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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

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

Plaintiff,

vs.

LIGHTBRIDGE HOSPICE, LLC, a California
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 37-2021-00041128-CU-OE-CTL
Honorable Loren G. Freestone
Department C-64

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (CAL. LABOR CODE § 2698,
ET SEQ.) SETTLEMENT AGREEMENT
AND AWARD OF PAGA COUNSEL
FEES PAYMENT, PAGA COUNSEL
LITIGATION EXPENSES PAYMENT,
SERVICE AWARD, AND
ADMINISTRATION EXPENSES
PAYMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of PAGA Counsel
(Joanna Ghosh); Declaration of Plaintiff
(Sarah Cables); and [Proposed] Order and
Judgment filed concurrently herewith]

Date: August 9, 2024
Time: 10:30 a.m.
Department: C-64

Complaint Filed: September 27, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 9, 2024 at 10:30 a.m. or as soon thereafter as
2 the matter may be heard before the Honorable Loren G. Freestone in Department C-64 of the
3 Superior Court of the State of California, for the County of San Diego, located at 330 West
4 Broadway, San Diego, California 92101-3827, Plaintiff Sarah Cables (“Plaintiff”) will and
5 hereby does move for entry of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the
7 settlement between Plaintiff and Defendant LightBridge Hospice, LLC (“Defendant”)
8 of the claims brought pursuant to the Private Attorneys General Act of 2004
9 (“PAGA”), as set forth in the Joint Stipulation of PAGA Action Settlement
10 (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as **“EXHIBIT 1”**
11 to the Declaration of Joanna Ghosh, including and not limited to, the plan of
12 allocation and distribution of the Gross Settlement Amount for payment of the
13 LWDA PAGA Payment to the California Labor and Workforce Development Agency
14 (“LWDA”), Individual PAGA Payments to the PAGA Members, PAGA Counsel
15 Fees Payment and PAGA Counsel Litigation Expenses Payment to PAGA Counsel,
16 Administration Expenses Payment to the Administrator, and Service Award to
17 Plaintiff;
- 18 2. Approving the Net Settlement Amount, estimated to be no less than \$61,688.76
19 which will be distributed to the LWDA and the PAGA Members, pursuant to
20 California Labor Code section 2699(i), of which seventy-five percent (75%) will be
21 paid to the LWDA (“LWDA PAGA Payment”) and twenty-five percent (25%) will be
22 paid to the PAGA Members (“Employees’ Portion”);
- 23 3. Appointing Atticus Administration LLC (“Atticus” or “Administrator”) to handle the
24 administration of the Settlement;
- 25 4. Directing Defendants to transmit the Gross Settlement Amount of \$125,000.00 into a
26 qualified settlement account established by the Administrator for administration of
27 the Settlement, according to the following installment payment schedule: \$42,000 to
28 be paid thirty (30) calendar days after the Court approves the Settlement (“Payment

1 1”); \$42,000 to be paid six (6) months after Payment 1 (“Payment 2”), and \$41,000 to
2 be paid six (6) months after Payment 2 (“Payment 3”); and directing the
3 Administrator to distribute the Gross Settlement Amount in accordance with the
4 Settlement Agreement;

- 5 5. Directing the mailing of Individual PAGA Payment checks to the PAGA Members
6 along with the Cover Letter, which is substantially similar in content and form to that
7 attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment Granting Approval
8 of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement
9 Agreement and Award of PAGA Counsel Fees Payment, PAGA Counsel Litigation
10 Expenses Payment, Service Award, and Administration Expenses Payment
11 (“[Proposed] Order and Judgement”) filed concurrently herewith;
- 12 6. Awarding \$7,500.00 to Plaintiff Sarah Cables as a Service Award;
- 13 7. Awarding up to \$4,000.00 to the Administrator as Administration Expenses Payment;
- 14 and
- 15 8. Awarding Lawyers *for* Justice, PC (“PAGA Counsel”) the amount of \$50,000.00 as
16 compensation for reasonable attorneys’ fees (“PAGA Counsel Fees Payment”) and
17 the amount of \$1,811.24 for reimbursement of litigation costs and expenses “PAGA
18 Counsel Litigation Expenses Payment”), pursuant to California Labor Code section
19 2699(g)(1).

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

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

27 ///

28 ///

1 This motion will be based upon the following Memorandum of Points and Authorities,
2 the Settlement Agreement, the Declarations of PAGA Counsel (Joanna Ghosh) and Plaintiff
3 (Sarah Cables) in support thereof, as well as the pleadings and other records on file with the
4 Court in this matter, and such evidence and oral argument as may be presented at the hearing on
5 this motion.

6 Dated: March 25, 2024

LAWYERS for JUSTICE, PC



By: _____

Joanna Ghosh
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Sarah Cables (“Plaintiff”) seeks approval of the Joint Stipulation of PAGA Action Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into between Plaintiff, individually and on behalf of the State of California with respect to PAGA Members, and Defendant LightBridge Hospice, LLC (“Defendant” or “LBH”), pursuant to California Labor Code section 2699(1)(2).¹

Subject to approval by the Court, Plaintiff and Defendant (together, the “Parties”) have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Gross Settlement Amount of \$125,000.00.²

The Gross Settlement Amount is inclusive of: (1) PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment to be paid to Lawyers for Justice, PC (“PAGA Counsel”), (2) Service Award to Plaintiff, (3) Administration Expenses Payment to the Administrator, and (4) Net Settlement Amount to be paid to the California Labor and Workforce Development Agency (“LWDA”) and all current and former non-exempt employees employed by Defendant in California during the PAGA Period (“PAGA Members” or “Aggrieved Employees”).³

The Net Settlement Amount is currently estimated to be no less than \$61,688.76.⁴ The Net Settlement Amount will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA PAGA Payment”) and twenty-five percent (25%) to the PAGA Members (“Employees’ Portion”).⁵ Each PAGA Member will be entitled to payment of his or her *pro rata* share of the Employees’ Portion, based on the number of pay periods they each worked during

¹ Joint Stipulation of PAGA Action Settlement (“Settlement Agreement”) is attached as “**EXHIBIT 1**” to the Declaration of Joanna Ghosh in Support of Motion for Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Service Award, and Administration Expenses Payment (“Ghosh Decl.”).

