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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

TONY BANKS, individually, and on behalf
of aggrieved employees pursuant to the
Private Attorneys General Act (“PAGA”);

Plaintiff,

v.

SUBLIME MACHINING INC. DBA
SUBLIME CANNA, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 21CV000754

Assigned for All Purposes to:
Honorable Peter Borkon
Department 15

**PLAINTIFF’S NOTICE OF MOTION
AND RENEWED MOTION FOR
APPROVAL OF PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE § 2698,
ET SEQ.) SETTLEMENT AGREEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Reservation ID: 986946213081]

[Declaration of Counsel (Douglas Han);
Declaration of Jack Nichols; Declaration of
Jodey Lawrence; and [Proposed] Order and
Judgment filed concurrently herewith]

Hearing Date: May 30, 2024
Hearing Time: 2:30 p.m.
Hearing Place: Department 15

Complaint Filed: October 22, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 30, 2024 at 2:30 p.m., or as soon as thereafter as
2 the matter may be heard, before the Honorable Peter Borkon in Department 15 of the Alameda
3 County Superior Court located at 1221 Oak Street, Oakland, California 94612, Plaintiff Tony
4 Banks (“Plaintiff”) will and hereby does move for entry of an order and judgment approving the
5 Amended Settlement Agreement and Release (“Settlement Agreement,” “Settlement,” or
6 “Agreement”), attached as **Exhibit 2** to the declaration of Douglas Han, pursuant to Labor Code
7 section 2699(1).

8 This motion is based upon this notice of motion and motion; Settlement Agreement;
9 Declarations of Plaintiff’s Counsel (Douglas Han), Settlement Administrator (Jodey Lawrence),
10 and Jack Nichols in support thereof; proposed order approving the Settlement Agreement;
11 pleadings and other records on file with the Court in this matter; and such evidence and oral
12 argument as may be presented at the hearing.

13
14 Dated: April 12, 2024

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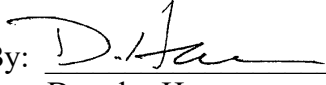
15 By: 
16 Douglas Han
17 *Attorneys for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Under Labor Code section 2699(l)(2), Plaintiff seeks approval of the Settlement Agreement
4 entered between Plaintiff and Defendant Sublime Machining Inc. d/b/a Sublime Canna
5 (“Defendant”). Plaintiff entered the Settlement Agreement on behalf of himself and all current or
6 former hourly-paid or non-exempt employees of Defendant who worked for Defendant within the
7 State of California at any time during the period from July 30, 2020, through June 30, 2022
8 (“Settlement Group,” “Settlement Group Members,” and “Settlement Period”).

9 Plaintiff submits the Settlement is fair, adequate, and reasonable, and meets requirements
10 for Court approval. Thus, Plaintiff requests the Court to approve the Settlement.

11 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

12 On July 30, 2021, Plaintiff provided written notice to the California Labor and Workforce
13 Development Agency (“LWDA”) and Defendant. On October 22, 2021, Plaintiff filed a
14 representative Private Attorneys General Act of 2004 (“PAGA”) action against Defendant. The
15 representative PAGA action was predicated on Defendant’s alleged failure to compensate
16 employees for, *inter alia*, all hours worked, noncompliant breaks, reasonable business expenses,
17 and associated wage statements and waiting time penalties.¹

18 The Parties then engaged in discoveries, investigations, and negotiations. Eventually, the
19 Parties remotely participated in private mediation on February 27, 2023 with the mediator Jeff Ross.
20 While the Parties did not initially settle at mediation, continued negotiations with the aid of the
21 mediator allowed the Parties to eventually reach a settlement.²

22 Plaintiff now moves for an order granting approval of the Settlement, pursuant to Labor
23 Code section 2699(l)(2).

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26 ¹ (Declaration of Douglas Han In Support of Plaintiff’s Renewed Motion for Approval of
27 Private Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement Agreement (“Han Decl.”),
¶¶ 13-15.)

28 ² (*Id.* at ¶¶ 16-18.)

