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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SONOMA

RYAN ACCURSO; TOM PIPLACK; DONOVAN M. SHERROD; BRENDON HART; TAYLER ANDREWS; ARIANNA CARRERA; BRIANNA MARIE TAYLOR; ELISSA BRISTOW; and BLAKE VANBREEMEN, on behalf of the State of California and all other Aggrieved Employees,

Plaintiffs,

vs.

IN-N-OUT BURGERS, a California corporation; and DOES 1-100, inclusive,

Defendants.

CASE NO.: SCV-268956

Hon. Dana Beernick Simonds — Dept. 18

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (CAL. LABOR CODE § 2698, ET SEQ.) SETTLEMENT AGREEMENT AND AWARD OF ATTORNEYS' FEES AND COSTS, REPRESENTATIVE AND GENERAL RELEASE PAYMENTS, AND SETTLEMENT ADMINISTRATION COSTS

Hearing Date:
Time:
Dept: 18

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Private Attorneys General Act ("PAGA") settlement is the global resolution of years of overlapping, aggressively litigated proceedings involving multiple PAGA actions, a related class action, individual arbitrations, appellate proceedings in two Courts of Appeal, California Supreme Court review, numerous distinct Labor Code theories, and a coordinated plaintiffs' team consisting of several separate law firms. Plaintiffs Ryan Accurso, Tom Piplack, Donovan M. Sherrod, Brendon Hart, Tayler Andrews, Arianna Carrera, Brianna Marie Taylor, Elissa Bristow, and Blake Vanbreemen ("Plaintiffs"), acting on behalf of the State of California and alleged Aggrieved Employees, and Defendant In-N-Out Burgers, a California Corporation ("Defendant" or "In-N-Out") reached a $14 million global settlement, of which $13 million is allocated to the PAGA Actions addressed in the Second Amended Consolidated Complaint attached to the Parties' Joint Stipulation for Leave to File Second Amended Consolidated Complaint, for settlement purposes only, and $1 million to the separate *Vanbreemen* class claims pending in San Bernardino Superior Court. This motion seeks approval of the PAGA settlement only; the class settlement is subject to separate approval in the Vanbreemen action. (Settlement Agreement ("Agreement"), ¶¶ 2.19, 8.1; Joint Stipulation, ¶¶ 3, 5–7.)

The PAGA settlement resolves claims on behalf of individuals who worked for Defendant as non-exempt, hourly paid employees in the State of California at any time from June 4, 2018 through the date the Settlement is approved ("PAGA Members"). As of May 31, 2026, there are approximately 88,511 PAGA Members who collectively worked an estimated 4,698,217 PAGA Pay Periods. No PAGA Member is required to submit a claim, and none of the $13 million Gross Settlement Amount will revert to In-N-Out. After Court-approved deductions, 75% of the Net Settlement Amount will be paid to the LWDA and 25% will be distributed directly to PAGA Members based on the number of PAGA Pay Periods each worked. (Agreement, ¶¶ 1.11, 3.1, 3.2.4)

The settlement was achieved only after repeated efforts at resolution. The parties participated in separate mediations in *Piplack* before Michael Young in 2021 and in *Accurso*

before the Hon. Lisa Hart Cole (Ret.) in 2022; a global mediation before Mark Rudy in 2023; and a further global mediation before Tripper Ortman in 2025. The litigation continued to evolve between those sessions, including significant appellate proceedings affecting arbitration, PAGA standing, intervention, and the continued viability of representative claims. The final settlement reflects years of litigation, coordination, and repeated arm's-length negotiations wherein a compromise was reached with the strengths and risks of the cases being understood.

Plaintiffs therefore respectfully request that the Court approve the Settlement as fair, reasonable, and adequate in light of PAGA's enforcement purposes; approve the requested representative and general release payments of $15,000 to each of eight representative Plaintiffs, excluding Vanbreemen, for a total of $120,000; approve settlement administration expenses of $123,250; approve litigation expenses in the amount of $122,584.33, supported by counsel declarations; and award $5,200,000 in attorneys' fees. The 40% fee request is supported by the eight actions, individual arbitrations, three appeals, and California Supreme Court review that Plaintiffs' Counsel litigated over nearly seven years on a fully contingent basis; by a result that matches, measured against maximum unstacked exposure, the $27 million PAGA-only settlement approved in *Doe v. Google LLC*; by authority approving 40% awards where litigation risk and appellate work warrant it; by the unique nature and complexity of the claims litigated; and by a lodestar cross-check.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Eight Related Actions Presented Distinct but Overlapping PAGA Theories

The Second Amended Consolidated Complaint attached to the Parties' Joint Stipulation, filed on 10/23/2026, brings together all nine Plaintiffs' PAGA claims from eight related actions: (1) *Accurso v. In-N-Out Burgers*, Sonoma County Superior Court, Case No. SCV-268956; (2) *Piplack and Sherrod v. In-N-Out Burgers*, Orange County Superior Court, Case No. 30-2019-01114510; (3) *Andrews v. In-N-Out Burgers*, Los Angeles County Superior Court, Case No. 21STCV31791; (4) *Carrera v. In-N-Out Burgers*, San Bernardino County Superior Court, Case No. CIVSB2115431; (5) *Taylor v. In-N-Out Burgers*, Los Angeles County Superior Court, Case No. 21STCV18259; (6) *Becerra/Bristow v. In-N-Out Burgers*, formerly captioned *Becerra v. In-*

N-Out Burgers, Los Angeles County Superior Court, Case No. 21STCV17045, in which Bristow substituted for Becerra, who is no longer a party; (7) *Vanbreemen v. In-N-Out Burgers*, San Bernardino County Superior Court, Case No. CIVRS2403118; and (8) *Hart v. In-N-Out Burgers*, JAMS, Case No. 5200001698. The consolidated pleading includes only Vanbreemen's representative PAGA allegations, not his class or individual causes of action.

