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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

MARCUS MITCHELL, individually, and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act;

Plaintiff,

vs.

SOLNUS FOUR, LLC, a California limited
liability company; SAN PABLO
HEALTHCARE & WELLNESS CENTER,
LLC, a California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: MSC21-01062

Honorable Charles S. Treat
Department 12

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL ACT
(CAL. LABOR CODE § 2698,
ET SEQ.) SETTLEMENT AGREEMENT
AND AWARD OF ATTORNEYS' FEES
AND COSTS, GENERAL RELEASE FEE,
AND SETTLEMENT ADMINISTRATION
COSTS; MEMORANDUM OF POINTS
AND AUTHORITIES**

[Declaration of Plaintiff's Counsel
(Brittany Shaw); Declaration of Plaintiff
(Marcus Mitchell); and [Proposed] Order and
Judgment filed concurrently herewith]

Date: TBD
Time: TBD
Department: 12

Complaint Filed: May 25, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on TBD at TBD a.m./p.m. or as soon thereafter as the
2 matter may be heard before the Honorable Charles S. Treat, Department 12 of the Superior
3 Court of the State of California, for the County of Contra Costa, located at 725 Court Street
4 Martinez, CA 94553, Plaintiff Marcus Mitchell (“Plaintiff”) will and hereby does move for entry
5 of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the
7 settlement between Plaintiff and Defendants Solnus Four, LLC and San Pablo
8 Healthcare & Wellness Center, LLC (“Defendants”) of the claims brought pursuant to
9 the Private Attorneys General Act of 2004 (“PAGA”), as set forth in the Private
10 Attorneys General Act Settlement Agreement and Release (“Settlement,”
11 “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the
12 Declaration of Brittany Shaw, including and not limited to, the plan of allocation and
13 distribution of the Total Settlement Amount for payment of the LWDA Payment to
14 the California Labor and Workforce Development Agency (“LWDA”), Individual
15 Settlement Shares to the Aggrieved Employees, Attorneys’ Fees and Costs to
16 Plaintiff’s Counsel, Settlement Administration Costs to the PAGA Settlement
17 Administrator, and General Release Fee to Plaintiff;
- 18 2. Approving the Total Settlement Amount¹ of \$252,416.50 (subject to possible increase
19 pursuant to Section 3(b) of the Settlement Agreement), which is inclusive of
20 Attorneys’ Fees and Costs, a General Release Fee to Plaintiff, the Settlement
21 Administration Costs, and the Net Settlement Amount;
- 22 3. Approving the Net Settlement Amount, estimated to be no less than \$134,800.54
23 which will be distributed to the LWDA and the Aggrieved Employees, pursuant to
24 California Labor Code section 2699(i), of which seventy-five percent (75%) will be
25 paid to the LWDA (“LWDA Payment”) and twenty-five percent (25%) will be paid
26 to the Aggrieved Employees (“Employees’ Portion”);

27
28 ¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Settlement Agreement.

4. Appointing Phoenix Settlement Administration (“Phoenix”) as the PAGA Settlement Administrator;
5. Directing Defendants to transmit the Total Settlement Amount of \$252,416.50 into a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement, in accordance with the terms of the Settlement Agreement, and directing the PAGA Settlement Administrator to distribute the Total Settlement Amount in accordance with the Settlement Agreement;
6. Directing the mailing of Individual Settlement Share checks to the Aggrieved Employees along with the Cover Letter, in accordance with the terms of the Settlement Agreement, which is substantially similar in content and form to that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys’ Fees and Costs, General Release Fee, and Settlement Administration Costs (“[Proposed] Order and Judgement”) filed concurrently herewith;
7. Awarding \$15,000.00 to Plaintiff Marcus Mitchell as a General Release Fee;
8. Awarding up to \$7,500.00 to the PAGA Settlement Administrator as Settlement Administration Costs; and
9. Awarding to Plaintiff’s Counsel, Lawyers for Justice, PC, \$88,345.78 as compensation for reasonable attorneys’ fees and \$6,770.18 for reimbursement of litigation costs and expenses (“Attorneys’ Fees and Costs”), pursuant to California Labor Code section 2699(g)(1).

The Settlement Agreement and moving and supporting papers for this motion are being concurrently submitted to the California Labor and Workforce Development Agency in conformity with California Labor Code section 2699(l)(2).

This motion is made pursuant to California Labor Code section 2699(l)(2), which provides for review and approval by the Court of the settlement of a civil action filed pursuant to PAGA, and Rule 3.1113(e) of the California Rules of Court, which permits the Court to extend

the page limit for memoranda.

This motion will be based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Plaintiff's Counsel (Brittany Shaw) and Plaintiff (Marcus Mitchell) in support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: September 13, 2024

LAWYERS for JUSTICE, PC

By:



Brittany Shaw
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Marcus Mitchell (“Plaintiff”) seeks approval of the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and Defendants Solnus Four, LLC and San Pablo Healthcare & Wellness Center, LLC (“Defendants”), pursuant to California Labor Code section 2699(l)(2).²

Subject to approval by the Court, Plaintiff and Defendants (together, the “Parties”) have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Total Settlement Amount of \$252,416.50, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement.³

The Total Settlement Amount is inclusive of: (1) Attorneys’ Fees and Costs to be paid to Lawyers for Justice, PC (“Plaintiff’s Counsel”), (2) General Release Fee to Plaintiff, (3) Settlement Administration Costs to be paid to the PAGA Settlement Administrator, and (4) Net Settlement Amount to be paid to the California Labor and Workforce Development Agency (“LWDA”) and all hourly-paid or non-exempt employees who worked for Defendants at Defendants’ Solnus Four, LLC and San Pablo Healthcare & Wellness Center, LLC locations in the State of California during the PAGA Period (“Aggrieved Employees”).⁴

The Net Settlement Amount will be the Total Settlement Amount less the Court-approved Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee, and is currently estimated to be no less than \$134,800.54.⁵ The Net Settlement Amount will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and twenty-five percent (25%) to the Aggrieved Employees (“Employees’ Portion”).⁶ Each

² The Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement”) is attached as “EXHIBIT 1” to the Declaration of Brittany Shaw.

³ Settlement Agreement, §§ 3(a)-(b).

⁴ *Id.*, §§ 3(a)(1)-(5). “PAGA Period” is defined as the period March 18, 2020 to May 24, 2024. *Id.*, § 3(a)(5).

⁵ *Id.*, § 3(a)(4).

⁶ *Id.*, § 3(a)(5).

