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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

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

Plaintiff,

vs.

CITRUS MOTORS ONTARIO, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. CIVSB2114893

Honorable David S. Cohn
Department S26

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
REPRESENTATIVE ACTION
SETTLEMENT**

Date: July 12, 2022
Time: 10:00 a.m.
Department: S26

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Gerardo Velasquez and Cayla Bonds (“Plaintiffs”) seek approval of the Private
4 Attorneys General Act Settlement Agreement and Release (“Settlement,” “Settlement Agreement,”
5 or “Agreement”) entered into by and between Plaintiffs and Defendant Citrus Motors Ontario, Inc.
6 (“Defendant”) (together, Plaintiffs and Defendants are referred to as the “Parties”). Subject to Court
7 approval, Plaintiffs and Defendant have agreed to resolve the actions entitled *Gerardo Velasquez*
8 *v. Citrus Motors Ontario, Inc.*, San Bernardino Case No. CIVSB2108083 (“Velasquez Action”),
9 and *Cayla Bonds v. Citrus Motors Ontario, Inc.*, San Bernardino Case No. CIVSB2114893 (“Bonds
10 Action” and together, with the Velasquez Action, the “Actions”), brought pursuant to the Private
11 Attorneys General Act of 2004, as amended, California Labor Code § 2698 *et seq.* (“PAGA”) an
12 amount of \$725,000.00.

13 Plaintiffs allege approximately 311 non-exempt employees worked for Defendant during
14 the PAGA Period who were not paid at least minimum wages for all hours worked, not paid
15 overtime compensation, not provided with meal periods or compensation in lieu thereof, not
16 provided with rest breaks or compensation in lieu thereof, not reimbursed for business expenses,
17 not provided with accurate wage statements, not paid wages during employment, and were not paid
18 all wages owed upon separation of employment. The proposed Settlement seeks to release claims
19 for civil penalties for violations of Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 246, 510, 512,
20 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, and 2802, and Industrial
21 Welfare Commission Wage Order 7-2001.

22 Under Labor Code § 2699(l)(2), the Court must review and approve any proposed PAGA
23 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
24 Settlement is attached to the Declaration of Carolyn M. Bell (“Bell Decl.”) as Exhibit 1. Plaintiffs
25 now seek this Court's approval of the Settlement terms.

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II. FACTUAL AND PROCEDURAL BACKGROUND

On March 18, 2021, Plaintiff Bonds sent a letter to the California Labor & Workforce Development Agency (“LWDA”) and Defendant giving notice of her intent to file a representative action under PAGA (“Bonds LWDA Notice”). *See* Declaration of Edwin Aiwazian in Support of Motion for Approval of Private Attorneys General Act Representative Action Settlement (“Declaration of Edwin Aiwazian” or “Aiwazian Decl.”), ¶ 2; Bell Decl., ¶ 3. Similarly, on March 25, 2021, Plaintiff Velasquez sent a letter to the LWDA and Defendant to give notice of his intent to file a representative action under PAGA (“Velasquez LWDA Notice”). *See* Bell Decl., ¶ 4, Exhibit 2. The Bonds LWDA Notice and Velasquez LWDA Notice are collectively referred to as the “Notices to the LWDA.” The LWDA did not respond to either of the notices within 65 days, indicating it did not intend to investigate, thus allowing Plaintiffs to file lawsuits pursuant to Labor Code Section 2699.3(a)(2)(A). *See* Aiwazian Decl., ¶ 2; Bell Decl., ¶ 5.

On March 25, 2021, Plaintiff Velasquez filed his Class Action Complaint as a class action. Bell Decl., ¶ 6. On July 6, 2021, Plaintiff Velasquez filed his First Amended Class Action Complaint adding a cause of action under PAGA. Bell Decl., ¶ 7.

On May 25, 2021, Plaintiff Bonds filed her representative Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. that alleged a single cause of action under PAGA. Aiwazian Decl., ¶ 2; Bell Decl., ¶ 8.