² Settlement Agreement, ¶ 8.

³ *Id.*, ¶¶ 18. “PAGA Period” is defined as the period from July 23, 2020 to May 1, 2023. *Id.*, ¶ 22.

⁴ Ghosh Decl., ¶ 10

⁵ *Id.*, ¶ 13.

the PAGA Period (“Pay Periods”).⁶

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

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

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

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant is located in San Diego, California and provides hospice and palliative care for patients. Defendant is an accredited hospice company with one location. Plaintiff Sarah Cables is a former employee of Defendant.

Prior to commencing this lawsuit, on July 23, 2021, as required by California Labor Code section 2699.3, Plaintiff Sarah Cables provided the LWDA and Defendant with written notice of her intent to assert claims under PAGA and the basis for those claims, to which the LWDA did

⁶ Settlement Agreement, ¶ 23.

⁷ *Id.*, ¶ 56.

not respond (“PAGA Notice”).⁸ A true and correct copy of Plaintiff’s July 23, 2021 PAGA Notice is attached to the Declaration of Joanna Ghosh as “EXHIBIT 2.”

On September 27, 2021, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) against Defendant in the San Diego County Superior Court (“Court”), Case No. 37-2021-00041128-CU-OE-CTL (the “Action”). 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 timely wages during employment and upon termination of employment, failing to provide complete and accurate itemized wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

On December 6, 2021, Defendant filed an Answer to the Operative Complaint. 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. 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.

The Parties had scheduled a mediation with Jill Sperber to occur on November 10, 2022. However, Defendant’s financial documents revealed that Defendant was in dire financial circumstances and the Parties reasoned that any money that was to be spent on mediation would be better spent toward funding a resolution and settlement payments to the State of California and aggrieved employees. After extensive settlement negotiations between PAGA Counsel and Defendant’s Counsel, the Parties were able to reach an agreement to resolve the matter.⁹

Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(1)(2). The Settlement Agreement and moving and supporting papers for this motion are being submitted to the LWDA in conformity with

⁸ Ghosh Decl., ¶ 9.

⁹ *Id.*, ¶ 12.

California Labor Code section 2699(l)(2), concurrently with this filing.¹⁰

III. SUMMARY OF THE SETTLEMENT TERMS

A. PAGA Members

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

All current and former non-exempt employees employed by LBH in California during the period July 23, 2020 to May 1, 2023 ("PAGA Members").¹¹

Based on information provided by Defendant as of May 1, 2023, there are approximately one hundred forty-five (145) PAGA Members that worked 4,125 Pay Periods.¹²

B. Funding and Distribution of the Gross Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount of \$125,000.00.¹³ Within thirty (30) calendar days of the Court's order granting approval of the Settlement, Defendant will transmit the required sums to a qualified settlement account established by the Administrator for administration of the Settlement, according to the following installment payment schedule: \$42,000 to be paid thirty (30) calendar days after the Court approves the settlement ("Payment 1"), \$42,000 to be paid six (6) months after Payment 1 ("Payment 2"), and \$41,000 to be paid six (6) months after Payment 2 ("Payment 3").¹⁴

C. Distribution of the Net Settlement Amount

The Net Settlement Amount will be the Gross Settlement Amount less the following amounts: (1) PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment consisting of attorneys' fees of \$50,000.00 and reimbursement of litigation costs and expenses of \$1,811.24 to PAGA Counsel; (2) Service Award of \$7,500.00 to Plaintiff; and (3) Administration Expenses Payment of up to \$4,000.00 to Atticus Administration LLC ("Atticus")

¹⁰ The Court is referred to the concurrently-filed Proof of Service, which confirms submission of the papers to the LWDA.

¹¹ Settlement Agreement, ¶ 18.

¹² Settlement Agreement, ¶ 45; Ghosh Decl., ¶ 8.

¹³ Settlement Agreement, ¶ 8; Ghosh Decl., ¶ 10.

¹⁴ Settlement Agreement, ¶ 54.

1 or “Administrator”).¹⁵ The Net Settlement Amount will be fully distributed to the PAGA
2 Members and the LWDA.

3 No later than fifteen (15) calendar days after the Court’s order granting approval of the
4 Settlement, Defendant will provide the Administrator, in the form of a Microsoft Excel
5 spreadsheet, a list of all of the PAGA Members (“the PAGA Member Data”), containing the
6 following information for each PAGA Member: (i) first and last name; (ii) last known address;
7 (iii) last known telephone number; (iv) Social Security number, (v) the dates of employment as
8 an hourly-paid or non-exempt employee in California during the PAGA Period, and (vi) such
9 other information as is necessary for the Administrator to calculate the Pay Periods.¹⁶

10 Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$46,266.57)
11 will be distributed to the LWDA (i.e., LWDA PAGA Payment) and twenty-five percent (25%) of
12 the Net Settlement Amount (or approximately \$15,422.19) (i.e., Employees’ Portion) will be
13 distributed to the PAGA Members on a *pro rata* basis, based on their Pay Periods.¹⁷ To calculate
14 each PAGA Member’s share of the Employees’ Portion (“Individual PAGA Payment”), the
15 Administrator will: (1) for each PAGA Member, divide the number of Pay Periods credited to
16 each PAGA Member by the total aggregate number of Pay Periods credited to all PAGA
17 Members, and then (ii) multiply this amount by the Employees’ Portion to arrive at each PAGA
18 Member’s Individual PAGA Payment.¹⁸ The payments to PAGA Members for their Individual
19 PAGA Payments are considered one hundred percent (100%) penalties to be reported on IRS
20 Form 1099, if required.¹⁹

21 No later than fourteen (14) calendar days after the Administrator receives the PAGA
22 Member Data and Defendant fully funds the Gross Settlement Amount (i.e., after Payment 3),
23 the Administrator will mail the agreed-upon Cover Letter and Individual PAGA Payments
24 checks (together, the “PAGA Settlement Package”) to all PAGA Members by first-class United
25

26 ¹⁵ Settlement Agreement, ¶¶ 2 & 42.

