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

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

Plaintiff,

vs.

HARDIN AUTOMOTIVE, a California
corporation; HARDIN IRVINE
AUTOMOTIVE, INC., a California corporation;
GARDEN GROVE AUTOMOTIVE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 30-2021-01201227-CU-OE-CXC

Honorable Melissa R. McCormick
Department CX105

**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**

Reservation ID: 74774156
Date: April 16, 2026
Time: 2:00 PM
Department: CX105

Complaint Filed: May 17, 2021
Trial Date: None Set

**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**

1 **PLEASE TAKE NOTICE** that on April 16, 2026 at 2:00 PM, or as soon thereafter as the
2 matter may be heard before the Honorable Melissa R. McCormick in Department CX105 of the
3 Superior Court of the State of California, for the County of Orange, located at 751 West Santa
4 Ana Blvd, Santa Ana, CA 92701, Plaintiff Robert Truelove (“Plaintiff”) will and hereby does
5 move for 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 Defendants Hardin Automotive, Hardin Irvine
8 Automotive, Inc., and Garden Grove Automotive, Inc. (“Defendants”) of the claims
9 brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as set forth
10 in the Private Attorneys General Act Settlement Agreement and Release (“Settlement,”
11 “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the
12 Declaration of Charles T. Sweeny, including and not limited to, the plan of allocation
13 and 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 Plaintiff’s
16 Counsel, Settlement Administration Costs to the PAGA Settlement Administrator, and
17 General Release Fee to Plaintiff;
- 18 2. Approving the Net Settlement Amount, estimated to be no less than \$362,246.97, which
19 will be distributed to the LWDA and the Aggrieved Employees, pursuant to California
20 Labor Code section 2699(i), of which seventy-five percent (75%) will be paid to the
21 LWDA (“LWDA Payment”) and twenty-five percent (25%) will be paid to the
22 Aggrieved Employees (“Employees’ Portion”);
- 23 3. Appointing ILYM Group LLC (“ILYM Group”) as the PAGA Settlement
24 Administrator, to handle the administration of the Settlement;
- 25 4. Directing Defendants to transmit the Total Settlement Amount into a qualified
26 settlement account established by the PAGA Settlement Administrator for
27 administration of the Settlement, and directing the PAGA Settlement Administrator to
28

- 1 distribute the Total Settlement Amount in accordance with the Settlement Agreement;
- 2 5. Directing the mailing of Individual Settlement Share checks to the Aggrieved
- 3 Employees along with the Cover Letter, which is substantially similar in content and
- 4 form to that attached as “**EXHIBIT A**” to the [Proposed] Order and Judgment Granting
- 5 Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*)
- 6 Settlement Agreement and Award of Attorneys’ Fees and Costs, General Release Fee,
- 7 and Settlement Administration Costs (“[Proposed] Order and Judgement”) filed
- 8 concurrently herewith;
- 9 6. Awarding \$5,000.00 to Plaintiff Robert Truelove as his General Release Fee;
- 10 7. Awarding up to \$5,950.00 to the PAGA Settlement Administrator as Settlement
- 11 Administration Costs; and
- 12 8. Awarding to Lawyers *for* Justice, PC and Sweeny Law, PC (“Plaintiff’s Counsel”) the
- 13 amount of \$209,688.15 as compensation for reasonable attorneys’ fees and the amount
- 14 of up to \$16,223.88 for reimbursement of litigation costs and expenses (together,
- 15 “Attorneys’ Fees and Costs”), pursuant to California Labor Code section 2699(g)(1).

16 The Settlement Agreement and moving and supporting papers for this motion are being

17 concurrently submitted to the California Labor and Workforce Development Agency in

18 conformity with California Labor Code section 2699(l)(2).

19 This motion is made pursuant to California Labor Code section 2699(l)(2), which provides

20 for review and approval by the Court of the settlement of a civil action filed pursuant to PAGA,

21 and Rule 3.1113(e) of the California Rules of Court, which permits the Court to extend the page

22 limit for memoranda.

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26 This motion will be based upon the following Memorandum of Points and Authorities, the

27 Settlement Agreement, the Declarations of Plaintiff’s Counsel (Charles T. Sweeny and Brian J.

1 St. John) and Plaintiff Robert Truelove in support thereof, as well as the pleadings and other
2 records on file with the Court in this matter, and such evidence and oral argument as may be
3 presented at the hearing on this motion.

4 Dated: February 10, 2026

SWEENY LAW, PC

5
6 By: 
7 Charles T. Sweeny
8 *Counsel for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Plaintiff Robert Truelove (“Plaintiff”) seeks approval of the Private Attorneys General
4 Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement
5 Agreement”) entered into between Plaintiff, individually and on behalf of the State of California
6 with respect to Aggrieved Employees, and Defendants Hardin Automotive, Hardin Irvine
7 Automotive, Inc., and Garden Grove Automotive, Inc. (“Defendants”), pursuant to California
8 Labor Code section 2699(1)(2).¹

9 Subject to approval by the Court, Plaintiff and Defendants (together, the “Parties”) have
10 agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General
11 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Total Settlement
12 Amount of Five Hundred Ninety Nine Thousand One Hundred and Nine Dollars and Zero Cents
13 (\$599,109.00), subject to possible increase pursuant to Section 3(a)(5) of the Settlement
14 Agreement.²

15 The Total Settlement Amount is inclusive of: (1) Attorneys’ Fees and Costs to be paid to
16 Lawyers *for* Justice, PC and Sweeny Law, PC (“Plaintiff’s Counsel”), (2) General Release Fee to
17 Plaintiff, (3) Settlement Administration Costs to be paid to the PAGA Settlement Administrator,
18 and (4) Net Settlement Amount to be paid to the California Labor and Workforce Development
19 Agency (“LWDA”) and all current and former hourly-paid or non-exempt individuals employed
20 by Defendants within the State of California at any time during the PAGA Period (“Aggrieved
21 Employees”).³

22 The Net Settlement Amount will be the Total Settlement Amount less the Court-approved
23 Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee; the Net
24

25 ¹ The Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement”) is attached as
26 “**EXHIBIT 1**” to the Declaration of Charles T. Sweeny.

27 ² Settlement Agreement, § 3(a) (“If the actual number of Compensable Pay Periods during the PAGA Period is
28 more than five percent (5%) above 25,494, Defendants will have the option to either increase the Total Settlement
Amount by the percentage that the actual number exceeds 26,769 or shorten the PAGA Period to when the
Compensable Pay Periods reach 25,494.”). *Id.*, § 3(a)(5).

³ Settlement Agreement, §§ 3(a)(1)-(5). “PAGA Period” is defined as the period of March 12, 2020 through March
28, 2025. Settlement Agreement, § 3(a)(5).

1 Settlement Amount is currently estimated to be no less than \$362,246.97, subject to possible
2 increase pursuant to Section 3(a)(5) of the Settlement Agreement.⁴ The Net Settlement Amount
3 will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and
4 twenty-five percent (25%) to the Aggrieved Employees (“Employees’ Portion”).⁵ Each
5 Aggrieved Employee will be entitled to payment of his or her *pro rata* share of the Employees’
6 Portion, based upon the number of pay periods they each worked during the period March 12,
7 2020 to March 28, 2025 (“Compensable Pay Periods”).⁶

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

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

20 In order to efficiently present the Court with adequate information to determine whether
21 to grant approval of the Settlement in conformity with California Labor Code section 2699(l)(2),
22 Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds
23

24 ⁴ Settlement Agreement, §§ 3(a)(4) and 3(a)(5). Although the Settlement Agreement provides that the PAGA
25 Settlement Administrator can seek up to \$15,000.00 for reimbursement of settlement costs and expenses, the PAGA
26 Settlement Administrator has estimated the amount of Settlement Administration Costs will be approximately
27 \$9,050.00 *less than* the agreed-upon amount, namely, \$5,950.00. (*See*, Declaration of Charles T. Sweeny (“Sweeny
28 Decl.”) ¶¶ 23 & 36, Ex. 3). Similarly, although the Settlement Agreement allows for Attorneys’ Costs of up to
\$20,000.00, Plaintiff’s Counsel are only requesting reimbursement of \$16,223.88 in costs. (*See*, Declaration of
Brian J. St. John (“St. John” Decl.”), at ¶ 20, Exh. 3). These savings are added to the Net Settlement Amount.

