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

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

Plaintiff,

vs.

CABLECOM, LLC, a Delaware limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: RG21112665

Honorable Stephen Kaus
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 COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

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

Reservation ID: 799329230333
Date: March 18, 2024
Time: 3:00 p.m.
Department: 19

Complaint Filed: September 14, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on March 18, 2024, at 3:00 p.m. or as soon thereafter as
2 the matter may be heard before the Honorable Stephen Kaus in Department 19 of the Superior
3 Court of the State of California, for the County of Alameda, located at 1221 Oak Street, Oakland,
4 CA 94612, Plaintiff Ryan Kestler (“Plaintiff”) will and hereby does move for entry of the
5 following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(1)(2), of the
7 settlement between Plaintiff and Defendant CableCom, LLC (“Defendant”) of the
8 claims brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as
9 set forth in the Private Attorneys General Act Settlement Agreement and Release
10 (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**”
11 to the Declaration of Joanna Ghosh, including and not limited to, the plan of
12 allocation and distribution of the Total Settlement Amount for payment of the LWDA
13 Payment to the California Labor and Workforce Development Agency (“LWDA”),
14 Individual Settlement Shares to the Aggrieved Employees, Attorneys’ Fees and Costs
15 to Plaintiff’s Counsel, Settlement Administration Costs to the PAGA Settlement
16 Administrator, and General Release Fee to Plaintiff;
- 17 2. Approving the Net Settlement Amount, estimated to be no less than \$1,052,500.00
18 which will be distributed to the LWDA and the Aggrieved Employees, pursuant to
19 California Labor Code section 2699(i), of which seventy-five percent (75%) will be
20 paid to the LWDA (“LWDA Payment”) and twenty-five percent (25%) will be paid
21 to the Aggrieved Employees (“Employees’ Portion”);
- 22 3. Appointing Simpluris, Inc. (“Simpluris”) as the PAGA Settlement Administrator;
- 23 4. Directing Defendant to transmit the Total Settlement Amount of \$1,650,000.00 into a
24 qualified settlement account established by the PAGA Settlement Administrator for
25 administration of the Settlement, and directing the PAGA Settlement Administrator to
26 distribute the Total Settlement Amount in accordance with the Settlement Agreement;
- 27 5. Directing the mailing of Individual Settlement Share checks to the Aggrieved
28 Employees along with the Cover Letter, which is substantially similar in content and

1 form to that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment
2 Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et*
3 *Seq.*) Settlement Agreement and Award of Attorneys’ Fees and Costs, General
4 Release Fee, and Settlement Administration Costs (“[Proposed] Order and
5 Judgment”) filed concurrently herewith;

- 6 6. Awarding \$10,000.00 to Plaintiff Ryan Kistler as a General Release Fee;
7 7. Awarding up to \$10,000.00 to the PAGA Settlement Administrator as Settlement
8 Administration Costs; and
9 8. Awarding to Plaintiff’s Counsel, Lawyers *for* Justice, PC, \$577,500.00 as
10 compensation for reasonable attorneys’ fees and reimbursement of litigation costs and
11 expenses (“Attorneys’ Fees and Costs”), pursuant to California Labor Code section
12 2699(g)(1).

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

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

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

6 Dated: January 31, 2024

LAWYERS for JUSTICE, PC



By: _____

Edwin Aiwazian

Arby Aiwazian

Joanna Ghosh

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Ryan Kistler (“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 and other aggrieved employees, and Defendant CableCom, LLC (“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 Total Settlement Amount of \$1,650,000.00.²

The Total Settlement Amount is inclusive of: (1) Attorneys’ Fees and Costs to be paid to Lawyers for Justice, PC (“Plaintiff’s Counsel”), (2) General Release Fee to Plaintiff, (3) Settlement Administration Costs to be paid to the PAGA Settlement Administrator, and (4) Net Settlement Amount to be paid to the California Labor and Workforce Development Agency (“LWDA”) and all current and former non-exempt employees employed by Defendant within the State of California during the period from July 6, 2020 to December 16, 2022 (“Aggrieved Employees”).³

The Net Settlement Amount will be the Total Settlement Amount less the Court-approved Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fees, and is currently estimated to be no less than \$1,052,500.00, if the Total Settlement Amount is

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

² Settlement Agreement, Section III(b) of the Settlement Agreement provides for an escalator clause that if triggered, would increase the Total Settlement Amount. Section III(b) states that “[t]he Aggrieved Employees are estimated to have performed work as non-exempt employees in California during approximately 67,102 workweeks (defined as any week in which an employee actually performed work for the Defendant) during the period from April 9, 2020 through September 30, 2022 (the “Data Period”). If the actual number of workweeks during the time period referenced is more than ten percent (10%) above 67,102 (i.e., more than 73,812), the Total Settlement Amount will be increased by 1% for every 1% increase in workweeks over the 10% threshold. (E.g., if there are 76,496 workweeks during the Data Period, the Total Settlement Amount will increase by 4%).

³ *Id.*, Section III(a)(1)-(5). “PAGA Release Period” is defined as the period extending from July 6, 2020 to May 9, 2023. *Id.*, Section VIII(a).

1 \$1,650,000.00.⁴ The Net Settlement Amount will be distributed as follows: seventy-five percent
2 (75%) to the LWDA (“LWDA Payment”) and twenty-five percent (25%) to the Aggrieved
3 Employees (“Employees’ Portion”).⁵ Each Aggrieved Employee will be entitled to payment of
4 his or her *pro rata* share of the Employees’ Portion, based on the number of workweeks in which
5 Aggrieved Employees performed work for CableCom, LLC as non-exempt employees in
6 California during the PAGA Release Period (“Qualified Workweeks”).⁶

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

10 Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the
11 requirements for approval by the Court based upon the relevant fairness factors, the relative
12 strengths of the PAGA claim, the risk, expense, and complexity of further litigation, the benefit
13 conferred by the Settlement, the scope of the release of claims, the experience and views of
14 counsel, and the reasonableness of the Net Settlement Amount (consisting of the LWDA
15 Payment and Employees’ Portion), Attorneys’ Fees and Costs, Settlement Administration Costs,
16 and General Release Fee. Plaintiff respectfully requests that this Court approve the Settlement,
17 award the Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release
18 Fees and approve the LWDA Payment, which are provided for by the Settlement and requested
19 herein.

