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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – NORWALK COURTHOUSE

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

Plaintiff,

vs.

TRENCH PLATE RENTAL COMPANY, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 21NWCV00317

Honorable Lee W. Tsao
Department C

**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 PAGA COUNSEL
FEES PAYMENT, PAGA COUNSEL
LITIGATION EXPENSES PAYMENT,
GENERAL RELEASE PAYMENT, AND
ADMINISTRATION EXPENSES
PAYMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of PAGA Counsel
(Edwin Aiwarzian); Declaration of Plaintiff
(Jacob Sanchez); and [Proposed] Order and
Judgment filed concurrently herewith]

Reservation ID: 876503522998
Date: July 19, 2023
Time: 1:30 p.m.
Department: C

Complaint Filed: May 21, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 19, 2023 at 1:30 p.m. or as soon thereafter as the
2 matter may be heard before the Honorable Lee W. Tsao in Department C of the Superior Court
3 of the State of California, for the County of Los Angeles, located at 12720 Norwalk Blvd.
4 Norwalk, California 90650, Plaintiff Jacob Sanchez (“Plaintiff”) will and hereby does move for
5 entry of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the
7 settlement between Plaintiff and Defendant National Trench Safety, Inc., fka Trench
8 Plate Rental Company (“Defendant”) of the claims brought pursuant to the Private
9 Attorneys General Act of 2004 (“PAGA”), as set forth in the PAGA Settlement
10 Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as
11 “**EXHIBIT 1**” to the Declaration of Edwin Aiwazian, including and not limited to,
12 the plan of allocation and distribution of the Gross Settlement Amount for payment of
13 the LWDA Payment to the California Labor and Workforce Development Agency
14 (“LWDA”), Individual PAGA Payments to the Aggrieved Employees, PAGA
15 Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment to PAGA
16 Counsel, Administration Expenses Payment to the Administrator, and General
17 Release Payment to Plaintiff;
- 18 2. Approving the Net Settlement Amount, estimated to be no less than \$384,688.44
19 which will be distributed to the LWDA and the Aggrieved Employees, pursuant to
20 California Labor Code section 2699(i), of which seventy-five percent (75%) will be
21 paid to the LWDA (“LWDA Payment”) and twenty-five percent (25%) will be paid
22 to the Aggrieved Employees;
- 23 3. Appointing Simpluris, Inc. (“Simpluris”) as the Administrator;
- 24 4. Directing Defendant to transmit the Gross Settlement Amount of \$700,000.00 into a
25 qualified settlement account established by the Administrator for administration of
26 the Settlement, and directing the Administrator to distribute the Gross Settlement
27 Amount in accordance with the Settlement Agreement;

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- 1 5. Directing the mailing of Individual PAGA Payment checks to the Aggrieved
2 Employees along with the Cover Letter, which is substantially similar in content and
3 form to that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment
4 Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et*
5 *Seq.*) Settlement Agreement and Award of PAGA Counsel Fees Payment, PAGA
6 Counsel Litigation Expenses Payment, General Release Payment, and Administration
7 Expenses Payment (“[Proposed] Order and Judgement”) filed concurrently herewith;
- 8 6. Awarding \$15,000.00 to Plaintiff Jacob Sanchez as a General Release Payment;
- 9 7. Awarding up to \$5,300.00 to the Administrator as the Administration Expenses
10 Payment; and
- 11 8. Awarding to PAGA Counsel, Lawyers *for* Justice, PC, \$280,000.00 as compensation
12 for reasonable attorneys’ fees (“PAGA Counsel Fees Payment”) and \$15,011.56 for
13 reimbursement of litigation costs and expenses (“PAGA Counsel Litigation Expenses
14 Payment”), pursuant to California Labor Code section 2699(g)(1).

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

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

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1 This motion will be based upon the following Memorandum of Points and Authorities,
2 the Settlement Agreement, the Declarations of PAGA Counsel (Edwin Aiwasian) and Plaintiff
3 (Jacob Sanchez) in support thereof, as well as the pleadings and other records on file with the
4 Court in this matter, and such evidence and oral argument as may be presented at the hearing on
5 this motion.

6 Dated: June 26, 2023

LAWYERS for JUSTICE, PC

7 *Giovani Pimentel*
8 By: _____
9 Giovani Pimentel
10 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Jacob Sanchez (“Plaintiff”) seeks approval of the PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and Defendant National Trench Safety, Inc., fka Trench Plate Rental Company (“TPR” or “Defendant”), pursuant to California Labor Code section 2699(l)(2).¹

Subject to approval by the Court, Plaintiff and Defendant (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 Gross Settlement Amount of \$700,000.00.²

The Gross Settlement Amount is inclusive of: (1) PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment to be paid to Lawyers for Justice, PC (“PAGA Counsel”), (2) General Release Payment to Plaintiff, (3) Administration Expenses Payment to be paid to the Administrator, and (4) Net Settlement Amount to be paid to the California Labor and Workforce Development Agency (“LWDA”) and all current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period (“Aggrieved Employees”).³

The Net Settlement Amount will be the Gross Settlement Amount less the Court-approved PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Administration Expenses Payment, and General Release Payment, and is currently estimated to be no less than \$384,688.44.⁴ The Net Settlement Amount will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and twenty-five percent (25%) to

¹ The PAGA Settlement Agreement (“Settlement Agreement”) is attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwasian.

² Settlement Agreement, ¶ 1.12.

³ *Id.*, ¶¶ 1.4 and 3.2.1 - 3.2.4. “PAGA Period” is defined as the period from March 16, 2020 to and including February 28, 2023. *Id.*, ¶ 1.22.

⁴ *Id.*, ¶ 1.16.

1 the Aggrieved Employees.⁵ Each Aggrieved Employee will be entitled to payment of his or her
2 *pro rata* share of the 25% portion of the Net Settlement Amount (“Individual PAGA Payment”),
3 based on the number of pay periods during which they each worked for TPR for at least one day
4 during the PAGA Period (“Pay Periods”).⁶

5 The payments to Aggrieved Employees will be treated and reported for tax purposes as
6 one hundred percent (100%) penalties and the Administrator will be responsible for issuing IRS
7 Forms 1099 as required.⁷

8 Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the
9 requirements for approval by the Court based upon the relevant fairness factors, the relative
10 strengths of the PAGA claim, the risk, expense, and complexity of further litigation, the benefit
11 conferred by the Settlement, the scope of the release of claims, the experience and views of
12 counsel, and the reasonableness of the Net Settlement Amount (consisting of the LWDA
13 Payment and Individual PAGA Payments), PAGA Counsel Fees Payment, PAGA Counsel
14 Litigation Expenses Payment, Administration Expenses Payment, and General Release Payment.
15 Plaintiff respectfully requests that this Court approve the Settlement, award the PAGA Counsel
16 Fees Payment, PAGA Counsel Litigation Expenses Payment, Administration Expenses Payment,
17 and General Release Payment and approve the LWDA Payment, which are provided for by the
18 Settlement and requested herein.

19 In order to efficiently present the Court with adequate information to determine whether
20 to grant approval of the Settlement, Plaintiff also moves for an order permitting the filing of this
21 memorandum, although it exceeds the page limit established by California Rules of Court, Rule
22 3.1113(d).