Aggrieved Employee will be entitled to payment of his or her *pro rata* share of the Employees' Portion, based on the number of pay periods they each worked between March 18, 2020 and May 24, 2024 ("Compensable Pay Periods").⁷

The payments to Aggrieved Employees will be treated and reported for tax purposes as one hundred percent (100%) penalties and the PAGA Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.⁸

Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the requirements for approval by the Court based upon the relevant fairness factors, the strengths of the PAGA claim, the risk, expense, and complexity of further litigation, the benefit conferred by the Settlement, the scope of the release of claims, the experience and views of counsel, and the reasonableness of the Net Settlement Amount (consisting of the LWDA Payment and Employees' Portion), Attorneys' Fees and Costs, Settlement Administration Costs, and General Release Fee. Plaintiff respectfully requests that this Court approve the Settlement, award the Attorneys' Fees and Costs, Settlement Administration Costs, and General Release Fee and approve the LWDA Payment, which are provided for by the Settlement and requested herein.

In order to efficiently present the Court with adequate information to determine whether to grant approval of the Settlement, Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant San Pablo Healthcare & Wellness Center, LLC (formerly Solnus Four, LLC) is a skilled nursing facility located in San Pablo, California. Plaintiff Marcus Mitchell is a former employee of Defendant San Pablo Healthcare & Wellness Center, LLC (formerly Solnus Four, LLC).

Prior to commencing this lawsuit, on March 18, 2021, as required by California Labor Code section 2699.3, Plaintiff Marcus Mitchell provided the LWDA and Defendants with written

⁷ Settlement Agreement, § 7(b).

⁸ *Id.*, § 7(b)(1).

1 notice of his intent to assert a claim for civil penalties under PAGA and the basis for the claim, to
2 which the LWDA did not respond (“PAGA Notice”).⁹ A true and correct copy of Plaintiff’s
3 March 18, 2021 PAGA Notice is attached to the Declaration of Brittany Shaw as “**EXHIBIT 2.**”

4 On May 25, 2021, Plaintiff filed a Complaint for Enforcement Under the Private
5 Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) against
6 Defendants in the Contra Costa County Superior Court (“Court”), Case No. C21-01062 (the
7 “Action”). Plaintiff’s core allegation is that Defendants violated the California Labor Code by
8 engaging in a uniform practice and procedure, with respect to Plaintiff and other aggrieved
9 employees, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide
10 compliant meal and rest periods and associated premiums, failing to pay timely wages during
11 employment and upon termination of employment, failing to provide complete and accurate
12 itemized wage statements, failing to keep complete and accurate payroll records, and failing to
13 reimburse necessary business-related expenses and costs.

14 On September 3, 2021, Defendants filed an Answer to the Operative Complaint.
15 Defendants maintained, and continues to maintain, that they had, and continues to have, legally
16 compliant employment policies and practices throughout the time period at issue. Defendants
17 deny that they ever violated any provision of the California Labor Code, including, but not
18 limited to, those sections for which Plaintiff seeks penalties under the PAGA.

19 On October 26, 2021, Plaintiff served Form Interrogatories-General (Set One), Request
20 for Production of Documents (Set One), Special Interrogatories (Set One), and Special
21 Interrogatories (Set Two).¹⁰ Plaintiff also served deposition notices for Defendants’ Person Most
22 Knowledgeable regarding organizational structure and job duties.¹¹

23 On November 22, 2021, Defendant San Pablo Healthcare & Wellness Center, LLC
24 served Form Interrogatories-General (Set One), Form Interrogatories-Employment (Set One),
25 Request for Production of Documents (Set One), and Notice of Deposition.¹²

26 ⁹ Declaration of Brittany Shaw (“Shaw Decl.”), ¶ 10.

27 ¹⁰ *Id.*, ¶ 14.

28 ¹¹ *Id.*

¹² *Id.*

On November 30, 2021, Defendants responded to Plaintiff's Form Interrogatories-General (Set One), Request for Production of Documents (Set One), Special Interrogatories (Set One), and Special Interrogatories (Set Two).¹³

On December 27, 2021, Plaintiff responded to Defendant San Pablo Healthcare & Wellness Center, LLC's Form Interrogatories-General (Set One), Form Interrogatories-Employment (Set One), and Request for Production of Documents (Set One).¹⁴

On January 31, 2022, Plaintiff served supplemental responses to Defendant San Pablo Healthcare & Wellness Center, LLC's Form Interrogatories-Employment (Set One), and Request for Production of Documents (Set One).¹⁵

On April 1, 2022, Plaintiff sent Defendants a meet and confer letter regarding Defendants' written discovery responses.¹⁶

On May 6, 2022, the Parties requested the matter be stayed pending *Adolph v. Uber Technologies* (Case No. S274671) ("*Adolph*").

On August 4, 2022 and September 2, 2022, the Parties renewed their request to stay the matter pending *Adolph*.

On September 8, 2022, the Court ordered the case stayed pending *Adolph*.

On August 22, 2023, the Court lifted the stay.

On August 23, 2023, Plaintiff served Form Interrogatories-General (Set Two), Request for Production of Documents (Set Two), Special Interrogatories (Set Three), and Request for Admissions (Set One).¹⁷ Plaintiff also served deposition notices for Defendants' Person Most Knowledgeable regarding purported arbitration agreements.¹⁸

On August 29, 2023, Defendants filed their Motion to Compel Arbitration.

On September 26, 2023, Defendant responded to Plaintiff's Form Interrogatories-General (Set Two), Request for Production of Documents (Set Two), Special Interrogatories (Set Three),

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

and Request for Admissions (Set One).¹⁹

On November 2, 2023, the Court denied Defendants' Motion to Compel Arbitration.

On November 22, 2023, Defendants filed a Notice of Appeal regarding the Court's Order denying Defendants Motion to Compel Arbitration.

While the appeal was pending, the Parties agreed to engage in informal discovery and exchange information, data, and documents, including, but not limited to, a sampling for time and wage records from employees of Defendants prior to mediation.²⁰

On February 8, 2024, the Parties participated in a mediation conducted by Monique Ngo-Bonnici, a well-respected mediator experienced in mediating complex labor and employment matters.²¹ With the aid of the mediator, the Parties reached the Settlement described hereon.²²

Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(l)(2). The Settlement Agreement and moving and supporting papers for this motion are being submitted to the LWDA in conformity with California Labor Code section 2699(l)(2), concurrently with this filing.²³

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Aggrieved Employees who are covered by the Settlement are:

All current and former hourly-paid or non-exempt employees who worked for Defendants at Defendants' Solnus Four, LLC and San Pablo Healthcare & Wellness Center, LLC locations in the State of California during the PAGA Period.²⁴

Based on information provided by Defendants as of June 10, 2024, there are approximately 390 Aggrieved Employees and 10,789 Compensable Pay Periods.²⁵

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*, ¶ 13.

