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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

RICHARD JOHN TRINIDAD individual, on
behalf of the State of California as a private
attorney general,

Plaintiff,

vs.

ASCOT HOTEL, L.P., a California Limited
Partnership; and Does 1 through 50, Inclusive;

Defendants.

Case No. 21SMCV00575

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF PAGA
SETTLEMENT**

Hearing Date: May 10, 2022

Judge: Elaine W. Mandel
Dept: P
Complaint filed: March 29, 2021

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California Labor Code §2021

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California Labor Code §2041

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California Labor Code §512 1

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California Labor Code §2699 1,3, 5-6, 8, 10

California Labor Code §280211

1 **I. INTRODUCTION**

2 This settlement covers an action brought under the California Private Attorneys General
3 Act, Cal. Labor Code §2699, et seq. (“PAGA”). The operative Complaint was filed by Plaintiff
4 Richard J. Trinidad, (“Plaintiff”). Plaintiff brought claims on behalf of all individuals who, during
5 the time period of January 6, 2020 through February 8, 2022 (the “PAGA Period”), were employed
6 and classified by Defendant Ascot Hotel, L.P. (“Defendant”) as non-exempt, in California (the
7 “Aggrieved Employees”).

8 Plaintiff alleged that Defendant failed to pay minimum wages for all time worked,
9 including for rest breaks, failed to provide meal and rest periods, failed to provide accurate wage
10 statements, and failed to provide wages when due. Based upon the foregoing conduct, Plaintiff
11 contends that Defendant is liable for PAGA penalties for underlying violations of Labor Code
12 sections 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197,
13 1197.1, 1198, 2802, and the applicable Wage Orders. Defendant denies Plaintiff’s claims, any
14 liability therefor, and that Plaintiff can successfully proceed with his claims including on a
15 representative basis.

16 After a full day of mediation with Steve Serratore, Esq., following an extensive informal
17 discovery exchange, the parties agreed to a mediator’s proposal to settle this PAGA action for the
18 total amount of One Hundred and Thirty-Five Thousand Dollars (\$135,000.00). In accordance
19 with California Labor Code §2699(l), Plaintiff now asks this Court to review and approve the
20 Parties’ mediated and agreed upon settlement of Plaintiff’s PAGA claims.¹

21 The PAGA settlement is set forth in the accompanying Private Attorney General Act
22 (Labor Code Section 2698 *et Seq.*) Settlement Agreement and Release of All Claims (“Settlement
23 Agreement”). A true and correct copy of the Settlement Agreement which sets forth the terms for
24 the settlement of the PAGA claims is attached as Exhibit #1 to the Declaration of Attorney

25 ¹ Section 2699(l)(2) provides as follows: “The superior court shall review and approve any
26 settlement of any civil action filed pursuant to this part.” This is only a settlement of the PAGA
27 claims for civil penalties, and is not a class action settlement and does not release the individual
28 claims, if any, of the affected Aggrieved Employees. Cal. Labor Code § 2699(g)(1); *Iskanian v.*
CLS Transportation, 59 Cal. 4th 348, 381 (2014).

Matthew M. Blum, filed herewith. Capitalized terms shall have the same meaning as defined in the Settlement Agreement. The LWDA has received notice of this Settlement and this motion as set forth in the accompanying Declaration of Matthew M. Blum (“Blum Dec”). A proposed order confirming review and approval of the PAGA settlement is submitted herewith.

II. RELEVANT FACTS

On January 6, 2021, Plaintiff Pablo Macias gave written notice to the Labor and Workforce Development Agency (“LWDA”) of his intent to assert a claim under the Private Attorney General Act of 2004 (“PAGA”) and his alleged bases for the claims. More than 65 days passed after the notice letter was sent to the LWDA, and the LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter.

On March 29, 2021, Plaintiff filed the Action, a PAGA representative complaint, against Defendant in the Superior Court of Los Angeles County, Case No. 21SMCV00575. After several meet and confer efforts, the parties agreed to stay discovery in the case and instead move forward with mediation. In preparation for the mediation, the parties exchanged informal discovery in good faith. Plaintiff retained an expert consulting firm to review Defendant’s payroll data and perform an analysis of potential liability under applicable statutes. This information was incorporated into Plaintiff’s mediation brief and shared with Defendants at mediation.