In preparation for mediation, Defendant produced data and documents for Plaintiffs to evaluate the PAGA claims and calculate the alleged exposure, including policy documents, compensation plans, pay stubs and time and pay records. Bell Decl., ¶ 9. The Parties attended mediation on October 19, 2021, with Jill R. Sperber, Esq., a respected class action and PAGA action mediator. Aiwazian Decl., ¶ 8; Bell Decl., ¶ 10. After extensive negotiations the Parties reached an agreement to settle for \$725,000.00. Bell Decl., ¶ 10.

Around January 2022, the Parties finalized the terms of the Settlement Agreement, which is now presented to this Court for approval. Bell Decl., ¶ 12, Exhibit 1.

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1 **III. PAGA REQUIREMENTS**

2 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
3 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
4 Plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of
5 California and other similarly aggrieved employees without seeking class certification or meeting
6 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As
7 such, the class action two-step preliminary and final approval process is not required.

8 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by
9 the State and by private individuals who have been aggrieved by their employers. The statute calls
10 for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25% to the
11 aggrieved employees (Cal. Lab. Code § 2699(i) (2016)).

12 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
13 must first provide written notice to the LWDA and the employer of the particular Labor Code
14 violations the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code §
15 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to
16 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
17 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf
18 of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code § 2699.3(a)(2)(A)
19 (2016).

20 In 2009, the California Supreme Court considered the issue of whether an aggrieved
21 employee who brings a PAGA representative claim needs to meet class certification requirements.
22 *Arias*, 46 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the Court
23 held that an aggrieved employee's representative action brought on behalf of other aggrieved
24 employees against an employer for PAGA violations does not need to meet the requirements for
25 class certification. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA does
26 so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986. Because the
27 employee's PAGA action functions as a substitute for an action brought by the government itself, a
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1 judgment in the PAGA action binds all those who would be bound by a judgment in an action
2 brought by the government. *Id.*

3 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court
4 need only "review and approve" the settlement. Cal. Lab. Code § 2699(1)(2) (2016). The Parties
5 to this current PAGA action have reached such an agreement and now seek this Court's approval of
6 the proposed settlement.

7 **IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES**

8 The Parties have agreed that Defendant will pay a total settlement amount of \$725,000.00
9 (the "Gross Settlement Amount"). See Settlement Agreement, § III(2). From this amount, up to
10 one-third (1/3) of the Gross Settlement Amount, or \$241,666.66, is allocated to attorneys' fees and
11 up to \$25,000.00 to reimbursement of actual litigation costs and expenses (together, "Attorneys'
12 Fees and Costs") to Plaintiffs' Counsel, Aegis Law Firm, PC and Lawyers *for* Justice, PC.
13 Settlement Agreement, § III(7). To date, Plaintiffs' Counsel have incurred a total amount of \$20,
14 285.97 in litigation costs and expenses. Aegis Law Firm, PC has incurred \$9,580.41 in litigation
15 costs and expenses. See Bell Decl., ¶ 33, 38, Exhibit 4. Lawyers *for* Justice, PC has incurred
16 \$10,705.56 in litigation costs and expenses as reflected in the Case Cost Detail attached as
17 EXHIBIT 2 to the Declaration of Edwin Aiwasian Aiwasian Decl., ¶ 19. The Settlement allocates
18 up to \$10,000.00 for payment to the settlement administrator Phoenix Class Action Administration
19 Solutions ("Settlement Administrator") for costs associated with administration of the Settlement
20 ("Settlement Administration Costs"). Settlement Agreement, § III(2)(b). For Plaintiffs' efforts in
21 assisting with the lawsuits and in exchange for a general release of their individual claims,
22 \$10,000.00 (total, \$20,000.00) is allocated to each Plaintiff ("General Release Fees"). Settlement
23 Agreement, § III(2)(a).