27 ¹⁶ *Id.*, ¶ 57(a).

28 ¹⁷ *Id.*, ¶ 55.

¹⁸ *Ibid.*

¹⁹ *Id.*, ¶ 56.

1 States mail.²⁰ For each PAGA Settlement Package that is returned as undeliverable within thirty
2 (30) calendar days of the initial mailing, the Administrator will promptly attempt to locate an
3 alternate, updated address for the PAGA Member at issue, by using a skip-trace search and shall
4 attempt one (1) re-mailing of the PAGA Settlement Package. Before mailing any checks, the
5 Administrator must update the recipients' mailing addresses using the National Change of
6 Address Database.²¹

7 The Individual PAGA Payment checks issued to PAGA Members will remain valid for
8 ninety (90) calendar days, and thereafter, will be canceled.²² Funds associated with canceled
9 checks will be transmitted to the State Controller's Office Unclaimed Property Division in the
10 name of the PAGA Member(s) at issue and in the amount of their respective Individual PAGA
11 Payment(s).²³

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

13 Upon the date the Court has entered an order approving the Settlement Agreement and
14 the full funding of the Gross Settlement Amount, Plaintiff and the State of California with
15 respect to PAGA Members will be deemed to have knowingly and voluntarily released and
16 forever discharged Released Parties from the Released Claims.

17 The "Released PAGA Claims" are any and all claims, arising during the PAGA
18 Period, for civil penalties under California Labor Code section 2698, *et seq.*
19 ("PAGA") as well as any interest, fees, and costs available under PAGA, based on
20 the factual allegations in the Operative Complaint, including but not limited to, for
21 failure to pay minimum, regular, and overtime wages, failure to provide complaint
22 meal periods and associated premiums, failure to provide compliant rest periods
23 and associated premiums, failure to timely pay wages during employment, failure
24 to timely pay wages upon termination, failure to provide complaint and accurate
25 wage statements, failure to maintain complete and accurate payroll records, and
26 failure to reimburse necessary business-related expenses and costs, in violation of
27 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551,
28 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2810.5 and 2802 and Industrial

26 ²⁰ Settlement Agreement, ¶ 57(c).

27 ²¹ Ibid.

28 ²² *Id.*, ¶ 57(d).

²³ Ibid.

Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001, 5-2001.²⁴

The “Released Parties” are Defendant and its insurers, brands, concepts, parents, affiliates, subsidiaries, successors, assigns, and any individual or entity that could be jointly liable for Defendant.²⁵

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

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

“[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

²⁴ Settlement Agreement, ¶¶ 25 & 60(a).

²⁵ *Id.*, ¶ 26.

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); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (aggrieved employee cannot opt out of a PAGA settlement).

As such, the Settlement is consistent with the law, and there is no requirement that the PAGA Members 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. 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

1 affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor
2 Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged,
3 courts have approved settlements of PAGA claims.²⁶ See, e.g., *Resendez v. Bridgestone Retail*
4 *Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto*
5 *Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v.*
6 *Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David’s Bridal,*
7 *Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D.
8 Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal Nov. 27,
9 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576,
10 589.

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

25 A PAGA settlement is a settlement of claims for penalties and other remedies which the
26 LWDA could assess and collect on behalf of employees without their involvement or approval.

27 _____
28 ²⁶ Ghosh Decl., ¶ 6.

1 “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the
2 ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010 WL
3 1340777, at *5. This renders the approval process of a PAGA settlement distinct from a class
4 action settlement, and the Court need not employ the two-step approval process that applies to a
5 class action settlement, under both state and federal law.

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

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

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

11 The Parties reached the Settlement after conducting extensive, arm’s-length settlement
12 negotiations.²⁷ A settlement that is “the product of extensive and hard-fought adversarial
13 negotiations between the parties” is entitled to a presumption of fairness. *Wershba v. Apple*
14 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

15 The Settlement is presumptively fair because: (1) it is the product of adversarial, non-
16 collusive, and arm’s-length negotiations; (2) it was negotiated by counsel with significant
17 experience in similar complex labor and employment matters; and (3) it occurred after counsel
18 for the Parties engaged in significant investigation to evaluate the strength and potential value of
19 the PAGA claim, and risks and expenses of litigating this claim through trial.²⁸

20 After engaging in significant investigations, propounding formal discovery and engaging
21 in informal discovery, and undertaking the exchange of information, data, and documents, the
22 Parties participated in settlement negotiations to try to resolve the lawsuit.²⁹ In the course of
23 settlement negotiations, the Parties discussed all aspects of the case, including the risks and
24 delays of further litigation and proceeding with trial, as well as the law relating to representative
25 PAGA actions, off-the-clock theory, meal and rest periods, meal waivers, arbitration agreements,

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27 ²⁷ Ghosh Decl., ¶ 12.

²⁸ *Id.*, ¶¶ 4-6, 11-13, & 14-19.

²⁹ *Id.*, ¶ 12.