On December 3, 2021, the Parties engaged in a full-day mediation with Steve Serratore, Esq. Based upon information provided to Plaintiff’s counsel by Defendant as part of the exchange of informal discovery in advance of and in support of mediation, as of the date of the parties’ mediation, there were approximately 143 aggrieved employees who worked a total of approximately 3,614 pay periods during the PAGA Period to the date of mediation. Defendant provided a large sample of time records and payroll records for the mediation. Defendant also provided Plaintiff with all relevant employment policies, sample employee schedules and break waivers, and other relevant documentation, as well as Plaintiff’s complete personnel file.

At the mediation, the Parties engaged in extensive, arms-length negotiations. At the conclusion of the full-day mediation, the parties had reached an agreement for settlement based on a mediator’s proposal, which Plaintiff and Defendant ultimately accepted. The mediator’s proposal

1 called for this PAGA case to be resolved for the total amount of One Hundred and Thirty-Five
2 Thousand Dollars and Zero Cents (\$135,000.00), the agreement was memorialized in a
3 Memorandum of Understanding. The Parties thereafter negotiated and entered into a long form
4 settlement agreement. Accordingly, the Parties now ask the Court to approve the Parties'
5 Settlement.

6 **III. TERMS OF THE PAGA SETTLEMENT**

7 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699. The
8 Settlement Agreement negotiated by the parties provides for Defendant to pay One Hundred and
9 Thirty-Five Thousand Dollars and Zero Cents (\$135,000.00) as the "Gross Settlement Amount".
10 (Settlement Agreement at §4.01) This Gross Settlement Amount includes the following: (i) any
11 payment to the LWDA; (ii) any payment to Aggrieved Employees; (iii) the payment of fees and
12 costs to Plaintiff's counsel, as approved by the Court; and (v) all fees, costs, and expenses of
13 administration of this Agreement. (*Id.*) The "PAGA Payment" is defined as the amount remaining
14 from the Gross Settlement Amount after the deduction of the Settlement Administration Fee,
15 Plaintiffs' Counsel's Fee Amount and Plaintiffs' Counsels' Cost Amount. *See the* Settlement
16 Agreement attached as Exhibit 1 to Blum Dec.

17 The Net PAGA Payment shall represent Labor Code Section 2699 penalties, of which 75%
18 of the payment will be paid to the LWDA as the LWDA Payment and 25% will be paid to
19 Aggrieved Employees as Individual PAGA Payments, unless the Court determines otherwise. A
20 reallocation of the settlement funds amongst PAGA claims directed by the Court shall not be a
21 basis for either side to void the Settlement Agreement. Aggrieved Employees will be issued a Form
22 1099 for their share of the PAGA payments. The Individual PAGA Payment for each Aggrieved
23 Employee shall be based on the number of bimonthly payroll periods each Aggrieved Employee
24 worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved
25 Employees during the PAGA Period. *See* Blum Dec.

26 The "Aggrieved Employees" are defined as "all of Defendant's current and former non-
27 exempt employees employed in California between January 6, 2020, through February 8, 2022.
28 Defendant provided Plaintiff's Counsel with the number of pay periods. Defendant represented

1 that there are approximately 3,614 pay periods as of the Parties' mediation date. After confirming
2 the number of pay periods in the PAGA period if the Court grants approval of the settlement,
3 Defendant will provide a supplemental declaration confirming the number of pay periods and
4 Aggrieved Employees.

5 Notice shall be provided to the Aggrieved Employees in the following manner: No later
6 than thirty (30) days after Effective Date² Defendant shall provide the Settlement Administrator
7 with a list of Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees
8 List shall state the first name and last name in separate columns for each Aggrieved Employee, the
9 last known home address for each such Aggrieved Employee, each Aggrieved Employee's social
10 security number, and each Aggrieved Employee's respective number of pay periods employed by
11 Defendant in California during the PAGA Period.