III. SUMMARY OF THE SETTLEMENT TERMS

A. Allocation of the Gross Settlement Amount

The Settlement provides Defendant will pay a non-reversionary Gross Settlement Amount of \$150,000. The PAGA Penalties Fund will be the Gross Settlement Amount less: (1) Attorneys' Fees Award of up to \$50,000; (2) Litigation Costs Award of \$14,588.90; and (3) Administration Costs of up to \$5,000.³

The current amount of the PAGA Penalties Fund is estimated to be \$80,411.10. Seventy-five percent (75%) of the PAGA Penalties Fund will be transmitted to the LWDA as the LWDA PAGA Payment, pursuant to Labor Code section 2699(i). The remaining twenty-five percent (25%) of the PAGA Penalties Fund will be distributed to the Settlement Group Members as their Individual Settlement Awards. The Settlement Administrator will calculate each Individual Settlement Award using the formula set forth in the Settlement Agreement.⁴

B. Distribution of the PAGA Penalties Fund

Within fifteen (15) calendar days of the Effective Date, Defendant shall provide to the Settlement Administrator a list of Settlement Group Members. Funding of the Settlement shall be made via monthly installment payments in the form of twenty-four (24) checks. The twenty-four (24) installment payments will begin within thirty (30) calendar days after the Effective Date. Thereafter, payments will be made over a two (2) year period in equal monthly installments, provided that all Parties have signed the Agreement. This payment plan is crucial for Defendant due to its current financial condition and financial hardships it has been experiencing in recent years. Within fourteen (14) calendar days of the full funding of the Settlement by Defendant, the Settlement Administrator will issue the payments required by section 7 of the Agreement to the appropriate entities or persons.⁵

³ (See Settlement Agreement attached as **Exhibit 2** to the Declaration of Douglas Han In Support of Plaintiff's Renewed Motion for Approval of Private Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement Agreement ("Settlement Agreement"), §§ 7(a), 7(b).)

⁴ (*Id.* at § 7(b)(iv).)

⁵ (*Id.* at §§ 8(a)-8(c).)

Individual Settlement Award checks will remain negotiable for one hundred twenty (120) calendar days after the date of their issuance. Uncashed settlement checks will be voided and directed to the California State Controller for deposit in the Unclaimed Property Fund.⁶

C. The Scope of the Release in the Settlement Agreement

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, the Settlement Agreement and the judgment to be entered by the Court following the Settlement Agreement forever bar Plaintiff, LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all allegedly aggrieved employees, from pursuing any action against Defendant under PAGA based on or arising out of violations of Labor Code sections alleged in the lawsuit, and claims that could have been asserted in the lawsuit based upon the facts alleged in the operative complaint and PAGA Notice through the end of the Settlement Period.⁷ (See *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 980, 986 [a plaintiff suing under PAGA “does so as the proxy or agent of the state’s labor law enforcement agencies,” and, as such, “represents the same legal right and interest as state labor law enforcement agencies”].) A judgment in a PAGA action “binds not only that [plaintiff] employee but also the state labor law enforcement agencies.” (*Id.* at p. 986) Further, “[b]ecause an aggrieved employee’s action under [PAGA] functions as a substitute for an action brought by the government itself, a judgment in that action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government.” (*Ibid.*) “Accordingly, with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under [PAGA]” (*Ibid.*)

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⁶ (Settlement Agreement, *supra*, at § 8(c)(iii).)

⁷ (*Id.* at § 9(a).)

1 **D. No Right to Object to or Opt Out of the Settlement**

2 “[A] PAGA action is a statutory action for penalties brought as a proxy for the state, rather
3 than a procedure for resolving the claims of other employees, there is no need to protect absent
4 employees’ due process rights[.]” (*Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 546.) “Unnamed
5 employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of
6 the representative PAGA claim.” (*Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2,
7 2010), 2010 WL 3570777, at *5.) “PAGA does not make other potentially aggrieved employees
8 parties” and no “due process concerns arise under PAGA because absent employees do not own a
9 personal claim for PAGA civil penalties and whatever personal claims the absent employees might
10 have for relief are not at stake.” (*Williams*, at pp. 546-547 (internal references omitted, citing
11 *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46t Cal.4th 993, 1003 and
12 *Iskanian v. CLS Trans. Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)) “[A]bsent fellow
13 employees will be bound by the outcome of any PAGA action[.]” (*Williams*, at p. 548 (internal
14 references omitted, citing *Arias v. Sup. Ct.*, *supra*, 46 Cal.4th at pp. 980-981; *Fireside Bank v. Sup.*
15 *Ct.* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Indus., Inc.* (1981) 29 Cal, 3d 462, 474.)

