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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

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

Plaintiff,

vs.

LOS ALTOS GOLF & COUNTRY CLUB, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 21CV386789

Honorable Theodore C. Zayner
Department 19

**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 EXPENSES;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declaration of Plaintiff's Counsel
(Elizabeth Parker-Fawley); Declaration of
Plaintiff (Cristobal Florian); and [Proposed]
Order and Judgment filed concurrently
herewith]

Date: December 11, 2024
Time: 1:30 PM
Department: 19

Complaint Filed: September 16, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 11, 2024 at 1:30 p.m. or as soon thereafter
2 as the matter may be heard before the Honorable Theodore C. Zayner in Department 19 of the
3 Superior Court of the State of California, for the County of Santa Clara, located at 191 North First
4 Street, San Jose, California 95113, Plaintiff Cristobal Florian (“Plaintiff”) will and hereby does
5 move for entry of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the
7 settlement between Plaintiff and Defendant Los Altos Golf & Country Club
8 (“Defendant”) of the claims brought pursuant to the Private Attorneys General Act of
9 2004 (“PAGA”), as set forth in the Private Attorneys General Act Settlement
10 Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”),
11 attached as “**EXHIBIT 1**” to the Declaration of Elizabeth Parker-Fawley, including
12 and not limited to, the plan of allocation and distribution of the Maximum Settlement
13 Amount for payment of the LWDA Payment to the California Labor and Workforce
14 Development Agency (“LWDA”), Individual Settlement Shares to the PAGA
15 Members, Attorneys’ Fees and Costs to Plaintiff’s Counsel, Settlement Administration
16 Expenses to the PAGA Settlement Administrator, and General Release Fee to Plaintiff;
- 17 2. Approving the Net Settlement Amount, estimated to be no less than \$298,787.59 which
18 will be distributed to the LWDA and the PAGA Members, pursuant to California Labor
19 Code section 2699(i), of which seventy-five percent (75%) will be paid to the LWDA
20 (“LWDA Payment”) and twenty-five percent (25%) will be paid to the PAGA
21 Members (“Employees’ Portion”);
- 22 3. Appointing Simpluris, Inc. (“Simpluris”) as the PAGA Settlement Administrator, to
23 handle administration of the Settlement;
- 24 4. Directing Defendant to transmit the Maximum Settlement Amount of \$502,000.00 into
25 a qualified settlement account established by the PAGA Settlement Administrator for
26 administration of the Settlement, and directing the PAGA Settlement Administrator to
27 distribute the Maximum Settlement Amount in accordance with the Settlement
28 Agreement;

5. Directing the mailing of Individual Settlement Share checks to the PAGA Members along with the Cover Letter, which is substantially similar in content and form to that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment Granting 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 Expenses (“[Proposed] Order and Judgement”) filed concurrently herewith;

6. Awarding \$7,500.00 to Plaintiff Cristobal Florian as a General Release Fee;

7. Awarding up to \$6,000.00 to the PAGA Settlement Administrator as Settlement Administration Expenses; and

8. Awarding to Lawyers *for* Justice, PC (“Plaintiff’s Counsel”) the amount of \$175,700.00 as compensation for reasonable attorneys’ fees and \$14,012.41 for reimbursement of litigation costs and expenses (together, “Attorneys’ Fees and Costs”), pursuant to California Labor Code section 2699(g)(1).

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

This motion is made pursuant to California Labor Code section 2699(l)(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.

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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 (Elizabeth Parker-Fawley) and Plaintiff (Cristobal Florian), 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: July 12, 2024

LAWYERS for JUSTICE, PC

By: 
Elizabeth Parker-Fawley
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	3
A.	PAGA Members	3
B.	Funding and Distribution of the Maximum 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.....	6
IV.	STANDARDS FOR APPROVAL OF PAGA SETTLEMENT	7
V.	THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED	9
A.	The Factors Giving Rise to a Presumption of Fairness Exist.....	9
B.	The Relative Strength of the PAGA Claim and the Range of Possible Outcomes in the Litigation Strongly Favor Approval of the Settlement.....	11
C.	The Settlement Avoids Risky, Complex, and Lengthy Further Litigation.....	14
D.	The Settlement Is Fair, Adequate, and Reasonable	16
E.	The Experience and Views of Plaintiff’s Counsel Favor Approval of the Settlement	18
VI.	THE PROPOSED ATTORNEYS’ FEES AWARD IS FAIR AND REASONABLE, AND SHOULD BE APPROVED	18
A.	A Fee Award of a Percentage of the Entire Fund Is Appropriate	18
B.	The Fee Award Requested by Plaintiff’s Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards.....	22
1.	Time & Labor	23
2.	The Skill Required to Perform Legal Services Properly.....	24
3.	The Value of the Settlement.....	24
4.	Whether the Fee Is Fixed or Contingent	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

5.	The Amount Involved and the Results Achieved.....	26
6.	The Reputation and Ability of the Attorneys.....	26
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.....	26
1.	Plaintiff’s Counsel Performed Work for a Reasonable Number of Hours.....	27
2.	The Fees Requested Represent a Reasonable Hourly Rate of Compensation in Light of Plaintiff’s Counsel’s Efforts and Experience	28
VII.	COSTS TO BE REIMBURSED TO Plaintiff’S COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED	30
VIII.	THE PROPOSED COVER LETTER TO THE PAGA MEMBERS SHOULD BE APPROVED	30
IX.	THE PROPOSED SETTLEMENT ADMINISTRATION EXPENSES ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED.....	30
X.	THE PROPOSED GENERAL RELEASE FEE IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED	31
XI.	CONCLUSION	32

