Settlement Agreement at ¶ III.6.a)

21 **5. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable**
22 **Amount to the Payment of Attorneys’ Fees**

23 The PAGA allows a prevailing plaintiff to recover reasonable attorneys’ fees. *See* Cal. Lab. Code
24 § 2699(g). In recognition of this, the Settlement Agreement allows Plaintiffs’ counsel to request 1/3 of
25 the Gross Settlement Amount, \$283,333.33 in attorneys’ fees. (Lapuyade Decl., ¶ 21; Settlement
26 Agreement at ¶ III.6.b). For the reasons below, this amount is fair, adequate, and reasonable.

27 First, in class actions, state and federal courts have held that when a class action establishes a
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1 monetary fund for the benefit of the class members out of which attorneys' fees may be paid, courts may
2 determine the amount of a reasonable fee by "choosing an appropriate percentage of the fund created."
3 *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (affirming a fee award representing 33 1/3
4 percent of the fund and joining "the overwhelming majority of federal and state courts" in approving the
5 "percentage method" as a reasonable means for determining attorney fee awards in class actions). While
6 different from class action settlements in important ways, PAGA settlements also involve the
7 establishment of a common fund for the benefit of persons other than the named plaintiff, so the reasons for
8 utilizing the percentage method are the same. *See id.* (noting that the percentage method provides "ease
9 of calculation," "alignment of incentives between counsel and the class," "a better approximation of
10 market conditions in a contingency case," and the "encouragement . . . to seek an early settlement"). The
11 \$283,333.33 requested by Plaintiffs' counsel represents one-third of the Gross Settlement Amount, which
12 is consistent with awards usually approved in class actions. *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th
13 43, 66, fn. 11 (2008) ("[F]ee awards in class actions average around one-third of the recovery"); *see also*
14 *Laffitte*, 1 Cal. 5th at 506 (upholding the approval of a fee award equal to one-third of the total settlement
15 amount).

16 Second, the percentage method may be cross-checked with the lodestar calculation when there
17 are concerns about the reasonableness of a percentage-based award. A lodestar cross-check thus provides a
18 mechanism for bringing an objective measure of the work performed into the calculation of a reasonable
19 attorney fee. The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar
20 cross-check is extraordinarily high or low, the trial court should consider whether the percentage used
21 should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not
22 necessarily required to make such an adjustment." (*Id.*) Thus, a lodestar cross-check is aimed at
23 astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-check
24 "undermines" one of the primary reasons for using the percentage method: aligning counsel's incentives
25 with the benefits delivered to the class and discouraging protracted litigation. (*Id.* at p. 506 (finding trial
26 courts "retain the discretion to forgo a lodestar cross-check"); *Report of the Third Circuit Task Force,*
27 *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 258; *Lealao v. Beneficial California, Inc.*, 82 Cal.
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1 App. 4th 19, 29-30 (2000) (citing the recommendations of the Third Circuit Task Force with approval
2 and observing that “[t]he criticisms of the lodestar approach set forth in this Report are now echoed by
3 many authorities, who have been most vocal about the manner in which it exacerbates the problem of
4 ‘cheap settlements’ and burdens already overworked trial judge”).)

5 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or
6 even higher.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255; *see also, e.g., Sutter*
7 *Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a cross-
8 check in an antitrust class action); *Chavez*, 162 Cal.App.4th at 60 (applying a 2.5 multiplier on a lodestar
9 cross-check); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier
10 without remand).)

11 As set forth in their declarations and their respective lodestars, Plaintiffs counsel’s total lodestar
12 incurred in the prosecution of the case against Defendants is estimated at \$341,125. Specifically,
13 Plaintiffs’ counsel have spent approximately 630.1 hours in litigating and settling this action to date, and
14 anticipates spending another 20 hours to handle post-approval matters and any settlement issues.
15 Lapuyade Decl. ¶¶ 22-24; L. Lee Decl. at ¶¶ 6-8; Choi Decl. at ¶¶ 3-5; D. Lee Decl. at ¶¶ 8-10; Zakay
16 Decl. ¶¶ 4-5; Treglio Decl. ¶¶ 10-15).

17 The courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time
18 records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to the
19 number of hours worked on a particular case is sufficient evidence to support an award of attorney fees,
20 even in the absence of detailed time records.” (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.)

21 Reasonable hours include, in addition to time spent during litigation, the time spent before the
22 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
23 preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.) Further,
24 the fee award should include fees incurred to establish and defend the attorneys’ fee claim. (*Serrano v.*
25 *Unruh* (1982) 32 Cal.3d 621, 639 [*Serrano IV*].)

26 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience
27 in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The court
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1 may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney’s skill and
2 experience, the nature of the work performed, the relevant area of expertise and the attorney’s customary
3 billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632-33.)