²² *Id.*

²³ The Court is referred to the concurrently filed Proof of Service, which confirms submission of the papers to the LWDA.

²⁴ Settlement Agreement, § 3(a)(5).

²⁵ Settlement Agreement, § 3(b), and Shaw Decl., ¶ 9.

1 **B. Distribution of the Total Settlement Amount**

2 Under the terms of the Settlement Agreement, Defendants will pay a Total Settlement
3 Amount of \$252,416.50, subject to possible increase pursuant to Section 3(b) of the Settlement
4 Agreement.²⁶ Within thirty (30) calendar days of the Court’s order granting approval of the
5 Settlement, Defendants will transmit the Total Settlement Amount to a qualified settlement
6 account established by the PAGA Settlement Administrator for administration of the
7 Settlement.²⁷

8 **C. Distribution of the Net Settlement Amount**

9 The Net Settlement Amount will be the Total Settlement Amount less the following
10 amounts: (1) Attorneys’ Fees and Costs consisting of attorneys’ fees of \$88,345.78 and
11 reimbursement of litigation costs and expenses of \$6,770.18 to Plaintiff’s Counsel; (2) General
12 Release Fee of \$15,000.00 to Plaintiff; and (3) Settlement Administration Costs of up to
13 \$7,500.00 to Phoenix Settlement Administrators (“Phoenix” or “PAGA Settlement
14 Administrator”).²⁸ The Net Settlement Amount will be fully distributed to the Aggrieved
15 Employees and the LWDA.

16 No later than seven (7) calendar days after the Court’s order granting approval of the
17 Settlement, Defendants shall provide the PAGA Settlement Administrator with a list of all
18 Aggrieved Employees (the “Aggrieved Employees List”), containing the following information for
19 each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known
20 telephone number; (iv) Social Security number; and (v) Compensable Pay Periods.²⁹

21 Seventy-five percent (75%) of the Net Settlement Amount (or approximately
22 \$101,100.40) will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent
23 (25%) of the Net Settlement Amount (or approximately \$33,700.14) (i.e., Employees’ Portion)
24 will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable
25

26 ²⁶ Settlement Agreement, § 3(a)-(b), and Shaw Decl., ¶ 11.

27 ²⁷ Settlement Agreement, § 7(a).

28 ²⁸ Shaw Decl., ¶ 11.

29 ²⁹ *Id.*, § 7(c)(1).

1 Pay Periods.³⁰ To calculate each Aggrieved Employee's share of the Employees' Portion
2 ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (i) for each
3 Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually
4 worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved
5 Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each
6 Aggrieved Employee's Individual Settlement Share.³¹ The payments to Aggrieved Employees
7 for their Individual Settlement Shares are considered one hundred percent (100%) penalties to be
8 reported on IRS Form 1099, if required.³²

9 No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives
10 the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator
11 shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the
12 "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail.³³ For
13 each PAGA Settlement Package that is returned undeliverable within thirty (30) calendar days of the
14 initial mailing, the PAGA Settlement Administrator shall promptly attempt to locate an alternate,
15 updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt
16 one (1) re-mailing of the PAGA Settlement Package.³⁴

17 The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid
18 for ninety (90) calendar days, and thereafter, shall be canceled.³⁵ Funds associated with canceled
19 checks shall be transmitted to the State Controller's Office Unclaimed Property Division in the
20 name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual
21 Settlement Share(s).³⁶

22 **D. The Scope of the Release in the Settlement Agreement**

23 Upon the date the Court has entered an order approving the Settlement Agreement and full
24

25 ³⁰ *Id.*, § 3(a)(5).

26 ³¹ *Id.*, § 7(b).

27 ³² *Id.*, §§ 3(c) & 7(b)(1).

28 ³³ *Id.*, § 7(c)(3).

³⁴ *Ibid.*

³⁵ *Id.*, § 7(c)(4).

³⁶ *Ibid.*

funding of the Total Settlement Amount, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff and the State of California with respect to Aggrieved Employees, will be deemed to have knowingly and voluntarily released and forever discharged, to the fullest extent of the law, of and from the Action and Released Claims.

The “Released Claims” are any and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, *et seq.* (“PAGA”) as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business-related expenses and costs, in violation of California Labor Code sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 512(a), 551, 552, 558, 1174, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001, and 5-2001.³⁷

The “Released Parties” Defendants, Rockport Healthcare Support Services, LLC, and Rockport Administrative Services, LLC, including each of their parent corporations, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs.³⁸

E. No Right to Object to, or Opt Out of, the Settlement

“[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546. “Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5. A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are “nonparty aggrieved employees who are not given notice of, and an opportunity to be heard in, a representative action that is not brought as a class

³⁷ Settlement Agreement, § 8(a).

³⁸ *Ibid.*

1 action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other
2 potentially aggrieved employees parties” to the action and no “due process concerns arise under
3 PAGA because absent employees do not own a personal claim for PAGA civil penalties and
4 whatever personal claims the absent employees might have for relief are not at stake.” *Williams*,
5 *supra*, 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756*,
6 *AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation*
7 *Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

8 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
9 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v.*
10 *Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29
11 Cal, 3d 462, 474.) A “judgment in such an action is binding not only on the named employee
12 plaintiff but also on government agencies and any aggrieved employee not a party to the
13 proceeding” because “the employee plaintiff represents the same legal right and interest as state
14 labor law enforcement agencies[.]” “collateral estoppel applies [...] against those for whom the
15 party acted as an agent or proxy[.]” and “[w]hen a government agency is authorized to bring an
16 action on behalf of an individual or in the public interest, and a private person lacks an
17 independent right to bring the action, a person who is not a party but who is represented by the
18 agency is bound by the judgment as though the person were a party.” *Arias, supra*, at 985-86
19 (citations omitted); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476
20 (aggrieved employee cannot opt out of a PAGA settlement).

21 As such, the Settlement is consistent with the law, and there is no requirement that the
22 Aggrieved Employees be provided with a mechanism to opt out of or object to the Settlement.

23 **IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT**

24 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself
25 or herself and on behalf of other aggrieved employees and the State of California to recover civil
26 penalties which, outside of PAGA, only the LWDA can assess upon and collect from an
27 employer (Cal. Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee
28 must comply with California Labor Code section 2699.3. See Cal. Lab. Code § 2699(a).

Plaintiff has complied.