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27 ⁵ Settlement Agreement, ¶¶ 1.15 and 3.2.4.

28 ⁶ *Id.*, ¶¶ 1.13 and 1.21.

⁷ *Id.*, ¶ 3.2.4.2.

1 **II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY**

2 Defendant provides a wide range of trench safety solutions including slide rail systems,
3 trench boxes, aluminum shores as well as trench plates and traffic control equipment. Plaintiff
4 Jacob Sanchez is a former employee of Defendant.

5 Prior to commencing this lawsuit, on March 16, 2021, as required by California Labor
6 Code section 2699.3, Plaintiff Jacob Sanchez provided the LWDA and Defendant with written
7 notice (“PAGA Notice”) of his intent to assert claims under PAGA and the basis for those
8 claims, to which the LWDA did not respond.⁸ A true and correct copy of the March 16, 2021
9 PAGA Notice is attached to the Declaration of Edwin Aiwarzian as “EXHIBIT 2”.

10 On May 21, 2021, Plaintiff filed a Complaint for Enforcement Under the Private
11 Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) against
12 Defendant in the Los Angeles County Superior Court (“Court”), Case No. 21NWCV00317 (the
13 “Action”). Plaintiff’s core allegation is that Defendant has violated the California Labor Code
14 by engaging in a uniform practice and procedure, with respect to Plaintiff and other aggrieved
15 employees, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide
16 compliant meal and rest periods and associated premiums, failing to pay timely wages during
17 employment and upon termination of employment, failing to provide complete and accurate
18 itemized wage statements, failing to keep complete and accurate payroll records, and failing to
19 reimburse necessary business-related expenses and costs.

20 On August 27, 2021, Defendant filed an Answer to the Operative Complaint. Defendant
21 maintained, and continues to maintain, that it had, and continues to have, legally-compliant
22 employment policies and practices throughout the time period at issue. Defendant denies that it
23 ever violated any provision of the California Labor Code, including, but not limited to, those
24 sections for which Plaintiff seeks penalties under the PAGA.

25 On October 25, 2021, Plaintiff served multiple sets of formal written discovery requests
26 onto Defendant (specifically, Requests for Production of Documents (Set One), Special
27 Interrogatories (Sets One and Two), and Form Interrogatories – General (Set One), and noticed the

28 ⁸ Declaration of Edwin Aiwarzian (“Aiwarzian Decl.”), ¶ 10.

depositions of Person(s) Most Knowledgeable at Defendant regarding organizational structure and wage-and-hour practices, along with accompanying requests for production of documents

On July 10, 2022, the Parties participated in a full-day mediation conducted by Steven Rottman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁹ With the aid of the mediator, the Parties reached the Settlement described herein.¹⁰

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.¹¹

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 Defendant in the State of California at any time during the PAGA Period.¹²

Based on information provided by Defendant, there are approximately four hundred and ninety-six (496) Aggrieved Employees who worked a total of sixteen thousand seven hundred and ninety-six (16,796) Pay Periods.¹³

B. Distribution of the Gross Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount of \$700,000.00.¹⁴ The Net Settlement Amount will be the Gross Settlement Amount less the following amounts: (1) PAGA Counsel Fees Payment consisting of attorneys' fees of \$280,000.00 and PAGA Counsel Litigation Expenses Payment consisting of reimbursement of litigation costs and expenses of \$15,011.56 to PAGA Counsel; (2) General Release Payment of

⁹ Aiwasian Decl., ¶ 13.

¹⁰ Ibid.

¹¹ The Court is referred to the concurrently-filed Proof of Service, which confirms submission of the papers to the LWDA.

¹² Settlement Agreement, ¶ 1.4.

¹³ Settlement Agreement, ¶ 4.1; and Aiwasian Decl., ¶ 9.

¹⁴ Settlement Agreement, ¶ 3.1; and Aiwasian Decl., ¶ 11.

\$15,000.00 to Plaintiff; and (3) Administration Expenses Payment of up to \$5,300.00 to Simpluris, Inc. (“Administrator”).¹⁵ The Net Settlement Amount will be fully distributed to the Aggrieved Employees and the LWDA, as described in Part III.C, *infra*.

C. Distribution of the Net Settlement Amount

Within fifteen (15) calendar days after the date of entry of the proposed Court order and judgment granting approval of the Settlement and entering judgment based upon the approval of the Settlement, Defendant shall provide the Administrator with a list of all Aggrieved Employees (“Aggrieved Employee Data”), containing the following information for each Aggrieved Employee: (i) full name; (ii) last known mailing address; (iii) Social Security number; and (iv) number of Pay Periods.¹⁶ No later than thirty (30) calendar days after the Effective Date, Defendant shall transmit the Gross Settlement Amount to a qualified settlement account established by the Administrator for administration of the Settlement.¹⁷

Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$288,516.33) will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount (or approximately \$96,172.11) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Pay Periods (i.e. Individual PAGA Payments).¹⁸ To calculate each Individual PAGA Payment, the Administrator shall: (1) divide 25% of the Net Settlement approved by the Court by the total number of Pay Periods worked by all Aggrieved Employees during the PAGA Period, and then (ii) multiply the result by the total Pay Periods worked by each Aggrieved Employee.¹⁹ The payments to Aggrieved Employees for their Individual PAGA Payment are considered one hundred percent (100%) penalties to be reported on IRS Form 1099, if required.²⁰

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¹⁵ Aiwazian Decl., ¶ 11.

¹⁶ Settlement Agreement, ¶¶ 1.5, 1.7, and 4.2.

¹⁷ *Id.*, ¶ 4.3. *See id.*, ¶ 1.10 for the definition of “Effective Date.”

¹⁸ *Id.*, ¶ 3.2.4.

¹⁹ *Id.*, ¶ 3.2.4.1.

²⁰ *Id.*, ¶ 3.2.4.2.

1 Within seven (7) business days after Defendant funds the Gross Settlement Amount, the
2 Administrator will issue checks for the Individual PAGA Payments and send to the Aggrieved
3 Employees via First Class U.S. Mail, postage prepaid along with a cover letter (“Cover
4 Letter”).²¹ The Administrator will conduct an Aggrieved Employee address search for all
5 Aggrieved Employees whose checks are returned undeliverable without USPS forwarding
6 address within thirty (30) calendar days of the initial mailing.²² Within five (5) business days of
7 receiving a returned check, the Administrator will re-mail checks to the USPS forwarding
8 address provided by USPS or to an address ascertained through the Aggrieved Employee address
9 search.²³

10 The face of each Individual PAGA Payment check will prominently state the date (that is
11 180 days after the date of the initial mailing) when the check will be voided.²⁴ The
12 Administrator will cancel all checks not cashed or negotiated by the void date.²⁵ For any
13 Aggrieved Employee whose Individual PAGA Payment check is canceled after the void date, the
14 Administrator shall transmit the funds represented by such checks to the California Controller’s
15 Unclaimed Property Fund in the name of the Aggrieved Employee.²⁶

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

17 Effective on the date when the Defendant fully funds the entire Gross Settlement
18 Amount, Plaintiff and the State of California with respect to Aggrieved Employees are deemed
19 to release, on behalf of themselves and their respective former and present representatives,
20 agents, attorneys, heirs, administrators, successors, and assigns the Released Parties from the
21 Released Claims.²⁷

22 The “Released Claims” are all claims for PAGA penalties that were alleged, or
23 reasonably could have been alleged, arising during the PAGA Period, based on the
24 facts stated in the Operative Complaint and PAGA Notice, and ascertained in the
course of the Action, including, but not limited to, any and all claims for failure to

25 ²¹ Settlement Agreement, ¶¶ 4.4 and 4.4.1.