4 Plaintiffs’ counsel’s skill and experience justify the requested rate. As shown in the supporting
5 declarations, Plaintiffs’ counsel have significant experience in the area of employment and wage and
6 hour class actions. Specifically, Plaintiffs counsel’s practice focuses on representing employees in
7 employment matters, particularly wage and hour cases. (Lapuyade Decl. ¶¶ 38-45; L. Lee Decl. at ¶¶ 3-
8 5; Choi Decl. at ¶¶ 3-4; D. Lee Decl. at ¶¶ 3-7; Zakay Decl. ¶ 3; Treglio Decl. ¶¶ 1-9). As such, based on
9 the hours and applicable rate, the total lodestar to be expended by Plaintiffs’ counsel through finalizing
10 this Settlement will be approximately \$341,125.50, based on 630.1 total hours. (Lapuyade Decl. ¶¶ 25-
11 26).

12 Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier in
13 order to make an appropriate fee award. (*Serrano v. Priest*, 20 Cal.3d 25, 48 (1977) (“*Serrano III*”)) The
14 pertinent factors include the difficulty of the questions involved and the skill in presenting them, the
15 contingent nature of the fee award, the extent to which the litigation precluded other employment, and
16 the percentage-of-the-fund the attorney would have received on the fair market. (*Id.*; *Lealao*, 82
17 Cal.App.4th at p. 49.) However, this list is not exhaustive and the court can consider other factors it
18 deems important in setting the multiplier. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1139.)

19 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
20 enhancement based on a percentage-of-the-fund. (*Lealao*, 82 Cal.App.4th at p. 52 (the promptness of
21 settlement “cannot be used to justify the refusal to apply a multiplier”).) According to *Lealao*, courts
22 placed “an extraordinarily high value” on settlement, and counsel should be rewarded, not punished, for
23 achieving this goal in a timely fashion. (*Id.*)

24 Here, based upon Plaintiffs counsel’s lodestar of \$341,125.590, Plaintiffs’ counsel do not need a
25 multiplier, as their incurred attorneys’ fees exceed 1/3 of the requested fee, or \$283,333.33. In other
26 words, a negative multiplier would have to be applied to Plaintiffs counsel’s lodestar to reach the
27 \$283,333.33 in fees. As such, the requested fee award is fair and reasonable, and should be awarded in
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its entirety. Plaintiffs' counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all PAGA Settlement Employees. For such reasons, Plaintiffs counsel's request for attorneys' fees in the amount of \$283,333.33 is fair, reasonable, and adequate.

Plaintiffs' counsel will be splitting the approved fees as follows: 25 % to JCL Law Firm, APC; 25% to Zakay Law Group, APLC; 25% to Diversity Law Group, PC, Law Offices of Choi & Associates, APLC; and David Lee Law, APC; and 25% to Potter Handy LLP, which the Plaintiffs have previously authorized in writing. (Lapuyade Decl. ¶ 26).

6. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Litigation Costs

The PAGA also allows a prevailing plaintiff to recover litigation costs. *See* Cal. Lab. Code § 2699(g). Accordingly, the Settlement Agreement allows Plaintiffs' counsel to request up to \$25,000.00 in litigation costs. (Settlement Agreement at ¶ III.6.b)

Plaintiffs' counsel request \$25,000.00² for the reimbursement of litigation costs despite incurring \$31,318.62. As set forth in accompanying declarations of Plaintiffs' counsel, these costs were all directly incurred in the prosecution of this action, including, but not limited to, filing fees, service fees, and mediation fees. Lapuyade Decl. ¶¶ 28-31; L. Lee Decl. at ¶ 9; Choi Decl. at ¶ 7; D. Lee Decl. at ¶ 9; Zakay Decl. ¶¶ 7-8; Treglio Decl. ¶¶ 16-17). As such, Plaintiffs' counsel request for costs in the amount of \$25,000.00 is fair, adequate, reasonable, and consistent with the PAGA's policies.

7. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Plaintiffs' PAGA Representative Service Award

Courts have held that named plaintiffs in class, or private attorney general actions can request a service award. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009) (explaining that service awards “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize

² Plaintiffs' Counsel actually incurred \$31,318.62 in costs litigating this case. However, the Settlement Agreement only permits a recovery of up to \$25,000.

1 their **willingness to act as a private attorney general**”) (emphasis added). Plaintiffs have requested, and
2 Defendants do not oppose, Enhancement Awards in the amount of Seven Thousand-Five Hundred
3 Dollars (\$7,500) to Plaintiff Capps, Five Thousand Dollars (\$5,000) to Plaintiff Chavez and Five
4 Thousand Dollars (\$5,000) to Plaintiff Jimenez, pursuant to the terms of the Settlement Agreement.
5 Plaintiffs request that this Court approve such service payments in light of the efforts Plaintiffs put into
6 this case, and the excellent result achieved. (Lapuyade Decl., ¶ 32).

