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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

vs.

ROCKPORT HEALTHCARE SUPPORT
SERVICES, LLC, a California limited liability
company; ROCKPORT HEALTHCARE
SERVICES, an unknown business entity; NOVATO
HEALTHCARE CENTER, LLC, a California
limited liability company; NOVATO
HEALTHCARE CENTER, an unknown business
entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 21STCV19267 (Lead Case)
21STC19161 (Related)

Honorable Elaine Lu
Department 9

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

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

Date: November 20, 2024
Time: 10:00 a.m.
Department: 9

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

1 **PLEASE TAKE NOTICE** that on November 20, 2024 at 10:00 a.m. or as soon
2 thereafter as the matter may be heard before the Honorable Elaine Lu, Department 9 of the
3 Superior Court of the State of California, for the County of Los Angeles, located at 312 N.
4 Spring Street, LA, CA 90012, Plaintiff Kaila Ali (“Plaintiff”) will and hereby does move for
5 entry of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(1)(2), of the
7 settlement between Plaintiff and Defendants Rockport Healthcare Support Services,
8 LLC and Rockport Healthcare Service (“Defendants”) of the claims brought pursuant
9 to the Private Attorneys General Act of 2004 (“PAGA”), as set forth in the Private
10 Attorneys General Act Settlement Agreement and Release (“Settlement,”
11 “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the
12 Declaration of Brittany Shaw, including and not limited to, the plan of allocation and
13 distribution of the Total Settlement Amount for payment of the LWDA Payment to
14 the California Labor and Workforce Development Agency (“LWDA”), Individual
15 Settlement Shares to the Aggrieved Employees, Attorneys’ Fees and Costs to
16 Plaintiff’s Counsel, Settlement Administration Costs to the PAGA Settlement
17 Administrator, and General Release Fee to Plaintiff;
- 18 2. Approving the Total Settlement Amount¹ of \$349,566.00 (subject to possible increase
19 pursuant to Section 3(b) of the Settlement Agreement), which is inclusive of
20 Attorneys’ Fees and Costs, a General Release Fee to Plaintiff, the Settlement
21 Administration Costs, and the Net Settlement Amount;
- 22 3. Approving the Net Settlement Amount, estimated to be no less than \$202,018.11
23 which will be distributed to the LWDA and the Aggrieved Employees, pursuant to
24 California Labor Code section 2699(i), of which seventy-five percent (75%) will be
25 paid to the LWDA (“LWDA Payment”) and twenty-five percent (25%) will be paid
26 to the Aggrieved Employees (“Employees’ Portion”);

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

4. Appointing Phoenix Settlement Administration (“Phoenix”) as the PAGA Settlement Administrator;
5. Directing Defendants to transmit the Total Settlement Amount of \$349,566.00 into a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement, and directing the PAGA Settlement Administrator to distribute the Total Settlement Amount in accordance with the Settlement Agreement;
6. Directing the mailing of Individual Settlement Share checks to the Aggrieved Employees along with the Cover Letter, which is substantially similar in content and form to that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys’ Fees and Costs, General Release Fee, and Settlement Administration Costs (“[Proposed] Order and Judgement”) filed concurrently herewith;
7. Awarding \$15,000.00 to Plaintiff Kaila Ali as a General Release Fee;
8. Awarding up to \$7,500.00 to the PAGA Settlement Administrator as Settlement Administration Costs; and
9. Awarding to Plaintiff’s Counsel, Lawyers for Justice, PC, \$122,348.10 as compensation for reasonable attorneys’ fees and \$2,699.79 for reimbursement of litigation costs and expenses (“Attorneys’ Fees and Costs”), pursuant to California Labor Code section 2699(g)(1).

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

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

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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 Plaintiff's Counsel (Brittany Shaw) and Plaintiff
3 (Kaila Ali) in support thereof, as well as the pleadings and other records on file with the Court in
4 this matter, and such evidence and oral argument as may be presented at the hearing on this
5 motion.

6 Dated: September 13, 2024

LAWYERS for JUSTICE, PC

7
8 By: 
9 Brittany Shaw
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Kaila Ali (“Plaintiff”) seeks approval of the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and Defendants Rockport Healthcare Support Services, LLC and Novato Healthcare Center, LLC (“Defendants”), pursuant to California Labor Code section 2699(1)(2).²

Subject to approval by the Court, Plaintiff and Defendants (together, the “Parties”) have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Total Settlement Amount of \$349,566.00, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement.³

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

The Net Settlement Amount will be the Total Settlement Amount less the Court-approved Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee, and is currently estimated to be no less than \$15,000.00.⁵ The Net Settlement Amount will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and twenty-five percent (25%) to the Aggrieved Employees (“Employees’ Portion”).⁶ Each Aggrieved Employee will be entitled to payment of his or her *pro rata* share of the Employees’

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

³ Settlement Agreement, §§ 3(a)-(b).

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

⁵ *Id.*, § 3(a)(4).