TABLE OF AUTHORITIES

Cases

<i>Adolph v. Uber Technologies, Inc.</i> (2023) 14 Cal.5th 1104.....	14
<i>Aguirre v Genesis Logistics</i> (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820.....	18
<i>Allen v American Multi-Cinema</i> (July 24, 2016) Alameda County Superior Court No. RG11585502.....	18
<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court.</i> (2009) 46th Cal.4th 9937	
<i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969	7, 8
<i>Arnold v San Diego Second Chance Program</i> (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375.....	18
<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>Carrington v Starbucks Corp.</i> (2018) 30 Cal.App.5th 50.....	18
<i>Casida v. Sears Holdings Corp.</i> (E.D. Cal. Jan. 26, 2012) 2012 WL 253217	8
<i>City of Oakland v. Oakland Raiders</i> (1988) 203 Cal.App.3d 78	29
<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	21
<i>DCH Auto Wage and Hour Cases</i> (May 2017) Los Angeles Superior Court, Case No. JCCP4833	18
<i>Driscoll v Granite Rock</i> (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426.....	18
<i>Felczer v Apple Inc.</i> (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593	18
<i>Fireside Bank v. Superior Court</i> (2007) 40 Cal.4th 1069.....	7
<i>Fleming v Covidien, Inc.</i> , No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590..	18
<i>Horton v. Jones</i> (1972) 26 Cal.App.3d 952	12
<i>In re Ampicillin Antitrust Litig.</i> (D.D.C. 1981) 526 F.Supp. 494.....	21
<i>In re Taco Bell Wage and Hour Actions</i> (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557.....	18
<i>Ingram v. The Coca-Cola Co.</i> (N.D. Ga. 2001) 200 F.R.D. 685.....	31

1	<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> , (2014) 58 Cal.4th 348.....	7, 13
2	<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.....	20, 27, 28, 29
3	<i>Kirkorian v. Borelli</i> (N.D. Cal. 1988) 695 F.Supp. 446	11
4	<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480.....	20, 21, 27
5	<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	20
6	<i>Magadia v. Wal-Mart Assocs.</i> (N.D. Cal. 2019) 384 F.Supp. 3d 1058.....	17
7	<i>Morales v Bridgestone Retail Operations LLC</i> (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244	17
8	<i>Ochoa-Hernandez v. CJADERS Foods, Inc.</i> (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777	9
9	<i>Pedroza v. PetSmart, Inc.</i> (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667.....	8
10	<i>Resendez v. Bridgestone Retail Operations, LLC</i> , Los Angeles Superior Court, Case No. BC596892 (June 2016)	8
11	<i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal.3d 462,.....	7
12	<i>Robinson v. Southern Counties Oil Co.</i> (2020) 53 Cal.App.5th 476	7
13	<i>Satchell v. Fed. Express Corp.</i> (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010	11
14	<i>Stafford v. Dollar Tree Stores, Inc.</i> (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396.....	12
15	<i>Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal.App.4th 495.....	29
16	<i>Thomas v. Aetna Health of Cal., Inc.</i> (E.D. Cal. June 2, 2011) 2011 WL 2173715	8
17	<i>Viking River Cruises, Inc. v. Moriana</i> (2022) 596 U.S. 639.....	13
18	<i>Vo v. Las Virgenes Municipal Water Dist.</i> (2000) 79 Cal.App.4th 440.....	27
19	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	9
20	<i>Williams v. Superior Court</i> (2017) 3 Cal.5th 531	6, 7, 8, 19
21	Statutes	
22	Cal. Lab. Code § 2699(g)(1)(i).....	19
23	Cal. Lab. Code § 2699(j)	9
24	Cal. Lab. Code § 2699(l)(2).....	1, 8
25	Cal. Lab. Code § 2699.3	8
26	Cal. Lab. Code §§ 2698, <i>et seq.</i>	1
27	///	
28		

Other Authorities

A. Conte, *Attorney Fee Awards* (2d ed. 1993)..... 20

California Practice Guide, *Civil Procedure Before Trial*, Chapter 14 20

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Cristobal Florian (“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 the PAGA Members, and Defendant Los Altos Golf & Country Club (“Defendant”), pursuant to California Labor Code section 2699(1)(2).¹

Subject to approval by the Court, Plaintiff and Defendant (together, the “Parties”) have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Maximum Settlement Amount of \$502,000.00, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement.²

The Maximum 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 Expenses 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, non-exempt employees who are currently or have been employed by Defendant in the State of California at any time during the PAGA Period (“PAGA Members”).³

The Net Settlement Amount will be the Maximum Settlement Amount less the Court-approved Attorneys’ Fees and Costs, Settlement Administration Expenses, and General Release Fee, and is currently estimated to be no less than \$298,787.59.⁴ The Net Settlement Amount will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and twenty-five percent (25%) to the PAGA Members (“Employees’ Portion”).⁵ Each PAGA Member will be entitled to payment of his or her *pro rata* share of the Employees’ Portion, based upon the

¹ The Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement”) is attached as “EXHIBIT A” to the Declaration of Elizabeth Parker-Fawley (“Parker-Fawley Decl.”).

² Settlement Agreement, § 3(a)-(b).

³ *Id.*, §§ 3(a)(1)-(5). “PAGA Period” is defined as the period July 13, 2020 through October 31, 2022. *Id.*, § 3(a)(5).

⁴ *Id.*, § 3(a)(4).

⁵ *Id.*, § 3(a)(5).

number of pay periods they each worked during the PAGA Period (“Compensable Pay Periods”).⁶

The payments to PAGA Members 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.⁷

Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the requirements for approval by the Court based upon the relevant fairness factors, the 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 Expenses, and General Release Fee. Plaintiff respectfully requests that this Court approve the Settlement, award the Attorneys’ Fees and Costs, Settlement Administration Expenses, 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 in conformity with California Labor Code section 2699(1)(2), Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant is located in Los Altos, California, and operates a golf and country club with an aquatics complex, tennis courts, fitness center, and dining area and clubhouse. Plaintiff Cristobal Florian is a former employee of Defendant.

Prior to commencing this lawsuit, on July 13, 2021, as required by California Labor Code section 2699.3, Plaintiff Cristobal Florian provided the LWDA and Defendant with written notice of his intent to assert claims under PAGA and the basis for those claims, to which the LWDA did not respond (“PAGA Notice”).⁸ A true and correct copy of Plaintiff’s July 13, 2021 PAGA Notice is attached to the Declaration of Elizabeth Parker-Fawley as “EXHIBIT B.”

⁶ Settlement Agreement, § 7(b).

⁷ *Id.*, § 7(b)(1).

