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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

BLAINE NICKSON, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, vs. SHEMRAN, INC., a California corporation; BARONS MARKET, an unknown business entity; and DOES 1 through 100, inclusive, Defendants.	Case No.: CVSW2107735 Honorable Harold Hopp Department 1 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (CAL. LABOR CODE § 2698, *ET SEQ.*) SETTLEMENT AGREEMENT AND AWARD OF PAGA COUNSEL FEES PAYMENT, PLAINTIFF'S GENERAL RELEASE FEE, AND ADMINISTRATOR EXPENSES PAYMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [Declaration of PAGA Counsel (Travis J. Maher); Declaration of Plaintiff (Blaine Nickson); Declaration of Proposed Settlement Administrator (Jonathan Paul); and [Proposed] Order and Judgment filed concurrently herewith] Reservation ID: 190126748466 Date: May 8, 2025 Time: 8:30 a.m. Department: 1 Complaint Filed: September 10, 2021 Trial Date: None Set

PLEASE TAKE NOTICE that on May 8, 2025, at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Harold Hopp in Department 1 of the Superior Court of the State of California, for the County of Riverside, located at 4050 Main Street, Riverside, California 92501, Plaintiff Blaine Nickson ("Plaintiff") will and hereby does move for entry of the following orders:

1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the settlement between Plaintiff Blaine Nickson ("Plaintiff") and Defendant Shemran, Inc. DBA Barons Market (collectively, "Defendant" or "SHEMRAN") of the claims brought pursuant to the Private Attorneys General Act of 2004 ("PAGA"), as set forth in the PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Travis J. Maher, including and not limited to, the plan of allocation and distribution of the Gross Settlement Amount for payment of the LWDA PAGA Payment to the California Labor and Workforce Development Agency ("LWDA"), Individual PAGA Payments to the Aggrieved Employees, PAGA Counsel Fees Payment to PAGA Counsel, Administrator Expenses Payment to the Administrator, and Plaintiff's General Release Fee;
2. Approving the Net Settlement Amount, estimated to be no less than $164,702.71 which will be distributed to the LWDA and the Aggrieved Employees, pursuant to California Labor Code section 2699(i), of which 75% will be paid to the LWDA ("LWDA PAGA Payment") and 25% will be paid to the Aggrieved Employees;
3. Appointing Xpand Legal Consulting LLC ("Xpand") as the Administrator, to handle the administration of the Settlement;
4. Directing SHEMRAN to fund the Gross Settlement Amount, and directing the Administrator to distribute payments in accordance with the Settlement Agreement;
5. Directing the mailing of Individual PAGA Payments checks to the Aggrieved Employees along with the Cover Letter, which is substantially similar in content and form to that attached as "**EXHIBIT A**" to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of PAGA Counsel Fees Payment, Plaintiff's General Release Fee, and Administrator

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Expenses Payment ("[Proposed] Order and Judgement") filed concurrently herewith;

6. Awarding $7,500.00 to Plaintiff Blaine Nickson as Plaintiff's General Release Fee;

7. Awarding up to $6,000.00 to the Administrator as Administrator Expenses Payment; and

8. Awarding to Lawyers *for* Justice, PC ("PAGA Counsel") the amount of $130,000.00 as compensation for reasonable attorneys' fees and the amount of $16,762.69 for reimbursement of litigation costs and expenses (together, "PAGA Counsel Fees Payment"), pursuant to California Labor Code section 2699(g)(1).

Unless otherwise specified, all citations and references to the Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* are to the version of statute prior to the recent amendment effective July 1, 2024; the amended statute does not apply to the above-captioned action and the Settlement pursuant to California Labor Code section 2699(v)(1), as amended, because the above-captioned action was filed prior to June 19, 2024.