12 The individual PAGA Payments are considered penalties and will not be subject to local,
13 state or federal tax withholdings. All Aggrieved Employees who cash their settlement check may
14 receive an IRS Form 1099 reflecting this portion of the settlement. Settlement checks issued to
15

16 ² "Effective Date" means the date upon which the following have occurred: (a) approval of the
17 Settlement is granted by the Superior Court of California for the County of San Diego, or other
18 court assuming jurisdiction of this matter, (b) the Court's Judgment approving the Settlement
19 becomes Final, and (c) the date of the time for filing or noticing any appeal of the Judgment has
20 expired. If there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal,
21 the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of
22 certiorari to the California Supreme Court shall be the date the Settlement is Final. If there is an
23 intervener, but no appeal is filed, the expiration date of the time for filing or noticing any appeal
24 of the Judgment shall be the date the Settlement is Final. If there is no intervener in the Action,
25 the date the Court enters an order approving this Settlement shall be the date the Settlement is
26 Final. For purposes of this Agreement, "becomes final and is no longer appealable" shall mean the
27 later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal
28 of the order and judgment approving this Agreement may be timely filed and none is filed (*i.e.*, 60
days from notice of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed
of by ruling, dismissal, denial, or in a any other manner that confirms the validity of the order and
judgment, the day after the last date for filing a request for further review of the order and judgment
approving this Agreement passes, and no further review is requested; or (c) if an appeal is filed
and the order approving this Agreement is affirmed and further review of the order is requested,
the day after the review is finally resolved and the order and judgment approving this Agreement
is affirmed.

1 Aggrieved Employees shall remain valid for one hundred eighty (180) days. Thereafter, all
2 uncashed checks shall be voided, and the funds represented thereby shall be paid to the State
3 Controller Fund in the name of the Aggrieved Employee.

4 The PAGA settlement releases the “Released Claims” which are any and all claims for civil
5 penalties under PAGA, of whatever kind or nature, whether known or unknown, arising during the
6 PAGA Period, based on the facts alleged in the operative complaint, as well as Plaintiffs’ notice
7 letters to the LWDA, and any resulting claim for attorneys’ fees and costs under PAGA, which
8 occurred during the PAGA Period. The release excludes individual claims and claims outside of
9 the PAGA Period.

10 Pursuant to California Labor Code Section 2699(1), Plaintiff will provide a copy of the
11 Settlement Agreement to the LWDA concurrently with the filing of the instant motion for
12 settlement approval as well as a declaration confirming that Plaintiff has submitted the Settlement
13 Agreement to the LWDA in compliance with Labor Code Section 2699(1). In addition, Plaintiff
14 shall submit to the LWDA a copy of the Court’s judgment and order approving the Settlement
15 Agreement within ten (10) days after entry of judgment or order.

16 The amounts to be paid from the Gross PAGA Settlement Amount other than the Net
17 PAGA Payment, subject to Court approval, are as follows: (1) Forty-four thousand five hundred
18 and fifty dollars (\$44,550.00) shall be paid to Plaintiff’s Counsel for payment of attorneys’ fees³,
19 ten thousand six hundred and seventy dollars (\$10,670.00) shall be paid to Plaintiff’s Counsel for
20 litigation expenses as set forth in the client’s billing statement (pursuant to Declaration(s) by
21 Plaintiff’s Counsel) in prosecuting the PAGA, and settlement administration fees shall be
22 distributed to the third party settlement administrator ILYM Group, Inc. in an amount not to exceed
23 \$5,500. If any of these amounts end up being less than estimated, the remaining amounts will be
24 added to the PAGA Fund.⁴

25 _____
26 ³ This amount reflects 33% of the Gross PAGA payment

27 ⁴ Plaintiff has entered into a separate confidential settlement agreement with Defendant in
28 regards to the settlement of his individual claims, which provides for payment to him in
exchange for a general release of all claims. Plaintiff will supply a copy of the individual
settlement agreement to the Court for in-camera review upon request.

1 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIM**

2 The claim before this court is the representative claim under PAGA on behalf of the State
3 of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this PAGA
4 claim in its entirety after informal discovery and arm's length mediation. The settlement is
5 intended to fully and finally resolve the PAGA claims asserted by Plaintiff on behalf of the State
6 of California. This is only a settlement of the PAGA claims for civil penalties, and is not a class
7 settlement and does *not* release the individual claims, if any, of the Aggrieved Employees.
8 Attorneys' fees equal to one-third of the Settlement Sum and ligation expenses will also be paid
9 to Plaintiff's Counsel as part of the settlement in accordance with California Labor Code §
10 2699(g)(1) as set forth in the Agreement.

11 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
12 **SETTLEMENT OF THE PAGA CLAIM**

13 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of
14 any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to
15 the agency at the same time that it is submitted to the court." Consequently, the parties respectfully
16 ask the Court to review and approve the settlement of the PAGA claims and the PAGA Settlement
17 Sum to be paid as part of the proposed settlement.

