

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
JASON ROTHMAN (SBN 304961)
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

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

JENNIFER BARTON, individually, and on
behalf of aggrieved employees pursuant to
the Private Attorneys General Act
("PAGA");

Plaintiff,

v.

UNITED DEVELOPMENT GROUP, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendant.

Case No.: 37-2021-00039885-CU-OE-CTL

Assigned for All Purposes to:
Honorable Carolyn Caietti
Department C-70

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (LABOR
CODE § 2698, ET SEQ.) SETTLEMENT
AGREEMENT, ATTORNEY'S FEES AND
LITIGATION COSTS, AND INCENTIVE
AWARD; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

[Declaration of Counsel (Douglas Han);
Declaration of Plaintiff (Jennifer Barton); and
[Proposed] Order and Judgment filed
concurrently herewith]

Hearing Date: August 25, 2023
Hearing Time: 10:30 a.m.
Hearing Place: Department C-70

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

1 **PLEASE TAKE NOTICE** that on August 25, 2023 at 10:30 a.m., or as soon as thereafter
2 as the matter may be heard, before the Honorable Carolyn Caietti in Department C-70 of the San
3 Diego County Superior Court (Hall of Justice) located at 330 West Broadway, San Diego,
4 California 92101, Plaintiff Jennifer Barton (“Plaintiff”) will and hereby does move for entry of
5 an order and judgment approving the Private Attorneys General Act (Labor Code § 2698 *et seq.*)
6 Settlement Agreement and Release (“Settlement Agreement,” “Settlement,” or “Agreement”),
7 attached as **Exhibit 2** to the declaration of Douglas Han, pursuant to Labor Code section 2699(1).

8 This motion is based upon this notice of motion and motion; Settlement Agreement;
9 Declarations of Plaintiff’s Counsel (Douglas Han), and Plaintiff (Jennifer Barton); proposed
10 order approving the Settlement Agreement; pleadings and other records on file with the Court in
11 this matter; and such evidence and oral argument as may be presented at the hearing.

12
13 Dated: July 28, 2023

JUSTICE LAW CORPORATION

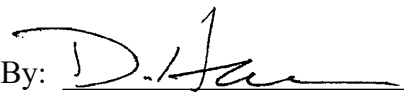
14
15 By: 
16 Douglas Han
17 Attorneys for Plaintiff
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	10
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND	10
III.	SUMMARY OF THE SETTLEMENT TERMS.....	10
	A. Allocation of the Maximum Settlement Amount.....	10
	B. Distribution of the Net Settlement Amount	11
	C. The Scope of the Releases in the Settlement Agreement.....	11
	D. No Right to Object to or Opt Out of the Settlement	12
IV.	STANDARD FOR APPROVAL OF A PAGA SETTLEMENT	13
V.	THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED.....	14
	A. The Factors Giving Rise to a Presumption of Fairness Exist	14
	B. The Relative Strength of the PAGA Claim and the Range of Possible Outcomes in the Litigation Strongly Favor Approval of the Settlement	15
	C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation	17
	D. The Settlement is Fair, Adequate, and Reasonable.....	18
	E. Experience and Views of Plaintiff’s Counsel Favor Settlement Approval.....	19
VI.	APPROVAL OF THE REQUESTED ATTORNEYS’ FEES.....	19
	A. A Fee Award of Percentage of the Entire Fund is Appropriate.....	19
	B. The Requested Attorneys’ Fees is Reasonable Based on the Factors Considered in Determination of Fee Awards.....	19
	1. The Results Obtained.....	20
	2. The Extraordinary Risk Taken by Plaintiff’s Counsel.....	20
	3. The Difficulty of the Litigation.....	21
	4. The Skill Displayed and Quality of Work	21
	C. The Lodestar Methodology Justifies Approval of the Requested Fees	22
	1. Plaintiff’s Counsel Worked for a Reasonable Number of Hours	22

///

///

2. The Fees Requested Represent a Reasonable Hourly Rate

of Compensation.....23

VII. THE LITIGATION COSTS TO BE REIMBURSED SHOULD BE APPROVED.....23

VIII. APPROVAL OF THE INCENTIVE AWARD23

IX. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED24

X. CONCLUSION.....24

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.</i>	
(2009) 46 Cal.4th 993	12, 14
<i>Arias v. Sup. Ct.</i>	
(2009) 46 Cal.4th 969	12, 13, 14
<i>Bernstein v. Virgin Am., Inc.</i>	
(9th Cir. 2021) 3 F.4th 1127	16
<i>Boyd v. Bechtel Corp.</i>	
(N.D. Cal. 1979) 485 F.Supp.610	15
<i>Camden I Condo. Ass'n, Inc., v. Dunkel</i>	
(11th Cir. 1991) 946 F.2d 768	20
<i>Casida v. Sears Holdings Corp.</i>	
(E.D. Cal. Jan. 26, 2012) 2012 WL 253217	13
<i>Cates v. Chiang</i>	
(2013) 213 Cal.App.4th 791	20
<i>Chu v. Wells Fargo Invs., LLC</i>	
(N.D. Cal. Feb. 16, 2011) 2011 WL 672645	14, 18
<i>Class Plaintiffs v. City of Seattle</i>	
(9th Cir. 1992) 955 F.2d 1268	17
<i>DCH Auto Wage and Hour Cases</i>	
(May 2017) Los Angeles Superior Court Case No. JCCP4833	14, 19
<i>Duran v. U.S. Bank Nat. Assn.</i>	
(2014) 59 Cal.4th 1	16
<i>Elliot v. Spherion Pac. Work, LLC</i>	
(C.D. Cal. 2008) 572 F.Supp.2d 1169	15
<i>Estrada v. FedEx Ground Package Sys. Inc.</i>	
(2007) 154 Cal.App.4th 1	19

