

Armond M. Jackson, SBN 281547
ajackson@jacksonapc.com
Andrea M. Fernandez, SBN 295924
afernandez@jacksonapc.com
Anthony S. Filer Jr., SBN 337704
afiler@jacksonapc.com
JACKSON LAW, APC
2 Venture Parkway, Ste. 240
Irvine, California 92618
Phone (949) 281-6857
Fax (949) 777-6218

Attorneys for Plaintiff Eva Jardon

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

EVA JARDON, as an individual and on behalf
of other similarly situated employees,

Plaintiff,

vs.

FULLERTON BAEKJEONG, LLC, a
California corporation, IRVINE
BAEKJEONG, LLC, a California corporation,
ROWLAND HEIGHTS BAEKJEONG, LLC,
a California corporation, SAN JOSE
BAEKJEONG, LLC, a California corporation,
TEMPLE CITY BAEKJEONG, LLC, a
California corporation, TORRANCE
BAEKJEONG, LLC, a California corporation,
and DOES 1-50, inclusive,

Defendants

CASE NO: 30-2021-01207008-CU-OE-CXC

Assigned for all purposes to:
Judge William Claster
Dept. CX104

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER APPROVING
SETTLEMENT UNDER CALIFORNIA
LABOR CODE SECTION 2699 ET SEQ.**

Hearing Date: December 2, 2022
Hearing Time: 9:00 a.m.
Department: CX104

Case filed: June 22, 2021
Trial date: TBD
Reservation No. 73876170

TABLE OF CONTENTS

I. INTRODUCTION.....	2
II. BRIEF STATEMENT OF FACTS AND PROCEDURAL HISTORY	2
A. BACKGROUND	2
B. PAGA NOTICE	3
C. COMPLAINT.....	3
D. SUBSTANTIAL DISCOVERY AND CASE ANALYSIS BY PLAINTIFF	3
E. SUBMISSION OF PAGA SETTLEMENT AGREEMENT AND MOTION TO LWDA	4
III. LEGAL STANDARD	4
IV. ARGUMENT.....	5
A. PAGA SETTLEMENT IS A FAIR OUTCOME IN THIS CASE	5
1. Plaintiff’s Core PAGA Allegations Wage Statement Violations	5
a. Labor Code Violations	5
b. Meal Break Violations	5
c. Rest Break Violations	5
d. Minimum Wage and/or Overtime Wage Violations	6
e. Wage Statements	6
f. 203 Penalty Violations.....	6
g. 2802 Penalty Violations.....	7
2. Settlement Achieves the Purpose of PAGA.....	7
a. Factors (1) and (2) Settlement Achieves Compliance with State Labor Laws and Deters Further Violations	7
b. Factor (3) This Settlement Serves to Enlist Private Citizens in Public Enforcement of PAGA.....	8
c. Factor (4) This Settlement is Just and in the Public Interest.....	8

1	B. SETTLEMENT DISTRIBUTION UNDER PAGA	9
2	C. ATTORNEY’S FEES AND COSTS UNDER PAGA SETTLEMENT AGREEMENT	10
3	1. Lodestar Analysis.....	10
4	2. The Number of Hours Expended by Plaintiff’s Counsel Was Reasonable.	11
5	3. The Hourly Rate Charged for the Services of Plaintiff’s Counsel is Reasonable.	12
6	4. Laffey Matrix Rates	14
7	5. Attorney’s Fees	14
8	6. Costs.....	15
9	V. CONCLUSION	15