16 Consistent with this law, the Settlement does not provide for a procedure for Settlement
17 Group Members to object to or exclude themselves from the Settlement.

18 **IV. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

19 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself,
20 other aggrieved employees and the State to recover civil penalties with respect to provisions of the
21 Labor Code that do not otherwise provide for civil penalties (Lab. Code § 2699(g)), and also, civil
22 penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer
23 (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must comply with
24 Labor Code section 2699.3. (See Lab. Code § 2699(a).) Although PAGA penalties must be awarded
25 by a court if a violation is found, a court “may award a lesser amount than the maximum civil
26 penalty amount specified by this part if, based on the facts and circumstances of the particular case,
27 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
28 (Lab. Code § 2699(e)(2).)

1 The settlement of a PAGA claim requires court approval. (See Lab. Code § 2699(l)(2) (“The
2 superior court shall review and approve any settlement of any civil action pursuant to this part.”).)
3 However, “[a] PAGA claim asserted on a non-class representative basis . . . is not considered a
4 class action but a law enforcement action” and, therefore, does not have to meet the requirements
5 of a class action. (*Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at
6 *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias*
7 *v. Sup. Ct., supra*, 46 Cal.4th at pp. 980-988 (affirming lower court’s holding that “plaintiff need
8 not satisfy class action requirements” to assert a PAGA claim); *Pedroza v PetSmart, Inc.* (C.D. Cal.
9 Jan. 28, 2013) 2013 WL 1490667, at *15.) As such, a court’s review of a PAGA settlement involves
10 analysis of several unique features that render the approval process distinct from approval of a class
11 action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a negotiated
12 resolution is fair to those affected.” (*Williams v. Sup. Ct., supra*, 3 Cal.5th at p. 549 (citing Lab.
13 Code § 2699(l)(2)).) Although Labor Code section 2699(l) does not set forth the criteria on which
14 a PAGA settlement is to be judged, courts have approved settlements of a PAGA claim.⁸ The Court
15 of Appeal has held that “a trial court should evaluate a PAGA settlement to determine whether it is
16 fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
17 violations, deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco*
18 *USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)

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25 ⁸ (See e.g. *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court,
26 Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court,
27 Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL
28 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.)

1 In a PAGA case, the Court’s focus is not the amount which “aggrieved employees” are to
2 receive but whether the total settlement amount achieves PAGA’s objectives. PAGA’s purpose “to
3 incentivize private parties to recover civil penalties for the government that otherwise may not have
4 been assessed and collected by overburdened state enforcement agencies.” (See *Ochoa-Hernandez*,
5 *supra*, 2010 WL 3570777, at *4 (citing *Arias v. Sup. Ct.*, *supra*, 46 Cal.4th at p. 986).) Penalties
6 recovered under the PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor
7 laws . . . and for education of employers and employees about their rights and responsibilities under
8 this code, to be continuously appropriated to supplement and not supplant the funding to the agency
9 for those purposes.” (See Lab. Code § 2699(j).) The recovery of penalties on behalf of the state, by
10 way of a PAGA claim, is essentially a law enforcement action. (See *Amalgamated Transit Union*,
11 *Local 1756, AFL-CIO v. Sup. Ct.*, *supra*, 46 Cal.4th at p. 1003 (stating the PAGA is mechanism for
12 “an aggrieved employee to recover civil penalties – for Labor Code violations – that otherwise
13 would be sought by state labor law enforcement agencies”); see also *Iskanian v. CLS Trans. Los*
14 *Angeles, LLC*, *supra*, 58 Cal.4th at p. 381.)

15 **V. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED.**

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

17 A settlement agreement that is “the product of extensive and hard-fought adversarial
18 negotiations between the parties” is entitled to a presumption of fairness. (*Wershba v. Apple*
19 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)

20 The Settlement is presumptively fair. This is because the Settlement: (1) is the product of
21 non-collusive, arm’s-length negotiations; (2) was negotiated by counsel with experience in similar
22 wage-and-hour litigation following a full-day mediation with a mediator; and (3) occurred after the
23 Parties’ counsel engaged in significant investigation of the strengths of this case and the risks of
24 continued litigation. Plaintiff’s Counsel also have extensive experience in representative and class
25 action wage-and-hour litigation and used that experience to achieve a reasonable result.⁹

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28 ⁹ (Han Decl., *supra*, at ¶¶ 2-10; Exhibit 1.)