20 In order to efficiently present the Court with adequate information to determine whether
21 to grant approval of the Settlement, Plaintiff also moves for an order permitting the filing of this
22 memorandum, although it exceeds the page limit established by California Rules of Court, Rule
23 3.1113(d).

24 **II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY**

25 Defendant is CableCom, LLC, provides construction services to cable television multiple

26 ⁴ *Id.*, Section III(a)(4); See *supra* n. 3.

27 ⁵ *Id.*, Section III(a)(5).

28 ⁶ Settlement Agreement, Section VII(b).

⁷ *Id.*, Section VII(a)(2).

1 system operators throughout the United States and is the primary contractor for major system
2 operators in the San Francisco Bay area and Los Angeles. Plaintiff Ryan Kistler is a former
3 employee of Defendant.

4 Prior to commencing this lawsuit, on July 9, 2021, as required by California Labor Code
5 section 2699.3, Plaintiff Ryan Kistler provided the LWDA and Defendant with written notice of
6 his intent to assert claims under PAGA and the basis for those claims, to which the LWDA did
7 not respond ("PAGA Notice").⁸ A true and correct copy of Plaintiff's PAGA Notice is attached
8 to the Declaration of Joanna Ghosh as "EXHIBIT 2."

9 On August 10, 2021 Plaintiff filed a putative wage-and-hour class action against
10 Defendant in Alameda County Superior Court entitled *Ryan Kistler v. CableCom, LLC*, Alameda
11 County Superior Court, Case No. RG21108560. On October 22, 2021, Defendant removed the
12 putative class action to federal court, which, upon removal, was entitled and assigned as *Ryan*
13 *Kistler v. CableCom, LLC*, United States District Court for the Northern District of California
14 Case No. 3:21-cv-08258 ("Federal Action").

15 On September 14, 2021, Plaintiff Ryan Kistler filed a Complaint for Enforcement Under
16 the Private Attorneys General Act, California Labor Code § 2698, Et Seq. against Defendant
17 thereby commencing the action entitled *Ryan Kistler v. CableCom, LLC*, Alameda County
18 Superior Court ("Court"), Case No. RG21112665 (the "Action"). Plaintiff's core allegation is
19 that Defendant has violated the California Labor Code by engaging in a uniform practice and
20 procedure, with respect to Plaintiff and other aggrieved employees, of, *inter alia*, failing to pay
21 wages, failing to provide compliant meal and rest periods and associated premiums, failing to
22 pay timely wages during employment and upon termination of employment, failing to provide
23 complete and accurate itemized wage statements, failing to keep complete and accurate payroll
24 records, and failing to reimburse necessary business-related expenses and costs.

25 On November 24, 2021, Defendant filed a Notice of Demurrer and Demurrer to
26 Plaintiff's Complaint for Enforcement Under the Private Attorneys General Act, or In the

27
28 ⁸ Declaration of Joanna Ghosh ("Ghosh Decl."), ¶ 9.

Alternative, Motion to Stay (“Demurrer and Motion to Stay”). Defendant maintained, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time period at issue. Defendant denies that it ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.

On January 26, 2022, an Order Granting Defendant’s Motion to Compel Arbitration was entered by the Court in the Federal Action *and* a Judgment dismissing the putative class action without prejudice was entered.

On January 31, 2022, Plaintiff filed an Opposition to Defendant’s Demurrer and Motion to Stay.

On February 4, 2022, Defendant filed a Reply Memorandum of Points and Authorities in support of the Demurrer and Motion to Stay.

On February 28, 2022, Plaintiff’s Counsel propounded multiple sets of formal written discovery requests onto Defendant, specifically, Form Interrogatories – General (Set One), Requests for Production of Documents (Set One), and Special Interrogatories (Sets One, Two, and Three).

On March 24, 2022, the Court overruled Defendant’s Demurer, continued the Motion for Stay, and ordered supplemental briefing regarding the Motion for Stay.

On April 11, 2022, Plaintiff Ryan Kistler filed a Supplemental Brief regarding why the case should not be stayed under California Code of Civil Procedure section 1281.4.

On April 20, 2022, Defendant filed a Reply to Plaintiff Ryan Kistler’s Supplemental Brief.

On May 29, 2022, the Court denied Defendant’s Motion to Stay.

On December 16, 2022, the Parties participated in a full-day mediation conducted by Francis J. Ortman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁹ Following the mediation, the Parties were able to reach a settlement by

⁹ Ghosh Decl., ¶ 13.

way of 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. Aggrieved Employees

The Aggrieved Employees who are covered by the Settlement are:

All current and former non-exempt employees employed by Defendant within the State of California during the period from July 6, 2020 to December 16, 2022.¹²

Based on information provided by Defendant, there were approximately 939 Aggrieved Employees for the time period from April 6, 2020 to September 30, 2022.¹³

B. Distribution of the Total Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Amount of \$1,650,000.00.¹⁴ The Net Settlement Amount will be the Total Settlement Amount less the following amounts: (1) attorneys' fees and reimbursement of litigation costs and expenses in the sum total of \$577,500.00 to Plaintiff's Counsel; (2) General Release Fee of \$10,000.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$10,000.00 to Simpluris, Inc. ("Simpluris" or "PAGA Settlement Administrator").¹⁵ The Net Settlement Amount will be fully distributed to the Aggrieved Employees and the LWDA, as described in Part III.C, *infra*.