TABLE OF AUTHORITIES

Cases

<i>Arias v. Superior Court</i> (2009), 46 Cal. 4th 969, 986	4
<i>Bihun v. AT&T Information Systems, Inc.</i> (1993) 13 Cal.App.4th 976	12, 13
<i>Caliber Bodyworks, Inc. v. Superior Court</i> , 134 Cal. App. 4th 365, 374 (2005)	4
<i>Chavez v. City of Los Angeles</i> (2010) 47 Cal. 4 th 970	10
<i>Consumer Advocacy Group, Inc. v. Kinetsu Enterprises of America</i> , (2006)	9
<i>Gates v. Deukmejian</i> (9th Cir. 1992) 987 F.2d 1392	12
<i>HLP Technologies, Inc. Securities Litigation</i> , 366 F.Supp. 2d 912, 921 (2005).....	14
<i>In Re: Vitamin Cases</i> (2003) 110 Cal. App. 4 th 1041	10
<i>Iskanian v. CLS Transp. Los Angeles, LLC</i> (2014)	4
<i>Ketchum v. Moses</i> (2001) 24 Cal. 4 th 1122, 1134	10
<i>Laffey v. Northwest Airlines, Inc.</i> , 572 F.Supp. 354 (D.D.C. 1983),	14
<i>Lakin v. Watkins Assoc. Indus.</i> (1993).....	13
<i>Lakin v. Watkins Assoc. Indus.</i> (1993) 6 Cal.4th 644	12, 14
<i>New York Gaslight Club, Inc. v. Carey</i> (1980) 447 U.S. 54.....	11
<i>Ochoa-Hernandez v. CJADERS Foods, Inc</i>	7
<i>Press v. Lucky Stores, Inc.</i> , (1983) 34 Cal. 3d 311, 322	11
<i>Serrano v. Unruh</i> (1982) 32 Cal.3d 631	12
<i>Serrano v. Unruh</i> , 32 Cal. 3d 621, 640, fn. 31 (1982).....	13
<i>Syers Properties III, Inc. v. Rankin</i> , 226 Cal.App.4th 691, 702, (2014).....	13
<i>Villacres v. ABM Indus. Inc.</i> (2010)	5
<i>Vitamin Cases</i> (2003) 110 Cal. App. 4 th 1041	10
<i>Viking River Cruises, Inc. v. Moriana</i> (2022).....	4, 8
<i>Wershba v. Apple Computer, Inc.</i> 91 Cal. App. 4th 224, 254 (2001).....	10

1	<i>Williams v. Superior Court</i> (2017) 3 Cal.5th 531, 549	5
---	---	---

2

3 Statutes

4	Cal. Lab Code § 226	2
5	Cal. Lab Code § 512, 226.7 & Wage Order 5-2001	2
6	Cal. Lab. Code § 203	2
7	Cal. Lab. Code § 2699	2, 15
8	Cal. Lab. Code §§ 510 and 1194.....	2
9	Cal. Lab. Code §2699	10
10	Cal. Lab. Code Sec. 2699(e)(2)	3
11	Cal. Labor Code § 2699.3(b)(4).....	5
12	Code, § 2699(l)(2).....	5
13	Labor Code §2699.....	2
14	Labor Code §2699(1)(2)	2

15 Other Authorities

16	2003 Cal. Legis. Serv. H. 906 section 1(a).	7
17	<i>Gates v. Deukmejian</i> (9th Cir. 1992) 987 F.2d 1392	12

1 **I. INTRODUCTION**

2 Plaintiff Eva Jardon (“Plaintiff”) seeks an order from the Court approving the PAGA
3 Settlement between Plaintiff and Defendants Fullerton Baekjeong, LLC, Irvine Baekjeong, LLC,
4 Rowland Heights Baekjeong, LLC, San Jose Baekjeong, LLC, Temple City Baekjeong, LLC,
5 and Torrance Baekjeong, LLC, (referred to herein as “Defendants”). Plaintiff brought this action
6 for violations of the California Labor Code, both as an individual and in a representative capacity
7 under the Private Attorney General Act (“PAGA”).

8 At the mediation, the parties were able to resolve all claims. Plaintiff and Defendant
9 entered into an agreement that settles all of Plaintiff’s outstanding claims, including a written
10 PAGA Settlement Agreement related to Plaintiff’s PAGA claim. Plaintiff and Defendant now
11 seek an Order from this Court approving the PAGA Settlement, as is required by California
12 Labor Code §2699(1)(2). (Declaration of Armond M. Jackson (“Jackson Decl.” ¶ 1, Ex. A,
13 Settlement Agreement.)

14 **II. BRIEF STATEMENT OF FACTS AND PROCEDURAL HISTORY**

15 **A. BACKGROUND**

16 Plaintiff worked for Defendant as a non-exempt employee. Defendant operates as a
17 restaurant chain. Plaintiff filed this Complaint on June 22, 2021. Through her June 22, 2021
18 Complaint, Plaintiff alleged they and other similarly situated non-exempt employees in the state
19 of California were required to work through their meal and rest breaks (Cal. Lab Code § 512,
20 226.7 & Wage Order 5-2001), were not provided with accurate wage statements (Cal. Lab Code
21 § 226(a), nor paid premium wages upon termination (Cal. Lab. Code § 203) and not paid all
22 minimum and overtime wages (Cal. Lab. Code §§ 510 and 1194). (See ROA No. 2) Plaintiff’s
23 wage and hour claims were brought on an individual and representative basis under PAGA
24 pursuant to Cal. Lab. Code § 2699 et seq. (*Id.*)

25 Defendant denied that Plaintiff and the other similarly situated employees were provided
26 inaccurate wage statements or had to purchase business materials.
27
28

1 **B. PAGA NOTICE**

2 On March 30, 2021, Plaintiff served via certified mail, return receipt requested, the
3 LWDA and the Defendants with notice of alleged wage and hour violations. (See Jackson Decl.
4 ¶ 15, Ex. F.)