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

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

This motion will be based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of PAGA Counsel (Travis J. Maher), Proposed Settlement Administrator (Jonathan Paul), and Plaintiff Blaine Nickson in support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: April 15, 2025

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By: Travis J Maher

Travis J. Maher
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Blaine Nickson ("Plaintiff") seeks approval of the PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") entered into between Plaintiff, individually and on behalf of the State of California with respect to Aggrieved Employees, and Defendant Shemran, Inc. DBA Barons Market (collectively, "Defendant" or "SHEMRAN"), pursuant to California Labor Code section 2699(l)(2).[1] Plaintiff and SHEMRAN (together, the "Parties") have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* ("PAGA"), for a Gross Settlement Amount of $325,000.00.[2]

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise of a disputed claim that has been reached through arm's-length negotiations, in light of the risks, complexity, and expense of further litigation, and the strengths of the PAGA claim. The Settlement meets the requirements for Court approval based upon the relevant fairness factors. The Court is respectfully requested to approve the Settlement, award the PAGA Counsel Fees Payment, Administrator Expenses Payment, and Plaintiff's General Release Fee and approve the LWDA PAGA Payment.

The Settlement Agreement and moving and supporting papers for this motion are being concurrently submitted to the LWDA and Plaintiff now moves for an order granting approval of the Settlement, in conformity with California Labor Code section 2699(l)(2).[3] In order to efficiently present the Court with adequate information, Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the page limit set forth in California Rules of Court, Rule 3.1113(d).

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Plaintiff alleges that SHEMRAN, who operates a food retail business with multiple locations in California, violated the California Labor Code, with respect to the Aggrieved Employees. (Maher Decl., ¶ 11). On July 7, 2021, Plaintiff's Counsel provided a PAGA Notice

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[1] The PAGA Settlement Agreement ("Settlement Agreement") is attached as "**EXHIBIT 1**" to the Declaration of Travis J. Maher ("Maher Decl."), filed concurrently herewith.

[2] Settlement Agreement, § 3.1. The Gross Settlement Amount is subject to possible increase pursuant to Section 8 of the Settlement Agreement.

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

to the LWDA via online submission and to SHEMRAN via U.S. Certified Mail. (Maher Decl., ¶ 10, Ex. 2). Aside from confirmation of receipt, the LWDA did not respond to the PAGA Notice.

On September 10, 2021, Plaintiff filed his Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Complaint"), alleging that Defendant violated California law by, *inter alia*, failing to pay minimum, regular, and overtime wages, failing to provide compliant meal and rest periods and associated premiums, failing timely to pay wages during employment and upon termination of employment, failing to provide complete and accurate wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs. (Maher Decl., ¶ 11).

Defendant contended that Plaintiff executed a lawful and binding arbitration agreement, and filed a Motion to Compel Arbitration and Stay Lawsuit Pending Arbitration on January 4, 2022. (Maher Decl., ¶ 51). On March 14, 2022, Defendant filed a Notice of Appeal regarding the February 3, 2022 denial of its Motion to Compel Arbitration and Stay Lawsuit Pending Arbitration. (*Id*.). The Court of Appeal for the State of California, Fourth Appellate District, Division One, issued its ruling on April 7, 2023 on Defendant's appeal, Case No. D080914, reversing the order denying the motion to compel arbitration, thus directing this Court to enter a new order granting the motion with respect to Nickson's individual PAGA claims, and instructing that the nonindividual PAGA claims remain pending in this Court. *Nickson v. Shemran, Inc*. (2023) 90 Cal.App.5th 121. At the June 7, 2023 Status Hearing, the Court ordered Plaintiff's individual PAGA claims to arbitration in line with the Court of Appeal's Order, and stayed the non-individual PAGA claims pending arbitration. (*Id*.). On July 7, 2023, Plaintiff sent a Demand for Arbitration to Defendant. Thereafter, the Parties met and conferred on numerous occasions in the process of narrowing down an acceptable Arbitrator. (*Id*.). On or about September 28, 2023, Defendant substituted its counsel, to Higgs Fletcher Mack. (*Id*.). The Parties immediately met and conferred to discuss arbitration and potential mediation. (*Id*.). On or about January 2, 2024, the Parties agreed in principle to attend private mediation of the PAGA claims and focused their meet and confer efforts on that subject. (*Id*., ¶ 9). On or about March 27, 2024, the Parties agreed to Brandon McKelvey of M Resolution as a mediator and reserved

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September 3, 2024 for mediation. (*Id*.). On September 3, 2024, the Parties attended private mediation with Brandon McKelvey. The case was not settled at that time, but counsel for the Parties continued settlement discussions. (*Id*.). On or about October 21, 2024, the Parties reached a settlement in principle that will resolve the action in its entirety, if approved by the Court. (*Id*.). On December 10, 2024, the Parties finalized and executed the Settlement Agreement. (*Id*.).