Cases	Page(s)
<i>Fireside Bank v. Sup. Ct.</i>	
(2007) 40 Cal.4th 1069	13
<i>Franco v. Ruiz Food Prods.</i>	
(E.D. Cal. Nov. 27, 2012) 2012 WL 5941801	14, 18
<i>Garcia v. Gordon Trucking</i>	
(E.D. Cal. Oct. 31, 2012) 2012 WL 5364575	14, 18
<i>Hopson v. Hanesbrands Inc.</i>	
(N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900	17
<i>Iskanian v. CLS Trans. Los Angeles, LLC</i>	
(2014) 58 Cal.4th 348	12, 14
<i>Kirkorian v. Borelli</i>	
(N.D. Cal. 1988) 695 F.Supp.446	15
<i>Laffitte v. Robert Half Int’l, Inc.</i>	
(2016) 1 Cal.5th 480	20
<i>Lealao v. Beneficial Cal., Inc.</i>	
(2000) 82 Cal.App.4th 19	20, 21, 22
<i>Liuy v. Merrill Lynch & Co.</i>	
(C.D. Cal. Nov. 10, 2014, No. CV-14-0425-PA) WL 5904904	16
<i>Martinez v. Joe’s Crab Shack Holdings, et al.</i>	
(2014) 231 Cal.App.4th 362	16
<i>Martinez v. Joe’s Crab Shack Holdings, et al.</i>	
(Dec. 3, 2014) 2014 Cal.App.4th LEXIS 1102.....	16
<i>Moniz v. Adecco USA, Inc.</i>	
(2021) 72 Cal.App.5th 56	14
<i>Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.</i>	
(C.D. Cal. Jan. 5, 2004) 221 F.R.D. 523.....	17
///	

Cases	Page(s)
<i>Nordstrom Commissions Case</i>	
(2010) 186 Cal.App.4th 576	14, 17, 18
<i>Ochoa-Hernandez v. CJADERS Foods, Inc.</i>	
(N.D. Cal. Apr. 2, 2010) 2010 WL 3570777	12, 14
<i>Officers for Justice v. Civil Serv. Comm'n</i>	
(9th Cir. 1981) 688 F.2d 615	18
<i>Pedroza v. PetSmart, Inc.</i>	
(C.D. Cal. Jan. 28, 2013) 2013 WL 1490667	13
<i>Resendez v. Bridgestone Retail Operations, LLC</i>	
(June 2016) Los Angeles Sup. Ct., Case No. BC596892	14
<i>Richmond v. Dart Indus., Inc.</i>	
(1981) 29 Cal.3d 462	13
<i>Sanchez v. McDonald's Rests. Of Cal.</i>	
Los Angeles Superior Court Case No. BC499888, 2017 WL 4620746	16
<i>Schiller v. David's Bridal, Inc</i>	
(E.D. Cal. June 11, 2012) 2012 WL 2117001	14, 18
<i>Thomas v. Aetna Health of Cal., Inc.</i>	
(E.D. Cal. June 2, 2011) 2011 WL 2173715	13
<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
(2012) 203 Cal.App.4th 1112	16
<i>Wesson v. Staples the Office Superstore, LLC</i>	
(2021) 68 Cal.App.5th 746	17
<i>Wershba v. Apple Computer, Inc.</i>	
(2001) 91 Cal.App.4th 224	14
<i>Williams v. Sup. Ct.</i>	
(2017) 3 Cal.5th 531	12, 13
///	

Statutes

Code of Civil Procedure § 1021.5	19
Labor Code § 201	15
Labor Code § 202	15
Labor Code § 203	15
Labor Code § 204	15
Labor Code § 218.5	15
Labor Code § 221	15
Labor Code § 226.3	15
Labor Code § 226.7	15
Labor Code § 226 (a).....	15
Labor Code § 246	15
Labor Code § 510	15
Labor Code § 512 (a).....	15
Labor Code § 558	15
Labor Code § 1174 (d)	15
Labor Code § 1194	15
Labor Code § 1197	15
Labor Code § 1197.1	15
Labor Code § 1198	15
Labor Code § 2698	10, 11, 24
Labor Code § 2699.3	13
Labor Code § 2699(a)	13
Labor Code § 2699(e)(2)	13, 16
Labor Code § 2699(g)	13
Labor Code § 2699(g)(1).....	19
Labor Code § 2699(i)	11, 19
Labor Code § 2699(j)	14

Statutes	Page(s)
Labor Code § 2699(1)	2, 13
Labor Code § 2699(1)(2)	10, 13
Labor Code § 2800	15
Labor Code § 2802	15

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Under Labor Code section 2699(1)(2), Plaintiff seeks approval of the Settlement
4 Agreement entered between Plaintiff and Defendant United Development Group, Inc.
5 (“Defendant”). Plaintiff entered the Settlement Agreement on behalf of herself and all non-
6 exempt employees of Defendant in the State of California at any time during the period of time
7 beginning on July 12, 2020 and ending on January 10, 2023, including Plaintiff (“Aggrieved
8 Employees” and “PAGA Period”).

