

Arby Aiwarzian (SBN 269827)
Joanna Ghosh (SBN 272479)
Elizabeth Parker-Fawley (SBN 301592)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

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

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

Plaintiff,

vs.

WEBER DISTRIBUTION LLC, a California
limited liability company; WEBER
LOGISTICS, an unknown business entity; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 21LBCV00374

Honorable Mark C. Kim
Department S27

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

[Declaration of Plaintiffs' Counsel
(Elizabeth Parker-Fawley); Declarations of
Plaintiff Ashton Baker; and [Proposed] Order
and Judgment filed concurrently herewith]

Date: July 16, 2024
Time: 8:30 a.m.
Department: S27

Complaint Filed: July 12, 2021
FAC Filed: April 11, 2024
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 16, 2024 at 8:30 a.m. or as soon thereafter as the
2 matter may be heard before the Honorable Mark C. Kim in Department S27 of the Superior Court
3 of the State of California, for the County of Los Angeles–Governor George Deukmejian
4 Courthouse, located at 275 Magnolia, Long Beach, CA 90802, Plaintiff Ashton Baker (“Plaintiff”)
5 will and hereby moves 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 Defendant Weber Distribution LLC (“Defendant”) of
8 the claims brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”),
9 as set forth in the Private Attorneys General Act Settlement Agreement and Release
10 (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as **“EXHIBIT 1”**
11 to the Declaration of Elizabeth Parker-Fawley, including and not limited to, the plan of
12 allocation and distribution of the Total Settlement Amount for payment of the LWDA
13 Payment to the California Labor and Workforce Development Agency (“LWDA”),
14 Individual Settlement Shares to the Aggrieved Employees, Attorneys’ Fees and Costs
15 to Plaintiff’s Counsel, Settlement Administration Costs to the PAGA Settlement
16 Administrator, and General Release Fee to Plaintiff;
- 17 2. Approving the LWDA Payment and Employees’ Portion, estimated to be
18 approximately \$1,113,129.98 which will be distributed to the LWDA and the
19 Aggrieved Employees, pursuant to California Labor Code section 2699(i), of which
20 seventy-five percent (75%) will be paid to the LWDA (“LWDA Payment”) and twenty-
21 five percent (25%) will be paid to the Aggrieved Employees (“Employees’ Portion”);
- 22 3. Appointing Simpluris, Inc. (“Simpluris” or “PAGA Settlement Administrator”) to
23 handle the administration of the Settlement;
- 24 4. Directing Defendant to transmit the Total Settlement Amount into a qualified
25 settlement account established by the PAGA Settlement Administrator for
26 administration of the Settlement, and directing the PAGA Settlement Administrator to
27 distribute the Total Settlement Amount in accordance with the Settlement Agreement;
- 28 5. Directing the mailing of Individual Settlement Share checks to the Aggrieved

Employees along with the Cover Letter, which is substantially similar in content and form to that attached as “**EXHIBIT A**” to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys’ Fees and Costs, General Release Fee, and Settlement Administration Costs (“[Proposed] Order and Judgment”) filed concurrently herewith;

6. Awarding **\$7,500.00** to Plaintiff Ashton Baker as his General Release Fee;
7. Awarding up to **\$8,000.00** to the PAGA Settlement Administrator as Settlement Administration Costs; and
8. Awarding Lawyers for Justice, PC (“Plaintiffs’ Counsel”) the amount of **\$760,000.00** as compensation for reasonable attorneys’ fees and **\$11,370.02** for reimbursement of litigation costs and expenses (together, “Attorneys’ Fees and Costs”), pursuant to California Labor Code section 2699(g)(1).

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

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

This motion will be based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Plaintiff’s Counsel (Elizabeth Parker-Fawley) and Plaintiff Ashton Baker in support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: June 21, 2024

LAWYERS for JUSTICE, PC

By: _____


Elizabeth Parker-Fawley
Attorney for Plaintiff

TABLE OF CONTENTS

I.	SUMMARY OF MOTION	1
II.	FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY	2
III.	SUMMARY OF THE SETTLEMENT TERMS	4
A.	AGGRIEVED EMPLOYEES	4
B.	FUNDING AND DISTRIBUTION OF THE TOTAL SETTLEMENT AMOUNT	4
C.	DISTRIBUTION OF THE LWDA PAYMENT AND EMPLOYEES PORTION.....	4
D.	THE SCOPE OF THE RELEASE IN THE SETTLEMENT AGREEMENT.....	6
E.	NO RIGHT TO OBJECT TO, OR OPT OUT OF, THE SETTLEMENT	7
IV.	STANDARDS FOR APPROVAL OF PAGA SETTLEMENT	8
V.	THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED.....	10
A.	THE FACTORS GIVING RISE TO A PRESUMPTION OF FAIRNESS EXIST	10
B.	THE RELATIVE STRENGTH OF THE PAGA CLAIM AND THE RANGE OF POSSIBLE OUTCOMES IN THE LITIGATION STRONGLY FAVOR APPROVAL OF THE SETTLEMENT	12
C.	THE SETTLEMENT AVOIDS RISKY, COMPLEX, AND LENGTHY FURTHER LITIGATION	15
D.	THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE	17
E.	THE EXPERIENCE AND VIEWS OF PLAINTIFF’S COUNSEL FAVOR APPROVAL OF THE SETTLEMENT	19
VI.	THE REQUESTED ATTORNEYS’ FEES AWARD IS FAIR AND REASONABLE, AND SHOULD BE APPROVED	19