26 ²² *Id.*, ¶ 4.4.2.

27 ²³ *Ibid.*

28 ²⁴ *Id.*, ¶ 4.4.1.

²⁵ *Ibid.*

²⁶ *Id.*, ¶ 4.4.3.

²⁷ *Id.*, ¶ 5.

pay minimum, regular, overtime, and reporting time pay, failure to provide compliant meal and rest period premiums at the regular rate of pay, failure to provide meal periods and associated premiums, failure to provide rest periods and associated premiums, failure to pay timely pay wages during employment, failure to pay timely wages upon termination, failure to maintain complete and accurate payroll records, failure to provide complete and accurate wage statements, failure to reimburse necessary business-related expenses and costs, and for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 11971.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia* Wage Orders 4-2001, 7-2001, 9-2001, and 16-2001.²⁸

The “Released Parties” means TPR and each of TPR’s current, former, and future parent, subsidiary and affiliated companies, and its/their agents, officers, shareholders, directors, management-level employees, including successors and assigns, related or affiliated companies’ predecessors and successors; and, with respect to all such entities, all of its/their past and present employees, officers, directors, stockholders, owners, representatives, assigns, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries and insurers of such programs) and any other persons acting by, through, under or in concert with any such persons or entities.²⁹

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 action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other potentially aggrieved employees parties” to the action and no “due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and whatever personal claims the absent employees might have for relief are not at stake.” *Williams, supra*, 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756*,

²⁸ Settlement Agreement, ¶ 5.

²⁹ *Id.*, ¶ 1.26.

1 *AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation*
2 *Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

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

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

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

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

25 The settlement of a PAGA action requires court approval. See Cal. Lab. Code §
26 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed
27 pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis
28 . . . 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.³⁰ 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 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

³⁰ Aiwazian Decl., ¶ 7.

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 through arm’s-length negotiations, after a mediation with an experienced and respected mediator, Steven Rottman, Esq.³¹ A settlement that is “the 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 non-collusive, 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

³¹ Aiwazian Decl., ¶ 13.

1 for the Parties engaged in significant investigation to evaluate the strength and potential value of
2 the PAGA claim, and the risks associated of litigating this claim through trial.³²

3 After engaging in significant investigations, formal and informal discovery, and the
4 exchange of information, the Parties participated in settlement negotiations to try to resolve the
5 lawsuit.³³ These efforts included participating in formal mediation conducted by Steven
6 Rottman, Esq., a well-respected mediator experienced in mediating complex labor and
7 employment matters.³⁴ In the course of mediation and settlement negotiations, the Parties
8 discussed all aspects of the case, including the risks and delays of further litigation and
9 proceeding with trial, as well as the law relating to representative PAGA actions, manageability,
10 off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and arbitration
11 agreements, the evidence produced and analyzed, and the possibility of bifurcation of discovery
12 and/or trial and appeals, among other things.³⁵ During all settlement discussions, the Parties
13 conducted their negotiations at arm's length in an adversarial position.³⁶

14 Based on all of the information available to the Parties and with the assistance of the
15 experienced mediator, the Parties agree that this matter is well-suited for settlement given the
16 strengths and weaknesses of the PAGA claim.³⁷ Plaintiff and PAGA Counsel believe that the
17 settlement is a fair, adequate, and reasonable resolution of this matter.³⁸ PAGA Counsel has
18 extensive experience handling representative and class action wage-and-hour litigation and used
19 that experience to achieve a great result for Plaintiff, the State of California, and the Aggrieved
20 Employees.³⁹ Therefore, the Court should give considerable weight to the competency,
21 experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the
22 settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988)
23 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd*

24 _____
32 Aiwasian Decl., ¶¶ 4-7, 12-14, and 16-20.

25 33 *Id.*, ¶ 13.

26 34 *Ibid.*

27 35 *Ibid.*

28 36 *Ibid.*

37 *Id.*, ¶ 27.

38 *Ibid.*

39 *Id.*, ¶¶ 4-7.

1 *v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs’
2 counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express*
3 *Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the “assistance of an
4 experienced mediator in the settlement process confirms that the settlement is non-collusive”).

5 **B. The Relative Strength of the PAGA Claim and the Range of Possible**
6 **Outcomes in the Litigation Strongly Favor Approval of the Settlement**

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

13 Plaintiff’s core allegation is that Defendant has systematically violated the California
14 Labor Code, with respect to Plaintiff and the Aggrieved Employees, by, *inter alia*, failing to
15 properly pay minimum, regular, overtime wages, failing to provide compliant meal and rest
16 periods and associated premiums, failing to timely pay wages during employment and upon
17 termination of employment, failing to provide complete and accurate wage statements, failing to
18 keep complete and accurate payroll records, and failing to reimburse necessary business-related
19 expenses and costs.

20 Although wage-and-hour actions are amenable to resolution as to a group of employees,⁴⁰
21 some courts have also found that, for various reasons, the issues raised by Plaintiff raise

22 ⁴⁰ See, e.g., *Martinez vs. Joe’s Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-84, *modified on other*
23 *grounds by Martinez v. Joe’s Crab Shack Holdings, et al.* (Dec. 3, 2014, B242807) 2014 Cal.App. LEXIS 1102, *1-
24 2 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of resolving
25 wage-and-hour claims, including misclassification and overtime, recognizing that “statistical sampling may provide
26 assistance in identifying the realistic demands of the job and illuminating whether the typical employee was able to
27 meet those expectations” and that “[b]y refocusing its analysis on the policies and practices of the employer and the
28 effect those policies and practices have on the [employees] . . . the trial court may in fact find class analysis a more
efficient and effective means of resolving plaintiffs’ overtime claim”); *Sav-On Drug Stores, Inc. v. Superior Court*
(2004) 34 Cal.4th 319, 330-31 (Court successfully managed and adjudicated wage-and-hour claims made on behalf
of a group of employees, utilizing, among other things, statistics and surveying.); *Brinker Restaurant Corp. v.*
Superior Court (2012) 53 Cal.4th 1004, 1033 (“Claims alleging that a uniform policy consistently applied to a group
of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for
class treatment [...] The theory of liability – that [the employer] has a uniform policy, and that that policy, measured

(Footnote continued)

individualized issues and/or are unmanageable and thus not suitable for adjudication as to a group of employees.⁴¹

Defendant contended that courts have required, and that due process requires, that the adjudication of PAGA claims meets a “manageability” requirement. *See, e.g., Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 756 (“[C]ourts have inherent authority to ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike claims that cannot be rendered manageable”)⁴²; *but cf. Estrada v. Royalty Carpet Mills, Inc.* (2022) 76

against wage order requirements, allegedly violates the law - is by its nature a common question eminently suited for class treatment.”); *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (finding that real parties demonstrated that the existence of the practice and the fact of damage were matters suitable for determination on behalf of a group of employees and that, “[r]eal parties’ evidence supports the reasonable inference that [...] they could establish that petitioners engaged in the alleged practice, that is, they never paid meal break premium wages, even though a significant number of employees accrued them. Furthermore, in view of real parties’ theory of restitution, those facts would also suffice to demonstrate the fact of damage. Under that theory, the fact of damage does not require a showing that all -- or virtually all -- class members accrued unpaid meal break premium wages, but only that on a system-wide basis, petitioners denied the class members the benefits of the compensation guarantee and enhanced enforcement implemented by section 226.7.”); *Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036 (holding that statistical evidence is admissible to support class action certification because it is also admissible to prove liability and damages across a group of employees, where the defendant employer had not kept records of time spent by employees with respect to donning and doffing protective clothing).

