BROCK & GONZALES, LLP
6701 CENTER DRIVE WEST, STE. 610
LOS ANGELES, CA 90045
Tel: (310) 294-9595
Fax: (310) 961-3673
D. AARON BROCK, STATE BAR NO. 241919
DANIELLE L. GRUPPCHANG, STATE BAR NO. 313881

Attorneys for Plaintiff
Elizabeth Reyna

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

Elizabeth Reyna, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, v. Eagle Community Credit Union, a California corporation; and DOES 1-50, inclusive, Defendants.	Case No.: 30-2021-01225885-CU-OE-CXC Honorable Melissa R. McCormick Department CX-104 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND AWARD OF ATTORNEY'S FEES AND LITIGATION EXPENSES, GENERAL RELEASE FEE, AND ADMINISTRATION EXPENSES PAYMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [Declaration of Plaintiff's Counsel; Declaration of Plaintiff; and [Proposed] Order and Judgment filed concurrently herewith] Reservation No.: 74254982 Date: August 1, 2024 Time: 2:00 pm Department: CX-104 Complaint Filed: October 12, 2021 Trial Date: None Set

PLEASE TAKE NOTICE that on August 1, 2024 at 2:00 p.m., or as soon hereafter as the matter may be heard before the Honorable Melissa R. McCormick in Department CX-104 of the Superior Court of the State of California for the County of Orange, located at 751 West Santa Ana Blvd., Santa Ana, California 92701, Plaintiff Elizabeth Reyna ("Plaintiff") will and hereby does move for entry of the following orders:

1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the settlement between Plaintiff and Defendant Eagle Community Credit Union ("Defendant") of the claims brought pursuant to the Private Attorneys General Act of 2004 ("PAGA"), as set forth in the PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Danielle L. GruppChang, including and not limited to, the plan of allocation and distribution of the Gross Settlement Amount for payment of the LWDA PAGA Payment to the Labor Workforce and Development Agency ("LWDA"), Individual PAGA Payments to Aggrieved Employees, PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment to PAGA Counsel, Administration Expenses Payment to the Settlement Administrator, and General Release Fee to Plaintiff;
2. Approving the penalties allocated under PAGA, which will be distributed to the LWDA and the Aggrieved Employees pursuant to California Labor Code section 2699(i), of which seventy-five percent (75%) will be paid to the LWDA ("LWDA PAGA Payment") and twenty-five percent (25%) will be paid to Aggrieved Employees ("Individual PAGA Payments");
3. Appointing Rust Consulting, Inc. ("Rust") as the Settlement Administrator;
4. Directing Defendant to deposit the Gross Settlement Amount of $150,000.00 into an account for administration of the Settlement and directing the Settlement Administrator to distribute the Gross Settlement Amount in accordance with the Settlement Agreement;

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5. Directing the mailing of Individual PAGA Payments to the Aggrieved Employees under a cover letter, which is substantially similar in content and form to the [Proposed] Cover Letter attached as "**EXHIBIT A**" to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act Settlement Agreement and Award of Attorneys' Fees and Litigation expenses, General Release Fee, and Administration Expenses Payment ("Proposed Order and Judgement") filed concurrently herewith;
6. Awarding $10,000.00 to Plaintiff Elizabeth Reyna as General Release Fee;
7. Awarding up to $5,000 to the Settlement Administrator as Administration Expenses Payment; and
8. Awarding to PAGA Counsel, Brock & Gonzales, LLP, up to $50,000.00 as compensation for reasonable attorneys' fees ("PAGA Counsel Fees Payment") and up to $15,000.00 for reimbursement of actual litigation expenses and expenses ("PAGA Counsel Litigation Expenses Payment"), 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 will be based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of PAGA Counsel (Danielle L. GruppChang) and Plaintiff (Elizabeth Reyna) 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: March 21, 2024 **BROCK & GONZALES, LLP**