⁵ Settlement Agreement, § 3(a)(5).

⁶ Settlement Agreement, § 7(b).

⁷ Settlement Agreement, § 7(b)(1).

the page limit established by California Rules of Court, Rule 3.1113(d).

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendants are located in Orange County, California and operate car dealerships where they sell new and used cars and provide full maintenance services for their customers. During the relevant time period, Defendants operated multiple locations in California. Plaintiff Robert Truelove is one of Defendants' former employees.⁸

Prior to commencing this lawsuit, on May 17, 2021, as required by California Labor Code section 2699.3, Plaintiff Robert Truelove provided the LWDA and Defendants with written notice of his intent to assert a claim for civil penalties under PAGA and the basis for the claim, to which the LWDA did not respond ("PAGA Notice").⁹ A true and correct copy of Plaintiff's March 12, 2021 PAGA Notice is attached to the Declaration of Brian J. St. John as "**EXHIBIT 1.**"¹⁰

On May 17, 2021, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint") against Defendants in the Orange County Superior Court ("Court"), Case No. 30-2021-01201227-CU-OE-CXC (the "Action").¹¹ Plaintiff's core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and other Aggrieved Employees, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide compliant meal and rest periods and associated premiums, failing to pay timely wages during employment and upon termination of employment, failing to provide complete and accurate itemized wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.¹²

On July 7, 2021, Defendants filed an Answer to the Operative Complaint. Defendants maintained, and continue to maintain, that they had, and continue to have, legally-compliant employment policies and practices throughout the time period at issue.¹³ Defendants deny that

⁸ Sweeny Decl., ¶ 7.

⁹ St. John Decl., ¶ 9, Exh. 1.

¹⁰ St. John Decl., ¶ 9, Exh. 1.

¹¹ Sweeny Decl., ¶ 8.

¹² Sweeny Decl., ¶ 8.

¹³ Sweeny Decl., ¶ 8.

1 they ever violated any provision of the California Labor Code, including, but not limited to, those
2 sections for which Plaintiff seeks penalties under the PAGA.¹⁴

3 On August 19, 2021, Plaintiff propounded multiple sets of written discovery requests on
4 Defendants, including Requests for Production of Documents, (Set One); Special Interrogatories
5 (Sets One & Two), and Form Interrogatories—General (Set One), and noticed the deposition of
6 Defendants’ persons most knowledgeable regarding Defendants’ document retention practices,
7 organizational structure, and wage and hour practices (along with requests for production of
8 documents).¹⁵

9 This case was originally slated for mediation several times, but following the then-recently
10 decided *Viking River Cruises v. Moriana, Inc.* (2022) 142 S. Ct. 1906 (“*Viking River*”), Defendant
11 filed a motion to compel Plaintiff’s individual PAGA claims to arbitration and dismiss or stay the
12 non-individual PAGA claims (the “MTCA”).¹⁶ Shortly after *Viking River* was decided, but before
13 the Court held a hearing on the MTCA, the California Supreme Court granted review in *Adolph*
14 *v. Uber Technologies* (Case No. S274671) (“*Adolph*”) in order to determine whether *Viking River*
15 erred on state law grounds when it decided that non-individual PAGA claims can be dismissed for
16 lack of standing if individual PAGA claims were compelled to arbitration.¹⁷

17 Thus, in September 2022, the Parties stipulated to stay this case and take the MTCA off
18 calendar pending the outcome of *Adolph* or a further stipulation of the Parties.¹⁸ The Parties
19 stipulated to continue the stay twice more, first on March 17, 2023, and again on June 14, 2023,
20 both times because *Adolph* had by then not yet been decided.¹⁹ In September 2023, the Parties
21 agreed to mediation but requested the Court lift the stay, which was granted.²⁰ Plaintiff
22 propounded further written discovery and after several mediation date changes and cancellations,
23 the Parties were able to participate in mediation in 2025.²¹

24
25 ¹⁴ Sweeny Decl., ¶ 9.

¹⁵ Sweeny Decl., ¶ 10.

¹⁶ Sweeny Decl., ¶¶ 11-12.

¹⁷ Sweeny Decl., ¶ 12.

¹⁸ Sweeny Decl., ¶ 12.

¹⁹ Sweeny Decl., ¶ 12.

²⁰ Sweeny Decl., ¶ 13.

²¹ Sweeny Decl., ¶¶ 14-17.

1 On March 28, 2025, the Parties participated in a full-day mediation conducted by Steve
2 Pearl, Esq. a well-respected mediator experienced in mediating complex labor and employment
3 matters.²² The Parties did not reach a settlement at the mediation.²³

4 On April 1, 2025, Plaintiff filed and served a Motion to Compel all Defendants to Provide
5 Responses to Plaintiff's Special Interrogatories (Set One) Nos. 1 and 2, and Request for Monetary
6 Sanctions (the "Discovery Motion").²⁴ That same day, Plaintiff served Defendants with a 21-day
7 Safe Harbor Notice of Motion for Sanctions under Code of Civil Procedure section 128.7, based
8 on the argument that the MTCA – which the Parties had agreed to table pending mediation – was
9 objectively without merit under *Duran v. EmployBridge Holding Company* (2023) 92 Cal.App.5th
10 59 ("Duran") and *Mondragon v. Sunrun Inc.* (2024) 101 Cal.App.5th 592 ("Mondragon")
11 because the alleged arbitration agreements that accompanied the MTCA expressly do not apply to
12 PAGA claims.²⁵

13 The Parties thereafter continued to engage with the mediator, and, with his further
14 assistance, the Parties reached the Settlement that is described herein via a mediator's proposal.²⁶

15 On May 29, 2025, the Parties informed the Court of their tentative settlement and
16 requested that the hearing on the Discovery Motion be vacated.²⁷

17 After lengthy post-mediation negotiations, Plaintiff now moves for an order granting
18 approval of the Settlement pursuant to California Labor Code section 2699(1)(2).²⁸ The Settlement
19 Agreement and moving and supporting papers for this motion are being submitted to the LWDA
20 in conformity with California Labor Code section 2699(1)(2), concurrently with this filing.²⁹

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24 ²² Sweeny Decl., ¶ 17.

25 ²³ Sweeny Decl., ¶ 17.

26 ²⁴ Sweeny Decl., ¶ 18.

27 ²⁵ Sweeny Decl., ¶ 18.

28 ²⁶ Sweeny Decl., ¶ 17-19

²⁷ Sweeny Decl., ¶ 20.

²⁸ Sweeny Decl., ¶ 21, fn. 1.

²⁹ The Court is referred to the concurrently filed Proof of Service, which confirms submission of the papers to the LWDA; see also Settlement Agreement, § 12.

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

2 **A. Aggrieved Employees**

3 The Settlement pertains to the following allegedly aggrieved employees:

4 All current and former hourly-paid or non-exempt individuals employed by
5 Defendants within the State of California at any time during the PAGA Period.³⁰

6 Based on information provided by Defendants, there are approximately Seven Hundred
7 Sixteen (716) Aggrieved Employees who worked approximately Twenty-Five Thousand Four
8 Hundred Ninety-Four (25,494) Compensable Pay Periods during the PAGA Period.³¹

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

10 Under the terms of the Settlement Agreement, Defendants will pay a Total Settlement
11 Amount of Five Hundred Ninety Nine Thousand One Hundred and Nine Dollars and Zero Cents
12 (\$599,109.00), subject to possible increase pursuant to Section 3(a)(5) of the Settlement
13 Agreement.³² Within fourteen (14) calendar days of the Court's order granting approval of the
14 Settlement, Defendants will transmit the Total Settlement Amount to a qualified settlement
15 account established by the PAGA Settlement Administrator for administration of the Settlement.³³

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

17 The Net Settlement Amount will be the Total Settlement Amount less the following
18 amounts: (1) Attorneys' Fees and Costs consisting of attorneys' fees of \$209,688.15 and
19 reimbursement of litigation costs and expenses of up to \$16,223.88 to Plaintiff's Counsel; (2)
20 General Release Fee of \$5,000.00 to Plaintiff; and (3) Settlement Administration Costs of up to
21 \$5,950.00 to ILYM Group LLC ("ILYM" or "PAGA Settlement Administrator").³⁴ The Net
22 Settlement Amount will be fully distributed to the Aggrieved Employees and the LWDA.