A.	A FEE AWARD OF A PERCENTAGE OF THE ENTIRE FUND IS APPROPRIATE	19
B.	THE REQUESTED FEE AWARD IS REASONABLE BASED ON THE FACTORS CONSIDERED IN DETERMINATION OF FEE AWARDS.....	23
1.	TIME & LABOR.....	24
2.	THE SKILL REQUIRED TO PERFORM LEGAL SERVICES PROPERLY	25
3.	THE VALUE OF THE SETTLEMENT.....	25
4.	WHETHER THE FEE IS FIXED OR CONTINGENT.....	26
5.	THE AMOUNT INVOLVED AND THE RESULTS ACHIEVED	27
6.	THE REPUTATION AND ABILITY OF THE ATTORNEYS	27
VII.	COSTS TO BE REIMBURSED TO PLAINTIFF’S COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED	27
VIII.	THE PROPOSED COVER LETTER TO THE AGGRIEVED EMPLOYEES SHOULD BE APPROVED.....	28
IX.	THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED	28
X.	THE PROPOSED GENERAL RELEASE FEES ARE FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED	28
XI.	CONCLUSION	30

TABLE OF AUTHORITIES

Cases

<i>Aguirre v Genesis Logistics</i> (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820	18
<i>Allen v American Multi-Cinema</i> (July 24, 2016) Alameda County Superior Court No. RG11585502	18
<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court.</i> (2009) 46th Cal.4th 993	7
<i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969.....	7, 8
<i>Arnold v San Diego Second Chance Program</i> (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375	18
<i>Bell v. Farmers Ins. Exch.</i> (2004) 115 Cal.App.4th 715	29
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F.Supp. 610.....	11
<i>Carrington v Starbucks Corp.</i> (2018) 30 Cal.App.5th 50	18
<i>Casida v. Sears Holdings Corp.</i> (E.D. Cal. Jan. 26, 2012) 2012 WL 253217.....	8
<i>Clark v. Am. Residential Servs., LLC</i> (2009) 175 Cal.App.4th 785.....	29
<i>Consumer Privacy Cases</i> (2009) 175 Cal. App. 4th 545.....	22
<i>DCH Auto Wage and Hour Cases</i> (May 2017) Los Angeles Superior Court, Case No. JCCP4833	19
<i>Driscoll v Granite Rock</i> (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426	18
<i>edroza v. PetSmart, Inc.</i> (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667	9
<i>Felczer v Apple Inc.</i> (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593	18
<i>Fireside Bank v. Superior Court</i> (2007) 40 Cal.4th 1069	8
<i>Fleming v Covidien, Inc.</i> , No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590...	18
<i>Horton v. Jones</i> (1972) 26 Cal.App.3d 952.....	13
<i>In re Taco Bell Wage and Hour Actions</i> (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557	18
<i>Ingram v. The Coca-Cola Co.</i> (N.D. Ga. 2001) 200 F.R.D. 685	29
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> , (2014) 58 Cal.4th 348.....	7
<i>Kirkorian v. Borelli</i> (N.D. Cal. 1988) 695 F.Supp. 446	11

1	<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480.....	21
2	<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	21
3	<i>Magadia v. Wal-Mart Assocs.</i> (N.D. Cal. 2019) 384 F.Supp. 3d 1058.....	18
4	<i>Morales v Bridgestone Retail Operations LLC</i> (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244.....	18
5	<i>Ochoa-Hernandez v. CJADERS Foods, Inc.</i> (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777	9, 10
6	<i>Resendez v. Bridgestone Retail Operations, LLC</i> , Los Angeles Superior Court, Case No. BC596892 (June 2016)	9
7	<i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal.3d 462,.....	8
8	<i>Satchell v. Fed. Express Corp.</i> (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010	12
9	<i>Stafford v. Dollar Tree Stores, Inc.</i> (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396.....	13
10	<i>Thomas v. Aetna Health of Cal., Inc.</i> (E.D. Cal. June 2, 2011) 2011 WL 2173715	8
11	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	10
12	<i>Williams v. Superior Court</i> (2017) 3 Cal.5th 531	7, 8, 9, 19
13	Statutes	
14	Cal. Lab. Code § 2699(g)(1)(i).....	19
15	Cal. Lab. Code § 2699(j)	9
16	Cal. Lab. Code § 2699(l)(2).....	1, 8, 9
17	Cal. Lab. Code § 2699.3	8
18	Cal. Lab. Code §§ 2698, <i>et seq.</i>	1
19	Other Authorities	
20	A. Conte, <i>Attorney Fee Awards</i> (2d ed. 1993).....	21
21	<u>California Practice Guide</u> , <i>Civil Procedure Before Trial</i> , Chapter 14	21
22		
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Ashton Baker (“Plaintiff”) seeks approval of the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into between Plaintiff, individually and on behalf of the State of California with respect to Aggrieved Employees, and Defendant Weber Distribution, LLC (“Defendant”), pursuant to California Labor Code section 2699(1)(2).¹

Subject to approval by the Court, Plaintiff and Defendant (together, the “Parties”) have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Total Settlement Amount of **\$1,900,000.00**, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement.²

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

The Net Settlement Amount is currently estimated to be no less than \$1,113,129.98.⁴ The Net Settlement Amount will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and twenty-five percent (25%) to the Aggrieved Employees (“Employees’ Portion”).⁵ Each Aggrieved Employee will be entitled to payment of his or her *pro rata* share of

¹ The Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement”) is attached as “**EXHIBIT 1**” to the Declaration of Elizabeth Parker Fawley (“Parker-Fawley Decl.”).

² Settlement Agreement, § 3(a)-(b).

³ *Id.*, §§ 3(a)(1)-(5). “PAGA Period” is defined as the period of November 11, 2019 through the date the Court grants approval of the Settlement. *Id.*, § 3(a)(5).