By: Danielle L GruppChang

Danielle L. GruppChang
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Elizabeth Reyna ("Plaintiff") seeks approval of the Private Attorneys General Act Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") entered into between Plaintiff, individually and on behalf of the State of California and other Aggrieved Employees, and Defendant Eagle Community Credit Union ("Defendant"), pursuant to California Labor Code section 2699(l)(2).[1]

Subject to approval by the Court, Plaintiff and Defendant (collectively, the "Parties") have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* ("PAGA"), for a Gross Settlement Amount of $150,000.00.[2]

The Gross Settlement Amount is inclusive of: (1) all Individual PAGA Payments to Plaintiff and all persons employed by Defendant as an hourly-paid or non-exempt employee in California at any time during the PAGA Period ("Aggrieved Employees")[3], (2) payment of 75% of the PAGA Penalties to the California Labor and Workforce Development Agency ("LWDA"), (3) PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment to be paid to Brock & Gonzales, LLP ("PAGA Counsel"), (4) General Release Fee to be paid to Plaintiff, and (5) Administration Expenses Payment to be paid to the Settlement Administrator.[4]

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 relative strengths of the PAGA claims, 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 LWDA PAGA Payment and Individual PAGA Payments, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expense Payment, Administration

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[1] PAGA Settlement Agreement ("Settlement Agreement") is attached as "**EXHIBIT 1**" to the Declaration of Danielle L. GruppChang in Support of Plaintiff's Motion for Approval of PAGA Settlement Agreement ("GruppChang Decl.").

[2] Settlement Agreement, § 1.11.

[3] The PAGA Period is the time period from July 31, 2020 to October 2, 2023.

[4] *Id.*, §§ 3.2.1.through 3.2.4.

Expenses Payment, and General Release Fee. Plaintiff respectfully requests that this Court approve the Settlement, award the LWDA PAGA Payment, Individual PAGA Payments, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expense Payment, Administration Expenses Payment, and General Release Fee, which are provided for by the Settlement and requested herein.

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant is Eagle Community Credit Union, Inc. Plaintiff Elizabeth Reyna is a former employee of Defendant.

Prior to commencing a lawsuit, on or around July 28, 2021, as required by California Labor Code section 2699.3, Plaintiff provided the LWDA with written notice of her intent to assert claims against Defendant under PAGA and the basis for those claims, to which the LWDA did not respond.[5] In conformity with the applicable requirements under the PAGA statute, on October 12, 2021, Plaintiff filed the Complaint for Enforcement Under the Private Attorneys General Act (the "Operative Complaint" or "Complaint") in Orange County Superior Court, Case No. 30-2021-01225885-CU-OE-CXC ("Action"). On January 4, 2022, Defendant filed its Answer to the Complaint.

Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and other Aggrieved Employees, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide compliant meal and rest periods and associated premiums, failing to pay minimum wages during employment, failing to pay timely wages during employment and upon termination of employment, failing to provide complete and accurate itemized wage statements, failing to keep and maintain complete and accurate payroll records, and failing to reimburse necessary business expenses and costs.

Defendant maintained, and continues to maintain, that it had and continues to have, legally-compliant employment policies and practices throughout the relevant time period. Defendant denies that it ever violated any provision of the California Labor Code, including,

[5] GruppChang Decl., ¶ 11.

but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.

The Parties have actively litigated the Action and conducted significant investigation into the facts of the case through informal discovery. On June 20, 2023, the Parties participated in a full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters and were able to reach the Settlement described herein.

