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

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

Plaintiff,

vs.

DESERT MEDICAL GROUP, INC., a
California Corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: CVPS2104875

Honorable Harold W. Hopp
Department 1

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

[Declaration of Plaintiff's Counsel
(Joanna Ghosh); Declaration of Plaintiff
(Stephanie McCoy); and [Proposed] Order
and Judgment filed concurrently herewith]

Date: July 22, 2024
Time: 8:30 a.m.
Department: 1

Complaint Filed: September 21, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 22, 2024, at 8:30 a.m., or as soon thereafter as
2 the matter may be heard, before the Honorable Harold W. Hopp in Department 1 of the Superior
3 Court of the State of California, for the County of Riverside, located at 4050 Main Street,
4 Riverside, California 92501, Plaintiff Stephanie McCoy (“Plaintiff”) will and hereby does move
5 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 Desert Medical Group, Inc.,
8 (“Defendant”) of the claims brought by Plaintiff pursuant to the Private Attorneys
9 General Act of 2004 (“PAGA”), as set forth in the Private Attorneys General Act
10 Settlement Agreement and Release (“Settlement,” “Settlement Agreement,” or
11 “Agreement”), attached as **“EXHIBIT 1”** to the Declaration of Joanna Ghosh, filed
12 concurrently herewith;
- 13 2. Approving the Total Settlement Amount¹ of \$800,000.00 (subject to possible increase
14 pursuant to Section 3(b) of the Settlement Agreement), which is inclusive of
15 Attorneys’ Fees and Costs, a General Release Fee to Plaintiff, the Settlement
16 Administration Costs, and the Net Settlement Amount;
- 17 3. Approving the Net Settlement Amount, estimated to be no less than \$487,371.89,
18 which will be distributed to the California Labor and Workforce Development
19 Agency (“LWDA”) and the Aggrieved Employees, pursuant to California Labor Code
20 section 2699(i), of which seventy-five percent (75%) will be paid to the Labor and
21 Workforce Development Agency (“LWDA Payment”) and twenty-five percent (25%)
22 will be paid to the Aggrieved Employees (“Employees’ Portion”);
- 23 4. Appointing Simpluris, Inc. as the PAGA Settlement Administrator;
- 24 5. Directing Defendant to transmit the Total Settlement Amount into a qualified
25 settlement account established by the PAGA Settlement Administrator for
26 administration of the Settlement, and directing the PAGA Settlement Administrator

27 ¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Settlement
28 Agreement.

1 to distribute the Total Settlement Amount in accordance with the Settlement
2 Agreement;

3 6. Directing the mailing of Individual Settlement Share checks to the Aggrieved
4 Employees along with the Cover Letter, which shall be substantially similar in content
5 and form to that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment
6 Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et*
7 *Seq.*) Settlement Agreement and Award of Attorneys’ Fees and Costs, General
8 Release Fee, and Settlement Administration Costs (“[Proposed] Order and
9 Judgement”), filed concurrently herewith;

10 7. Awarding \$10,000.00 to Plaintiff as a General Release Fee;

11 8. Awarding up to \$7,500.00 to the PAGA Settlement Administrator as Settlement
12 Administration Costs; and

13 9. Awarding to Plaintiff’s Counsel, Lawyers *for* Justice, PC, \$280,000.00 as
14 compensation for reasonable attorneys’ fees and \$15,128.11 for reimbursement of
15 litigation costs and expenses (collectively, “Attorneys’ Fees and Costs”), pursuant to
16 California Labor Code section 2699(g)(1).

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

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

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This motion will be based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Plaintiff's Counsel (Joanna Ghosh) and Plaintiff (Stephanie McCoy) in support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: June 27, 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 Stephanie McCoy (“Plaintiff”) seeks approval, pursuant to California Labor Code section 2699(1)(2), of the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Settlement Agreement,” or “Agreement”) entered into between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and Defendant Desert Medical Group, Inc. (“Defendant”). The Settlement Agreement is attached as “**EXHIBIT 1**” to the Declaration of Joanna Ghosh (“Ghosh Decl.”), filed concurrently herewith. (Ghosh Decl., ¶ 9, Ex. 1.)

Subject to approval by the Court, Plaintiff and Defendant (the “Parties”) have agreed to resolve this action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Total Settlement Amount² of \$800,000 (subject to possible increase pursuant to Section 3(b)). (Settlement Agreement, §§ 3(a)-(b).) The Total Settlement Amount is inclusive of: (1) Attorneys’ Fees and Costs to be paid to Lawyers for Justice, PC (“Plaintiff’s Counsel”), (2) General Release Fee to Plaintiff, (3) Settlement Administration Costs to be paid to the PAGA Settlement Administrator, and (4) Net Settlement Amount to be paid to the California Labor and Workforce Development Agency (“LWDA”) and all hourly-paid or non-exempt employees who worked for Defendant in the State of California during the PAGA Period (“Aggrieved Employees”). (Settlement Agreement, §§ 3(a)(1)-(5).) The PAGA Period is January 14, 2020 to March 12, 2024. (*Id.*, § 3(a)(5).)