18 **A. The Settlement Sum to Be Paid is Fair And Reasonable**

19 The Parties believe that the Settlement Sum is fair and reasonable and therefore "shall" be
20 reviewed and should be approved. In the case of *Price v. Uber Technologies*, Los Angeles Superior
21 Court Case No. BC544512, where a PAGA penalty claim for misclassification of 300,000 Uber
22 drivers was approved for \$7.5 million in PAGA penalties plus some changes to Uber's policies to
23 allow drivers to drive for other companies like Lyft, California's Labor Commissioner was asked
24 by the court to submit an amicus brief about its views of the standards to evaluate the fairness of a
25 PAGA settlement (where the State is the real party in interest). In its amicus brief filed in response
26 to that request, the Labor Commissioner Julie Hsu specifically stated that the main purpose of
27 PAGA penalties in the eyes of the Labor and Workforce Development Agency is to enforce

1 California's Labor Code and obtain Labor Code compliance. Concerning the adequacy of PAGA
2 settlements, the Labor Commission noted that the purpose of PAGA penalties is to "promote
3 PAGA's compliance and deterrence goals," see Amicus Curiae Brief Submitted by the State Labor
4 Commissioner, *Price v. Uber Technologies*, Case No. BC544512 (June 16, 2017). As explained
5 in this Brief at page 1, the Labor Commissioner believes that labor issues are "best resolved by
6 applying principles of fairness and justice that have developed in other forms of representative
7 actions, as well as by considering PAGA's role in helping the Labor Commissioner discharge her
8 mandate", which is:

9 *To vigorously enforce minimum labor standards in order to ensure employees are not*
10 *required or permitted to work under substandard unlawful conditions or for employers that*
11 *have not secured the payment of compensation, and to protect employers who comply with*
12 *the law from those who attempt to gain a competitive advantage at the expense of their*
13 *workers by failing to comply with minimum labor standards.*

14 Cal. Labor Code §90.5(a).

15 Where, as here, Labor Code compliance is obtained because an employer's policies have
16 changed, PAGA's purpose has been fulfilled and the monetary penalty components of the
17 Settlement become less significant or insignificant. Specifically, after the action was initiated,
18 Defendant adopted new practices to monitor and enforce its written policies to ensure that
19 employees receive paid rest-breaks consistent with California law. Based on the Labor
20 Commissioner's logic, this change, which has been implemented, has eliminated the issue of
21 potential ongoing liability, and makes the Settlement before the Court for approval fair and
22 reasonable.

23 In addition, this Settlement Sum compares favorably to the estimated amount of PAGA
24 penalties owed. With the assistance of an expert, Plaintiff initially calculated that the maximum
25 amount of statutory PAGA civil penalties was potentially \$2,204,600 (based on maximum \$100
26 per pay period for initial violations and \$200 per pay period for subsequent violations and no meal
27 period waivers). Blum Dec. Importantly, however, these calculations were performed at the
28

1 maximum statutory rates for the PAGA penalties, when in fact, it is likely that any penalties
2 awarded would be at a lower rate. Blum Dec.

3 California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than
4 the maximum civil penalty if based on the facts and circumstances to do otherwise would result in
5 an award that is "unjust, arbitrary and oppressive or confiscatory." Before and during the
6 mediation, Defendant argued, among other things, that it was unlikely that any Judge would award
7 more than the actual amounts owed on the claims, let alone the full \$100 or \$200 per violation.

8 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming*
9 *v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA
10 penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum
11 penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually
12 awarded no civil penalties, even when Labor Code violations are established. *See also In re*
13 *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (affirming an award of \$0 in PAGA
14 penalties in a wage and hour class action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.
15 LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

16 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
17 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
18 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff
19 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
20 the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved
21 Employee suffered a violation for each pay period the employee worked.

22 The primary claims in this PAGA action are based on (1) Defendant's alleged failure to
23 provide compliant meal and rest breaks to the Aggrieved Employees when a break was missed,
24 short or late; (2) Failure to pay minimum wage and overtime; and (3) Failure to issue properly
25 itemized wage statements.