9 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

10 On July 12, 2021, Plaintiff provided written notice to the California Labor and Workforce
11 Development Agency (“LWDA”) and Defendant. On September 17, 2021, Plaintiff filed a
12 representative PAGA action in the Superior Court of California, County of San Diego.¹

13 The Parties then engaged in discoveries, investigations, negotiations (*i.e.*, propounding
14 formal discovery requests, exchanging documents and information, interviewing putative class
15 members, calculating potential damages). After participating in several negotiations, the Parties
16 eventually reached a settlement for this matter.²

17 Plaintiff now moves for an order granting approval of the Settlement, pursuant to Labor
18 Code section 2699(1)(2).

19 **III. SUMMARY OF THE SETTLEMENT TERMS**

20 **A. Allocation of the Maximum Settlement Amount**

21 The Settlement provides Defendant will pay a non-reversionary Maximum Settlement
22 Amount of \$225,000. The Net Settlement Amount will be the Maximum Settlement Amount less
23 the following: (1) attorneys’ fees of up to \$78,500; (2) attorneys’ costs of \$2,434.85; (3) Service
24 Award of up to \$5,000; and (4) Settlement Administration Costs of up to \$10,000.

25 _____
26 ¹ (Declaration of Douglas Han In Support of Plaintiff’s Motion for Approval of Private
27 Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement Agreement (“Han Decl.”), ¶ 11;
Exhibits 9, 10.)

28 ² (*Id.* at ¶¶ 12-16.)

1 The amount of the Net Settlement Amount is estimated to be approximately \$128,815.15.
2 Twenty-five percent (25%) of the Net Settlement Amount (\$32,203.79) will be distributed to
3 each of the Aggrieved Employees as their Settlement Shares. The Settlement Administrator will
4 calculate each Settlement Share in a manner set forth in the Settlement Agreement. The
5 remaining seventy-five percent (75%) of the PAGA Award (\$96,611.36) will be transmitted to
6 the LWDA, pursuant to Labor Code section 2699(i).³

7 **B. Distribution of the PAGA Award**

8 Defendant shall pay the Maximum Settlement Amount to a settlement fund maintained
9 by the Settlement Administrator within thirty (30) calendar days of the Approval Date. The
10 Settlement Administrator will mail settlement checks to Aggrieved Employees via U.S. First-
11 Class mail within forty-five (45) calendar days after the Approval Date.⁴

12 Checks to Aggrieved Employees shall remain negotiable for one hundred eighty (180)
13 days. Uncashed settlement checks will be voided and delivered to Office of the State Controller
14 – Unclaimed Property, in the name(s) of the Aggrieved Employee(s) who did not cash check(s).⁵

15 **C. The Scope of the Releases in the Settlement Agreement**

16 In consideration of Defendant's payment of the Maximum Settlement Amount and upon
17 entry of the Approval Order, Plaintiff, individually and as the representative acting as a proxy or
18 agent of the LWDA, and the State of California, shall fully, finally, and forever release, settle,
19 relinquish, and discharge the Released Parties (as defined in the Settlement Agreement) from
20 any and all claims against the Released Parties for civil penalties asserted in this matter that were
21 or could have been set forth against Defendant in this matter and the notice letter sent to the
22 LWDA and Defendant, whether stated explicitly or by implication, based on Aggrieved
23 Employees' work for Defendant during the PAGA Period. This release shall become effective

24 _____
25 ³ (See Settlement Agreement attached as **Exhibit 3** to the Declaration of Douglas Han In
26 Support of Plaintiff's Motion for Approval of Private Attorneys General Act (Labor Code § 2698,
et seq.) ("Settlement Agreement"), §§ 1.11., 3.1., 4.1.)

27 ⁴ (*Id.* at §§ 3.2., 4.4., 5.3(a).)

28 ⁵ (*Id.* at §§ 4.6., 5.4.)

1 immediately upon Defendant’s payment of the Maximum Settlement Amount to the Settlement
2 Administrator for distribution as specified in the Settlement Agreement. The released claims do
3 not include nonparty employees’ individual claims.⁶ (See *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969,
4 980, 986 [a plaintiff suing under PAGA “does so as the proxy or agent of the state’s labor law
5 enforcement agencies,” and, as such, “represents the same legal right and interest as state labor
6 law enforcement agencies”].) A judgment in a PAGA action “binds not only that [plaintiff]
7 employee but also the state labor law enforcement agencies.” (*Ibid.*) Further, “[b]ecause an
8 aggrieved employee’s action under [PAGA] functions as a substitute for an action brought by the
9 government itself, a judgment in that action binds all those, including nonparty aggrieved
10 employees, who would be bound by a judgment in an action brought by the government.” (*Ibid.*)
11 “Accordingly, with respect to the recovery of civil penalties, nonparty employees as well as the
12 government are bound by the judgment in an action brought under [PAGA]” (*Ibid.*)