24 After deducting the Attorneys' Fees and Costs, Settlement Administration Costs, and
25 General Release Fees, the remaining fund ("PAGA Penalties"), estimated to be \$433,047.37 will
26 be paid 75% to the LWDA ("LWDA Payment") and 25% to the PAGA Employees ("Employee
27 Amount"). Settlement Agreement, § III(4). "PAGA Employees" are "Plaintiffs and all current and
28 former non-exempt employees who worked for Defendant within the State of California during the

1 PAGA Period.” Settlement Agreement, § I(10). The PAGA Period is defined as “the time period
2 from September 25, 2019 through December 20, 2021.” Settlement Agreement, § I(11).

3 Each PAGA Employee will receive a *pro rata* portion of the Employee Amount,
4 determined based on the total number of pay periods that each PAGA Employee worked as a non-
5 exempt employee for Defendant during the PAGA Period (“Pay Periods”). Settlement Agreement,
6 §§ I(13) & III(5). The “Individual Settlement Payment” for the PAGA Employees shall be
7 determined as follows: the Employee Amount will be divided by the total number of Pay Periods
8 of all PAGA Employees to yield the “Per Pay Period Amount,” and then each PAGA Employee’s
9 individual number of Pay Periods will be multiplied by the Per Pay Period Amount to yield his or
10 her “Individual Settlement Payment.” Settlement Agreement, § III(5). Individual Settlement
11 Payments shall be paid to PAGA Employees by way of a single check to each PAGA Employee
12 (“Individual Settlement Check”). Settlement Agreement, § III(5). All PAGA Employees’
13 Individual Settlement Payments will be characterized as one hundred percent (100%) penalties for
14 tax purposes and reported on IRS Form 1099. Settlement Agreement, § III(6).

15 Within ten (10) calendar days after the Court has signed and entered the order approving
16 the Settlement, Defendant shall provide the Settlement Administrator with a list containing the
17 following information regarding each of the PAGA Employees: (1) full name; (2) last known
18 mailing address; (3) Social Security number; and (4) the total number of Pay Periods worked during
19 the PAGA Period (“PAGA Employee List”). Settlement Agreement, § VI(1).

20 Defendant shall fund the Gross Settlement Amount by way of electronic transfer to the
21 account to be established by the Settlement Administrator for purposes of administration of the
22 Settlement (“Settlement Administration Account”) within the later of (i) sixty-one (61) calendar
23 days after service of notice of entry of the order approving the Settlement, if no appeal, review, or
24 writ has been filed; or (ii) if an appeal, review, or writ is sought from the order approving the
25 Settlement, the 5th day after the order approving the Settlement is affirmed or the appeal, review,
26 or writ is dismissed or denied, and the order approving the Settlement is no longer subject to further
27 judicial review. Settlement Agreement, VI(2).

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1 Within fifteen (15) calendar days after Defendant funds the Gross Settlement Amount, the
2 Settlement Administrator will mail via U.S. First Class mail to each PAGA Employee his or her
3 Individual Settlement Check at the last known address in the PAGA Employee List or a more
4 updated address from the National Change of Address database. Settlement Agreement, § VI(4). A
5 cover letter explaining why the check is being sent (“Cover Letter”) will be included in the mailing
6 of each PAGA Employee’s Individual Settlement Check, substantially similar in content and form
7 to that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment Granting Motion for
8 Approval of Private Attorneys General Act Representative Action Settlement filed concurrently
9 herewith. Settlement Agreement, § VI(4). The proposed Cover Letter is also attached to the
10 Settlement Agreement as Exhibit A. Together, an Individual Settlement Check that is mailed to a
11 PAGA Employee with the Cover Letter is referred to as a “Payment Packet.” Settlement
12 Agreement, § VI(4). Prior to mailing the Payment Packets, the Settlement Administrator shall
13 check the addresses provided using the National Change of Address database. Settlement
14 Agreement, § VI(4). Should any of the Payment Packets be returned as undeliverable, the
15 Settlement Administrator will have ten (10) calendar days after it receives the returned
16 undeliverable mail to search for a more current address for the PAGA Employee (via a skip trace
17 or other reasonable method) and to re-mail Payment Packets to the traced address. Settlement
18 Agreement, § VI(4).