The related proceedings also include Taylor's superior-court action, No. 22STCV06730, and JAMS proceeding, No. 5220001732; Piplack's Judicate West proceeding, No. A325548; Andrews's ADR Services proceeding, No. 24-5167-DJL; and Sherrod's appeal, No. G064028. Under the Agreement, the Parties will conclude the identified proceedings to the extent not already dismissed, with the named Plaintiffs' individual claims dismissed with prejudice and representative PAGA claims in the other forums dismissed without prejudice because they are resolved through this consolidated proceeding. Vanbreemen's separately settled class-related claims are excluded. Plaintiffs' Counsel will file the stipulated dismissals and provide Defense Counsel conformed copies.

Joinder and consolidation are for settlement purposes only and do not waive Defendant's rights or defenses, including arbitration. If the Settlement does not become final, the Second Amended Consolidated Complaint is to be withdrawn, Accurso's First Amended Complaint reinstated, and the Parties restored to their respective positions under the Agreement and Joint Stipulation. The stipulation does not itself dismiss, stay, or otherwise affect the related proceedings. (Agreement, ¶¶ 8.1–8.3, 9.6; Joint Stipulation, ¶¶ 5–7.)

The claims span a broad range of alleged Labor Code and Wage Order violations, including unpaid minimum and overtime wages and off-the-clock work; meal, rest, and recovery-period violations; timekeeping and wage statement violations; untimely wages and final wages; uniform and other business expense reimbursement; reporting time and split shift compensation; suitable seating; vacation wages; personnel and payroll record violations; COVID-19 supplemental paid sick leave; sick and protected leave; workplace health and safety; restrictions on protected disclosures; and required written employment notices. The PAGA period begins June 4, 2018, based on the earliest *Piplack* PAGA notice, and extends through the

date the Settlement is approved.

B. The Litigation Generated Significant Appellate Proceedings

The appellate history materially increased both the work required of Plaintiffs' Counsel and the risks of continued litigation. In *Piplack*, In-N-Out appealed the denial of its motion to compel arbitration. In a published decision, *Piplack v. In-N-Out Burgers* (2023) 88 Cal.App.5th 1281, the Fourth District held that the individual PAGA claim could be compelled to arbitration under *Viking River Cruises* while the plaintiff retained standing to pursue representative PAGA claims under California law.

Piplack and Taylor also appealed the denial of their motions to intervene in the *Accurso* Action. The First District affirmed the denial of mandatory intervention, but concluded that permissive intervention had been erroneously denied due to the incorrect legal standard being applied in *Accurso v. In-N-Out Burgers* (2023) 94 Cal.App.5th 1128, review granted Nov. 29, 2023, S282173. The California Supreme Court granted review and later transferred the matter back to the Court of Appeal in light of *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664; *Turrieta* held that PAGA plaintiffs have no right to intervene in another employee's PAGA action and the appeal was ultimately dismissed as moot after the appellants no longer sought intervention.

A third, separate appeal arose from the trial court's determination that Sherrod, who had entered an arbitration agreement as a minor, timely disaffirmed that agreement. In-N-Out appealed that ruling to the Fourth District, Division Three, Case No. G064028. That appeal, stayed pending approval of this settlement, along with the representative proceedings and individual arbitrations, became part of the complex litigation landscape the parties were required to address in pursuing a global settlement.

These were not collateral events. The appellate proceedings addressed questions central to where and how the PAGA claims could proceed, who could participate, and whether representative claims would remain viable after individual arbitration. They required specialized briefing, strategic coordination among counsel in different actions, and continued litigation despite a rapidly changing PAGA and arbitration landscape.

C. Multiple Mediations Were Required Before the Parties Reached a Global Settlement

Settlement negotiations took place over several years. Piplack mediated with Michael Young in 2021. Accurso separately mediated with the Hon. Lisa Hart Cole (Ret.) in 2022. In March 2023, counsel for the then-pending matters participated in a global mediation with Mark Rudy. No global resolution was achieved. The cases continued, the PAGA period expanded, additional employees and pay periods came within the potential scope, and the appellate proceedings continued to reshape the parties' positions.

The parties then returned to global mediation with Tripper Ortman on August 15, 2025. By that time, Plaintiffs' analysis reflected *millions* of PAGA pay periods and tens of thousands of potentially aggrieved employees. The parties ultimately reached agreement only after this extended history of litigation and repeated mediated negotiations. The Settlement Agreement memorializes the parties' arm's-length resolution and expressly recognizes the uncertainties, costs, risks, delays, and likely appeals associated with continued litigation. (Agreement, ¶¶ 2.19–2.22.)

III. THE PROPOSED SETTLEMENT

A. Gross Settlement Amount and Non-Reversionary Structure

In-N-Out will pay a non-reversionary Gross Settlement Amount of $13,000,000 to resolve the PAGA Actions. The Settlement Administrator will disburse the entire amount; no portion will revert to Defendant. The $13 million PAGA settlement is part of a $14 million global resolution, with a separate $1 million allocated to the *Vanbreemen* class-related claims pending in San Bernardino Superior Court. Defendant shall not be required to pay more than the Gross Settlement Amount except as provided in the Agreement. (Agreement, ¶¶ 1.11, 3.1, 7.1, 9.3.)

B. Deductions and Distribution

Subject to Court approval, the Gross Settlement Amount will fund: (1) PAGA Representative and General Release Payments of up to $15,000 for each of eight representative plaintiffs (excluding Vanbreemen), totaling $120,000; (2) attorneys' fees of up to $5,200,000,

equal to 40% of the Gross Settlement Amount; (3) litigation expenses in the amount of $122,584.33 as supported by counsel declarations; and (4) settlement administration expenses not to exceed $123,250. Any amount requested but not approved for fees, expenses, service payments, or administration will be added back to the Net Settlement Amount. (Agreement, ¶¶ 3.2.1–3.2.3.)