13 **D. No Right to Object to or Opt Out of the Settlement**

14 “[A] PAGA action is a statutory action for penalties brought as a proxy for the state, rather
15 than a procedure for resolving the claims of other employees, there is no need to protect absent
16 employees’ due process rights[.]” (*Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 546.) “Unnamed
17 employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out
18 of the representative PAGA claim.” (*Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr.
19 2, 2010), 2010 WL 3570777, at *5.) “PAGA does not make other potentially aggrieved
20 employees parties” and no “due process concerns arise under PAGA because absent employees
21 do not own a personal claim for PAGA civil penalties and whatever personal claims the absent
22 employees might have for relief are not at stake.” (*Id.* at pp. 546-547 (internal references omitted,
23 citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46th Cal.4th 993,
24 1003 and *Iskanian v. CLS Trans. Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)) “[A]bsent
25 fellow employees will be bound by the outcome of any PAGA action[.]” (*Williams v. Sup. Ct.*,
26 *supra*, 3 Cal.5th at p. 548 (internal references omitted, citing *Arias v. Sup. Ct.*, *supra*, 46 Cal.4th

27
28 ⁶ (Settlement Agreement, *supra*, at § 2.2.)

1 at pp. 980-981; *Fireside Bank v. Sup. Ct.* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart*
2 *Indus., Inc.* (1981) 29 Cal, 3d 462, 474.)

3 Consistent with this law, the Settlement does not provide for a procedure for Aggrieved
4 Employees to opt out or otherwise exclude themselves from the Settlement.

5 **IV. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

6 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself,
7 other aggrieved employees and the State to recover civil penalties with respect to provisions of
8 the Labor Code that do not otherwise provide for civil penalties (Lab. Code § 2699(g)), and also,
9 civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an
10 employer (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must
11 comply with Labor Code section 2699.3. (See Lab. Code § 2699(a).) Although PAGA penalties
12 must be awarded by a court if a violation is found, a court “may award a lesser amount than the
13 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
14 the particular case, to do otherwise would result in an award that is unjust, arbitrary and
15 oppressive, or confiscatory.” (*Id.* at § 2699(e)(2).)

16 The settlement of a PAGA claim requires court approval. (See Lab. Code § 2699(l)(2)
17 (“The superior court shall review and approve any settlement of any civil action pursuant to this
18 part.”).) However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
19 considered a class action but a law enforcement action” and, therefore, does not have to meet the
20 requirements of a class action. (*Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012
21 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL
22 2173715, at *11; *Arias v. Sup. Ct., supra*, 46 Cal.4th at pp. 980-988 (affirming lower court’s
23 holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim);
24 *Pedroza v PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15.) As such, a court’s
25 review of a PAGA settlement involves analysis of several unique features that render the approval
26 process distinct from approval of a class action settlement. A court reviewing a PAGA settlement
27 need only “ensur[e] that a negotiated resolution is fair to those affected.” (*Williams v. Sup. Ct.,*
28 *supra*, 3 Cal.5th at p. 549 (citing Lab. Code § 2699(l)(2)).) Although Labor Code section 2699(l)

1 does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved
2 settlements of a PAGA claim.⁷ The Court of Appeal has held that “a trial court should evaluate
3 a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s
4 purposes to remediate present labor law violations, deter future ones, and to maximize
5 enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)

6 In a PAGA case, the Court’s focus is not the amount which “aggrieved employees” are
7 to receive but whether the total settlement amount achieves PAGA’s objectives. PAGA’s purpose
8 “to incentivize private parties to recover civil penalties for the government that otherwise may
9 not have been assessed and collected by overburdened state enforcement agencies.” (See *Ochoa-*
10 *Hernandez, supra*, 2010 WL 3570777, at *4 (citing *Arias v. Sup. Ct., supra*, 46 Cal.4th at p.
11 986).) Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for
12 enforcement of labor laws . . . and for education of employers and employees about their rights
13 and responsibilities under this code, to be continuously appropriated to supplement and not
14 supplant the funding to the agency for those purposes.” (See Lab. Code § 2699(j).) The recovery
15 of penalties on behalf of the state, by way of a PAGA claim, is essentially a law enforcement
16 action. (See *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct., supra*, 46 Cal.4th at
17 p. 1003 (stating the PAGA is mechanism for “an aggrieved employee to recover civil penalties –
18 for Labor Code violations – that otherwise would be sought by state labor law enforcement
19 agencies”); see also *Iskanian v. CLS Trans. Los Angeles, LLC, supra*, 58 Cal.4th at p. 381.)

20 **V. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED.**

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

22 A settlement agreement that is “the product of extensive and hard-fought adversarial
23 negotiations between the parties” is entitled to a presumption of fairness. (*Wershba v. Apple*

24 ⁷ (See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court,
25 Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court,
26 Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012
27 WL 5364575, at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001,
28 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.)