The Net Settlement Amount will be the Total Settlement Amount less the Court-approved Attorneys’ Fees and Costs, General Release Fee, and Settlement Administration Costs. (Settlement Agreement, § 3(a)(4).) If the Court approves the amounts requested for Attorneys’ Fees (\$280,000.00), Costs (\$15,128.11), the General Release Fee (\$10,000.00), and Settlement Administration Costs (\$7,500.00), then the Net Settlement Amount will be \$487,371.89.³ The

² Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Settlement Agreement.

³ \$800,000 - \$280,000 - \$20,000 - \$10,000 - \$7,500 = \$482,500.

Net Settlement Amount will be distributed as follows: 75 percent, or \$365,528.92, to the LWDA (the “LWDA Payment”), 25 percent, or \$121,842.97, to the Aggrieved Employees (the “Employees’ Portion”). (Settlement Agreement, §3(a)(5).) Each Aggrieved Employee will be entitled to payment of his or her *pro rata* share of the Employees’ Portion, based upon the number of pay periods they each worked during the PAGA Period (“Compensable Pay Periods”). (*Id.*, § 7(b).)

The payments to Aggrieved Employees will be treated and reported for tax purposes as 100 percent penalties, and the PAGA Settlement Administrator will be responsible for issuing IRS Forms 1099 as required. (*Id.*, § 7(b)(1).)

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 claim, the risk, expense, and complexity of further litigation, the benefit conferred by the Settlement, the scope of the release of claims, the experience and views of counsel, and the reasonableness of the Net Settlement Amount (consisting of the LWDA Payment and Employees’ Portion), Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee. Plaintiff respectfully requests that this Court approve the Settlement, award the Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee, and approve the LWDA Payment and Employees’ Portion, 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, 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

Plaintiff was employed by Defendant as an hourly-paid medical assistant from approximately February 2020 to approximately April 2020 and also from approximately September 2020 to approximately November 2020. (Declaration of Stephanie McCoy (“McCoy

Decl.”) ¶ 2.)

On July 15, 2021, pursuant to California Labor Code section 2699.3, Plaintiff provided the LWDA and Defendant with written notice (the “PAGA Notice”) of her intent to seek civil penalties under PAGA for alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, to which the LWDA did not respond. (Ghosh Decl., ¶ 11, Ex. 2.)

On September 21, 2021, Plaintiff filed her Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Complaint”) against Defendant. Plaintiff asserts that Defendant has violated the California Labor Code and Industrial Welfare Commission Wage Orders by engaging in a uniform practice and procedure, with respect to Plaintiff and other aggrieved employees, of, *inter alia*, failing to pay minimum, regular, and overtime wages, failing to provide compliant meal and rest periods and associated premiums, failing timely to 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.

On December 9, 2021, Defendant filed an Answer to the Complaint. Defendant denies Plaintiff’s allegations and asserts numerous affirmative defenses. Indeed, throughout the litigation of this matter, Defendant has vigorously disputed that it violated any provisions of the California Labor Code. (Ghosh Decl., ¶ 12.)

The Parties agreed to participate in a mediation with Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters. (Ghosh Decl., ¶ 10.)

On January 9, 2023 the Parties mediated with Mr. Krivis. (Ghosh Decl., ¶ 10.) The matter did not settle at mediation. (*Id.*)

Thereafter, on May 11, 2023, Plaintiff served the following discovery requests on Defendant: Form Interrogatories-General (Set One), Requests for Production of Documents (Set One), Special Interrogatories (Set One), and Special Interrogatories (Set Two). (Ghosh Decl., ¶

61.) Defendant responded to these requests on August 8, 2023. (*Id.*) In total, through informal and formal discovery, Defendant produced approximately 36,000 thousand pages in documents, which Plaintiff's Counsel analyzed to evaluate the potential PAGA penalties at issue. (*Id.*)

In addition to continuing discovery, the Parties continued settlement negotiations, facilitated by the mediator, Mr. Krivis. (*Id.*, ¶ 10.) In December 2023, the Parties agreed to a settlement based on Mr. Krivis's mediator's proposal. (*Id.*) The Settlement Agreement was fully executed as of May 1, 2024. (*Id.*, ¶ 9, Ex. 1.)

Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(l)(2). The Settlement Agreement and these moving papers are being submitted to the LWDA in conformity with California Labor Code section 2699(l)(2), as stated in the Proof of Service filed concurrently herewith.

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Settlement pertains to the following aggrieved employees: "all current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California during the PAGA Period." (Settlement Agreement, § 3(a)(5).) The PAGA Period is January 14, 2020 to March 12, 2024. (*Id.*, § 3(a)(5).) The Aggrieved Employees are estimated to consist of 1,205 individuals who worked approximately 54,675 Compensable Pay Periods during the PAGA Period. (*Id.*, § 3(b).)