1 and wage-and-hour enforcement, the evidence produced and analyzed, the possibility of
2 bifurcation of discovery and/or trial and appeals, and the risks posed by and circumstances
3 surrounding Defendant's financial condition, among other things.³⁰ During all settlement
4 discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³¹

5 Based on all of the information available to the Parties, the Parties agree that this matter
6 is well-suited for settlement given the strengths and weaknesses of the PAGA claim and the facts
7 and circumstances of the case.³² Plaintiff and PAGA Counsel believe that the settlement is a fair,
8 adequate, and reasonable resolution of this matter.³³ PAGA Counsel has extensive experience
9 handling representative and class action wage-and-hour litigation and used that experience to
10 achieve a great result for Plaintiff, the State of California, and the PAGA Members.³⁴ Therefore,
11 the Court should give considerable weight to the competency, experience, and opinion of
12 counsel. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of
13 experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979)
14 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a
15 presumption of reasonableness).

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

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

24
25 _____
26 ³⁰ Ibid

27 ³¹ Ibid.

28 ³² *Id.*, ¶ 19.

³³ *Id.*, ¶¶ 19, 25.

³⁴ *Id.*, ¶¶ 3-5.

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

Although wage-and-hour actions are amenable to resolution as to a group of employees,³⁵ some courts have also found that, for various reasons, the issues raised by Plaintiff raise individualized issues and/or otherwise are not suitable for adjudication as to a group of employees.³⁶

³⁵ See, e.g., *Martinez vs. Joe's Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-84, *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 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of resolving wage-and-hour claims, including misclassification and overtime, recognizing that "statistical sampling may provide assistance in identifying the realistic demands of the job and illuminating whether the typical employee was able to meet those expectations" and that "[b]y refocusing its analysis on the policies and practices of the employer and the effect those policies and practices have on the [employees] . . . the trial court may in fact find class analysis a more efficient and effective means of resolving plaintiffs' overtime claim"); *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 330-31 (Court successfully managed and adjudicated wage-and-hour claims made on behalf of a group of employees, utilizing, among other things, statistics and surveying.); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033 ("Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment [...] The theory of liability – that [the employer] has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law - is by its nature a common question eminently suited for class treatment."); *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (finding that real parties demonstrated that the existence of the practice and the fact of damage were matters suitable for determination on behalf of a group of employees and that, "[r]eal parties' evidence supports the reasonable inference that [...] they could establish that petitioners engaged in the alleged practice, that is, they never paid meal break premium wages, even though a significant number of employees accrued them. Furthermore, in view of real parties' theory of restitution, those facts would also suffice to demonstrate the fact of damage. Under that theory, the fact of damage does not require a showing that all -- or virtually all -- class members accrued unpaid meal break premium wages, but only that on a system-wide basis, petitioners denied the class members the benefits of the compensation guarantee and enhanced enforcement implemented by section 226.7."); *Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036 (holding that statistical evidence is admissible to support class action certification because it is also admissible to prove liability and damages across a group of employees, where the defendant employer had not kept records of time spent by employees with respect to donning and doffing protective clothing).

³⁶ See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35 (stating that even where it has been alleged "that the employer consistently imposed a uniform policy or de facto practice" as to its employees, "the party must still demonstrate that the illegal effects of this conduct can be proven efficiently and manageably" and in litigating representative actions the procedures utilized by the court "may not be used to abridge a party's substantive rights," including "abridge[ing the defendant's] presentation of [a defense] simply because that defense was cumbersome to litigate," because of "principles of due process"); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest

(Footnote continued)

1 Defendant maintained several defenses to Plaintiff's theory of liability, which, if
2 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
3 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and
4 continues to have, legally-compliant employment policies and practices throughout the time
5 period at issue.³⁷ Defendant denies that it ever violated any provision of the California Labor
6 Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the
7 PAGA.³⁸ Defendant further denied, and continues to deny, that the lawsuit is appropriate for
8 representative treatment for any purpose other than settlement.³⁹

9 Defendant also challenged Plaintiff's standing as an aggrieved employee and denied that
10 any of Defendant's other employees whom Plaintiff seeks to represent are aggrieved.⁴⁰ Also,
11 multiple courts have taken an approach requiring a plaintiff to establish standing and face the
12 possibility of bifurcation of discovery and/or trial of the PAGA claim. *See Amalgamated Transit*
13 *Union, supra*, 46 Cal.4th at 1001 (noting that PAGA "require[s] a plaintiff to have suffered an
14 injury resulting from an unlawful action"); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov.
15 21, 2014) 2014 WL 6633396, at *4 (finding that judicial economy supported bifurcation because
16 of the difficulties and inherent uncertainties of being able to establish liability with respect to a
17 large number of potentially aggrieved employees and noted that "PAGA's public purpose would
18 be ill-served if the court finds [the plaintiff] has not been aggrieved by a Labor Code violation");
19 *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of
20 litigation is allowed to avoid wasting time and money on trial when litigation of issues could be
21 rendered moot).

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23 _____
24 breaks demonstrated that individualized inquiries were required to show harm); *Brinker Restaurant Corp. v.*
25 *Superior Court* (2012) 53 Cal.4th 1004, 1018 (stating that employers must authorize, permit, or "relieve the
26 employee of all duty for [a] designated meal [or rest] period," and "relinquish [full] control over [the employee's]
activities" and "afford" employees an "opportunity to take an *uninterrupted* thirty-minute break," but
are not obligated to affirmatively ensure that no work related tasks are performed during such periods).

27 ³⁷ Ghosh Decl., ¶ 16.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ghosh Decl., ¶ 18.

1 Defendant also argued that an important feature of PAGA is that the Court retains
2 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to
3 do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.”
4 See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.*
5 (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA
6 penalties awarded to an employee based upon discretionary factors). Defendant maintained, and
7 continues to maintain, that it had and continues to have, legally-compliant employment policies
8 and practices throughout the time period at issue.⁴¹ Defendant denies that it ever violated any
9 provision of the California Labor Code.⁴² Even if, *arguendo*, such violations occurred, which
10 Defendant denies, Defendant contended that said violations would only be considered “initial
11 violations” and thus heightened “subsequent violation” penalties were not warranted. See Cal.
12 Lab. Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157,
13 1208-09 (“Until the employer has been notified that it is violating a Labor Code provision [...],
14 the employer cannot be presumed to be aware that its continuing underpayment of employees is
15 a ‘violation’ subject to penalties.”).