⁴ *Id.*, § 3(a)(4).

⁵ *Id.*, § 3(a)(5).

the Employees' Portion, based on the number of pay periods they each worked during the PAGA Period ("Compensable Pay Periods").⁶

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

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

In order to efficiently present the Court with adequate information to determine whether to grant approval of the Settlement in conformity with California Labor Code section 2699(1)(2), Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant provides supply chain solutions with an extensive warehouse network and truck fleet to move products to the market. Defendant is headquartered in Santa Fe Springs, California and has sixteen distribution centers across California. Plaintiff is a former employee of Defendant.

Prior to commencing this lawsuit, on May 5, 2021, as required by California Labor Code section 2699.3, Plaintiff Ashton Baker, provided the LWDA and Defendant with written notice of his intent to assert a claim for civil penalties under PAGA and the basis for the claim, to which the

⁶ Settlement Agreement, § 7(b).

⁷ *Id.*, § 7(b)(1).

1 LWDA did not respond “2021 PAGA Notice”).⁸

2 On April 3, 2024, Lawyers for Justice, PC submitted an additional letter to the LWDA and
3 Defendant, adding California Labor Code section 227.3 as a provision for which Plaintiff seeks
4 civil penalties under PAGA, providing further details regarding the allegations that were
5 investigated, mediated, and resolved, including and not limited to, adding additional details about
6 alleged violations of California Labor Code section 227.3 and California Labor Code Section 2800
7 and 2802 (the “2024 PAGA Notice”) (the 2021 PAGA Notice and 2024 PAGA Notice collectively
8 “Plaintiff’s Notice(s) Sent to the LWDA”).

9 On July 12, 2021, Plaintiff Ashton Baker filed a Complaint for Enforcement Under the
10 Private Attorneys General Act, California Labor Code § 2698, Et Seq..

11 On October 27, 2021, Defendant filed a Demurrer to Plaintiff’s complaint alleging that
12 Plaintiff had failed to timely file the action and a Motion to Strike certain relief sought in Plaintiff’s
13 complaint in connection with Defendant’s failure to reimburse necessary business-related
14 expenses and costs. On January 27, 2022, the Court overruled Defendant’s Demurrer and partially
15 denied and partially granted Defendant’s Motion to Strike Plaintiff’s Complaint.

16 On July 12, 2021, Defendant filed an Answer to the Operative Complaint. Defendant
17 maintained, and continues to maintain, that Defendant had, and continues to have, legally-
18 compliant employment policies and practices throughout the time period at issue. Defendant
19 denies that they ever violated any provision of the California Labor Code, including, but not
20 limited to, those sections for which Plaintiff seeks penalties under the PAGA.

21 On August 2, 2023, the Parties participated in a full-day mediation conducted by Daniel
22 Buckley Esq. a well-respected mediator and retired judge experienced in mediating complex labor
23 and employment matters.⁹ With the aid of the mediator’s evaluation and his assistance with
24 continued settlement negotiations, the Parties reached the Settlement.¹⁰

25 On April 11, 2024, Plaintiff filed his First Amended Complaint for Enforcement under the
26

27 ⁸ Parker-Fawley, ¶ 9.

28 ⁹ *Id.*, ¶ 12.

¹⁰ Parker-Fawley Decl., ¶ 12.

Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”).

Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(l)(2). The Settlement Agreement and moving and supporting papers for this motion are being submitted to the LWDA in conformity with California Labor Code section 2699(l)(2), concurrently with this filing.¹¹

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Settlement pertains to Defendant’s employment of the following allegedly aggrieved employees:

“All current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California during the PAGA period, November 11, 2019 through the date the Court grants approval of the Settlement”).¹²

Based on information provided by Defendant, for the period November 11, 2019 to June 2, 2023, there were approximately one-thousand and ninety-eight (1,098) Aggrieved Employees that worked 66,709 Compensable Pay Periods.¹³

B. Funding and Distribution of the Total Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Amount of \$1,900,000.00, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement.¹⁴ Within thirty (30) calendar days of the Effective Date, Defendant will transmit the Total Settlement Amount to a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement.¹⁵

C. Distribution of the LWDA Payment and Employees Portion

The Net Settlement amount will be the Total Settlement Amount less the following amounts: (1) Attorneys’ Fees and Costs consisting of attorneys’ fees of \$760,000.00 and reimbursement of litigation costs and expenses of \$11,370.02 to Plaintiff’s Counsel; (2) General

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

¹² Settlement Agreement, § 3(a)(5).

¹³ Settlement Agreement, § 3(b), and Parker-Fawley Decl., ¶ 8.

¹⁴ Settlement Agreement, § 3(a)-(b), and Parker-Fawley Decl., ¶ 10.

¹⁵ Settlement Agreement, § 7(a).

Release Fee of \$7,500.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$8,000.00 to Simpluris, Inc. “Simpluris” or “PAGA Settlement Administrator”).¹⁶ The Net Settlement Amount will be fully distributed to the LWDA and the Aggrieved Employees.

No later than 21 calendar days after Defendant the Effective Date¹⁷, Defendant shall provide the PAGA Settlement Administrator with a list of all the Aggrieved Employees containing the following information for each PAGA Group Member: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) Social Security number; (v) dates of employment as an hourly-paid or non-exempt employee who worked for Defendant in the State of California during the PAGA Period; (vi) Compensable Pay Periods during the PAGA Period (vii) Compensable Pay Periods during the period between November 11, 2019 through June 2, 2023.¹⁸

Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$834,847.48) will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount (or approximately \$278,282.50) (i.e., Employees’ Portion) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods.¹⁹ 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.²⁰ The payments to Aggrieved Employees for their Individual Settlement Shares are

¹⁶ Parker-Fawley Decl., ¶ 10.