C. Distribution of the Net Settlement Amount

Within fourteen (14) calendar days of the Court's order granting approval of the Settlement Agreement, Defendant shall transmit the Total Settlement Amount to a qualified

¹⁰ *Ibid*.

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

¹² Settlement Agreement, § III(a)(5).

¹³ Ghosh Decl., ¶ 9.

¹⁴ Settlement Agreement, § III(a), and Ghosh Decl., ¶ 10; See *supra* n.3.

¹⁵ Settlement Agreement, § III(a).

1 settlement account established by the PAGA Settlement Administrator for administration of the
2 Settlement.¹⁶ No later than ten (10) calendar days after the Court's order granting approval of
3 the Settlement, Defendant shall provide the PAGA Settlement Administrator with a list of all
4 Aggrieved Employees ("Aggrieved Employees List"), containing the following information for
5 each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known
6 telephone number; (iv) social security number; and (v) Qualified Workweeks.¹⁷

7 Seventy-five percent (75%) of the Net Settlement Amount (or approximately
8 \$789,375.00) will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent
9 (25%) of the Net Settlement Amount (or approximately \$263,125.00) (i.e., Employees' Portion)
10 will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Qualified
11 Workweeks.¹⁸ To calculate each Aggrieved Employee's share of the Employees' Portion
12 ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (1) for each
13 Aggrieved Employee, divide the number of Qualified Workweeks he or she individually worked
14 by the total aggregate number of Qualified Workweeks worked by all Aggrieved Employees, and
15 then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's
16 Individual Settlement Share.¹⁹ The payments to Aggrieved Employees for their Individual
17 Settlement Shares are considered one hundred percent (100%) penalties to be reported on IRS
18 Form 1099, if required.²⁰

19 No later than fourteen (14) calendar days after the PAGA Settlement Administrator
20 receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement
21 Administrator shall mail the agreed-upon proposed information cover letter ("Cover Letter") and
22 Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved
23

24 ¹⁶ *Id.*, Section VII(a).

25 ¹⁷ *Id.*, Section VII(c)(1). Qualified Workweeks is defined in Section VII(c)(1) of the Settlement Agreement as the
26 number of workweeks in which Aggrieved Employees performed work for CableCom, LLC as non-exempt
27 employees in California during the PAGA Release Period. The PAGA Release Period is defined in Section VIII(a)
28 of the Settlement Agreement as the period extending from July 6, 2020 through May 9, 2023.

¹⁸ *Id.*, § Section VII(b).

¹⁹ *Ibid.*

²⁰ *Id.*, § Section VII(b)(2).

Employees 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 Aggrieved Employee 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 Aggrieved Employees shall remain valid for ninety (90) calendar days, and thereafter, shall be canceled.²³ Funds associated with cancelled checks shall be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of their respective Individual Settlement Share(s).²⁴

D. The Scope of the Release in the Settlement Agreement

Upon the date the Court has entered an order approving the Settlement Agreement and the full funding of the Total Settlement Amount, Plaintiff and the State of California with respect to the Aggrieved Employees will be deemed to have knowingly and voluntarily released and forever discharged Released Parties from the Released Claims for the "PAGA Release Period," which extends from July 6, 2020 through May 9, 2023.

The "Released Claims" are all causes of action and factual or legal theories that were alleged in the operative complaint in the Action or reasonably could have been alleged based on the facts and theories alleged in the operative complaint in the Action, including all of the following claims for relief: for failure to pay all wages due (including minimum wages, straight time, overtime, double-time, incentive compensation and premium pay, miscalculation of pay), failure to provide compliant meal periods and failure to provide proper meal premiums, failure to provide compliant rest breaks and proper rest break premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide complete and accurate wage statements, failure to maintain complete and accurate payroll records, failure to

²¹ *Id.*, Section VII(c)(3).

²² *Ibid.*

²³ Settlement Agreement, Section VII(c)(4).

²⁴ *Ibid.*

1 provide pay on a proper pay cycle, failure to reimburse necessary business-related expenses and
2 costs, civil penalties under the Private Attorneys General Act (“PAGA”) arising out of the claims
3 and theories described above, and any penalties or recoveries raised by the wage and hour laws and
4 IWC Wage Orders pleaded in the Action, including but not limited to a recovery of attorneys’ fees,
5 costs, and expenses.²⁵

6 The “Released Parties” are Defendant, including Defendant’s past, present, and/or future,
7 direct and/or indirect, officers, directors, members, managers, management-level employees,
8 agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators,
9 parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint
10 venturers.²⁶

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

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

27 ²⁵ *Id.*, Section VIII(c).

28 ²⁶ *Id.*, Section VIII(b).

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

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

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

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

23 The settlement of a PAGA action requires court approval. See Cal. Lab. Code §
24 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed
25 pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis
26 . . . is not considered a class action but a law enforcement action” and therefore does not have to
27 meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26,
28 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.²⁷ 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 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

²⁷ Ghosh Decl., ¶ 6.

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, Francis J. Ortman, Esq.²⁸ A settlement that is “the product of extensive and hard-fought adversarial negotiations between the parties” is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

The Settlement is presumptively fair because: (1) it is the product of non-collusive, arm’s-length negotiations with the assistance of an independent mediator knowledgeable in complex labor and employment matters; (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters; and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claim, and the risks associated with continued litigation.²⁹

²⁸ Ghosh Decl., ¶ 13.

²⁹ *Id.*, ¶¶ 2-6, 11-13, & 16-20.