23 No later than seven (7) calendar days after the Court's order granting approval of the
24 Settlement, Defendants will provide the PAGA Settlement Administrator with a list of all
25 Aggrieved Employees ("Aggrieved Employees List"), containing the following information for

26 ³⁰ Settlement Agreement, § 3(a)(5); Sweeny Decl., ¶ 22.

27 ³¹ Sweeny Decl., ¶ 22.

28 ³² Settlement Agreement, § 3(a); *see also* Sweeny Decl., ¶ 23.

³³ Settlement Agreement, § 7(a).

³⁴ *See, supra*, fn. 4.

each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) Social Security number; and (v) and number of Compensable Pay Periods worked by each Aggrieved Employee during the PAGA Period.³⁵

Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$271,685.23) will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount (or approximately \$90,561.74) (i.e., Employees' Portion) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods.³⁶ To calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator will: (1) 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.³⁷ The payments to Aggrieved Employees for their Individual Settlement Share are considered one hundred percent (100%) penalties to be reported on IRS Form 1099, if required.³⁸

No later than seven (7) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator will mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package(s)") to all Aggrieved Employees by first-class United States mail.³⁹ For each PAGA Settlement Package that is returned as undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator will 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.⁴⁰

No later than fourteen (14) calendar days after receipt of the Aggrieved Employees List

³⁵ Settlement Agreement, § 7(c)(1).

³⁶ Settlement Agreement, § 3(a)(5).

³⁷ Settlement Agreement, § 7(b).

³⁸ Settlement Agreement, §§ 3(a)(6) & 7(b)(1).

³⁹ Settlement Agreement, § 7(c)(3).

⁴⁰ Settlement Agreement, § 7(c)(3).

1 and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA
2 Payment to the LWDA, the General Release Fee to Plaintiff, the Settlement Administration Costs
3 to itself, only after the PAGA Settlement Packages have been mailed to all Aggrieved Employees,
4 the Attorneys' Fees and Costs, unless instructed otherwise by Plaintiff's Counsel, as provided for
5 by this Order and Judgment and the Settlement Agreement.⁴¹

6 The Individual Settlement Share checks issued to Aggrieved Employees will remain valid
7 for ninety (90) calendar days, and thereafter, will be canceled.⁴² Funds associated with canceled
8 checks will be transmitted to the State Controller's Office Unclaimed Property Division in the
9 name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual
10 Settlement Share(s).⁴³

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

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

17 The "Released Claims" are any and all claims, arising during the PAGA Period, for
18 civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well
19 as any interest, fees, and costs available under PAGA, including but not limited to,
20 for failure to pay minimum, regular, and overtime, failure to provide compliant meal
21 periods and associated premiums, failure to provide compliant rest periods and
22 associated premiums, failure to timely pay wages during employment, failure to
23 timely pay wages upon termination, failure to provide compliant and accurate wage
24 statements, failure to maintain complete and accurate payroll records, 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, 1197.1, 1198, 2800, and 2802 and Industrial Welfare
Commission Wage Orders, including inter alia, Wage Orders 1-2001, 4-2001, 7-
2001, and 9-2001.⁴⁴

25 The "Released Parties" are Defendants, including Defendants' parent corporation,
26 franchisees, affiliates, subsidiaries, divisions, predecessors, insurers, successors and

27 ⁴¹ Settlement Agreement, §§ 7(c)(3)(d)-(g)

28 ⁴² Settlement Agreement, § 7(c)(4).

⁴³ Settlement Agreement, § 7(c)(4).

⁴⁴ Settlement Agreement, § 8(a).

1 assigns, and their current and former employees, attorneys, officers, directors and
2 agents thereof, both individually and in their business capacities, and their employee
3 benefit plans and programs and the trustees, administrators, fiduciaries and insurers
4 of such plans and programs.⁴⁵

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

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

21 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
22 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v.*
23 *Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29
24 Cal, 3d 462, 474.) A “judgment in such an action is binding not only on the named employee
25 plaintiff but also on government agencies and any aggrieved employee not a party to the
26 proceeding” because “the employee plaintiff represents the same legal right and interest as state
27 labor law enforcement agencies[.]” “collateral estoppel applies [...] against those for whom the
28 party acted as an agent or proxy[.]” and “[w]hen a government agency is authorized to bring an

⁴⁵ Settlement Agreement, § 8(a).

1 action on behalf of an individual or in the public interest, and a private person lacks an independent
2 right to bring the action, a person who is not a party but who is represented by the agency is bound
3 by the judgment as though the person were a party.” *Arias, supra*, at 985-86 (citations omitted);
4 see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (aggrieved employee
5 cannot opt out of a PAGA settlement).

6 As such, the Settlement is consistent with the law, and there is no requirement that the
7 Aggrieved Employees be provided with a mechanism to opt out of or object to the Settlement.⁴⁶

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

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

15 The settlement of a PAGA action requires court approval. *See* Cal. Lab. Code § 2699(l)(2)
16 (“The superior court shall review and approve any settlement of any civil action filed pursuant to
17 this part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
18 considered a class action but a law enforcement action” and therefore does not have to meet the
19 requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012
20 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL
21 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff
22 need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.*
23 (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA
24 settlement involves analysis of several unique features that render the approval process distinct
25 from, and simpler than, the process for approval of a class action settlement. A court reviewing a
26 PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those affected.”

27
28 ⁴⁶ Settlement Agreement, § 8(c).

1 *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(1)(2)). Although California Labor Code
2 section 2699(1) does not set forth the criteria on which a PAGA settlement is to be judged, courts
3 have approved settlements of PAGA claims. See, e.g., *Resendez v. Bridgestone Retail Operations,*
4 *LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto Wage and Hour*
5 *Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking*
6 (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David's Bridal, Inc.* (E.D. Cal.
7 June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16,
8 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal Nov. 27, 2012) 2012 WL
9 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576, 589.

10 In a PAGA case, the court's focus is not the monetary amount which aggrieved employees
11 or the State stand to receive, but instead, whether the total settlement amount achieves the PAGA's
12 objectives. The purpose of the PAGA is "to incentivize private parties to recover civil penalties
13 for the government that otherwise may not have been assessed and collected by overburdened
14 state enforcement agencies." See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *4 (citing
15 *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to "be
16 distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers and
17 employees about their rights and responsibilities under this code, to be continuously appropriated
18 to supplement and not supplant the funding to the agency for those purposes." See Cal. Lab. Code
19 § 2699(j). The recovery of penalties on behalf of the State, by way of a PAGA claim, is essentially
20 a law enforcement action. See *Amalgamated, supra*, 46 Cal. 4th at 1003 (stating that the PAGA
21 is a mechanism for "an aggrieved employee to recover civil penalties—for Labor Code
22 violations—that otherwise would be sought by state labor law enforcement agencies"); see also
23 *Iskanian, supra*, at 381.

24 A PAGA settlement is a settlement of claims for penalties and other remedies which the
25 LWDA could assess and collect on behalf of employees without their involvement or approval.
26 "[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
27 to opt-out of the representative PAGA claim." *Ochoa-Hernandez, supra*, 2010 WL 1340777, at
28

*5. This renders the approval process of a PAGA settlement distinct from a class action settlement, and the Court need not employ the two-step approval process that applies to a class action settlement, under both state and federal law.

V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

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

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

The Parties reached the Settlement after conducting extensive, arm's-length settlement negotiations and the involvement of a neutral mediator, Steve Pearl, Esq.⁴⁷ 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 with the assistance of an independent mediator knowledgeable in complex labor and employment matters; (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters; and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claim, and risks and expenses of litigating this claim through trial.⁴⁸

In the course of litigation and after engaging in significant investigations, formal and informal discovery, and the exchange of information, data and documents, including an approximately 1/3rd sample of Aggrieved Employees' time and pay data across the PAGA Period, the Parties participated in extensive settlement discussions and negotiations to try to resolve the lawsuit.⁴⁹ These efforts included participating in a formal mediation conducted by Steve Pearl, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁵⁰ In the course of mediation and settlement negotiations (including after mediation

⁴⁷ St. John Decl., ¶ 6; Sweeny Decl., ¶ 31.