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.[6]

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Aggrieved Employees who are covered by the Settlement are:

> All persons employed by Defendant as an hourly-paid or non-exempt employee in California at any time during the PAGA Period.[7]

Based on information provided by Defendant, there are approximately one hundred one (101) Aggrieved Employees.[8]

B. Distribution of the Gross Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount of $150,000.00.[9] The PAGA Penalties will be the Gross Settlement Amount less the following amounts: (1) PAGA Counsel Fees Payment of up to $50,000.00 and PAGA Counsel Litigation Expenses Payment of up to $15,000.00 to PAGA Counsel; (2) General Release Fee of up to $10,000.00 to Plaintiff; and (3) Administration Expenses Payment in not to exceed $5,000 to Rust Consulting, Inc. ("Rust" or "Settlement Administrator").[10] The PAGA Penalties will be fully distributed to the Aggrieved Employees and the State of California, as described in

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

[7] Settlement Agreement, § 1.4. *See* fn. 7 for the definition of the "PAGA Period."

[8] GruppChang Decl., ¶ 24.

[9] Settlement Agreement, § 1.11.

[10] *Id.*, § 1.16. *See also Id.*, §§ 3.2.1. through 3.2.4.

Section III.C, *infra*.

C. Distribution of the LWDA PAGA Payment and Individual PAGA Payments

Within three (3) business days after the Effective Date, Defendant will provide the Settlement Administrator with a list containing the following information regarding each of the Aggrieved Employees: full name, last-known mailing address, Social Security number, and number of PAGA Pay Periods attributed to him or her (collectively referred to as the "Aggrieved Employee Data").[11] Within seven (7) days of the Effective Date, Defendant will fund the Gross Settlement Amount.[12]

Seventy-five percent (75%) of the PAGA Penalties will be distributed to the LWDA (i.e., LWDA PAGA Payment) and the remaining twenty-five percent (25%) will be distributed to the Aggrieved Employees on a *pro rata* basis ("Individual PAGA Payments") based on each of their number of PAGA Pay Periods.[13] Twenty-five percent (25%) of the PAGA Penalties will be divided by the total number of PAGA Pay Periods of all Aggrieved Employees then multiplied by each Aggrieved Employee's individual PAGA Pay Periods to yield his or her Individual PAGA Payment.[14] Individual PAGA Payments will be characterized one hundred percent (100%) penalties to be reported on IRS Form 1099.[15]

Within thirty (30) calendar days of the effective date, the Settlement Administrator will distribute the Individual PAGA Payments to Aggrieved Employees, the LWDA PAGA Payment to the LWDA, the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment to PAGA Counsel, and Administration Expenses Payment to itself.[16] The Settlement Administrator will distribute the Individual PAGA Payments with a Cover Letter, substantially similar in content and form to the [Proposed] Cover Letter, which is attached as "**Exhibit A**" to the [Proposed] Order and Judgment.[17] For each Individual PAGA Payment that is returned to the Settlement Administrator as undeliverable within one hundred eighty (180) calendar days of

[11] Settlement Agreement, §§ 1.5 & 4.2.
[12] *Id.*, § 4.3.
[13] *Id.*, § 3.2.4.
[14] *Ibid.*
[15] *Id.*, § 3.2.4.2.
[16] *Id.*, § 4.4
[17] *Id.*, § 4.4.1.

issuance, the Settlement Administrator will promptly search for an alternate, updated address, and re-mail the Individual PAGA Payment.[18]

Individual PAGA Payment will remain valid and negotiable for one hundred eighty (180) calendar days after their initial mailing to Aggrieved Employees and will thereafter be cancelled.[19] Any funds associated with cancelled Individual PAGA Payments will be transmitted to the State Controller's Office Unclaimed Property Fund in the name of the Aggrieved Employee whose check is voided.[20]

D. The Scope of the Release in the Settlement Agreement

Upon funding the Gross Settlement Amount, Plaintiff and Aggrieved Employees are deemed to release Defendant and their past, present, and future subsidiaries, parents, affiliates, predecessors, insurers (including TruStage, formerly CUNA Mutual Insurance Company), agents, employees, successors, assigns, officers, officials, directors, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other respective current or former trustees and administrators, agents, employees, and fiduciaries (the "Released Parties") from all claims for PAGA civil penalties alleged in the operative complaints, Plaintiff's PAGA Notice, or could have been alleged that have or may have accrued during the pendency of this action through to the Effective Date. This includes, but is not limited to claims for PAGA civil penalties based on alleged violations of California Labor Code sections 201-204, 206.5, 210, 212, 213, 218, 221, 223, 224, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 2800, 2802, 2810.5 and the California Industrial Welfare Commission Wage Orders ("Released PAGA Claims").[21]