After these deductions, the Net Settlement Amount will be divided as PAGA requires: 75% to the LWDA and 25% to PAGA Members. Each PAGA Member's payment will be calculated by dividing 25% of the Net Settlement Amount by the total number of PAGA Pay Periods and multiplying that figure by the number of Pay Periods worked by that PAGA Member. Based on the currently supplied litigation expenses of $122,584.33, attorneys' fees of $5,200,000, representative and general release payments totaling $120,000, and administration expenses of $123,250, the Net Settlement Amount would be approximately $7,434,165.67, of which approximately $5,575,624.25 would be payable to the LWDA and approximately $1,858,541.42 would be allocated to PAGA Members. (Agreement, ¶¶ 1.11, 3.2.4.)

C. PAGA Members, Pay Periods, and Escalator

In-N-Out estimates that, as of May 31, 2026, approximately 88,511 PAGA Members worked approximately 4,698,217 PAGA Pay Periods. In the event that the total number of Pay Periods actually worked by PAGA Members exceeds the amount of Defendant's estimate of 4,698,217 Pay Periods by more than twelve percent (12%), the Gross Settlement Amount shall be increased by one (1) percent for every one percent increase in pay periods worked over the twelve (12) percent threshold or, alternatively, at Defendant's election, to shorten the release period so that the number of Actual Pay Periods does not trigger any proportional increase. No increase applies if Actual Pay Periods are 5,262,003 or fewer. Any proportional increase is conditioned on full execution of the Agreement and filing of all necessary approval paperwork by November 9, 2026, unless Plaintiffs are unable to file by that date due to delays attributable to Defendant. If those conditions are not satisfied through no fault of Defendant, no proportional increase applies. (Agreement, ¶ 7.1)

D. Administration and Uncashed Checks

After obtaining quotes from six settlement administrators, the parties selected Atticus Administration, LLC as the neutral Settlement Administrator. PAGA Members need not submit claims. Checks will remain negotiable for at least 180 days. Funds represented by uncashed checks will be transmitted to the California Controller's Unclaimed Property Fund in the name of the PAGA Member, avoiding a reversion to Defendant. (Agreement, ¶¶ 4.3.3)

Defendant will fund the Gross Settlement Amount no later than 65 days after Plaintiffs serve notice of entry of Judgment, provided no appeal is filed. If an appeal is filed, funding is due within 21 business days after affirmance, issuance of remittitur, and expiration of the time for further appeals. Within 15 business days after funding, the Administrator will mail settlement payments; fees, litigation expenses, and representative payments may not be disbursed before the Individual PAGA Payments and LWDA Payment. Defendant's remittance discharges its payment obligations regardless of whether checks are received or negotiated, subject to its continuing good-faith cooperation concerning administration. (Agreement, ¶¶ 4.2–4.4.)

E. Release

The representative release is limited to Released PAGA Claims during the PAGA Period and benefits all Released Parties defined in the Agreement. The named Plaintiffs separately provide general releases and Civil Code section 1542 waivers in exchange for consideration included within their Representative and General Release Payments. The settlement does not require other PAGA Members to provide general releases, execute individual releases, or submit claim forms. (Agreement, ¶¶ 1.26–1.27, 3.1, 3.2.1, 5.1–5.4.)

IV. LEGAL STANDARD FOR APPROVAL OF A PAGA SETTLEMENT

Former Labor Code section 2699(l)(2) requires the superior court to "review and approve any settlement of any civil action" brought under PAGA. The proposed settlement must be submitted to the Labor and Workforce Development Agency ("LWDA") at the same time it is submitted to the Court, and a copy of the Court's judgment or other order awarding or denying civil penalties must be submitted to the LWDA within 10 days after entry. Lab. Code,

former § 2699(l)(2)–(3).

Unlike a class action, a PAGA action is fundamentally a law enforcement action brought on behalf of the State. An aggrieved employee acts "as the proxy or agent of the state's labor law enforcement agencies," which are the real parties in interest. *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; *see also, Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 435–436. Thus, "[a] PAGA action is at heart a civil enforcement action filed on behalf of and for the benefit of the state, not a claim for class relief." *Baumann v. Chase Investment Services Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123–1124.

In reviewing a PAGA settlement, the Court considers whether the settlement is "fair, reasonable, and adequate" in light of PAGA's purposes of remedying Labor Code violations, deterring future violations, and maximizing enforcement of California's labor laws. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77, disapproved on another ground by *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664. Relevant considerations may include the strength of the plaintiff's claims, the risks and complexity of continued litigation, the stage of the proceedings, and the amount of the settlement. *Moniz*, *supra*, 72 Cal.App.5th at 76–77.

The Settlement satisfies these standards. It was reached through arm's-length negotiations between experienced counsel with the assistance of an experienced mediator and reflects the Parties' assessment of the strengths and weaknesses of the claims, the substantial risks and uncertainty of continued litigation, and the expense and delay associated with further proceedings and trial. California has a strong public policy favoring the voluntary settlement of disputes. *Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 745. Viewed as a whole, the Settlement provides a meaningful recovery for the alleged Labor Code violations while furthering PAGA's enforcement and deterrence objectives. The Settlement is therefore fair, reasonable, and adequate and should be approved.