19 All Individual Settlement Checks will expire one hundred and eighty (180) calendar days
20 after the initial mailing of the original Payment Packets to the PAGA Employees, and thereafter,
21 shall be cancelled. Settlement Agreement, § VI(6). If any funds remain in the Settlement
22 Administration Account as a result of the cancelled Individual Settlement Checks, such funds shall
23 be transmitted to the California State Controller’s Office Unclaimed Property Fund in the name of
24 each PAGA Employee whose check is voided. Settlement Agreement, § VI(6).

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1 Upon the Effective Date, Plaintiffs and each PAGA Employee, shall fully release and
2 forever discharge Released Parties from the Released Claims during the period from September 25,
3 2019, through December 20, 2021, and the State of California shall fully release and forever
4 discharge Released Parties from the Released Claims as they pertain to Plaintiff and PAGA
5 Employees from September 25, 2019, through December 20, 2021. Settlement Agreement, § IV(1).

6 The Released Claims are defined as:

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8 any and all claims for PAGA civil penalties that were alleged or reasonably could
9 have been alleged in the Notices to the LWDA and the Operative Complaints based
10 on the facts alleged therein, which arose during the PAGA Period, which includes,
11 but is not limited to, claims under PAGA for failure to pay minimum wages, failure
12 to pay overtime wages, failure to provide meal periods, failure to permit rest breaks,
13 failure to reimburse business expenses, failure to provide accurate itemized wage
14 statements, failure to pay all wages due upon separation of employment, failure to
pay wages during employment, failure to keep complete and accurate payroll
records, and violations of California Labor Code sections 201-204, 210, 226, 226.3,
226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1,
1198, 2751, 2800, 2802, and Industrial Welfare Commission Wage Order 7-2001
("Released Claims"). Settlement Agreement, § I(16).

15 The Released Parties are defined as:

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17 Defendant and each of its current, past, and present subsidiaries, affiliates, parent
18 companies, shareholders, members, directors, officers, managing agents, owners,
19 employees, attorneys, representative, agents, insurers, predecessors, successors,
and assigns, and any individual or entity which could be jointly liable with
Defendant in connection with the Actions. ("Released Parties"). Settlement
20 Agreement, § I(17).

21 Only Plaintiffs will provide a general release of claims as set forth in the Settlement Agreement.
22 Settlement Agreement, § IV(3).

23 If the total number of PAGA Employees exceeds 311 or the total number of pay periods
24 exceeds 7,200, respectively, by more than ten percent (10%), there will be a pro rata adjustment to
25 the Gross Settlement Amount per additional PAGA Employee or additional Pay Period. Settlement
26 Agreement, § III(3).

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1 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

2 **A. Standard for Approval**

3 While there are no statutory or common law standards for approval of PAGA settlements,
4 the legislative history of the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et. seq.*
5 (“PAGA”) sheds some light on the approval requirement as it was phrased in § 2699, subdivision
6 (l) prior to the July 1, 2016 amendments. *See* Cal. Lab. Code § 2699(l) (2015) (amended 2016)
7 (“The superior court shall review and approve any penalties sought as part of a proposed
8 settlement...”). PAGA was passed by the legislature as Senate Bill (“SB”) 796, and it was signed
9 by the Governor and filed with the Secretary of State on October 12, 2003. *See* Legislative
10 Counsel’s Digest re Senate Bill No. 796, attached as Exhibit A to the Request for Judicial Notice
11 (“RJN”) filed herewith, p. 1. It took effect on January 1, 2004.

12 The original version of the act did not contain the court approval requirement now codified
13 in § 2699(l). That subdivision was added as part of the amendments to the Act that were introduced
14 as SB 1809 in February of 2004 and signed by the Governor and filed with the Secretary of State
15 on August 11, 2004. *See* Legislative Counsel’s Digest re Senate Bill No. 1809, attached as Exhibit
16 B to the RJN, p. 1. Those amendments took effect immediately, and the court approval
17 requirement of § 2699(l) was one of the provisions that the legislature made retroactive to January
18 1, 2004. *Id.* at pp. 1-2.