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*

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[18] Settlement Agreement, § 4.4.2.
[19] *Id.*, § 4.4.1.
[20] *Id.*, § 4.4.3.
[21] *Id.*, § 5.2.

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.)

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

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

IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT

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

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

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

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, with the assistance of an experienced and respected mediator, Jeffrey Krivis, Esq., after a full-day mediation.[22] A settlement that is "the product of extensive and hard-fought adversarial negotiations between the parties" is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

The Settlement is presumptively fair because: (1) it is the product of non-collusive, arm's-length negotiations that were overseen by 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 claims, and the risks of litigating these claims through trial.[23]

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[22] GruppChang Decl., ¶ 13.
[23] *Id.*, ¶¶ 23 &25.

After engaging in formal and informal discovery, the Parties participated in settlement negotiations to try to resolve the matter.[24] These efforts included participating in formal mediation conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[25] During mediation, the Parties discussed all aspects of the case, including the risks and delays of further litigation, the risks to the Parties of proceeding with trial, the law relating to representative PAGA actions, wage-and-hour enforcement, the evidence produced and analyzed, and/or trial and appeals, among other things.[26] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[27]

Based on all of the information available to the Parties and with the aid of the mediator's evaluation, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim.[28] Plaintiff, PAGA Counsel and Defense Counsel believe that the settlement is a fair, adequate, and reasonable resolution of this matter.[29] PAGA Counsel has extensive experience handling representative and class action wage-and-hour litigation and used that experience to achieve a great result for Plaintiff, the State of California, and the Aggrieved Employees.[30] Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

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[24] GruppChang Decl., ¶ 13.
[25] *Ibid.*
[26] *Ibid.*
[27] *Ibid.*
[28] *Id.*, ¶ 23.
[29] *Id.*, ¶¶ 25 & 31.
[30] *Id.*, ¶¶ 2-8.

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

In order for Plaintiff to prevail on the PAGA claims, he would have to prove the underlying California Labor Code violations, demonstrate that Aggrieved Employees suffered, and demonstrate that Defendant's conduct gives rise to 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 has systematically violated the California Labor Code, with respect to Plaintiff and Aggrieved Employees, by, *inter alia*, failing to properly pay overtime and minimum 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 itemized wage statements, failing to keep and maintain complete and accurate payroll records, and failing to reimburse business expenses and costs.

Defendant also maintained several defenses to Plaintiff's theory of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time period at issue.[31] Defendant denies that it ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.[32] Defendant further denied, and continues to deny, that the lawsuit is appropriate for representative treatment for any purpose other than settlement.[33]

Defendant also challenged Plaintiff's standing as Aggrieved Employees and denied that any of Defendant's other employees whom Plaintiff seeks to represent are aggrieved

[31] GruppChang Decl., ¶ 21.
[32] *Ibid.*
[33] *Ibid.*

employees.[34]

Defendant also argued that an important feature of PAGA is that the Court retains discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors). Defendant maintained, and continues to maintain, that it had and continues to have, legally-compliant employment policies and practices throughout the time period at issue.[35] Defendant denies that it ever violated any provision of the California Labor Code.[36] Even if, *arguendo,* such violations occurred, which Defendant denies, Defendant contended that said violations would only be considered "initial violations" and thus heightened "subsequent violation" penalties were not warranted. See Cal. Lab. Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 ("Until the employer has been notified that it is violating a Labor Code provision […], the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties.").