¹⁷ The Settlement Agreement shall become effective on the later of: (i) the 61st day after the Court enters an order and/or judgment granting approval of the Settlement, provided no appeal or motion for reconsideration or other efforts to obtain review has been filed; (ii) if any timely appeals or motions for reconsideration or review are filed, the 61st day after final resolution of any such appeals or motions for reconsideration or review have been finally concluded. In this regard, the Parties intend that the Effective Date of the Settlement Agreement shall not be on a date before the Court’s order and/or judgment approving the Settlement has become completely final and there is no timely recourse by any person who seeks to object or otherwise contest the Settlement. See Settlement Agreement, § 16.

¹⁸ Settlement Agreement, § 7(c)(1).

¹⁹ *Id.*, § 3(a)(5), 7(b).

²⁰ *Id.*, § 7(b).

considered one hundred percent (100%) penalties to be reported on IRS Form 1099, if required.²¹

No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the “PAGA Settlement Package”) to Aggrieved Employees by first-class United States mail.²² For each PAGA Settlement Package that is returned as undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.²³

The Individual Settlement Share checks issued to Aggrieved Employees will remain valid for ninety (90) calendar days, and thereafter, will be canceled.²⁴ Funds associated with canceled checks will be transmitted to the State Controller’s Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual Settlement Share(s).²⁵

D. The Scope of the Release in the Settlement Agreement

Upon the Court’s entry of an order and judgment approving the Settlement Agreement and the full funding of the Total Settlement Amount, Plaintiff and the State of California with respect to the Aggrieved Employees will be deemed to have knowingly and voluntarily released and forever discharged Released Parties, to the fullest extent of the law, of and from the Action and Released Claims.

The “Released Claims” means:

[A]ny and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, et seq. (“PAGA”) as well as any interest, fees, and costs available under PAGA, based on the factual allegations in Plaintiff’s Notice(s) Sent to the LWDA, and in the Operative Complaint, including but not limited to, for: failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide

²¹ Settlement Agreement, § 7(b)(1).

²² *Id.*, § 7(c)(3).

²³ *Ibid.*

²⁴ *Id.*, § 7(c)(4).

²⁵ *Ibid.*

compliant rest periods and associated premiums, failure to pay vacation wages, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business-related expenses and costs in violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 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 4-2001 and 9-2001.²⁶

The “Released Parties” means:

Defendant, including Defendant’s parent corporation, members, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries, and insurers of such plans and programs.²⁷

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

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

///

²⁶ Settlement Agreement, § 8(a).

²⁷ *Ibid.*

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

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

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

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

22 The settlement of a PAGA action requires court approval. *See* Cal. Lab. Code § 2699(l)(2)
23 (“The superior court shall review and approve any settlement of any civil action filed pursuant to
24 this part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
25 considered a class action but a law enforcement action” and therefore does not have to meet the
26 requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL
27 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715,
28

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

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

²⁸ Parker-Fawley Decl., ¶ 7.

a mechanism for “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies”); see also *Iskanian*, *supra*, at 381.

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

V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

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

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

The Parties reached the Settlement through arm’s-length negotiations, after a mediation with an experienced and respected mediator, Honorable Daniel Buckley (Ret.).²⁹ 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.³⁰

²⁹ Parker-Fawley Decl., ¶ 13.

³⁰ ³⁰ Parker-Fawley Decl., ¶¶ 4-7, 11-13, & 16-20.

1 After engaging in significant investigations, formal and informal discovery, and the
2 exchange of information, data, and documents, the Parties participated in settlement negotiations
3 to try to resolve the lawsuit.³¹ These efforts included participating in formal mediation conducted
4 by Hon. Daniel Buckley, a well-respected mediator experienced in presiding over and mediating
5 complex labor and employment matters.³² In the course of mediation and settlement negotiations,
6 the Parties discussed all aspects of the case, including the risks and delays of further litigation and
7 proceeding with trial, as well as the law relating to representative PAGA actions, off-the-clock
8 theory, meal and rest periods, regular rate of pay, vacation pay, collective bargaining agreements,
9 and arbitration/mutual dispute resolution agreements, wage-and-hour enforcement, evidence
10 produced and analyzed, and the possibility of bifurcation of discovery and/or trial and appeals,
11 among other things.³³ During all settlement discussions, the Parties conducted their negotiations
12 at arm's length in an adversarial position.³⁴

13 Based on all of the information available to the Parties, the Parties agreed that this matter
14 was well-suited for settlement given the strengths and weaknesses of the PAGA claims and the
15 facts and circumstances of the case.³⁵ Plaintiff and Plaintiff's Counsel believe that the settlement
16 is a fair, adequate, and reasonable resolution of this matter.³⁶ Plaintiff's Counsel has extensive
17 experience handling representative and class action wage-and-hour litigation and used that
18 experience to achieve a settlement recovery for Plaintiff, the State of California, and the Aggrieved
19 Employees.³⁷ Therefore, the Court should give considerable weight to the competency, experience,
20 and opinion of counsel and the involvement of a neutral mediator in assuring that the settlement is
21 a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446,
22 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.*
23 (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be
24

25 ³¹ Parker-Fawley Decl., ¶ 13.

26 ³² *Ibid.*

27 ³³ *Ibid.*

28 ³⁴ *Ibid.*

³⁵ *Id.*, ¶ 20.

³⁶ *Id.*, ¶ 24.

³⁷ *Id.*, ¶¶ 2-6.