⁴⁸ St. John Decl., ¶¶ 5-6 & 22; Sweeny Decl., ¶¶ 24-31 & 38.

⁴⁹ St. John Decl., ¶¶ 2-6; Sweeny Decl., ¶¶ 24-31.

⁵⁰ St. John Decl., ¶ 6; Sweeny Decl., ¶ 31.

wherein settlement negotiations continued with the assistance of the mediator), 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, regular rate, meal and rest periods, unreimbursed business expenses, arbitration agreements/clauses, 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.⁵¹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁵²

Based on all of the information available, Plaintiff's Counsel submits that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim and the facts and circumstances of the case.⁵³ Plaintiff and Plaintiff's Counsel believe that the settlement is a fair, adequate, and reasonable resolution of this matter.⁵⁴ Plaintiff's Counsel have 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.⁵⁵ Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of arm's length bargaining. 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); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

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

In order for Plaintiff to prevail on the PAGA claim, he would have to prove that Defendant

⁵¹ St. John Decl., ¶ 6; Sweeny Decl., ¶ 25.

⁵² St. John Decl., ¶ 6; Sweeny Decl., ¶ 31.

⁵³ St. John Decl., ¶¶ 6 & 22; Sweeny Decl., ¶ 31.

⁵⁴ St. John Decl., ¶ 22; Sweeny Decl., ¶ 38.

⁵⁵ St. John Decl., ¶¶ 14-19; Sweeny Decl., ¶¶ 2-6.

engaged in the alleged California Labor Code violations and demonstrate that Defendant's 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 have systematically violated the California Labor Code, with respect to Plaintiff and the Aggrieved Employees, by, *inter alia*, failing to properly pay all wages, including minimum wages, overtime wages, and double time 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.⁵⁶

Although wage-and-hour actions are amenable to resolution as to a group of employees, some courts have also found that, for various reasons, the issues raised by Plaintiff raises individualized issues and/or are not suitable for adjudication as to a group of employees.⁵⁷

Defendants 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, Defendants maintained, and continue to maintain, that they had, and continue to have, legally-compliant employment policies and practices throughout the time period at issue.⁵⁸ Defendants deny that they ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.⁵⁹ Defendants further denied, and continue to deny, that the lawsuit is appropriate for representative treatment for any purpose other than settlement.⁶⁰

Defendants also challenged Plaintiff's standing as an aggrieved employee and denied that

⁵⁶ Sweeny Decl., ¶ 8.

⁵⁷ Sweeny Decl., ¶ 26.

⁵⁸ Sweeny Decl., ¶ 28.

⁵⁹ Sweeny Decl., ¶ 28.

⁶⁰ Sweeny Decl., ¶ 28.

1 any of their other employees whom Plaintiff seeks to represent are aggrieved.⁶¹ Also, multiple
2 courts have taken an approach requiring a plaintiff to establish standing and face the possibility of
3 bifurcation of discovery and/or trial of the PAGA claim. *See Amalgamated Transit Union, supra*,
4 46 Cal.4th at 1001 (noting that PAGA “require[s] a plaintiff to have suffered an injury resulting
5 from an unlawful action”); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014
6 WL 6633396, at *4 (finding that judicial economy supported bifurcation because of the difficulties
7 and inherent uncertainties of being able to establish liability with respect to a large number of
8 potentially aggrieved employees and noted that “PAGA’s public purpose would be ill-served if
9 the court finds [the plaintiff] has not been aggrieved by a Labor Code violation”); *Horton v. Jones*
10 (1972) 26 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of litigation is allowed to
11 avoid wasting time and money on trial when litigation of issues could be rendered moot).

12 Defendants also argued that an important feature of PAGA is that the Court retains
13 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to
14 do otherwise would result in an award that is “unjust, arbitrary and oppressive, or
15 confiscatory.” *See* Cal. Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit*
16 *Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the
17 amount of PAGA penalties awarded to an employee based upon discretionary factors).
18 Defendants maintained, and continue to maintain, that they had and continue to have, legally-
19 compliant employment policies and practices throughout the time period at issue.⁶² Defendants
20 deny that they ever violated any provision of the California Labor Code.⁶³ Even if, *arguendo*,
21 such violations occurred, which Defendants deny, Defendants contended that said violations
22 would only be considered “initial violations” and thus heightened “subsequent violation”
23 penalties were not warranted. *See* Cal. Lab. Code § 2699(f)(2); *see also Amaral v. Cintas Corp.*
24 *No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 (“Until the employer has been notified that it is
25 violating a Labor Code provision [...], the employer cannot be presumed to be aware that its
26

27 ⁶¹ Sweeny Decl., ¶ 30.

28 ⁶² Sweeny Decl., ¶ 28.

⁶³ Sweeny Decl., ¶ 28.

continuing underpayment of employees is a ‘violation’ subject to penalties.”).

Defendants also contended that, with respect to PAGA claims, trial courts are 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.

There remains uncertainty regarding PAGA claims due to decisions of the high courts and recent amendment of the PAGA statute. For example, there is uncertainty and tension between, on the one hand, the United States Supreme Court’s 2022 decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906 (“*Viking River*”), which allowed trial courts to divide a PAGA claim into “individual” and “non-individual” components, and to compel the “individual” components to arbitration, and, on the other hand, the California Supreme Court’s 2023 decision in *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 (“*Adolph*”), which held that even when a PAGA plaintiff’s “individual” PAGA claims are compelled to arbitration, that plaintiff still maintains statutory standing to pursue “non-individual” PAGA claims arising out of events involving other employees.

Indeed, after the *Viking River* decision was issued, Defendant filed a motion to compel Plaintiff’s individual PAGA claims to arbitration and dismiss or stay the non-individual PAGA claims (the “MTCA”).⁶⁴ But after the California Supreme Court granted review in *Adolph* in order to determine whether *Viking River* erred on state law grounds, the Parties stipulated to stay this case and take the MTCA off calendar pending the outcome of *Adolph*.⁶⁵

Moreover, while Plaintiff believed that additional case authority, e.g., *Duran v. EmployBridge Holding Company* (2023) 92 Cal.App.5th 59 and *Mondragon v. Sunrun Inc.* (2024) 101 Cal.App.5th 592 foreclosed Defendants’ ability to compel his claims to arbitration, Defendants disagreed. There now continues to be substantial uncertainty in the relevant case

⁶⁴ Sweeny Decl., ¶ 12.

⁶⁵ Sweeny Decl., ¶ 12.

1 authorities about whether an arbitrator’s finding that a PAGA plaintiff is not an “aggrieved
2 employee” for PAGA purposes, may, if reduced to a final judgment, warrant a trial court
3 determination that the plaintiff loses standing to pursue non-individual PAGA claims. In addition,
4 the California Supreme Court is currently reviewing a split of appellate authorities on the question
5 of whether a PAGA plaintiff even needs to bring individual claims at all, or whether he or she can
6 proceed only as to the non-individual PAGA claims on behalf of other Aggrieved Employees,
7 known as a “headless” PAGA action. (*See, Leeper v. Shipt* (2025) 566 P.3d 234, Case No,
8 S289305, granting review of *Leeper v. Shipt* (2024) 107 Cal.App.5th 1001, 1005 [holding that if
9 a former employee who entered into an enforceable agreement to arbitrate PAGA claims with
10 his/her employer attempts to bring a headless PAGA action against that employer, the trial court
11 may still compel individual arbitration because “every PAGA action necessarily includes and
12 individual PAGA claim”]; *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533
13 [holding that PAGA standing does not “depend on the viability or strength of a plaintiff’s
14 individual PAGA claim,” which means that PAGA plaintiffs do not necessarily need to assert an
15 individual, arguably arbitrable, PAGA claim, in order to bring PAGA actions on behalf of other
16 Aggrieved Employees], and *CRST Expedited, Inc. v. Superior Ct.* (2025) 112 Cal. App. 5th 872
17 (same, and review granted but stayed pending review of *Leeper v. Shipt*).