1 After engaging in significant investigations, serving formal discovery, and engaging in
2 extensive informal discovery and exchange of information, documents, and data, the Parties
3 participated in settlement negotiations to try to resolve the lawsuit.³⁰ These efforts included
4 participating in formal mediation conducted by Francis J. Ortman, a well-respected mediator
5 experienced in mediating complex labor and employment matters.³¹ In the course of mediation
6 and settlement negotiations, the Parties discussed all aspects of the case, including the risks and
7 delays of further litigation, the risks to the Parties of proceeding with trial, possible arbitration
8 proceedings, as well as the law relating to representative PAGA actions, manageability, off-the-
9 clock theory, wage-and-hour enforcement, arbitration agreements, exemption, waiver, the
10 evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and
11 appeals, among other things.³² During all settlement discussions, the Parties conducted their
12 negotiations at arm's length in an adversarial position.³³

13 Based on all of the information available to the Parties and with the assistance of the
14 experienced mediator, the Parties agree that this matter is well-suited for settlement given the
15 strengths and weaknesses of the PAGA claim.³⁴ Plaintiff and Plaintiff's Counsel believe that the
16 settlement is a fair, adequate, and reasonable resolution of this matter.³⁵ Plaintiff's Counsel has
17 extensive experience handling representative and class action wage-and-hour litigation and used
18 that experience to achieve a great result for Plaintiff, the State of California, and the Aggrieved
19 Employees.³⁶ Therefore, the Court should give considerable weight to the competency,
20 experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the
21 settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988)
22 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd*
23 *v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of Plaintiff's
24

25 ³⁰ *Id.*, ¶ 13.

26 ³¹ *Ibid.*

27 ³² Ghosh Decl., ¶ 13.

28 ³³ *Ibid.*

³⁴ *Id.*, ¶ 27.

³⁵ *Ibid.*

³⁶ *Id.*, ¶¶ 2-6.

Counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the “assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive”).

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

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

Plaintiff’s core allegation is that Defendant has systematically violated the California Labor Code, with respect to Plaintiff and the Aggrieved Employees, by, *inter alia*, failing to pay all wages due, failing to provide compliant meal periods and failure to provide proper meal premiums, failing to provide compliant rest breaks and proper rest break premiums, failing to timely pay wages during employment, failing to timely pay wages upon termination, failing to provide complete and accurate wage statements, failing to maintain complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

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

Defendant maintained several defenses to Plaintiff’s theory of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time

1 period at issue.³⁷ Defendant denies that it ever violated any provision of the California Labor
2 Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the
3 PAGA.³⁸ Defendant further denied, and continues to deny, that the lawsuit is appropriate for
4 representative treatment for any purpose other than settlement.³⁹

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

18 Defendant also argued that an important feature of PAGA is that the Court retains
19 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to
20 do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory."
21 See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.*
22 (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA
23 penalties awarded to an employee based upon discretionary factors). Defendant maintained, and
24 continues to maintain, that it had and continues to have, legally-compliant employment policies
25

26 ³⁷ Ghosh Decl., ¶ 17.

27 ³⁸ *Ibid.*

28 ³⁹ *Ibid.*

⁴⁰ *Id.*, ¶ 19.

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

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

15 There is also uncertainty regarding PAGA claims due to the United States Supreme
16 Court’s decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S.
17 LEXIS 2940. As a result of that decision, it may be more likely that employer agreements
18 containing arbitration terms will impact the viability of adjudication of PAGA claims in the
19 judicial forum, which is relevant to this matter in light of agreements that Defendant obtained
20 from its employees (which include, *inter alia*, delegation clauses, class and collective action
21 waivers, and binding individual arbitration provisions). *Viking River Cruises, Inc. v. Moriana*
22 (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940; but see *Adolph v. Uber Technologies, Inc.*,
23 (2023) 14 Cal.5th 1104, 532 P.3d 682, 685. While the Parties may disagree regarding the impact
24 of *Viking River* on this case, it remains possible that Plaintiff’s representative/non-individual
25 PAGA claims could be stayed pending arbitration of a plaintiff’s individual PAGA claims. If
26 this occurred and then in arbitration Plaintiff was determined to not be an “aggrieved employee”

27 ⁴¹ Ghosh Decl., ¶ 17.

28 ⁴² *Ibid.*

for PAGA purposes, issue preclusion would apply and, once reduced to a final judgment, the trial court would be bound by the arbitrator's determination and Plaintiff could theoretically lose standing to pursue non-individual PAGA claims.

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 and the uncertainty of how the case might have concluded as litigation continued, at trial, in arbitration proceedings, and/or appeals.⁴³

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

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

Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope of the PAGA claim and allegations.⁴⁴ In addition, the Parties exchanged a large volume of information, documents, and data relevant to the PAGA claim and Defendant's defenses thereto, including, and not limited to, the employment records of Plaintiff and other putative class members/aggrieved employees, a sampling of aggrieved employee time and pay data, Defendant's Employee Handbook, various agreements and acknowledgments (including, *inter alia*, arbitration agreements, meal waivers, and on-duty meal agreements), and Defendant's operations and employment practices, policies, and procedures documents (such as, Defendant's Meal and Rest Break Policies, Timekeeping Policy, Minimum Wage Policy, and Employee Expense Reimbursement Policy), among other documents.⁴⁵ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant information, documents, and data to evaluate Plaintiff's claims, including, and not limited to, calculating the

⁴³ Ghosh Decl., ¶ 20.

⁴⁴ Ghosh Decl., ¶ 14.

⁴⁵ *Id.*, ¶¶ 14 & 20.

1 potential monetary recovery under PAGA.⁴⁶ Other work performed by Plaintiff's Counsel
2 included, but was not limited to: meeting and conferring with Defendant's counsel regarding the
3 pleadings, motions, case management, mediation, and settlement negotiations, among other
4 issues; case strategy and analysis; drafting, reviewing, and revising the pleadings, motion-related
5 papers, the mediation brief, and settlement agreement; preparing for and engaging in the
6 mediation and settlement negotiations; and preparing for and appearing for court proceedings.