While Plaintiff maintains that the PAGA claims have merit, in reaching the settlement, Plaintiff and PAGA Counsel took into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or appeals.[37]

C. <u>The Settlement Avoids Risky, Complex, and Lengthy Further Litigation</u>

Courts favor the voluntary conciliation and settlement of complex litigation. *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*

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[34] GruppChang Decl., ¶ 21.
[35] *Ibid.*
[36] *Id.*, ¶ 22.
[37] *Id.*, ¶ 23.

(C.D. Cal. Jan. 5, 2004) 221 F.R.D. 523, 526 (citation omitted).

Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the PAGA claims.[38] Prior to mediation and settlement discussions, PAGA Counsel propounded formal written discovery and engaged in informal discovery and exchange of information.[39] In addition, the Parties exchanged a large volume of pages of documents and data relevant to Plaintiff's claims and Defendant's defenses thereto.[40] Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant documents and data to evaluate Plaintiff's claims, including, and not limited to, calculating the potential monetary recovery under PAGA.[41]

Had the case not settled, the Parties would have conducted extensive formal discovery, including additional written discovery as well as multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. Even if Defendant failed on its defenses, litigating complex PAGA actions is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.[42] Additionally, there is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State of California or other Aggrieved Employees after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

D. <u>The Settlement Is Fair, Adequate, and Reasonable</u>

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

The settlement provides significant benefits to the State of California and the Aggrieved Employees and falls well-within the range of acceptable settlements under the circumstances.

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[38] GruppChang Decl., ¶ 14.
[39] *Ibid.*
[40] *Ibid.*
[41] *Ibid.*
[42] *Id.*, ¶ 20.

Under the Agreement, Defendant has agreed to pay a Gross Settlement Amount of $150,000.00, which encompasses the PAGA Penalties, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Administration Expenses Payment, and General Release Fee.[43] Subject to approval by the Court, the following amounts will be subtracted from the Gross Settlement Amount to yield the PAGA Penalties: (1) PAGA Counsel Fees Payment in the amount of $50,000.00 for attorneys' fees and PAGA Counsel Litigation Expenses Payment in the amount of up to $15,000.00[44]; (2) the Administration Expenses Payment of up to $5,000[45]; and (3) General Release Fee of up to $10,000.00 to Plaintiff.[46]

The PAGA Penalties is currently estimated to be $70,000.00, of which an estimated $17,500 is to be distributed to Aggrieved Employees on a *pro rata* basis, based their number of Pay Periods and $52,500.00 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the PAGA Penalties as it fully complies with California Labor Code section 2699(i).

Considering all of the facts in this case, Defense Counsel, Plaintiff and her 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.[47]

E. **<u>The Experience and Views of PAGA Counsel Favor Approval of the Settlement</u>**

PAGA Counsel is highly experienced in complex representative and class action wage-and-hour litigation.[48] In the view of PAGA Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial

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[43] Settlement Agreement, § 1.11.

[44] GruppChang Decl., ¶ 29. Although the Settlement Agreement provides that PAGA Counsel can seek up to $15,000 for reimbursement of litigation expenses and expenses, PAGA Counsel will only seek their actual litigation expenses and expenses which are currently estimated to be $12,857.47. The difference between the amount sought and the maximum allocated amount available under the settlement will be a part of the PAGA Penalties.

[45] *Id.*, § 17.

[46] Settlement Agreement, §§ 3.2.1. through 3.2.4.

[47] GruppChang Decl., ¶ 31.