1 The Court should give considerable weight to the competency, experience, and opinion of
2 counsel and the involvement of a neutral mediator in assuring the Settlement is a product of hard-
3 fought negotiations that was entered without collusion. (See *Kirkorian v. Borelli* (N.D. Cal. 1988)
4 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v.*
5 *Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-617, 622 (recommendations of plaintiffs’
6 counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express Corp.*
7 (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating the “assistance of an experienced
8 mediator in the settlement process confirms that the settlement is non-collusive”).)

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

11 Plaintiff contends the provisions of the Labor Code potentially triggering PAGA penalties
12 in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221,
13 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.
14 For Plaintiff to recover civil penalties, he must prove the underlying Labor Code violations with
15 respect to the Settlement Group Members and show Defendant’s conduct gave rise to penalties.
16 (See e.g. *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82
17 (“Plaintiffs’ claim under [PAGA] is wholly dependent upon her other claims. Because all of
18 Plaintiffs’ other claims fail as a matter of law, so does her PAGA claim.”).)¹⁰

19 Defendant maintained it had compliant employment policies and practices throughout the
20 statutory period. Defendant denied it ever violated any provision of the Labor Code. Defendant also
21 denied this case is appropriate for representative treatment for any purpose other than the
22 Settlement. If this case had not been settled, Defendant would have challenged Plaintiff’s standing
23 as a Settlement Group Member and denied its other employees were aggrieved. Defendant argued
24 the Court was unlikely to assess cumulative penalties for the maximum number of possible separate
25 Labor Code violations because the “subsequent violation” theory of PAGA recovery would not be
26 triggered in this case, and it would be unjust, arbitrary, oppressive, and/or confiscatory. (See e.g.
27

28 ¹⁰ (Han Decl., *supra*, at ¶ 27.)

1 *Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144.) Plaintiff and Plaintiff’s Counsel
2 had to consider the strengths and weaknesses of each side’s position and uncertainty of how the
3 case might have ended. Defendant asserted PAGA penalties are not mandatory but permissive and
4 discretionary. Defendant maintained it had a strong argument it would be unjust to award maximum
5 PAGA penalties given the unsettled state of PAGA liability. (*Thurman v. Bayshore Transit Mgmt.,*
6 *Inc.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)¹¹

7 Although wage-and-hour actions are amenable to class-wide resolution,¹² courts have found
8 certain Labor Code violations raise individualized issues and/or are unmanageable and are not
9 suitable for class adjudication.¹³ Similarly, in PAGA-only actions, Defendant contends courts have
10 found due process requires the adjudication of a PAGA claim meet a “manageability” requirement.
11 (See e.g. *Liuy v. Merrill Lynch & Co.* (C.D.Cal. Nov. 10, 2014) No. CV-14-0425-PA, WL 5904904
12 at **3-4 (Court dismissed the PAGA claim because a multitude of individualized assessments
13 would be necessary, making the PAGA claim unmanageable); see also *Wesson v. Staples the Office*
14 *Superstore, LLC* (2021) 68 Cal.App.5th 746, 766-767.)

15 Plaintiff alleges, under Defendant’s argument that stacking penalties does not apply to the
16 PAGA claim, and limiting potential exposure to an initial violation only, PAGA penalties would
17 be **\$20,000** (200 employees x \$100 penalty for initial violation) on the low end and **\$160,000** (200
18 employees x \$100 penalty for initial violation x 8 theories of recovery) on the high end.¹⁴

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24 ¹¹ (Han Decl., *supra*, at ¶¶ 22-26.)

25 ¹² (See e.g. *Martinez vs. Joe’s Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-
26 84, modified on other grounds by *Martinez v. Joe’s Crab Shack Holdings, et al.* (Dec. 3, 2014
B242807) 2014 Cal.App. LEXIS 1102, *1-2.)

27 ¹³ (See e.g. *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, 34-35.)

28 ¹⁴ (Han Decl., *supra*, at ¶¶ 28-30.)