⁴¹ *See, e.g., Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35 (stating that even where it has been alleged “that the employer consistently imposed a uniform policy or de facto practice” as to its employees, “the party must still demonstrate that the illegal effects of this conduct can be proven efficiently and manageably” and in litigating representative actions the procedures utilized by the court “may not be used to abridge a party’s substantive rights,” including “abridge[ing] the defendant’s] presentation of [a defense] simply because that defense was cumbersome to litigate,” because of “principles of due process”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1018 (stating that employers must authorize, permit, or “relieve the employee of all duty for [a] designated meal [or rest] period,” and “relinquish [full] control over [the employee’s] activities” and “afford” employees an “opportunity to take an *uninterrupted* thirty-minute break,” but are not obligated to affirmatively ensure that no work related tasks are performed during such periods).

⁴² In *Wesson*, the appellate court determined that trial courts may dismiss PAGA actions if they are unmanageable. The employer moved to strike the PAGA claim, arguing that the misclassification allegations were “highly fact dependent” and would require individualized inquiries to evaluate the company’s affirmative defenses, and that the number of employees and the nature of the allegations made the PAGA action “unmanageable,” which would violate Staples’ due process rights. *Wesson*, 68 Cal.App.5th 746, 755-756 and 772-773. The trial court invited the plaintiff to submit a trial plan showing that his PAGA action would be manageable at trial, but the plaintiff insisted the trial court lacked authority to require that his claim was manageable. *Id.* at 755-756. Following this response, the trial court concluded that the PAGA claim could not be managed at trial and granted the employer’s motion to strike the PAGA claim. *Ibid.* The appellate court affirmed, holding that trial “courts have inherent authority to ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike claims that cannot be rendered manageable;” “as a matter of due process, defendants are entitled to a fair opportunity to litigate available affirmative defenses, and a court’s manageability assessment should account for them;” and “given the state of the record and [plaintiff’s] lack of cooperation with the trial court’s manageability inquiry, the court did not abuse its discretion in striking his PAGA claim as unmanageable.” *Id.* at 755-756 and 764-766. The appellate court noted that because PAGA claims lack the basic requirements that control class actions, such as a well-defined community of interest and a showing that common questions predominate over individual ones, PAGA claims “may well present more significant manageability concerns than those involved in class actions.” *Id.* at 766. In other words, the appellate court noted, because PAGA actions may include “disparate groups of employees and involve different kinds of violations raising

(Footnote continued)

Cal.App.5th 685⁴³, 712, *review granted* (June 22, 2022) (“Imposing a manageability requirement would create an extra hurdle in PAGA cases that does not apply to LWDA enforcement actions.”); *Litty v. Merrill Lynch & Co.* (C.D. Cal. Nov. 10, 2014) No. CV-14-0425-PA, WL 5904904 at **3-4 (Court dismissed the PAGA claim because a multitude of individualized assessments would be necessary, making the PAGA claim unmanageable).

Defendant also maintained several defenses to Plaintiff’s theory of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time period at issue.⁴⁴ Defendant denies that it ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the

distinct questions,” there is a heightened need to consider manageability and that “a need for individualized proof pertaining to a very large number of employees will raise manageability concerns.” *Ibid.*

⁴³ In *Estrada*, the plaintiffs alleged representative claims under PAGA and class claims primarily based on purported meal and rest period violations. The trial court initially certified two classes and denied the employer’s pre-trial motion to decertify the class, due to the employer’s failure to show changed circumstances warranting decertification. *Estrada*, 76 Cal.App.5th 685, 700. However, following the presentation of evidence at trial, the trial court decertified one of the classes (and in relevant part, this also involved dismissing the PAGA meal period claims of this class, due to their being “unmanageable”), and entered judgment. *Id.* at 701-702. Both sides appealed. The Fourth District Court of Appeal determined, in relevant part, that the trial court erred in dismissing the PAGA claims as unmanageable, and in doing so, specifically acknowledged that it was reaching “the opposite conclusion” to that reached in *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746 (where it was concluded that courts have inherent authority to strike unmanageable PAGA claims). *Id.* at 697. The appellate court relied on *Arias v. Superior Court* (2009) 46 Cal.4th 969 and *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, to find that a court cannot strike a PAGA claim based on manageability, because:

“[t]hese cases have made clear that PAGA claims are unlike conventional civil suits and, in particular, are not class actions. Allowing dismissal of unmanageable PAGA claims would effectively graft a class action requirement onto PAGA claims, undermining a core principle of these authorities. It would also interfere with PAGA’s purpose as a law enforcement mechanism by placing an extra hurdle on PAGA plaintiffs that is not placed on the state. That said, courts are not powerless when facing unwieldy PAGA claims. Courts may still, where appropriate and within reason, limit the amount of evidence PAGA plaintiffs may introduce at trial to prove alleged violations to other unrepresented employees. If plaintiffs are unable to show widespread violations in an efficient and reasonable manner, that will just reduce the amount of penalties awarded rather than lead to dismissal.” *Id.* at 697.

For this and other reasons, the appellate court reversed the trial court’s order decertifying the class and dismissing the related PAGA claim as unmanageable. However, the appellate court also acknowledged that “[s]ome PAGA claims involve hundreds or thousands of alleged aggrieved employees, each with unique factual circumstances” and to address this, where appropriate and within reason, trial courts may “limit witness testimony and other forms of evidence when determining the number of violations that occurred and the amount of penalties to assess[.]” and plaintiffs’ counsel should “work with the trial courts during trial planning to define a workable group or groups of aggrieved employees for which violations can be more easily shown[.]” *Id.* at 712-713. Otherwise, the appellate court noted, a PAGA plaintiff seeking to try their claim “risk[s] being awarded a paltry sum of penalties, if any,” due to problems of proof. *Id.* at 713. The appellate court’s comments regarding the practical limitations of actually trying a PAGA lawsuit are being used by employers to argue that PAGA lawsuits are unmanageable or that the scope of such lawsuits should be narrowed for purposes of trial.

⁴⁴ Aiwazian Decl., ¶ 17.

PAGA.⁴⁵ Defendant further denied, and continues to deny, that the lawsuit is appropriate for representative treatment for any purpose other than settlement.⁴⁶

Defendant also challenged Plaintiff's standing as an aggrieved employee and denied that any of Defendant's other employees whom Plaintiff seeks to represent are aggrieved.⁴⁷ Also, at the time that this case commenced, multiple courts had taken an approach requiring a plaintiff to establish standing and face the possibility of bifurcation of discovery and/or trial of the PAGA claim. *See Amalgamated Transit Union, supra*, 46 Cal.4th at 1001 (noting that PAGA "require[s] a plaintiff to have suffered an injury resulting from an unlawful action"); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding that judicial economy supported bifurcation because of the difficulties and inherent uncertainties of being able to establish liability with respect to a large number of potentially aggrieved employees and noted that "PAGA's public purpose would be ill-served if the court finds [the plaintiff] has not been aggrieved by a Labor Code violation"); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of litigation is allowed to avoid wasting time and money on trial when litigation of issues could be rendered moot).

