

Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Helene Mayer (SBN 332975)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

ERICK ULISSES FELIX individually, and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act;

Plaintiff,

vs.

GEN RESTAURANT GROUP, LLC, a
California limited liability company; JAE
CHANG, individually; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 21STCV34502

Honorable Michelle Williams Court
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 EXPENSES PAYMENT, GENERAL
RELEASE FEE, AND
ADMINISTRATION EXPENSES
PAYMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

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

Reservation ID: 800250953782
Date: August 1, 2024
Time: 8:30 a.m.
Department: 1

Complaint Filed: September 17, 2021
Trial Date: None Set

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 1, 2024 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Michelle Williams Court in Department 1 of the Superior Court of the State of California, for the County of Los Angeles, located at Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, CA 90012, Plaintiff Erick Ulisses Felix (“Plaintiff”) will and hereby does move for entry of the following orders:

1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the settlement between Plaintiff and Defendants GEN Restaurant Group, LLC and Jae Chang (“Defendants”) of the claims brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as set forth in the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Joanna Ghosh, including and not limited to, the plan of allocation and distribution of the Gross Settlement Amount for payment of the LWDA PAGA Payment to the California Labor and Workforce Development Agency (“LWDA”), Individual PAGA Payments to the Aggrieved Employees, Attorneys’ Fees and Expenses Payment to Plaintiff’s Counsel, Administration Expenses Payment to the Administrator, and General Release Fee to Plaintiff;
2. Approving the Net Settlement Amount, estimated to be no less than \$244,200.00 which will be distributed to the LWDA and the Aggrieved Employees, pursuant to California Labor Code section 2699(i), of which seventy-five percent (75%) will be paid to the LWDA (“LWDA PAGA Payment”) and twenty-five percent (25%) will be paid to the Aggrieved Employees;
3. Appointing ILYM Group, Inc. (“ILYM Group”) as the Administrator;
4. Directing Defendants to transmit the Gross Settlement Amount of \$435,000.00 into a qualified settlement account established by the Administrator for administration of the Settlement, and directing the Administrator to distribute the Gross Settlement

Amount in accordance with the Settlement Agreement;

5. Directing the mailing of Individual PAGA Payment checks to the Aggrieved Employees;

6. Awarding \$7,500.00 to Plaintiff Erick Ulisses Felix as a General Release Fee;

7. Awarding up to \$8,000.00 to the Administrator as Administration Expenses Payment; and

8. Awarding to Plaintiff's Counsel, Lawyers for Justice, PC, not more than 38% of the Gross Settlement Amount (i.e., \$165,300.00 if the Gross Settlement Amount remains \$435,000.00) as compensation for reasonable attorneys' fees and \$10,000.00 for reimbursement of litigation costs and expenses ("Attorneys' Fees and Expenses Payment"), pursuant to California Labor Code section 2699(g)(1).

The Settlement Agreement and moving and supporting papers for this motion are being concurrently submitted to the California Labor and Workforce Development Agency in conformity with California Labor Code section 2699(1)(2).

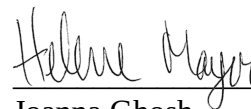
This motion is made pursuant to California Labor Code section 2699(1)(2), which provides for review and approval by the Court of the settlement of a civil action filed pursuant to PAGA, and Rule 3.1113(e) of the California Rules of Court, which permits the Court to extend the page limit for memoranda.

This motion will be based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Plaintiff's Counsel Joanna Ghosh and Plaintiff Erick Ulisses Felix 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: May 31, 2024

LAWYERS for JUSTICE, PC

By:



Joanna Ghosh

Helene Mayer

Attorneys for Plaintiff

TABLE OF CONTENTS

I.	SUMMARY OF MOTION	1
II.	FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY	2
III.	SUMMARY OF THE SETTLEMENT TERMS	4
A.	Aggrieved Employees	4
B.	Distribution of the Gross Settlement Amount	4
C.	Distribution of the Net Settlement Amount	4
D.	The Scope of the Release in the Settlement Agreement	6
E.	No Right to Object to, or Opt Out of, the Settlement	7
IV.	STANDARDS FOR APPROVAL OF PAGA SETTLEMENT	8
V.	THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED	10
A.	The Factors Giving Rise to a Presumption of Fairness Exist	10
B.	The Relative Strength of the PAGA Claim and the Range of Possible Outcomes in the Litigation Strongly Favor Approval of the Settlement	12
C.	The Settlement Avoids Risky, Complex, and Lengthy Further Litigation	15
D.	The Settlement Is Fair, Adequate, and Reasonable	17
E.	The Experience and Views of Plaintiff’s Counsel Favor Approval of the Settlement	19
VI.	THE PROPOSED ATTORNEYS’ FEES PAYMENT IS FAIR AND REASONABLE, AND SHOULD BE APPROVED	19
A.	A Fee Award of a Percentage of the Entire Fund Is Appropriate	19
B.	The Fee Award Requested by Plaintiff’s Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards	23
1.	Time & Labor	24
2.	The Skill Required to Perform Legal Services Properly	25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3.	The Value of the Settlement.....	25
4.	Whether the Fee Is Fixed or Contingent	26
5.	The Amount Involved and the Results Achieved	27
6.	The Reputation and Ability of the Attorneys.....	27
C.	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.....	27
1.	Plaintiff’s Counsel Performed Work for a Reasonable Number of Hours.....	28
2.	The Fees Requested Represent a Reasonable Hourly Rate of Compensation in Light of Plaintiff’s Counsel’s Efforts and Experience	29
VII.	COSTS TO BE REIMBURSED TO PLAINTIFF’S COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED	30
VIII.	THE PROPOSED ADMINISTRATION EXPENSES PAYMENT ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED	30
IX.	THE PROPOSED GENERAL RELEASE FEE IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED	31
X.	CONCLUSION	32