The settlement of a PAGA action requires court approval. See Cal. Lab. Code § 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action” and therefore does not have to meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from, and simpler than, the process for approval of a class action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims.³⁹ See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576, 589.

In a PAGA case, the court’s focus is not the monetary amount which aggrieved employees or the State stand to receive, but instead, whether the total settlement amount achieves the PAGA’s objectives. The purpose of the PAGA is “to incentivize private parties to recover

³⁹ Shaw Decl., ¶ 7.

civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.” See Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by way of a PAGA claim, is essentially a law enforcement action. See *Amalgamated, supra*, 46 Cal.4th at 1003 (stating that the PAGA is a mechanism for “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies”); see also *Iskanian, supra*, at 381.

A PAGA settlement is a settlement of claims for penalties and other remedies which the LWDA could assess and collect on behalf of employees without their involvement or approval. “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *5. This renders the approval process of a PAGA settlement distinct from a class action settlement, and the Court need not employ the two-step approval process that applies to a class action settlement, under both state and federal law.

V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

The Settlement resulted from hard-fought negotiations, fulfills the objectives of the PAGA statute, is fair, adequate, and reasonable, and meets all of the criteria for approval for the reasons discussed below.

A. The Factors Giving Rise to a Presumption of Fairness Exist

The Parties reached the Settlement after conducting extensive, arm’s-length negotiations, the involvement of a neutral mediator, Monique Ngo-Bonnici.⁴⁰ A settlement that is “the

⁴⁰ Shaw Decl., ¶ 13.

product of extensive and hard-fought adversarial negotiations between the parties” is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

The Settlement is presumptively fair because: (1) it is the product of adversarial, non-collusive, and arm’s-length negotiations with the assistance of an independent mediator knowledgeable in complex labor and employment matters; (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters; and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claim, and of risks and expenses litigating this claim through trial.⁴¹

In the course of litigation and after engaging in significant investigations, formal and informal discovery, and the exchange of information, data and documents, the Parties participated in settlement negotiations to try to resolve the lawsuit.⁴² These efforts included participating in a formal mediation conducted by Monique Ngo-Bonnici, a well-respected mediator experienced in mediating complex labor and employment matters.⁴³ In the course of mediation and settlement negotiations, the Parties discussed all aspects of the case, including the risks and delays of further litigation and proceeding with trial, as well as the law relating to representative PAGA actions, off-the-clock theory, meal and rest periods, reporting time pay, Industrial Wage Orders, exemptions, pre-emption, and wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other things.⁴⁴ During all settlement discussions, the Parties conducted their negotiations at arm’s length in an adversarial position.⁴⁵

Based on all of the information available to the Parties, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim and the facts and circumstances of the case.⁴⁶ Plaintiff and Plaintiff’s Counsel believe that the settlement is a

⁴¹ *Id.*, ¶¶ 3-7, 11-20.

⁴² Shaw Decl., ¶ 14.

⁴³ *Id.*, ¶ 13.

⁴⁴ *Id.*, ¶¶ 13-14.

⁴⁵ *Ibid.*

⁴⁶ *Id.*, ¶ 19.

1 fair, adequate, and reasonable resolution of this matter.⁴⁷ Plaintiff's Counsel has extensive
2 experience handling representative and class action wage-and-hour litigation and used that
3 experience to achieve a settlement recovery for Plaintiff, the State of California, and the
4 Aggrieved Employees.⁴⁸ Therefore, the Court should give considerable weight to the
5 competency, experience, and opinion of counsel and the involvement of a neutral mediator in
6 assuring that the settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli*
7 (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to
8 considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622
9 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness); see
10 also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating
11 that the "assistance of an experienced mediator in the settlement process confirms that the
12 settlement is non-collusive).

13 **B. The Relative Strength of the PAGA Claim and the Range of Possible**
14 **Outcomes in the Action Strongly Favor Approval of the Settlement**

15 In order for Plaintiff to prevail on the PAGA claim, he would have to prove that
16 Defendants engaged in the alleged California Labor Code violations and demonstrate that
17 Defendants' conduct warrants the imposition of penalties. See, e.g., *Elliot v. Spherion Pac.*
18 *Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 ("Plaintiff's claim under [PAGA] is
19 wholly dependent upon her other claims. Because all of plaintiff's other claims fail as a matter
20 of law, so does her PAGA claim.").

21 Plaintiff's core allegation is that Defendants systematically violated the California Labor
22 Code, with respect to Plaintiff and the Aggrieved Employees, by, *inter alia*, failing to properly
23 pay minimum, regular, overtime wages, failing to provide compliant meal and rest periods and
24 associated premiums, failing to timely pay wages during employment and upon termination of
25 employment, failing to provide complete and accurate wage statements, failing to keep complete
26

27 ⁴⁷ *Id.*, ¶ 23.

28 ⁴⁸ *Id.*, ¶¶ 3-7.

1 and accurate payroll records, and failing to reimburse necessary business-related expenses and
2 costs.

3 Although wage-and-hour actions are amenable to resolution as to a group of employees,
4 some courts have also found that, for various reasons, the issues raised by Plaintiff raise
5 individualized issues and/or are thus not suitable for adjudication as to a group of employees.

6 Defendants also maintained several defenses to Plaintiff's theory of liability, which, if
7 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
8 Throughout this litigation, Defendants maintained, and continues to maintain, that it had, and
9 continues to have, legally-compliant employment policies and practices throughout the time
10 period at issue.⁴⁹ Defendants denies that it ever violated any provision of the California Labor
11 Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the
12 PAGA.⁵⁰ Defendants further denied, and continues to deny, that the lawsuit is appropriate for
13 representative treatment for any purpose other than settlement.⁵¹

14 Defendants also challenged Plaintiff's standing as an aggrieved employee and denied that
15 any of Defendants' other employees whom Plaintiff seeks to represent are aggrieved.⁵² Also, at
16 the time that this case commenced, multiple courts had taken an approach requiring a plaintiff to
17 establish standing and face the possibility of bifurcation of discovery and/or trial of the PAGA
18 claim. See *Amalgamated Transit Union, supra*, 46 Cal.4th at 1001 (noting that PAGA
19 "require[s] a plaintiff to have suffered an injury resulting from an unlawful action"); *Stafford v.*
20 *Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding that judicial
21 economy supported bifurcation because of the difficulties and inherent uncertainties of being
22 able to establish liability with respect to a large number of potentially aggrieved employees and
23 noted that "PAGA's public purpose would be ill-served if the court finds [the plaintiff] has not
24 been aggrieved by a Labor Code violation"); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955
25 (stating that bifurcation and sequencing of litigation is allowed to avoid wasting time and money

26 ⁴⁹ Shaw Decl., ¶ 17.