7 Had the case not settled, the Parties would have conducted extensive additional formal
8 discovery, including propounding additional written discovery requests as well as multiple
9 depositions of party and percipient witnesses all over the State of California, to prepare the case
10 for trial. From the inception of this litigation, Defendant indicated that it would aggressively
11 litigate this case.⁴⁷ Even if Defendant failed on its defenses, litigating a complex PAGA action is
12 inherently expensive, and the litigation could continue beyond entry of judgment if either party
13 were to appeal adverse rulings.⁴⁸ Additionally, there is a real possibility that Plaintiff would
14 recover nothing, either for himself or on behalf of the State of California or other Aggrieved
15 Employees after years of costly and labor-intensive litigation. Avoiding these risks and the
16 likelihood of future contentious litigation, which would involve significant costs, favors
17 settlement.

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

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

23 The Settlement provides significant benefits to the State of California and the Aggrieved
24 Employees and falls well-within the range of acceptable settlements under the circumstances.
25 Under the Agreement, Defendant has agreed to pay a Total Settlement Amount of \$1,650,000.00,

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27 ⁴⁶ *Ibid.*

28 ⁴⁷ *Id.*, ¶ 17.

⁴⁸ Ghosh Decl., ¶¶ 12, 13, 16 & 19.

1 which encompasses the Net Settlement Amount, Attorneys' Fees and Costs, Settlement
2 Administration Costs, and General Release Fee.⁴⁹ Subject to approval by the Court, the
3 following amounts will be subtracted from the Total Settlement Amount to yield the Net
4 Settlement Amount: (1) Attorneys' Fees and Costs consisting of attorneys' fees in the amount of
5 and reimbursement of litigation costs and expenses in the amount of \$577,500.00 to Plaintiff's
6 Counsel; (2) the Settlement Administration Costs of up to \$10,000.00; and (3) General Release
7 Fee of up to \$10,000.00 to the Plaintiff.⁵⁰

8 The Net Settlement Amount is currently estimated to be \$1,052,500.00, of which an
9 estimated \$263,125.00 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on
10 their Qualified Workweeks and \$789,375.00 is to be distributed to the LWDA. There is no
11 reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it
12 fully complies with California Labor Code section 2699(i).

13 The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel
14 recognize the expense and length of continued proceedings necessary to litigate the matter
15 through trial and any possible appeals.⁵¹ Plaintiff and his counsel have also taken into account
16 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
17 inherent in such litigation.⁵² Plaintiff and his counsel are also aware of the burdens of proof
18 necessary to establish liability, both generally and in response to Defendant's defenses thereto,
19 and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on
20 behalf of Plaintiff, the State of California, and other Aggrieved Employees.⁵³ Plaintiff and his
21 counsel have also taken into account Defendant's agreement to enter into a settlement that
22 confers significant relief upon the Aggrieved Employees and the State of California.⁵⁴

23 Considering all of the facts in this case, Plaintiff and his counsel have determined that the
24 Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it

25 ⁴⁹ Settlement Agreement, Sections III(a)(1)-(5).

26 ⁵⁰ *Id.*, § III(a)(4).

27 ⁵¹ Ghosh Decl., ¶¶ 11, 16 & 19.

28 ⁵² *Id.*, ¶¶ 11, 16 & 19.

⁵³ *Id.*, ¶¶ 15 & 16.

⁵⁴ *Id.*, ¶ 13.

is in the best interests of the Aggrieved Employees and the State of California.⁵⁵

The result achieved in this case, and the monetary recovery provided by this settlement, are well-within the range of an acceptable settlement under the circumstances, especially when compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit). Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

//

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

Plaintiff’s Counsel is highly experienced in complex representative and class action wage-and-hour litigation.⁵⁶ In the view of Plaintiff’s Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁵⁷ Furthermore, courts have acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees

⁵⁵ *Id.*, ¶ 27.

⁵⁶ Ghosh Decl., ¶¶ 2-6.

⁵⁷ *Id.*, ¶ 27.

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

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

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

The Settlement provides for a Total Settlement Amount of \$1,650,000.00.⁵⁸ The Settlement provides for attorneys’ fees and reimbursement of litigation costs and expenses in the sum total of \$577,500.00, subject to approval and award by the Court.⁵⁹ When taking into account the \$14,009.93 in litigation costs and expenses for which reimbursement is sought, the amount of attorneys’ fees sought (\$563,490.07) represents approximately thirty-four and fifteen hundredth percent (34.15%) of the Total Settlement Amount. The requested attorneys’ fees award is commensurate with: (1) the risk that Plaintiff’s Counsel took in bringing and litigating the matter, (2) the time, effort, and expense dedicated to the matter, (3) the skill and determination that Plaintiff’s Counsel has shown, (4) the results that Plaintiff’s Counsel has achieved throughout the litigation, (5) the value that Plaintiff’s Counsel has achieved, and (6) the other cases that Plaintiff’s Counsel has turned down in order to devote its time and effort to this matter.

Plaintiff’s Counsel is entitled to recover reasonable attorneys’ fees and costs as a matter of right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) (“Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney’s fees and costs”). Plaintiff’s Counsel is also entitled to fees and costs under California Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition “for the benefit” of others and secures monetary recovery for a large number of Aggrieved Employees, as well as the State of California. *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17 (recognizing that recovery obtained on behalf of 209 individuals satisfies the “significant

⁵⁸ Settlement Agreement, Section III(a); *See supra* n.3.

⁵⁹ *Id.*, Section III(a)(1).

benefit,” “public interest,” and “large class of persons” requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff’s personal motivation). The settlement will also benefit the state labor agency in enforcing labor laws and educating “employers and employees about their rights and responsibilities under [the California Labor Code].” Cal. Lab. Code § 2699(i).

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

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

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

The percentage method is particularly appropriate where a monetary settlement has been recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a “certain easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable

percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.

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

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

appropriate).