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Settlement Provides a Substantial, Certain, and Non-Reversionary Recovery

The $13 Million settlement represents approximately 2.77 percent of the maximum

unstacked alleged PAGA exposure under Plaintiffs' model. The Settlement encompasses approximately 4,698,217 pay periods. Applying a single $100 penalty to every covered pay period, without stacking separate penalties for each alleged Labor Code violation, produces maximum unstacked exposure of $469,821,700. That figure is before any discount for the arbitration, manageability/individualized-proof, and penalty-reduction risks addressed in Section V.B. This model is used solely to evaluate the settlement, is not an agreed calculation of maximum legally recoverable penalties, and does not constitute an admission by Defendant that any violation occurred or that any penalty is recoverable. The $13,000,000 Settlement therefore recovers approximately 2.77 percent of that maximum:

4,698,217 pay periods × $100 = $469,821,700

$13,000,000 ÷ $469,821,700 = 2.77%

This conservative calculation assumes that at least one PAGA violation could be established during every pay period for every allegedly aggrieved employee. It does not discount for the disputed frequency or existence of the alleged violations, In-N-Out's defenses, the difficulty of proving uniform violations across approximately 88,511 employees, the effect of arbitration agreements, the possibility that certain derivative penalties could not be stacked, or the Court's discretion to reduce the resulting penalties.

The recovery compares closely to the PAGA-only settlement approved in *Doe v. Google LLC*, San Francisco Superior Court Case No. CGC-16-556034. There, the approval papers calculated Google's maximum unstacked exposure at $966,755,600 using a single $100 penalty per pay period. The approved $27 million settlement represented approximately 2.8 percent of that unstacked exposure. Here, the $13 million recovery represents approximately 2.77 percent under the same conservative methodology. The recoveries are therefore nearly identical when measured against maximum unstacked exposure.

Although many reported decisions addressing per-pay-period values arise from combined class and PAGA settlements, they remain instructive on the point that courts do not apply a fixed minimum recovery for each PAGA pay period. For example, courts have approved PAGA allocations equivalent to approximately $0.21 per pay period in *Morel v. HNTB Corp.*,

S.D. Cal. No. 3:22-cv-00408-AJB-AHG, 2025 U.S. Dist. LEXIS 128476, and $1.11 per pay period in *Kryzhanovskiy v. Amazon.com Services, Inc.*, E.D. Cal. No. 2:21-cv-01292-DAD-JDP, 2024 U.S. Dist. LEXIS 165401. Those settlements demonstrate that the fairness of a PAGA resolution is evaluated under the totality of the circumstances, rather than through a mechanical minimum-per-pay-period requirement.

Further, the relevant comparison is not between the Settlement and penalties that could be obtained only if Plaintiffs prevailed on every disputed factual and legal issue. Rather, the Court must assess whether the guaranteed recovery is fair, reasonable, and adequate in light of the likelihood of proving the alleged violations, their frequency, the number of employees for whom violations could be established, the risk of substantial penalty reductions such as occurred in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, and the expense and delay of continued litigation. The $13 million settlement's approximately $2.77 in gross value per covered pay period falls comfortably within the range of reasonable PAGA resolutions. With the Net Settlement estimated to be $7,434,165.67, the State will receive 75% of this amount, $5,575,624.25, and 25% of this amount, $1,858,541.42, will be distributed to the 88,511 employees, which results in an average recovery of approximately $21.00 per aggrieved employee, which constitutes meaningful relief.

B. Continued Litigation Presented Extraordinary Risk, Expense, and Delay

Absent settlement, the parties faced not one ordinary trial but a network of representative PAGA proceedings, individual arbitrations, a related class action, and appellate issues. Plaintiffs asserted numerous theories arising from different jobs, policies, time periods, and categories of employees. Defendant denied liability and asserted arbitration, standing, manageability/individualized-proof, causation, penalty-reduction, and other defenses. Even favorable rulings were likely to generate further appellate proceedings. The costs and delay of litigating the cases separately through arbitration, trial, and appeal were substantial.

In assessing the reasonableness of a PAGA recovery, the Court also has substantial discretion to award penalties below the statutory maximum. In *Carrington, supra*, at 529, the Court of Appeal affirmed an award reducing the applicable PAGA penalty to only $5 per

violation based on the circumstances of the violations and the employer's good faith efforts to comply with the law. The court recognized that Labor Code section 2699(e)(2) permits a trial court to award lesser penalties where imposition of the maximum statutory penalties would be unjust, arbitrary and oppressive, or confiscatory. *Id.*; *see also, Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213.

Accordingly, the theoretical maximum PAGA penalties do not, standing alone, establish the appropriate value of a PAGA claim or render a negotiated compromise inadequate. Rather, the Court may consider the particular circumstances of the alleged violations, the parties' respective litigation risks, and the possibility that substantially reduced penalties would ultimately be awarded. Here, the Settlement reflects those considerations and was reached through arm's-length negotiations between experienced counsel with the assistance of an experienced mediator. It avoids the substantial expense, delay, and uncertainty associated with continued litigation and trial while providing a meaningful recovery for the alleged Labor Code violations. Viewed as a whole, the Settlement is fair, reasonable, and adequate and furthers PAGA's enforcement and deterrence objectives.

Defendant continues to deny all alleged violations and maintains that its employment practices comply and have complied with applicable law. Approval is not requested as a merits determination or an admission of liability, willfulness, or the validity of any asserted penalty calculation. The Settlement and settlement-only representative treatment do not waive Defendant's defenses. The Parties request that, after entry of Judgment, the Court retain jurisdiction solely to enforce the Agreement and Judgment, address settlement administration, and consider post-Judgment matters permitted by law. (Agreement, ¶¶ 9.4, 11.1.)

C. Counsel Had Sufficient Information to Evaluate the Claims

By the time of settlement, the cases had been pending for years with the earliest case, *Piplack*, filed in 2019. Plaintiffs' Counsel had litigated motions, arbitration issues, discovery disputes, appellate proceedings, and multiple mediation sessions. The plaintiffs' team had exchanged and analyzed information concerning the size of the workforce and pay period exposure, developed penalty analyses, and coordinated the legal and factual theories of the

separate actions. *See,* Declarations of Plaintiffs' Counsel. The settlement was therefore reached with a mature understanding of both potential exposure and litigation risk. (Agreement, ¶ 2.18.)