B. Distribution of the Total Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Amount of \$800,000 (subject to possible increase pursuant to Section 3(b) of the Settlement Agreement). (*Id.*, §§ 3(a)-(b).) The Net Settlement Amount will be the Total Settlement Amount less the following requested amounts (if approved): (1) Attorneys' Fees and Costs consisting of attorneys' fees of \$280,000.00 and reimbursement of litigation costs and expenses of \$15,128.11 to Plaintiff's Counsel; (2) General Release Fee of \$10,000.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$7,500.00 to the proposed PAGA Settlement

Administrator, Simpluris, Inc. (“Simpluris” or “PAGA Settlement Administrator”). (*Id.*, § 3(a)(3).) The Net Settlement Amount will be fully distributed to the Aggrieved Employees and the LWDA, as described in Part III.C, *infra*.

C. Distribution of the Net Settlement Amount

Within 30 calendar days of the Court’s order granting approval of the Settlement, Defendant will transmit the Total Settlement Amount to a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement. (Settlement Agreement, § 7(a).) No later than seven calendar days after the Court’s order granting approval of the Settlement, Defendant shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the “Aggrieved Employees List”), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) Social Security number; and (iv) Compensable Pay Periods. (*Id.*, § 7(c)(1).)

Seventy-five percent of the Net Settlement Amount (or approximately \$365,528.92) will be distributed to the LWDA, and 25 percent of the Net Settlement Amount (or approximately \$121,842.97) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods. (*Id.*, § 3(a)(5).) To calculate each Aggrieved Employee’s share of the Employees’ Portion (“Individual Settlement Share”), the PAGA Settlement Administrator will: (i) for each Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees’ Portion to arrive at each Aggrieved Employee’s Individual Settlement Share. (*Id.*, § 7(b).) The payments to Aggrieved Employees for their Individual Settlement Shares will be considered 100 percent penalties to be reported on IRS Form 1099, if required. (*Id.*, § 7(b)(1).)

No later than 14 calendar days after the PAGA Settlement Administrator receives the Total Settlement Amount, the PAGA Settlement Administrator will mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the “PAGA Settlement Package”) to

all Aggrieved Employees by first-class United States mail. (*Id.*, § 7(c)(3).) For each PAGA Settlement Package that is returned as undeliverable within 30 calendar days of the initial mailing, the PAGA Settlement Administrator will promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one re-mailing of the PAGA Settlement Package. (*Id.*)

The Individual Settlement Share checks issued to Aggrieved Employees will remain valid for 90 calendar days, and then will be canceled. (*Id.*, § 7(c)(4).) Funds associated with canceled checks will be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of their respective Individual Settlement Share(s). (*Id.*)

D. The Scope of the Release in the Settlement Agreement

Upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, Plaintiff and the State of California with respect to the Aggrieved Employees will be deemed to have knowingly and voluntarily released and forever discharged Released Parties from the Released Claims. (Settlement Agreement, § 8(a).)

The "Released Claims" are defined as:

any and all claims, arising during the PAGA Period, for civil penalties under [PAGA] as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliance rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business-related expenses and costs, in violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia* Wage Orders 4-2001 and 5-2001.

(*Id.*)

The "Released Parties" are defined as:

Defendant, Heritage Provider Network, Inc., and its affiliated medical groups, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, owners, officers, directors and

agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs.

(*Id.*)

The Settlement Agreement also contains a general release from Plaintiff. (*Id.*, § 8(a).)

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 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

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

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

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

9 PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or
10 herself and on behalf of other aggrieved employees and the State of California to recover civil
11 penalties which, outside of PAGA, only the LWDA can assess upon and collect from an
12 employer. (Lab. Code § 2699(a).) Before bringing a civil action under PAGA, an employee
13 must comply with California Labor Code section 2699.3 (Lab. Code § 2699(a)), which Plaintiff
14 has done here. (Ghosh Decl., ¶ 11, Ex. 2.)

15 Any settlement of PAGA claims must be reviewed and approved by the trial court to
16 “ensur[e] that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court*
17 (2017) 3 Cal.5th 531, 549; see also Cal. Lab. Code, § 2699(l)(2).) However, “[t]he legal
18 authority identifying the proper standard of review of PAGA settlements to be employed by the
19 court is still nascent.” (*Middleton v. Halliburton Energy Services, Inc.* (E.D. Cal. May 2, 2024)
20 No. 1:19-cv-01747-CDB, 2024 WL 1930691, at *2.)

21 “[A] trial court should evaluate a PAGA settlement to determine whether it is fair,
22 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
23 deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA,*
24 *Inc.* (2021) 72 Cal.App.5th 56, 77.) Factors that “can be useful in evaluating the fairness of a
25 PAGA settlement” include “the strength of the plaintiff’s case, the risk, the stage of the
26 proceeding, the complexity and likely duration of further litigation, and the settlement amount.”
27 (*Id.*)

1 A PAGA settlement is a settlement of claims for penalties and other remedies which the
2 LWDA could assess and collect on behalf of employees without their involvement or approval.
3 “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
4 to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D.
5 Cal. Apr. 2, 2020) No. 08-civ-2073 MHP, 2010 WL 1340777, at *5.) This renders the approval
6 process of a PAGA settlement distinct from a class action settlement, and the Court need not
7 employ the two-step approval process that applies to a class action settlement, under both state
8 and federal law.