18 While Plaintiff disagrees with Defendants’ contentions and maintains that his PAGA claim
19 has merit and that Defendants cannot require him to arbitrate his “individual” PAGA claim, in
20 reaching the settlement, Plaintiff and his counsel took into account the strengths and weaknesses
21 of each side’s position and the uncertainty of how the case might have concluded as litigation
22 continued, through arbitration and post-arbitration motions, and at trial, and/or upon appeal.⁶⁶

23 Furthermore, the recent amendment of the PAGA statute enacted on July 1, 2024,
24 adopting, *inter alia*, modified standing requirements, codifying a manageability requirement,
25 capping civil penalties that can be assessed against an employer if an employer meets certain
26 conditions, and allowing an employer to cure violations to avoid the assessment of civil penalties

27
28 ⁶⁶ Sweeny Decl., ¶ 31.

1 if an employer meets certain conditions, has created uncertainty regarding the future of claims for
2 civil penalties under PAGA.

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

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

9 Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope
10 of the PAGA claim and allegations.⁶⁷ In addition, the Parties exchanged a volume of information,
11 documents, and data relevant to Plaintiff’s claims and Defendants defenses thereto, including, and
12 not limited to, the employment records of Plaintiff, time and pay data for Aggrieved Employees,
13 constituting an approximately 1/3rd sample across the PAGA Period, multiple iterations of
14 Defendants’ Employee Handbook, Arbitration Agreements(s), Meal Break Waivers, Sample
15 Attestation Forms, Meal Break Premiums, and Defendants’ operations and employment practices,
16 policies, and procedures, among other documents.⁶⁸ Counsel for the Parties undertook significant
17 investigation, and also invested time reviewing and analyzing relevant information, documents,
18 and data to evaluate the PAGA claim and related allegations, including, and not limited to,
19 calculating the potential monetary recovery under PAGA.⁶⁹ Other work performed by Plaintiff’s
20 Counsel included, but was not limited to: meeting and conferring with Defendants’ counsel
21 regarding the pleadings, case management, discovery, arbitration, mediation, and settlement
22 negotiations, among other issues; case strategy and analysis; researching, drafting, reviewing, and
23 revising pleadings, court filings, motion-related papers (e.g., with respect to a motion to compel
24 arbitration, discovery motions, and settlement approval motion papers), briefs for settlement
25 negotiations and mediation, and the settlement agreement; propounding written discovery requests
26

27 ⁶⁷ St. John Decl., ¶¶ 4-6; Sweeny Decl., ¶ 24.

28 ⁶⁸ St. John Decl., ¶ 4; Sweeny Decl., ¶ 24.

⁶⁹ St. John Decl., ¶ 4; Sweeny Decl., ¶ 25.

1 and notices of depositions of Defendants' persons most knowledgeable designees and reviewing
2 Defendants' objections and responses thereto; claims evaluation and analysis; preparing for and
3 participating in settlement negotiations and the mediation; preparing the Discovery Motion;
4 preparing a Notice of Motion for Sanctions under Code of Civil Procedure section 128.7; and
5 appearing for court proceedings.⁷⁰

6 Had the case not settled, the Parties would have conducted extensive additional formal
7 discovery, including propounding additional written discovery requests as well as multiple
8 depositions of party and percipient witnesses all over the State of California, to prepare the case
9 for trial. From the inception of this litigation, Defendants indicated that they would aggressively
10 litigate this case.⁷¹ Even if Defendants failed on their defenses, litigating a complex PAGA action
11 is inherently expensive, and the litigation could continue beyond entry of judgment if either party
12 were to appeal adverse rulings.⁷² Additionally, there is a real possibility that Plaintiff could
13 recover nothing, either for himself or on behalf of the State of California or other Aggrieved
14 Employees after years of costly and labor-intensive litigation. Avoiding these risks and the
15 likelihood of future contentious litigation, which would involve significant costs, favors
16 settlement.

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

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

22 The Settlement provides significant benefits to the State of California and the Aggrieved
23 Employees and falls well-within the range of acceptable settlements under the circumstances.
24 Under the Agreement, Defendants have agreed to pay a Total Settlement Amount of Five Hundred
25 Ninety Nine Thousand One Hundred and Nine Dollars and Zero Cents (\$599,109.00), subject to
26

27 ⁷⁰ St. John Decl., ¶ 4; Sweeny Decl., ¶ 25.

⁷¹ St. John Decl., ¶¶ 4-6; Sweeny Decl., ¶ 28.

28 ⁷² St. John Decl., ¶¶ 4-6; Sweeny Decl., ¶ 30.

possible increase pursuant to Section 3(a)(5) of the Settlement Agreement, which encompasses the Net Settlement Amount, Attorneys' Fees and Costs, Settlement Administration Costs, and General Release Fee.⁷³ 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 \$209,688.15 and reimbursement of actual litigation costs and expenses of \$16,223.88⁷⁴ to Plaintiff's Counsel; (2) the Settlement Administration Costs of \$5,950.00⁷⁵ to the PAGA Settlement Administrator; and (3) General Release Fee of up to \$5,000.00 to Plaintiff.⁷⁶

The Net Settlement Amount is currently estimated to be at the very least Three Hundred Sixty Two Thousand Two Hundred Forty Six Dollars and Ninety Seven Cents (\$362,246.97), of which an estimated Ninety Thousand Five Hundred Sixty One Dollars and Seventy One Cents (\$90,561.74) is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods and Two Hundred Seventy One Thousand Six Hundred Eighty Five Dollars and Twenty Three Cents (\$271,685.23) is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel recognize the expense and length of continued proceedings necessary to pursue the matter through trial and any possible appeals.⁷⁷ Plaintiff and his counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.⁷⁸ Plaintiff and his counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendants' defenses thereto, and the difficulties in establishing Defendants' liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other Aggrieved Employees.⁷⁹ Plaintiff and his counsel have

⁷³ Settlement Agreement, §§ 3(a) & 3(a)(1)-(5).

⁷⁴ *See, supra*, fn. 4.

⁷⁵ *See, supra*, fn. 4.

⁷⁶ Settlement Agreement, §§ 3(a)(1)-(5).

⁷⁷ St. John Decl., ¶ 6; Sweeny Decl., ¶ 31.

⁷⁸ St. John Decl., ¶ 6; Sweeny Decl., ¶ 31.

⁷⁹ St. John Decl., ¶ 6; Sweeny Decl., ¶ 31.

also taken into account Defendants' agreement to enter into a settlement that confers significant relief upon the Aggrieved Employees and the State of California.⁸⁰

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.⁸¹

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 trial court penalties assessments in contested cases⁸² and the settlement of PAGA claims in other cases.⁸³ Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

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⁸⁰ St. John Decl., ¶ 6; Sweeny Decl., ¶ 31.

⁸¹ St. John Decl., ¶ 6; Sweeny Decl., ¶ 31.

⁸² *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp. 3d 1058, 1100-1101, 1103-1104, 1111 (finding that, under Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA penalties as the Court sees fit" and reducing the PAGA penalty award significantly from the maximum penalties possible); *Morales v Bridgestone Retail Operations LLC* (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244 (of \$7 million PAGA penalties requested, the court awarded \$425,000); *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty rate to \$5 per violation); *Arnold v San Diego Second Chance Program* (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375 (no PAGA penalties awarded); *Felczer v Apple Inc.* (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593 (no PAGA penalties awarded); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557 at *41 (the court declined to award PAGA penalties after trial); *Allen v American Multi-Cinema* (July 24, 2016) Alameda County Superior Court No. RG11585502 (no PAGA penalties awarded); *Atempa v Pama* (July 31, 2015) San Diego County Superior Court (of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00); *Driscoll v Granite Rock* (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426 (the court declined to award PAGA penalties); *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at **8-9 (of \$2,800,000 PAGA penalties requested, the court awarded \$500,000); *Aguirre v Genesis Logistics* (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820 at **6-7 (of \$1,800,000 PAGA penalties requested, the court awarded \$500,000); *Halevi v Aroma Bakery Café, Inc.*, Los Angeles County Superior Court No. 468146 (Aug. 30, 2013) (the court declined to award PAGA penalties after trial awarding wages to class on the basis that, *inter alia*, the lawsuit was not prompted by availability of PAGA penalties, penalties were not necessary to remedy ongoing or future violations, corporate defendants corrected violations and were no longer in business, and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory).