⁶ *Id.*, § 3(a)(5).

1 Portion, based on the number of pay periods they each worked between March 18, 2020 and
2 approval (“Compensable Pay Periods”).⁷

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

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

15 In order to efficiently present the Court with adequate information to determine whether
16 to grant approval of the Settlement, Plaintiff also moves for an order permitting the filing of this
17 memorandum, although it exceeds the page limit established by California Rules of Court, Rule
18 3.1113(d).

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

20 Defendants is located in Defendant is located in San Pablo, California and operate and
21 provide administrative services to skilled nursing facilities and nursing homes. Plaintiff Kaila Ali
22 is a former employee of Defendants.

23 Prior to commencing this lawsuit, on March 16, 2021, as required by California Labor
24 Code section 2699.3, Plaintiff Kaila Ali provided the LWDA and Defendants with written notice
25 of his intent to assert a claim for civil penalties under PAGA and the basis for the claim, to which
26

27 ⁷ Settlement Agreement, § 7(b).

28 ⁸ *Id.*, § 7(b)(1).

1 the LWDA did not respond (“PAGA Notice”).⁹ A true and correct copy of Plaintiff’s March 16,
2 2021 PAGA Notice is attached to the Declaration of Brittany Shaw as “EXHIBIT 2.”

3 On May 20, 2021, Plaintiff filed a Complaint for Enforcement Under the Private
4 Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) against
5 Defendants in the Contra Costa County Superior Court (“Court”), Case No. C21-01062 (the
6 “Action”). Plaintiff’s core allegation is that Defendants violated the California Labor Code by
7 engaging in a uniform practice and procedure, with respect to Plaintiff and other aggrieved
8 employees, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide
9 compliant meal and rest periods and associated premiums, failing to pay timely wages during
10 employment and upon termination of employment, failing to provide complete and accurate
11 itemized wage statements, failing to keep complete and accurate payroll records, and failing to
12 reimburse necessary business-related expenses and costs.

13 On July 22 2021, Defendants filed an Answer to the Operative Complaint. Defendants
14 maintained, and continue to maintain, that they had, and continue to have, legally compliant
15 employment policies and practices throughout the time period at issue. Defendants deny that
16 they ever violated any provision of the California Labor Code, including, but not limited to,
17 those sections for which Plaintiff seeks penalties under the PAGA.

18 On March 28, 2022, the Court ruled that Case No. 21STCV19161—the PAGA action—is
19 related to Case No. 21STC19267—the instant class action. Both matters were assigned to
20 Department 9 moving forward, with Case No. 21STC19267 being the lead case. Both matters
21 involve the same named parties; however, the PAGA matter includes an additional named
22 defendant: Novato Healthcare Center, LLC.¹⁰

23 On October 6, 2022, the Parties attended mediation with Jeffrey Krivis, Esq.¹¹ Although
24 mediation was unsuccessful, the Parties continued settlement negotiations.¹²

25 On November 2, 2022, Defendants filed a Motion to Compel Arbitration of Individual

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

27 ¹⁰ On June 10, 2024, the Court granted the Parties’ Joint Stipulation to dismiss the class claims, without prejudice.

28 ¹¹ Shaw Decl., ¶ 10.

¹² *Id.*

PAGA Claim and to Strike or Stay Non-Individual PAGA Claim (“Motion to Compel Arbitration”).

On November 18, 2022, Plaintiff propounded Form Interrogatories-General (Set One), Request for Production of Documents (Set One), Special Interrogatories (Sets One and Two), and Request for Admissions (Set One).¹³ Plaintiff also served two deposition notices for Defendant’s Person Most Knowledgeable.¹⁴

On December 20, 2022, Defendants responded to Plaintiff’s Form Interrogatories-General (Set One), Request for Production of Documents (Set One), Special Interrogatories (Sets One and Two), and Request for Admissions (Set One).¹⁵

On or about January 5, 2023, the Parties requested the matter be stayed pending *Adolph v. Uber Technologies* (Case No. S274671) (“*Adolph*”).

In preparation for the second mediation, the Parties agreed to engage in informal discovery and exchange information, data, and documents, including, but not limited to, a sampling for time and wage records from employees of Defendants prior to mediation.¹⁶

On February 8, 2024, the Parties participated in a second mediation conducted by Monique Ngo-Bonnici, a well-respected mediator experienced in mediating complex labor and employment matters.¹⁷ With the aid of the mediator, the Parties reached the Settlement described hereon.¹⁸

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.¹⁹

¹³ *Id.*,

¹⁴ *Id.*,

¹⁵ *Id.*

¹⁶ *Id.*, ¶ 10.

¹⁷ *Id.*, ¶ 13.

¹⁸ *Id.*

¹⁹ The Court is referred to the concurrently filed Proof of Service, which confirms submission of the papers to the LWDA.