⁸ Parker-Fawley Decl., ¶ 11, Exh. B.

On September 16, 2021, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) against Defendant in the Santa Clara County Superior Court (“Court”), Case No. 21CV386789 (the “Action”). Plaintiff’s core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and other PAGA Members, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide compliant meal and rest periods and associated premiums, failing to pay timely wages during employment and upon termination of employment, failing to provide complete and accurate itemized wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

On November 29, 2021, Defendant filed an Answer to the Operative Complaint. Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action is appropriate for representative adjudication for any purpose other than for settlement purposes only.

On October 31, 2022, the Parties participated in a full-day mediation conducted by Francis J. Ortman III, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁹ With the aid of the mediator’s evaluation and his assistance, the Parties reached the Settlement by accepting the mediator’s proposal.¹⁰

Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(l)(2). The Settlement Agreement and moving and supporting papers for this motion are being submitted to the LWDA in conformity with California Labor Code section 2699(l)(2), concurrently with this filing.¹¹

III. SUMMARY OF THE SETTLEMENT TERMS

A. PAGA Members

The Settlement pertains to the following allegedly aggrieved employees:

All hourly, non-exempt employees who are currently or have been employed by

⁹ *Id.*, ¶ 14.

¹⁰ *Id.*, ¶ 10.

¹¹ The Court is referred to the concurrently-filed Proof of Service, which confirms submission to the LWDA.

Defendant in the State of California at any time during the PAGA Period.¹²

Based on information provided by Defendant during the period from July 13, 2020 through October 31, 2022 (the “PAGA Period”), there were approximately Two Hundred Sixty-Six (266) PAGA Members who have worked approximately Six Thousand Two Hundred (6,200) Compensable Pay Periods.¹³

B. Funding and Distribution of the Maximum Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Maximum Settlement Amount of \$502,000.00, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement.¹⁴ Within fourteen (14) calendar days of the Effective Date, Defendant will transmit the Maximum Settlement Amount to a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement.¹⁵

C. Distribution of the Net Settlement Amount

The Net Settlement Amount will be the Maximum Settlement Amount less the following amounts: (1) Attorneys’ Fees and Costs consisting of attorneys’ fees of \$175,700.00 and reimbursement of litigation costs and expenses of \$14,012.41 to Plaintiff’s Counsel; (2) General Release Fee of \$7,500.00 to Plaintiff; and (3) Settlement Administration Expenses of up to \$6,000.00 to Simpluris, Inc. (“Simpluris” or “PAGA Settlement Administrator”).¹⁶ The Net Settlement Amount will be fully distributed to the PAGA Members and the LWDA.

No later than fourteen (14) calendar days after the Effective Date, Defendant shall provide the PAGA Settlement Administrator with a list of all PAGA Members (“PAGA Members List”), containing the following information for each PAGA Member: (i) first and last name; (ii) last known address; (iii) Social Security number; (iv) dates of employment as an hourly, non-exempt employee in California during the PAGA Period; and (v) such other information as is necessary for the PAGA Settlement Administrator to calculate Compensable Pay Periods.¹⁷

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¹² Settlement Agreement, § 3(a)(5).

¹³ Settlement Agreement, § 3(a)(5), and Parker-Fawley Decl., ¶ 10.

¹⁴ Settlement Agreement, § 3(a)-(b), and Parker-Fawley Decl., ¶ 12.

¹⁵ Settlement Agreement, § 7(a).

¹⁶ Settlement Agreement, §§ 3(a)-(b), and Parker-Fawley Decl., ¶ 12.

¹⁷ Settlement Agreement, § 7(c)(1).

Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$224,090.69) will be distributed to the LWDA (i.e., the “LWDA Payment”) and the remaining twenty-five percent (25%) of the Net Settlement Amount (or approximately \$74,696.90) (i.e., Employees’ Portion) will be distributed to the PAGA Members on a *pro rata* basis, based on their Compensable Pay Periods.¹⁸ To calculate each PAGA Member’s share of the Employees’ Portion (“Individual Settlement Share”), the PAGA Settlement Administrator shall: (1) for each PAGA Member, divide the number of Compensable Pay Periods he or she individually worked during the PAGA Period by the total aggregate number of Compensable Pay Periods credited to all PAGA Members, and then (ii) multiply this amount by the Employees’ Portion to arrive at each PAGA Member’s Individual Settlement Share.¹⁹ The payments to PAGA Members for their Individual Settlement Shares are considered one hundred percent (100%) penalties to be reported on IRS Form 1099, if required.²⁰

No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the PAGA Members List and Maximum Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the “PAGA Settlement Package”) to all PAGA Members by first-class United States mail.²¹ For each PAGA Settlement Package that is returned as undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the PAGA Member at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.²²

The Individual Settlement Share checks issued to PAGA Members will remain valid for one hundred and eighty days (180) calendar days, and thereafter, shall be canceled. Funds associated with canceled checks shall be transmitted to the State Controller’s Office Unclaimed Property Division in the name of the PAGA Member(s) at issue and in the amount of his or her respective Individual Settlement Share(s).²³

¹⁸ *Id.*, § 3(a)(5).

¹⁹ *Id.*, § 7(b).

²⁰ *Id.*, §§ 3(c) & 7(b)(1).

²¹ Settlement Agreement, § 7(c)(3).

²² *Ibid.*

²³ *Id.*, § 7(c)(4).

D. The Scope of the Release in the Settlement Agreement

Upon the Effective Date and the full funding of the Maximum Settlement Amount, and except as to the rights and obligations created by Settlement Agreement, Plaintiff and the State of California with respect to PAGA Members will be deemed to have knowingly and voluntarily released and forever discharged Released Parties, to the fullest extent permitted by law, of and from the Action and Released Claims. The “Released Claims” are:

[A]ny and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, *et seq.* (“PAGA”) as well as any interest, fees, and costs available under PAGA, based on the claims and factual allegations in the Operative Complaint and PAGA Notice, including but not limited to, for failure to pay minimum, regular, and overtime wages (including, and not limited to, the failure to pay overtime at the correct regular rate of pay), failure to provide compliant meal periods and associated premiums, failure to provide compliant 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 2-2001, 4-2001, 5,2001, and 10-2001.²⁴

The “Released Parties” are:

Defendant, including Defendant’s present and former parent companies, subsidiaries, divisions, related or affiliated companies, and its shareholders, members, officers, directors, employees, agents, attorneys, insurers, successors and assigns, counsel in the Action, and any other individual or entity that could be liable for any of the Released Claims.²⁵

Plaintiff has also agreed to a general release of all claims in favor of the Released Parties.