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, Plaintiff would have to prove that Defendant 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 Defendant systematically violated the California Labor Code, with respect to Plaintiff and the Aggrieved Employees, by, *inter alia*, failing to properly pay minimum, regular, overtime wages, failing to provide compliant meal and rest periods and associated premiums, failing to timely pay wages during employment and upon termination of employment, failing to provide complete and accurate wage statements, failing to keep complete and accurate payroll records, failing to pay all accrued vacation pay, and failing to reimburse necessary business-related expenses and costs.

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

Defendant maintained several defenses to Plaintiff’s theory of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendant maintained, and continues to maintain, that they had, and continue to have, legally-compliant employment policies and practices throughout the time period at issue.³⁸ Defendant denies that they ever violated any provision of the California Labor Code,

³⁸ Parker-Fawley Decl., ¶ 17.

1 including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.³⁹
2 Defendant further denied, and continue to deny, that the lawsuit is appropriate for representative
3 treatment for any purpose other than settlement.⁴⁰

4 Defendant also challenged Plaintiff's standing as an aggrieved employee and denied that
5 any of Defendant's other employees whom Plaintiff seeks to represent are aggrieved.⁴¹ Also,
6 multiple courts have taken an approach requiring a plaintiff to establish standing and face the
7 possibility of bifurcation of discovery and/or trial of the PAGA claim. *See Amalgamated Transit*
8 *Union, supra*, 46 Cal.4th at 1001 (noting that PAGA "require[s] a plaintiff to have suffered an
9 injury resulting from an unlawful action"); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21,
10 2014) 2014 WL 6633396, at *4 (finding that judicial economy supported bifurcation because of
11 the difficulties and inherent uncertainties of being able to establish liability with respect to a large
12 number of potentially aggrieved employees and noted that "PAGA's public purpose would be ill-
13 served if the court finds [the plaintiff] has not been aggrieved by a Labor Code violation"); *Horton*
14 *v. Jones* (1972) 26 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of litigation is
15 allowed to avoid wasting time and money on trial when litigation of issues could be rendered
16 moot).

17 Defendant also argued that an important feature of PAGA is that the Court retains
18 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to
19 do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory."
20 *See* Cal. Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.* (2012)
21 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties
22 awarded to an employee based upon discretionary factors). Defendant maintained, and continues
23 to maintain, that they had and continue to have, legally-compliant employment policies and
24 practices throughout the time period at issue.⁴² Defendant denies that they ever violated any
25

26 ³⁹ *Ibid.*

27 ⁴⁰ *Ibid.*

28 ⁴¹ Parker-Fawley Decl., ¶ 19.

⁴² Parker-Fawley Decl., ¶ 17.

1 provision of the California Labor Code.⁴³ Even if, *arguendo*, such violations occurred, which
2 Defendant denies, Defendant contended that said violations would only be considered “initial
3 violations” and thus heightened “subsequent violation” penalties were not warranted. *See* Cal.
4 Lab. Code § 2699(f)(2); *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157,
5 1208-09 (“Until the employer has been notified that it is violating a Labor Code provision [...],
6 the employer cannot be presumed to be aware that its continuing underpayment of employees is a
7 ‘violation’ subject to penalties.”).

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

14 There is also uncertainty regarding PAGA claims due to decisions of the high courts. As
15 a result of a recent United States Supreme Court decision, it may be more likely that employer
16 agreements containing arbitration terms will impact the viability of adjudication of PAGA claims
17 in the judicial forum, which is relevant to this matter in light of the arbitration agreements that
18 Defendants obtained from their employees. *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S.
19 639.⁴⁴ Recently, the California Supreme Court confirmed that an aggrieved employee who has
20 been compelled to arbitrate claims under PAGA that are premised on California Labor Code
21 violations actually sustained by the plaintiff still maintains statutory standing to pursue a PAGA
22 claim arising out of events involving other employees through a PAGA representative claim.
23 *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 532 P.3d 682, 685. Nevertheless, while
24 the arbitrable and non-arbitrable components of an action are not severed from one another, it is
25 still possible that trial courts will stay the representative/non-individual PAGA claims pending
26 arbitration of a plaintiff’s individual PAGA claims and if a plaintiff is determined to not be an

27 ⁴³ *Ibid.*

28 ⁴⁴ Parker-Fawley Decl., ¶ 18.

“aggrieved employee” for PAGA purposes, issue preclusion may apply and, once reduced to a final judgment, trial courts are bound by the arbitrator’s determination and the plaintiff may lose standing to pursue non-individual PAGA claims. *Id.* at 693.

While Plaintiff disagrees with Defendant’s contentions and maintains that his PAGA claims have merit, in reaching the settlement, Plaintiff and his counsel took into account the strengths and weaknesses of each side’s position and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon appeal.⁴⁵

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

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

Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope of the PAGA claim and allegations.⁴⁶ In addition, the Parties exchanged tens of thousands of pages of information, documents, and data relevant to Plaintiff’s claims and Defendant’s defenses thereto, including, and not limited to, the employment records of Plaintiff, Defendants’ Arbitration Agreements, internal memoranda, various agreements and acknowledgments (such as, Mutual Dispute Resolution Agreement and Labor Agreements, Confirmation of Receipt 2017 Employee Handbook, 2019 Employee Handbook Acknowledgement CBA Covered Employees, Employee Receipt Acknowledgment of Policy and Procedure Manual, Meal and Rest Period Policy Acknowledgment), forms (such as, New Hire Form, Exit Interview Survey, Termination Checklist, Weber Hourly Associate Performance Review, Weber Logistics Safety Shoe Reimbursement Form, Time & Attendance Correction Form, Driver Certification for Other Compensated Work), and Defendants’ operations and employment practices, policies, and procedures documents (such as, Defendants’ Meal Break and Rest Period Policies, Vacation Policies, Overtime Policy, and

⁴⁵ Parker-Fawley Decl., ¶ 20.