⁸³ 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).

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

3 Plaintiff’s Counsel are highly experienced in complex representative and class action
4 wage-and-hour litigation.⁸⁴ In the view of Plaintiff’s Counsel, the benefits conferred by the
5 settlement are eminently fair and reasonable, and in the best interests of the State of California and
6 the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and
7 the substantial monetary benefits provided for by the Settlement.⁸⁵ Furthermore, courts have
8 acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees
9 are largely aligned. All stand to gain from proving as convincingly as possible as many Labor
10 Code violations as the evidence will sustain[.]” *Williams, supra*, 548 (citing Cal. Lab. Code §
11 2699(g)(1)(i)).

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

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

15 The Settlement provides for a Total Settlement Amount of Five Hundred Ninety Nine
16 Thousand Dollars One Hundred and Nine Dollars and Zero Cents (\$599,109.00), subject to
17 possible increase pursuant to Section 3(a)(5) of the Settlement Agreement.⁸⁶ The Settlement
18 provides for attorneys’ fees in an amount of up to thirty-five percent (35%) of the Total Settlement
19 Amount, (assuming the Total Settlement Amount remains \$599,109.00)⁸⁷, subject to approval and
20 award by the Court.⁸⁸ The requested attorneys’ fees award is commensurate with: (1) the risk that
21 Plaintiff’s Counsel took in bringing and litigating the case, (2) the time, effort, and expense
22 dedicated to the case, (3) the skill and determination that Plaintiff’s Counsel have shown, (4) the
23 results that Plaintiff’s Counsel have achieved in the case, (5) the value that Plaintiff’s Counsel
24 have achieved in the case, and (6) the other cases that Plaintiff’s Counsel have turned down in
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26 ⁸⁴ St. John Decl., ¶¶ 14-19; Sweeny Decl. ¶¶ 2-6.

27 ⁸⁵ St. John Decl., ¶ 6; Sweeny Decl. ¶¶ 31 & 38.

28 ⁸⁶ Settlement Agreement, §§ 3(a) & 3(a)(5).

⁸⁷ Settlement Agreement, § 3(a)(1).

⁸⁸ Settlement Agreement, § 3(a)(1).

1 order to devote their time and effort to this case.

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

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

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

1 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
2 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
3 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *see also Laffitte, supra*, 1 Cal.5th 480 at 506
4 (holding that “trial court did not abuse its discretion in using [the percentage of fund method], in
5 part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is the
6 best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001)
7 24 Cal.4th 1122, 1132.

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

14 The percentage fee method is preferred in representative actions because “it better
15 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
16 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be equivalent
17 to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the
18 result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at 47-50; *Laffitte, supra*, 1
19 Cal.5th 480 at 503. In cases where the settlement agreement provides that the defendant will pay
20 the plaintiff’s attorneys a percentage of the fund created by the settlement, use of that percentage
21 method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards that are too small will
22 “chill the private enforcement essential to the vindication of many legal rights and obstruct the
23 representative actions that often relieve the courts of the need to separately adjudicate numerous
24 claims.” *Id.* at 53. Therefore, fees in representative actions should approximate the probable
25 terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable
26 litigation. *Id.* at 48. “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate
27 counsel for their efforts, irrespective of the method of calculation.” *Consumer Privacy Cases*
28

(2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court*, *supra*, 126 Cal.App.4th at 1270).

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

Plaintiff's Counsel have litigated this case since it was commenced, with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.⁸⁹ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant information, documents, and data to evaluate the allegations, including, and not limited to, calculating the potential monetary recovery under PAGA.⁹⁰ Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendants' counsel regarding the pleadings, case management, discovery, mediation, and settlement negotiations, among other issues; case strategy and analysis; researching, drafting, reviewing, and revising pleadings, court filings, motion-related papers (e.g., with respect to motion to compel arbitration, discovery motions, and settlement approval motion papers), briefs for settlement negotiations and mediation, and the settlement agreement; propounding written discovery requests and notices of depositions of Defendants' persons most knowledgeable designees and reviewing Defendants' objections and responses thereto; claims evaluation and analysis; preparing for and participating in settlement negotiations and the mediation; preparing

⁸⁹ St. John Decl., ¶¶ 6 & 20.

⁹⁰ St. John Decl., ¶¶ 3-6; Sweeny Decl. ¶ 25.

1 the Discovery Motion; preparing a Notice of Motion for Sanctions under Code of Civil Procedure
2 section 128.7; and appearing for court proceedings.⁹¹

3 In the present case, Plaintiff's Counsel have borne all of the risks and costs of litigation and
4 will not receive any compensation until recovery is obtained.⁹² Plaintiff's Counsel have
5 experience in complex wage-and-hour litigation and used that experience to obtain a significant
6 settlement recovery for Plaintiff, the Aggrieved Employees, and the State of California.⁹³
7 Considering the amount of fees requested, work performed, risks incurred, results obtained, and
8 experience of Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested
9 attorneys' fees are reasonable and should be awarded.

10 **B. The Requested Fee Award is Reasonable Based on the Factors Considered in**
11 **Determination of Fee Awards**

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

22 It should be highlighted that the percentage award sought is commensurate with the time,
23 effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel's
24 representation and the risks taken in commencing the case, the skill and determination required,
25 the results that Plaintiff's Counsel have achieved, and the value of the settlement that Plaintiff's
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27 ⁹¹ St. John Decl., ¶ 4; Sweeny Decl. ¶ 25.

28 ⁹² St. John Decl., ¶ 20.

⁹³ St. John Decl., ¶¶ 10-19; Sweeny Decl. ¶¶ 2-6.

Counsel have 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 have used their 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 their operations and employment policies, practices, and procedures.⁹⁴ During the litigation of the case, Plaintiff's Counsel interviewed and obtained information from Plaintiff, Defendants, and other sources, conducted legal research, reviewed and analyzed thousands of pages of documents and data, including an approximately 1/3rd sample of Aggrieved Employees' time and pay data across the PAGA Period, prepared for and participated in mediation and robust settlement discussions, evaluated the PAGA claim, and calculated the potential monetary recovery under PAGA.⁹⁵ Plaintiff's Counsel also met and conferred with Defendants' counsel regarding the pleadings, case management, discovery, mediation, and settlement negotiations, among other issues.⁹⁶ Plaintiff's Counsel performed other work including, *inter alia*, case strategy and analysis; and engaging in extensive settlement negotiations.⁹⁷

Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary to prosecute the case with maximum efficiency and has fully and actively participated in the litigation process. The Attorney Task and Time Charts, which are attached as "EXHIBIT 2" to the accompanying Declaration of Brian J. St. John and as "EXHIBIT 2" to the accompanying Declaration of Charles T. Sweeny, set forth in detail the hours that Plaintiff's Counsel have spent performing tasks in this matter. Attorneys at Lawyers *for* Justice, PC and Sweeny Law, PC have spent a collective **249.4 hours** to obtain a recovery on behalf of Plaintiff, the Aggrieved

⁹⁴ St. John Decl., ¶ 3.

⁹⁵ St. John Decl., ¶¶ 3-5; Sweeny Decl. ¶¶ 24-31.

⁹⁶ St. John Decl., ¶ 4; Sweeny Decl. ¶¶ 24-31.

⁹⁷ St. John Decl., ¶ 4; Sweeny Decl. ¶¶ 24-31.