TABLE OF AUTHORITIES

Cases

<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court.</i> (2009) 46th Cal.4th 993	7, 13
<i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969	7, 8
<i>Bell v. Farmers Ins. Exch.</i> (2004) 115 Cal.App.4th 715	31
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F.Supp. 610	11
<i>Casida v. Sears Holdings Corp.</i> (E.D. Cal. Jan. 26, 2012) 2012 WL 253217	8
<i>Clark v. Am. Residential Servs., LLC</i> (2009) 175 Cal.App.4th 785	31
<i>Consumer Privacy Cases</i> (2009) 175 Cal. App. 4th 545	22
<i>edroza v. PetSmart, Inc.</i> (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667	8
<i>Fireside Bank v. Superior Court</i> (2007) 40 Cal.4th 1069	7
<i>Horton v. Jones</i> (1972) 26 Cal.App.3d 952	13
<i>Ingram v. The Coca-Cola Co.</i> (N.D. Ga. 2001) 200 F.R.D. 685	31
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> , (2014) 58 Cal.4th 348	7, 14, 15
<i>Kirkorian v. Borelli</i> (N.D. Cal. 1988) 695 F.Supp. 446	11
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	21, 27
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	21
<i>Ochoa-Hernandez v. CJADERS Foods, Inc.</i> (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777 .9, 10	
<i>Resendez v. Bridgestone Retail Operations, LLC</i> , Los Angeles Superior Court, Case No. BC596892 (June 2016)	9
<i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal.3d 462,	7
<i>Satchell v. Fed. Express Corp.</i> (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010	11
<i>Stafford v. Dollar Tree Stores, Inc.</i> (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396	13
<i>Thomas v. Aetna Health of Cal., Inc.</i> (E.D. Cal. June 2, 2011) 2011 WL 2173715	8
<i>Vo v. Las Virgenes Municipal Water Dist.</i> (2000) 79 Cal.App.4th 440	28
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	10, 20
<i>Williams v. Superior Court</i> (2017) 3 Cal.5th 531	7, 9, 19

Statutes

Cal. Lab. Code § 2699(g)(1)(i).....	19
Cal. Lab. Code § 2699(j).....	9
Cal. Lab. Code § 2699(l)(2)	1, 8, 9
Cal. Lab. Code § 2699.3	8
Cal. Lab. Code §§ 2698, <i>et seq.</i>	1

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Erick Ulisses Felix (“Plaintiff”) seeks approval of the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into between Plaintiff, individually and on behalf of the State of California with respect to aggrieved employees, and Defendants GEN Restaurant Group, LLC and Jae Chang (together, “Defendants”), pursuant to California Labor Code section 2699(1)(2).¹

Subject to approval by the Court, Plaintiff and Defendants (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 \$435,000.00.²

The Gross Settlement Amount is inclusive of: (1) Attorneys’ Fees and Expenses Payment to be paid to Lawyers for Justice, PC (“Plaintiff’s Counsel”), (2) General Release Fee to Plaintiff, (3) Administration Expenses Payment to be paid to ILYM Group, Inc. (“ILYM Group” or “Administrator”),³ and (4) Net Settlement Amount to be paid to the California Labor and Workforce Development Agency (“LWDA”) and any person who worked for any of the Defendants in California and classified as an hourly-paid or non-exempt employee during the PAGA Period (“Aggrieved Employees”).⁴

The Net Settlement Amount will be the Gross Settlement Amount less the Court-approved Attorneys’ Fees and Expenses Payment, Administration Expenses Payment, and General Release Fee, and is currently estimated to be no less than \$244,200.00.⁵ 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 Aggrieved Employees.⁶ Each

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

² Settlement Agreement, ¶ 1.14.

³ Settlement Agreement, ¶¶ 3.2.1-3.2.4, and Ghosh Decl., ¶ 11.

⁴ *Id.*, ¶¶ 3.2.1-3.2.4. “PAGA Period” is defined as the period April 6, 2020 to May 28, 2023. *Id.*, ¶ 1.21.

⁵ *Id.*, ¶ 1.19.

⁶ *Id.*, ¶ 3.2.4.