Defendant 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). Defendant maintained, and continues to maintain, that it had and continues to have, legally-compliant employment policies and practices throughout the time period at issue.⁴⁸ Defendant denies that it ever violated any provision of the California Labor Code.⁴⁹ Even if, *arguendo*, such violations occurred, which

⁴⁵ Aiwazian Decl., ¶ 17

⁴⁶ *Ibid.*

⁴⁷ *Id.*, ¶ 19.

⁴⁸ *Id.*, ¶ 17.

⁴⁹ *Ibid.*

Defendant denies, Defendant 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.”).

Defendant 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. As such, Defendant contended that cumulative penalties and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.

There is also uncertainty regarding PAGA claims due to the United States Supreme Court’s decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940. As a result of that decision, it may be more likely that employer agreements containing arbitration terms will impact the viability of adjudication of PAGA claims in the judicial forum, which is relevant to this matter in light of the arbitration agreements that Defendant obtained from its employees. *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940.⁵⁰

⁵⁰ Aiwazian Decl., ¶ 18. In *Viking River Cruises*, the U.S. Supreme Court determined that PAGA claims can be split into individual claims based on California Labor Code violations suffered by the plaintiff (that can then be subject to arbitration) and non-individual claims (that are representative in nature) and that the “indivisibility rule” recognized by the California Supreme Court in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348 is preempted by the Federal Arbitration Act (FAA) to the extent it circumscribes the freedom of parties to agree to such contractual division or splitting of PAGA actions. *Viking River Cruises, Inc.*, 1923-1925. The U.S. Supreme Court also determined that, important structural differences between PAGA actions and class actions preclude any straightforward application of U.S. Supreme Court precedents invalidating prohibitions on class-action waivers, to *Iskanian*’s ban on wholesale PAGA representative action waivers, and thus this aspect of *Iskanian* is not preempted by the FAA. *Id.* at 1919, 1922-1925. The U.S. Supreme Court also expressed its understanding of California state law, and the impact of its ruling on, PAGA’s standing requirement, regarding which California courts will have the last word, as noted by a concurring opinion. *Id.* at 1925-1926 (concurring opinion). Taken together, the substantive statutory right to pursue a PAGA claim has not been eviscerated and has been preserved, however, arbitration agreements may be used to select the forum and procedure to be used to resolve PAGA claims to some extent, and the California courts and legislature have yet to weigh in on and articulate where California law stands.

While Plaintiff disagrees with Defendant’s 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 concluded as litigation continued, at trial and/or appeals.⁵¹

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

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

Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope of the PAGA claim, and were preparing for trial.⁵² In addition, the Parties exchanged a large volume of information, documents, and data relevant to Plaintiff’s claim and Defendant’s defenses thereto, including, and not limited to, the employment records of Plaintiff, aggrieved employees’ time and pay data, road test checklists, various agreements, acknowledgments, and forms (such as, Defendant’s Driver Responsibility Acknowledgement, Anti-Idling Notification, Driver Certification for Other Compensated Work, Manual Acknowledgement Form, Mutual Agreement to Arbitrate Claims, Acknowledgement of Receipt of Mutual Agreement to Arbitrate, Acknowledgement of Execution of Mutual Agreement to Arbitrate, Nondisclosure and Confidentiality Agreement, and Expense Reimbursement Form), and Defendant’s operations and employment policies, practices, and procedures (such as, Defendant’s Meal & Rest Periods Policy and Pay Rates Policy), among other documents.⁵³ Counsel for the Parties undertook significant investigation and evaluation of Plaintiff’s claim and allegations, including, and not limited to, calculating the potential monetary recovery under PAGA.⁵⁴ Other work performed by PAGA Counsel included, but was not limited to: meeting and conferring with Defendant’s

⁵¹ Aiwazian Decl., ¶ 20.

⁵² *Id.*, ¶ 14.

⁵³ *Ibid.*

⁵⁴ *Id.*, ¶¶ 14 and 20.

counsel regarding the pleadings, discovery, case management, and the production of information, documents, and data in the course of litigation and in connection with the mediation and settlement negotiations, among other issues; case strategy and analysis; drafting, reviewing, and revising the pleadings, court filings, the mediation brief, settlement agreement, and settlement approval motion papers; and preparing for and appearing for court proceedings, the mediation, and settlement negotiations.⁵⁵

Had the case not settled, the Parties would have conducted extensive additional formal discovery, including propounding additional written discovery requests as well as multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendant indicated that it would aggressively litigate this case and contended that it would ultimately succeed in the Action.⁵⁶ Even if Defendant failed on its defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.⁵⁷ Additionally, there is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State of California or other Aggrieved Employees after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

D. The Settlement Is Fair, Adequate, and Reasonable

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

The Settlement provides significant benefits to the State of California and the Aggrieved Employees and falls well-within the range of acceptable settlements under the circumstances. Under the Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$700,000.00,

⁵⁵ Aiwasian Decl., ¶ 14.

⁵⁶ *Id.*, ¶ 17.

⁵⁷ *Id.*, ¶¶ 12, 13, 17, and 19.

1 which encompasses the Net Settlement Amount, PAGA Counsel Fees Payment, PAGA Counsel
2 Litigation Expenses Payment, Administration Expenses Payment, and General Release
3 Payment.⁵⁸ Subject to approval by the Court, the following amounts will be subtracted from the
4 Gross Settlement Amount to yield the Net Settlement Amount: (1) PAGA Counsel Fees Payment
5 consisting of attorneys' fees in the amount of \$280,000.00 and PAGA Counsel Litigation
6 Expenses Payment consisting of reimbursement of litigation costs and expenses in the amount of
7 \$15,011.56 to Plaintiff's Counsel⁵⁹; (2) the Administration Expenses Payment of up to
8 \$5,300.00; and (3) General Release Payment of up to \$15,000.00 to Plaintiff.⁶⁰

9 The Net Settlement Amount is currently estimated to be \$384,688.44, of which an
10 estimated \$288,516.33 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on
11 their Pay Periods, and \$96,172.11 is to be distributed to the LWDA. There is no reason to doubt
12 the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies
13 with California Labor Code section 2699(i).

14 The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel
15 recognize the expense and length of continued proceedings necessary to litigate the matter
16 through trial and any possible appeals.⁶¹ Plaintiff and his counsel have also taken into account
17 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
18 inherent in such litigation.⁶² Plaintiff and his counsel are also aware of the burdens of proof
19 necessary to establish liability, both generally and in response to Defendant's defenses thereto,
20 and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on
21 behalf of Plaintiff, the State of California, and other Aggrieved Employees.⁶³ Plaintiff and his
22 counsel have also taken into account Defendant's agreement to enter into a settlement that

23 ⁵⁸ Settlement Agreement, ¶ 1.12.