5 **C. COMPLAINT**

6 On June 22, 2021, Plaintiff filed a complaint for damages, titled *Jardon v. Fullerton*
7 *Baekjeong, LLC, et al.*, filed in Orange County Superior Court Case 30-2021-01207008-CU-
8 OE-CXC (“Lawsuit”), alleging the following claims for claim for failure to provide accurate
9 wage statements, failure to maintain records, claim for failure to pay for meal periods and rest
10 periods, claim for failure to pay for minimum wages and overtime wages, and claim for failure to
11 pay upon termination and unlawful business practices. (See ROA No. 2) On October 20, 2021,
12 Plaintiff filed an Amended Complaint alleging PAGA only claims. (See ROA No. 39)

13 **D. SUBSTANTIAL DISCOVERY AND CASE ANALYSIS BY PLAINTIFF**

14 PAGA attaches penalties of at least \$100 for each aggrieved employee per pay period in
15 which a Labor Code violation exists. To be able to collect PAGA penalties, Plaintiff would have
16 to prevail on the merits of the underlying claims. Thus, these weaknesses would limit recovery
17 under PAGA. Moreover, the trial court has discretion in reducing civil penalty “amount based on
18 facts and circumstances of a particular case, to do otherwise, would result in an award that is
19 unjust, arbitrary or oppressive, or confiscatory.” Cal. Lab. Code Sec. 2699(e)(2). (*Id.*) In light of
20 the foregoing, and even factoring in the potential advantage for Plaintiff of not having to seek
21 certification of PAGA claims, the value of these claims are predicated on the discretion of the
22 Court and the likelihood of prevailing at trial.

23 Discovery was taken by Plaintiff, including payroll data and identifying the aggrieved
24 employees at issue that would be subjected to the various Labor Code violations. Additionally,
25 during each phase of litigation, Plaintiff’s counsel engaged in a detailed case analysis based on
26 the information revealed. (Jackson Decl. ¶¶ 4-10.) Calculations were performed, as well as
27 analysis of the risks and rewards of continued litigation. (*Id.*) Under these assumptions, for
28

1 purposes of negotiation, it was determined that there were approximately a total of 1450 total
2 aggrieved employees worked for Defendant during the relevant time period. Plaintiff that PAGA
3 penalties would realistically amount to approximately \$636,755 for all violations. (*Id.*) The risk
4 factors and the decision of *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906 created
5 cause for discounts in which a 50% discount was applied. (Jackson Decl. ¶ 10.) After several
6 rounds of negotiations, a settlement of \$325,000.00 was reached. (*Id.*) This settlement results in
7 51% (\$636,755 /\$325,000) of the maximum expected realistic exposure against Defendant for
8 civil penalties for PAGA claims for the aggrieved employees.

9 **E. SUBMISSION OF PAGA SETTLEMENT AGREEMENT AND MOTION TO**
10 **LWDA**

11 On October 27, 2022, Plaintiff submitted the PAGA Settlement Agreement, together with
12 a copy of this motion and all concurrently filed associated documents to the Labor and
13 Workforce Development Agency (“LWDA”). (Jackson Decl. ¶ 2, Ex. B.)

14 **III. LEGAL STANDARD**

15 The California Legislature enacted the Private Attorney General Act (“PAGA”) as a
16 “[r]espon[se] to a shortage of State funds and staffing to enforce State labor laws.” *Caliber*
17 *Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365, 374 (2005). PAGA “allow[s]
18 aggrieved employees, defined as any person who was employed by the alleged violator and
19 against whom one or more of the alleged violations was committed, to bring a civil action to
20 collect civil penalties for [California] Labor Code violations.” *Id.* at 374 (internal quotation
21 marks omitted). An individual suing under PAGA “does so as [a] proxy or agent of the state’s
22 labor law enforcement agencies.” *Arias v. Superior Court* (2009), 46 Cal. 4th 969, 986. In other
23 words, “an aggrieved employees action under the PAGA functions as a substitute for an action
24 brought by the government itself.” *Iskanian v. CLS Transp. Los Angeles, LLC* (2014), 59 Cal. 4th
25 348, 381. Consequently, PAGA allows an employee to recover “civil penalties on behalf of the
26 state against his or her employer for [California] Labor Code violations.” *Id.* at 360 (emphasis
27
28

1 added); see also *Villacres v. ABM Indus. Inc.* (2010), 189 Cal. App. 4th 562, 579 (“PAGA is
2 limited to the recovery of civil penalties”).