27 ⁵⁰ *Ibid.*

28 ⁵¹ *Ibid.*

⁵² *Ibid.*

on trial when litigation of issues could be rendered moot).

Defendants also argued that an important feature of PAGA is that the Court retains discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors). Defendants maintained, and continue to maintain, that it had and continues to have, legally-compliant employment policies and practices throughout the time period at issue.⁵³ Defendants deny that they ever violated any provision of the California Labor Code.⁵⁴ Even if, *arguendo*, such violations occurred, which Defendants denies, Defendants contended that said violations would only be considered “initial violations” and thus heightened “subsequent violation” penalties were not warranted. See Cal. Lab. Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 (“Until the employer has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”).

Defendants also contended that, with respect to PAGA claims, the Court was unlikely to assess cumulative penalties for the maximum number of possible, separate California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be regulated by multiple provisions of the California Labor Code that are interrelated and work in tandem.⁵⁵ As such, Defendants contended that cumulative penalties and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.⁵⁶

While Plaintiff disagrees with Defendants’ contentions and maintains that his PAGA claim has merit, in reaching the settlement, Plaintiff and his counsel took into account the strengths and weaknesses of each side’s position and the uncertainty of how the case might have

⁵³ *Id.*, ¶ 18.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

1 concluded as litigation continued, at trial, and/or upon appeal.⁵⁷

2 Furthermore, the recent amendment of the PAGA statute enacted on July 1, 2024,
3 adopting, inter alia, modified standing requirements, codifying a manageability requirement,
4 capping civil penalties that can be assessed against an employer if an employer meets certain
5 conditions, and allowing an employer to cure violations to avoid the assessment of civil penalties
6 if an employer meets certain conditions, has created uncertainty regarding the future of claims
7 for civil penalties under PAGA.

8 **C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation**

9 Courts favor voluntary conciliation and settlement of complex litigation. *Class Plaintiffs*
10 *v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, “unless the settlement is
11 clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation
12 with uncertain results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan. 5,
13 2004) 221 F.R.D. 523, 526 (citation omitted).

14 Prior to reaching the Settlement, the Parties investigate the veracity, strength, and scope
15 of the PAGA claim and allegations.⁵⁸ In addition, the Parties exchanged information,
16 documents, and data relevant to Plaintiff’s claim and Defendants’ defenses thereto, including,
17 and not limited to, Plaintiff’s personnel records, sampling of time and corresponding wage
18 records, a variety of Employee Policy documents, Arbitration Agreement(s), Authorization
19 Forms, Employee Handbook, among other documents.⁵⁹ Counsel for the Parties undertook
20 significant investigation, and also invested time reviewing and analyzing relevant information,
21 documents and data to evaluate Plaintiff’s claim and allegations, including, and not limited to,
22 calculating the potential monetary recovery under PAGA.⁶⁰ Other work performed by Plaintiff’s
23 Counsel included, but was not limited to: meeting and conferring with Defendants’ counsel
24 regarding the pleadings, case management, discovery, arbitration, the mediation, settlement
25 negotiations and settlement, among other issues; case strategy and analysis; drafting, reviewing,

26 ⁵⁷ Shaw Decl., ¶ 19.

27 ⁵⁸ *Id.*, ¶ 14.

28 ⁵⁹ *Id.*, ¶¶ 14 & 19.

⁶⁰ *Ibid.*

1 and revising the pleadings, court filings, opposition to Defendants' Motion to Compel
2 Arbitration, the mediation brief, settlement agreement, and settlement approval motion papers;
3 propounding written discovery requests and notices of depositions of Defendants' person most
4 knowledgeable designees and reviewing Defendants' responses and objections thereto meeting
5 and conferring regarding Defendants' deficient responses; claims evaluation and analysis and
6 preparing for mediation and settlement negotiations; and appearing for court proceedings and
7 participating in the mediation and settlement negotiations.⁶¹

8 Had the case not settled, the Parties would have conducted extensive additional formal
9 discovery, including propounding additional written discovery requests as well as multiple
10 depositions of party and percipient witnesses all over the State of California, to prepare the case
11 for trial. From the inception of this litigation, Defendants indicated that it would aggressively
12 litigate this case.⁶² Even if Defendants failed on its defenses, litigating a complex PAGA action
13 is inherently expensive, and the litigation could continue beyond entry of judgment if either party
14 were to appeal adverse rulings.⁶³ Additionally, there is a real possibility that Plaintiff could
15 recover nothing, either for himself or on behalf of the State of California or other Aggrieved
16 Employees after years of costly and labor-intensive litigation. Avoiding these risks and the
17 likelihood of future contentious litigation, which would involve significant costs, favors
18 settlement.

19 **D. The Settlement Is Fair, Adequate, and Reasonable**

20 “[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an
21 abandoning of highest hopes.’” *Officers for Justice v. Civil Service Comm’n* (9th Cir. 1981) 688
22 F.2d 615, 624. “The proposed settlement is not to be judged against a hypothetical or
23 speculative measure of what might have been achieved by the negotiators.” *Id.* at 625.

24 The Settlement provides significant benefits to the State of California and the Aggrieved
25 Employees and falls well-within the range of acceptable settlements under the circumstances.

26
27 ⁶¹ *Ibid.*

28 ⁶² *Id.*, ¶ 17.

⁶³ *Id.*, ¶¶ 13, 19.

Under the Agreement, Defendants have agreed to pay a Total Settlement Amount of \$252,416.50, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement, which encompasses the Net Settlement Amount, Attorneys' Fees and Costs, Settlement Administration Costs, and General Release Fee.⁶⁴ Subject to approval by the Court, the following amounts will be subtracted from the Total Settlement Amount to yield the Net Settlement Amount: (1) Attorneys' Fees and Costs consisting of attorneys' fees in the amount of \$88,345.78 and reimbursement of litigation costs and expenses in the amount of \$6,770.18 to Plaintiff's Counsel⁶⁵; (2) the Settlement Administration Costs of up to \$7,500.00; and (3) General Release Fee of up to \$15,000.00 to Plaintiff.⁶⁶

The Net Settlement Amount is currently estimated to be \$134,800.54, of which an estimated \$33,700.14 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods and \$101,100.40 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel recognize the expense and length of continued proceedings necessary to litigate the matter through trial and any possible appeals.⁶⁷ Plaintiff and his counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.⁶⁸ Plaintiff and his counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendants' defenses thereto, and the difficulties in establishing Defendants' liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other Aggrieved Employees.⁶⁹ Plaintiff and his

⁶⁴ Settlement Agreement, §§ 3(a) & 3(a)(1)-(5).