9 The appropriate appellate standard of review for PAGA settlements is “abuse of
10 discretion.” (*Moniz, supra*, 72 Cal.App.5th at 78.) The appellate court “determine[s] only
11 whether the trial court acted within its broad discretion in approving the settlement.” (*Id.*)

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

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

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

17 A settlement that is “the product of extensive and hard-fought adversarial negotiations
18 between the parties” is entitled to a presumption of fairness. (*Wershba v. Apple Computer, Inc.*
19 (2001) 91 Cal.App.4th 224, 245.) In the comparable context of class action settlements, courts
20 have held that a settlement is entitled to “a presumption of fairness . . . where: (1) the settlement
21 is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to
22 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
23 and (4) the percentage of objections is small.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
24 1794, 1802.) The fourth factor is not applicable to PAGA settlements, as there is no class notice
25 provided to aggrieved employees. But the first three factors are applicable and are satisfied
26 here.

1 The Settlement Agreement here was reached through arm's-length negotiations and
2 sufficient investigation and discovery. Through formal and informal discovery, Plaintiff's
3 Counsel obtained substantial documentation from Defendant, including the employment records
4 of Plaintiff, a sampling of aggrieved employees' time and pay data, Defendant's Employee
5 Handbook, job descriptions, various agreements and acknowledgments (such as, Defendant's
6 Mutual Arbitration Agreement, Receipt of Employee Handbook, and Acknowledgement of
7 Employee Handbook), and Defendant's operations and employment practices, policies, and
8 procedures, among other documents; after evaluating extensive information, data, and
9 documents obtained from Plaintiff, Defendant, and other sources, Plaintiff's Counsel calculated
10 the potential PAGA Penalties, and then embarked upon negotiating and reaching a settlement
11 (Ghosh Decl., ¶¶ 12-57 & 61.) The parties participated in a full-day mediation with Defendant
12 and mediator Jeffrey Krivis, Esq., but the matter did not settle right away at the mediation, and
13 Plaintiff's Counsel thereafter served written discovery requests on Defendant, to which
14 Defendant responded, and continued to engage with Defendant in settlement discussions
15 facilitated by Mr. Krivis. (*Id.*, ¶¶ 10 & 61.) Ultimately, the Parties reached a settlement based
16 on Mr. Krivis's mediator's proposal. (*Id.*, ¶ 10.) The fact that the Settlement Agreement was
17 the product of a mediation, continued discussions, and a mediator's proposal, supports a finding
18 that the Settlement Agreement is fair, adequate, and reasonable. (See, e.g., *Fritsch v. Swift*
19 *Transportation Co. of Arizona, LLC* (C.D. Cal. Jan. 4, 2022) No. 5:17-cv-02226-VAP, 2022
20 WL 17095951, at *2 [noting that the settlement agreement was the product of three mediation
21 sessions and "therefore presumptively the product of a non-collusive, arms-length
22 negotiation"].)

23 Other work performed by Plaintiff's Counsel included, but was not limited to: meeting
24 and conferring with Defendant's counsel regarding the mediation and settlement, among other
25 issues; case strategy and analysis; drafting, reviewing, and revising the mediation brief; and
26 preparing for the mediation and settlement negotiations. (*Id.*, ¶ 61.) Counsel for the Parties
27 have further invested time to research the applicable law, which evolving as it relates to
28

1 representative PAGA actions, off-the-clock theory, regular rate, wage-and-hour enforcement,
2 and arbitration agreements, Plaintiff's claims and allegations, and Defendant's defenses, as well
3 as facts discovered. (*Id.*)

4 Plaintiff's Counsel has extensive experience handling representative and class action
5 wage-and-hour litigation. (Ghosh Decl., ¶¶ 2-7.) Based on that experience, Plaintiff's Counsel
6 believes that the settlement is a fair, adequate, and reasonable resolution of this matter. (*Id.*, ¶
7 72.) (See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 [opinion of experienced
8 counsel is entitled to considerable weight]; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp.
9 610, 616-17, 622 [recommendations of plaintiffs' counsel should be given a presumption of
10 reasonableness].)

11 Because the Settlement Agreement was the product of arm's-length negotiations
12 between adversarial parties, including via a mediation and mediator's proposal issued by an
13 experienced mediator, was based on Plaintiff's Counsel's review and analysis of substantial
14 information and documents obtained from Defendant (in advance of mediation and subsequent
15 to mediation through formal written discovery), and, in the opinion of Plaintiff's Counsel, is an
16 excellent result for Plaintiff, the Aggrieved Employees and the State of California, the Court
17 should approve the Settlement Agreement as fair, adequate and reasonable. (*Id.* ¶¶ 61 & 72.)