3 When a plaintiff settles a PAGA claim, the court must review the settlement related to
4 claim and the payment of penalties. Cal. Labor Code § 2699.3(b)(4). “PAGA settlements are
5 subject to trial court review and approval, ensuring that any negotiated resolution is fair to those
6 affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549 [citing Lab. Code, §
7 2699(l)(2)].) “A court has discretion to approve the settlement of PAGA claims if the settlement
8 would be ‘fair.’” (See *Nordstrom Commission Cases* (2010), 186 Cal. App. 4th 576, 581)

9 **IV. ARGUMENT**

10 **A. PAGA SETTLEMENT IS A FAIR OUTCOME IN THIS CASE**

11 **1. Plaintiff’s Core PAGA Allegations Wage Statement Violations**

12 **a. Labor Code Violations**

13 In this case, the core basis to support Plaintiff’s PAGA claims were based upon meal
14 break, rest break, minimum wage and overtime wages for working off-the-clock. (Jackson Decl.
15 4-10.) After analyzing the discovery, it was confirmed that approximately 1450 aggrieved
16 employees worked during the PAGA period. (*Id.*) It was also determined there was
17 approximately 26,102 pay periods during the relevant time period. (*Id.*)

18 **b. Meal Break Violations**

19 Based upon the payroll records, it was determined that the maximum exposure amounted
20 to \$80,000 based upon a 3.9% violation rate during (20,516 pay periods with violations *3.9%)
21 pay periods during the relevant time period. (Jackson Decl. ¶ 4.)

22 **c. Rest Break Violations**

23 There were no records evincing meal break violations. However, a conservative
24 assumption while applying the same violation rate for meal breaks would also amount to \$80,000
25 based upon a 3.9% violation rate during (20,516 pay periods with violations *3.9%) pay periods
26 during the relevant time period. (Jackson Decl. ¶ 5.)
27
28

1 **d. Minimum Wage and/or Overtime Wage Violations**

2 Overtime and minimum wage violations were based upon the allegation that the
3 aggrieved employees were subjected to a policy of off-the-clock temperature checks before
4 beginning the shifts as well as before clocking-in. (Jackson Decl. ¶ 6.) It was alleged that these
5 activities would amount to approximately 5 minutes per shift of off-the-clock work. (*Id.*) This
6 policy and practice occurred approximately between March 1, 2020 to March 1, 2021 estimating
7 approximately 15,114 pay periods. (*Id.*) Based upon this analysis, a maximum exposure would
8 amount to \$1,511,400 in PAGA penalty exposure. The realistic range of exposure should be
9 discounted by 50% to account for the lack of documented evidentiary support resulting in an
10 exposure of \$755,700.

11 **e. Wage Statements**

12 This wage statement claim is based upon Defendants failing to include gross and net
13 wages and total hours worked as a result of failing to include meal break violations and off-the-
14 clock work in violation of Labor Code section 226(a)(1)(2)(5) and (9). (Jackson Decl. ¶ 7.) The
15 exposure under Labor Code 226(a) would amount to \$1,511,400. This calculation is comprised
16 of the maximum number of pay periods (15,114) being potentially subjected to a wage statement
17 violation based upon meal break, rest break, minimum wage or overtime wage violations. The
18 realistic range of exposure should be discounted by 50% to account for the lack of documented
19 evidentiary support resulting in an exposure of \$755,700.

20 **f. 203 Penalty Violations**

21 This penalty claim is based upon purported minimum wage or overtime violations. It was
22 estimated that 1000 employees were terminated, laid off, or resigned whom were subjected to
23 Labor Code violations. (Jackson Decl. ¶ 8.) The PAGA penalties equate to \$100,000 (1000
24 employees*\$100 PAGA Penalty).

1 **g. 2802 Penalty Violations**

2 These claims were valued at \$26,100 (26,102*.01 violation rate *\$100) given the lack of
3 evidentiary support for the 2802 claims given Defendant’s policy of not requiring employees to
4 bring their own face masks or presenting the schedule in the restaurant obviating the need to use
5 any cell phones for business purposes. (Jackson Decl. ¶ 9.)