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

22 There is also uncertainty regarding PAGA claims due to decisions of the high courts. As
23 a result of a recent United States Supreme Court decision, it may be more likely that employer
24 agreements containing arbitration terms will impact the viability of adjudication of PAGA claims
25 in the judicial forum, which is relevant to this matter in light of the arbitration agreements that
26 Defendant obtained from its employees (which include a delegation clause and jury trial waiver).

27 ⁴¹ *Id.*, ¶ 16.

28 ⁴² *Ibid.*

Viking River Cruises, Inc. v. Moriana (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940.⁴³ Recently, the California Supreme Court has confirmed that an aggrieved employee who has been compelled to arbitrate claims under PAGA that are premised on California Labor Code violations actually sustained by the plaintiff still maintains statutory standing to pursue a PAGA claim arising out of events involving other employees through a PAGA representative claim. *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 532 P.3d 682, 685. Nevertheless, while the arbitrable and non-arbitrable components of an action are not severed from one another, it is still possible that trial courts will stay the representative/non-individual PAGA claims pending arbitration of a plaintiff's individual PAGA claims and if a plaintiff is determined to not be an "aggrieved employee" for PAGA purposes, issue preclusion may apply and, once reduced to a final judgment, trial courts are bound by the arbitrator's determination and the plaintiff may lose standing to pursue non-individual PAGA claims. *Id.* at 693.

While Plaintiff disagrees with Defendant's contentions and maintains that her PAGA claim has merit, in reaching the settlement, Plaintiff and her counsel took into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon appeal.⁴⁴

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

Courts favor voluntary conciliation and settlement of complex litigation. *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, "unless the settlement is

⁴³ Ghosh Decl., ¶ 17. In *Viking River Cruises*, the U.S. Supreme Court determined that PAGA claims can be split into individual claims based on California Labor Code violations suffered by the plaintiff (that can then be subject to arbitration) and non-individual claims (that are representative in nature) and that the "indivisibility rule" recognized by the California Supreme Court in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348 is preempted by the Federal Arbitration Act (FAA) to the extent it circumscribes the freedom of parties to agree to such contractual division or splitting of PAGA actions. *Viking River Cruises, Inc.*, 1923-1925. The U.S. Supreme Court also determined that, important structural differences between PAGA actions and class actions preclude any straightforward application of U.S. Supreme Court precedents invalidating prohibitions on class-action waivers, to *Iskanian*'s ban on wholesale PAGA representative action waivers, and thus this aspect of *Iskanian* is not preempted by the FAA. *Id.* at 1919, 1922-1925. The U.S. Supreme Court also expressed its understanding of California state law, and the impact of its ruling on, PAGA's standing requirement, regarding which California courts will have the last word, as noted by a concurring opinion. *Id.* at 1925-1926 (concurring opinion). Taken together, the substantive statutory right to pursue a PAGA claim has not been eviscerated and has been preserved, however, arbitration agreements may be used to select the forum and procedure to be used to resolve PAGA claims to some extent.

⁴⁴ Ghosh Decl., ¶ 19.

1 clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation
2 with uncertain results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan. 5,
3 2004) 221 F.R.D. 523, 526 (citation omitted).

4 Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope
5 of the PAGA claim and allegations.⁴⁵ In addition, the Parties exchanged a large volume of
6 information, documents, and data relevant to Plaintiff’s claim and Defendant’s defenses thereto,
7 including, and not limited to, the employment records of Plaintiff, a sampling of PAGA
8 Members’ time and pay data, Defendant’s Arbitration Agreement and Meal Waiver Form and
9 Agreement, documents regarding Defendant’s employment and operations policies, practices,
10 and procedures related to Plaintiff’s allegations in this lawsuit, and Defendant’s financial
11 documents, among other documents.⁴⁶ Counsel for the Parties undertook significant
12 investigation, and also invested time reviewing and analyzing relevant documents and data to
13 evaluate Plaintiff’s claim and allegations, including, and not limited to, calculating the potential
14 monetary recovery under PAGA.⁴⁷ Other work performed by PAGA Counsel included, but was
15 not limited to: meeting and conferring with Defendant’s Counsel regarding the pleadings, case
16 management, the mediation (that had been scheduled but did not ultimately take place), and
17 settlement, among other issues; case strategy and analysis; drafting, reviewing, and revising the
18 pleadings, court filings, settlement agreement, and settlement approval motion papers;
19 propounding written discovery requests and a notice of deposition of Defendant’s person most
20 knowledgeable; claims evaluation and analysis and preparing for settlement negotiations; and
21 appearing for court proceedings and participating in settlement negotiations.⁴⁸

22 Had the case not settled, the Parties would have conducted extensive formal discovery,
23 including propounding additional written discovery requests and depositions of party and
24 percipient witnesses all over the State of California, to prepare the case for trial. From the
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26 ⁴⁵ *Id.*, ¶ 13.

27 ⁴⁶ Ghosh Decl., ¶¶ 13 & 19.