19 Senator Joseph L. Dunn authored both the original PAGA bill (SB 796) and the
20 amendments (SB 1809). *See* RJN, Exs. A and B. On July 29, 2004, during the consideration of
21 the amendments in SB 1809, Senator Dunn sent a letter addressed to the President Pro Tem of the
22 Senate, which was published in the Senate Daily Journal, “to clarify the intent of subdivision (l)”
23 of what would become § 2699. *See* 7/29/04 Letter from Sen. Dunn to Sen. Burton, attached as
24 Exhibit C to the RJN. He was sending this letter “in response to an issue raised by the Judicial
25 Council of California.” *Id.* In the letter, Senator Dunn stated that:

26 The purpose of court review of the penalties in subdivision (l) is to ensure that
27 settlements involving penalties arising under Labor Code Section 2699 do not
28 undercut the dual statutory purposes of punishment and deterrence, or result in
unjust, arbitrary, and oppressive, or confiscatory settlements. *Id.*

1 To Plaintiffs' knowledge, this is the only statement in the legislative history directly
2 addressing the purpose of the court approval requirement. While the letter does not address any
3 specific factual issues to be considered, it does provide some very broad criteria. It suggests that
4 the courts should consider whether the penalties are so small as to "undercut the dual purposes of
5 punishment and deterrence" or so large that they may result in an "unjust, arbitrary and oppressive,
6 or confiscatory" settlement.

7 These broad criteria appear to give the Court wide latitude in determining whether to
8 approve the penalties proposed as part of a PAGA settlement. Interestingly, the criteria focus on
9 the effect the penalties may have on the defendant/employer rather than the LWDA or the
10 aggrieved employees who will receive the penalties. This is different than the analysis of a class
11 action settlement, which typically focuses on the amount received by the class and compares that
12 to the reasonable range of potential outcomes in the case. *See, e.g., Kullar v. Foot Locker Retail,*
13 *Inc.*, 168 Cal.App.4th 116, 130 (2008); *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186
14 Cal.App.4th 399, 407 (2010).

15 **B. The Settlement Meets the Standard for Approval**

16 The \$725,000.00 Gross Settlement Amount is reasonable when considered in light of the
17 principles discussed in Senator Dunn's letter. For a group of approximately 311 employees, a
18 penalty of \$725,000.00 is large enough to punish Defendant for alleged past violations and deter
19 future violations. The settlement amount is equivalent to a penalty of about \$2,331.19 per employee,
20 which is a significant penalty for a wage and hour case. At the same time, the penalty amount is not
21 so large as to be unjust, oppressive or confiscatory, considering the company's potential exposure
22 explained below. Bell Decl., ¶ 15.

23 The Gross Settlement Amount is also reasonable in light of the facts of the Actions, the
24 real risk that no PAGA penalties would be paid, and inherent risks and uncertainties associated with
25 PAGA claims. Bell Decl., ¶ 16. Defendant could have defeated Plaintiffs' claims by proving its
26 rest break and meal period policies were compliant and thus those PAGA claims were
27 unmanageable, the bonuses were discretionary and therefore should not be included in the overtime
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1 rate, and the wage statements claims would fail as they were purely derivative of the unpaid wage
2 claims. Bell Decl., ¶ 17. The settlement negotiations took these risks into account. Bell Decl., *Id.*

3 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
4 awards are discretionary and can be reduced by the Court. Bell Decl., ¶ 18. Under Labor Code §
5 2699(e)(2), the Court can reduce the PAGA penalties “if, based on the facts and circumstances of
6 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
7 or confiscatory.” *Id.* In other words, were this matter to go to trial, any award granted would be at
8 the discretion of the Court. *Id.* Thus, if Plaintiffs were not able to “stack” PAGA penalties, the
9 maximum exposure could be reduced even further. Plaintiffs recognize that, although they believe
10 there would be no persuasive grounds to reduce the penalties, the Court could determine otherwise
11 and significantly reduce the PAGA penalties, especially given that Defendant is not a large
12 employer with unlimited funds. Bell Decl., ¶ 19. The wide range of potential recovery and the
13 additional delays and risks of trial justified settling at this point for a reasonable amount of recovery.
14 *Id.*