Plaintiff's Counsel has litigated this matter for several years, with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.⁶⁰ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant documents and data to evaluate the allegations, including, and not limited to, calculating the potential monetary recovery under PAGA.⁶¹ Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding case management, motions, mediation, and settlement negotiations, among other issues; case strategy and analysis; drafting, reviewing, and revising the pleadings, motion-related papers, the mediation brief, and settlement agreement; preparing for and engaging in the mediation and settlement negotiations; and preparing for and appearing for court proceedings.⁶²

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.⁶³ Plaintiff's Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the Aggrieved Employees, and the State of California.⁶⁴ Considering the amount of fees requested, work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees are reasonable and should be awarded.

B. The Fee Award Requested by Plaintiff's Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards

The factors which courts consider in determining whether fee awards are reasonable, all of which support the fee award requested by Plaintiff's Counsel, are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due

⁶⁰ Ghosh Decl., ¶ 25.

⁶¹ *Id.*, § 14.

⁶² *Ibid.*

⁶³ *Id.*, ¶ 25.

⁶⁴ Ghosh Decl., ¶¶ 2-6.

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

8 It should be highlighted that the percentage award sought is commensurate with the time,
9 effort, and expense dedicated to the matter, the contingent nature of Plaintiff's Counsel's
10 representation and the risks taken in commencing the Action, the skill and determination
11 required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that
12 Plaintiff's Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees, and the State
13 of California. For the reasons discussed herein, an award of attorneys' fees equal to
14 approximately thirty-four and fifteen hundredth percent (34.15%) of the Total Settlement
15 Amount is reasonable.

16 ///

17 **1. Time & Labor**

18 Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour
19 actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit,
20 Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal
21 issues, Defendant's business, and its operations and employment policies, practices, and
22 procedures.⁶⁵ During the litigation of the Action, Plaintiff's Counsel interviewed and obtained
23 information from Plaintiff and Aggrieved Employees, conducted legal research, reviewed and
24 analyzed a large amount of information, documents, and data, prepared for and attended
25 mediation, evaluated the PAGA claim, and calculated the potential monetary recovery under
26 PAGA.⁶⁶ Plaintiff's Counsel also met and conferred with Defendant's counsel regarding case

27 ⁶⁵ Ghosh Decl., ¶ 14.

28 ⁶⁶ *Ibid.*

1 management, motions, mediation, and settlement negotiations, among other issues.⁶⁷ Plaintiff's
2 Counsel performed other work including, *inter alia*, case strategy and analysis; drafting,
3 reviewing, and revising the pleadings, motion-related papers, the mediation brief, and settlement
4 agreement; and preparing for and appearing for court proceedings.⁶⁸

5 Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary
6 to prosecute the case with maximum efficiency, and has fully and actively participated in the
7 litigation process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT 3**" to the
8 accompanying Declaration of Joanna Ghosh, sets forth in detail the hours that Plaintiff's Counsel
9 has spent performing tasks in this matter. Attorneys at Lawyers *for* Justice, PC have spent
10 **488.90 hours** to obtain a recovery on behalf of Plaintiff, the Aggrieved Employees, and the State
11 of California. These hours were required to bring the matter to its successful conclusion.

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

14 **2. The Skill Required to Perform Legal Services Properly**

15 The skill required to properly litigate this case is evident not only in the results achieved,
16 but in the steps necessary to reach the same. Defendant retained highly-respected counsel to
17 represent its defenses. Defendant and its counsel felt very strongly about Defendant's ability to
18 prevail on the merits and avoid representative adjudication of the PAGA claim in a court of law.
19 Plaintiff and Plaintiff's Counsel believe that the PAGA claim has merit and that Plaintiff will
20 prevail at trial. Plaintiff's Counsel undertook extensive investigation, analysis, and research
21 prior to filing the lawsuit and during the litigation of the matter. Plaintiff's Counsel took steps to
22 prepare the case for trial and had every intention of taking the case to trial if Defendant did not
23 offer an appropriate settlement.

24 Plaintiff's Counsel's efforts and skill were used to, among other things, investigate the
25 allegations and gather facts, research the legal issues, analyze data and information obtained
26 from Plaintiff, Defendant, and other sources, evaluate the PAGA claim, and negotiate the

27 ⁶⁷ *Ibid.*

28 ⁶⁸ *Ibid.*

1 settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used its
2 extensive experience and skill in the handling of complex wage-and-hour matters to advocate for
3 and obtain Aggrieved Employees and the State of California a recovery now, with maximum
4 efficiency, as opposed to the possibility of recovery in the future, after significant expense and
5 time.⁶⁹

6 **3. The Value of the Settlement**

7 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty
8 and risks of further litigation.⁷⁰ Had the case not settled, Defendant would have vigorously
9 continued its efforts to enforce its arbitration agreements, challenge manageability and liability,
10 and sought a reduction in the amount assessed as penalties. Defendant, however, faced risks too,
11 including and not limited to, the risk of a jury trial and having the Court assess penalties.
12 Additionally, preparing the case for trial would have been extraordinarily expensive for the
13 Parties.

14 At this stage, the settlement is preferred over continued litigation because such resolution
15 saves time and money that would otherwise go to litigation. The risks and expenses of further
16 litigation outweighed any benefit that might have been gained otherwise. The Settlement
17 provides an immediate recovery, as opposed to an uncertain result in the future after prolonged
18 litigation involving expert discovery, trial preparation, and appellate review of those
19 proceedings. The Settlement offers present and considerable monetary relief to Plaintiff, the
20 Aggrieved Employees, and the State of California while avoiding additional expense, risk, and
21 delay in obtaining possible further recovery.

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

23 The representation provided by Plaintiff's Counsel has been wholly contingent and
24 Plaintiff's Counsel took on this matter without knowing whether any recovery would be
25 obtained. Plaintiff's Counsel has invested **488.90 hours** of time to obtain relief on behalf of
26

27 ⁶⁹ Ghosh Decl., ¶¶ 16-20.

28 ⁷⁰ *Id.*, ¶¶ 15, 16, 19, & 27.