1 Plaintiff also recognized the risk any PAGA award could be reduced. Many of the claimed
2 Labor Code violations underlying the PAGA claim were cumulative for which the Court may or
3 may not stack. Therefore, a Gross Settlement Amount of \$150,000 for PAGA civil penalties was
4 reasonable and significant. When PAGA penalties are negotiated in good faith and “there is no
5 indication that [the] amount was the result of self-interest at the expense of other Class Members,”
6 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr.
7 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900 at *24; see e.g. *Nordstrom Com. Cases*
8 (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a
9 settlement which does not allocate any damages to the PAGA claims.”).)¹⁵

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

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

16 Both sides used the pre-mediation time to investigate the veracity, strength, and scope of
17 the PAGA claim. The Parties engaged in extensive discovery and exchanged documents and data
18 to mediate the claims relevant to the Labor Code violations and applicable defenses thereto and to
19 determine the potential value and strength of the PAGA claim. After engaging in significant
20 investigation and negotiations, Plaintiff’s Counsel believed it would be best to pursue a settlement
21 rather than take the risky and uncertain trial route. Even if the Parties had managed to negotiate a
22 similar settlement later, it would have been severely undercut but the additional costs and expenses
23 incurred. In other words, the Settlement offers immediate recovery rather than only the possibility
24 of recovery at some indeterminate later date.¹⁶

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27 ¹⁵ (Han Decl., *supra*, at ¶ 31.)

28 ¹⁶ (*Id.* at ¶¶ 15-18, 26.)

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 Serv. Comm’n* (9th Cir. 1981) 688 F.2d
4 615, 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 p. 625.)

6 The Settlement provides a significant monetary benefit to the LWDA and Settlement Group
7 Members. The PAGA Penalties Fund is currently estimated to equal \$80,411.10. In addition, the
8 proposed plan of allocation of the PAGA Penalties Fund to the LWDA and Settlement Group
9 Members fully complies with Labor Code section 2699(i).

10 After their investigations and inquiries, Plaintiff and Plaintiff’s Counsel recognize the
11 expense, length, risk, and uncertainty of continued proceedings necessary to litigate this dispute.
12 To recover civil penalties, Plaintiff would have to prove the Settlement Group Members suffered
13 from the underlying Labor Code violations and that Defendant’s conduct gave rise to penalties,
14 which could take several months, or even years, to prove. Plaintiff would also have to proffer a
15 manageable trial plan to the Court to prove penalties. Plaintiff and Plaintiff’s Counsel are aware of
16 the burdens of proof necessary to establish liability and the difficulties in establishing liability for
17 penalties. Plaintiff and Plaintiff’s Counsel also considered Defendant’s agreement to enter a
18 settlement that confers significant relief. Thus, Plaintiff and Plaintiff’s Counsel determined the
19 Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim.¹⁷

20 The results achieved, and the PAGA allocation provided by the Settlement Agreement, is
21 within the range of acceptable settlement under the circumstances.¹⁸

22 ¹⁷ (Han Decl., *supra*, at ¶¶ 22-26.)

23 ¹⁸ (See e.g. *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No.
24 JCCP4833 (May 2017) (approving \$15,000 out of \$4 million toward settlement of the PAGA
25 claim); *Garcia, supra*, 2012 WL 5364575, at *3 (approving \$10,000 out of \$3.7 million toward
26 settlement of the PAGA claim); *Schiller v. David’s Bridal, Inc., supra*, 2012 WL 2117001, at *14
27 (approving \$10,000 out of \$518,245 toward settlement of the PAGA claim); *Chu v. Wells Fargo*
28 *Invs., supra*, 2011 WL 672645, at *1 (approving \$10,000 out of \$6.9 million toward settlement of
 the PAGA claim); *Franco v. Ruiz Food Prods., supra*, 2012 WL 5941801, at *14 (approving
 \$10,000 out of \$2.5 million toward settlement of the PAGA claim); *Nordstrom Commissions Case*,
 supra, 186 Cal.App.4th at p. 589 (finding no abuse of discretion by the trial court in approving a

(Footnote continued)

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

2 Plaintiff's Counsel are experienced in complex representative and class action wage-and-
3 hour litigation. Plaintiff's Counsel believe the benefit conferred by the Settlement is eminently fair
4 and reasonable and in the best interests of the LWDA and Settlement Group Members. In other
5 words, Plaintiff's Counsel used their experience to negotiate a proper settlement.¹⁹

6 **VI. APPROVAL OF THE REQUESTED ATTORNEYS' FEES AWARD.**

7 **A. A Fee Award of Percentage of the Entire Fund is Appropriate.**

8 The Settlement provides for an Attorneys' Fees Award of \$50,000 (1/3 of the Gross
9 Settlement Amount). Defendant does not oppose Court approval of, but makes no claims or
10 admissions with respect to, the reasonableness of the Attorneys' Fees Award. The Attorneys' Fees
11 Award is commensurate with the: (1) risks undertaken; (2) time, effort, and expense dedicated; (3)
12 skills and determination shown; (4) value achieved; and (5) cases turned down.