1 **III. SUMMARY OF THE SETTLEMENT TERMS**

2 **A. Aggrieved Employees**

3 The Aggrieved Employees who are covered by the Settlement are:

4 All current and former hourly-paid or non-exempt employees who worked for
5 Defendants at Defendants' Novato Healthcare Center, LLC location in the State
6 of California during the PAGA Period.²⁰

7 Based on information provided by Defendants as of June 10, 2024, there are
8 approximately 340 Aggrieved Employees and 14,941 Compensable Pay Periods.²¹

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

10 Under the terms of the Settlement Agreement, Defendants will pay a Total Settlement
11 Amount of \$349,566.00, subject to possible increase pursuant to Section 3(b) of the Settlement
12 Agreement.²² The Net Settlement Amount will be the Total Settlement Amount less the
13 following amounts: (1) Attorneys' Fees and Costs consisting of attorneys' fees of \$122,348.10
14 and reimbursement of litigation costs and expenses of \$2,699.79 to Plaintiff's Counsel; (2)
15 General Release Fee of \$15,000.00 to Plaintiff; and (3) Settlement Administration Costs of up to
16 \$7,500.00 to Phoenix Settlement Administrators ("Phoenix" or "PAGA Settlement
17 Administrator").²³ The Net Settlement Amount will be fully distributed to the Aggrieved
18 Employees and the LWDA, as described in Part III.C, *infra*.

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

20 Within thirty (30) calendar days of the Court's order granting approval of the Settlement,
21 Defendant will transmit the Total Settlement Amount to a qualified settlement account
22 established by the PAGA Settlement Administrator for administration of the Settlement.²⁴ No
23 later than seven (7) calendar days after the Court's order granting approval of the Settlement,
24 Defendant shall provide the PAGA Settlement Administrator with a list of all Aggrieved
25 Employees (the "Aggrieved Employees List"), containing the following information for each

26 ²⁰ Settlement Agreement, § 3(a)(5).

27 ²¹ Settlement Agreement, § 3(b), and Shaw Decl., ¶ 9.

28 ²² Settlement Agreement, § 3(a)-(b), and Shaw Decl., ¶ 11.

²³ Shaw Decl., ¶ 11.

²⁴ Settlement Agreement, § 7(a).

Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) Social Security number; and (v) Compensable Pay Periods.²⁵

Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$151,513.58) will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount (or approximately \$50,504.53) (i.e., Employees' Portion) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods.²⁶ To calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (i) for each Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.²⁷ The payments to Aggrieved Employees for their Individual Settlement Shares are considered one hundred percent (100%) penalties to be reported on IRS Form 1099, if required.²⁸

No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail.²⁹ For each PAGA Settlement Package that is returned undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.³⁰

The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid

²⁵ *Id.*, § 7(c)(1).

²⁶ *Id.*, § 3(a)(5).

²⁷ *Id.*, § 7(b).

²⁸ *Id.*, §§ 3(c) & 7(b)(1).

²⁹ *Id.*, § 7(c)(3).

³⁰ *Ibid.*

for ninety (90) calendar days, and thereafter, shall be canceled.³¹ Funds associated with canceled checks shall be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual Settlement Share(s).³²

D. The Scope of the Release in the Settlement Agreement

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

The "Released Claims" are, to the full extent permitted by law, of and from the Action and from any and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business-related expenses and costs, in violation of California Labor Code sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 512(a), 551, 552, 558, 1174, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001, and 5-2001.³³

The "Released Parties" are Defendants and Rockport Administrative Services, LLC, including each of their parent corporations, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs.³⁴

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

³¹ *Id.*, § 7(c)(4).

³² *Ibid.*

³³ Settlement Agreement, § 8(a).

³⁴ *Ibid.*

1 such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior*
2 *Court* (2017) 3 Cal.5th 531, 546. “Unnamed employees need not be given notice of the PAGA
3 claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-*
4 *Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5. A
5 representative PAGA action need not satisfy class action requirements, and no due process
6 concern arises from the fact that there are “nonparty aggrieved employees who are not given
7 notice of, and an opportunity to be heard in, a representative action that is not brought as a class
8 action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other
9 potentially aggrieved employees parties” to the action and no “due process concerns arise under
10 PAGA because absent employees do not own a personal claim for PAGA civil penalties and
11 whatever personal claims the absent employees might have for relief are not at stake.” *Williams,*
12 *supra*, 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756,*
13 *AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation*
14 *Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

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

28 As such, the Settlement is consistent with the law, and there is no requirement that the

Aggrieved Employees be provided with a mechanism to opt out of or object to the Settlement.

IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT

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

The settlement of a PAGA action requires court approval. See Cal. Lab. Code § 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action” and therefore does not have to meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from, and simpler than, the process for approval of a class action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims.³⁵ 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*,

³⁵ Shaw Decl., ¶ 7.

1 *Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D.
2 Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal Nov. 27,
3 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576,
4 589.