24 ⁵⁹ *Id.*, ¶ 3.2.1. Although the Settlement Agreement provides that PAGA Counsel can seek up to \$25,000.00 for
25 reimbursement of litigation costs and expenses, PAGA Counsel only seeks the amount of \$15,011.56 for this
26 payment, which is less than \$25,000.00. The difference between the amount sought and the maximum allocated
27 amount available under the settlement (i.e., the difference of \$9,988.44), will be a part of the Net Settlement
28 Amount.

⁶⁰ *Id.*, ¶¶ 3.2.2 and 3.2.3.

⁶¹ Aiwazian Decl., ¶¶ 12, 16, and 19.

⁶² *Ibid.*

⁶³ *Id.*, ¶¶ 15 and 16.

confers significant relief upon the Aggrieved Employees and the State of California.⁶⁴

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.⁶⁵

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 to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (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). Here, the value obtained for settlement of the PAGA claims is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

E. The Experience and Views of PAGA Counsel Favor Approval of the Settlement

PAGA Counsel is highly experienced in complex representative and class action wage-and-hour litigation.⁶⁶ In the view of PAGA 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

⁶⁴ Aiwazian Decl., ¶ 13.

⁶⁵ *Id.*, ¶ 27.

⁶⁶ *Id.*, ¶¶ 4-7.

substantial monetary benefits provided for by the Settlement.⁶⁷ 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 PROPOSED PAGA COUNSEL FEES PAYMENT 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 Gross Settlement Amount of \$700,000.00.⁶⁸ The Settlement provides for attorneys’ fees in an amount of up to forty percent (40%) of the Gross Settlement Amount, which is \$280,000.00, subject to approval and award by the Court.⁶⁹ The requested attorneys’ fees award is commensurate with: (1) the risk that PAGA Counsel took in bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that PAGA Counsel has shown, (4) the results that PAGA Counsel has achieved throughout the case, (5) the value that PAGA Counsel has achieved in the case, and (6) the other cases that PAGA Counsel has turned down in order to devote its time and effort to this case.

PAGA Counsel is entitled to recover reasonable attorneys’ fees and costs as a matter of right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) (“Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney’s fees and costs”). PAGA Counsel is also entitled to fees and costs under California Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition “for the benefit” of others and secures monetary recovery for a large number of Aggrieved Employees, as well as the State of California. *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17 (recognizing that recovery obtained on behalf of 209 individuals satisfies the “significant

⁶⁷ Aiwasian Decl., ¶ 27.

⁶⁸ Settlement Agreement, ¶ 3.1.

⁶⁹ *Id.*, ¶ 3.2.1.

benefit,” “public interest,” and “large class of persons” requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff’s personal motivation). The settlement will also benefit the state labor agency in enforcing labor laws and educating “employers and employees about their rights and responsibilities under [the California Labor Code].” Cal. Lab. Code § 2699(i).

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

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

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

The percentage method is particularly appropriate where a monetary settlement has been recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a “certain easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable

percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.

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

PAGA 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).

PAGA 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.⁷⁰ 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.⁷¹ Other work performed by PAGA Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding the pleadings, case management, the mediation, and settlement, among other issues; case strategy and analysis; drafting, reviewing, and revising the pleadings, court filings, the mediation brief, settlement agreement, and settlement approval motion papers; and preparing for and appearing for court proceedings, mediation, and settlement negotiations.⁷²

In the present case, PAGA Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷³ PAGA Counsel is 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.⁷⁴ Considering the amount of fees requested, work performed, risks incurred, results obtained, and experience of PAGA Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees are reasonable and should be awarded.

B. The Fee Award Requested by PAGA 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 PAGA 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

⁷⁰ Aiwazian Decl., ¶ 25.

⁷¹ *Id.*, ¶ 14.

⁷² *Ibid.*

⁷³ *Id.*, ¶ 25.

⁷⁴ *Id.*, ¶¶ 4-7.

1 to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent;
2 (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and
3 results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability
4 of the case; (11) the nature and length of the professional relationship with the client; and (12)
5 awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991)
6 946 F. 2d 768, 772. Some of the most relevant factors to this Court's fee determination will be
7 addressed below.

8 It should be highlighted that the percentage award sought is commensurate with the time,
9 effort, and expense dedicated to the case, the contingent nature of PAGA Counsel's
10 representation and the risks taken in commencing the Action, the skill and determination
11 required, the results that PAGA Counsel has achieved, and the value of the settlement that
12 PAGA Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of
13 California. For the reasons discussed herein, an award of attorneys' fees in the amount of forty
14 percent (40%) of the Gross Settlement Amount is reasonable.

15 **1. Time & Labor**

16 PAGA Counsel has used its experience and skills in litigating complex wage-and-hour
17 actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, PAGA
18 Counsel conducted a significant amount of investigation into the factual and legal issues,
19 Defendant's business, and its operations and employment policies, practices, and procedures.⁷⁵
20 During the litigation of the Action, PAGA Counsel obtained information from Plaintiff,
21 Defendant, and other sources, conducted legal research, reviewed and analyzed a large amount of
22 documents and data, prepared for and attended mediation, evaluated the PAGA claim, and
23 calculated the potential monetary recovery under PAGA.⁷⁶ PAGA Counsel also met and
24 conferred with Defendant's counsel regarding the pleadings, discovery, case management, the
25 mediation, and settlement, among other issues.⁷⁷ PAGA Counsel performed other work
26

27 ⁷⁵ Aiwazian Decl., ¶ 14.

28 ⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

1 including, *inter alia*, case strategy and analysis; and engaging in extensive settlement
2 negotiations.⁷⁸

3 PAGA Counsel dedicated the full extent of staffing and monetary resources necessary to
4 prosecute the case with maximum efficiency, and has fully and actively participated in the
5 litigation process. The Attorney Task and Time Chart, which is attached as “**EXHIBIT 3**” to the
6 accompanying Declaration of Edwin Aiwazian, sets forth in detail the hours that PAGA Counsel
7 has spent performing tasks in this matter. Attorneys at Lawyers for Justice, PC has spent **342.80**
8 **hours** to obtain a recovery on behalf of Plaintiff, the Aggrieved Employees, and the State of
9 California. These hours were required to bring the case to its successful conclusion.

10 In light of the value of time expended and the carrying of costs involved in this litigation,
11 the requested attorneys’ fees award is fair, adequate, and reasonable.

12 **2. The Skill Required to Perform Legal Services Properly**

13 The skill required to properly litigate this case is evident not only in the results achieved,
14 but in the steps necessary to reach the same. Defendant retained highly-respected counsel to
15 represent its defenses. Defendant and its counsel felt very strongly about Defendant’s ability to
16 prevail on the merits and avoid representative adjudication of the PAGA claim. Plaintiff and
17 PAGA Counsel believe that the PAGA claim has merit and that Plaintiff will prevail at trial.
18 PAGA Counsel undertook extensive investigation, analysis, and research prior to filing the
19 lawsuit and during the litigation. PAGA Counsel took steps to prepare the case for trial and had
20 every intention of taking the case to trial if Defendant did not offer an appropriate settlement.