6 **2. Settlement Achieves the Purpose of PAGA**

7 The purpose of PAGA is “to incentivize private parties to recover civil penalties for the
8 government that otherwise may not have been accessed and collected by overburdened state
9 enforcement agencies.” (See *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2,
10 2010) 2010 WL 1340777 at *4 (citing *Arias, supra*, 46 Cal.4th at 986.) Moreover, PAGA was
11 enacted “to achieve maximum compliance with stat labor laws’ and “to ensure an effective
12 disincentive for employers to engage in unlawful and anticompetitive business practices.” 2003
13 Cal. Legis. Serv. H. 906 section 1(a).

14 Consistent with the purpose of PAGA, the following factors in determining whether to
15 approve the settlement should be applied;

- 16 (1) The extent to which the settlement achieves compliance with state labor laws;
17 (2) The extent to which the settlement deters violations of the state labor laws;
18 (3) Whether the settlement serves to enlist private citizens in public enforcement of
19 PAGA;
20 (4) Whether the settlement is otherwise “just” and “in the public interest.”

21 Because this proposed settlement reasonably and fairly advances each of the above
22 factors, the parties request approval.

23 **a. Factors (1) and (2) Settlement Achieves Compliance with State Labor Laws and**
24 **Deters Further Violations**

25 As discussed above, several Labor Code violations were discovered. Defendant is paying
26 attorneys, the State and aggrieved employees for these Labor Code violations. This litigation
27 incentivized Defendant to ensure full compliance with the state Labor Code deterring further
28 similar violations thereby achieving this purpose of PAGA. This litigation caused Defendant to

1 account for any gaps in their meal break and rest break premium wage policy and off-the-clock
2 work practices.

3 **b. Factor (3) This Settlement Serves to Enlist Private Citizens in Public**
4 **Enforcement of PAGA**

5 Plaintiff also believe the proposed settlement acts to encourage private enforcement of
6 PAGA. Through the settlement, Plaintiff's counsel will receive attorneys' fees and costs as
7 determined by the Court, and all aggrieved employees will receive 25% share of the net
8 settlement amount, as well as notice of the claim.

9 **c. Factor (4) This Settlement is Just and in the Public Interest**

10 Lastly, the proposed settlement is both just and in the public's interest.

11 First, *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906 has diminished the
12 value of these claims if these claims were to proceed to trial given there is a class action and
13 representative action waiver issue that could impact standing to bring any
14 representative claims. Second, this Court has discretion to lower any penalties as a result of
15 Labor Code violations creating further risks of discount.

16 Given the risks of the applicability of *Viking River* and the discretion to reduce penalties,
17 the maximum exposure amount must be discounted by 65% resulting in a realistic expected
18 exposure of \$636,755 (\$1,819,300 *.35) Here, the \$325,000.00 settlement amount is 51% of
19 the realistic maximum exposure while incorporating risks. If the Court grants Plaintiff's motion,
20 the State and the aggrieved employees will share approximately \$186,678 which is a substantial
21 sum given the narrow release and extent of Labor Code violations.

22 Second, the settlement seeks penalties only and release is narrowly tethered to the alleged
23 Labor Code violations.

24 Third, the settlement shall, even with deductions, provides a substantial sum to the State:
25 \$140,008.50. It also provides a reasonable sum to each employee on a pro-rata basis. Given the
26 purpose of PAGA is not to compensate employees, whom still retain any private rights of action
27 they may have had under the applicable Labor Code provisions, this sum provided to the
28 aggrieved employees is reasonable. Moreover, the settlement will also provide notice that

describes the litigation and settlement sum. (See Jackson Declaration ¶ Plaintiff contends this notice will educate the aggrieved employees as to the requirement of the Labor Code, which is in the public interest intended to achieve the purpose of PAGA. (See Labor Code section 2699(j) (stating that civil penalties recovered under PAGA shall be distributed to the LWDA for [among other things] “education of employers and employees about their legal rights and responsibilities under this code.”))

Lastly, public policy strongly favors the settlement of litigation. (*Consumer Advocacy Group, Inc. v. Kinetsu Enterprises of America*, (2006) 141 Cal.App.4th, 46, 63.) This settlement is not unjust or ignores the public interest, thus it should be approved.