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

²⁴ Settlement Agreement, § 8(a).

²⁵ *Ibid.*

arises from the fact that there are “nonparty aggrieved employees who are not given notice of, and an opportunity to be heard in, a representative action that is not brought as a class action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other potentially aggrieved employees parties” to the action and no “due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and whatever personal claims the absent employees might have for relief are not at stake.” *Williams, supra*, 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

“[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]” *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29 Cal, 3d 462, 474.) A “judgment in such an action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding” because “the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies[.]” “collateral estoppel applies [...] against those for whom the party acted as an agent or proxy[.]” and “[w]hen a government agency is authorized to bring an action on behalf of an individual or in the public interest, and a private person lacks an independent right to bring the action, a person who is not a party but who is represented by the agency is bound by the judgment as though the person were a party.” *Arias, supra*, at 985-86 (citations omitted); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (aggrieved employee cannot opt out of a PAGA settlement).

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

IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT

The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or herself and on behalf of other aggrieved employees and the State of California to recover civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer.

Cal. Lab. Code § 2699(a). Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. Cal. Lab. Code § 2699(a). Plaintiff has complied.

The settlement of a PAGA action requires court approval. *See* Cal. Lab. Code § 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action” and therefore does not have to meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from, and simpler than, the process for approval of a class action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims.²⁶ *See, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576, 589.

In a PAGA case, the court’s focus is not the monetary amount which aggrieved employees or the State stand to receive, but instead, whether the total settlement amount achieves the PAGA’s objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state

²⁶ Parker-Fawley Decl., ¶ 8.

enforcement agencies.” See *Ochoa-Hernandez*, *supra*, 2010 WL 1340777, at *4 (citing *Arias*, *supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.” See Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by way of a PAGA claim, is essentially a law enforcement action. See *Amalgamated*, *supra*, 46 Cal.4th at 1003 (stating that the PAGA is a mechanism for “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies”); see also *Iskanian*, *supra*, at 381.

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.²⁷ 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-

²⁷ Parker-Fawley Decl., ¶ 14.

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 risks and expenses of litigating this claim through trial.²⁸

After engaging in extensive investigations, informal discovery, and exchange of information, data, and documents, the Parties participated in settlement negotiations to try to resolve the above-captioned lawsuit.²⁹ These efforts included participating in a full-day mediation on October 31, 2022, conducted by Francis J. Ortman III, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁰ With the aid of the mediator's evaluation and his assistance, the Parties reached the Settlement by accepting the mediator's proposal.³¹ 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, meal and rest periods, and wage-and-hour enforcement, alternative dispute resolution agreements, the evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other things.³² During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³³

Based on all of the information available to the Parties, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim and the facts and circumstances of the case.³⁴ Plaintiff and Plaintiff's Counsel believe that the settlement is a fair, adequate, and reasonable resolution of this matter.³⁵ Plaintiff's Counsel has extensive experience handling representative and class action wage-and-hour litigation and used that

²⁸ *Id.*, ¶¶ 3-8, 13-20.

²⁹ *Id.*, ¶ 14.

³⁰ *Ibid.*

³¹ *Ibid.*

³² Parker-Fawley Decl., ¶ 14.

³³ *Ibid.*

³⁴ *Id.*, ¶ 26.

³⁵ *Ibid.*

1 experience to achieve a great result for Plaintiff, the State of California, and the PAGA Members.³⁶
2 Therefore, the Court should give considerable weight to the competency, experience, and opinion
3 of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of
4 arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion
5 of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979)
6 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a
7 presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007)
8 2007 WL 1114010, at *4 (stating that the "assistance of an experienced mediator in the settlement
9 process confirms that the settlement is non-collusive").

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

12 In order for Plaintiff to prevail on the PAGA claim, he would have to prove that Defendant
13 engaged in the alleged California Labor Code violations and demonstrate that Defendant's conduct
14 warrants the imposition of penalties. See, e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008)
15 572 F.Supp.2d 1169, 1181-82 ("Plaintiff's claim under [PAGA] is wholly dependent upon her
16 other claims. Because all of plaintiff's other claims fail as a matter of law, so does her PAGA
17 claim.").

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

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

28 ³⁶ *Id.*, ¶¶ 2-8.

1 Defendant also maintained several defenses to Plaintiff's theory of liability, which, if
2 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
3 Throughout this litigation, Defendant maintained, and continues to maintain, that it did not engage
4 in a uniform policy and systematic scheme of wage abuse against its hourly, non-exempt
5 employees, and that it had, and continues to have, legally-compliant employment policies and
6 practices throughout the time period at issue.³⁷ Defendant denies that it ever violated any provision
7 of the California Labor Code.³⁸ Defendant further denied, and continues to deny, that the lawsuit
8 is appropriate for representative adjudication for any purpose other than the Settlement.³⁹

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

22 Defendant also argued that an important feature of PAGA is that the Court retains
23 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to
24 do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory."
25 See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.* (2012)
26 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties

27 ³⁷ Parker-Fawley Decl., ¶ 18.

28 ³⁸ Ibid.

³⁹ Ibid.

⁴⁰ *Id.*, ¶ 19.

1 awarded to an employee based upon discretionary factors). Defendant maintained, and continues
2 to maintain, that it had and continues to have, legally-compliant employment policies and practices
3 throughout the time period at issue.⁴¹ Defendant denies that it ever violated any provision of the
4 California Labor Code.⁴² Even if, *arguendo*, such violations occurred, which Defendant denies,
5 Defendant contended that said violations would only be considered “initial violations” and thus
6 heightened “subsequent violation” penalties were not warranted. *See* Cal. Lab. Code § 2699(f)(2);
7 *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 (“Until the employer
8 has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed
9 to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”).