D. The Settlement Is the Product of Repeated Arm's-Length Negotiations

The history of unsuccessful and successive mediations itself demonstrates the absence of collusion. The parties mediated multiple times before finally reaching agreement. Experienced neutral mediators participated at each stage. The resulting agreement reflects sustained adversarial negotiations informed by years of litigation. (Agreement, ¶¶ 2.20–2.22.)

VI. THE REQUESTED 40% ATTORNEYS' FEE IS REASONABLE

A. PAGA Authorizes an Award of Reasonable Attorneys' Fees

A prevailing employee in a PAGA action is entitled to reasonable attorneys' fees and costs. (Lab. Code, § former 2699(g)(1).) California courts may evaluate a fee generated from a common fund using a percentage-of-the-fund approach, with a lodestar cross-check available as an additional measure of reasonableness. *See, Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 503, 506; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26, 47-50. The objective is a reasonable market-based fee that reflects the result achieved, the risk assumed, and the value of counsel's services.

Whether a percentage is reasonable turns on the same considerations that govern lodestar enhancements: the novelty and difficulty of the questions involved, the skill displayed in presenting them, the extent to which the litigation precluded other employment, and the contingent nature of the fee. *See, Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132; *Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Lealao*, *supra*, 82 Cal.App.4th at pp. 47–50. The Court's discretion is guided by those factors and by the result obtained, not by a fixed benchmark. *See*, *Laffitte*, *supra*, 1 Cal.5th at pp. 503–506. As shown below, each factor supports an above-average percentage here.

B. A 40% Award Is Within the Range Courts Have Approved in Appropriate Cases

The complexity, scope, and extraordinary procedural history of this litigation warrant the requested 40% fee award. This Settlement resolves multiple PAGA actions involving numerous

plaintiffs, claims, counsel, and overlapping factual and legal issues, all of which required substantial coordination and litigation before a comprehensive resolution could be achieved. Counsel undertook this work on a contingent basis and ultimately secured a $13 million settlement for the benefit of the State and the PAGA Members.

A 40% fee award has been approved in representative actions, including in PAGA settlements approved by this Court. Most recently, in *Gomes Correia v. Premier Healthcare Staffing Solutions, LLC,* et al., Sonoma County Superior Court Case No. 23CV00497 (Dec. 16, 2025), the Court approved two PAGA settlements providing for attorneys' fees equal to 40% of the respective gross settlement amounts - $40,000 from a $100,000 settlement and $44,000 from a $110,000 settlement. The court found the settlement terms fair and reasonable in light of PAGA's purposes and the State's interests and granted both motions for approval.

Federal courts applying California law likewise have approved fee awards of 40% or more where warranted by the circumstances. Particularly instructive is *Vasquez v. Leprino Foods Co.*, No. 1:17-cv-00796-JLT-BAM (E.D. Cal. June 17, 2024), ECF No. 477, in which the court approved a $1.4 million fee representing 40% of a $3.5 million wage-and-hour and PAGA settlement. In approving the award, the court considered, among other factors, the complexity and risks of the litigation, counsel's prosecution of six related cases on a contingency basis, the substantial time and costs devoted to the matters, and the extensive procedural history of the litigation, including a jury verdict for the defense on the core claim and a settlement reached while the plaintiffs' appeal was pending.

Other courts have similarly approved 40% fee awards in California class action and PAGA settlements. *See, Geiger v. Charter Communications, Inc.,* No. 2:18-cv-00158-DMG-GJS, ECF No. 162 (C.D. Cal. Jan. 29, 2021) (awarding 40% in a class and PAGA settlement); *Gomez v. H & R Gunlund Ranches, Inc.*, No. 1:10-cv-01163-LJO-MJS, 2011 WL 5884224, at *5 (E.D. Cal. Nov. 23, 2011) (approving fees equal to 45% of the settlement fund); *Crandall v. U-Haul International, Inc.,* L.A. Super. Ct. Case No. BC178775 (Mar. 19, 2001) (awarding attorneys' fees equal to 40% of the settlement fund); *Birch v. Office Depot, Inc.*, No. 3:06-cv-01690-DMS, ECF No. 48, ¶ 13 (S.D. Cal. Sept. 28, 2007) (awarding 40% of a $16 million

wage-and-hour class settlement); *Rippee v. Boston Market Corp.*, No. 3:05-cv-01359-BTM, ECF No. 70 at 7–8 (S.D. Cal. Oct. 10, 2006) (awarding 40% of a $3.75 million wage-and-hour fund and finding a 3.23 multiplier appropriate).

The Ninth Circuit's leading fee decision confirms that appellate risk supports a percentage above the norm. In *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, the court affirmed a 28 percent award, above that circuit's 25 percent benchmark. The court relied on the exceptional result, the risk counsel assumed (the plaintiffs had twice lost in the district court before prevailing on appeal), and benefits to the class beyond the cash fund. (*Id.* at pp. 1048–1049.) Here, counsel did not face appellate risk only in the abstract, but litigated through three appeals and California Supreme Court review, before any recovery was obtained.

The circumstances here provide substantial justification for the requested percentage. Unlike a single PAGA action resolved following limited litigation, this Settlement brings together and resolves multiple actions in varying venues, involving distinct plaintiffs and counsel, overlapping and differing claims, and substantial work performed over the course of the litigation. The $13 million recovery itself reflects the significant benefit achieved through those efforts. Considering the scope and complexity of the litigation, the risks undertaken by counsel, the work required to coordinate and resolve the multiple actions, and the result obtained, the requested 40% fee is reasonable.

C. The Extraordinary Scope and Procedural Complexity Support the Requested 40% Percentage

This matter required counsel to prosecute and coordinate eight separate actions asserting materially different theories; manage the interaction between representative PAGA claims and individual arbitration; litigate appellate proceedings in multiple districts; address California Supreme Court review; coordinate among multiple plaintiffs and law firms; analyze a statewide workforce involving tens of thousands of employees and millions of pay periods; and negotiate a settlement that would deliver global peace across proceedings pending in different counties, arbitral forums, and in the appellate court.