1 Employees, and the State of California.⁹⁸ These hours were required to bring the case to its
2 successful conclusion.

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

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

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

14 Plaintiff's Counsel's effort and skill were used to, among other things, investigate the
15 allegations and gather facts, research the legal issues, analyze data, documents, and information
16 obtained from Defendants, Plaintiff, and through other sources, evaluate the PAGA claim, and
17 negotiate the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel
18 used its extensive experience and skill in the handling of complex wage-and-hour matters to
19 advocate for and obtain Aggrieved Employees and the State of California a recovery now, with
20 maximum efficiency, as opposed to the possibility of recovery in the future, after significant
21 expense and time.⁹⁹

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

23 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty and
24 risks of further litigation.¹⁰⁰ Had the case not settled, Defendants would have vigorously defended
25 the case, and would have challenged manageability and liability, and also sought a reduction in
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27 ⁹⁸ St. John Decl., ¶ 10, Exh. 2; Sweeny Decl. ¶ 33, Exh. 2.

⁹⁹ St. John Decl., ¶¶ 14-19; Sweeny Decl. ¶¶ 2-6.

28 ¹⁰⁰ St. John Decl., ¶ 6; Sweeny Decl. ¶ 31.

1 the amount assessed as civil penalties. Defendants, however, faced risks too, including and not
2 limited to, the risk of trial and the risk of having the Court assess civil penalties. Additionally,
3 preparing for trial would have been extraordinarily expensive for the Parties.

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

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

12 The representation provided by Plaintiff's Counsel have been wholly contingent and
13 Plaintiff's Counsel took on this matter without knowing whether any recovery would be obtained.
14 Plaintiff's Counsel have invested a collective **249.4 hours** of time to obtain relief on behalf of
15 Plaintiff, the Aggrieved Employees, and the State of California. Plaintiff's Counsel are also
16 requesting reimbursement of actual litigation costs and expenses in the amount of \$16,223.88.¹⁰¹

17 In this case, Plaintiff's Counsel have borne all of the risks and costs of litigation and will
18 not receive any compensation until recovery is obtained.¹⁰² If Plaintiff's Counsel have not been
19 successful, the time that they have devoted to litigating the case would have been for naught and
20 would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel
21 are well-experienced in complex wage-and-hour litigation and used that experience to obtain a
22 great result for Plaintiff, the Aggrieved Employees, and the State of California.¹⁰³ The skill and
23 determination that Plaintiff's Counsel have shown throughout the prosecution of the case justifies
24 the requested attorneys' fees and costs. Considering the amounts requested, work performed, and
25 risks incurred, the requested fees and costs are reasonable and should be awarded.

26
27 ¹⁰¹ St. John Decl., ¶ 20, Exh. 3.

¹⁰² St. John Decl., ¶ 20.

28 ¹⁰³ St. John Decl., ¶¶ 14-19 & 22; Sweeny Decl. ¶¶ 2-6.

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

2 The results achieved, in light of the difficulties inherent in similar cases and the specific
3 difficulties faced in this case, are considerable. Here, the results achieved, and the recovery
4 obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent a
5 fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a
6 settlement that provides for a Total Settlement Amount of Five Hundred Ninety Nine Thousand
7 One Hundred and Nine Dollars and Zero Cents (\$599,109.00), subject to possible increase
8 pursuant to Section 3(a)(5) of the Settlement Agreement, and it is currently estimated that the Net
9 Settlement Amount available for distribution to the Aggrieved Employees and the State of
10 California, is approximately Three Hundred Sixty Two Thousand Two Hundred Forty Six Dollars
11 and Ninety Seven Cents (\$362,246.97).¹⁰⁴

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

13 Plaintiff's Counsel are recognized class action and complex litigation law firms, and their
14 attorneys employed their knowledge, skill, and experience to bring the case to a successful
15 conclusion. Plaintiff's Counsel have years of wage-and-hour class action and complex litigation
16 experience, have recovered millions of dollars on behalf of thousands of individuals in California,
17 and have successfully handled numerous significant wage-and-hour class action and
18 representative action cases.¹⁰⁵

19 **C. The Lodestar Methodology Also Justifies Approval of the Requested Fees,**
20 **Because Plaintiff's Counsel Have Performed Work That Is of Significant Value**
21 **Based on Reasonable Hours and Prevailing Hourly Rates of Compensation**

22 While the percentage-of-the-benefit approach is endorsed as the better approximation of
23 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
24 method to "cross-check" the results of the other. *See Laffitte, supra*, 1 Cal.5th at 505 (explaining
25 that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time
26 spent by counsel into the trial court's reasonableness determination"); *see also, e.g., Vizcaino*, 290

27 ¹⁰⁴ Settlement Agreement, § 3(a); Sweeny Decl., ¶¶ 23.

28 ¹⁰⁵ St. John Decl., ¶¶ 14-19; Sweeny Decl. ¶¶ 2-6.

1 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the
2 lodestar may provide a useful perspective on the reasonableness of a given percentage award.”).
3 Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination
4 of the fee as a percentage” and “does not impose an absolute maximum or minimum on the
5 potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

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

9 ***1. Plaintiff’s Counsel Performed Work for a Reasonable Number of Hours***

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

13 As discussed above, this case was highly contested and required a significant amount of
14 time and labor. Defendants made it clear very early on that it disputed all of Plaintiff’s allegations
15 and disputed that representative adjudication was appropriate. Defendants also argued, *inter alia*,
16 that they had facially-compliant employment policies and practices throughout the time period at
17 issue.¹⁰⁶ Defendants raised affirmative defenses and denied liability, and the pursuit of this case
18 involved gathering and analyzing data from Defendants as well as other sources.¹⁰⁷ The handling
19 of this litigation involved a great amount of effort, and also required and involved the exercise of
20 a high level of skill, which Plaintiff’s Counsel have, as a result of its extensive experience in
21 complex wage-and-hour litigation. Long and difficult battles would have followed as the case
22 moved toward trial, including taking and defending declarant and expert depositions, depositions
23 of person most knowledgeable designees, conducting additional formal discovery, and litigating
24 complex motions, including the pending MTCA, the pending Discovery Motion, and the
25 anticipated 128.7 Motion. As Plaintiff’s Counsel geared up for these battles, Plaintiff’s Counsel
26 undertook intense preparation in an attempt to resolve the entire matter through settlement

27 ¹⁰⁶ Sweeny Decl., ¶ 28.

28 ¹⁰⁷ Sweeny Decl., ¶¶ 25-31.

1 negotiations.

2 Plaintiff's Counsel had to bring together a volume of information, data, and documents
3 that were obtained from Plaintiff, Defendants, and other sources. Plaintiff's Counsel conducted
4 extensive review and analysis of the information, documents, and data to strategize and evaluate
5 the case and engage in settlement discussions.

6 As set forth above in Part VI.B.1 *infra*, attached to the Declarations of Brian J. St. John
7 and Charles T. Sweeny are the Attorney Task and Time Charts that set forth in detail the numerous
8 tasks that Plaintiff's Counsel performed in this case, and the time required for completing those
9 tasks.¹⁰⁸ The charts demonstrate that Lawyers *for* Justice, PC and Sweeny Law, PC have spent a
10 total of **249.4 hours** on this matter. In light of the facts and circumstances of this case, as well as
11 the results Plaintiff's Counsel have achieved on behalf of Plaintiff, the Aggrieved Employees, and
12 the State of California, Plaintiff's Counsel have spent a reasonable number of hours on this matter.

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

15 Both California and federal courts recognize that attorneys should be compensated for
16 providing representation on a contingency basis and for taking on the risks associated with said
17 representation, as well as being provided with financial incentives to enforce important rights and
18 protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In
19 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market
20 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
21 normal hourly rates for winning contingency cases." *See id.*

22 Plaintiff's Counsel have been actively involved in the prosecution of this case, prior to the
23 commencement of the Action and all the way up to approval of the settlement, and their dedication
24 to the representation of Plaintiff, the Aggrieved Employees, and the State of California has
25 precluded other employment. Here, Plaintiff's Counsel bore the risk that, despite all of their
26 efforts and skills employed, there may be no recovery. Ultimately, Plaintiff's Counsel was

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28 ¹⁰⁸ St. John Decl., ¶ 10, Exh. 2; Sweeny Decl. ¶ 33, Exh. 2.

successful in reaching a settlement of \$599,109.00, subject to possible increase pursuant to Section 3(a)(5) of the Settlement Agreement.