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

20 Here, based on Plaintiff's Counsel's analysis of the records and other discovery obtained
21 from Defendant, Plaintiff's Counsel is confident in the merit of Plaintiff's claim against
22 Defendant for PAGA penalties. And, if Plaintiff were indeed able to establish liability on
23 alleged California Labor Code and Industrial Welfare Commission Wage Order violations at
24 trial, and the Court were to award the maximum PAGA penalties and interpret all as-yet-not-
25 fully-resolved legal issues concerning calculation of PAGA penalties in favor of Plaintiff, the
26 potential PAGA penalties are substantial. (Ghosh Decl., ¶¶ 12-57)

1 Although the potential PAGA penalties at issue in this matter are significant, there are
2 also significant risks. First, there is the risk that Defendant would be able to establish a defense
3 or defenses to liability. Throughout this litigation, Defendant maintained, and continues to
4 maintain, that it had, and continues to have, legally-compliant employment policies and
5 practices throughout the time period at issue. (Ghosh Decl., ¶ 52.) Defendant denies that it ever
6 violated any provision of the California Labor Code or Industrial Welfare Commission Wage
7 Orders, including, but not limited to, those sections for which Plaintiff seeks penalties under
8 PAGA. (*Id.*)

9 Also, there is a risk that the Court would, in its discretion, significantly reduce the PAGA
10 penalties. The PAGA statute gives courts the discretion to award a lesser amount than the
11 maximum penalties. (See Cal. Lab. Code, § 2699(e)(2) [“In any action by an aggrieved
12 employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may
13 award a lesser amount than the maximum civil penalty amount specified by this part if, based
14 on the facts and circumstances of the particular case, to do otherwise would result in an award
15 that is unjust, arbitrary and oppressive, or confiscatory.”].) Applying this discretion, courts often
16 significantly reduce the amount awarded for PAGA penalties. (See, e.g., *Fleming v. Covidien*
17 *Inc.* (C.D. Cal. Aug. 12, 2011) No. 10-cv-01487, 2011 WL 7563047, at *4 [court reduces \$2.8
18 million PAGA penalty to \$500,000 pursuant to § 2699(e)]; *Carrington v. Starbucks Corp.*
19 (2018) 30 Cal.App.5th 504, 529 [affirming trial court’s reduction of the \$50 maximum penalty
20 (per initial violation) to only \$5 per initial violation]; *Kaanaana v. Barrett Bus. Servs.* (2018)
21 29 Cal.App.5th 778, 787 [trial court reduced PAGA penalties from \$1,390,800 to \$53,293.50].)
22 Third, the above calculations for PAGA penalties assume that the Court would apply increased
23 penalty rates for subsequent violations. However, some courts have required a showing of the
24 employer’s notice of an initial violation before heightened penalties apply for subsequent
25 violations. (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.)

26 There is also uncertainty regarding PAGA claims due to decisions of the high courts. As
27 a result of a recent United States Supreme Court decision, it may be more likely that employer
28

1 agreements containing arbitration terms will impact the viability of adjudication of PAGA
2 claims in the judicial forum, which is relevant to this matter in light of the arbitration agreements
3 that Defendant obtained from its employees (which include a class, collective, and
4 representative waiver). *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S.
5 LEXIS 2940. Recently, the California Supreme Court confirmed that an aggrieved employee
6 who has been compelled to arbitrate claims under PAGA that are premised on California Labor
7 Code violations actually sustained by the plaintiff still maintains statutory standing to pursue a
8 PAGA claim arising out of events involving other employees through a PAGA representative
9 claim. *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 532 P.3d 682, 685.
10 Nevertheless, while the arbitrable and non-arbitrable components of an action are not severed
11 from one another, it is still possible that trial courts will stay the representative/non-individual
12 PAGA claims pending arbitration of a plaintiff's individual PAGA claims and if a plaintiff is
13 determined to not be an "aggrieved employee" for PAGA purposes, issue preclusion may apply
14 and, once reduced to a final judgment, trial courts are bound by the arbitrator's determination
15 and the plaintiff may lose standing to pursue non-individual PAGA claims. *Id.* at 693.

16 While Plaintiff disagrees with Defendant's contentions and maintains that Defendant has
17 violated the California Labor Code and Industrial Welfare Commission Wage Orders as alleged
18 in the Complaint, Plaintiff and her counsel, in reaching the Settlement, with the benefit of the
19 mediator's evaluation, took into account the strengths and weaknesses of each side's position
20 and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or
21 appeals. (*Id.*, ¶ 55.) In light of these risks, Plaintiff's Counsel strongly believes that the
22 Settlement achieved is a good result for the State of California and the Aggrieved Employees.