1 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) The Settlement is presumptively fair. This is
2 because the Settlement: (1) is the product of non-collusive, arm's-length negotiations; (2) was
3 negotiated by counsel with significant experience in similar wage-and-hour litigation following
4 extensive negotiations; and (3) occurred after the Parties' counsel engaged in significant
5 investigation of the strengths of this case and risks of continued litigation.

6 The Court should give considerable weight to the competency, experience, and opinion
7 of counsel in assuring the Settlement is a product of hard-fought negotiations that was entered
8 without collusion. (See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of
9 experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979)
10 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a
11 presumption of reasonableness).)

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

14 Plaintiff contends the provisions of the Labor Code potentially triggering PAGA penalties
15 in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221,
16 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.
17 For Plaintiff to recover civil penalties, she must prove the underlying Labor Code violations with
18 respect to the Aggrieved Employees and show Defendant's conduct gave rise to penalties. (See,
19 e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-1182
20 ("Plaintiffs' claim under [PAGA] is wholly dependent upon her other claims. Because all of
21 Plaintiffs' other claims fail as a matter of law, so does her PAGA claim.").)

22 Defendant maintained it had compliant employment policies and practices throughout the
23 statutory period. Defendant also denied it ever violated any provision of the Labor Code. Next,
24 Defendant denied this case is appropriate for representative treatment for any purpose other than
25 the Settlement because resolution of this matter on a representative basis in a non-settlement
26 context would be unmanageable, claiming individualized issues would predominate over
27 Plaintiff's claims. If this case had not been settled, Defendant would likely have challenged
28 Plaintiff's standing as an Aggrieved Employee and denied its other employees were aggrieved.

1 Finally, Defendant argued the Court was unlikely to assess cumulative penalties for the maximum
2 number of possible separate Labor Code violations because the “subsequent violation” theory of
3 PAGA recovery would not be triggered in this case, and it would be unjust, arbitrary, oppressive,
4 and/or confiscatory. (See, e.g., *Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144.)⁸

5 Plaintiff and Plaintiff’s Counsel had to consider the strengths and weaknesses of each
6 side’s position and the uncertainty of how the case might have ended. Defendant asserted,
7 regardless of any alleged liability for Labor Code violations, PAGA penalties are not mandatory
8 but permissive and discretionary. Defendant also maintained it had a strong argument that it
9 would be unjust to award maximum PAGA penalties given the unsettled state of PAGA liability
10 and based on the facts of this case. (See Cal. Lab. Code § 2699(e)(2) (specifying that “a court
11 may award a lesser amount than the maximum civil penalty amount specified by this part if,
12 based on the facts and circumstances of the particular case, to do otherwise would result in an
13 award that is unjust, arbitrary and oppressive, or confiscatory”); *Thurman v. Bayshore Transit*
14 *Mgmt., Inc.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority];
15 *Sanchez v. McDonald’s Rests. Of Cal.*, Los Angeles Superior Court Case No. BC499888, 2017
16 WL 4620746, at *8 (rejecting plaintiffs’ request to “stack” penalties).)⁹

17 Although some wage-and-hour actions are amenable to class-wide resolution,¹⁰ courts
18 have found certain Labor Code violations raise individualized issues and/or are unmanageable
19 and not suitable for class adjudication.¹¹ Similarly, in PAGA-only actions, Defendant contends
20 courts have found due process requires the adjudication of a PAGA claim meet a “manageability”
21 requirement. (See, e.g., *Liuy v. Merrill Lynch & Co.* (C.D.Cal. Nov. 10, 2014) No. CV-14-0425-
22

23 ⁸ (Han Decl., *supra*, at ¶¶ 22-23.)

24 ⁹ (*Id.* at ¶¶ 20-25.)

25 ¹⁰ (See, e.g., *Martinez vs. Joe’s Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362,
26 383-84, modified on other grounds by *Martinez v. Joe’s Crab Shack Holdings, et al.* (Dec. 3,
2014 B242807) 2014 Cal.App. LEXIS 1102, *1-2.)

27 ¹¹ (See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35.)
28

1 PA, WL 5904904 at **3-4 (Court dismissed the PAGA claim because a multitude of
2 individualized assessments would be necessary, making the PAGA claim unmanageable); see
3 also *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 766-767.)

4 Under Defendant’s argument stacking penalties does not apply to the PAGA claim and
5 limiting potential exposure to an initial violation only, Plaintiff alleges PAGA penalties would
6 be **\$14,300** (143 employees x \$100 penalty for initial violation) on the low end and **\$114,400**
7 (143 employees x \$100 penalty for initial violation x 8 theories of recovery) on the high end.¹²

8 Many of the claimed Labor Code violations underlying the PAGA claim were cumulative,
9 and the Court may exercise its discretion not to stack penalties for those underlying claims. Thus,
10 a Maximum Settlement Amount of \$225,000 for PAGA civil penalties was reasonable and
11 significant. When PAGA penalties are negotiated in good faith and “there is no indication that
12 [the] amount was the result of self-interest at the expense of other Class Members,” such amounts
13 are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No.
14 08-00844, 2009 U.S. Dist. LEXIS 33900 at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186
15 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which
16 does not allocate any damages to the PAGA claims.”).)¹³

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

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

23 Both sides used the time to investigate the veracity, strength, and scope of the PAGA
24 claim. The Parties engaged in written discovery and exchanged documents and data relevant to
25 the claim of Labor Code violations and applicable defenses to determine the potential value and
26

27 ¹² (Han Decl., *supra*, at ¶¶ 26-28.)