As set forth in the Declaration of Brian J. St. John, the professional backgrounds and experience of Lawyers *for* Justice, PC support the hourly rates for the various attorneys at Lawyers *for* Justice, PC who worked on this case.¹⁰⁹ Similarly, the Declaration of Charles T. Sweeny supports a reasonable hourly rate of compensation of at least \$750 per hour for services provided by Sweeny Law, PC.¹¹⁰ While the circumstance of every case is unique, the fact remains that the work performed and efforts undertaken by Plaintiff's Counsel in this matter justify the requested attorneys' fees award.

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

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

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

In determining whether or not to enhance the lodestar, California courts take into account multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See, *Cates*

¹⁰⁹ St. John Decl., ¶¶ 11-13.

¹¹⁰ Sweeny Decl., ¶¶ 33-34.

at 822-23. Multiple factors warrant enhancement in this case, including the following:

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

Ketchum at 1134.

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 Defendants 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 Plaintiff's Counsel have as a result of extensive experience in employment wage-and-hour litigation. Plaintiff's Counsel have been actively involved in the prosecution of this matter, prior to its commencement and Plaintiff's Counsel's work have continued all the way

up to the present. Plaintiff's 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 Plaintiff's 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, Plaintiff's Counsel bore the risk that, despite all of its efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Plaintiff's Counsel are entitled to a risk multiplier. The results obtained by way of Plaintiff's Counsel's efforts are significant here. Plaintiff's Counsel were successful in achieving substantial results in the form of a settlement of \$599,109.00. Also, Plaintiff's Counsel's efforts throughout the matter demonstrate dedication to the interests of both the Aggrieved Employees and the State of California.

Plaintiff's 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, Plaintiff's Counsel devoted the hours in legal time summarized above and detailed in the Attorney Task and Time Charts which are attached as exhibits to the Declaration of Brian J. St. John and Charles T. Sweeny.¹¹¹ As the Declarations indicate, Plaintiff's Counsel have worked a collective 249.4 hours in the pursuit of this matter. Applying the reasonable hourly rates stated at Paragraph 11 of the Declaration of Brian St. John to the 123.2 hours of work performed by various lawyers at Lawyers *for* Justice, PC that is described in Exhibit 2 of the St. John declaration, and applying a reasonable hourly rate of \$750 per hour to the 126.2 hours of work performed by Sweeny Law, PC that is described in Exhibit 2 of the Sweeny declaration would place a base lodestar value of \$204,540.50, and applying even a modest multiplier of 1.5, the total enhanced lodestar fees would be \$306,810.75, for Plaintiff's Counsel's services. However, Plaintiff's Counsel seek an attorneys' fee award of \$209,688.15 (equal to 35% of the Total Settlement Amount based on the

¹¹¹ St. John Decl., ¶ 10, Exh. 2; Sweeny Decl. ¶ 33, Exh. 2.

Settlement Agreement). Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Plaintiff's Counsel are 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 1.025 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 \$209,688.15 to Plaintiff's Counsel.

4. Unique Circumstances Exist Here.

This case involved unique circumstances that further warrant the requested fees. As stated above, the Parties' respective positions were closely tethered to the tension between the United States Supreme Court's 2022 decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906 ("*Viking River*") and the California Supreme Court's 2023 decision in *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 ("*Adolph*"), as well as their extensive interpreting authorities that were generated after those decisions were issued.

Indeed, while Defendants believed that *Viking River* allowed them to compel Plaintiff's "individual" PAGA claim to arbitration, and to challenge his standing in arbitration, Plaintiff strongly disagreed, and, when settlement negotiations appeared to break down, served Defendants with a 21-Day Safe Harbor Notice of Motion for Sanctions under Civil Procedure section 128.7, on the grounds that additional, post-*Viking River* authorities, e.g., *Duran v. EmployBridge Holding Company* (2023) 92 Cal.App.5th 59 and *Mondragon v. Sunrun Inc.* (2024) 101 Cal.App.5th 592 foreclosed Defendants' ability to compel Plaintiff's claims to arbitration because Plaintiff

1 contended that there was a “PAGA Carve-Out.” Defendants disagreed and the Parties extensively
2 negotiated over this disagreement through the mediator. Ultimately, the Parties were able to settle
3 before Plaintiff moved forward with his sanctions motion.

4 Thus, in addition to the extensive formal and informal discovery efforts and complex
5 negotiations, this case was unique; hotly contested settlement negotiations responded to an ever-
6 changing legal landscape. The Parties elected to negotiate their competing positions about
7 complex law through an expert mediator in the interests of saving litigation costs in light of the
8 concomitant risks thereof.

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

11 The Settlement provides for reimbursement of litigation costs and expenses of up to
12 \$20,000.00. As set forth in the Declaration of Brian J. St. John, Plaintiff’s Counsel seek
13 reimbursement of \$16,223.88 in litigation costs and expenses.¹¹² These expenses were reasonable
14 and necessary in the prosecution of this matter and to obtain the Settlement. Accordingly, the
15 Court is requested to award reimbursement of litigation costs and expenses to Plaintiff’s Counsel
16 in the amount of \$16,223.88.

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

19 Although PAGA does not require notice to unnamed aggrieved employees of a settlement,
20 the Parties prepared, and now present for the Court’s consideration and approval, the Cover Letter
21 for transmission to the Aggrieved Employees along with their Individual Settlement Share checks
22 (together, “PAGA Settlement Package(s)”), substantially in the form attached as “EXHIBIT A”
23 to the [Proposed] Order and Judgment and as “EXHIBIT A” to the Settlement Agreement. The
24 Cover Letter informs the Aggrieved Employees about the Action and the Settlement.
25 Accordingly, Plaintiff respectfully requests that the Court approve the Cover Letter for
26 transmission to the Aggrieved Employees at the time of disbursing their Individual Settlement
27

28 ¹¹² St. John Decl., ¶ 20, Exh. 3. *See also, supra*, fn. 4.

Shares.

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

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, ILYM Group to handle the administration of the Settlement. The fees and expenses of the PAGA Settlement Administrator are estimated not to exceed \$5,950.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual Settlement Shares checks to the Aggrieved Employees (i.e., PAGA Settlement Packages); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages; 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 \$5,950.00 to ILYM Group, 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 \$5,000.00 for his broader individual waiver and release of claims with a California Civil Code Section 1542 waiver (set forth in Section 8(b) of the Settlement Agreement).¹¹³

It is also worth noting that, 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 necessary to attempt to prove the allegations.¹¹⁴ For example, Defendants propounded discovery requests on Plaintiff, and Plaintiff spent time reviewing said discovery

¹¹³ Settlement Agreement, §§ 3(a)(2) & 8(b). The PAGA statute recognizes that a plaintiff employee may pursue or recover other remedies and relief available to the plaintiff employee under state or federal law through an action under PAGA. See, Cal. Lab. Code § 2699(k)(1) (formerly Cal. Lab. Code § 2699(g)(1)). As such, it is appropriate for Plaintiff to receive a payment for his broader individual release of claims.

¹¹⁴ St. John Decl., ¶ 21; Sweeny Decl., ¶ 37; Declaration of Robert Truelove (“Truelove Decl.”), ¶¶ 2-4.

1 requests and providing information and documents in response thereto.¹¹⁵ Plaintiff was available
2 whenever his counsel needed him and tried to obtain and provide documents and information that
3 would aid in the litigation of the PAGA claim and pursuit of recovery on behalf of the State of
4 California and Aggrieved Employees.¹¹⁶

5 Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the
6 amount of \$5,000.00, in addition to the Individual Settlement Shares he will receive as an
7 Aggrieved Employee.

8 **XI. CONCLUSION**

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

17 Dated: February 10, 2026

SWEENEY LAW, PC

18
19 By:



Charles T. Sweeny
Counsel for Plaintiff

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27 ¹¹⁵ St. John Decl., ¶ 21; Sweeny Decl., ¶ 37; Truelove Decl., ¶¶ 2-4.

28 ¹¹⁶ St. John Decl., ¶ 21; Sweeny Decl., ¶ 37; Truelove Decl., ¶¶ 4-6