Aggrieved Employee will be entitled to payment of his or her *pro rata* share of twenty-five percent (25%) portion of the PAGA Penalties, based on the number of pay periods each Aggrieved Employee worked any hours for any of the Defendants for at least one day during the PAGA Period (“PAGA Pay Periods”).⁷

The payments to Aggrieved Employees will be treated and reported for tax purposes as one hundred percent (100%) penalties and the PAGA Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.⁸

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 twenty-five percent (25%) portion of the PAGA Penalties to be distributed to all Aggrieved Employees), Attorneys’ Fees and Expenses Payment, Administration Expenses Payment, and General Release Fee. Plaintiff respectfully requests that this Court approve the Settlement, award the Attorneys’ Fees and Expenses Payment, Administration Expenses Payment, and General Release Fee and approve the LWDA Payment, which are provided for by the Settlement and requested herein.

In order to efficiently present the Court with adequate information to determine whether to grant approval of the Settlement, 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

Defendants operate three Korean Barbeque restaurants called “GEN Korean BBQ” in Southern California. At issue in this case are Defendants’ wage and hour policies and practices for non-exempt employees. Plaintiff Erick Ulisses Felix is a former employee of Defendants.

⁷ Settlement Agreement, ¶¶ 1.15 and 1.20.

⁸ *Id.*, ¶ 3.2.4.1.

Prior to commencing this lawsuit, on July 14, 2021, as required by California Labor Code section 2699.3, Plaintiff Felix provided the LWDA and Defendants with written notice of his intent to assert claims under PAGA and the basis for those claims (“PAGA Notice”).⁹ A true and correct copy of Plaintiff’s July 14, 2021 PAGA Notice is attached to the Declaration of Joanna Ghosh as “**EXHIBIT 2.**”

On September 17, 2021, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Complaint”) against Defendants in the Los Angeles County Superior Court (“Court”), Case No. 21STCV34502 (the “Action”). Plaintiff’s core allegation is that Defendants 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 all 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, failing to provide a day of rest, failing to provide reporting time pay, and failing to reimburse necessary business-related expenses and costs.

On December 23, 2021, Defendant GEN Restaurant Group filed an Answer to the Operative Complaint. On February 1, 2022, Defendant Jae Chang filed an Answer to the Operative Complaint. Defendants deny liability and maintained, and continue to maintain, that they have, and continue to have, legally-compliant employment policies and practices throughout the time period at issue. Defendants deny violating any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.

On March 23, 2023, the Parties participated in a full-day mediation conducted by Brandon McKelvey, of McKelvey Resolution, a well-respected mediator experienced in mediating complex labor and employment matters.¹⁰ With the aid of the mediator, the Parties

⁹ Ghosh Decl., ¶ 10.

¹⁰ *Id.*, ¶ 13.

reached the Settlement described hereon.¹¹

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 California Labor Code section 2699(1)(2), concurrently with this filing.¹²

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Aggrieved Employees who are covered by the Settlement are:

Any person who worked for Defendants in California and classified as an hourly-paid or non-exempt during the period from April 6, 2020 to May 28, 2023.¹³

Based on information provided by Defendants as of April 21, 2023, there are approximately seven hundred seventy (770) Aggrieved Employees.¹⁴

B. Distribution of the Gross Settlement Amount

Under the terms of the Settlement Agreement, Defendants will pay a Gross Settlement Amount of \$435,000.00.¹⁵ The Net Settlement Amount will be the Gross Settlement Amount less the following amounts: (1) Attorneys' Fees and Expenses Payment consisting of attorneys' fees of 38% of the Gross Settlement Amount (i.e., \$165,300.00) and reimbursement of litigation costs and expenses of \$10,000.00 to Plaintiff's Counsel; (2) General Release Fee of \$10,000.00 to Plaintiff; and (3) Administration Expenses Payment of up to \$8,000.00 to ILYM Group. 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 fifteen (15) days of the Effective Date¹⁶, Defendants will transmit the Gross Settlement Amount to a qualified settlement account established by the Administrator for

¹¹ Ghosh Decl., ¶ 13.

¹² The Court is referred to the concurrently-filed Proof of Service, which confirms submission of the papers to the LWDA.

¹³ Settlement Agreement, ¶1.4.

¹⁴ Settlement Agreement, ¶ 4.1, and Ghosh Decl., ¶ 9.

¹⁵ Settlement Agreement, ¶ 1.14, and Ghosh Decl., ¶ 11.

¹⁶ See Settlement Agreement at ¶ 1.11 for full definition of "Effective Date."

administration of the Settlement.¹⁷ Within (15) days of the Effective Date, Defendants will provide the Administrator with a list of all Aggrieved Employees (“Aggrieved Employee Data”), containing the following information for each Aggrieved Employee: (i) full name; (ii) last known mailing address; (iii) Social Security number; (iv) and number of PAGA Pay Periods.¹⁸

Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$183,150.00) will be distributed to the LWDA (i.e., LWDA PAGA Payment) and twenty-five percent (25%) of the Net Settlement Amount (or approximately \$61,050.00) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their PAGA Pay Periods.¹⁹ To calculate each Aggrieved Employee’s share of the Employees’ Portion (“Individual PAGA Payment”), the Settlement Administrator will: (i) divide the amount of the Aggrieved Employees’ 25% share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period, and then (ii) multiply the result by each Aggrieved Employee’s PAGA Period Pay Periods.²⁰ The payments to Aggrieved Employees for their Individual PAGA Payments are considered one hundred percent (100%) penalties to be reported on IRS Form 1099, as required.²¹