The settlement itself required counsel to reconcile different PAGA notices, time periods,

claims, representatives, actions, arbitrations, and appellate matters into a single approval structure in Sonoma County. The consolidated complaint alone encompasses nineteen PAGA causes of action. Achieving a unified $13 million PAGA resolution under these circumstances required work and coordination far beyond that presented in a single-plaintiff, single-action PAGA case.

D. The Significant Appellate Proceedings and Their Risks Strongly Supports the Fee

The appellate proceedings were substantial. Three appeals and a grant of review by the California Supreme Court determined whether, where, and by whom the representative claims could be pursued. Each was litigated while the underlying actions and individual arbitrations remained active.

Counsel litigated the *Piplack* arbitration appeal that produced a published PAGA decision; the *Piplack/Taylor* intervention appeal that produced a published First District opinion and proceeded to California Supreme Court review; and the *Sherrod* appeal concerning disaffirmance of an arbitration agreement. These proceedings required voluminous appellate briefs and records while the underlying actions and arbitrations remained active, and they materially affected both the litigation landscape and the path toward settlement. The significance of that work is illustrated by the history of the parties' settlement efforts. In February of 2022, the *Piplack* and *Taylor* Actions petitioned for a stay and for leave to file a complaint in intervention in the *Accurso* Action, which proceeded through an appeal. The Court denied the petition on May 18, 2022, and the ensuing appeal proceeded through the Court of Appeal and the California Supreme Court before it was dismissed in January of 2025. After years of further litigation, appellate proceedings, and two additional mediations, the parties ultimately reached the present $13 million PAGA settlement. Time reasonably spent on appeal is compensable as part of a reasonable fee. *See, Serrano v. Unruh* (1982) 32 Cal.3d 621, 624, 637; *Morcos v. Board of Retirement* (1990) 51 Cal.3d 924, 927. In a common-fund case the same work bears on the percentage: appellate proceedings add both risk and hours that a single-

action, single-forum PAGA case does not involve. *See, Vizcaino*, *supra*, 290 F.3d at pp. 1048–1049.

A percentage award that ignored this appellate work would undervalue the services necessary and risk required to preserve and advance the representative claims through a period of rapid change in PAGA and arbitration law. The 40% request appropriately reflects that the ultimate fund was not produced by routine pleading and mediation alone, but by years of litigation through changing law and multiple appellate forums.

E. The Result Achieved Is Exceptional

Counsel secured a $13 million non-reversionary PAGA fund, plus a separate $1 million class allocation in *Vanbreemen*. The PAGA settlement provides payments without a claims process, includes a pay period escalator subject to the conditions in the Agreement, paragraph 7.1, and resolves a litigation landscape that otherwise would have required numerous arbitrations, superior-court proceedings, and likely additional appeals. The magnitude and certainty of this recovery support the requested fee.

The result also compares favorably with the most significant PAGA-only resolutions. Measured the same way, the Settlement's 2.77 percent of maximum unstacked exposure is effectively identical to the 2.8 percent recovery in *Doe v. Google LLC*, *supra*. Moreover, because the State is the real party in interest, and seventy-five percent of the Net Settlement Amount will go to the LWDA for enforcement of the Labor Code and education of employers and employees, the fee is properly measured against the full fund.

F. Counsel Assumed Significant Contingent Risk Over Many Years

Plaintiffs' Counsel prosecuted these matters on a contingent basis while facing substantial uncertainty concerning arbitration, standing, intervention, PAGA procedure, proof across a large workforce, discretionary penalty reductions, and the possibility of no recovery. *See,* Declarations of Plaintiffs' Counsel. The litigation also required counsel to devote resources to appellate proceedings and repeated mediations without any guarantee that a global settlement could be achieved. Compensation at 40% appropriately accounts for that risk and the delayed nature of payment. Moreover, Counsel have carried these claims without compensation since

the *Piplack* Action was filed in November 2019, nearly seven years ago. Compensating counsel for the risk of nonpayment and for the delay in payment is a core reason a contingent fee may exceed an hourly rate. *See, Ketchum*, *supra*, 24 Cal.4th at pp. 1132–1133, 1138.

G. Lodestar Cross-Check

The Court may, but need not, use a lodestar cross-check to confirm that a percentage award is reasonable. *See, Laffitte, supra,* 1 Cal.5th at pp. 504–506. Collectively, Plaintiffs' Counsel have expended 5,976.9 hours prosecuting these matters, for a combined lodestar of $4,963,557.50. The following table summarizes the lodestar of each law firm seeking fees.

Firm	**Hours**	**Lodestar**
Aiman-Smith & Marcy	3,475.0	$3,054,410.00
Lavi & Ebrahimian	183.6	$147,810.00
Law Offices of Mark Yablonovich	724.0	$492,901.00
Slater & Associates, APC	482.6	$416,960.00
Potter Handy, LLP	302.5	$259,856.50
Lebe Law, APLC	809.2	$591,620.00
Total:	**5,976.9**	**$4,963,557.50**

Each law firm is submitting a declaration supporting the fees and costs it seeks, including the time devoted, hourly rates, and work performed. *See*, Declarations of Plaintiffs' Counsel submitted herewith. The requested $5,200,000 fee therefore represents a multiplier of approximately 1.048 ($5,200,000 ÷ $4,963,557.50). That modest multiplier supports the reasonableness of the percentage request in light of the contingent risk, delay in payment, appellate work, and results described above. *See, Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255, disapproved on another ground in *Hernandez v. Restoration Hardware*, Inc. (2018) 4 Cal.5th 260, 269-270; *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512; *Vizcaino, supra*, 290 F.3d at p. 1051 & fn. 6. The cross-check does not require line-item review of billing records; the Court may rely on counsel's declarations summarizing the time and work performed. *See, Laffitte, supra,* 1 Cal.5th at p. 505.