5 In a PAGA case, the court’s focus is not the monetary amount which aggrieved
6 employees or the State stand to receive, but instead, whether the total settlement amount achieves
7 the PAGA’s objectives. The purpose of the PAGA is “to incentivize private parties to recover
8 civil penalties for the government that otherwise may not have been assessed and collected by
9 overburdened state enforcement agencies.” See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at
10 *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to
11 “be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers
12 and employees about their rights and responsibilities under this code, to be continuously
13 appropriated to supplement and not supplant the funding to the agency for those purposes.” See
14 Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by way of a PAGA
15 claim, is essentially a law enforcement action. See *Amalgamated, supra*, 46 Cal.4th at 1003
16 (stating that the PAGA is a mechanism for “an aggrieved employee to recover civil penalties—
17 for Labor Code violations—that otherwise would be sought by state labor law enforcement
18 agencies”); see also *Iskanian, supra*, at 381.

19 A PAGA settlement is a settlement of claims for penalties and other remedies which the
20 LWDA could assess and collect on behalf of employees without their involvement or approval.
21 “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the
22 ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010 WL
23 1340777, at *5. This renders the approval process of a PAGA settlement distinct from a class
24 action settlement, and the Court need not employ the two-step approval process that applies to a
25 class action settlement, under both state and federal law.

26 **V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

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

reasons discussed below.

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

The Parties reached the Settlement after conducting extensive, arm's-length negotiations, after a mediation with an experienced and respected mediator, Monique Ngo-Bonnici.³⁶ 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 adversarial, non-collusive, and arm's-length negotiations; (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters; and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claim, and of litigating this claim through trial.³⁷

In the course of litigation and after engaging in significant investigations, propounding formal and engaging in informal discovery, and undertaking the exchange of information, data and documents, the Parties participated in settlement negotiations to try to resolve the lawsuit.³⁸ The Parties participated in two formal mediations, including the second mediation conducted by Monique Ngo-Bonnici, a well-respected mediator.³⁹ In the course of mediation and settlement negotiations, the Parties discussed all aspects of the case, including the risks and delays of further litigation and proceeding with trial, as well as the law relating to representative PAGA actions, off-the-clock theory, meal and rest periods, reporting time pay, Industrial Wage Orders, exemptions, pre-emption, and wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other things.⁴⁰ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴¹

³⁶ Shaw Decl., ¶ 13.

³⁷ *Id.*, ¶¶ 3-7, 11-20.

³⁸ Shaw Decl., ¶ 14.

³⁹ *Id.*, ¶ 13.

⁴⁰ *Id.*, ¶¶ 13-14.

⁴¹ *Ibid.*

Based on all of the information available to the Parties, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim.⁴² Plaintiff and Plaintiff's Counsel believe that the settlement is a fair, adequate, and reasonable resolution of this matter.⁴³ Plaintiff's Counsel has extensive experience handling representative and class action wage-and-hour litigation and used that experience to achieve a settlement recovery for Plaintiff, the State of California, and the Aggrieved Employees.⁴⁴ Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness).

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

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

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

⁴² *Id.*, ¶ 19.

⁴³ *Id.*, ¶ 23.

⁴⁴ *Id.*, ¶¶ 3-7.

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

4 Defendants also maintained several defenses to Plaintiff's theory of liability, which, if
5 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
6 Throughout this litigation, Defendants maintained, and continues to maintain, that it had, and
7 continues to have, legally-compliant employment policies and practices throughout the time
8 period at issue.⁴⁵ Defendants denies that it ever violated any provision of the California Labor
9 Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the
10 PAGA.⁴⁶ Defendants further denied, and continues to deny, that the lawsuit is appropriate for
11 representative treatment for any purpose other than settlement.⁴⁷

12 Defendants also challenged Plaintiff's standing as an aggrieved employee and denied that
13 any of Defendants' other employees whom Plaintiff seeks to represent are aggrieved.⁴⁸ Also, at
14 the time that this case commenced, multiple courts had taken an approach requiring a plaintiff to
15 establish standing and face the possibility of bifurcation of discovery and/or trial of the PAGA
16 claim. See *Amalgamated Transit Union, supra*, 46 Cal.4th at 1001 (noting that PAGA
17 "require[s] a plaintiff to have suffered an injury resulting from an unlawful action"); *Stafford v.*
18 *Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding that judicial
19 economy supported bifurcation because of the difficulties and inherent uncertainties of being
20 able to establish liability with respect to a large number of potentially aggrieved employees and
21 noted that "PAGA's public purpose would be ill-served if the court finds [the plaintiff] has not
22 been aggrieved by a Labor Code violation"); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955
23 (stating that bifurcation and sequencing of litigation is allowed to avoid wasting time and money
24 on trial when litigation of issues could be rendered moot).

25 Defendants also argued that an important feature of PAGA is that the Court retains

26 ⁴⁵ Shaw Decl., ¶ 17.