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

16 There is also uncertainty regarding PAGA claims due to decisions of the high courts. As a
17 result of a recent United States Supreme Court decision, it may be more likely that employer
18 agreements containing arbitration terms will impact the viability of adjudication of PAGA claims
19 in the judicial forum, which is relevant to this matter in light of collective bargaining agreements
20 (and pertinent grievance and arbitration procedures) applicable to the workforce at issue in this
21 case. *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.⁴³ Recently, the California

22 ⁴¹ Parker-Fawley Decl., ¶ 18.

23 ⁴² *Ibid.*

24 ⁴³ In *Viking River Cruises*, the U.S. Supreme Court determined that PAGA claims can be split into individual claims
25 based on California Labor Code violations suffered by the plaintiff (that can then be subject to arbitration) and non-
26 individual claims (that are representative in nature) and that the “indivisibility rule” recognized by the California
27 Supreme Court in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348 is preempted by the Federal
28 Arbitration Act (FAA) to the extent it circumscribes the freedom of parties to agree to such contractual division or
splitting of PAGA actions. *Viking River Cruises, Inc.*, 596 U.S. at 659-663. 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
653, 659-663. The U.S. Supreme Court also expressed its understanding of California state law, and the impact of its
ruling on, PAGA’s standing requirement, regarding which California courts will have the last word, as noted by a
concurring opinion. *Id.* at 663-664 (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.

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. Nevertheless, while the arbitrable and non-arbitrable components of an action are not severed from one another, it is still possible that trial courts will stay the representative/non-individual PAGA claims pending arbitration of a plaintiff's individual PAGA claims and if a plaintiff is determined to not be an "aggrieved employee" for PAGA purposes, issue preclusion may apply and, once reduced to a final judgment, trial courts are bound by the arbitrator's determination and the plaintiff may lose standing to pursue non-individual PAGA claims. *Id.* at 693.

While Plaintiff disagrees with Defendant's contentions and maintains that 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, the facts and circumstances of the case, and the uncertainty of how the case might have concluded as litigation continued, at trial, in arbitration proceedings, and/or upon appeal.⁴⁴

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

Courts favor voluntary conciliation and settlement of complex litigation. *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, "unless the settlement is 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 investigated the veracity, strength, and scope of the PAGA claim and allegations, and were preparing for trial.⁴⁵ Plaintiff conducted significant investigation, informal discovery, and exchange of information, documents, and data regarding the facts of the case, including and not limited to, the review, consideration, and analysis of a large

⁴⁴ Parker-Fawley Decl., ¶ 20.

⁴⁵ *Id.*, ¶ 15.

1 volume of information, documents, and data obtained from Plaintiff, Defendant, and other
2 sources.⁴⁶ The information, documents, and data that were reviewed and analyzed by Plaintiff's
3 Counsel included, and was not limited to, the employment records of Plaintiff, a sampling of
4 PAGA Members' time and pay data, Defendant's Employee Handbook, internal memorandum,
5 new hire orientation checklists, company policy acknowledgments (including but not limited to,
6 Confirmation of Receipt of Employee Handbook and Personnel Action Notice), forms, procedures,
7 and policies (including but not limited to Expense Accounts Policy, Attendance and Punctuality
8 Policy, Timekeeping Requirements Policy, Advisory Services Agreement, Purchase Agreement,
9 and Individual Dispute Resolution Agreement), among other information and documents.⁴⁷
10 Counsel for the Parties undertook significant investigation, and invested time conducting
11 investigation and reviewing and analyzing relevant information, documents, and data to evaluate
12 the PAGA claim and related allegations, including, and not limited to, calculating the potential
13 monetary recovery under PAGA.⁴⁸ Other work performed by Plaintiff's Counsel included, but was
14 not limited to: meeting and conferring with Defendant's counsel regarding the pleadings, case
15 management, discovery, mediation, and settlement, among other issues; case strategy and analysis;
16 researching, drafting, reviewing, and revising pleadings, court filings, and briefs for settlement
17 negotiations and mediation, and the settlement agreement; claims evaluation and analysis;
18 preparing for and participating in settlement negotiations and the mediation; and appearing for
19 court proceedings.⁴⁹ Counsel for the Parties have also invested time to research the applicable law,
20 which is evolving as it relates to representative PAGA actions, off-the-clock theory, meal and rest
21 periods, alternative dispute resolution agreements, and wage-and-hour enforcement, Plaintiff's
22 claims and allegations, and Defendant's defenses, as well as facts discovered.⁵⁰

23 Had the case not settled, the Parties would have conducted extensive formal discovery,
24 including propounding written discovery requests as well as multiple depositions of party and
25 percipient witnesses all over the State of California, to prepare the case for trial. From the inception
26

27 ⁴⁶ *Ibid.*

28 ⁴⁷ *Ibid.*

⁴⁸ Parker-Fawley Decl., ¶ 15.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

of this litigation, Defendant indicated that it would aggressively litigate this case and contended that it would ultimately succeed in the action.⁵¹ 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.⁵² Additionally, there is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State of California or other PAGA Members after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

D. The Settlement Is Fair, Adequate, and Reasonable

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

The Settlement provides significant benefits to the State of California and the PAGA Members and falls well-within the range of acceptable settlements under the circumstances. Under the Agreement, Defendant has agreed to pay a Maximum Settlement Amount of \$502,000.00, 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 Expenses, and General Release Fee.⁵³ Subject to approval by the Court, the following amounts will be subtracted from the Maximum Settlement Amount to yield the Net Settlement Amount: (1) Attorneys’ Fees and Costs consisting of attorneys’ fees in the amount of \$175,700.00 and reimbursement of litigation costs and expenses in the amount of \$14,012.41 to Plaintiff’s Counsel;⁵⁴ (2) the Settlement Administration Expenses of up to \$6,000.00; and (3) General Release Fee of up to \$7,500.00 to Plaintiff.⁵⁵

⁵¹ *Id.*, ¶ 18.

⁵² *Id.*, ¶¶ 13, 14, & 17.