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, as stated in the Proof of Service filed concurrently herewith.

III. SUMMARY OF THE SETTLEMENT TERMS

A. Scope of the Settlement

If the Court grants approval of the Settlement, Plaintiff and the State of California with respect to Aggrieved Employees[4] will release the Released Parties (SHEMRAN "and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates") [5] from the Released PAGA Claims.[6]

The Settlement pertains to the following aggrieved employees: all current and former non-exempt or hourly paid employees of Defendant that have worked for Defendant in the State of California during the period from July 7, 2020, to October 14, 2024 (the "PAGA Period"). (Settlement Agreement, § 1.4.) The Aggrieved Employees are estimated to consist of about 1,185 individuals who worked approximately 40,634 pay periods during the PAGA Period. (*Id*., § 4.1.)

The Settlement Agreement also provides for a general release by Plaintiff of his individual claims with California Civil Code section 1542 waiver. (*Id*., § 5.1.1.)

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[4] Settlement Agreement, § 1.4. The "PAGA Period" is defined as the period of July 7, 2020, through October 14, 2024. *Id*., § 1.19.

[5] The definition of the "Released Parties" is set forth in the Settlement Agreement, § 1.25.

[6] The definition of the "Released PAGA Claims" is set forth in the Settlement Agreement, § 1.24 as follows: "Released PAGA Claims" means the release by Aggrieved Employees, on behalf of themselves and their former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns, for all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

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B. Funding and Distribution of the Gross Settlement Amount

Under the terms of the Settlement Agreement, SHEMRAN will pay a Gross Settlement Amount of $325,000.00[7], which is inclusive of the following: (1) PAGA Counsel Fees Payment to be paid to Lawyers *for* Justice, PC ("PAGA Counsel"), (2) Plaintiff's General Release Fee, (3) Administrator Expenses Payment to be paid to the Administrator, and (4) Net Settlement Amount to be paid to the California Labor and Workforce Development Agency ("LWDA") and Aggrieved Employees. The Net Settlement Amount will be the Gross Settlement Amount less the Court-approved PAGA Counsel Fees Payment, Administrator Expenses Payment, and Plaintiff's General Release Fee; the Net Settlement Amount is currently estimated to be no less than $164,702.71.[8] The Net Settlement Amount will be distributed as follows: 75% of the Net Settlement Amount (or approximately $123,527.03) will be distributed to the LWDA ("LWDA PAGA Payment") and 25% of the Net Settlement Amount (or approximately $41,175.68) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their PAGA Pay Periods.[9]

Within 14 calendar days after the Court enters a final Judgment on its Order Approving the PAGA Settlement, SHEMRAN will transmit the Gross Settlement Amount to the Administrator for administration of the Settlement.[10] Within 14 calendar days after the Court's order granting approval of the Settlement, SHEMRAN will provide the Administrator with the Aggrieved Employee Data, containing the contact information and other information required to calculate payment for each Aggrieved Employee.[11]

No later than 14 calendar days after the Administrator receives the Aggrieved Employee Data and Gross Settlement Amount, the Administrator will calculate payments and mail the agreed-upon Cover Letter[12] and Individual PAGA Payments[13] checks (together, the "Individual PAGA Payments(s)")

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[7] Settlement Agreement, §§ 1.10, 3.1.
[8] *Id.*, § 1.14.
[9] *Id.*, § 1.19.
[10] *Id.*, § 4.3.
[11] *Id.*, § 4.2.
[12] The Parties have prepared a simple Cover Letter for transmission to the Aggrieved Employees along with their Individual Settlement Share checks, substantially in the form attached as "**EXHIBIT A"** to the [Proposed] Order and Judgment and as "EXHIBIT A" to the Settlement Agreement. The Cover Letter informs the Aggrieved Employees about the Actions and the Settlement.
[13] Each Aggrieved Employees' Individual PAGA Payment, will be calculated by the Administrator based on their