13 Plaintiff's Counsel are entitled to recover reasonable attorneys' fees and costs as a matter
14 of right under PAGA. (See Lab. Code § 2699(g)(1).) Plaintiff's Counsel are entitled to fees and
15 costs under Code of Civil Procedure section 1021.5, as this case is by definition "for the benefit"
16 of others and has secured monetary awards for the Settlement Group Members.²⁰ The payment to
17 the LWDA will also benefit the agency in enforcing labor laws and educating "employers and
18 employees about their rights and responsibilities under [the Labor Code]." (*Id.* § 2699(i).)

19 Plaintiff's Counsel thoroughly investigated and litigated this case before mediation with a
20 real chance of not reaching a resolution. The ongoing work has been extensive and successful in
21 achieving a settlement. Plaintiff's Counsel have also borne all the risks and costs of litigation and
22 will not receive any compensation until recovery via the Settlement.²¹

23 _____ settlement that allocates \$0 toward the settlement of the PAGA claim at issue in the lawsuit.)

24 ¹⁹ (Han Decl., *supra*, at ¶¶ 2-10; Exhibit 1.)

25 ²⁰ (See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
26 (recognizing that recovery obtained on behalf of 209 individual satisfies the "significant benefit,"
27 "public interest," and "large class of persons" requirements of Code of Civil Procedure section
1021.5, regardless of plaintiff's personal motivation).)

28 ²¹ (Han Decl., *supra* at ¶ 48.)

1 **B. The Requested Attorneys' Fees Award is Reasonable Based on the Factors**
2 **Considered in Determination of Fee Awards.**

3 The factors courts consider in determining whether fee awards are reasonable are: (1) time
4 and labor required; (2) novelty and difficulty of the questions; (3) requisite skills to perform the
5 legal services; (4) preclusion of other employment by the attorney; (5) customary fee; (6) whether
6 the fee is fixed or contingent; (7) time limitation imposed; (8) amount involved and results obtained;
7 (9) experience, reputation and ability of the attorney; (10) undesirability of the case; (11) nature
8 and length of the professional relationship; and (12) awards in similar cases. (*Camden I Condo.*
9 *Ass'n, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.)

10 It should be highlighted that the percentage award sought is commensurate with the: (1)
11 results obtained; (2) risks undertaken; (3) difficulty of this case; and (4) skills displayed and the
12 quality of work, which are addressed below.

13 ***1. The Results Obtained***

14 The results attorneys obtain for their clients is an important factor when determining the
15 reasonability of a percentage-based fee. (See *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
16 489.) Law firms that obtain reasonable results expect them to be reflected in their fees.

17 The results obtained are reasonable as Plaintiff's Counsel obtained a settlement of \$150,000
18 without the need for extended litigation. If this case went to trial, there was no guarantee the trial
19 would have been short or either party would have prevailed. As stated above, even if the Parties
20 reached a similar settlement, it would have been undercut by additional expenses incurred.
21 Resolution of this dispute at this stage is preferred as the Parties were moving to the phase where
22 significant time and money would inevitably have to be spent to prepare for trial. Preparation for
23 trial would have also entailed preparing for and deposing several people who were most qualified,
24 which would have been a lengthy and expensive endeavor with no guarantee of success.

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1 Consequently, agreeing to settle this case prior to trial meant Plaintiff's Counsel used their
2 skills and experience to obtain a reasonable result for the Settlement Group Members at far less
3 expense. By avoiding the uncertainties associated with conducting trial and Defendant's responses
4 to the allegations, Plaintiff's Counsel obtained those results more quickly and surely than if the
5 matter had been litigated to final resolution. Under California law, this factor also supports the
6 requested fee. (See *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App. 4th 19, 51.)