15 **VI. APPROVAL OF THE PROPOSED GENERAL RELEASE FEE TO PLAINTIFFS**

16 The Settlement provides for a General Release Fee of \$10,000 to be paid to each Plaintiff,
17 for a total of \$20,000, as an incentive award. The purpose of such an award is to incentivize
18 aggrieved employees to step into the shoes of the state labor agency and undertake the risks
19 associated with initiating a lawsuit and serving in a representative capacity. See *Bell v. Farmers*
20 *Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate named plaintiff “for
21 [her] efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th
22 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce an individual to participate
23 in the suit’”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal
24 quotation marks omitted) (“Courts routinely approve incentive awards to compensate named
25 plaintiffs for the services they provided and the risks they incurred during the course of the [...]
26 litigation.”); see also, e.g., *Resendez*, *supra*, Los Angeles County Court, Case No. BC59689
27 (approving \$10,000 enhancement award in a PAGA action).

1 Here, Plaintiffs contributed considerable time and effort to the litigation in order to enforce
2 the Labor Code on behalf of the LWDA and for the benefit of other PAGA Employees, producing
3 relevant documents and past employment records, and providing the facts and evidence necessary
4 to support the allegations asserted in the Actions. Aiwazian Decl., ¶ 20. Plaintiffs were available
5 whenever their counsel needed them and tried to obtain documents and information that would aid
6 the litigation of the PAGA claims and recovery of benefits for the LWDA and PAGA Employees.
7 Aiwazian Decl., ¶ 20. Additionally, as a part of the Settlement, Plaintiffs have agreed to a broader
8 release of claims than the release of claims that applies to PAGA Employees. Accordingly, it is
9 reasonable and just for Plaintiffs to receive a General Release Fee of \$10,000.00 each, in addition
10 to the Individual Settlement Payment each Plaintiff will receive as an PAGA Employee, for their
11 services in litigating the Actions to enforce California wage-and-hour laws.

12 **VII. APPROVAL OF THE REQUESTED ATTORNEYS' FEES PAYMENT**

13 The Settlement provides for Plaintiffs' Counsel to apply to the Court for an award of
14 attorneys' fees of up to one-third (1/3) of the Gross Settlement Amount, or \$241,666.66. Settlement
15 Agreement, § III(7). The requested attorneys' fee award is commensurate with (1) the risk
16 Plaintiffs' Counsel took in bringing and litigating this case, (2) the time, effort and expense
17 dedicated to the case, (3) the skill and determination Plaintiffs' Counsel has shown, (4) the results
18 Plaintiffs' Counsel has achieved throughout the litigation, (5) the value that Plaintiffs' Counsel has
19 achieved for Plaintiffs, the LWDA, and PAGA Employees, and (6) the other cases Plaintiffs'
20 Counsel could not pursue in order to devote its time and efforts to this matter. Aiwazian Decl., ¶
21 9.

22 Plaintiffs' Counsel is entitled to recover reasonable attorneys' fees and costs as a matter of
23 right under the PAGA. See Lab. Code § 2699(g)(1). Plaintiffs' Counsel is also entitled to fees and
24 costs under California Code of Civil Procedure section 1021.5, as the instant PAGA action is by
25 definition "for the benefit" of others and has secured monetary awards for a large number of PAGA
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1 Employees, as well as the LWDA.¹ The LWDA Payment will also benefit the agency in enforcing
2 labor laws and educating “employers and employees about their rights and responsibilities under
3 [the Labor Code].” Lab. Code § 2699(i).

4 The propriety of calculating and awarding attorneys’ fees as a percentage of a monetary
5 fund that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed
6 by the California Supreme Court in recent years. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th
7 480 at pp. 486 & 506. While trial courts have discretion to apply either a lodestar method or
8 percentage-of-the-fund method, the California Supreme Court has taken the position that trial courts
9 also “retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
10 reasonableness of a requested percentage fee[,]” and “[t]he percentage of fund method survives in
11 California.” *Id.* (internal quotes omitted); *see also Wershba v. Apple Computer, Inc.* (2001) 91
12 Cal.App.4th 224, 253.