26 Here, a number of defenses asserted by Defendant presented serious threats to the claims
27 of the Plaintiff and the Aggrieved Employees. Defendant asserted that the employment practices
28 complied with all applicable Labor Laws. Most importantly and relevant to this case, Defendant

1 argued that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
2 weakened, if not eliminated, Plaintiffs' claims, on liability, value, and manageability as to the meal
3 period and rest break claims. A major component of the damages alleged to have been suffered
4 by the Aggrieved Employees are attributed to missed meal breaks and rest breaks. Before and
5 during the mediation, Defendant aggressively argued that Defendant's policies and culture
6 afforded the Aggrieved Employees an opportunity to take timely meal periods and rest breaks, and
7 that employees like the Plaintiff *chose* not to take compliant breaks. Specifically, Defendant's
8 written policies encouraged Aggrieved Employees to take meal periods according to schedules
9 compliant with the California Labor Code, and included an outline of employees' rights with
10 respect to breaks based on the length of their shift. Defendant argued, therefore, that under the
11 *Brinker* decision it has no liability for the missed breaks whatsoever. Defendant argued that it
12 adopted and strictly enforced lawful policies, and thus afforded Plaintiff and the Aggrieved
13 Employees the opportunity to take compliant meal breaks. Because Plaintiff's claims were largely
14 based on the missed meal breaks, and because Defendant's policies were, indeed, compliant, this
15 presented a very real concern for Plaintiff and the Aggrieved Employees. If successful, this
16 defense could eliminate or substantially reduce any recovery. While Plaintiff believes that this
17 defense, and others, could be overcome, Defendant maintains these defenses have merit and
18 therefore present a serious risk to recovery.

19 Defendant asserted additional defenses to the PAGA claim, not only as to liability but also
20 as to the amount of the penalties, reduction, and manageability. Defendant could argue that no
21 penalties prior to the PAGA notification and/or a Court finding of liability should be awarded
22 because the violations were not intentional, and at least some Courts have so ruled. In addition,
23 Defendant argued that any Court would substantially reduce the PAGA penalty awards in light of
24 decisions like *Carrington*.

25 These defenses present a significant risk to the PAGA claim and the potential that some or
26 all of the PAGA penalties sought may not be awarded. Given Defendant's potential defenses to
27 the violations at issue, the risks and costs of continued litigation, Plaintiff and his attorneys believe
28 that the PAGA Settlement Sum is fair and reasonable. This is particularly true given the changes

1 that Defendant has now made to its policies as described above. Plaintiff's Counsel have
2 significant experience litigating wage and hour claims including claims for PAGA penalties, and
3 the Gross Settlement Amount here is similar to or greater than similar settlements that courts have
4 approved. The Gross Settlement Amount was negotiated by experienced counsel at arm's length
5 with the assistance of a private mediator, Steve Serratore, Esq.

6 As set forth in the exhibit to the declaration of Matthew M. Blum, Esq. submitted
7 concurrently herewith, the LWDA has been provided notice of this motion and the PAGA
8 settlement. The decision of LWDA to accept the PAGA settlement and not oppose or object to this
9 motion should be given considerable weight. This is not a situation where the Court needs to be
10 concerned about the rights of absent employees as in a class settlement, as this PAGA-only
11 settlement does not release the individual claims of absent employees, and the LWDA is a
12 sophisticated government entity that is more than able to look out for its own rights.

13 **B. The Remaining Settlement Terms Are Fair and Reasonable**

14 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code
15 § 2699(1) does not require that a court approve any other elements of the proposed settlement.
16 Because there are no class allegations, the approval provisions applicable to class settlements
17 under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs to approve the
18 settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the
19 settlement terms for attorneys' fees and costs are reasonable.

20 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND**
21 **REASONABLE**

22 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's
23 position is that the payment of attorneys' fees and costs in this settlement is a matter of contract
24 for a contingent representation. Nevertheless, should this Court review the requested attorneys'
25 fees, it is clear that the requested fees and costs are reasonable.

26 In *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480, 503 (2016), the California Supreme
27 Court unequivocally held that when "litigation established a monetary fund for the benefit of the
28 class members, and the trial court in its equitable powers awards class counsel a fee out of that

1 fund, the court may determine the amount of a reasonable fee by choosing an appropriate
2 percentage of the fund created” without considering the amount of hours expended on the case. *Id.*
3 The Court further held that “[t]he recognized advantages of the percentage method – including
4 relative ease of calculation, alignment of incentives between counsel and the class, a better
5 approximation of market conditions in a contingency case, and the encouragement it provides
6 counsel to seek an early settlement and avoid unnecessarily prolonging litigation – convince us
7 the percentage method is a valuable tool that should not be denied by our trial courts.” *Id.*
8 Consistent with *Laffitte*, the Ninth Circuit has held that PAGA and/or Class Counsel should not be
9 penalized for achieving a timely result. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002)
10 (“We do not mean to imply that class counsel should necessarily receive a lesser fee for settling a
11 case quickly; in many instances, it may be a relevant circumstance that counsel achieved a timely
12 result for class members.”).