7 **2. The Risk Taken by Plaintiff's Counsel**

8 Whether or not representation is provided on a contingency basis is an important factor:
9 A contingent fee must be higher than a fee for the same legal services paid as they are
10 performed [and] [...] compensates the lawyer not only for the legal services he renders but
11 for the loan of those services. A lawyer who both bears the risk of not being paid and
12 provides legal services is not receiving the fair market value of his work if he is paid only
13 for the second of these functions. If he is paid no more, competent counsel will be reluctant
14 to accept fee award cases. (internal quotes and citations omitted)
15 (*Cates v. Chiang* (2013) 213 Cal.App.4th 791, 823.)

16 Plaintiff executed a contingent fee agreement. This meant no recovery would have equated
17 to no compensation for 293 hours of work and \$14,588.90 litigation costs incurred. This, in turn,
18 illustrates the risks taken by Plaintiff's Counsel. Additionally, several factors also made this case
19 difficult, thereby contributing to the risks undertaken. These factors included: (1) some employees
20 working for Defendant through temporary employment agencies; (2) drafting and propounding
21 formal discovery requests; (3) difficulties in pinning down job responsibilities, wages paid, meal
22 and rest breaks taken; (4) number of documents that had to be reviewed and analyzed; (5) shifting
23 wage-and-hour laws; and (6) Defendant's firm resistance to the relief.²²

24 **3. The Difficulty of the Litigation**

25 The unsettled nature of the law, factual complexities underlying the policies and practices
26 in place, and other issues made this case complex and difficult. Yet, Plaintiff's Counsel overcame
27 these obstacles by obtaining a settlement that is fair, adequate, and reasonable. Plaintiff's Counsel
28 obtaining a fair settlement despite these roadblocks speaks volumes of their skill and experience.
(See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p. 42 (the "special skill and experience
of counsel" is a relevant factor when determining fee award).)

²² (Han Decl., *supra*, at ¶¶ 32, 42-45, 48.)

1 Due to the difficulty of this case, Plaintiff's Counsel devoted substantial hours to this matter.
2 The Task & Time Chart sets forth these hours, allocating the total time to the tasks required to
3 conclude this lawsuit. The work commenced with the pre-filing case analysis and research and
4 continues up to the moment of the work for final approval.²³

5 As stated in the previous section, this was not a clear-cut case. Plaintiff's Counsel had to
6 overcome roadblocks and obstacles before they could reach a reasonable settlement, which further
7 illustrates the difficulty of this case. These difficulties ranged from arguing against Defendant's
8 defenses, drafting and propounding discovery requests, gathering and analyzing relevant
9 documents and data, preparing for and attending mediation, continuing to negotiate with
10 Defendant's counsel following mediation, etc.

11 **4. The Skill Displayed and Quality of Work**

12 The level of skill displayed and quality of work it produced also justify the requested fee.
13 Plaintiff's Counsel are skilled and experienced representatives and class action wage-and-hour
14 litigators, and the Task & Time Chart further illustrates this assertion.

15 Plaintiff's Counsel used the pre-mediation time period to investigate the veracity, strength,
16 and scope of the PAGA claim and to prepare for representative adjudication. This included, among
17 other things: (1) engaging case strategy and analysis; (2) requesting and gathering relevant
18 documents from Defendant and other sources; (3) drafting, reviewing, and revising pleadings and
19 a mediation brief; (4) preparing for and appearing at court proceedings; (5) drafting and
20 propounding formal discovery requests; (6) undertaking calculations of potential damages; (7)
21 preparing for and attending mediation and settlement negotiations; and (8) working with
22 Defendant's counsel to draft and finalize the Settlement Agreement (and exhibit). In addition to
23 determining the scope of the Settlement Group Members, Plaintiff's Counsel undertook the arduous
24 and time-consuming task of locating and interviewing Settlement Group Members to verify if the
25 PAGA claim raised individualized issues.²⁴

26
27 ²³ (Han Decl., *supra*, at ¶¶ 42-44; Exhibit 3.)

28 ²⁴ (*Id.* at ¶ 16.)

1 Thus, Plaintiff's Counsel's accumulated skill and expertise contributed to the Settlement in
2 this case. Under California law, this factor (skills displayed and quality of work) also supports the
3 Attorneys' Fees Award. (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p. 51.)