Plaintiff, the Aggrieved Employees, and the State of California. Plaintiff's Counsel is also requesting reimbursement of litigation costs and expenses in the amount of \$14,009.93.⁷¹

In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷² If Plaintiff's Counsel had not been successful, the time that they have devoted to litigating the case would have been for naught and would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel is well-experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the Aggrieved Employees, and the State of California.⁷³ The skill and determination that Plaintiff's Counsel has shown throughout the Action justify the requested attorneys' fees and costs. Considering the amounts requested, work performed, and risks incurred, the requested fees and costs are reasonable and should be awarded.

5. *The Amount Involved and the Results Achieved*

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. Ultimately, despite the fate of the individual and class damages claims asserted in the putative class action, the Action seeking civil penalties under PAGA has continued and reached a resolution that provides for a significant monetary payment of civil penalties to the State of California and Aggrieved Employees. Here, the results achieved, and the recovery obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent a fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a settlement that provides for a Total Settlement Amount of \$1,650,000.00, and it is currently estimated that the Net Settlement Amount available for distribution to the Aggrieved Employees and the State of California, as set forth in Part III.C *infra*, is approximately \$1,052,500.00.⁷⁴

6. *The Reputation and Ability of the Attorneys*

⁷¹ Ghosh Decl., ¶ 25 and Exh. 3.

⁷² *Id.*, ¶ 25.

⁷³ See Ghosh Decl., ¶¶ 2-6.

⁷⁴ Settlement Agreement, Section III(a)(4).

Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its attorneys employed their knowledge, skill, and experience to bring the case to a successful conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and representative action cases.⁷⁵

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**

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. *See Laffitte, supra*, 1 Cal.5th at 505 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination"); *see also, e.g., Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award."). Importantly, "the lodestar calculation . . . does not override the trial court's primary determination of the fee as a percentage" and "does not impose an absolute maximum or minimum on the potential fee award." *Laffitte, supra*, 1 Cal.5th at 505.

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

1. Plaintiff's Counsel Performed Work for a Reasonable Number of Hours

⁷⁵ Ghosh Decl., ¶¶ 2-6.

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

4 As discussed above, this matter was highly contested and required a significant amount of
5 time and labor. Defendant made it clear very early on that it disputed all of Plaintiff’s allegations
6 and disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*,
7 that it had facially-compliant employment policies and practices throughout the time period at
8 issue.⁷⁶ Defendant raised affirmative defenses and denied liability, and the pursuit of this case
9 involved gathering and analyzing data from Defendant as well as other sources.⁷⁷ The handling
10 of this litigation involved a great amount of effort, and also required and involved the exercise of
11 a high level of skill, which Plaintiff’s Counsel has, as a result of its extensive experience in
12 complex wage-and-hour litigation. Long and difficult battles would have followed as the case
13 moved toward trial, including taking and defending declarant and expert depositions, depositions
14 of person most knowledgeable designees, conducting additional formal discovery, and engaging
15 in extensive motion practice. As Plaintiff’s Counsel geared up for these battles, Plaintiff’s
16 Counsel undertook intense preparation in an attempt to resolve the entire matter through
17 settlement negotiations.

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

22 As set forth above in Part VI.B.1 *infra*, attached to the Declaration of Joanna Ghosh is the
23 Attorney Task and Time Chart that sets forth in detail the numerous tasks that Plaintiff’s Counsel
24 performed in this matter, and the time required for completing those tasks.⁷⁸ The chart
25 demonstrates that Lawyers for Justice, PC has spent a total of **488.90 hours** on this matter. In
26

27 ⁷⁶ Ghosh Decl., ¶ 17.

28 ⁷⁷ *Id.*, ¶¶ 14 & 19.

⁷⁸ *Id.*, Exh. 2.

light of the facts and circumstances of this matter, as well as the results Plaintiff's Counsel has achieved on behalf of Plaintiff, the Aggrieved Employees, and the State of California, Plaintiff's Counsel has spent a reasonable number of hours on this matter.

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

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

Plaintiff's Counsel has been actively involved in the prosecution of this matter, prior to the commencement of the Action and all the way up to approval of the settlement, and their dedication to the representation of Plaintiff, the Aggrieved Employees, and the State of California has precluded other employment. Here, Plaintiff's Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, Plaintiff's Counsel was successful in reaching a settlement of \$1,650,000.00.

As set forth in the Declaration of Joanna Ghosh, the professional backgrounds and experience of Plaintiff's Counsel support a reasonable hourly rate of compensation of at least \$800 per hour for services provided by Plaintiff's Counsel.⁷⁹ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$800 for legal services performed, by courts of this state.⁸⁰ While the circumstance of every case is unique, the fact remains that the work performed and efforts undertaken by Plaintiff's Counsel in this matter justify the requested attorneys' fees award.

⁷⁹ Ghosh Decl., ¶ 24.

⁸⁰ *Ibid.*

1 **3. The Risks Involved, Skill Required, Complexity of the Matter, and Results**
2 **Obtained Warrant Upward Enhancement of the Lodestar.**

3 Even when courts have opted to award fees in settlement fund cases based on time
4 reasonably expended on the action, courts have generally awarded these fees based on the actual
5 time expended (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v. Screen*
6 *Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67. Such a multiplier is warranted in this matter.

7 Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved,
8 the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051;
9 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of the most common fee
10 enhancers [...] is for contingency risk.”). Such an enhancement “mirrors the established practice
11 in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying
12 them a premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 290
13 F.3d at 1051; *accord Ketchum*, 24 Cal.4th at 1132-33. A risk multiplier also serves to bring the
14 financial incentives for enforcing important rights “into line with incentives [attorneys] have to
15 undertake claims for which they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal. 4th at
16 1132.