27 ⁴⁶ *Ibid.*

28 ⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors). Defendants maintained, and continues to maintain, that they had and continue to have, legally-compliant employment policies and practices throughout the time period at issue.⁴⁹ Defendants deny that they ever violated any provision of the California Labor Code.⁵⁰ Even if, *arguendo*, such violations occurred, which Defendants denies, Defendants contended that said violations would only be considered “initial violations” and thus heightened “subsequent violation” penalties were not warranted. See Cal. Lab. Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 (“Until the employer has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”).

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

While Plaintiff disagrees with Defendants’ contentions and maintains that her PAGA claim has merit, in reaching the settlement, Plaintiff and her 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 upon appeal.⁵¹

⁴⁹ *Id.*, ¶ 18.

⁵⁰ *Ibid.*

⁵¹ *Id.*, ¶ 19.

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

2 Courts favor voluntary conciliation and settlement of complex litigation. *Class Plaintiffs*
3 *v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, “unless the settlement is
4 clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation
5 with uncertain results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan. 5,
6 2004) 221 F.R.D. 523, 526 (citation omitted).

7 Prior to reaching the Settlement, the Parties investigate the veracity, strength, and scope
8 of the PAGA claim and allegations.⁵² In addition, the Parties exchanged information,
9 documents, and data relevant to Plaintiff’s claim and Defendants’ defenses thereto, including,
10 and not limited to, Plaintiff’s personnel records, sampling of time and corresponding wage
11 records, a variety of Employee Policy documents, Arbitration Agreement(s), Authorization
12 Forms, Employee Handbook, among other documents.⁵³ Counsel for the Parties undertook
13 significant investigation, and also invested time reviewing and analyzing relevant information,
14 documents and data to evaluate Plaintiff’s claim and allegations, including, and not limited to,
15 calculating the potential monetary recovery under PAGA.⁵⁴ Other work performed by Plaintiff’s
16 Counsel included, but was not limited to: meeting and conferring with Defendants’ counsel
17 regarding the pleadings, case management, discovery, arbitration, the mediation, settlement
18 negotiations and settlement, among other issues; case strategy and analysis; drafting, reviewing,
19 and revising the pleadings, court filings, the mediation brief, settlement agreement, and
20 settlement approval motion papers; propounding written discovery requests and notices of
21 depositions of Defendants’ person most knowledgeable designees and reviewing Defendants’
22 responses and objections thereto; claims evaluation and analysis and preparing for mediation and
23 settlement negotiations; and appearing for court proceedings and participating in the mediation
24 and settlement negotiations.⁵⁵

25 Had the case not settled, the Parties would have conducted extensive additional formal

26 ⁵² *Id.*, ¶ 14.

27 ⁵³ *Id.*, ¶¶ 14 & 19.

28 ⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

discovery, including propounding additional written discovery requests as well as multiple depositions of party and percipient witnesses all over the State of California, motion practice on Defendants' motion to compel arbitration, and to prepare the case for trial. From the inception of this litigation, Defendants indicated that it would aggressively litigate this case.⁵⁶ Even if Defendants 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, Defendants has agreed to pay a Total Settlement Amount of \$349,566.00, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement, which encompasses the Net Settlement Amount, Attorneys' Fees and Costs, Settlement Administration Costs, and General Release Fee.⁵⁸ Subject to approval by the Court, the following amounts will be subtracted from the Total Settlement Amount to yield the Net Settlement Amount: (1) Attorneys' Fees and Costs consisting of attorneys' fees in the amount of \$122,348.10 and reimbursement of litigation costs and expenses in the amount of \$2,699.79 to Plaintiff's Counsel⁵⁹; (2) the Settlement Administration Costs of up to \$7,500.00; and (3) General Release

⁵⁶ *Id.*, ¶ 17.

⁵⁷ *Id.*, ¶¶ 13, 19.

⁵⁸ Settlement Agreement, §§ 3(a) & 3(a)(1)-(5).

⁵⁹ *Id.*, § 3(a)(1). Although the Settlement Agreement provides that Plaintiff's Counsel can seek up to \$25,000.00 for

(Footnote continued)

Fee of up to \$15,000.00 to Plaintiff.⁶⁰

The Net Settlement Amount is currently estimated to be \$202,018.11, of which an estimated \$50,504.53 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods and \$151,513.58 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

The Settlement is a compromise of highly disputed claims. Plaintiff and her counsel recognize the expense and length of continued proceedings necessary to litigate the matter through trial and any possible appeals.⁶¹ Plaintiff and her counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.⁶² Plaintiff and her counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendants' defenses thereto, and the difficulties in establishing Defendants' liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other Aggrieved Employees.⁶³ Plaintiff and her counsel have also taken into account Defendants' agreement to enter into a settlement that confers significant relief upon the Aggrieved Employees and the State of California.⁶⁴

Considering all of the facts in this case, Plaintiff and her 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

reimbursement of litigation costs and expenses, Plaintiff's Counsel only seeks the amount of \$2,699.79 for this payment, which is less than \$25,000.00. The difference between the amount sought and the maximum allocated amount available under the settlement (i.e., the difference of \$22,300.21), will be a part of the Net Settlement Amount.