⁶⁵ *Id.*, § 3(a)(1). Although the Settlement Agreement provides that Plaintiff's Counsel can seek up to \$25,000.00 for reimbursement of litigation costs and expenses, Plaintiff's Counsel only seeks the amount of \$6,770.18 for this payment, which is less than \$25,000.00. The difference between the amount sought and the maximum allocated amount available under the settlement (i.e., the difference of \$18,229.82), will be a part of the Net Settlement Amount.

⁶⁶ *Id.*, §§ 3(a)-3(a)(4), 3(b).

⁶⁷ Shaw Decl., ¶19.

⁶⁸ *Id.*, ¶¶ 16, 19, 23.

⁶⁹ *Id.*, ¶¶ 16, 19.

counsel have also taken into account Defendants' agreement to enter into a settlement that confers significant relief upon the Aggrieved Employees and the State of California.⁷⁰

Considering all of the facts in this case, Plaintiff and his counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the Aggrieved Employees and the State of California.⁷¹

The result achieved in this case, and the monetary recovery provided by this settlement, are well-within the range of an acceptable settlement under the circumstances, especially when compared trial court penalties assessments in contested cases⁷² and the settlement of PAGA claims in other cases⁷³. Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA

⁷⁰ *Id.*, ¶ 13.

⁷¹ *Id.*, ¶ 23.

⁷² *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp. 3d 1058, 1100-1101, 1103-1104, 1111 (finding that, under Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA penalties as the Court sees fit" and reducing the PAGA penalty award significantly from the maximum penalties possible); *Morales v Bridgestone Retail Operations LLC* (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244 (of \$7 million PAGA penalties requested, the court awarded \$425,000); *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty rate to \$5 per violation); *Arnold v San Diego Second Chance Program* (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375 (no PAGA penalties awarded); *Felczer v Apple Inc.* (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593 (no PAGA penalties awarded); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557 at *41 (the court declined to award PAGA penalties after trial); *Allen v American Multi-Cinema* (July 24, 2016) Alameda County Superior Court No. RG11585502 (no PAGA penalties awarded); *Atempa v Pama* (July 31, 2015) San Diego County Superior Court (of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00); *Driscoll v Granite Rock* (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426 (the court declined to award PAGA penalties); *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at **8-9 (of \$2,800,000 PAGA penalties requested, the court awarded \$500,000); *Aguirre v Genesis Logistics* (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820 at **6-7 (of \$1,800,000 PAGA penalties requested, the court awarded \$500,000); *Halevi v Aroma Bakery Café, Inc.*, Los Angeles County Superior Court No. 468146 (Aug. 30, 2013) (the court declined to award PAGA penalties after trial awarding wages to class on the basis that, *inter alia*, the lawsuit was not prompted by availability of PAGA penalties, penalties were not necessary to remedy ongoing or future violations, corporate defendants corrected violations and were no longer in business, and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory).

⁷³ *See, e.g., DCH Auto Wage and Hour Cases* (May 2017) Los Angeles Superior Court, Case No. JCCP4833 (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit).

statute.

E. The Experience and Views of Plaintiff’s Counsel Favor Approval of the Settlement

Plaintiff’s Counsel is highly experienced in complex representative and class action wage-and-hour litigation.⁷⁴ In the view of Plaintiff’s Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁷⁵ Furthermore, courts have acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]” *Williams, supra*, 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

VI. THE REQUESTED ATTORNEYS’ FEES AWARD IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

A. A Fee Award of a Percentage of the Entire Fund Is Appropriate

The Settlement provides for a Total Settlement Amount of \$252,416.50, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement.⁷⁶ The Settlement provides for attorneys’ fees in an amount of up to thirty-five percent (35%) of the Total Settlement Amount which is \$88,345.78, subject to approval and award by the Court.⁷⁷ The requested attorneys’ fees award is commensurate with: (1) the risk that Plaintiff’s Counsel took in bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that Plaintiff’s Counsel has shown, (4) the results that Plaintiff’s Counsel has achieved in the case, (5) the value that Plaintiff’s Counsel has achieved in the case, and (6) the other cases that Plaintiff’s Counsel has turned down in order to devote its time and effort to this case.

⁷⁴ Shaw Decl., ¶¶ 3-7.

⁷⁵ *Id.*, ¶ 23.

⁷⁶ Settlement Agreement, § 3(a)-(b).

⁷⁷ *Id.*, § 3(a)(1).

1 Plaintiff's Counsel is entitled to recover reasonable attorneys' fees and costs as a matter
2 of right under PAGA. See Cal. Lab. Code § 2699(g)(1) ("Any employee who prevails in any
3 [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs"). Plaintiff's
4 Counsel is also entitled to fees and costs under California Code of Civil Procedure section
5 1021.5, as the instant PAGA action is by definition "for the benefit" of others and secures
6 monetary recovery for a large number of allegedly aggrieved employees, as well as the State of
7 California. See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
8 (recognizing that recovery obtained on behalf of 209 individuals satisfies the "significant
9 benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure
10 section 1021.5, regardless of plaintiff's personal motivation). The settlement will also provide
11 significant funds to the state labor agency, to enhance enforcement of labor laws and education
12 of "employers and employees about their rights and responsibilities under [the California Labor
13 Code]." Cal. Lab. Code § 2699(i).

14 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
15 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
16 confirmed by the California Supreme Court. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
17 480 at 486 & 506. While trial courts have discretion to apply either a lodestar method or
18 percentage-of-the-fund method, the California Supreme Court has taken the position that trial
19 courts also "retain the discretion to forgo a lodestar cross-check and use other means to evaluate
20 the reasonableness of a requested percentage fee" and "[t]he percentage of fund method survives
21 in California." *Id.* (internal quotes omitted); see also *Wershba, supra*, 91 Cal.App. 4th at 253.

22 Courts award fees to serve as an economic incentive for lawyers to undertake litigation,
23 and thereby enhance and facilitate access to the judicial system for adjudication of meritorious
24 claims, and to deter wrongdoing. This is especially true in situations where multiple similar
25 alleged wrongs would not be economically feasible to pursue individually, such as here. See A.
26 Conte, *Attorney Fee Awards* (2d ed. 1993) 104, at 6.

27 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
28 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*

1 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *see also Laffitte, supra*, 1 Cal.5th 480 at 506
2 (holding that “trial court did not abuse its discretion in using [the percentage of fund method], in
3 part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is the
4 best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001)
5 24 Cal.4th 1122, 1132.