28 ⁴⁷ *Ibid.*

⁴⁸ Ghosh Decl., ¶ 13.

inception of this litigation, Defendant indicated that it would aggressively litigate this case.⁴⁹ Even if Defendant failed on its defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.⁵⁰ Additionally, there is a real possibility that Plaintiff would recover nothing, either for herself or on behalf of the State of California or other PAGA Members after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

D. The Settlement Is Fair, Adequate, and Reasonable

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

The Settlement provides significant benefits to the State of California and the PAGA Members and falls well-within the range of acceptable settlements under the circumstances. Under the Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$125,000.00, which encompasses the Net Settlement Amount, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Administration Expenses Payment, and Service Award.⁵¹ Subject to approval by the Court, the following amounts will be subtracted from the Gross Settlement Amount to yield the Net Settlement Amount: (1) PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment in the amount of \$50,000.00 and PAGA Counsel Litigation Expenses Payment in the amount of \$1,811.24 to PAGA Counsel;⁵² (2) the Administration Expenses Payment of up to \$4,000.00 to the Administrator; and (3) Service

⁴⁹ *Id.*, ¶ 16.

⁵⁰ *Id.*, ¶¶ 11, 12, 13 & 18.

⁵¹ Settlement Agreement, ¶¶ 8, & 39-44.

⁵² *Id.*, ¶ 40. Although the Settlement Agreement provides that Plaintiff’s Counsel can seek up to \$10,000.00 for reimbursement of litigation costs and expenses, Plaintiff’s Counsel only seeks the amount of \$1,811.24 for this payment, which is less than \$10,000.00. The difference between the amount sought and the maximum allocated amount available under the settlement (i.e., the difference of \$8,188.76), will be a part of the Net Settlement Amount.

Award of up to \$7,500.00 to Plaintiff.⁵³

The Net Settlement Amount is currently estimated to be \$61,688.76, of which an estimated \$15,422.19 is to be distributed to PAGA Members on a *pro rata* basis, based on their Pay Periods and \$46,266.57 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

The Settlement is a compromise of highly disputed claims. Plaintiff and her counsel recognize the expense and length of continued proceedings necessary to litigate the matter through trial and any possible appeals.⁵⁴ Plaintiff and her counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, especially in light of Defendant's financial circumstances.⁵⁵ Plaintiff and her counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other PAGA Members.⁵⁶ Plaintiff and her counsel have also taken into account Defendant's agreement to enter into a settlement that confers significant relief upon the PAGA Members and the State of California.⁵⁷

Considering all of the facts in this case, Plaintiff and her counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the PAGA Members and the State of California.⁵⁸

The result achieved in this case, and the monetary recovery provided by this settlement, are well-within the range of an acceptable settlement under the circumstances, especially when compared to trial court penalties assessments in contested cases⁵⁹ and the settlement of PAGA

⁵³ *Id.*, ¶ 41-43.

⁵⁴ Ghosh Decl., ¶¶ 12, 16 & 19.

⁵⁵ *Id.*, ¶¶ 11, 15 & 18.

⁵⁶ *Id.*, ¶¶ 14 & 15.

⁵⁷ *Id.*, ¶ 11.

⁵⁸ *Id.*, ¶ 25.

⁵⁹ *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp. 3d 1058, 1100-1101, 1103-1104, 1111 (finding that, under Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA penalties as the Court sees fit" and

(Footnote continued)

claims in other cases⁶⁰. Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

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

Plaintiff's Counsel (i.e., PAGA Counsel) is highly experienced in complex representative and class action wage-and-hour litigation.⁶¹ 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 of California and the PAGA Members in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁶² Furthermore, courts have acknowledged that "the interests of plaintiff, counsel and other

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

⁶⁰ See, e.g., *DCH Auto Wage and Hour Cases* (May 2017) Los Angeles Superior Court, Case No. JCCP4833 (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit).

⁶¹ Ghosh Decl., ¶¶ 3-6.

⁶² *Id.*, ¶ 25.

potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]” *Williams, supra*, 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

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

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

The Settlement provides for a Gross Settlement Amount of \$125,000.00.⁶³ The Settlement provides for attorneys’ fees in an amount of up to forty percent (40%) of the Gross Settlement Amount, which is \$50,000.00, subject to approval and award by the Court.⁶⁴ The requested attorneys’ fees award is commensurate with: (1) the risk that PAGA Counsel took in bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that PAGA Counsel has shown, (4) the results that PAGA Counsel has achieved in the case, (5) the value that PAGA Counsel has achieved in the case, and (6) the other cases that PAGA Counsel has turned down in order to devote its time and effort to this case.

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 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).

⁶³ Settlement Agreement, ¶ 8.

⁶⁴ *Id.*, ¶ 40.

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

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

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

The percentage method is particularly appropriate where a monetary settlement has been recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a “certain 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 method is preferred in representative actions because “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82

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

15 PAGA Counsel's application for attorneys' fees in light of the facts and circumstances
16 surrounding the case is well-within the range of reasonableness. Historically, courts have
17 awarded fees as high as fifty percent (50%) of the settlement in complex actions, depending on
18 the circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp.
19 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million total settlement amount);
20 *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195
21 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely
22 approve attorneys' fees awards "average[ing] around one-third of the recovery." *Chavez v.*
23 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency
24 fees in marketplace to be 20 to 40 percent and determined such a percentage fee was
25 appropriate).

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PAGA Counsel has litigated this case since it was commenced, with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.⁶⁵ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant information, documents, and data to evaluate the allegations, including, and not limited to, calculating the potential monetary recovery under PAGA.⁶⁶ Other work performed by PAGA Counsel included, but was not limited to: meeting and conferring with Defendant's Counsel regarding the pleadings, case management, discovery, and settlement, among other issues; case strategy and analysis; drafting, reviewing, and revising the pleadings, settlement agreement, and settlement approval motion papers; propounding written discovery requests and a notice of deposition of Defendant's person most knowledgeable; claims evaluation and analysis and preparing for settlement negotiations; and appearing for court proceedings and participating in settlement negotiations.⁶⁷

In the present case, PAGA Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁸ PAGA Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the PAGA Members, and the State of California.⁶⁹ 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. The Requested Fee Award Requested is Reasonable Based on the Factors Considered in Determination of Fee Awards

The factors which courts consider in determining whether fee awards are reasonable, all of which support the fee award requested by PAGA Counsel, are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to

⁶⁵ Ghosh Decl., ¶ 23.