⁶⁰ *Id.*, §§ 3(a)-3(a)(4), 3(b).

⁶¹ Shaw Decl., ¶ 19.

⁶² *Id.*, ¶¶ 16, 19, 23.

⁶³ *Id.*, ¶¶ 16 & 19.

⁶⁴ *Id.*, ¶ 13.

⁶⁵ *Id.*, ¶ 23.

1 compared trial court penalties assessments in contested cases⁶⁶ and the settlement of PAGA
2 claims in other cases⁶⁷.

3 Here, the value obtained for settlement of the PAGA claim is significant, and it will be
4 distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

5 **E. The Experience and Views of Plaintiff's Counsel Favor Approval of the**
6 **Settlement**

7 Plaintiff's Counsel is highly experienced in complex representative and class action
8 wage-and-hour litigation.⁶⁸ In the view of Plaintiff's Counsel, the benefits conferred by the
9 settlement are eminently fair and reasonable, and in the best interests of the State of California
10 and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation
11

12 ⁶⁶ *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp. 3d 1058, 1100-1101, 1103-1104, 1111 (finding that,
13 under Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA penalties as the Court sees fit" and
14 reducing the PAGA penalty award significantly from the maximum penalties possible); *Morales v Bridgestone*
15 *Retail Operations LLC* (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244 (of \$7 million PAGA
16 penalties requested, the court awarded \$425,000); *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517,
17 529 (of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based on
18 30,000 violations, which reduced the penalty rate to \$5 per violation); *Arnold v San Diego Second Chance Program*
19 (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375 (no PAGA penalties awarded); *Felczar v*
20 *Apple Inc.* (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593 (no PAGA penalties
21 awarded); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S.
22 Dist. LEXIS 48557 at *41 (the court declined to award PAGA penalties after trial); *Allen v American Multi-Cinema*
23 (July 24, 2016) Alameda County Superior Court No. RG11585502 (no PAGA penalties awarded); *Atempa v Pama*
24 (July 31, 2015) San Diego County Superior Court (of PAGA penalties of \$456,133 sought, the court awarded
25 \$197,434.00); *Driscoll v Granite Rock* (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426 (the
26 court declined to award PAGA penalties); *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S.
27 Dist. LEXIS 154590 at **8-9 (of \$2,800,000 PAGA penalties requested, the court awarded \$500,000); *Aguirre v*
28 *Genesis Logistics* (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820 at
**6-7 (of \$1,800,000 PAGA penalties requested, the court awarded \$500,000); *Halevi v Aroma Bakery Café, Inc.*,
Los Angeles County Superior Court No. 468146 (Aug. 30, 2013) (the court declined to award PAGA penalties after
trial awarding wages to class on the basis that, *inter alia*, the lawsuit was not prompted by availability of PAGA
penalties, penalties were not necessary to remedy ongoing or future violations, corporate defendants corrected
violations and were no longer in business, and plaintiffs did not offer evidence establishing imposition of penalties
on individual defendants would not be confiscatory).

⁶⁷ See, e.g., *DCH Auto Wage and Hour Cases* (May 2017) Los Angeles Superior Court, Case No. JCCP4833
(approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL
5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller,*
supra, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA
claims); *Chu, supra*, 2011 WL 672645, at *1 (approving the amount of \$10,000 out of \$6.9 million toward
settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of
\$2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no abuse of
discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of PAGA claims that
were at issue in the lawsuit).

⁶⁸ Shaw Decl., ¶¶ 3-7.

1 and the substantial monetary benefits provided for by the Settlement.⁶⁹ Furthermore, courts have
2 acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees
3 are largely aligned. All stand to gain from proving as convincingly as possible as many Labor
4 Code violations as the evidence will sustain[.]” *Williams, supra*, 548 (citing Cal. Lab. Code §
5 2699(g)(1)(i)).

6 **VI. THE PROPOSED ATTORNEYS’ FEES PAYMENT IS FAIR AND**
7 **REASONABLE, AND SHOULD BE APPROVED**

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

9 The Settlement provides for a Total Settlement Amount of \$349,566.00, subject to
10 possible increase pursuant to Section 3(b) of the Settlement Agreement.⁷⁰ The Settlement
11 provides for attorneys’ fees in an amount of up to thirty-five percent (35%) of the Total
12 Settlement Amount, which is \$122,348.10, subject to approval and award by the Court.⁷¹ The
13 requested attorneys’ fees award is commensurate with: (1) the risk that Plaintiff’s Counsel took
14 in bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the
15 skill and determination that Plaintiff’s Counsel has shown, (4) the results that Plaintiff’s Counsel
16 has achieved throughout the litigation, (5) the value that Plaintiff’s Counsel has achieved in the
17 case, and (6) the other cases that Plaintiff’s Counsel has turned down in order to devote its time
18 and effort to this case.