21 PAGA Counsel’s effort and skill were used to, among other things, investigate the
22 allegations and gather facts, research the legal issues, analyze data and information obtained
23 from Defendant, Plaintiff, and through other sources, evaluate the PAGA claim, and negotiate
24 the settlement. Despite all of the obstacles that had to be overcome, PAGA Counsel used its
25 extensive experience and skill in the handling of complex wage-and-hour matters to advocate for
26 and obtain Aggrieved Employees and the State of California a recovery now, with maximum
27

28 ⁷⁸ Aiwazian Decl., ¶ 14.

1 efficiency, as opposed to the possibility of recovery in the future, after significant expense and
2 time.⁷⁹

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

4 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty
5 and risks of further litigation.⁸⁰ Had the case not settled, Defendant would have vigorously
6 challenged manageability and liability, and sought a reduction in the amount assessed as
7 penalties. Defendant, however, faced risks too, including and not limited to, the risk of having
8 the Court assess penalties. Additionally, preparing the case for trial would have been
9 extraordinarily expensive for the Parties.

10 At this stage, the settlement is preferred over continued litigation because such resolution
11 saves time and money that would otherwise go to litigation. The risks and expenses of further
12 litigation outweighed any benefit that might have been gained otherwise. The Settlement
13 provides an immediate recovery, as opposed to an uncertain result in the future after prolonged
14 litigation involving expert discovery, trial preparation, and appellate review of those
15 proceedings. The Settlement offers present and considerable monetary relief to Plaintiff, the
16 Aggrieved Employees, and the State of California while avoiding additional expense, risk, and
17 delay in obtaining possible further recovery.

18 **4. Whether the Fee Is Fixed or Contingent**

19 The representation provided by PAGA Counsel has been wholly contingent and PAGA
20 Counsel took on this matter without knowing whether any recovery would be obtained. PAGA
21 Counsel has invested **342.80 hours** of time to obtain relief on behalf of Plaintiff, the Aggrieved
22 Employees, and the State of California. PAGA Counsel is also requesting reimbursement of
23 litigation costs and expenses in the amount of \$15,011.56.⁸¹

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27 ⁷⁹ Aiwazian Decl., ¶¶ 16-20.

28 ⁸⁰ *Id.*, ¶¶ 15, 16, 19, and 27.

⁸¹ *Id.*, ¶ 25 and Exh. 4.

1 In this case, PAGA Counsel has borne all of the risks and costs of litigation and will not
2 receive any compensation until recovery is obtained.⁸² If PAGA Counsel had not been
3 successful, the time that they have devoted to litigating the case would have been for naught and
4 would not have produced any fee or any reimbursement of costs or expenses. PAGA Counsel is
5 well-experienced in complex wage-and-hour litigation and used that experience to obtain a great
6 result for Plaintiff, the Aggrieved Employees, and the State of California.⁸³ The skill and
7 determination that PAGA Counsel has shown throughout the Action justify the requested
8 attorneys' fees and costs. Considering the amounts requested, work performed, and risks
9 incurred, the requested fees and costs are reasonable and should be awarded.

10 **5. The Amount Involved and the Results Achieved**

11 The results achieved, in light of the difficulties inherent in similar cases and the specific
12 difficulties faced in this case, are considerable. Here, the results achieved, and the recovery
13 obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent a
14 fair and reasonable resolution of this lawsuit. PAGA Counsel's efforts have resulted in a
15 settlement that provides for a Gross Settlement Amount of \$700,000.00, and it is currently
16 estimated that the Net Settlement Amount available for distribution to the Aggrieved Employees
17 and the State of California, as set forth in Part III.C *infra*, is approximately \$384,688.44.⁸⁴

18 **6. The Reputation and Ability of the Attorneys**

19 PAGA Counsel is a recognized class action and complex litigation law firm, and its
20 attorneys employed their knowledge, skill, and experience to bring the case to a successful
21 conclusion. PAGA Counsel has years of wage-and-hour class action and complex litigation
22 experience, has recovered millions of dollars on behalf of thousands of individuals in California,
23 and has successfully handled numerous significant wage-and-hour class action and representative
24 action cases.⁸⁵

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26 ⁸² Aiwazian Decl., ¶ 25.

27 ⁸³ *Id.*, ¶¶ 4-7.

28 ⁸⁴ *Id.*, ¶ 11.

⁸⁵ *Id.*, ¶¶ 4-7.

C. **The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because PAGA Counsel Has Performed Work That Is of Significant Value Based on Reasonable Hours and Prevailing Hourly Rates of Compensation**

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to “cross-check” the results of the other. *See Laffitte, supra*, 1 Cal.5th at 505 (explaining that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court’s reasonableness determination”); *see also, e.g., Vizcaino*, 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination of the fee as a percentage” and “does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

1. PAGA Counsel Performed Work for a Reasonable Number of Hours

The reasonableness of hours is assessed by “the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

As discussed above, this case was highly contested and required a significant amount of time and labor. Defendant made it clear very early on that it disputed all of Plaintiff’s allegations and disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*, that it had facially-compliant employment policies and practices throughout the time period at issue.⁸⁶ Defendant raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and analyzing data from Defendant as well as other sources.⁸⁷ The handling

⁸⁶ Aiwazian Decl., ¶ 17.

⁸⁷ *Id.*, ¶ 14.

of this litigation involved a great amount of effort, and also required and involved the exercise of a high level of skill, which PAGA Counsel has, as a result of its extensive experience in complex wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward trial, including taking and defending declarant and expert depositions, depositions of person most knowledgeable designees, conducting additional formal discovery, and engaging in extensive motion practice. As PAGA Counsel geared up for these battles, PAGA Counsel undertook intense preparation in an attempt to resolve the entire matter through settlement negotiations.

PAGA Counsel had to bring together a volume of data and documents that were obtained from Plaintiff, Defendant, and through other sources. PAGA Counsel conducted extensive review and analysis of these documents and data to strategize and evaluate the case and engage in settlement discussions.

As set forth above in Part VI.B.1 *infra*, attached to the Declaration of Edwin Aiwazian is the Attorney Task and Time Chart that sets forth in detail the numerous tasks that PAGA Counsel performed in this case, and the time required for completing those tasks.⁸⁸ The chart demonstrates that Lawyers for Justice, PC has spent a total of **342.80 hours** on this matter. In light of the facts and circumstances of this case, as well as the results PAGA Counsel has achieved on behalf of Plaintiff, the Aggrieved Employees, and the State of California, PAGA Counsel has spent a reasonable number of hours on this matter.

***2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation
in Light of PAGA Counsel's Efforts and Experience***

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market

⁸⁸ Aiwazian Decl., Exh. 3.

of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases.” *See id.*

PAGA Counsel has been actively involved in the prosecution of this case, prior to the commencement of the Action and all the way up to approval of the settlement, and their dedication to the representation of Plaintiff, the Aggrieved Employees, and the State of California has precluded other employment. Here, PAGA Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, PAGA Counsel was successful in reaching a settlement of \$700,000.00.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of PAGA Counsel support a reasonable blended hourly rate of compensation of at least \$750 per hour for services provided by PAGA Counsel.⁸⁹ Lawyers for Justice, PC has been awarded attorneys’ fees, compensating the firm at the rate of at least \$750 for legal services performed, by courts of this state.⁹⁰ While the circumstance of every case is unique, the fact remains that the work performed and efforts undertaken by PAGA Counsel in this matter justify the requested attorneys’ fees award.