⁴⁶ *Id.*, ¶ 14.

Timekeeping Policies), among other documents.⁴⁷ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant information, documents, and data to evaluate Plaintiff's claims and allegations, including, and not limited to, calculating the potential monetary recovery under PAGA.⁴⁸ Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding the pleadings, arbitration agreements, case management, discovery, the mediation, settlement negotiations, and settlement, among other issues; case strategy and analysis; drafting, reviewing, researching, and revising the pleadings, court filings, the mediation brief, settlement agreement, and settlement approval motion papers, propounding written discovery requests and notices of depositions of Defendant's person most knowledgeable designees and reviewing Defendant's responses and objections thereto; claims evaluation and analysis and preparing for the mediation and settlement negotiations; and appearing for court proceedings and participating in mediation and settlement negotiations.⁴⁹

Had the case not settled, the Parties would have conducted extensive additional formal discovery, including propounding additional written discovery requests as well as multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendant indicated that they would aggressively litigate this case.⁵⁰ Even if Defendant's defenses failed, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.⁵¹ Additionally, there is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State of California or other Aggrieved Employees after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

⁴⁷ Parker-Fawley Decl., ¶ 14.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Id.*, ¶ 17.

⁵¹ Parker-Fawley Decl., ¶ 20.

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

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

6 The Settlement provides significant benefits to the State of California and the Aggrieved
7 Employees and falls well-within the range of acceptable settlements under the circumstances.
8 Under the Agreement, the Defendant has agreed to pay a Total Settlement Amount of
9 \$1,900,000.00, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement,
10 which encompasses the LWDA Payment and Employees Portion, Attorneys’ Fees and Costs,
11 Settlement Administration Costs, and the General Release Fee.⁵² Subject to approval by the Court,
12 the following amounts will be subtracted from the Total Settlement Amount to yield the Net
13 Settlement amount which will go towards the LWDA Payment and Employees Portion: (1)
14 Attorneys’ Fees and Costs consisting of attorneys’ fees in the amount of \$760,000.00 and
15 reimbursement of litigation costs and expenses in the amount of \$11,370.02 to Plaintiff’s
16 Counsel⁵³; (2) the Settlement Administration Costs of up to \$8,000.00 to the PAGA Settlement
17 Administrator; and (3) General Release Fee of \$7,500.00 to Plaintiff.⁵⁴

18 The LWDA Payment and Employees Portion is currently estimated to be \$1,113,129.98,
19 of which an estimated \$834,847.48 will be distributed to the LWDA and an estimated \$278,282.50
20 will be distributed to the Aggrieved Employees . There is no reason to doubt the fairness of the
21 proposed plan of allocation of the LWDA Payment and Employees Portion as it fully complies
22 with California Labor Code section 2699(i).

23 The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel
24 recognizes the expense and length of continued proceedings necessary to litigate the matter
25 through trial and any possible appeals.⁵⁵ Plaintiff and his counsel have also taken into account the

26 ⁵² Settlement Agreement, §§ 3(a)(1)-(5).

27 ⁵³ *Id.*, § 3(a)(1).

28 ⁵⁴ *Id.*, §§ 3(a)-3(a)(4).

⁵⁵ Parker-Fawley Decl., ¶¶ 11, 14, 15 & 19.

uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.⁵⁶ Plaintiff and his counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other Aggrieved Employees.⁵⁷ Plaintiff and his counsel have also taken into account Defendant's agreement to enter into a settlement that confers significant relief upon the Aggrieved Employees and the State of California.⁵⁸

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 claims, and that it is in the best interests of the Aggrieved Employees and the State of California.⁵⁹

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 cases⁶⁰ and the settlement of PAGA

⁵⁶ *Ibid.*

⁵⁷ *Id.*, ¶¶ 14-18.

⁵⁸ *Id.*, ¶ 11.

⁵⁹ *Id.*, ¶ 25.

⁶⁰ *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).

claims in other cases⁶¹. Here, the value obtained for settlement of the PAGA claims is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

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

Plaintiff's Counsel is highly experienced in complex representative and class action wage-and-hour litigation.⁶² In the view of Plaintiff's Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁶³ Furthermore, courts have acknowledged that "the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]" *Williams, supra*, 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

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

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

The Settlement provides for a Total Settlement Amount of \$1,900,000.00, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement.⁶⁴ The Settlement provides for attorneys' fees in an amount of up to forty percent (40%) of the Total Settlement Amount,

⁶¹ 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).

⁶² Parker-Fawley Decl., ¶¶ 2-6.

⁶³ *Id.*, ¶ 24.

⁶⁴ Settlement Agreement, § 3(a)-(b).

1 which is \$760,000.00, subject to approval and award by the Court.⁶⁵ The requested attorneys' fees
2 award is commensurate with: (1) the risk that Plaintiff's Counsel took in bringing and litigating
3 the case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that
4 Plaintiff's Counsel has shown, (4) the results that Plaintiff's Counsel has achieved in the case, (5)
5 the value that Plaintiff's Counsel has achieved in the case, and (6) the other cases that Plaintiff's
6 Counsel has turned down in order to devote its time and effort to this case.

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

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

27
28 ⁶⁵ *Id.*, § 3(a)(1).

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

6 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
7 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
8 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *see also Laffitte, supra*, 1 Cal.5th 480 at 506
9 (holding that “trial court did not abuse its discretion in using [the percentage of fund method], in
10 part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is the
11 best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001)
12 24 Cal.4th 1122, 1132.