[48] *Id.*, ¶¶ 3-8.

monetary benefits provided for by the Settlement.[49] Furthermore, courts have acknowledged that "the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]" *Williams, supra,* 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

VI. THE PROPOSED ATTORNEYS' FEES PAYMENT IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

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

The Settlement provides for a Gross Settlement Amount of $150,000.00.[50] The Settlement provides for attorneys' fees in an amount of up to $50,000.00, subject to approval and award by the Court.[51] The requested attorneys' fees award is commensurate with: (1) the risk that PAGA Counsel took in bringing and litigating this case, (2) the time, effort, and expense dedicated to this case, (3) the skill and determination that PAGA Counsel has shown, (4) the results that PAGA Counsel has achieved throughout the litigation, (5) the value that PAGA Counsel has achieved for Plaintiff, Aggrieved Employees, and the State of California, and (6) the other cases that PAGA Counsel has turned down in order to devote time and effort to this matter.

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

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[49] GruppChang Decl., ¶ 20.
[50] Settlement Agreement, § 1.11.
[51] *Id.*, § 3.2.1.

section 1021.5, regardless of plaintiff's personal motivation). The settlement will also benefit the state labor agency in enforcing labor laws and educating "employers and employees about their rights and responsibilities under [the California Labor Code]." Cal. Lab. Code § 2699(i).

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

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

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

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

PAGA Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the lawsuit are well-within the range of reasonableness. Historically, courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of the case. See *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the $7.3 million total settlement amount); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve attorneys' fees awards "average[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee was appropriate); see also, *e.g.*, *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles County Superior Court, Case No. BC596892 (June 2016) (citing *Chavez*, *supra*, 162 Cal.App.4th at 66, n.11) (approving a fee award of one-third of the settlement amount of $950,000, in a PAGA action, because it was "reasonable and consistent with fee awards in class action cases").

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PAGA Counsel has litigated the case since it was commenced, with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.[52] PAGA Counsel conducted formal and informal discovery and exchanged thousands of pages of data and documents with Defendants' counsel.[53] Other work performed by PAGA Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding the pleadings, discovery, mediation and settlement, among other issues; participating in case strategy and analysis; drafting, reviewing, and revising the pleadings and mediation brief; and preparing for and attending mediation and settlement negotiations.[54]

In the present matter, PAGA Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[55] PAGA Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, Aggrieved Employees, and the State of California.[56] Considering the amount of fees requested, work performed, risks incurred, results obtained, and experience of PAGA Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees are reasonable and should be awarded.

B. <u>The Fee Award Requested by PAGA Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards</u>

The factors which courts consider in determining whether fee awards are reasonable, all of which support the fee award requested by PAGA Counsel, are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards

[52] GruppChang Decl., ¶ 29.
[53] *Id.*, ¶ 14.
[54] *Id.*, ¶ 15.
[55] *Id.*, ¶ 29.
[56] *Id.*, ¶¶ 3-8.

in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772. Some of the most relevant factors to this Court's fee determination will be addressed below.

It should be highlighted that the percentage award sought is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of PAGA Counsel's representation and the risks taken in commencing the case, the skill and determination required, the results that PAGA Counsel has achieved, and the value of the settlement that PAGA Counsel has obtained on behalf of Plaintiff, Aggrieved Employees, and the State of California. For the reasons discussed herein, an award of attorneys' fees in the amount of one-third (1/3) of the Gross Settlement Amount is reasonable.

1. Time & Labor

PAGA 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 the case, PAGA Counsel conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.[57] During the litigation of the matter, PAGA Counsel interviewed and obtained information from Plaintiff and Aggrieved Employees, conducted formal and informal discovery, conducted legal research, reviewed and analyzed a large volume of documents and data, prepared for and attended hearings and mediation, evaluated the PAGA claims, and calculated the potential monetary recovery under PAGA.[58] PAGA Counsel also met and conferred with Defendant's counsel over issues relating to the pleadings, discovery, mediation, and settlement.[59] PAGA Counsel performed other work including, *inter alia*, case strategy and analysis; drafting, reviewing, and revising pleadings; and engaging in extensive settlement negotiations.[60]

PAGA Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in

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[57] GruppChang Decl., ¶ 27.
[58] *Ibid.*
[59] *Ibid.*
[60] *Ibid.*

the litigation process. The accompanying declaration of Danielle L. GruppChang sets forth the hours that PAGA Counsel has spent performing tasks in this matter. PAGA Counsel has spent **over 120 hours** to obtain a recovery on behalf of Plaintiff, Aggrieved Employees, and the State of California. These hours were required to bring this case to its successful conclusion.