Within fifteen (15) days after the Defendants fund the Gross Settlement Amount, the Administrator will mail the Individual PAGA Payment checks to all Aggrieved Employees by First Class United States Mail.²² For each Individual PAGA Payment check that is returned as undeliverable without a USPS forwarding address, within sixty (60) calendar days of the initial mailing, the Administrator must conduct an Aggrieved Employee Address Search.²³ Within seven (7) days of receiving a returned check, the Administrator must re-mail the check to the USPS forwarding address provided, or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to

¹⁷ Settlement Agreement, ¶ 4.3.

¹⁸ *Id.*, ¶ 1.5.

¹⁹ *Id.*, ¶¶ 1.15, 1.18, and 1.24.

²⁰ *Id.*, ¶ 3.2.4.1.

²¹ *Ibid.*

²² *Id.*, ¶ 4.4.1.

²³ *Id.*, ¶ 4.4.2.

Aggrieved Employees whose re-mailed checks are returned as undelivered.²⁴

The Individual PAGA Payment checks issued to Aggrieved Employees will remain valid for one hundred and eighty (180) days after the date of mailing, and thereafter, will be canceled.²⁵ Funds associated with checks that are not cashed, not deposited, or canceled checks will be transmitted to the California State Controller's Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual PAGA Payment(s).²⁶

D. The Scope of the Release in the Settlement Agreement

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

The "Released PAGA Claims" are all claims for civil penalties under the Private Attorneys General Act that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint and the PAGA Notice. Such released claims specifically include but are not limited to PAGA penalties for: failure to pay overtime; failure to provide meal periods, and failure to pay associated premiums for missed, late, short or interrupted meal periods; failure to provide rest periods, and failure to pay associated premiums for missed, late, short or interrupted rest periods; failure to provide one day of rest in a seven-day work week; failure to pay minimum wages; failure to pay reporting time pay when employees were required to report to work, but were not put to work; failure to timely pay wages due upon termination; failure to timely pay wages during employment; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; failure to reimburse necessary business-related expenses and costs; and violations of IWC Wage Orders 4-2001 and 5-2001, as well as all claims for attorney's fees and costs, and interest under the Private Attorneys General Act.²⁷

²⁴ Settlement Agreement, ¶ 4.4.2.

²⁵ *Id.*, ¶ 4.4.2.

²⁶ *Id.*, ¶ 4.4.3.

²⁷ *Id.*, ¶ 5.2.

The “Released Parties” are Defendants Gen Restaurant Group, LLC and Jae Chang, and each of its and his former and present directors, officers, shareholders, owners, members, attorneys, agents, insurers, predecessors, successors, assigns, subsidiaries, affiliates, and past or present employees.²⁸

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

²⁸ Settlement Agreement, ¶ 1.28.

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 Aggrieved Employees be provided with a mechanism to opt out of or object to the Settlement.

IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT

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

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

1 court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to
2 those affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California
3 Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be
4 judged, courts have approved settlements of PAGA claims.²⁹ See, e.g., *Resendez v. Bridgestone*
5 *Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH*
6 *Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May
7 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller*
8 *v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo*
9 *Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D.
10 Cal Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186
11 Cal.App.4th 576, 589.

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

26 ///

27
28 ²⁹ Ghosh Decl., ¶ 6.

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

V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

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

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

The Parties reached the Settlement through arm’s-length negotiations, after a mediation with an experienced and respected mediator, Brandon McKelvey, of McKelvey Resolution.³⁰ A settlement that is “the product of extensive and hard-fought adversarial negotiations between the parties” is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

The Settlement is presumptively fair because: (1) it is the product of non-collusive, arm’s-length negotiations with the assistance of an independent mediator knowledgeable in complex labor and employment matters; (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters; and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claim, and of litigating this claim through trial.³¹

After engaging in significant investigations, formal and informal discovery, and the exchange of information, the Parties participated in settlement negotiations to try to resolve the

³⁰ Ghosh Decl., ¶ 13.

³¹ *Id.*, ¶¶ 2-6, 11-13, and 16-20.

lawsuit.³² These efforts included participating in formal mediation conducted by Brandon McKelvey, of McKelvey Resolution, a well-respected mediator experienced in mediating complex labor and employment matters.³³ In the course of mediation and settlement negotiations, the Parties discussed all aspects of the case, including the risks and delays of further litigation and proceeding with trial, as well as the law relating to representative PAGA actions, off-the-clock theory, and wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other things.³⁴ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³⁵

Based on all of the information available to the Parties and with the assistance of the experienced mediator, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim.³⁶ Plaintiff and Plaintiff's Counsel believe that the settlement is a fair, adequate, and reasonable resolution of this matter.³⁷ Plaintiff's Counsel has extensive experience handling representative and class action wage-and-hour litigation and used that experience to achieve a great result for Plaintiff, the State of California, and the Aggrieved Employees.³⁸ Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an experienced mediator in the settlement process confirms that the

³² Ghosh Decl., ¶ 13.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ *Id.*, ¶ 26.