28 ¹³ (*Id.* at ¶ 29.)

1 strength of the PAGA claim. After engaging in extensive investigation and negotiations,
2 Plaintiff's Counsel believed it would be best to pursue a settlement rather than take the risky,
3 lengthy, and uncertain trial route. In other words, the Settlement offers immediate recovery rather
4 than only the possibility of recovery at some indeterminate later date.¹⁴

5 **D. The Settlement Is Fair, Adequate, and Reasonable.**

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

10 After their investigations and inquiries, Plaintiff and Plaintiff's Counsel recognize the
11 expense, length, risk, and uncertainty of continued proceedings necessary to litigate this dispute.
12 To recover civil penalties, Plaintiff would have to prove the Aggrieved Employees suffered from
13 the underlying Labor Code violations and that Defendant's conduct gave rise to penalties. This
14 could take a significant amount of time to prove, assuming liability is found, and Plaintiff could
15 proffer a manageable trial plan to the Court to prove penalties. Plaintiff and Plaintiff's Counsel
16 are aware of the burdens of proof necessary to establish liability and difficulties in establishing
17 liability for penalties. Thus, Plaintiff and Plaintiff's Counsel determined the Settlement
18 represents a fair, adequate, and reasonable resolution of the PAGA claim.¹⁵

19 Thus, the results achieved, and the PAGA allocation provided by the Settlement, is within
20 the range of acceptable and reasonable settlement terms under the circumstances.¹⁶

21 _____
22 ¹⁴ (Han Decl., *supra*, at ¶¶ 12-16, 24.)

23 ¹⁵ (Han Decl., *supra*, at ¶¶ 20-24.)

24 ¹⁶ (See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833
25 (May 2017) (approving \$15,000 out of \$4 million toward settlement of the PAGA claim); *Garcia*,
26 *supra*, 2012 WL 5364575, at *3 (approving \$10,000 out of \$3.7 million toward settlement of the
27 PAGA claim); *Schiller v. David's Bridal, Inc.*, *supra*, 2012 WL 2117001, at *14 (approving
28 \$10,000 out of \$518,245 toward settlement of the PAGA claim); *Chu v. Wells Fargo Invs.*, *supra*,
2011 WL 672645, at *1 (approving \$10,000 out of \$6.9 million toward settlement of the PAGA
claim); *Franco v. Ruiz Food Prods.*, *supra*, 2012 WL 5941801, at *14 (approving \$10,000 out
of \$2.5 million toward settlement of the PAGA claim); *Nordstrom Commissions Case*, *supra*,

1 **E. Experience and Views of Plaintiff's Counsel Favor Settlement Approval.**

2 Plaintiff's Counsel are experienced in complex representative and class action wage-and-
3 hour litigation. Thus, Plaintiff's Counsel believe the benefit conferred by the Settlement is
4 eminently fair and reasonable and in the best interests of the LWDA and Aggrieved Employees.¹⁷

5 **VI. APPROVAL OF THE REQUESTED ATTORNEYS' FEES.**

6 **A. A Fee Award of Percentage of the Entire Fund is Appropriate.**

7 The Settlement provides for Plaintiff's Counsel to apply for an attorneys' fees of up to
8 \$78,750. The attorneys' fees aligns with the: (1) risks undertaken; (2) time and effort dedicated;
9 (3) skills and determination shown; (4) value achieved; and (5) other cases turned down.

10 Plaintiff's Counsel are entitled to recover reasonable attorneys' fees and costs as a matter
11 of right under PAGA. (See Lab. Code § 2699(g)(1).) Plaintiff's Counsel is entitled to fees and
12 costs under Code of Civil Procedure section 1021.5, as this matter is by definition "for the
13 benefit" of others and has secured monetary awards for the Aggrieved Employees.¹⁸ The payment
14 to the LWDA will also benefit the agency in enforcing labor laws and educating "employers and
15 employees about their rights and responsibilities under [the Labor Code]." (Lab. Code § 2699(i).)

16 **B. The Requested Attorneys' Fees is Reasonable Based on the Factors**
17 **Considered in Determination of Fee Awards.**

18 The factors courts consider in determining whether fee awards are reasonable are: (1)
19 time and labor required; (2) novelty and difficulty of the questions; (3) requisite skills to perform
20 the legal services; (4) preclusion of other employment by the attorney; (5) customary fee; (6)
21 whether the fee is fixed or contingent; (7) time limitation imposed; (8) amount involved and
22

23 _____
24 186 Cal.App.4th at p. 589 (finding no abuse of discretion by the trial court in approving a
settlement that allocates \$0 toward the settlement of the PAGA claim at issue in the lawsuit.)

25 ¹⁷ (Han Decl., *supra*, at ¶¶ 2-8; Exhibits 1, 2.)

26 ¹⁸ (See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
27 (recognizing that recovery obtained on behalf of 209 individual satisfies the "significant benefit,"
28 "public interest," and "large class of persons" requirements of Code of Civil Procedure section
1021.5, regardless of plaintiff's personal motivation).)