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 its counsel felt very strongly about Defendant's ability to prevail on the merits and avoid representative adjudication of the PAGA claims. Plaintiff and PAGA Counsel believe that the PAGA claims have merit and that Plaintiff will prevail at trial. PAGA Counsel undertook extensive investigation, analysis, and research prior to filing the lawsuit and during the litigation. PAGA Counsel took steps to prepare the case for trial and had every intention of taking the case to trial if Defendant did not offer an appropriate settlement.

PAGA Counsel's effort and skill were used to, among other things, investigate the allegations and gather facts, research the legal issues, analyze data and information obtained from Defendant, Plaintiff, and through other sources, evaluate the PAGA claims, and negotiate the settlement.[61] Despite all of the obstacles that had to be overcome, PAGA Counsel used its extensive experience and skill in the handling of complex wage-and-hour matters to advocate for and obtain 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.

3. The Value of the Settlement

This settlement represents an excellent resolution of this case, given the uncertainty and risks of further litigation.[62] At this stage, settlement is preferred over continued litigation

[61] GruppChang Decl., ¶¶ 12-16.
[62] *Id*., ¶ 23.

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

4. Whether the Fee Is Fixed or Contingent

The representation provided by PAGA Counsel has been wholly contingent and PAGA Counsel took on this matter without knowing whether any recovery would be obtained. PAGA Counsel has invested **over 120 hours** of time to obtain relief on behalf of Plaintiffs, Aggrieved Employees, and the State of California. PAGA Counsel is also requesting reimbursement of actual litigation expenses and expenses which are currently $12,857.47.[63]

In this matter, PAGA Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[64] If PAGA Counsel had not been successful, the time that has been devoted to litigating the case would have been for naught and would not have produced any fee or any reimbursement of costs or expenses. PAGA Counsel is well-experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, Aggrieved Employees, and State of California.[65] The skill and determination that PAGA Counsel has shown throughout the case justify the requested PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment. Considering the amounts requested, work performed, and risks incurred, the requested fees and costs are reasonable and should be awarded.

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[63] *See* GruppChang Decl., Exhibit 2. Also note, the estimated costs listed herein include the cost of filing the present motion.

[64] *Id.*, ¶ 29.

[65] *Id.*, ¶¶ 3-8.

5. The Amount Involved and the Results Achieved

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this case, are considerable. Here, the results achieved, and the recovery obtained on behalf of Plaintiff, Aggrieved Employees, and the State of California represent a fair and reasonable resolution of this matter. PAGA Counsel's efforts have resulted in a settlement that provides for a Gross Settlement Amount of $150,000.00, and it is currently estimated that the PAGA Penalties available for distribution to Aggrieved Employees and the State of California, as set forth in Part III.C *infra*, is approximately $70,000.[66]

6. The Reputation and Ability of the Attorneys

PAGA Counsel is a recognized class action and complex litigation law firm, and its attorneys employed their knowledge, skill, and experience to bring the case to a successful conclusion. PAGA Counsel has years of employment and complex litigation experience, has recovered millions of dollars on behalf of hundreds of employees in California, and has successfully handled numerous significant wage-and-hour class action and representative action cases.[67]

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

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

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[66] GruppChang Decl., ¶ 17.

[67] *Id.*, ¶¶ 3-8.

determination of the fee as a percentage" and "does not impose an absolute maximum or minimum on the potential fee award." *Laffitte*, *supra*, 1 Cal.5th at 505.