³⁷ Ibid.

³⁸ *Id.*, ¶¶ 2-6.

settlement is non-collusive”).

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

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

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

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

Defendants also maintained several defenses to Plaintiff’s theory of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendants denied liability and maintained, and continue to maintain, that they had, and continue to have, legally-compliant employment policies and practices throughout the time period at issue.³⁹ Defendants deny violating any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under

³⁹ Ghosh Decl., ¶ 17.

the PAGA.⁴⁰ Defendants further deny, and continue to deny, that the lawsuit is appropriate for representative treatment for any purpose other than settlement.⁴¹

Defendants also challenged Plaintiff's standing as an aggrieved employee and deny that any of Defendants' other employees with respect to whom Plaintiff seeks civil penalties are aggrieved.⁴² Also, at the time that this case commenced, multiple courts had taken an approach requiring a plaintiff to establish standing and face the possibility of bifurcation of discovery and/or trial of the PAGA claim. *See Amalgamated Transit Union, supra*, 46 Cal.4th at 1001 (noting that PAGA "require[s] a plaintiff to have suffered an injury resulting from an unlawful action"); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding that judicial economy supported bifurcation because of the difficulties and inherent uncertainties of being able to establish liability with respect to a large number of potentially aggrieved employees and noted that "PAGA's public purpose would be ill-served if the court finds [the plaintiff] has not been aggrieved by a Labor Code violation"); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of litigation is allowed to avoid wasting time and money on trial when litigation of issues could be rendered moot).

Defendants also argued that an important feature of PAGA is that the Court retains discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." *See* Cal. Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors). Defendants maintained, and continues to maintain, that they have and continue to have, legally-compliant employment policies and practices throughout the time period at issue.⁴³ Defendants deny violating any provision of the California Labor Code.⁴⁴ Even if, *arguendo*, such violations

⁴⁰ Ghosh Decl., ¶ 17.

⁴¹ *Ibid.*

⁴² *Id.*, ¶ 19.

⁴³ *Id.*, ¶ 17.

⁴⁴ *Ibid.*

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

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

14 There is also uncertainty regarding PAGA claims due to the United States Supreme
15 Court’s decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S.
16 LEXIS 2940. As a result of that decision, it may be more likely that employer agreements
17 containing arbitration terms will impact the viability of adjudication of PAGA claims in the
18 judicial forum, which is relevant to this matter in light of agreements that Defendants obtained
19 from their employees (which included, *inter alia*, waiver and release of claims, covenant not to
20 sue, acknowledgment of receipt of wages due, and/or binding individual arbitration provisions).
21 *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940.⁴⁵

22
23 ⁴⁵ Ghosh Decl., ¶ 18. In *Viking River Cruises*, the U.S. Supreme Court determined that PAGA claims can be split
24 into individual claims based on California Labor Code violations suffered by the plaintiff (that can then be subject
25 to arbitration) and non-individual claims (that are representative in nature) and that the “indivisibility rule”
26 recognized by the California Supreme Court in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348
27 is preempted by the Federal Arbitration Act (FAA) to the extent it circumscribes the freedom of parties to agree to
28 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

(Footnote continued)

Recently, the California Supreme Court 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 Defendants' contentions and maintains that his PAGA claim has merit, in reaching the settlement, Plaintiff and his counsel took into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon appeal.⁴⁶

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

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

Prior to reaching the Settlement, the Parties investigate the veracity, strength, and scope of the PAGA claim and allegations.⁴⁷ In addition, the Parties exchanged a volume of information, documents, and data relevant to Plaintiff's claim and Defendants' defenses thereto,

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.

⁴⁶ Ghosh Decl., ¶ 20.

⁴⁷ *Id.*, ¶ 14.

1 including, and not limited to, employment records of Plaintiff, the Employee Handbook, various
2 agreements and acknowledgments (such as Acknowledgement of Receipt of Employee
3 Handbook, Meal Period and Rest Break Waivers, and Employee Policies Acknowledgement
4 Form), Arbitration Agreement, and Defendants' operations and employment policies, practices,
5 and procedures (such as, Overtime Compensation Including Meal and Rest Break Requirements,
6 Cell Phone Usage Policy, Policy Against Harassment and Discrimination, Vacation Policy,
7 Leaves of Absence Policies, and Sick Time Policy), among other documents, among other
8 documents.⁴⁸ Counsel for the Parties undertook significant investigation, and also invested time
9 reviewing, analyzing, and considering relevant documents and data to evaluate Plaintiff's claim
10 and allegations, including, and not limited to, calculating the potential monetary recovery under
11 PAGA.⁴⁹ Other work performed by Plaintiff's Counsel included, but was not limited to: meeting
12 and conferring with Defendants' counsel regarding the pleadings, case management, the
13 mediation, and settlement, among other issues; case strategy and analysis; drafting, reviewing,
14 and revising the pleadings, court filings, the mediation brief, settlement agreement, and
15 settlement approval motion papers; and preparing for and appearing for court proceedings, the
16 mediation, and settlement negotiations.⁵⁰