⁵³ Settlement Agreement, §§ 3(a) & 3(a)(1)-(5).

⁵⁴ *Id.*, § 3(a)(1). Although the Settlement Agreement provides that Plaintiff’s Counsel can seek up to \$16,000.00 for reimbursement of litigation costs and expenses, Plaintiff’s Counsel only seeks the amount of \$14,012.41 for this payment, which is less than \$16,000.00. The difference between the amount sought and the maximum allocated amount available under the settlement (i.e., the difference of \$1,987.59), will be a part of the Net Settlement Amount.

⁵⁵ *Id.*, §§ 3(a)-3(a)(4).

The Net Settlement Amount is currently estimated to be \$298,787.59, of which an estimated \$74,696.90 is to be distributed to PAGA Members on a *pro rata* basis, based on their Compensable Pay Periods and \$224,090.69 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel recognize the expense and length of continued proceedings necessary to litigate the matter through trial and any possible appeals.⁵⁶ 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.⁵⁷ Plaintiff and his counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other PAGA Members.⁵⁸ Plaintiff and his counsel have also taken into account Defendant's agreement to enter into a settlement that confers significant relief upon the PAGA Members and the State of California.⁵⁹

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 PAGA Members and the State of California.⁶⁰

The result achieved in this case, and the monetary recovery provided by this settlement, are well-within the range of an acceptable settlement under the circumstances, especially when compared to trial court penalties assessments in contested cases⁶¹ and the settlement of PAGA

⁵⁶ Parker-Fawley Decl., ¶¶ 13, 14, & 17.

⁵⁷ Ibid.

⁵⁸ *Id.*, ¶¶ 16 & 17.

⁵⁹ *Id.*, ¶ 12.

⁶⁰ Parker-Fawley Decl., ¶ 26.

⁶¹ *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp. 3d 1058, 1100-1101, 1103-1104, 1111 (finding that, under Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA penalties as the Court sees fit" and reducing the PAGA penalty award significantly from the maximum penalties possible); *Morales v Bridgestone Retail Operations LLC* (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244 (of \$7 million PAGA penalties requested, the court awarded \$425,000); *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty rate to \$5 per violation); *Arnold v San Diego Second Chance Program* (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375 (no PAGA penalties awarded); *Felczer v Apple Inc.* (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593 (no PAGA penalties awarded); *In re*

(Footnote continued)

claims in other cases⁶². 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.⁶³ 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 PAGA Members in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁶⁴ Furthermore, courts have acknowledged that "the interests of plaintiff, counsel and other potentially PAGA Members 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 AWARD IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

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

The Settlement provides for a Maximum Settlement Amount of \$502,000.00, subject to

Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557 at *41 (the court declined to award PAGA penalties after trial); *Allen v American Multi-Cinema* (July 24, 2016) Alameda County Superior Court No. RG11585502 (no PAGA penalties awarded); *Atempa v Pama* (July 31, 2015) San Diego County Superior Court (of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00); *Driscoll v Granite Rock* (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426 (the court declined to award PAGA penalties); *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at **8-9 (of \$2,800,000 PAGA penalties requested, the court awarded \$500,000); *Aguirre v Genesis Logistics* (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820 at **6-7 (of \$1,800,000 PAGA penalties requested, the court awarded \$500,000); *Halevi v Aroma Bakery Café, Inc.*, Los Angeles County Superior Court No. 468146 (Aug. 30, 2013) (the court declined to award PAGA penalties after trial awarding wages to class on the basis that, *inter alia*, the lawsuit was not prompted by availability of PAGA penalties, penalties were not necessary to remedy ongoing or future violations, corporate defendants corrected violations and were no longer in business, and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory).

⁶² See, e.g., *DCH Auto Wage and Hour Cases* (May 2017) Los Angeles Superior Court, Case No. JCCP4833 (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit).

⁶³ Parker-Fawley Decl., ¶¶ 2-8.

⁶⁴ *Id.*, ¶ 26.

possible increase pursuant to Section 3(b) of the Settlement Agreement.⁶⁵ The Settlement provides for attorneys' fees in an amount of up to thirty-five percent (35%) of the Maximum Settlement Amount, which is \$175,700.00, subject to approval and award by the Court.⁶⁶ 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 Counsel has achieved in the case, (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 PAGA Members, 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, 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

⁶⁵ Settlement Agreement, § 3(a)-(b).

⁶⁶ *Id.*, § 3(a)(1).

1 the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness
2 of a requested percentage fee” and “[t]he percentage of fund method survives in California.” *Id.*
3 (internal quotes omitted); see also *Wershba, supra*, 91 Cal.App. 4th at 253.

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

9 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
10 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
11 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; see also *Laffitte, supra*, 1 Cal.5th 480 at 506
12 (holding that “trial court did not abuse its discretion in using [the percentage of fund method], in
13 part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is the
14 best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001)
15 24 Cal.4th 1122, 1132.

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

22 The percentage fee method is preferred in representative actions because “it better
23 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
24 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be equivalent
25 to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the
26 result achieved and risk incurred. See *Lealao, supra*, 82 Cal.App.4th at 47-50; *Laffitte, supra*, 1
27 Cal.5th 480 at 503. In cases where the settlement agreement provides that the defendant will pay
28 the plaintiff’s attorneys a percentage of the fund created by the settlement, use of that percentage

1 method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards that are too small will
2 “chill the private enforcement essential to the vindication of many legal rights and obstruct the
3 representative actions that often relieve the courts of the need to separately adjudicate numerous
4 claims.” *Id.* at 53. Therefore, fees in representative actions should approximate the probable terms
5 of a contingent fee contract negotiated by a sophisticated attorney and client in comparable
6 litigation. *Id.* at 48. “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel
7 for their efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
8 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th
9 at 1270).