17 In determining whether or not to enhance the lodestar, California courts take into account
18 multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See,
19 *Cates* at 822-23. Multiple factors warrant enhancement in this matter, including the following:

- 20 • The time and labor required
- 21 • The skill requisite to perform the legal services properly
- 22 • The preclusion of other employment by the attorney due to the acceptance of the case
- 23 • The contingent nature of the fee
- 24 • The amount involved and results obtained
- 25 • The experience, reputation, and ability of the attorney
- 26 • Awards in similar cases

27 *Ketchum* at 1134.

28

Adjustment of the base lodestar figure to compute an award of attorneys' fees for a claim under the California Labor Code is appropriate. See *Id.*, at 1135-36; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49. "The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate." *Wershba, supra*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment method, the trial court determines the reasonable hourly rate of compensation for counsel, which it then multiplies by the number of hours the court finds were reasonably spent preparing the case, to obtain the lodestar figure. *Ketchum, supra*, 24 Cal.4th at 1131-32. The lodestar figure is the "basic fee for comparable legal services in the community" based upon the "hourly amount to which attorneys of like skill in the area would typically be entitled." *Id.*, at 1132-33 (quotation marks and citation omitted).

As discussed above, this was a highly-contested matter which required an extensive amount of time and labor. Defendant raised defenses and denied liability, the Parties engaged in significant motion practice, and the matter involved gathering and analyzing a large volume of information, documents, and data f obtained from Plaintiff, Defendant, and other sources. The handling of this matter involved a great amount of effort, and required the exercise of a high-level of skill, which Plaintiff's Counsel has as a result of extensive experience in employment wage-and-hour litigation. Plaintiff's Counsel has been actively involved in the prosecution of this matter, prior to its commencement, and Plaintiff's Counsel's work has continued all the way up to the present. Plaintiff's Counsel's dedication to the representation of Plaintiff, the Aggrieved Employees, and the State of California has precluded other employment.

Most importantly, all services were performed by Plaintiff's Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, *e.g.*, *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Plaintiff's Counsel bore the risk that, despite all of their efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Plaintiff's Counsel is entitled to a risk multiplier. The results obtained by way of Plaintiff's Counsel's

efforts are significant here. Plaintiff's Counsel was successful in achieving substantial results in the form of a settlement of \$1,650,000. Also, Plaintiff's Counsel's efforts throughout the matter demonstrate dedication to the interests of both the Aggrieved Employees and the State of California.

Plaintiff's Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, Plaintiff's Counsel devoted the hours in legal time summarized above and detailed in the Attorney Task and Time Chart which is attached as an exhibit to the Declaration of Joanna Ghosh.⁸¹ As the Declaration indicates, Plaintiff's Counsel has performed 488.90 hours of work in the pursuit of this matter. Applying a reasonable blended rate of \$800 per hour to 488.90 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$391,120.00, and applying a modest multiplier of 1.45, the total enhanced lodestar fees are \$567,124.00, for Plaintiff's Counsel's services. Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Plaintiff's Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from 2 to 4 or even higher." *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with cross-check multipliers ranging from **4.5 to 19.6**).

Therefore, application of a modest multiplier of 1.45 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award.

VII. COSTS TO BE REIMBURSED TO PLAINTIFF'S COUNSEL ARE FAIR AND

⁸¹ Ghosh Decl., Exh. 2.

REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for reimbursement of all actual litigation costs and expenses. As set forth in the Declaration of Joanna Ghosh, Plaintiff's Counsel seeks reimbursement of \$14,009.93 in litigation costs and expenses.⁸² These expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement.⁸³ Accordingly, Plaintiff's Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$14,009.93 to Plaintiff's Counsel.

VIII. THE PROPOSED COVER LETTER TO THE AGGRIEVED EMPLOYEES 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 Aggrieved Employees along with their Individual Settlement Share check (together, PAGA Settlement Package), substantially in the form attached as "EXHIBIT 1" to the [Proposed] Order and Judgment and as "EXHIBIT A" to the Settlement Agreement. The Cover Letter informs the Aggrieved Employees about the Action and the Settlement. Accordingly, Plaintiff respectfully requests that the Court approve the Cover Letter for transmission to the Aggrieved Employees at the time of disbursing their Individual Settlement Shares.

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS 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, Inc. to handle the administration of the Settlement. The fees and expenses of the PAGA Settlement Administrator are estimated not to exceed \$10,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual Settlement Shares checks to the Aggrieved Employees (i.e., PAGA Settlement Package); performing skip-trace searches; re-mailing the returned PAGA Settlement

⁸² Ghosh Decl., ¶ 25.

⁸³ *Ibid.*

Packages to any updated addresses located; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to \$10,000.00 to Simpluris, Inc., a necessary third-party for handling the settlement process.

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

The Settlement provides for a General Release Fee to be paid to Plaintiff in the amount of \$10,000.00.⁸⁴ The purpose of such an award is to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce an individual to participate in the suit’”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) (“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the [...] litigation.”); *see also, e.g., Resendez, supra*, Los Angeles County Superior Court, Case No. BC59689 (approving \$10,000 enhancement award in a PAGA action).

Here, Plaintiff contributed considerable time and effort to the litigation of this matter in order to enforce the California Labor Code on behalf of the State of California and for the benefit of other Aggrieved Employees. Plaintiff discussed his employment with his counsel, gathered and produced relevant documents and information, and provided the facts and evidence necessary to attempt to prove the allegations.⁸⁵ Plaintiff was available whenever his counsel needed him and tried to obtain and provide documents and information that would aid in the litigation of the PAGA claim and pursuit of recovery on behalf of the State of California and

⁸⁴ Settlement Agreement, Section III(a)(3).

⁸⁵ Ghosh Decl., ¶ 26

Aggrieved Employees.⁸⁶

Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the amount of \$10,000.00.

XI. CONCLUSION

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

Dated: January 31, 2024

LAWYERS for JUSTICE, PC

By: _____



Edwin Aiwanian
Arby Aiwanian
Joanna Ghosh
Attorneys for Plaintiff

⁸⁶ Ghosh Decl., ¶ 26