7 Plaintiffs understood that the filing of this action was a matter of public action and this was being
8 prosecuted on a representative basis. Plaintiffs further understood that a representative action would take
9 longer in litigation than an individual action and undertook such risks. Plaintiffs did not incur any
10 expenses, but have expended a significant amount of time on this matter. Plaintiffs spent many hours
11 discussing this matter with their respective counsel on a number of occasions, including proving
12 substantive information regarding Defendants’ practices, and providing documents related to their own
13 claims and the claims of the Aggrieved Employees. As part of their duties as PAGA Representatives,
14 Plaintiffs provided invaluable information, evidence, and documents that resulted in this settlement.
15 (Lapuyade, Decl., ¶ 33; Treglia Decl., ¶ 26).

16 Plaintiffs assumed these risks alone and the Aggrieved Employees will reap the benefits through
17 this settlement. The Aggrieved Employees did not have to file individual lawsuits and bear the risks of
18 payment of fees and costs if they did not prevail, nor did they have to face the potential for retaliation.
19 These are significant benefits, even apart from the time Plaintiffs spent working on this case, that weigh
20 in favor of granting the requested enhancement. (Lapuyade Decl., ¶ 34).

21 This litigation has resulted in a significantly valuable benefit to the Aggrieved Employees, and
22 the Plaintiffs took a substantial risk and sacrifice in helping to get this financial benefit to the Aggrieved
23 Employees. As such, the enhancement should be awarded to the named Plaintiffs for their commitment,
24 dedication, and risks taken for this litigation. Accordingly, the court should find that the enhancement is
25 fair and reasonable. (Lapuyade Decl., ¶ 35).

26 **8. The Settlement Will be Administered by a Third-Party Administrator**

27 Because the Settlement Agreement requires payments not only to Plaintiffs, Plaintiffs’ counsel,
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1 and the LWDA, but also to approximately 1,358 current and former nonexempt employees in proportion
2 to the number of pay periods each Aggrieved Employee received, significant time and effort will be
3 required to administer the Settlement Agreement if it is approved by this Court. Among other things,
4 each Aggrieved Employee's share of the Aggrieved Employee Settlement Award must be calculated;
5 taxes must be reported and appropriate tax forms must be issued to all parties who receive payments
6 under the Settlement Agreement; payments must be mailed to Plaintiffs, Plaintiffs' counsel, the LWDA,
7 and each Aggrieved Employee; and any checks not cashed by Aggrieved Employees must be voided so
8 that the unclaimed amount can be reallocated to the LWDA.

9 In contemplation of these expenses, the Parties have engaged ILYM Group, Inc. ("ILYM") to act
10 as a third-party settlement administrator. ILYM has extensive experience administering PAGA matters.
11 ILYM has agreed to an amount that will not exceed the fee of \$12,000.00 to administer this settlement.
12 ILYM was chosen by the Parties based on a bid submitted by ILYM to the Parties' counsel, which was
13 the lowest bid obtained. (Lapuyade Decl. at ¶¶ 36-37, Ex. 8). Counsel for both Parties have used ILYM
14 in connection with previous PAGA and class action settlements and have found ILYM to be a competent
15 settlement administrator. (*Id.*) Based on their experience with prior settlement agreements, the parties'
16 counsel believe that the allocation of \$12,000.00 is competitive rate that reasonably approximates the
17 work required to administer the settlement. (*Id.*)

18 **9. Uncashed Checks Will be Distributed to the LWDA**

19 PAGA Aggrieved Employees shall have one-hundred eighty (180) days from the date of issuance
20 of the check to negotiate the check. (Settlement Agreement ¶ IV.4). The funds from any checks returned
21 as undeliverable, and any checks not negotiated within 180 days, shall be distributed to the LWDA. (*Id.*).

22 **V. THE LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS SETTLEMENT**

23 On April 7, 2022, Plaintiffs caused a copy of the Motion, Settlement Agreement and Proposed
24 Order to be uploaded to the LWDA's website. (Lapuyade Decl. ¶ 7; Ex. 5).

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1 **VI. CONCLUSION**

2 For all of the foregoing reasons, Plaintiffs request that the Court approve the Settlement
3 Agreement pursuant to Labor Code section 2699(1)(2) and set a nonappearance Final Report hearing date
4 in or after February 2023.

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6 Dated: April 8, 2022

JCL LAW FIRM, APC

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8 By: _____


Jean-Claude Lapuyade

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10 Attorneys for Plaintiffs and the Aggrieved Employees
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