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

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

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

Prior to reaching the Settlement, Plaintiff investigated the veracity, strength, and scope of the PAGA claim, and was preparing for trial. (Ghosh Decl., ¶¶ 55 & 61.) Plaintiff's Counsel considered a large volume of information, documents, and data obtained from Plaintiff, Defendant, and other sources, that were relevant to the PAGA claim and alleged violations and calculated the potential monetary recovery under PAGA. (*Id.*, ¶ 61.) Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding the mediation and settlement, among other issues; case strategy and analysis; drafting, reviewing, and revising the mediation brief; drafting discovery requests and analyzing Defendant's responses; drafting notices of deposition; and preparing for and attending the mediation and settlement negotiations as well as court proceedings. (*Id.*)

Had the case not settled, the Parties would have conducted extensive additional formal discovery, including propounding additional written discovery requests as well as multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendant indicated that it would aggressively litigate this case. (Ghosh Decl., ¶ 52.) 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. Additionally, there is a real possibility that Plaintiff would recover nothing, either for herself 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. 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 Aggrieved Employees and falls well within the range of acceptable settlements under the circumstances. Under the Agreement, Defendant has agreed to pay a Total Settlement Amount of \$800,000.00 (subject to possible increase pursuant to Section 3(b) of the Settlement Agreement), which encompasses the Net Settlement Amount, Attorneys' Fees and Costs, Settlement Administration Costs, and General Release Fee. (Settlement Agreement, §§ 3(a), 3(a)(1)-(5).) Subject to approval by the Court, the following amounts will be subtracted from the Total Settlement Amount to yield the Net Settlement Amount: (1) Attorneys' Fees and Costs consisting of attorneys' fees in the amount of \$280,000.00 and reimbursement of litigation costs and expenses in the amount of \$15,128.11 to Plaintiff's Counsel; (2) the Settlement Administration Costs of up to \$7,500.00; and (3) General Release Fee of \$10,000.00 to Plaintiff. (*Id.*, §§ 3(a)(1)-(4).)

The Net Settlement Amount is currently estimated to be \$487,371.89, of which an estimated \$121,842.97 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods, and \$365,528.92 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). 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 Aggrieved Employees and the State of California.⁴

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 the settlement of PAGA claims in other cases. See, e.g. *Matter of Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 588-590 (No abuse of discretion by the trial court in approving the allocation of \$0 toward PAGA penalties, where PAGA claim is resolved as a part of an overall resolution of the underlying California Labor Code violations); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL 5941801,

at *14 (Approving allocation of \$10,000, out of the settlement of \$2.5 million, toward the settlement of the PAGA claim); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) No.1:10-CV-0324-AWI-SKO, 2012 WL 5364655, at *3 (Approving the allocation of \$10,000, out of the settlement of \$3.7 million, toward the settlement of the PAGA claim); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) No. C 05-4526 MHP, C 0647924 MHP, 2011 WL 672645, at *1 (Approving the allocation of \$10,000, out of the settlement of \$6.9 million, toward the settlement of the PAGA claim); *Jack v. Hartford Ins. Co.* (S.D. Cal. Oct. 13, 2011) No. 3:09-cv-1683-MMA (JMA), 2011 WL 4899942, at *18 (Approving the allocation of \$3,000, out of the settlement of \$1.2 million, toward the settlement of the PAGA claim); *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14 (approving the allocation of \$10,000, out of the settlement of \$518,245, toward settlement of the PAGA claim).

Plaintiff's Counsel also considered that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors other than the employer's ability to pay, and that many trial courts have significantly reduced PAGA civil penalties or altogether declined to award PAGA civil penalties. See, e.g., *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590, at **8-9 (Out of \$2,800,000 PAGA penalties requested, the court awarded \$500,000.); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136, disapproved on other grounds (Out of \$512,000 PAGA penalties requested, the court awarded \$358,588.); *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 (Out of \$1,800,000 PAGA penalties requested, the court awarded \$500,000.); *Halevi v. Aroma Bakery Café, Inc.* (Aug. 30, 2013) Los Angeles County Superior Court No. 468146 (The court declined to award PAGA penalties after trial, although at trial the court awarded wages to class, on the basis that, *inter alia*, action was not prompted by availability of PAGA penalties, penalties were not necessary to remedy ongoing or future violations, and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory.); *Makabi v. Gedalia* (Mar. 2, 2016) No.

B261005, 2016 Cal. App. Unpub. LEXIS 1489, at **6-7 (Noting that the trial court found in favor of plaintiffs on California Labor Code violation claims, but declined to award any PAGA penalties.); *Arnold v. San Diego Second Chance Program* (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375 (No PAGA penalties awarded.); *Felczner v. Apple Inc.* (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593 (No PAGA penalties awarded.); *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 (Out 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.); *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.); *Morales v Bridgestone Retail Operations LLC* (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244 (Out of \$7 million PAGA penalties requested, the court awarded \$425,000.); *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (Out 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.).

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

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

Plaintiff's Counsel is highly experienced in complex representative and class action wage-and-hour litigation. (Ghosh Decl., ¶¶ 2-7.) In the view of Plaintiff's Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement. (Ghosh Decl., ¶ 72.) 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

Plaintiff’s Counsel requests an award of Attorneys’ Fees of \$280,000.00, which is 35 percent of the Total Settlement Amount. Plaintiff’s Counsel respectfully submits that this amount is reasonable and warrants approval.

“Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney’s fees and costs.” (Cal. Lab. Code § 2699(g)(1).) Plaintiff’s Counsel is also entitled to fees and costs under Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition “for the benefit” of others and secures a significant monetary recovery for approximately 1,205 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 LWDA in enforcing labor laws and educating “employers and employees about their rights and responsibilities under [the California Labor Code].” (Cal. Lab. Code § 2699(i).)

In evaluating the reasonableness of a requested attorneys’ fees award, the court has the discretion to apply a percentage-of-the-fund method or a lodestar method. (*Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 489.) 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.

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

6 The court has “wide latitude” in assessing the value of attorneys’ fees, and its decision
7 will “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial*
8 *Cal., Inc.* (2000) 82 Cal.App.4th 19, 41.) Indeed, the “experienced trial judge is the best judge
9 of the value of professional services rendered in his court.” (*Ketchum v. Moses* (2001) 24
10 Cal.4th 1122, 1132.)

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

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

6 **A. Under the Percentage-of-the-Fund Method, the Requested Attorneys’ Fees**
7 **Award is Reasonable**

8 Here, the requested Attorneys’ Fees amount of \$280,000, which is 35 percent of the
9 Total Settlement Amount (\$800,000), is justified. Historically, courts have awarded fees as high
10 as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of
11 the case. (See *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 [awarding
12 attorneys’ fees in the amount of 45% of the \$7.3 million total settlement amount]; *Beech*
13 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195
14 [awarding approximately 53% of the settlement as attorneys’ fees].) California courts routinely
15 approve attorneys’ fees awards “averag[ing] around one-third of the recovery.” (*Chavez v.*
16 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 [lower court found the range of contingency
17 fees in marketplace to be 20 to 40 percent and determined such a percentage fee was
18 appropriate].)

19 Plaintiff’s Counsel has litigated this case for approximately three years, since prior to
20 the submission of the PAGA Notice to the LWDA and Defendant on July 15, 2021, with the
21 very real possibility of an unsuccessful outcome and no fee recovery of any kind. Plaintiff’s
22 Counsel undertook significant investigation, and also invested time reviewing and analyzing
23 relevant documents and data to evaluate the claims, including, and not limited to, calculating
24 the potential monetary recovery under PAGA. (*Id.*, ¶¶ 16-18.) Other work performed by
25 Plaintiff’s Counsel included, but was not limited to: meeting and conferring with Defendant’s
26 counsel regarding case management, mediation and settlement, among other issues; case
27 strategy and analysis; drafting, reviewing, and revising pleadings, the mediation brief and
28

analyses, and discovery; and preparing for and participating in mediation and continued settlement negotiations. (*Id.*)

Further, the percentage rate sought here (35 percent) is justified by Plaintiff's Counsel's extensive experience in complex wage-and-hour litigation, which Plaintiff's Counsel applied to obtain a great result for Plaintiff, the Aggrieved Employees, and the State of California. (*Id.*, ¶¶ 6-7.) Considering the amount of fees requested, work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar matters, the requested attorneys' fees are reasonable.

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

The lodestar cross-check confirms that the amount of Attorneys' Fees requested is reasonable. 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. *Plaintiff's 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, including drafting the Complaint, analyzing thousands of pages of information, documents, and data, preparing liability and penalties exposure analyses, preparing the mediation brief, drafting discovery, analyzing discovery responses, meeting and conferring with Defendant's counsel, continuing settlement discussions, and negotiating the Settlement Agreement. 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 compliant employment policies and practices throughout the time period at issue. (Ghosh Decl., ¶¶ 12 & 52.) Defendant raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and analyzing information, documents, and data from Plaintiff, Defendant, and other sources. (*Id.*, ¶¶ 12, 19, 25, 30, 41, 44, 49-50, 52-54.) The handling of this litigation involved a great amount of effort, and also required and involved the exercise of a high level of skill and experience, which Plaintiff's Counsel has, as a result of Counsel's extensive experience in complex wage-and-hour litigation. (*Id.*, ¶¶ 2-7.)

Attached as "**Exhibit 3**" to the Declaration of Joanna Ghosh is the Attorney Task and Time Chart that sets forth in detail the numerous tasks that Plaintiff's Counsel performed in this case, and the time required for completing those tasks. (Ghosh Decl., ¶ 59, Ex. 3.) The chart demonstrates that Lawyers for Justice, PC has spent a total of **357.20 hours** on this matter. (*Id.*) In light of the facts and circumstances of this case, as well as the results Plaintiff's Counsel has achieved on behalf of Plaintiff, the Aggrieved Employees, and the State of California, the amount of hours Plaintiff's Counsel has dedicated to this matter is reasonable.

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

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." (*Id.*)

Plaintiff's Counsel has been actively involved in the prosecution of this case, prior to its commencement through the present, and their dedication to the representation of Plaintiff, the Aggrieved Employees, and the State of California has precluded other employment. Here, Plaintiff's Counsel bore the risk that, despite all of their efforts and skills employed, there may

be no recovery. Ultimately, Plaintiff's Counsel was successful in reaching the Settlement, which involves a Total Settlement Amount of \$800,000 (subject to possible increase pursuant to Section 3(b) of the Settlement Agreement).