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

20 Plaintiff’s Counsel has litigated this case since it was commenced, with the very real
21 possibility of an unsuccessful outcome and no fee recovery of any kind.⁶⁷ Counsel for the Parties
22 undertook significant investigation, and invested time conducting investigation and reviewing and
23 analyzing relevant information, documents, and data to evaluate the PAGA claim and related
24 allegations, including, and not limited to, calculating the potential monetary recovery under
25 PAGA.⁶⁸ Other work performed by Plaintiff’s Counsel included, but was not limited to: meeting
26 and conferring with Defendant’s counsel regarding the pleadings, case management, informal
27

28 ⁶⁷ Parker-Fawley Decl., ¶ 24.

⁶⁸ *Id.*, ¶ 15.

discovery, mediation, and settlement, among other issues; case strategy and analysis; researching, drafting, reviewing, and revising pleadings, court filings, and briefs for settlement negotiations and mediation, and the settlement agreement; claims evaluation and analysis; preparing for and participating in settlement negotiations and the mediation; and appearing for court proceedings.⁶⁹

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.⁷⁰ Plaintiff's Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the PAGA Members and the State of California.⁷¹ 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 Plaintiffs' 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 case, the skill and determination required,

⁶⁹ Parker-Fawley Decl., ¶ 15.

⁷⁰ *Id.*, ¶ 24.

⁷¹ *Id.*, ¶¶ 2-8.

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 PAGA Members, and the State of California. For the reasons discussed herein, an award of attorneys' fees in the amount of thirty-five percent (35%) of the Maximum 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, Defendant's business, and its operations and employment policies, practices, and procedures.⁷² During the litigation of the case, Plaintiff's Counsel interviewed and obtained information from Plaintiff, Defendant, and other sources, conducted legal research, reviewed and analyzed a large volume of information, documents, and data, evaluated the PAGA claim, calculated the potential monetary recovery under PAGA, and prepared for and participated in settlement discussions, and eventually, mediation.⁷³ Plaintiff's Counsel also met and conferred with Defendant's counsel regarding the pleadings, case management, discovery, settlement negotiations and mediation, and settlement, among other issues.⁷⁴ Plaintiff's Counsel performed other work including, *inter alia*, case strategy and analysis; researching, drafting, reviewing, and revising pleadings, court filings, and briefs for settlement negotiations and mediation, and the settlement agreement; claims evaluation and analysis; preparing for and participating in settlement negotiations and mediation; and appearing for court proceedings.⁷⁵

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 C" to the accompanying Declaration of Elizabeth Parker-Fawley, 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 **280.10 hours** to obtain a recovery on behalf of Plaintiff, the PAGA Members, and the State of

⁷² Parker-Fawley Decl., ¶ 15.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

California. These hours were required to bring the case to its successful conclusion.

In light of the value of time expended and the carrying of costs involved in this litigation, the requested attorneys' fees award is fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly

The skill required to properly litigate this case is evident not only in the results achieved, but in the steps necessary to reach the same. Defendant retained highly-respected counsel to represent its defenses. Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and avoid representative adjudication of the PAGA claim. Plaintiff and 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 of the matter. Plaintiff's Counsel took steps to prepare the case for trial and had every intention of taking the case to trial if Defendant did not offer an appropriate settlement.

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, documents, and information obtained from Defendant, 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 PAGA Members and the State of California a recovery now, with maximum efficiency, as opposed to the possibility of recovery in the future, after significant expense and time.⁷⁶

3. The Value of the Settlement

The Settlement represents an excellent resolution of this lawsuit, given the uncertainty and risks of further litigation.⁷⁷ Had the case not settled, Defendant would have vigorously challenged manageability and liability, and sought a reduction in the amount assessed as civil penalties. Defendant, however, faced risks too, including and not limited to, the risk of having the Court

⁷⁶ Parker-Fawley Decl., ¶¶ 17-20.

⁷⁷ *Id.*, ¶¶ 16, 17, 19, & 25.

1 assess civil penalties. Additionally, preparing the case for trial would have been extraordinarily
2 expensive for the Parties.

3 At this stage, the settlement is preferred over continued litigation because such resolution
4 saves time and money that would otherwise go to litigation. The risks and expenses of further
5 litigation outweighed any benefit that might have been gained otherwise. The Settlement provides
6 an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation
7 involving expert discovery, trial preparation, and appellate review of those proceedings. The
8 Settlement offers present and considerable monetary relief to Plaintiff, the PAGA Members, and
9 the State of California while avoiding additional expense, risk, and delay in obtaining possible
10 further recovery.

11 **4. Whether the Fee Is Fixed or Contingent**

12 The representation provided by Plaintiff's Counsel has been wholly contingent and
13 Plaintiff's Counsel took on this matter without knowing whether any recovery would be obtained.
14 Plaintiff's Counsel has invested **280.10 hours** of time to obtain relief on behalf of Plaintiff, the
15 PAGA Members, and the State of California. Plaintiff's Counsel is also requesting reimbursement
16 of litigation costs and expenses in the amount of \$14,012.41.⁷⁸

17 In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not
18 receive any compensation until recovery is obtained.⁷⁹ If Plaintiff's Counsel had not been
19 successful, the time that they have devoted to litigating the case would have been for naught and
20 would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel
21 is well-experienced in complex wage-and-hour litigation and used that experience to obtain a great
22 result for Plaintiff, the PAGA Members, and the State of California.⁸⁰ The skill and determination
23 that Plaintiff's Counsel has shown throughout the prosecution of the case justifies the requested
24 attorneys' fees and costs. Considering the amounts requested, work performed, and risks incurred,
25 the requested fees and costs are reasonable and should be awarded.

26 ///

27 ⁷⁸ Parker-Fawley Decl., ¶ 24 and Exh. 4.

28 ⁷⁹ *Id.*, ¶ 24.

⁸⁰ See *Id.*, ¶¶ 2-8.

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 PAGA Members, and the State of California represent a fair
5 and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a settlement
6 that provides for a Maximum Settlement Amount of \$502,000.00, subject to possible increase
7 pursuant to Section 3(b) of the Settlement Agreement, and it is currently estimated that the Net
8 Settlement Amount available for distribution to the PAGA Members and the State of California is
9 approximately \$298,787.59.⁸¹

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

11 Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its
12 attorneys employed their knowledge, skill, and experience to bring the case to a successful
13 conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation
14 experience, has recovered millions of dollars on behalf of thousands of individuals in California,
15 and has successfully handled numerous significant wage-and-hour class action and representative
16 action cases.⁸²

17 **C. The Lodestar Methodology Also Justifies Approval of the Requested Fees,**
18 **Because Plaintiff's Counsel Has Performed Work That Is of Significant Value**
19 **Based on Reasonable Hours and Prevailing Hourly Rates of 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*, 290
25 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the
26 lodestar may provide a useful perspective on the reasonableness of a given percentage award.").