17 Had the case not settled, the Parties would have conducted extensive additional formal
18 discovery, including propounding additional written discovery requests as well as multiple
19 depositions of party and percipient witnesses all over the State of California, to prepare the case
20 for trial. From the inception of this litigation, Defendants indicated that they would aggressively
21 litigate this case.⁵¹ Even if Defendants failed on their defenses, litigating a complex PAGA
22 action is inherently expensive, and the litigation could continue beyond entry of judgment if
23 either party were to appeal adverse rulings.⁵² Additionally, there is a real possibility that
24 Plaintiff would recover nothing, either for himself or on behalf of the State of California or other
25

26 ⁴⁸ Ghosh Decl., ¶¶ 14 and 20.

27 ⁴⁹ Ibid.

28 ⁵⁰ *Id.*, ¶ 17.

⁵¹ Ibid.

⁵² *Id.*, ¶¶ 12, 13, 16, and 19.

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, Defendants have agreed to pay a Gross Settlement Amount of \$435,00.00, which encompasses the Net Settlement Amount, Attorneys’ Fees and Expenses Payment, Administration Expenses Payment, and General Release Fee.⁵³ Subject to approval by the Court, the following amounts will be subtracted from the Gross Settlement Amount to yield the Net Settlement Amount: (1) Attorneys’ Fees and Expenses Payment consisting of attorneys’ fees in the amount of thirty-eight percent (38%) of the Gross Settlement Amount (i.e., \$165,300.00) and reimbursement of litigation costs and expenses in the amount of \$10,000.00 to Plaintiff’s Counsel⁵⁴; (2) the Administration Expenses Payment of up to \$8,000.00⁵⁵; and (3) General Release Fee of up to \$7,500.00 to Plaintiff.⁵⁶

The Net Settlement Amount is currently estimated to be Two Hundred Forty-Four Thousand Two Hundred Dollars (\$244,200.00), of which an estimated Sixty-One Thousand and Fifty Dollars (\$61,050.00) is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their PAGA Pay Periods and One Hundred Eighty-Three Thousand One Hundred and Fifty Dollars (\$183,150.00) 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

⁵³ Settlement Agreement, ¶¶ 1.14 and 3.2.1-3.2.4.

⁵⁴ *Id.*, ¶ 3.2.1.

⁵⁵ *Id.*, ¶ 3.2.3.

⁵⁶ *Id.*, ¶ 3.2.2.

with California Labor Code section 2699(i).

The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel recognize the expense and length of continued proceedings necessary to litigate the matter through trial and any possible appeals.⁵⁷ Plaintiff and his 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.⁵⁸ Plaintiff and his counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendants' defenses thereto, and the difficulties in establishing Defendants' liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other Aggrieved Employees.⁵⁹ Plaintiff and his counsel have also taken into account Defendants' agreement to enter into a settlement that confers significant relief upon the Aggrieved Employees and the State of California.⁶⁰

Considering all of the facts in this case, Plaintiff and his counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the Aggrieved Employees and the State of California.⁶¹

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., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (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

⁵⁷ Ghosh Decl., ¶¶ 12, 16 and 19.

⁵⁸ *Ibid.*

⁵⁹ Ghosh Decl., ¶¶ 15 and 16.

⁶⁰ *Id.*, ¶ 13.

⁶¹ *Id.*, ¶ 26.

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

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

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

The Settlement provides for a Gross Settlement Amount of \$435,000.00.⁶⁴ The Settlement provides for attorneys’ fees in an amount of up to thirty-eight percent (38%) of the Gross Settlement Amount, which is \$165,300.00, subject to approval and award by the Court.⁶⁵ The requested attorneys’ fees award is commensurate with: (1) the risk that Plaintiff’s Counsel took in bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that Plaintiff’s Counsel has shown, (4) the results that Plaintiff’s

⁶² Ghosh Decl., ¶¶ 2-6.

⁶³ *Id.*, ¶ 26.

⁶⁴ Settlement Agreement, ¶ 1.14.

⁶⁵ *Id.*, ¶ 3.2.1.

Counsel has achieved throughout the litigation, (5) the value that Plaintiff's Counsel has achieved in the case, and (6) the other cases that Plaintiff's Counsel has turned down in order to devote its time and effort to this case.

Plaintiff's 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"). Plaintiff's 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).

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

1 alleged wrongs would not be economically feasible to pursue individually, such as here. See A.
2 Conte, *Attorney Fee Awards* (2d ed. 1993) 104, at 6.

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

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

16 The percentage fee method is preferred in representative actions because “it better
17 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
18 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be
19 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
20 based on the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at 47-50;
21 *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the
22 defendant will pay the plaintiff’s attorneys a percentage of the fund created by the settlement,
23 use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards
24 that are too small will “chill the private enforcement essential to the vindication of many legal
25 rights and obstruct the representative actions that often relieve the courts of the need to
26 separately adjudicate numerous claims.” *Id.* at 53. Therefore, fees in representative actions
27 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
28

1 attorney and client in comparable litigation. *Id.* at 48. “The ultimate goal . . . is the award of a
2 ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of
3 calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple*
4 *Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270).