As set forth in the Declaration of Joanna Ghosh, the professional backgrounds and experience of Plaintiff's Counsel support a reasonable blended hourly rate of compensation of at least \$800 per hour for services provided by Plaintiff's Counsel. (Ghosh Decl., ¶ 62.) Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$800 for legal services performed, by courts of this state. (*Id.*) While the circumstances of every case are unique, the fact remains that the work performed and efforts undertaken by Plaintiff's Counsel in this matter justify the requested attorneys' fees award.

The lodestar method, as a cross-check to the percentage fee sought, strongly supports the reasonableness of the requested attorneys' fees award. Applying the rate of \$800 per hour to **357.20 hours** worked by Plaintiff's Counsel, would place a base lodestar value of at least \$285,760.00 on the services provided by Plaintiff's Counsel. However, Plaintiff's Counsel only seeks an attorneys' fee award of \$280,000.00 (equal to 35% of the Total Settlement Amount based on the Settlement Agreement).

Accordingly, Plaintiff respectfully requests that the Court approve and grant an attorneys' fees award in the amount of \$280,000.00 to Plaintiff's Counsel, which is reasonable and justified based on both the percentage-basis and the lodestar cross-check.

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

Plaintiff's Counsel requests reimbursement for the litigation costs and expenses incurred in prosecuting this matter, in the total amount of \$15,128.11. (Ghosh Decl., ¶ 63, Ex. 4.) The requested amount is less than the maximum amount provided for in the Settlement Agreement of \$20,000.00. (Settlement Agreement, § 3(a)(1).) The cost savings of \$4,871.89 will be part of the Net Settlement Amount. (*Id.*, § 3(a)(4).)

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1 The costs and expenses for which reimbursement is sought – including court filing fees,
2 service fees, and mediation fees – are reasonable and were necessary to the prosecution and
3 settlement of this matter. Further, Plaintiff’s counsel has borne all of the risks and costs of
4 litigation to date and will not receive any compensation until a recovery is obtained in this
5 matter.

6 Accordingly, Plaintiff’s Counsel requests that the Court award reimbursement of
7 litigation costs and expenses in the amount of \$15,128.11 to Plaintiff’s Counsel. (See, e.g.,
8 *Bruce v. Del Monte Foods, Inc.* (N.D. Cal. Mar. 29, 2018) No. 16-cv-05891-JD, 2018 WL
9 8017998, at *2 [approving reimbursement of \$12,000 in costs for PAGA settlement].)

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

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

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

23 As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to
24 approval by the Court, Simpluris, Inc. to handle the administration of the Settlement.
25 (Settlement Agreement, § 3(a)(3).) The fees and expenses of the PAGA Settlement
26 Administrator are estimated not to exceed \$7,500.00. (Ghosh Decl., Ex. 5) These costs include,
27 but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and
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Individual Settlement Shares checks to the Aggrieved Employees (i.e., PAGA Settlement Package); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages to any updated addresses located; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to \$7,500.00 to Simpluris, Inc., a necessary third-party for handling the settlement process. (*See, e.g., Connelly v. Starbucks Corporation* (E.D. Cal. Sep. 29, 2023) 1:21-cv-000746-SAB, 2023 WL 6387077, at *19 [approving administration costs of up to \$16,000].)

X. THE PROPOSED GENERAL RELEASE FEE IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED

In recognition of her efforts and work in spearheading the litigation of the action, and for her broad release of individual claims and a general release with a California Civil Code Section 1542 waiver (as set forth in Section 8(b) of the Settlement Agreement), the Settlement provides for a General Release Fee to be paid to Plaintiff in the amount of \$10,000.00. (Settlement Agreement, § 3(a)(2).) Courts regularly award payments to named plaintiffs 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, e.g., 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.”)).

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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 Aggrieved Employees. Plaintiff discussed her employment with Plaintiff's Counsel, gathered and produced relevant documents and information, and provided the facts and evidence necessary to attempt to prove the allegations. (McCoy Decl., ¶¶ 3 & 4.) 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 claim and pursuit of recovery on behalf of the State of California and Aggrieved Employees. (*Id.*, ¶¶ 3 & 4.) Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the amount of \$10,000.00, in addition to the Individual Settlement Share she will receive as an Aggrieved Employee.

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 Total Settlement Amount for the LWDA Payment to the LWDA, Individual Settlement Shares to the Aggrieved Employees, Attorneys' Fees and Costs to Plaintiff's Counsel, Settlement Administration Costs to the PAGA Settlement Administrator, and General Release Fee to Plaintiff, and permit the filing of a memorandum that exceeds the page limit.

Dated: June 27, 2024

LAWYERS for JUSTICE, PC

By: _____


Joanna Ghosh
Attorneys for Plaintiff