6 The percentage method is particularly appropriate where a monetary settlement has been
7 recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset Prods.*
8 *Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a “certain
9 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
10 percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil*
11 *Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.

12 The percentage fee method is preferred in representative actions because “it better
13 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
14 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be
15 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
16 based on the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at 47-50;
17 *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the
18 Defendants will pay the plaintiff’s attorneys a percentage of the fund created by the settlement,
19 use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards
20 that are too small will “chill the private enforcement essential to the vindication of many legal
21 rights and obstruct the representative actions that often relieve the courts of the need to
22 separately adjudicate numerous claims.” *Id.* at 53. Therefore, fees in representative actions
23 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
24 attorney and client in comparable litigation. *Id.* at 48. “The ultimate goal . . . is the award of a
25 ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of
26 calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple*
27 *Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270).

28 Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and circumstances

surrounding the case is well-within the range of reasonableness. Historically, courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of the case. See *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million total settlement amount); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve attorneys’ fees awards “average[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee was appropriate).

Plaintiff’s Counsel has litigated this case since it was commenced, with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.⁷⁸ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant information, documents, and data to evaluate the claims, including, and not limited to, calculating the potential monetary recovery under PAGA.⁷⁹ Other work performed by Plaintiff’s Counsel included, but was not limited to: meeting and conferring with Defendants’ counsel regarding the pleadings, case management, discovery, arbitration, the mediation, settlement negotiations, and settlement, among other issues; case strategy and analysis; drafting, reviewing, and revising the pleadings, court filings, opposition to Defendants’ Motion to Compel Arbitration, the mediation brief, settlement agreement, and settlement approval motion papers, propounding written discovery requests and notices of depositions of Defendants’ person most knowledgeable designees, reviewing Defendants’ responses and objections thereto and meeting and conferring regarding Defendants’ deficient responses; reviewing and responding to Defendants’ discovery requests to Plaintiff; claims evaluation and analysis and preparing for the

⁷⁸ Shaw Decl., ¶ 23.

⁷⁹ *Id.*, § 14.

mediation and settlement negotiations; and appearing for court proceedings and participating in mediation and settlement negotiations.⁸⁰

In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁸¹ Plaintiff's Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a settlement recovery for Plaintiff, the Aggrieved Employees and the State of California.⁸² Considering the amount of fees requested, work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees are reasonable and should be awarded.

B. The Fee Award Requested by Plaintiff's Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards

The factors which courts consider in determining whether fee awards are reasonable, all of which support the fee award requested by Plaintiff's Counsel, are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772. Some of the most relevant factors to this Court's fee determination will be addressed below.

It should be highlighted that the percentage award sought is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel's representation and the risks taken in commencing the Action, the skill and determination

⁸⁰ *Ibid.*

⁸¹ *Id.*, ¶ 21.

⁸² *Id.*, ¶¶ 3-7.

required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that Plaintiff's Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California. For the reasons discussed herein, an award of attorneys' fees in the amount of thirty-five percent (35%) of the Total Settlement Amount is reasonable.

1. Time & Labor

Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and its operations and employment policies, practices, and procedures.⁸³ During the litigation of the Action, Plaintiff's Counsel interviewed and obtained information from Plaintiff, Defendants, and other sources, conducted legal research, reviewed and analyzed documents and data, prepared for and attended mediation, evaluated the PAGA claim, and calculated the potential monetary recovery under PAGA.⁸⁴ Plaintiff's Counsel also met and conferred with Defendants' counsel regarding the pleadings, case management, discovery, the mediation, and settlement, among other issues.⁸⁵ Plaintiff's Counsel performed other work including, *inter alia*, case strategy and analysis; drafting, reviewing, and revising the pleadings, court filings, opposing a Motion to Compel Arbitration, the mediation brief, settlement agreement, and settlement approval motion papers; propounding written discovery requests and notices of depositions of Defendants' person most knowledgeable designees and subsequent meet and confers regarding deficient responses; claims evaluation and analysis and preparing for the mediation and settlement negotiations; and appearing for court proceedings and participating in mediation and settlement negotiations.⁸⁶

2. The Skill Required to Perform Legal Services Properly

The skill required to properly litigate this case is evident not only in the results achieved, but in the steps necessary to reach the same. Defendants retained highly respected counsel to

⁸³ Shaw Decl., ¶ 14.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

1 represent their defenses. Defendants and their counsel felt very strongly about Defendants'
2 ability to prevail on the merits and avoid representative adjudication of the PAGA claim.
3 Plaintiff and Plaintiff's Counsel believe that the PAGA claim has merit, and that Plaintiff will
4 prevail at trial. Plaintiff's Counsel undertook extensive investigation, analysis, and research
5 prior to filing the lawsuit and during the litigation. Plaintiff's Counsel took steps to prepare the
6 case for trial and had every intention of taking the case to trial if Defendants did not offer an
7 appropriate settlement.

8 Plaintiff's Counsel's effort and skill were used to, among other things, investigate the
9 allegations and gather facts, research the legal issues, analyze data and information obtained
10 from Defendants, Plaintiff, and through other sources, evaluate the PAGA claim, and negotiate
11 the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used its
12 extensive experience and skill in the handling of complex wage-and-hour matters to advocate for
13 and obtain Aggrieved Employees and the State of California a recovery now, with maximum
14 efficiency, as opposed to the possibility of recovery in the future, after significant expense and
15 time.⁸⁷

16 **3. The Value of the Settlement**

17 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty
18 and risks of further litigation.⁸⁸ Had the case not settled, Defendants would have vigorously
19 challenged manageability and liability, and sought a reduction in the amount assessed as
20 penalties. Defendants, however, faced risks too, including and not limited to, the risk of having
21 the Court assess penalties. Additionally, preparing the case for trial would have been
22 extraordinarily expensive for the Parties.

23 At this stage, the settlement is preferred over continued litigation because such resolution
24 saves time and money that would otherwise go to litigation. The risks and expenses of further
25 litigation outweighed any benefit that might have been gained otherwise. The Settlement
26 provides an immediate recovery, as opposed to an uncertain result in the future after prolonged

27 ⁸⁷ Shaw Decl., ¶¶ 16-20.

28 ⁸⁸ *Id.*, ¶¶ 16-20, 23.

litigation involving expert discovery, trial preparation, and appellate review of those proceedings. The Settlement offers present and considerable monetary relief to Plaintiff, the Aggrieved Employees, and the State of California while avoiding additional expense, risk, and delay in obtaining possible further recovery.