1 results obtained; (9) experience, reputation and ability of the attorney; (10) undesirability of the
2 case; (11) nature and length of the professional relationship; and (12) awards in similar cases.
3 (*Camden I Condo. Ass'n, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.)

4 **1. The Results Obtained**

5 The results attorneys obtain for their clients is an important factor when determining the
6 reasonability of a percentage-based fee. (See *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
7 480, 489.) Law firms that obtain exceptional results expect them to be reflected in their fees.

8 The results obtained are reasonable as Plaintiff's Counsel obtained a sizeable settlement
9 without the need for extended litigation. If this case went to trial, there was no guarantee the trial
10 would have been short or either party would have prevailed. Even if the Parties reached a similar
11 settlement, it would have been undercut by additional expenses incurred.

12 Finally, by avoiding the uncertainties associated with conducting trial and Defendant's
13 responses to the allegations, Plaintiff's Counsel obtained those results more quickly and surely
14 than if the matter had been litigated to final resolution. Under California law, this factor also
15 supports the requested fee. (See *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App. 4th 19, 51.)

16 **2. The Extraordinary Risk Taken by Plaintiff's Counsel**

17 Whether or not representation is provided on a contingency basis is an important factor:

18 A contingent fee must be higher than a fee for the same legal services paid as they are
19 performed [and] [...] compensates the lawyer not only for the legal services he renders
20 but for the loan of those services. A lawyer who both bears the risk of not being paid and
21 provides legal services is not receiving the fair market value of his work if he is paid
only for the second of these functions. If he is paid no more, competent counsel will be
reluctant to accept fee award cases. (internal quotes and citations omitted)

22 (*Cates v. Chiang* (2013) 213 Cal.App.4th 791, 823.)

23 Plaintiff executed a contingent fee agreement. This meant no recovery would have equated
24 to no compensation for 302.6 hours of work and \$2,434.85 litigation costs incurred. This, in turn,
25 contributed to the extraordinary risks undertaken by Plaintiff's Counsel.¹⁹

26
27
28 ¹⁹ (Han Decl., *supra*, at ¶¶ 40-41, 44.)

Several factors made this case difficult, thereby exacerbating the risks undertaken. These factors included: (1) drafting and propounding formal discovery requests; (2) difficulties in pinning down job responsibilities, wages paid, meal and rest breaks taken; (3) number of documents that had to be reviewed and analyzed; (4) participating in several negotiation sessions; (5) calculating potential damages; (6) locating and interviewing putative aggrieved employees; (7) shifting wage-and-hour laws; and (8) Defendant's initial resistance to the relief.²⁰

3. *The Difficulty of the Litigation*

The unsettled nature of the law, factual complexities underlying the policies and practices in place, and other issues made this case complex and difficult. Yet, Plaintiff's Counsel overcame these obstacles by obtaining a settlement that is fair, adequate, and reasonable. Plaintiff's Counsel obtaining a fair settlement despite these roadblocks speaks volumes of their skill and experience. (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p. 42 (the "special skill and experience of counsel" is a relevant factor when determining fee award).)

Due to the difficulty of this case, Plaintiff's Counsel devoted substantial hours to this matter. The Task & Time Chart sets forth these hours, allocating the total time to the tasks required to conclude this lawsuit. The work commenced with the pre-filing case analysis and research and continues up to the moment of the work for final approval.²¹ This was not a clear-cut case, and Plaintiff's Counsel had to overcome several roadblocks and obstacles before they could reach a settlement. These roadblocks ranged from reviewing a wide range of documents produced, propounding formal discovery requests, reviewing Defendant's responses, etc.

4. *The Skill Displayed and Quality of Work*

The level of skill displayed and the excellent quality of work it produced also justify the requested fee. Plaintiff's Counsel are skilled and experienced representative and class action wage-and-hour litigators, and the Task & Time Chart further illustrates this assertion.

²⁰ (Han Decl., *supra*, at ¶ 30.)

²¹ (*Id.* at ¶ 40; Exhibit 4.)

1 Plaintiff's Counsel investigated the veracity, strength, and scope of the PAGA claim and
2 prepared for representative adjudication. This included: (1) case strategy and analysis; (2)
3 drafting, reviewing, and revising pleadings; (3) preparing for and appearing at court proceedings;
4 (4) calculating potential damages; (5) drafting and propounding discovery; (6) frequently
5 meeting and conferring with Defendant's Counsel; and (7) working with Defendant's Counsel to
6 draft, update, and finalize the Settlement Agreement. Plaintiff's Counsel also undertook the time-
7 consuming task of locating and interviewing putative aggrieved employees.²²

8 Thus, Plaintiff's Counsel's accumulated skill and expertise contributed to the Settlement
9 in this case. Under California law, this factor (skills displayed and quality of work) also supports
10 the Attorney Fee Amount. (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p. 51.)