B. SETTLEMENT DISTRIBUTION UNDER PAGA

The PAGA Settlement Agreement provides for a gross settlement of all PAGA penalties in the amount of \$325,000.00. (Jackson Decl. ¶ 1, Ex. A, p. 2, Section 11.) This settlement amount covers civil penalties (to be shared between the LWDA and aggrieved employees), as well as attorneys’ fees, litigation costs, and settlement administration costs. (*Id.*)

Pursuant to the agreement, the settlement amount will be distributed as follows: 1) Thirty-Three and one-third percent, equaling \$108,322.50 will be apportioned to attorney’s fees to Plaintiff’s counsel to procure the PAGA penalties; 2) Litigation costs in the amount of \$13,360.16; 3) Settlement Administration costs in the amount of \$10,000; 4) a PAGA Enhancement payment of \$5,000.00 will be awarded to Plaintiff; 5) of the remaining [\$325,000.00 GSA – 108,322.50 (Attorney Fees) - \$13,360.16 (Cost) – \$10,000 (Settlement Administration Costs(– \$5,000 PAGA Enhancement = \$188,317.34], Seventy-Five percent, equaling to \$141,238 will be apportioned to the California Workforce Development Agency; and 6) the remaining Twenty-Five percent, equaling \$47,079.34, will be distributed to the PAGA group. (Jackson Decl. ¶ 1, Ex. A, pp. 2-3, Sections 12-15) The amount to be distributed to the PAGA group will be paid on a pro-rata basis by dividing the Net Settlement Amount by the total number of pay periods worked by all members of the PAGA Group during the settlement period and then multiplying the pay period amount by the number of pay periods worked by the individual PAGA member. (Jackson Decl. ¶ 1, Ex. A, pp. 2-3, Section 12.)

1 **C. ATTORNEY’S FEES AND COSTS UNDER PAGA SETTLEMENT**
2 **AGREEMENT**

3 The Labor Code permits a Plaintiff to seek attorney’s fees and costs for actions arising
4 under PAGA. (Cal. Lab. Code §2699, subd. (g)(1))

5 **1. Lodestar Analysis**

6 “Courts recognize two methods of calculating attorney fees in civil class action; the
7 lodestar/multiplier method and the percentage of recovery method.” (*Wershba v. Apple*
8 *Computer, Inc.* 91 Cal. App. 4th 224, 254 (2001).) “[T]he lodestar is calculated by multiplying
9 the reasonable hours expended by a reasonable hourly rate. The court may then enhance the
10 lodestar with a multiplier, if appropriate.” (*Id.*) “The lodestar multiplier can range from 2 to 4 or
11 even higher.” (*Id.* at 255.)

12 In calculating attorney’s fees under the Labor Code, the court should follow the lodestar
13 approach adopted by the California Supreme Court in *Ketchum v. Moses* (2001) 24 Cal. 4th 1122,
14 1134. See also *Chavez v. City of Los Angeles* (2010) 47 Cal. 4th 970, 985. The “lodestar” method
15 is clearly defined in recent case law. It involves a five-step process. *In Re: Vitamin Cases* (2003)
16 110 Cal. App. 4th 1041, 1052. To determine the “lodestar number” – steps one through three of
17 the process – the court multiplies the number of hours reasonably worked by a reasonable hourly
18 rate. (*Id.*) Step four requires the Court to determine what, if any, multiplier should be applied to
19 the lodestar number. Step five determines the amount of the attorney fee award by applying the
20 multiplier to the lodestar number. (*Id.*)

21 For the Court’s ease of reference, the following chart summarizes the attorney’s fees
22 PAGA Counsel seeks:

23 ///

24
25 ///

26
27 ///

Item Description	Amount
Reasonable attorney's fees incurred in procuring the underlying award applying the Lodestar method for calculating attorney's fees in Labor Code cases (\$640.00 hourly rate*157.81 hours; Andrea Fernandez-Jackson \$440.00* 13.5 hours; Anthony Filer Jr. 5.4 hours * \$250 hourly rate; Yesenia Villalba * 5.6 hours at \$145 hourly rate)	\$109,100.40 *no multiplier
TOTAL:	\$109,100.40 requested

2. The Number of Hours Expended by Plaintiff's Counsel Was Reasonable.

"The starting point of every fee award...must be a calculation of the attorney's services in terms of the time he has expended on the case." *Press v. Lucky Stores, Inc.*, (1983) 34 Cal. 3d 311, 322. Reasonable hours include, in addition to time spent during litigation, time spent before the action is filed, including time reasonably spent interviewing the client, investigating the facts and the law, and preparing the initial pleadings, as well as time spent in exhausting administrative remedies. *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.