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

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

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

As discussed above, this case was highly contested and required a significant amount of time and labor. The handling of this litigation involved a great amount of effort, and also required and involved the exercise of a high level of skill, which PAGA Counsel has, as a result of its extensive experience in complex wage-and-hour litigation. As PAGA Counsel geared up for these battles, PAGA Counsel undertook intense preparation in an attempt to resolve the entire matter through settlement negotiations.

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

As set forth above in Part VI.B.1 *supra*, the concurrently-filed declaration of Danielle L. GruppChang sets forth in detail the numerous tasks that PAGA Counsel performed in this matter, and the time required for completing those tasks.[68] PAGA Counsel has spent over **120 hours** performing tasks in this matter.[69] In light of the facts and circumstances of this case, as well as the results PAGA Counsel has achieved on behalf of Plaintiff, Aggrieved Employees, and the State of California, PAGA Counsel has spent a reasonable number of hours on this matter.

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[68] GruppChang Decl., ¶ 27.
[69] *Ibid*.

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

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

As set forth in the Declaration of Danielle L. GruppChang, the professional backgrounds and experience of PAGA Counsel support a reasonable hourly rate of compensation of at least $500 per hour for services provided by PAGA Counsel. While the circumstance of every case is unique, the fact remains that the work performed and efforts undertaken by PAGA Counsel in this matter justify the requested attorneys' fees award.

Applying the rate of $500 per hour to 124 hours would place a reasonable value of $62,000, based on lodestar, for the work performed by PAGA Counsel. However, PAGA Counsel only seeks attorneys' fees in the amount of $50,000.00, which is one-third of the total recovery, as provided for by the Settlement Agreement.

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of $50,000.00 to PAGA Counsel.

VII. COSTS TO BE REIMBURSED TO PAGA COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for reimbursement of litigation expenses and expenses of up to $15,000.[70] As set forth in the declaration of Danielle L. GruppChang, PAGA Counsel has

[70] Settlement Agreement, § 3.2.1.

incurred a total of $12,857.47 in litigation expenses and expenses to date.[71] This amount was reasonable and necessary in the prosecution of this matter.[72] Accordingly, PAGA Counsel requests that the Court award reimbursement of actual litigation expenses and expenses to PAGA Counsel.

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

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

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, Rust to handle the administration of the Settlement.[73] The fees and expenses of the Settlement Administrator are currently estimated not to exceed $5,000.[74] These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual PAGA Payments to the Aggrieved Employees; re-mailing the returned checks to any new addresses obtained, and handling inquiries from Aggrieved Employees regarding the Settlement, among other things.[75] Accordingly, the Court should grant approval of the Administration Expenses Payments in the amount of up to $5,000 to Rust, a necessary third-party for handling the settlement process.

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[71] GruppChang Decl., ¶ 29. *Note*, this amount includes the costs incurred in the filing of the present motion.
[72] *Ibid*.
[73] Settlement Agreement, § 7.1.
[74] GruppChang Decl., ¶ 17.
[75] Settlement Agreement, § 7.4.

X. THE PROPOSED PLAINITFF'S RELEASE PAYMENT IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for General Release Fee to be paid to Plaintiff Elizabeth Reyna in the amount of $10,000.00.[76] The purpose of such an award may be to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. See *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 ("service payments" compensate named plaintiff "for [her] efforts in bringing the action"); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 ("an incentive award is appropriate 'if it is necessary to induce an individual to participate in the suit'"); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) ("Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the […] litigation."); see also, e.g., *Resendez*, *supra*, Los Angeles County Superior Court, Case No. BC59689 (approving $10,000 enhancement award in a PAGA action).

In addition, Plaintiff has agreed to a broader release of claims than the release of claims that applies to Aggrieved Employees. Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the amount of $10,000.00, in addition to her Individual PAGA Payment.

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[76] Settlement Agreement, § 3.2.2.

XI. CONCLUSION

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

Dated: March 22, 2024

BROCK & GONZALES, LLP

By: Danielle L GruppChang

Danielle L. GruppChang
Attorney for Plaintiff