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

19 The percentage fee method is preferred in representative actions because “it better
20 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
21 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be equivalent
22 to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the
23 result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at 47-50; *Laffitte, supra*, 1
24 Cal.5th 480 at 503. In cases where the settlement agreement provides that the defendant will pay
25 the plaintiff’s attorneys a percentage of the fund created by the settlement, use of that percentage
26 method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards that are too small will
27 “chill the private enforcement essential to the vindication of many legal rights and obstruct the
28

1 representative actions that often relieve the courts of the need to separately adjudicate numerous
2 claims.” *Id.* at 53. Therefore, fees in representative actions should approximate the probable terms
3 of a contingent fee contract negotiated by a sophisticated attorney and client in comparable
4 litigation. *Id.* at 48. “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel
5 for their efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
6 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court*, *supra*, 126 Cal.App.4th
7 at 1270).

8 Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and circumstances
9 surrounding the case is well-within the range of reasonableness. Historically, courts have awarded
10 fees as high as fifty percent (50%) of the settlement in complex actions, depending on the
11 circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
12 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million total settlement amount); *Beech*
13 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding
14 approximately 53% of the settlement as attorneys’ fees). California courts routinely approve
15 attorneys’ fees awards “average[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.*
16 (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency fees in
17 marketplace to be 20 to 40 percent and determined such a percentage fee was appropriate).

18 Plaintiff’s Counsel has litigated this case since it was commenced, with the very real
19 possibility of an unsuccessful outcome and no fee recovery of any kind.⁶⁶ Counsel for the Parties
20 undertook significant investigation, and also invested time reviewing and analyzing relevant
21 information, documents, and data to evaluate the allegations, including, and not limited to,
22 calculating the potential monetary recovery under PAGA.⁶⁷ Other work performed by Plaintiff’s
23 Counsel included, but was not limited to: meeting and conferring with Defendant’s counsel
24 regarding the pleadings, arbitration agreements, case management, discovery, the mediation,
25 settlement negotiations, and settlement, among other issues; case strategy and analysis;
26 researching, drafting, reviewing, and revising the pleadings, court filings, the mediation brief,

27 ⁶⁶ Parker-Fawley Decl., ¶ 22.

28 ⁶⁷ *Id.*, ¶ 13.

1 settlement agreement, and settlement approval motion papers; propounding written discovery
2 requests and notices of depositions of Defendant's person most knowledgeable designees and
3 reviewing Defendant's objections and responses thereto; claims evaluation and analysis and
4 preparing for the mediation and settlement negotiations; and appearing for court proceedings and
5 participating in mediation and settlement negotiations.⁶⁸

6 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation and
7 will not receive any compensation until recovery is obtained.⁶⁹ Plaintiff's Counsel is experienced
8 in complex wage-and-hour litigation and used that experience to obtain a settlement recovery for
9 Plaintiff, the Aggrieved Employees, and the State of California.⁷⁰ Considering the amount of fees
10 requested, work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel
11 in handling similar matters, Plaintiff's maintain that the requested attorneys' fees are reasonable
12 and should be awarded.

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

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

25
26
27 ⁶⁸ *Ibid.*

⁶⁹ *Id.*, ¶ 23.

28 ⁷⁰ *Id.*, ¶¶ 1-7.

It should be highlighted that the percentage award sought is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel's representation and the risks taken in commencing the Action, the skill and determination required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that Plaintiff's Counsel has obtained on behalf of the Plaintiff, the Aggrieved Employees, and the State of California. For the reasons discussed herein, an award of attorneys' fees in the amount of \$760,000.00, which is thirty-five percent (40%) of the Total Settlement Amount, is reasonable.

1. Time & Labor

Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and their operations and employment policies, practices, and procedures.⁷¹ During the litigation of the Action, Plaintiff's Counsel obtained information from Plaintiff, Defendant, and other sources, conducted legal research, reviewed and analyzed a large amount of documents and data, prepared for and attended mediation, evaluated the PAGA claim, and calculated the potential monetary recovery under PAGA.⁷² Plaintiff's Counsel also met and conferred with Defendant's counsel regarding the pleadings, dispositive motions, case management, discovery, the mediation, settlement negotiations, and settlement, among other issues.⁷³ Plaintiff's Counsel performed other work including, *inter alia*, case strategy and analysis; drafting, reviewing, and revising the pleadings, court filings, the mediation brief, settlement agreement, and settlement approval motion papers; propounding written discovery requests and notices of depositions of Defendant's person most knowledgeable designees; claims evaluation and analysis and preparing for the mediation and settlement negotiations; and appearing for court proceedings and participating in mediation and settlement negotiations.⁷⁴

Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary

⁷¹ Parker-Fawley Decl., ¶ 14.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

to prosecute the case with maximum efficiency, and has fully and actively participated in the litigation process. In light of the value of time expended and the carrying of costs involved in this litigation, the requested attorneys' fees award is fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly

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

Plaintiff's Counsel's efforts and skills were used to, among other things, investigate the allegations and gather facts, research the legal issues, analyze data, documents, and information obtained from Plaintiff, Defendant, and other sources, evaluate the PAGA claim, and negotiate the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used its extensive experience and skill in the handling of complex wage-and-hour matters to advocate for and obtain for the Aggrieved Employees and the State of California a recovery now, with maximum efficiency, as opposed to the possibility of recovery in the future, after significant expense and time.⁷⁵

3. The Value of the Settlement

The Settlement represents an excellent resolution of this lawsuit, given the uncertainty and risks of further litigation.⁷⁶ Had the case not settled, Defendant would have vigorously sought to enforce their mutual dispute resolution agreement, challenge liability, and sought a reduction in the amount assessed as penalties. Defendant, however, faced risks too, including and not limited

⁷⁵ Parker-Fawley Decl., ¶¶ 13-20.