27
28 ⁸¹ Settlement Agreement, § 3(a).

⁸² Parker-Fawley Decl., ¶¶ 2-8.

1 Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination
2 of the fee as a percentage” and “does not impose an absolute maximum or minimum on the
3 potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

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

7 **1. Plaintiff’s Counsel Performed Work for a Reasonable Number of Hours**

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

11 As discussed above, this case was highly contested and required a significant amount of
12 time and labor. Defendant made it clear very early on that it disputed all of Plaintiffs’ allegations
13 and disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*,
14 that it had facially-compliant employment policies and practices throughout the time period at
15 issue.⁸³ Defendant raised affirmative defenses and denied liability, and the pursuit of this case
16 involved gathering and analyzing data from Defendant as well as other sources.⁸⁴ The handling of
17 this litigation involved a great amount of effort, and also required and involved the exercise of a
18 high level of skill, which Plaintiff’s Counsel has, as a result of its extensive experience in complex
19 wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward
20 trial, including depositions, formal discovery, and motion practice. As Plaintiff’s Counsel geared
21 up for these battles, Plaintiff’s Counsel undertook intense preparation in an attempt to resolve the
22 entire matter through settlement negotiations.

23 Plaintiff’s Counsel had to bring together a volume of information, data, and documents that
24 were obtained from Plaintiff, Defendant, and other sources. Plaintiff’s Counsel conducted
25 extensive review and analysis of the information, documents, and data to strategize and evaluate
26 the case and engage in settlement discussions.

27
28 ⁸³ Parker-Fawley Decl., ¶ 18.

⁸⁴ *Id.*, ¶¶ 15 & 19.

As set forth above in Part VI.B.1 *infra*, attached to the Declaration of Elizabeth Parker-Fawley 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.⁸⁵ The chart demonstrates that Lawyers for Justice, PC has spent a total of **280.10 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 PAGA Members, 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 PAGA Members, 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 \$502,000.00, subject to possible increase pursuant to Section 3(b) of the Settlement Agreement.

As set forth in the Declaration of Elizabeth Parker-Fawley, 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.⁸⁶ While the circumstance of

⁸⁵ *Id.*, Exh. C.

⁸⁶ Parker-Fawley Decl., ¶ 23.

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.

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 \$850 per hour to 280.10 hours worked by Plaintiff's Counsel, would place a base lodestar value of \$238,085.00 on the services provided by Plaintiff's Counsel. However, Plaintiff's Counsel only seeks an attorneys' fee award of \$175,700.00 (equal to 35% of the Maximum Settlement Amount based on the Settlement Agreement).

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba*, *supra*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez*, *supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that the Court approve and grant an attorneys' fees award in the amount of \$175,700.00 to Plaintiff's Counsel, which is reasonable and justified on a percentage-basis, but also based on a lodestar cross-check.

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 \$16,000.00. As set forth in the Declaration of Elizabeth Parker-Fawley, Plaintiff’s Counsel seeks reimbursement of \$14,012.41 in litigation costs and expenses.⁸⁷ These expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement, and the amount sought for reimbursement is less than the maximum amount allocated under the Settlement Agreement for reimbursement of litigation costs and expenses.⁸⁸ The cost savings of \$1,987.59 will be part of the Net Settlement Amount.⁸⁹ Accordingly, Plaintiff’s Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$14,012.41 to Plaintiff’s Counsel.

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

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

IX. THE PROPOSED SETTLEMENT ADMINISTRATION EXPENSES 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, Simpluris to handle the administration of the Settlement. The fees and expenses of the PAGA Settlement Administrator are estimated not to exceed \$6,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual Settlement Shares checks to the PAGA Members (i.e., PAGA Settlement Packages); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages;

⁸⁷ Parker-Fawley Decl., ¶ 24.

⁸⁸ Ibid.

⁸⁹ Ibid.

1 and handling inquiries from PAGA Members regarding the Settlement, among other things.
2 Accordingly, the Court should grant approval of the Settlement Administration Expenses in the
3 amount of up to \$6,000.00 to Simpluris, a necessary third-party for handling the settlement
4 process.

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

7 The Settlement provides for a General Release Fee to be paid to Plaintiff in the amount of
8 \$7,500.00 in recognition of his efforts and work in spearheading the litigation of this matter, as
9 well as for his broader individual waiver and release of claims with a California Civil Code Section
10 1542 waiver (set forth in Section 8(b) of the Settlement Agreement).⁹⁰ The purpose of such an
11 award is to incentivize aggrieved employees to step into the shoes of the state labor agency and
12 undertake the responsibilities associated with initiating a lawsuit and serving in a representative
13 capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments”
14 compensate named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am. Residential*
15 *Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary
16 to induce an individual to participate in the suit’”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga.
17 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) (“Courts routinely approve incentive
18 awards to compensate named plaintiffs for the services they provided and the risks they incurred
19 during the course of the [...] litigation.”); *see also, e.g., Resendez, supra*, Los Angeles County
20 Superior Court, Case No. BC59689 (approving \$10,000 enhancement award in a PAGA action).

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

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28 ⁹⁰ Settlement Agreement, § 3(a)(2).

⁹¹ Parker-Fawley Decl., ¶ 25; Declaration of Cristobal Florian (“Florian Decl.”), ¶¶ 2-5.

claims and pursuit of recovery on behalf of the State of California and PAGA Members.⁹² Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the amount of \$7,500.00, in addition to the Individual Settlement Share that he will receive as a PAGA Member.

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

Dated: July 12, 2024

LAWYERS for JUSTICE, PC

By: _____



Elizabeth Parker-Fawley
Attorneys for Plaintiff

⁹² Ibid.