Counsel's hourly rates are reasonable. A reasonable hourly rate is the rate prevailing in the community for similar work. *See, PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. The fee is a single aggregate award to be divided among Plaintiffs' Counsel under a

written joint prosecution agreement. The division does not increase the total fee, and the clients consented to it in writing. *See,* Rules Prof. Conduct, rule 1.5.1; Lebe Decl. ¶ 53. Because any amount not awarded is added to the Net Settlement Amount, 75 percent of which goes to the LWDA, the fee request carries no risk of reversion to Defendant. (Agreement, ¶¶ 1.11, 3.1, 3.2.2.)

VII. LITIGATION EXPENSES ARE REASONABLE AND SHOULD BE REIMBURSED

Plaintiffs request reimbursement of $122,584.33 in litigation expenses. The following table summarizes the litigation costs of each law firm.

Firm	**Costs**
Aiman-Smith & Marcy	$86,290.27
Lavi & Ebrahimian	$8,204.72
Law Offices of Mark Yablonovich	$5,901.96
Slater & Associates, APC	$10,075.66
Potter Handy, LLP	$7,606.15
Lebe Law, APLC	$4,505.57
Total:	**$122,584.33**

Each law firm is submitting a declaration supporting costs it seeks and describing the expenses incurred in prosecuting these matters and obtaining the Settlement. *See,* Declarations of Plaintiffs' Counsel. The Court should approve reimbursement of these reasonable litigation expenses under the Settlement. The aggregate request is $7,415.67 below the $130,000 amount cap in the Settlement Agreement, leaving that difference in the Net Settlement Amount for distribution to the State and PAGA Members. Any amount requested but not approved will likewise remain in the Net Settlement Amount for distribution 75% to the LWDA and 25% to PAGA Members. (Agreement, ¶ 3.2.2.)

VIII. THE REQUESTED PAGA REPRESENTATIVE SERVICE PAYMENTS ARE REASONABLE

The Settlement permits the eight representatives identified in paragraph 3.2.1 to request service payments of up to $15,000 each. (Agreement, ¶ 3.2.1) California law permits a reasonable payment to compensate a representative for the expense or risk incurred in

conferring a benefit on others. *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806. Courts consider the work performed, the time devoted to the litigation, the duration of the case, the risks and burdens accepted, and the benefit obtained. The payment may recognize work performed for others, financial or reputational risk, and the willingness to act as a private attorney general. *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-959; *Clark, supra,* 175 Cal.App.4th at p. 806. Those considerations have particular force in employment litigation because fear of retaliation or future employment consequences can discourage employees from enforcing workplace rights. *Mitchell v. Robert DeMario Jewelry, Inc.* (1960) 361 U.S. 288, 292; *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 746.

The requested payments are supported by the length, complexity, and unusual procedural history of these matters. The representatives placed their names on public lawsuits against a prominent employer, remained available to counsel over several years, participated in factual investigations, provided documents and information, reviewed allegations and material filings, and assisted counsel in evaluating the claims and settlement. Several matters required filing arbitration proceedings, trial-court motion practice, appellate briefing, petitions for review, and coordination with representatives and counsel in other actions. The representatives remained involved while the governing law concerning PAGA standing and arbitration changed and while counsel pursued multiple unsuccessful settlement efforts before achieving a global resolution. Their participation ultimately contributed to a $13 million non-reversionary PAGA settlement covering approximately 88,511 employees and 4.7 million pay periods. Their declarations describe their individual efforts and the burdens they accepted. Each representative will also provide a general release and Civil Code section 1542 waiver broader than the release applicable to other PAGA Aggrieved Employees, supplying additional consideration for the requested payment. (Agreement, ¶¶ 3.2.1, 5.2–5.3) *See, La Fleur v. Medical Management International, Inc.*, No. EDCV 13-00398-VAP, 2014 WL 2967475, at *8 (C.D. Cal. June 25, 2014) (approving $15,000 enhancement payments in part because the representatives gave broader releases).

The $15,000 amount is consistent with awards approved in California state employment actions. Courts have approved a $25,000 enhancement payment in *Schumacher v. Bank of Hope*, Los Angeles County Superior Court Case No. 18STCV02066 (Apr. 12, 2023), and $15,000 payments in *Towell v. O'Gara Coach Co.*, Los Angeles County Superior Court Case No. 19STCV45961 (Dec. 23, 2019); *Mills v. Facility Solutions Group, Inc.*, Los Angeles County Superior Court Case No. 20STCV44879 (Nov. 20, 2020); *Magee v. American Residential Services, LLC*, Los Angeles County Superior Court Case No. BC423798 (Apr. 21, 2011*); Mares v. BFS Retail & Commercial Operations, LLC*, Los Angeles County Superior Court Case No. BC375967 (June 24, 2010); and *Nevarez v. Trader Joe's Co.*, Los Angeles County Superior Court Case No. BC373910 (Jan. 29, 2010). These awards confirm that $15,000 is within the range approved where an employee undertakes meaningful work and risk for the benefit of others.