⁷⁶ *Ibid.*

1 to, the risk of jury trial and having the Court assess penalties. Additionally, preparing the case for
2 trial would have been extraordinarily expensive for the Parties.

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

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

12 The representation provided by Plaintiff's Counsel has been wholly contingent and
13 Plaintiff's Counsel took on this matter without knowing whether any recovery would be obtained.
14 Plaintiff's Counsel has invested **a significant amount of** time to obtain relief on behalf of Plaintiff,
15 the Aggrieved Employees, and the State of California. Plaintiff's Counsel is also requesting
16 reimbursement of litigation costs and expenses in the amount of \$11,370.02.⁷⁷

17 In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not
18 receive any compensation until recovery is obtained.⁷⁸ If Plaintiff's Counsel had 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 is well-experienced in complex wage-and-hour litigation and used that experience to obtain a great
22 result for Plaintiff, the Aggrieved Employees, and the State of California.⁷⁹ The skill and
23 determination that Plaintiff's Counsel has shown throughout the Action justify the requested
24 attorneys' fees and costs. Considering the amounts requested, work performed, and risks incurred,
25 the requested fees and costs are reasonable and should be awarded.

26
27 ⁷⁷ *Id.*, ¶ 22 and Exh. 4.

28 ⁷⁸ *Id.*, ¶ 22.

⁷⁹ See Parker-Fawley 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 \$1,900,000.00, subject to possible
7 increase pursuant to Section 3(b) of the Settlement Agreement, and it is currently estimated that
8 the LWDA Payment and Employees Portion available for distribution to the Aggrieved Employees
9 and the State of California, is approximately \$1,113,129.98.⁸⁰

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

11 Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its
12 attorneys employed their knowledge, skill, and experience to bring the case to a successful
13 conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation
14 experience, has recovered millions of dollars on behalf of thousands of individuals in California,
15 and has successfully handled numerous significant wage-and-hour class action and representative
16 action cases.⁸¹

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

19 The Settlement provides for reimbursement of litigation costs and expenses of up to
20 \$30,000.00. As set forth in the Declaration of Elizabeth Parker-Fawley, Plaintiff's Counsel seeks
21 reimbursement of \$11,370.02 in litigation costs and expenses.⁸² See attached **EXHIBIT 4**. These
22 costs and expenses were reasonable and necessary in the prosecution of this matter and to obtain
23 the Settlement, and the amount sought for reimbursement is less than the maximum amount
24 (\$30,000.00) allocated under the Settlement Agreement for reimbursement of litigation costs and
25 expenses. The cost savings of \$18,629.98 will be part of the Net Settlement Amount.⁸³

26 ⁸⁰ Settlement Agreement, § 3(a)(1)-(5).

27 ⁸¹ Parker-Fawley Decl., ¶¶ 2-6.

28 ⁸² Parker-Fawley Decl., ¶ 22.

⁸³ *Ibid.*

Accordingly, Plaintiff's Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$11,370.02 to Plaintiff's Counsel.

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

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

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

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Simpluris, Inc. to handle the administration of the Settlement. The fees and expenses of the PAGA Settlement Administrator are estimated not to exceed \$8,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual Settlement Share checks to the Aggrieved Employees(i.e., PAGA Settlement Packages); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages to any updated addresses located; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to \$8,000.00 to Simpluris, Inc., a necessary third-party for handling the settlement process.

X. THE PROPOSED GENERAL RELEASE FEES ARE FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for General Release Fee to be paid to Plaintiff in the amount of

1 \$7,500.00 in recognition of Plaintiff's efforts and work in spearheading the litigation of this matter,
2 as well as for his broader individual waiver and release of claims with a California Civil Code
3 Section 1542 waiver (set forth in Section 8(c) of the Settlement Agreement).⁸⁴ The purpose of
4 such an award is, in part, to incentivize aggrieved employees to step into the shoes of the state
5 labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in
6 a representative capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726
7 ("service payments" compensate named plaintiff "for [her] efforts in bringing the action"); *Clark*
8 *v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 ("an incentive award is
9 appropriate 'if it is necessary to induce an individual to participate in the suit'"); accord *Ingram v.*
10 *The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted)
11 ("Courts routinely approve incentive awards to compensate named plaintiffs for the services they
12 provided and the risks they incurred during the course of the [...] litigation."); *see also, e.g.,*
13 *Resendez, supra*, Los Angeles County Superior Court, Case No. BC59689 (approving \$10,000.00
14 enhancement award in a PAGA action).

15 Here, Plaintiff contributed considerable time and effort to the litigation of this case in order
16 to enforce the California Labor Code on behalf of the State of California and for the benefit of
17 other Aggrieved Employees. Plaintiff discussed his employment with his counsel, gathered and
18 produced relevant documents and information, and provided the facts and evidence necessary to
19 attempt to prove the allegations.⁸⁵ Plaintiff was available whenever his counsel needed him and
20 tried to obtain and provide documents and information that would aid in the litigation of the PAGA
21 claim and pursuit of recovery on behalf of the State of California and the Aggrieved Employees.⁸⁶

22 Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the
23 amount of \$7,500.00, in addition to the Individual Settlement Share he will receive as an Aggrieved
24 Employee.

25 ///

26
27 ⁸⁴ Settlement Agreement, § 8(c).

⁸⁵ Parker-Fawley Decl., ¶ 23; Declaration of Ashton Baker ("Baker Decl."), ¶¶ 2-4.

28 ⁸⁶ Parker-Fawley Decl., ¶ 23; Baker Decl., ¶¶ 2-4.

XI. CONCLUSION

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

Dated: June 21, 2024

LAWYERS for JUSTICE, PC

By: 
Elizabeth Parker-Fawley
Attorney for Plaintiff