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

16 Plaintiff’s Counsel has litigated this case since it was commenced, with the very real
17 possibility of an unsuccessful outcome and no fee recovery of any kind.⁶⁶ Counsel for the Parties
18 undertook significant investigation, and also invested time reviewing and analyzing relevant
19 information, documents, and data to evaluate the claims, including, and not limited to,
20 calculating the potential monetary recovery under PAGA.⁶⁷ Other work performed by Plaintiff’s
21 Counsel included, but was not limited to: meeting and conferring with Defendants’ counsel
22 regarding the pleadings, case management, the mediation, and settlement, among other issues;
23 case strategy and analysis; drafting, reviewing, and revising the pleadings, court filings, the
24 mediation brief, settlement agreement, and settlement approval motion papers; and preparing
25 for and appearing for court proceedings, mediation, and settlement negotiations.⁶⁸

26
27 ⁶⁶ Ghosh Decl., ¶ 24.

28 ⁶⁷ *Id.*, ¶ 14.

⁶⁸ *Ibid.*

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

B. The Fee Award Requested by Plaintiff's Counsel 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 Plaintiff's Counsel, are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards 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 Plaintiff's Counsel's representation and the risks taken in commencing the Action, the skill and determination required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that Plaintiff's Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees, and the State

⁶⁹ Ghosh Decl., ¶ 24.

⁷⁰ *Id.*, ¶¶ 2-6.

of California. For the reasons discussed herein, an award of attorneys' fees in the amount of thirty-eight percent (38%) of the Gross Settlement Amount is reasonable.

1. Time & Labor

Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and its operations and employment policies, practices, and procedures.⁷¹ During the litigation of the Action, Plaintiff's Counsel interviewed and obtained information from Plaintiff, Defendants, and other sources, conducted legal research, reviewed and analyzed a large amount of documents and data, prepared for and attended mediation, evaluated the PAGA claim, and calculated the potential monetary recovery under PAGA.⁷² Plaintiff's Counsel also met and conferred with Defendants' counsel regarding the pleadings, case management, the mediation, and settlement, among other issues.⁷³ Plaintiff's Counsel performed other work including, *inter alia*, case strategy and analysis; and engaging in extensive settlement negotiations.⁷⁴

Plaintiff's 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 Plaintiff's Counsel has spent performing tasks in this matter. Attorneys at Lawyers for Justice, PC has spent **240.80 hours** to obtain a recovery on behalf of Plaintiff, the Aggrieved Employees, 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.

///

⁷¹ Ghosh Decl., ¶ 14.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

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

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

3. *The Value of the Settlement*

The Settlement represents an excellent resolution of this lawsuit, given the uncertainty and risks of further litigation.⁷⁶ Had the case not settled, Defendants would have vigorously challenged manageability and liability, and sought a reduction in the amount assessed as penalties. Defendants, however, faced risks too, including and not limited to, the risk of having the Court assess penalties. Additionally, preparing the case for trial would have been extraordinarily expensive for the Parties.

⁷⁵ Ghosh Decl., ¶¶ 16-20.

⁷⁶ *Id.*, ¶¶ 15, 16, 19, and 26.

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 Aggrieved Employees, 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 Plaintiff's Counsel has been wholly contingent and Plaintiff's Counsel took on this matter without knowing whether any recovery would be obtained. Plaintiff's Counsel has invested **240.80 hours** of time to obtain relief on behalf of Plaintiff, the Aggrieved Employees, and the State of California. Plaintiff's Counsel is also requesting reimbursement of litigation costs and expenses in the amount of \$10,000.00.⁷⁷

In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁸ If Plaintiff's 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. Plaintiff's Counsel is well-experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the Aggrieved Employees, and the State of California.⁷⁹ The skill and determination that Plaintiff's 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.

///

///

⁷⁷ Ghosh Decl., ¶ 24 and Exh. 4.

⁷⁸ *Id.*, ¶ 24.

⁷⁹ *Id.*, ¶¶ 2-6.

1 **5. The Amount Involved and the Results Achieved**

2 The results achieved, in light of the difficulties inherent in similar cases and the specific
3 difficulties faced in this case, are considerable. Here, the results achieved, and the recovery
4 obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent
5 a fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a
6 settlement that provides for a Gross Settlement Amount of \$435,000.00, and it is currently
7 estimated that the Net Settlement Amount available for distribution to the Aggrieved Employees
8 and the State of California, as set forth in Part III.C *infra*, is approximately \$244,200.00.⁸⁰

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

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

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

20 While the percentage-of-the-benefit approach is endorsed as the better approximation of
21 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
22 method to "cross-check" the results of the other. *See Laffitte, supra*, 1 Cal.5th at 505 (explaining
23 that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time
24 spent by counsel into the trial court's reasonableness determination"); *see also, e.g., Vizcaino*,
25 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method,
26 the lodestar may provide a useful perspective on the reasonableness of a given percentage

27 ⁸⁰ Settlement Agreement, ¶¶ 1.19 and 3.2.1-3.2.4.