The evidence submitted by PAGA Counsel in support of this motion reflect that PAGA Counsel reasonably expended the following number of hours in the prosecution of this case. (Jackson Decl. ¶¶ 3-10, 14 Ex. D) Jackson Law began filed this action in June 2021, more than 16 months prior to this hearing. A reasonable amount of work was performed pre-litigation, including conducting an extensive intake process. (Jackson Decl. ¶¶ 3-10, 14 Ex. D) Discovery was conducted by counsel regarding both the circumstances of the Plaintiff's employment, hours worked during his employment, meal breaks, wage statements, and rest periods taken during his employment and Defendant's policies in general regarding the employment of individuals with respect to payment of wages, working conditions, meal breaks and rest periods, minimum wage, overtime violations and unreimbursed business expenses. (Jackson Decl. ¶¶ 3-10, 14 Ex. D)

1 The time expended during the discovery phase was also reasonably incurred. (*Id.*)
2 Thereafter, numerous hours were spent by counsel in performing damages analysis of over
3 aggrieved employees regarding their entitlement to wages for missed meal breaks, rest periods,
4 overtime, accurate wage statements, minimum wage claims, pay upon termination and
5 unreimbursed business expenses. (*Id.*)

6 The time expended to achieve approval also reasonably incurred. (*Id.*) Counsel
7 conducted extensive legal research on the procedures and issues involved in achieving approval.
8 (*Id.*) Armond M. Jackson appeared for court hearings on several occasions preparing and arguing
9 the motion and addressing any concerns of the Court. (*Id.*) These hours were reasonably spent to
10 achieve approval of this PAGA Settlement. (*Id.*)

11 As set forth in the declarations submitted herewith, the total number of hours spent on
12 this matter by PAGA Counsel is reasonable in light of the work required to achieve the result.
13 (*Id.*) Thus, the Court shall conclude that all of the time spent on this case was reasonable and
14 necessary to achieve this result and counsel is entitled to compensation for all the attorney hours
15 worked in this case. (*Id.*)

16 **3. The Hourly Rate Charged for the Services of Plaintiff's Counsel is Reasonable.**

17 When determining a reasonable hourly rate for the attorney's services, courts consider the
18 following factors: (i) the prevailing rate charged by attorneys of similar skill and experience for
19 comparable legal services in the community, (ii) the nature of the work performed, and (iii) the
20 attorney's customary billing rates. *Serrano v. Unruh* (1982) 32 Cal.3d 631, 643; *See also Bihun*
21 *v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 997 *disapproved on other*
22 *grounds Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664. The hourly rate is
23 determined at the time of the prevailing party's fee application rather than rates charged at the
24 time the litigation began. (*Gates v. Deukmejian* (9th Cir. 1992) 987 F.2d 1392, 1406.)

25 The Jackson Declaration lays the proper foundation for why the hourly rates charged for
26 each attorney working on this case is reasonable and customary for those rates charged in
27 Southern California by attorneys with similar experience. (Jackson Decl. ¶¶ 3-14 Ex. D).
28

1 Mr. Jackson's hourly rate on this matter was \$640 is consistent with the Laffey Matrix.
2 (Jackson Decl. ¶¶ 3-10, 14 Ex. D, 19, Ex. E) Mr. Jackson is a senior attorney who has been
3 litigating for over 10 years. (*Id.*) He has handled over a hundred of employment matters on
4 behalf of the plaintiff in his career. (*Id.*) Mr. Jackson is a former member of the California
5 Employment Litigation Association ("CELA"). (Jackson Decl. ¶¶ 11-12.) Mr. Jackson has
6 argued before the Ninth Circuit and responsible for a published opinion. (*Id.*) Based on his
7 experience, and based on his own research for purposes of keeping his law firm competitive and
8 profitable, he has knowledge of the hourly rates other plaintiff's attorneys with similar
9 experience charge in employment cases. (*Id.*) Based on this foundation, Mr. Jackson believes
10 that his regular hourly rate of \$640 per hour is reasonable and similar to what attorneys with his
11 tenure, experience and expertise are charging in the Orange County area. (*Id.*) All other staff's
12 hourly rates that worked on this matter are also reasonable; Andrea Fernandez- Jackson at \$440
13 per hour as 8-year California licensed attorney with experiencing arguing before the Ninth
14 Circuit, Anthony Filer Jr. as 1-year California licensed attorney at \$250 per hour and Yesenia
15 Villalba as paralegal with 5 years of litigation experience at \$145 per hour. (Jackson Decl. ¶ 21.)

16 This evidence therefore supports the reasonableness of the fees charged in this case.

17 "Our Supreme Court has explained that the reasonable hourly rate used for the lodestar
18 calculation 'is that prevailing in the community *for similar work*.'" *Syers Properties III, Inc. v.*
19 *Rankin*, 226 Cal.App.4th 691, 702, (2014). Reasonable hourly rates are determined by the
20 formula "'reasonable market value'" and reached by evaluating the "'comparable salaries earned
21 by private attorneys with similar experience and expertise in equivalent litigation'" and the
22 "'hourly amount to which attorneys of like skill in the area would typically be entitled.'"
(*Serrano v. Unruh*, 32 Cal. 3d 621, 640, fn. 31 (1982).)