11 **C. The Lodestar Methodology Justifies Approval of the Requested Fees.**

12 Plaintiff's Counsel spent 302.6 hours litigating this matter. Plaintiff's Counsel's hourly
13 rates are supported by the 2021 Real Rate Report that was compiled by Wolter Kluwer that
14 surveyed the hourly rates charged in 2021 by hundreds of attorneys in California. Likewise,
15 Plaintiff's Counsel's hourly rates are also in line with the Laffey Matrix.²³

16 **1. *Plaintiff's Counsel Worked for a Reasonable Number of Hours.***

17 This matter required a significant amount of time and labor, and Defendant disputed the
18 PAGA claim and questioned its manageability. The Task & Time Chart evidence the numerous
19 tasks that were performed to seek all necessary information.

20 The case involved, among other things, gathering and analyzing data from Defendant and
21 other sources. Plaintiff's Counsel undertook intense preparation to resolve the entire matter.
22 These intense preparations ranged from locating and interviewing putative aggrieved employees,
23 reviewing a myriad of documents, determining the scope of the Aggrieved Employees, drafting
24 and propounding formal discovery requests, verifying the strengths of the PAGA claim, etc.

25
26
27 ²² (Han Decl., *supra*, at ¶ 14.)

28 ²³ (*Id.* at ¶¶ 40-42; Exhibits 5, 6.)

1 **2. *The Fees Requested Represent a Reasonable Hourly Rate of Compensation.***

2 Plaintiff's Counsel's hourly rates are within the range of rates charged by comparably
3 qualified attorneys in California and the legal profession in general for comparably complex
4 work. By extension, Plaintiff's Counsel's hourly rates are in line with the Laffey Matrix.²⁴

5 Plaintiff's Counsel's hourly rates are reasonable for the following reasons: (1) comparable
6 hourly rates for similar services have been deemed to be reasonable in several cases in California;
7 and (2) surveys of legal rates have supported Plaintiff's Counsel's hourly rates. This shows
8 Plaintiff's Counsel's hourly rates used for the lodestar calculation are within the range of non-
9 contingent rates charged by comparable attorneys for similar work performed in California.

10 Based on the attorney time expended, the base lodestar fees calculation is \$240,700,
11 resulting in a negative multiplier of 0.33 when cross-checked to the attorneys' fees.²⁵

12 **VII. THE LITIGATION COSTS TO BE REIMBURSED SHOULD BE APPROVED**

13 The Settlement provides for attorneys' costs not to exceed \$10,000. Plaintiff's Counsel
14 incurred \$2,434.85 in litigation costs and expenses, which were reasonable and necessary.²⁶
15 Thus, Plaintiff's Counsel request the Court order reimbursement for these costs and expenses.

16 **VIII. APPROVAL OF THE INCENTIVE AWARD TO PLAINTIFF**

17 The Settlement provides for a Service Award of \$5,000 to Plaintiff for her services and
18 contributions on behalf of the Aggrieved Employees.

19 Plaintiff spent a substantial amount of time and effort in locating and producing relevant
20 documents and past employment records, reviewing relevant documents, and providing the facts
21 and evidence supporting the allegations. Plaintiff was available whenever Plaintiff's Counsel
22 needed her and actively tried to obtain and provide as much information as she could. Plaintiff
23 spent numerous hours speaking with Plaintiff's Counsel about the alleged violations, discussing
24 her work experiences, helping Plaintiff's Counsel develop a strategy to obtain additional

25 _____
26 ²⁴ (Han Decl., *supra*, at ¶¶ 41, 42; Exhibits 5, 6.)

27 ²⁵ (*Id.* at ¶¶ 41, 43.)

28 ²⁶ (*Id.* at ¶ 44; Exhibit 7.)

documents from Defendant and other sources, aiding Plaintiff's Counsel to determine the importance of the documents produced, and reviewing the operative complaint, and Settlement (and exhibit). Plaintiff also made her accessible to provide her input on the negotiations.²⁷

Plaintiff was advised of and accepted the risks and sacrifices associated with serving as the named plaintiff. Plaintiff is also not related to anyone associated with Plaintiff's Counsel. In other words, Plaintiff elected to serve as the named plaintiff to her own detriment.²⁸

IX. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED

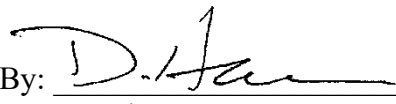
The total cost for the administration of the notice and settlement process in this case is up to \$10,000. The costs to be incurred include performing duties pursuant to the administration process. Thus, the Court should approve the Settlement Administration Costs.

X. CONCLUSION

Based thereon, Plaintiff requests the Court approve the Settlement, including the plan of allocation and distribution of the above-mentioned amounts.

Dated: July 28, 2023

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

²⁷ (Han Decl., *supra*, at ¶ 47; Declaration of Jennifer Barton In Support of Plaintiff's Motion for Approval of Private Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement Agreement ("Barton Decl."), ¶¶ 6-10.)

²⁸ (Han Decl., *supra*, at ¶ 47; Barton Decl., *supra*, at ¶¶ 11-14.)

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

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On July 28, 2023, I served the foregoing document described as

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698, *ET SEQ.*) SETTLEMENT AGREEMENT, ATTORNEY'S FEES AND LITIGATION COSTS, AND INCENTIVE AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

for the following case: **Barton v. United Development Group, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-837564-21**
Court Case No.: 37-2021-00039885-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 28, 2023, at Pasadena, California.



Mariah Anderson