19 Plaintiff’s Counsel is entitled to recover reasonable attorneys’ fees and costs as a matter
20 of right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) (“Any employee who prevails in any
21 [PAGA] action shall be entitled to an award of reasonable attorney’s fees and costs”). Plaintiff’s
22 Counsel is also entitled to fees and costs under California Code of Civil Procedure section
23 1021.5, as the instant PAGA action is by definition “for the benefit” of others and secures
24 monetary recovery for a large number of Aggrieved Employees, as well as the State of
25 California. *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17

26
27 ⁶⁹ *Id.*, ¶ 23.

⁷⁰ Settlement Agreement, § 3(a)-(b).

28 ⁷¹ *Id.*, § 3(a)(1).

(recognizing that recovery obtained on behalf of 209 individuals satisfies the “significant benefit,” “public interest,” and “large class of persons” requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff’s personal motivation). 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

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

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

20 Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and circumstances
21 surrounding the case is well-within the range of reasonableness. Historically, courts have
22 awarded fees as high as fifty percent (50%) of the settlement in complex actions, depending on
23 the circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp.
24 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million total settlement amount);
25 *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195
26 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely
27 approve attorneys’ fees awards “average[ing] around one-third of the recovery.” *Chavez v.*
28 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency

1 fees in marketplace to be 20 to 40 percent and determined such a percentage fee was
2 appropriate).

3 Plaintiff's Counsel has litigated this case since it was commenced, with the very real
4 possibility of an unsuccessful outcome and no fee recovery of any kind.⁷² Counsel for the
5 Parties undertook significant investigation, and also invested time reviewing and analyzing
6 relevant information, documents, and data to evaluate the claims, including, and not limited to,
7 calculating the potential monetary recovery under PAGA.⁷³ Other work performed by Plaintiff's
8 Counsel included, but was not limited to: meeting and conferring with Defendants' counsel
9 regarding the pleadings, case management, discovery, arbitration, the mediation, and settlement,
10 among other issues; case strategy and analysis; drafting, reviewing, and revising the pleadings,
11 court filings, the mediation brief, settlement agreement, and settlement approval motion papers;
12 propounding written discovery requests and notices of depositions of Defendants' person most
13 knowledgeable designees and reviewing Defendants' objections and responses thereto; claims
14 evaluation and analysis and preparing for the mediation and settlement negotiations; and
15 appearing for court proceedings and participating in mediation, and settlement negotiations.⁷⁴

16 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation
17 and will not receive any compensation until recovery is obtained.⁷⁵ Plaintiff's Counsel is
18 experienced in complex wage-and-hour litigation and used that experience to obtain a settlement
19 recovery for Plaintiff, the Aggrieved Employees and the State of California.⁷⁶ Considering the
20 amount of fees requested, work performed, risks incurred, results obtained, and experience of
21 Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys'
22 fees are reasonable and should be awarded.

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26 ⁷² Shaw Decl., ¶ 23.

27 ⁷³ *Id.*, § 14.

28 ⁷⁴ *Ibid.*

⁷⁵ *Id.*, ¶ 21.

⁷⁶ *Id.*, ¶¶ 3-7.

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

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

It should be highlighted that the percentage award sought is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel's representation and the risks taken in commencing the Action, the skill and determination required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that Plaintiff's Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California. For the reasons discussed herein, an award of attorneys' fees in the amount of thirty-five percent (35%) of the Total Settlement Amount is reasonable.

1. Time & Labor

Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and its operations and employment policies, practices, and procedures.⁷⁷ During the litigation of the Action, Plaintiff's Counsel interviewed and obtained

⁷⁷ Shaw Decl., ¶ 14.

information from Plaintiff, Defendants, and other sources, conducted legal research, reviewed and analyzed documents and data, prepared for and attended mediation, evaluated the PAGA claim, and calculated the potential monetary recovery under PAGA.⁷⁸ Plaintiff's Counsel also met and conferred with Defendants' counsel regarding the pleadings, case management, discovery, arbitration, the mediation, and settlement, among other issues.⁷⁹ Plaintiff's Counsel performed other work including, *inter alia*, case strategy and analysis; drafting, reviewing, and revising the pleadings, court filings, the mediation brief, settlement agreement, and settlement approval motion papers; propounding written discovery requests and notices of depositions of Defendants' person most knowledgeable designees; claims evaluation and analysis and preparing for the mediation and settlement negotiations; and appearing for court proceedings and participating in mediation and settlement negotiations.⁸⁰

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

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

Plaintiff's Counsel's effort and skill were used to, among other things, investigate the allegations and gather facts, research the legal issues, analyze data and information obtained from Defendants, Plaintiff, and through other sources, evaluate the PAGA claim, and negotiate the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used its

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

1 extensive experience and skill in the handling of complex wage-and-hour matters to advocate for
2 and obtain Aggrieved Employees and the State of California a recovery now, with maximum
3 efficiency, as opposed to the possibility of recovery in the future, after significant expense and
4 time.⁸¹

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

6 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty
7 and risks of further litigation.⁸² Had the case not settled, Defendants would have vigorously
8 challenged manageability and liability, and sought a reduction in the amount assessed as
9 penalties. Defendants, however, faced risks too, including and not limited to, the risk of having
10 the Court assess penalties. Additionally, preparing the case for trial would have been
11 extraordinarily expensive for the Parties.