28 ⁸¹ Ghosh Decl., ¶¶ 2-6.

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. 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. Defendants made it clear very early on that it disputed all of Plaintiff’s allegations and disputed that representative adjudication was appropriate. Defendants also argued, *inter alia*, that it had facially-compliant employment policies and practices throughout the time period at issue.⁸² Defendants raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and analyzing data from Defendants as well as other sources.⁸³ 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 Plaintiff’s 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 additional formal discovery, and engaging in extensive motion practice. As Plaintiff’s Counsel geared up for these battles, Plaintiff’s Counsel undertook intense preparation in an attempt to resolve the entire matter through settlement negotiations.

///

///

⁸² Ghosh Decl., ¶ 17.

⁸³ *Id.*, ¶¶ 14 and 19.

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

As set forth above in Part VI.B.1 *infra*, attached 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.⁸⁴ The chart demonstrates that Lawyers for Justice, PC has spent a total of **240.80 hours** on this matter. 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, Plaintiff's 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 Plaintiff's Counsel's Efforts and Experience**

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

Plaintiff's Counsel has been actively involved in the prosecution of this case, prior to the commencement of the Action and all the way up to approval of the settlement, 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 a settlement of \$435,000.00.

⁸⁴ Ghosh Decl., Exh. 2.

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 \$850 per hour for services provided by Plaintiff's Counsel.⁸⁵ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$850 for legal services performed, by courts of this state.⁸⁶ While the circumstance of every case is unique, the fact remains that the work performed and efforts undertaken by Plaintiff's Counsel in this matter justify the requested attorneys' fees award.

VII. COSTS TO BE REIMBURSED TO PLAINTIFF'S 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, Plaintiff's Counsel seeks reimbursement of \$10,000.00 in litigation costs and expenses.⁸⁷ These expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement.⁸⁸ Accordingly, Plaintiff's Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$10,000.00 to Plaintiff's Counsel.

VIII. THE PROPOSED ADMINISTRATION EXPENSES PAYMENT ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, ILYM Group to handle the administration of the Settlement. The fees and expenses of the Administrator are estimated not to exceed \$8,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing Individual PAGA Payment

⁸⁵ Ghosh Decl., ¶ 23.

⁸⁶ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys' fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57; and final approval of the class and representative action settlement in *Seth Swan v. Pace Supply Corp.* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate of \$855.96; Ghosh Decl., ¶ 23.

⁸⁷ Ghosh Decl., ¶ 24.

⁸⁸ *Ibid.*

checks to the Aggrieved Employees; performing searches through the Aggrieved Employee Address Search; re-mailing the returned Individual PAGA Payment checks 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 Administration Expenses Payment in the amount of up to \$8,000.00 to ILYM Group, a necessary third-party for handling the settlement process.

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

The Settlement provides for a General Release Fee to be paid to Plaintiff in the amount of \$7,500.00 in recognition of his efforts and work in spearheading the litigation of this matter, as well as for his broader individual waiver and release of claims with a California Civil Code Section 1542 waiver (set forth in Paragraph 5.1.1 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 Aggrieved Employees. Plaintiff discussed his employment with his counsel, gathered

⁸⁹ Settlement Agreement, ¶¶ 5.1 and 5.1.1.

1 and produced relevant documents and information, and provided the facts and evidence
2 necessary to attempt to prove the allegations.⁹⁰ Plaintiff was available whenever his counsel
3 needed him and tried to obtain and provide documents and information that would aid in the
4 litigation of the PAGA claims and pursuit of recovery on behalf of the State of California and
5 Aggrieved Employees.⁹¹

6 Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in
7 the amount of \$7,500.00.

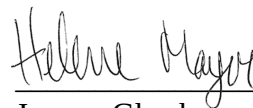
8 **X. CONCLUSION**

9 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise
10 of disputed claims that has been reached through arm's-length negotiations, in light of the risks,
11 complexity, and expense of further litigation. Plaintiff respectfully requests that the Court
12 approve the Settlement, including the plan of allocation and distribution of the Gross Settlement
13 Amount for the LWDA Payment to the LWDA, Individual PAGA Payments to the Aggrieved
14 Employees, Attorneys' Fees and Expenses Payment to Plaintiff's Counsel, Administration
15 Expenses Payment to the Administrator, and General Release Fee to Plaintiff, and permit the
16 filing of a memorandum that exceeds the page limit.

17 Dated: May 31, 2024

LAWYERS for JUSTICE, PC

18
19 By:



Joanna Ghosh
Helene Mayer
Attorneys for Plaintiff

20
21
22
23
24
25
26
27
28 _____
⁹⁰ Ghosh Decl., ¶ 25; Declaration of Erick Ulisses Felix ("Felix Decl."), ¶¶ 3 and 4.

⁹¹ Ghosh Decl., ¶ 25; Felix Decl., ¶¶ 3 and 4.