⁶⁶ *Id.*, ¶ 13.

⁶⁷ *Ibid.*

⁶⁸ *Id.*, ¶ 23.

⁶⁹ *Id.*, ¶¶ 3-6.

perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772. Some of the most relevant factors to this Court's fee determination will be addressed below.

It should be highlighted that the percentage award sought is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of PAGA Counsel's representation and the risks taken in commencing the Action, 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, the PAGA Members, and the State of California. For the reasons discussed herein, an award of attorneys' fees in the amount of \$50,000.00, which is forty percent (40%) 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 this lawsuit, 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.⁷⁰ During the litigation of the Action, PAGA Counsel obtained information from Plaintiff, Defendant, and other sources, conducted legal research, reviewed and analyzed a large amount of documents and data, evaluated the PAGA claim, calculated the potential monetary recovery under PAGA.⁷¹ PAGA Counsel also met and conferred with Defendant's Counsel regarding the pleadings, case management, and settlement negotiations, among other issues.⁷² PAGA Counsel

⁷⁰ Ghosh Decl., ¶ 13.

⁷¹ Ibid.

⁷² Ibid.

performed other work including, *inter alia*, case strategy and analysis; drafting, reviewing, and revising the pleadings, settlement agreement, and settlement approval motion papers; propounding written discovery requests and a notice of deposition of Defendant's person most knowledgeable; claims evaluation and analysis and preparing for settlement negotiations; and appearing for court proceedings and participating in settlement negotiations.⁷³

PAGA Counsel dedicated the full extent of staffing and monetary resources necessary to prosecute the case with maximum efficiency, and has fully and actively participated in the litigation process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT 3**" to the accompanying Declaration of Joanna Ghosh, sets forth in detail the hours that PAGA Counsel has spent performing tasks in this matter. Attorneys at Lawyers for Justice, PC have spent **245.40 hours** to obtain a recovery on behalf of Plaintiff, the PAGA Members, and the State of California. These hours were required to bring the 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 claim. 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 of the matter. 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

⁷³ Ibid.

from Plaintiff, Defendant, and other sources, evaluate the PAGA claim, and negotiate the settlement. 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 PAGA Members 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.⁷⁴

3. *The Value of the Settlement*

The Settlement represents an excellent resolution of this lawsuit, given the uncertainty and risks of further litigation.⁷⁵ Had the case not settled, Defendant would have vigorously sought to enforce its arbitration agreements, challenge liability, and sought a reduction in the amount assessed as penalties. Defendant, however, faced risks too, including and not limited to, the risk of jury trial and having the Court assess penalties. Additionally, preparing the case for trial would have been extraordinarily expensive for the Parties.

At this stage, the settlement is preferred over continued litigation 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 Plaintiff, the PAGA Members, and the 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 **245.40 hours** of time to obtain relief on behalf of Plaintiff, the PAGA

⁷⁴ Ghosh Decl., ¶¶ 15-19.

⁷⁵ *Id.*, ¶¶ 15, 16, 19, & 2.

Members, and the State of California. PAGA Counsel is also requesting reimbursement of litigation costs and expenses in the amount of \$1,811.24.⁷⁶

In this case, PAGA Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁷ If PAGA Counsel had not been successful, the time that they have 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, the PAGA Members, and the State of California.⁷⁸ The skill and determination that PAGA Counsel has shown throughout the Action justify the requested attorneys' fees and costs. Considering the amounts requested, work performed, and risks incurred, the requested fees and costs are reasonable and should be awarded.

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, the PAGA Members, and the State of California represent a fair and reasonable resolution of this lawsuit. PAGA Counsel's efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$125,000.00, and it is currently estimated that the Net Settlement Amount available for distribution to the PAGA Members and the State of California is approximately \$61,688.76.⁷⁹

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 wage-and-hour class action and complex litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California,

⁷⁶ *Id.*, ¶ 23 and Exh. 3.

⁷⁷ *Id.*, ¶ 23.

⁷⁸ See Ghosh Decl., ¶¶ 3-5.

⁷⁹ Settlement Agreement, ¶ 8.

and has successfully handled numerous significant wage-and-hour class action and representative action cases.⁸⁰

C. **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**

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 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. Defendant made it clear very early on that it disputed all of Plaintiff’s allegations and disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*, that it had facially-compliant employment policies and practices throughout the time period at

⁸⁰ Ghosh Decl., ¶¶ 3-5.

issue.⁸¹ Defendant raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and analyzing data from Defendant as well as other sources.⁸² 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. Long and difficult battles would have followed as the case moved toward trial, including taking and defending declarant and expert depositions, depositions of person most knowledgeable designees, conducting formal discovery, and engaging in extensive motion practice. 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 information, data, and documents that were obtained from Plaintiff, Defendant, and other sources. PAGA Counsel conducted extensive review and analysis of the information, documents, and data to strategize and evaluate the case and engage in settlement discussions.

As set forth above in Part VI.B.1 *infra*, attached to the Declaration of Joanna Ghosh is the Attorney Task and Time Chart that sets forth in detail the numerous tasks that PAGA Counsel performed in this case, and the time required for completing those tasks.⁸³ The chart demonstrates that Lawyers for Justice, PC has spent a total of **245.40 hours** on this matter. In light of the facts and circumstances of this case, as well as the results PAGA Counsel has achieved on behalf of Plaintiff, the PAGA Members, and the State of California, PAGA Counsel has spent a reasonable number of hours on this matter.

**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

⁸¹ Ghosh Decl., ¶ 16.

⁸² Ghosh Decl., ¶¶ 13 & 18.

⁸³ *Id.*, Exh. 2.