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

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

21 The representation provided by Plaintiff's Counsel has been wholly contingent and
22 Plaintiff's Counsel took on this matter without knowing whether any recovery would be
23 obtained. Plaintiff's Counsel is also requesting reimbursement of litigation costs and expenses in
24 the amount of \$2,699.79.⁸³

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27 ⁸¹ Shaw Decl., ¶¶ 16-20.

28 ⁸² *Id.*, ¶¶ 16-20, 23.

⁸³ *Id.*, ¶¶ 11, 21

1 In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will
2 not receive any compensation until recovery is obtained.⁸⁴ If Plaintiff's 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. Plaintiff's Counsel
5 is well-experienced in complex wage-and-hour litigation and used that experience to obtain a
6 great result for Plaintiff, the Aggrieved Employees, and the State of California.⁸⁵ The skill and
7 determination that Plaintiff's 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. Plaintiff's Counsel's efforts have resulted in a
15 settlement that provides for a Total Settlement Amount of \$349,566.00, subject to possible
16 increase pursuant to Section 3(b) of the Settlement Agreement, and it is currently estimated that
17 the Net Settlement Amount available for distribution to the Aggrieved Employees and the State
18 of California, as set forth in Part III.C *infra*, is approximately \$ 202,018.11.⁸⁶

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

20 Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its
21 attorneys employed their knowledge, skill, and experience to bring the case to a successful
22 conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation
23 experience, has recovered millions of dollars on behalf of thousands of individuals in California,
24 and has successfully handled numerous significant wage-and-hour class action and representative
25 action cases.⁸⁷

26 ⁸⁴ *Id.*, ¶ 21.

27 ⁸⁵ See Shaw Decl., ¶¶ 3-7.

28 ⁸⁶ Settlement Agreement, § 3(a)-(b).

⁸⁷ Shaw Decl., ¶¶ 3-7.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$25,000.00. As set forth in the Declaration of Brittany Shaw, Plaintiff’s Counsel seeks reimbursement of \$2,699.79 in litigation costs and expenses.⁸⁸ 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.⁸⁹ The cost savings of \$22,300.21 will be part of the Net Settlement Amount.⁹⁰ Accordingly, Plaintiff’s Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$2,699.79 to Plaintiff’s Counsel.

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

Although PAGA does not require notice to unnamed aggrieved employees of a settlement, the Parties prepared, and now present for the Court’s consideration and approval, the Cover Letter for transmission to the Aggrieved Employees along with their Individual Settlement Share check (together, PAGA Settlement Package), substantially in the form attached as “EXHIBIT 1” to the [Proposed] Order and Judgment and as “EXHIBIT A” to the Settlement Agreement. The Cover Letter informs the Aggrieved Employees about the Action and the Settlement. Accordingly, Plaintiff respectfully requests that the Court approve the Cover Letter for transmission to the Aggrieved Employees at the time of disbursing their Individual Settlement Shares.

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

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to

⁸⁸ Shaw Decl., ¶ 21.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

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

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

The Settlement provides for a General Release Fee to be paid to Plaintiff in the amount of \$15,000.00 in recognition of her efforts and work in spearheading the litigation of this matter, as well as for her broader individual waiver and release of claims with a California Civil Code Section 1542 waiver (set forth in Section 8(b) of the Settlement Agreement).⁹¹ 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

⁹¹ Settlement Agreement, § 3(a)(2).

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 her employment with her counsel, gathered and produced relevant documents and information, and provided the facts and evidence necessary to attempt to prove the allegations.⁹² For example, Defendant filed a Motion to Compel Arbitration where Plaintiff spent time reviewing and providing information and documents in response thereto.⁹³ Plaintiff was available whenever her counsel needed him and tried to obtain and provide documents and information that would aid in the litigation of the PAGA claims and pursuit of recovery on behalf of the State of California and Aggrieved Employees.⁹⁴

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

XI. CONCLUSION

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

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⁹² Shaw Decl., ¶ 23; Declaration of Kaili Ali ("Ali Decl."), ¶¶ 3-4.

⁹³ Shaw Decl., ¶ 23; Ali Decl., ¶¶ 3-4.

⁹⁴ Shaw Decl., ¶ 23; Ali Decl., ¶¶ 4-5.

1 Dated: September 13, 2024

LAWYERS for JUSTICE, PC

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3 By:  -
4 Brittany Shaw
5 Attorneys for Plaintiff
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