23 As explained in the declaration of Armond Jackson, the current prevailing billing or
24 "market" rates for attorneys in the Orange County area range from \$200 to over \$600 per hour.
25 (See, e.g., *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal. App. 4th 976, 1004-1005
26 (upholding an attorney's fee award in an action brought under the FEHA based on an hourly rate
27 of \$450 over ten years ago) (overruled on other grounds in *Lakin v. Watkins Assoc. Indus.* (1993)
28

6 Cal.4th 644, 664.)) Given the skill and experience of the attorneys who represented plaintiff, an hourly rate of \$640 for Armond M. Jackson, \$440 for Andrea-Fernandez-Jackson, \$250 for Anthony Filer Jr. and \$145 for Yesenia Villalba are reasonable. (Jackson Decl. ¶¶ 3-10, 14, 21 Ex. D)

4. Laffey Matrix Rates

The Laffey Matrix is one well-established objective source setting rates for attorneys based upon years of experience for attorneys practicing in the District of Columbia. See <https://www.justice.gov/usao-dc/file/796471/download> (citing *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), aff'd in part, rev'd in part on other grounds. 746 F.2d 4 (D.C.Cir. 1984). The Laffey Matrix figures are adjusted to comport with the cost of living in which where the firm operates. (*In re HLP Technologies, Inc. Securities Litigation*, 366 F.Supp. 2d 912, 921 (2005).) Under the Laffey Matrix, Orange County attorney rates fall under the Locality of Pay Rates of Los Angeles-Long Beach, California. When performing the appropriate calculation ($126.65-124.78/124.78=2.3\%$), the adjustment to the District of Columbia Laffey Matrix is 2.3% for Orange County attorneys. (See *In re HLP Technologies, Inc. Securities Litigation*, 366 F.Supp. 2d 912, 922 fn. 1.) Thus, the rate for Armond M. Jackson's as a ten plus year attorney is \$640.00 (Laffey \$676), Andrea Fernandez-Jackson as 8-year attorney set at \$440.00 (Laffey \$676), and Anthony Filer Jr. as 1-year attorney set at \$250 (Laffey \$381) and Yesenia Villalba as paralegal set at \$145 (Laffey \$208) are reasonable. (Jackson Decl. ¶ 19, Ex. F) According to the Laffey Matrix, these rates are discounted.

5. Attorney's Fees

Plaintiff requests that 33.33% of the amount awarded under the PAGA will be apportioned to attorney's fees. (Jackson Decl. ¶ 1, Ex. A, p. 3, Section 13) This amount is to be distributed from the lump sum of \$325,000.00 that was distributed to the claim brought under PAGA and amounts to a total of \$108,322.50. (*Id.*) A fee application of 33.33% was used in this case to be consistent with standard practices for representative actions. (*Id.*)

1 The attorney time spent, as well as the costs incurred, as to one necessarily affected the
2 other. The Plaintiff had to establish that he was an aggrieved employee to be able to maintain
3 standing under PAGA. (Cal. Lab. Code § 2699, subd. (a)). As of the date of this filing, in excess
4 of 182.31 hours of attorney time, in excess of \$109,000 in legal fees, has been spent pursuing
5 this case. A 33.33% allocation of the \$325,000.00 award to PAGA is \$108,322.50. (*Id.*) Based
6 upon the standard practices for representative actions and the amount of time that has been spent
7 pursuing the representative action in this case, the attorney's fees allocated are reasonable.
8 (Jackson Decl, ¶ 14, Ex. D.

9 **6. Costs**

10 Plaintiff seeks \$13,360.16 in litigation costs. This amount represents costs incurred
11 including court-filing and process-serving fees; mediation costs, postage costs and expected
12 filing fees for the instant motion. This amount of costs requested is modest and reflects efficient
13 litigation of the case. (Jackson Decl, ¶ 13, Ex. C)

14 **V. CONCLUSION**

15 For the reasons set forth herein, Plaintiff requests that the Court approve the proposed
16 settlement; approve the proposed notice; and adopt the Order filed concurrently herein.

17
18 Dated: October 28, 2022

JACKSON APC

19
20 By: /s/ Armond M. Jackson
Armond M. Jackson
21 Attorney for Plaintiff Eva Jardon
22
23
24
25
26
27
28