1 and protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In
2 awarding attorneys’ fees, the aim is to mirror “the established practice in the private legal market
3 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
4 normal hourly rates for winning contingency cases.” *See id.*

5 PAGA Counsel has been actively involved in the prosecution of this case, prior to the
6 commencement of the Action and all the way up to approval of the settlement, and their
7 dedication to the representation of Plaintiff, the PAGA Members, and the State of California has
8 precluded other employment. Here, PAGA Counsel bore the risk that, despite all of their efforts
9 and skills employed, there may be no recovery. Ultimately, PAGA Counsel was successful in
10 reaching a settlement of \$125,000.00.

11 As set forth in the Declaration of Joanna Ghosh, the professional backgrounds and
12 experience of PAGA Counsel support a reasonable blended hourly rate of compensation of at
13 least \$700 per hour for services provided by PAGA Counsel.⁸⁴ Lawyers for Justice, PC has been
14 awarded attorneys’ fees, compensating the firm at the rate of at least \$700 for legal services
15 performed, by courts of this state.⁸⁵ While the circumstance of every case is unique, the fact
16 remains that the work performed and efforts undertaken by PAGA Counsel in this matter justify
17 the requested attorneys’ fees award.

18 The lodestar method, as a cross-check to the percentage fee sought, strongly supports the
19 reasonableness of the requested attorneys’ fees award. Applying the rate of \$700 per hour to
20 245.40 hours worked by PAGA Counsel, would place a base lodestar value of \$171,780.00 on
21 the services provided by PAGA Counsel. However, PAGA Counsel only seeks an attorneys’ fee
22 award of \$50,000.00 (equal to 40% of the Gross Settlement Amount based on the Settlement
23 Agreement).

24 It also bears noting that a court may apply a multiplier in consideration for risk, efficiency,
25 and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. *See*
26 *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate

27 ⁸⁴ Ghosh Decl., ¶ 22.

28 ⁸⁵ *Ibid.*

contingency fee attorneys at a fair market rate). Such an enhancement “mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 290 F.3d at 1051; *accord Ketchum, supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights “into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba, supra*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even higher.”); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez, supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

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 approve and grant an attorneys’ fees award in the amount of \$50,000.00 to PAGA Counsel, which is reasonable and justified on a percentage-basis, but also based on a lodestar cross-check.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$10,000.00. As set forth in the Declaration of Joanna Ghosh, PAGA Counsel seeks reimbursement of \$1,811.24 in litigation costs and expenses.⁸⁶ These expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement, and the amount sought for reimbursement is less than the maximum amount allocated under the Settlement Agreement for reimbursement of litigation costs and expenses.⁸⁷ The cost savings of \$8,188.76

⁸⁶ Ghosh Decl., ¶ 23.

⁸⁷ *Ibid.*

will be part of the Net Settlement Amount.⁸⁸ Accordingly, PAGA Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$1,811.24 to PAGA Counsel.

VIII. THE PROPOSED COVER LETTER TO THE PAGA MEMBERS SHOULD BE APPROVED

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

IX. THE PROPOSED ADMINISTRATION EXPENSES PAYMENT IS 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, Atticus to handle the administration of the Settlement. The fees and expenses of the Administrator are estimated not to exceed \$4,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual PAGA Payment checks to the PAGA Members (i.e., PAGA Settlement Packages); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages to any updated addresses located; and handling inquiries from PAGA Members regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Administration Expenses Payment in the amount of up to \$4,000.00 to Atticus, a necessary third-party for handling the settlement process.

⁸⁸ Ibid.

X. THE PROPOSED SERVICE AWARD IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for a Service Award to be paid to Plaintiff in the amount of \$7,500.00 in recognition of her efforts and work in spearheading the litigation of this matter, as well as for her broader individual release of claims with a California Civil Code Section 1542 waiver (set forth in Section 60(b) of the Settlement Agreement).⁸⁹ The purpose of such an award is to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce an individual to participate in the suit’”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) (“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the [...] litigation.”); *see also, e.g., Resendez, supra*, Los Angeles County Superior Court, Case No. BC59689 (approving \$10,000 enhancement award in a PAGA action).

Here, Plaintiff contributed considerable time and effort to the litigation of this case in order to enforce the California Labor Code on behalf of the State of California and for the benefit of other PAGA Members. Plaintiff discussed her employment with her counsel, gathered and produced relevant documents and information, and provided the facts and evidence necessary to attempt to prove the allegations.⁹⁰ Plaintiff was available whenever her counsel needed her and tried to obtain and provide documents and information that would aid in the litigation of the PAGA claims and pursuit of recovery on behalf of the State of California and PAGA Members.⁹¹

Accordingly, it is reasonable and just for Plaintiff to receive a Service Award in the

⁸⁹ Settlement Agreement, ¶ 60(b).

⁹⁰ Ghosh Decl., ¶ 24; Declaration of Sarah Cables (“Cables Decl.”), ¶¶ 3 & 4.

⁹¹ Ghosh Decl., ¶ 24; Cables Decl., ¶¶ 3 & 4.

amount of \$7,500.00, in addition to the Individual PAGA Payment she will receive as a PAGA Member for her share of the Net Settlement Amount.

XI. CONCLUSION

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise of disputed claims that has been reached through arm's-length negotiations, in light of the risks, complexity, and expense of further litigation. Plaintiff respectfully requests that the Court approve the Settlement, including the plan of allocation and distribution of the Gross Settlement Amount for the LWDA PAGA Payment to the LWDA, Individual PAGA Payments to the PAGA members, PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment to PAGA Counsel, Administration Expenses Payment to the Administrator, and Service Award to Plaintiff, and permit the filing of this memorandum that exceeds the page limit.

Respectfully,

Dated: March 25, 2024

LAWYERS for JUSTICE, PC



By: _____

Joanna Ghosh
Attorneys for Plaintiff