13 Courts award fees to serve as an economic incentive for lawyers to undertake litigation in
14 order to achieve increased access to the judicial system for meritorious claims and to enhance
15 deterrents to wrongdoing. This is especially true in situations where multiple similar alleged
16 wrongs would not be economically feasible to pursue individually, such as here. *See A. Conte,*
17 *Attorney Fee Awards* (2d ed. 1993) 104l at p. 6.

18 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
19 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
20 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *see also Laffitte, supra*, 1 Cal.5th 480 at 506.
21 Indeed, it is long settled that the “experienced trial judge is the best judge of the value of
22 professional services rendered in his court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.

23 The percentage method is particularly appropriate where a common monetary fund has
24 been recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset*
25 *Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a “certain
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27 ¹ *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17 (recognizing
28 that recovery obtained on behalf of 209 individual satisfies the “significant benefit,” “public
interest,” and “large class of persons” requirements of Code of Civil Procedure section 1021.5,
regardless of plaintiff’s personal motivation).

1 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
2 percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil Procedure*
3 *Before Trial*, Chapter 14, section 14:145; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 at p.1808.

4 The percentage fee method is preferred in representative actions because “it better
5 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
6 Cal.App.4th at p. 49. California law provides that the award for attorneys’ fees should be equivalent
7 to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the
8 result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at p. 47-50; *Laffitte, supra*, 1
9 Cal.5th 480 at 503. In cases where the settlement agreement provides that the defendant agrees to
10 pay the attorneys a percentage of the fund created by the settlement, use of that percentage method
11 is appropriate. *Lealao* at p. 32. Fee awards that undercompensate counsel for their work will “chill
12 the private enforcement essential to the vindication of many legal rights and obstruct the
13 representative actions that often relieve the courts of the need to separately adjudicate numerous
14 claims.” *Id.* at 3. Therefore, fees in class and representative actions should approximate the probable
15 terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable
16 litigation. *Id.* at 48. “The ultimate goal ... is the award of a ‘reasonable’ fee to compensate counsel
17 for their efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
18 Cal.App.4th 545, 557-558 (quotation omitted). Historically, courts have awarded fees as high as
19 fifty percent (50%) of the settlement recovered, depending on the circumstances of the case.

20 Plaintiffs’ Counsel’s application for attorneys’ fees, in light of the facts and circumstances
21 surrounding the case, is well within the range of reasonableness. Plaintiff Bond’s counsel have
22 litigated the Bonds Action for over one year, and plaintiff Velasquez’ counsel have litigated the
23 Velasquez Action for almost one year, with the real possibility of an unsuccessful outcome and no
24 fee recovery of any kind. The ongoing work has been extensive, and ultimately successful in
25 achieving a settlement resolution.

26 In the Actions, Plaintiffs’ Counsel have borne all of the risks and costs of litigation and
27 will not receive any compensation until recovery is obtained. Plaintiffs’ Counsel are well-
28 experienced in complex wage-and-hour litigation and used that experience to obtain a favorable

1 result for Plaintiffs, PAGA Employees, and the LWDA. Considering the amount of the fees
2 requested, work performed, risks incurred, success of this litigation, and experience of Plaintiffs'
3 Counsel in handling similar matters, the requested attorneys' fees and costs are reasonable and
4 should be awarded.

5 **IX. CONCLUSION**

6 For the foregoing reasons, Plaintiffs request the Court approve the proposed Settlement,
7 including the plan of allocation and distribution of the Gross Settlement Amount for the LWDA
8 Payment, Individual Settlement Payments to the PAGA Employees, Attorneys' Fees and Costs to
9 Plaintiffs' Counsel, Settlement Administration Costs to the Settlement Administrator, and the
10 General Release Fees to Plaintiffs.

11 Dated: June 17, 2022

LAWYERS for JUSTICE, PC

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13 By:  _____

14 Edwin Aiwarzian
15 Attorneys for Plaintiff Cayla Bonds
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