4. Whether the Fee Is Fixed or Contingent

The representation provided by Plaintiff's Counsel has been wholly contingent and Plaintiff's Counsel took on this matter without knowing whether any recovery would be obtained. Plaintiff's Counsel is also requesting reimbursement of litigation costs and expenses in the amount of \$6,770.18.⁸⁹

In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁹⁰ If Plaintiff's Counsel had not been successful, the time that they have devoted to litigating the case would have been for naught and would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel is well-experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the Aggrieved Employees, and the State of California.⁹¹ The skill and determination that Plaintiff's Counsel has shown throughout the Action justify the requested attorneys' fees and costs. Considering the amounts requested, work performed, and risks incurred, the requested fees and costs are reasonable and should be awarded.

5. The Amount Involved and the Results Achieved

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this case, are considerable. Here, the results achieved, and the recovery obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent a fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a settlement that provides for a Total Settlement Amount of \$252,416.50, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement, and it is currently estimated that

⁸⁹ *Id.*, ¶¶ 11, 21

⁹⁰ *Id.*, ¶ 21.

⁹¹ See Shaw Decl., ¶¶ 3-7.

the Net Settlement Amount available for distribution to the Aggrieved Employees and the State of California, as set forth in Part III.C *infra*, is approximately \$134,800.54.⁹²

6. The Reputation and Ability of the Attorneys

Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its attorneys employed their knowledge, skill, and experience to bring the case to a successful conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and representative action cases.⁹³

VII. COSTS TO BE REIMBURSED TO PLAINTIFF'S COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for reimbursement of litigation costs and expenses of up to \$25,000.00. As set forth in the Declaration of Brittany Shaw, Plaintiff's Counsel seeks reimbursement of \$6,770.18 in litigation costs and expenses.⁹⁴ These expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement, and the amount sought for reimbursement is less than the maximum amount allocated under the Settlement Agreement for reimbursement of litigation costs and expenses.⁹⁵ The cost savings of \$18,229.82 will be part of the Net Settlement Amount.⁹⁶ Accordingly, Plaintiff's Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$6,770.18 to Plaintiff's Counsel.

VIII. THE PROPOSED COVER LETTER TO THE AGGRIEVED EMPLOYEES SHOULD BE APPROVED

Although PAGA does not require notice to unnamed aggrieved employees of a settlement, the Parties prepared, and now present for the Court's consideration and approval, the

⁹² Settlement Agreement, § 3(a)-(b).

⁹³ Shaw Decl., ¶¶ 3-7.

⁹⁴ Shaw Decl., ¶ 21.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

Cover Letter for transmission to the Aggrieved Employees along with their Individual Settlement Share check (together, PAGA Settlement Package), substantially in the form attached as “EXHIBIT 1” to the [Proposed] Order and Judgment and as “EXHIBIT A” to the Settlement Agreement. The Cover Letter informs the Aggrieved Employees about the Action and the Settlement. Accordingly, Plaintiff respectfully requests that the Court approve the Cover Letter for transmission to the Aggrieved Employees at the time of disbursing their Individual Settlement Shares.

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Phoenix Settlement Administration to handle the administration of the Settlement. The fees and expenses of the PAGA Settlement Administrator are estimated not to exceed \$7,500.00. These costs include, but are not limited to, expenses for preparing, translating, printing, and mailing the Cover Letter and Individual Settlement Shares checks to the Aggrieved Employees (i.e., PAGA Settlement Package); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages to any updated addresses located; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to \$7,500.00 to Phoenix Settlement Administration, a necessary third-party for handling the settlement process.

X. THE PROPOSED GENERAL RELEASE FEE IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for a General Release Fee to be paid to Plaintiff in the amount of \$15,000.00 in recognition of his efforts and work in spearheading the litigation of this matter, as well as for his broader individual waiver and release of claims with a California Civil Code Section 1542 waiver (set forth in Section 8(b) of the Settlement Agreement).⁹⁷ The purpose of

⁹⁷ Settlement Agreement, § 3(a)(2).

1 such an award is to incentivize aggrieved employees to step into the shoes of the state labor
2 agency and undertake the responsibilities associated with initiating a lawsuit and serving in a
3 representative capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726
4 (“service payments” compensate named plaintiff “for [her] efforts in bringing the action”); *Clark*
5 *v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is
6 appropriate ‘if it is necessary to induce an individual to participate in the suit’”); accord *Ingram*
7 *v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted)
8 (“Courts routinely approve incentive awards to compensate named plaintiffs for the services they
9 provided and the risks they incurred during the course of the [...] litigation.”); *see also, e.g.,*
10 *Resendez, supra*, Los Angeles County Superior Court, Case No. BC59689 (approving \$10,000
11 enhancement award in a PAGA action).

12 Here, Plaintiff contributed considerable time and effort to the litigation of this case in
13 order to enforce the California Labor Code on behalf of the State of California and for the benefit
14 of other Aggrieved Employees. Plaintiff discussed his employment with his counsel, gathered
15 and produced relevant documents and information, and provided the facts and evidence
16 necessary to attempt to prove the allegations.⁹⁸ For example, Defendant filed a Motion to
17 Compel Arbitration where Plaintiff spent time reviewing and providing information and
18 documents in response thereto.⁹⁹ Plaintiff was available whenever his counsel needed him and
19 tried to obtain and provide documents and information that would aid in the litigation of the
20 PAGA claims and pursuit of recovery on behalf of the State of California and Aggrieved
21 Employees.¹⁰⁰

22 Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the
23 amount of \$15,000.00, in addition to the Individual Settlement Share he will receive as an
24 Aggrieved Employee for his share of the Net Settlement Amount.

27 ⁹⁸ Shaw Decl., ¶ 23; Declaration of Marcus Mitchell (“Mitchell Decl.”), ¶¶ 3-4.

28 ⁹⁹ Shaw Decl., ¶ 23; Mitchell Decl., ¶¶ 3-4.

¹⁰⁰ Shaw Decl., ¶ 23; Mitchell Decl., ¶¶ 4-5.

XI. CONCLUSION

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise of disputed claims that has been reached through arm's-length negotiations, in light of the risks, complexity, and expense of further litigation. Plaintiff respectfully requests that the Court approve the Settlement, including the plan of allocation and distribution of the Total Settlement Amount for the LWDA Payment to the LWDA, Individual Settlement Shares to the Aggrieved Employees, Attorneys' Fees and Costs to Plaintiff's Counsel, Settlement Administration Costs to the PAGA Settlement Administrator, and General Release Fee to Plaintiff, and permit the filing of a memorandum that exceeds the page limit.

Dated: September 13, 2024

LAWYERS for JUSTICE, PC

By:



Brittany Shaw
Attorneys for Plaintiff