4 **C. The Lodestar Methodology Justifies Approval of the Requested Fees.**

5 Plaintiff's Counsel spent 293 hours litigating this matter. Plaintiff's Counsel's hourly rates
6 are supported by the 2022 Real Rate Report that was compiled by Wolter Kluwer that surveyed the
7 hourly rates charged in 2022 by hundreds of attorneys in California. Likewise, Plaintiff's Counsel's
8 hourly rates are in line with the Laffey Matrix.²⁵

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

10 This matter required a significant amount of time and labor, and Defendant disputed the
11 PAGA claim and questioned its manageability. The Task & Time Chart evidence the numerous
12 tasks that were performed to seek all necessary information. The Task & Time Chart further
13 illustrates Plaintiff's Counsel spent a reasonable number of hours working on this case, thereby
14 demonstrating the application for the attorneys' fees is within the range of reasonableness.²⁶

15 The case involved gathering and analyzing data from Defendant and the Settlement Group
16 Members. Plaintiff's Counsel undertook intense preparation to resolve the entire matter through
17 mediation. These preparations ranged from locating and interviewing putative aggrieved
18 employees, gathering and reviewing a myriad of documents, determining the scope of the
19 Settlement Group Members, verifying the strengths of the PAGA claim, etc.

20 **2. *The Fees Requested Represent a Reasonable Hourly Rate of Compensation.***

21 Plaintiff's Counsel's hourly rates are well within the range of rates charged by comparably
22 qualified attorneys in California and the legal profession in general for comparably complex work.
23 By extension, Plaintiff's Counsel's hourly rates are also in line with the Laffey Matrix.²⁷

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25 _____
26 ²⁵ (Han Decl., *supra*, at ¶¶ 42-46; Exhibits 4, 5.)

27 ²⁶ (*Id.* at ¶¶ 42-44; Exhibit 3.)

28 ²⁷ (*Id.* at ¶¶ 45, 46; Exhibits 4, 5.)

Plaintiff's Counsel's hourly rates are reasonable for the following reasons: (1) comparable hourly rates for similar services have been deemed to be reasonable in several cases in California; and (2) several surveys of legal rates have supported Plaintiff's Counsel's hourly rates. This shows Plaintiff's Counsel's hourly rates used for the lodestar calculation are within the range of non-contingent rates charged by comparable attorneys for similar work performed in California.

Based on the attorney time expended, the base lodestar fees calculation is \$217,660, resulting in a negative multiplier of 0.23 when cross-checked to the Attorneys' Fees Award.²⁸

VII. THE LITIGATION COSTS AWARD TO BE REIMBURSED SHOULD BE APPROVED

The Settlement Agreement allows for Litigation Costs Award not to exceed \$15,000. Plaintiff's Counsel incurred \$14,588.90 litigation in costs and expenses.²⁹ Plaintiff's Counsel request the Court order reimbursement for these costs and expenses.

VIII. THE ADMINISTRATION COSTS SHOULD BE APPROVED

The Agreement provides for the payment of Administration Costs of up to \$5,000 to the Settlement Administrator. The Administration Costs are intended to cover the costs incurred by the Settlement Administrator for performing its duties outlined in the Agreement. Plaintiff's Counsel has worked with the desired Settlement Administrator in the past and are familiar with its superior reputation and work product. Thus, the Court should approve the payment of the Administration Costs to the Settlement Administrator.

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²⁸ (Han Decl., *supra*, at ¶¶ 45, 47.)

²⁹ (*Id.* at ¶¶ 48-50; Exhibits 6-8.)

1 **IX. CONCLUSION**

2 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise.
3 Based thereon, Plaintiff requests the Court approve the Settlement, including the plan of allocation
4 and distribution of the above-mentioned payments.

5
6 Dated: April 12, 2024

JUSTICE LAW CORPORATION

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8 By: 
9 Douglas Han
Attorneys for Plaintiff

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is bitty@justicelawcorp.com

**PLAINTIFF'S NOTICE OF MOTION AND RENEWED MOTION FOR APPROVAL
OF PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698, ET SEQ.)
SETTLEMENT AGREEMENT; MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

on interested parties in this action by electronically submitting as follows:

[X] BY ELECTRONIC SUBMISSION

[X] STATE

Executed on April 12, 2024, at Pasadena, California.

Betty Marie Loub

PROOF OF SERVICE