Federal courts applying the same considerations have likewise approved payments equal to or greater than the amount requested here. *See, Lemus v. H & R Block Enterprises LLC*, No. C 09-3179 SI, 2012 WL 3638550, at *5-6 (N.D. Cal. Aug. 22, 2012) ($15,000 in a California wage-and-hour and PAGA action); *Ridgeway v. Wal-Mart Stores, Inc.* (N.D. Cal. 2017) 269 F.Supp.3d 975, 1002 ($15,000 to each of nine representatives); *Low v. Trump University, LLC* (S.D. Cal. 2017) 246 F.Supp.3d 1295, 1299 ($15,000 to each of five representatives); *Syed v. M-I, L.L.C.*, No. 1:12-cv-01718-DAD-MJS, 2017 WL 3190341, at *9 (E.D. Cal. July 27, 2017) ($15,000 and $20,000); *Ross v. U.S. Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at *4 (N.D. Cal. Sept. 29, 2010) ($20,000 to each of four representatives); *and Coates v. Farmers Group, Inc.*, No. 15-cv-01913-LHK, 2016 WL 5791413, at *2 (N.D. Cal. Sept. 30, 2016) ($25,000 based on the risks assumed and time devoted). Courts have also recognized that larger payments may be warranted in protracted litigation involving substantial representative participation. *See, Vietnam Veterans of America v. Central Intelligence Agency*, No. 09-cv-00037-CW, 2018 WL 4827397, at *1 (N.D. Cal. Oct. 4, 2018) ($20,000 after litigation spanning almost a decade); *In re High-Tech Employee Antitrust Litigation*, No. 11-cv-2509-LHK, 2014 WL 10520478, at *2-3 (N.D. Cal. May 16, 2014) ($20,000 based on substantial time and effort).

The aggregate request of $120,000 for eight representatives is approximately 0.92 percent of the $13 million PAGA settlement. That proportion is modest compared with awards approved in other cases. *See, Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-1394 (affirming service payments constituting less than one percent of the gross settlement); *Ridgeway, supra,* 269 F.Supp.3d at p. 1002 (nine $15,000 awards totaling approximately 0.22 percent of a $60 million settlement); *Low, supra,* 246 F.Supp.3d at p. 1299 (five $15,000 awards totaling approximately 0.3 percent of a $25 million settlement). The requested payments were negotiated as part of the settlement structure, do not increase Defendant's total payment, and will not reduce the recovery through any reversion to Defendant because any amount not approved will remain in the Net Settlement Amount. (Agreement, ¶¶ 3.1, 3.2.1.) Considering the representatives' sustained participation, the litigation and reputational burdens they accepted, the broader releases they will provide, and the substantial statewide recovery achieved, the requested $15,000 payments are reasonable and should be approved.

The representatives' supporting declarations describe their respective participation, including factual investigation, communications with counsel, participation, and the time and responsibility associated with serving as a representative. Additionally, the representative plaintiffs are providing General Releases and §1542 waivers; $4,000 of each of the $15,000 representative payments are attributed to payment for this General Release. (Agreement, ¶ 3.2.1) Accordingly, the incentive awards are also in consideration of the broad release by the representative plaintiffs.[1]

IX. SETTLEMENT ADMINISTRATION EXPENSES ARE REASONABLE

Before selecting a settlement administrator, Plaintiffs' Counsel obtained proposals from six experienced settlement administration firms and compared their proposed fees and services. Atticus Administration, LLC submitted the lowest-cost proposal, with an estimated total fee of $123,250 to administer the PAGA settlement for approximately 88,511 PAGA Aggrieved

[1] Plaintiff Vanbreemen will seek an incentive award in the pending class action settlement approval and, therefore, is not included in the Plaintiffs' request here.

Employees. Atticus's proposal includes project management; review, cleansing, and preparation of employee data; National Change of Address and skip-trace searches; calculation and verification of individual payments; preparation and mailing of checks and accompanying cover letters; a dedicated telephone number, interactive voice-response system, and live-operator support; establishment and administration of the qualified settlement fund; tax reporting; processing and re-mailing returned checks; preparation of payment and reconciliation reports; and the declarations required for approval and completion of the settlement administration process. Atticus has successfully administered large and complex settlements involving substantial numbers of employees and detailed distribution requirements. The Agreement appoints Atticus, sets the administration expense cap, and specifies its duties. (Agreement, ¶¶ 3.2.3, 4.3.1–4.3.3, 6.1, 6.3, 6.5–6.5.2.) A Declaration from Atticus Administration is also being submitted herewith.

X. THE SETTLEMENT WILL BE SUBMITTED TO THE LWDA

Plaintiffs will submit the Settlement Agreement and proposed PAGA settlement to the LWDA concurrently with, and no later than, the filing of this Motion, as required by former Labor Code section 2699(l)(2), and will file proof of that submission with the Court in support of this Motion. Plaintiffs' Counsel will also submit the Judgment and any other order awarding or denying PAGA civil penalties to the LWDA within 10 days after entry. (Agreement, ¶ 9.2.)

XI. CONCLUSION

After years of litigation across multiple courts and arbitral forums, significant appellate proceedings, repeated unsuccessful mediation efforts, and extensive coordination among separate plaintiffs and counsel groups, the parties achieved a $13 million non-reversionary PAGA settlement that provides a substantial and certain recovery to the State and PAGA Members while eliminating extraordinary litigation risk and delay.

Plaintiffs respectfully request that the Court: (1) approve the PAGA Settlement as fair, reasonable, and adequate; (2) approve attorneys' fees of $5,200,000, equal to 40% of the Gross Settlement Amount; (3) approve litigation expenses of $122,584.33; (4) approve PAGA Representative and General Release Payments of $15,000 to each representative as identified in

the proposed Order and Judgment; (5) approve settlement administration expenses not to exceed $123,250; (6) direct distribution of the Net Settlement Amount 75% to the LWDA and 25% to PAGA Members in accordance with the Settlement; and (7) enter the proposed Order and Judgment.

Date: November 4, 2026

/s/ Hallie Von Rock

Hallie Von Rock
Aiman-Smith & Marcy
Counsel for Plaintiffs Tom Piplack, Donovan Sherrod, and Brendon Hart

Date: November 4, 2026

/s/ Jonathan M. Lebe

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Date: November 4, 2026

/s/ Joseph Lavi

Joseph Lavi
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Date: November 4, 2026

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Date: November 4, 2026

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