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⁸⁹ Aiwarzian Decl., ¶ 24.

⁹⁰ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys’ fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys’ fees involved an hourly rate of \$919.57; final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys’ fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys’ fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply Corp.* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys’ fees involved an hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys’ fees involved an hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney’s fees involved an hourly rate of \$780.77; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys’ fees involved an hourly rate of \$845.64. Aiwarzian Decl., ¶ 24.

1 **3. *The Risks Involved, Skill Required, Complexity of the Matter, and***
2 ***Results Obtained Warrant Upward Enhancement of the Lodestar.***

3 Even when courts have opted to award fees in settlement fund cases based on time
4 reasonably expended on the action, courts have generally awarded these fees based on the actual
5 time expended (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v. Screen*
6 *Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67. Such a multiplier is warranted in this matter.

7 Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved,
8 the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051;
9 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of the most common fee
10 enhancers [...] is for contingency risk.”). Such an enhancement “mirrors the established practice
11 in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying
12 them a premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 290
13 F.3d at 1051; *accord Ketchum*, 24 Cal.4th at 1132-33. A risk multiplier also serves to bring the
14 financial incentives for enforcing important rights “into line with incentives [attorneys] have to
15 undertake claims for which they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal. 4th at
16 1132.

17 In determining whether or not to enhance the lodestar, California courts take into account
18 multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See,
19 *Cates* at 822-23. Multiple factors warrant enhancement in this case, including the following:

- 20 • The time and labor required
- 21 • The skill requisite to perform the legal services properly
- 22 • The preclusion of other employment by the attorney due to the acceptance of the case
- 23 • The contingent nature of the fee
- 24 • The amount involved and results obtained
- 25 • The experience, reputation, and ability of the attorney
- 26 • Awards in similar cases

27 *Ketchum* at 1134.

28 ///

Adjustment of the base lodestar figure to compute an award of attorneys' fees for a claim under the California Labor Code is appropriate. See *Id.*, at 1135-36; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49. "The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate." *Wershba, supra*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment method, the trial court determines the reasonable hourly rate of compensation for counsel, which it then multiplies by the number of hours the court finds were reasonably spent preparing the case, to obtain the lodestar figure. *Ketchum, supra*, 24 Cal.4th at 1131-32. The lodestar figure is the "basic fee for comparable legal services in the community" based upon the "hourly amount to which attorneys of like skill in the area would typically be entitled." *Id.*, at 1132-33 (quotation marks and citation omitted).

As discussed above, this was a highly-contested matter which required an extensive amount of time and labor. Defendant raised defenses and denied liability, and the case involved gathering and analyzing documents and data from Defendant and obtained through other sources. The handling of this matter involved a great amount of effort, and required the exercise of high-level of skill, which PAGA Counsel has as a result of extensive experience in employment wage-and-hour litigation. PAGA Counsel has been actively involved in the prosecution of this matter, prior to its commencement and PAGA Counsel's work has continued all the way up to the present. PAGA Counsel's dedication to the representation of Plaintiff, the Aggrieved Employees, and the State of California has precluded other employment.

Most importantly, all services were performed by PAGA Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, PAGA Counsel bore the risk that, despite all of its efforts and the skill employed, there may be no recovery. Therefore, at a minimum, PAGA Counsel is entitled to a risk multiplier. The results obtained by way of PAGA Counsel's efforts are significant here. PAGA Counsel was successful in achieving substantial results in the form

of a settlement of \$700,000.00. Also, PAGA Counsel's efforts throughout the matter demonstrate dedication to the interests of both the Aggrieved Employees and the State of California.

PAGA Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, PAGA Counsel devoted the hours in legal time summarized above and detailed in the Attorney Task and Time Chart which is attached as an exhibit to the Declaration of Edwin Aiwasian.⁹¹ As the Declaration indicates, PAGA Counsel has worked 342.80 hours in the pursuit of this matter. Applying a reasonable blended rate of \$750 per hour to 342.80 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$257,100.00, and applying a modest multiplier of 1.1, the total enhanced lodestar fees are \$282,810.00, for PAGA Counsel's services. However, PAGA Counsel seeks an attorneys' fee award of \$280,000.00 (equal to 40% of the Gross Settlement Amount based on the Settlement Agreement). Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by PAGA Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even higher.**" *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with cross-check **multipliers ranging from 4.5 to 19.6**).

Therefore, application of a modest multiplier of 1.1 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award. Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$280,000.00 to PAGA Counsel.

⁹¹ Aiwasian Decl., Exh. 3.

VII. COSTS TO BE REIMBURSED TO PAGA 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 Edwin Aiwazian, PAGA Counsel seeks reimbursement of \$15,011.56 for litigation costs and expenses.⁹² 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.⁹³ Accordingly, PAGA Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$15,011.56 to PAGA 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 Cover Letter for transmission to the Aggrieved Employees along with their Individual PAGA Payment check, 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 PAGA Payment.

IX. THE PROPOSED ADMINISTRATION EXPENSES PAYMENT 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, Simpluris, Inc., to handle the administration of the Settlement. The fees and expenses of the Administrator are estimated not to exceed \$5,300.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and

⁹² Aiwazian Decl., ¶ 25.

⁹³ Ibid.

Individual PAGA Payments checks to the Aggrieved Employees; performing skip-trace searches; re-mailing the returned Cover Letter 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 Administration Expenses Payment in the amount of up to \$5,300.00 to Simpluris, Inc., a necessary third-party for handling the settlement process.

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

The Settlement provides for a General Release Payment 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 Paragraph 6 of the Settlement Agreement).⁹⁴ The purpose of such an award is to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce an individual to participate in the suit’”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) (“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the [...] litigation.”); *see also, e.g., Resendez, supra*, Los Angeles County Superior Court, Case No. BC59689 (approving \$10,000 enhancement award in a PAGA action).

Here, Plaintiff contributed considerable time and effort to the litigation of this case in order to enforce the California Labor Code on behalf of the State of California and for the benefit of other Aggrieved Employees. Plaintiff discussed his employment with his counsel, gathered and produced relevant documents and information, and provided the facts and evidence

⁹⁴ Settlement Agreement, ¶ 3.2.3.

necessary to attempt to prove the allegations.⁹⁵ Plaintiff was available whenever his counsel needed him and tried to obtain and provide documents and information that would aid in the litigation of the PAGA claim and pursuit of recovery on behalf of the State of California and Aggrieved Employees.⁹⁶

Accordingly, it is reasonable and just for Plaintiff to receive a General Release Payment in the amount of \$15,000.00.

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 Gross Settlement Amount for the LWDA Payment to the LWDA, Individual PAGA Payments to the Aggrieved Employees, PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment to PAGA Counsel, Administration Expenses Payment to the Administrator, and General Release Payment to Plaintiff, and permit the filing of a memorandum that exceeds the page limit.

Dated: June 26, 2023

LAWYERS for JUSTICE, PC

Giovani Pimentel

By: _____

Giovani Pimentel
Attorneys for Plaintiff

⁹⁵ Aiwazian Decl., ¶ 26; Declaration of Jacob Sanchez ("Sanchez Decl."), ¶¶ 3 & 4.

⁹⁶ Aiwazian Decl., ¶ 26; Sanchez Decl., ¶¶ 3 & 4.