13 California Courts have consistently recognized “that most fee awards based on either a
14 lodestar or percentage calculation are 33%.” *McCrary v. Elations Co., LLC*, No. EDCV 13-0242
15 JGB (SPx), 2016 U.S. Dist. LEXIS 24050, at *2 (C.D. Cal. Feb. 25, 2016); *McClellan v. Chase*
16 *Home Fin. LLC*, No. SACV 12-1331-JGB (JEMx) 2015 U.S. Dist. LEXIS 118005, at *20
17 (C.D.Cal. Aug. 31, 2015) (explaining that while the attorneys’ fee award that approximated 32%
18 of all sums paid under the Settlement Agreement was reasonable after citing numerous other cases
19 finding that an award of 33% of the common fund was common in class actions)⁵

20 Plaintiff’s Counsel’s diligent and efficient litigation of this action resulted in the creation
21 of an ascertainable common fund of \$135,000.00 that will substantially benefit the state of
22 California and the aggrieved employees. Thus, Plaintiff’s Counsel obtained greater Labor Code
23 compliance and Defendant’s policies have changed, which means the primary objective of PAGA
24 as set forth by the Labor Commissioner in the *Uber* case has been achieved.

25 _____
26 ⁵ In reaching its decision in *McClellan*, the court recognized that “California district courts
27 routinely award attorneys’ fees in the range of 30-40% in class actions that result in the recovery
28 of a common fund under \$10 million.” *McClellan*, No. SACV 12-1331-JGB (JEMx) 2015 U.S.
Dist. LEXIS 118005, at *20 (quoting *Miller v. CEVA Logistics USA, Inc.*, No. 2:13-CV-01321-
TLN, 2015 U.S. Dist. LEXIS 104704, 2015 WL 4730176, at *8 (E.D. al. Aug. 10, 2015) and citing
In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 463 (9th Cir. 2000)).

1 Plaintiff's Counsel seek approval of an award of attorneys' fees in the amount of
2 \$44,550.00 representing 1/3 of the common fund. This request is significantly less than the
3 combined reasonable fees actually incurred in this case by The Law Office of Matt Blum and
4 Blumenthal Nordrehaug Bhowmik De Blouw, LLP⁶, as set forth in the concurrently filed
5 declaration(s). As set forth in the Parties' Settlement Agreement, the attorneys' fees shall be
6 allocated between Plaintiff's Counsel as follows: Blumenthal Nordrehaug Bhowmik De Blouw,
7 LLP's share will be 35%; and The Law Office of Matt Blum's share will be 65%.

8 Plaintiff's Counsel have also each provided information about the tasks that the two law
9 firms performed on this case by and through their respective declarations. Plaintiff's Counsel's
10 request for attorneys' fees in the amount of 1/3 of the monetary common fund is consistent with
11 the amount awarded in other cases as described in detail above. Under *Laffitte*, the Court need not
12 undertake any lodestar cross-check where, as here, the percentage of the common fund sought
13 equates to 1/3 of the common fund obtained.

14 Finally, as set forth in the accompanying Declaration of Matthew Blum and Nicholas De
15 Blouw, Plaintiff's Counsel will be recovering litigation expenses in the total amount of \$10,670.00.
16 These expenses are documented in the accompanying Declaration of Matthew Blum and
17 Declaration of Nicholas De Blouw.

18 VII. CONCLUSION

19 Based on the foregoing, Plaintiff respectfully requests that the Court approve the PAGA
20 settlement and the Settlement Sum as set forth in the Settlement Agreement and enter the proposed
21 order submitted herewith.

22
23 DATED: April 6, 2022

THE LAW OFFICE OF MATT BLUM

24
25 By: 
26 Matthew M. Blum
27 Attorney for Plaintiff

28 ⁶ The Firms have collectively incurred \$79,134.50 in reasonable fees. See *Blum Dec* and *De Blouw Dec* and corresponding time entries.