(Footnote continued)

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to all Aggrieved Employees by first-class United States mail.[14] For each PAGA Settlement Package that is returned as undeliverable after initial mailing, the PAGA Settlement Administrator will promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using an Aggrieved Employee Address Search and shall attempt re-mailing of the PAGA Settlement Package.[15]

The Individual Settlement Share checks issued to Aggrieved Employees will remain valid for 180 calendar days, and thereafter, will be canceled.[16] Funds associated with canceled checks will be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual PAGA Payment.[17]

C. <u>Standards for Approval of PAGA Settlement</u>

PAGA allows an "aggrieved employee" to bring a civil action on behalf of the State of California to recover civil penalties that normally the LWDA can pursue on behalf of employees against an employer without employees' involvement or approval. Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.[18] Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. *See* Cal. Lab. Code § 2699(a). Plaintiff has complied.

The settlement of a PAGA action requires court approval. *See* Cal. Lab. Code § 2699(l)(2). However, a PAGA claim asserted on a non-class representative basis and is not a class action but a law enforcement action.[19] A court's review of a PAGA settlement involves consideration of unique factors

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Pay Periods the Aggrieved Employee worked during the PAGA Period. Settlement Agreement, § 3.2.3.1 The payments to Aggrieved Employees for their Individual PAGA Payment are considered 100% penalties to be reported on IRS Form 1099.

[14] Settlement Agreement § 4.4.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (aggrieved employee cannot opt out of a PAGA settlement); *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546-548 ("[A] PAGA action is a statutory action for penalties brought as a proxy for the State," "whatever personal claims the absent employees might have for relief are not at stake[,]" as such, "there is no need to protect absent employees' due process rights" and they "will be bound by the outcome of any PAGA action[.]"); *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5 (Unnamed employees need not be given notice); *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984-86 (Same).

[19] *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court's holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15; *Amalgamated Transit Union, Local 1756, Afl-*

(Footnote continued)

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that render the approval process distinct from, and simpler than the two-step court approval process for a class action settlement. A court reviewing a PAGA settlement need only "ensur[e] that a negotiated resolution is fair to those affected." *Williams v. Superior Court* (2017) 3 Cal.5th 531, 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.[20]

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).

IV. 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 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 after conducting extensive, arm's-length settlement negotiations and the involvement of a neutral Brandon McKelvey.[21] 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.

Cio v. Superior Court (2009), 46 Cal.4th 993, 1003; see also *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 58 Cal.4th 348, 381.

[20] 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.

[21] Maher Decl., ¶ 8.

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As discussed in the Declaration of Travis J. Maher, the Settlement is presumptively fair because: (1) it is the product of adversarial non-collusive, and 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 risks and expenses of litigating this claim through trial.[22]

Based on all of the information available to the Parties, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim and the facts and circumstances of the case.[23] PAGA Counsel have extensive experience handling representative and class action wage-and-hour litigation and used that experience to achieve a settlement recovery for Plaintiff, the State of California, and the Aggrieved Employees.[24] Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of arm's length bargaining.[25]

B. <u>The Relative Strengths and Weaknesses of the PAGA Claim and the Range of Possible Outcomes Strongly Favor Approval of the Settlement</u>

For a detailed discussion of the relative strengths and weaknesses of the specific underlying violations of the PAGA claims and the range of possible outcomes in the litigation, see the Declaration of Travis J. Maher at paragraphs 12-56.

In order for Plaintiff to prevail on the PAGA claim, he would have to prove that Defendant engaged in the alleged California Labor Code and Industrial Welfare Commission Wage Order 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

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[22] *Id.*., ¶¶ 2-6, 9.
[23] *Id.*, ¶ 58.
[24] *Id.*, ¶¶ 2-6.
[25] See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness)

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all of plaintiff's other claims fail as a matter of law, so does her PAGA claim."].)

Here, based on Plaintiff's Counsel's analysis of the records and other discovery obtained from Defendant, Plaintiff is confident in his claims and believes he would prevail at trial. Nonetheless, there are always risks in litigation, and Defendant has 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 period at issue. (Maher Decl., ¶ 10.) Defendant denies that it ever violated any provision of the California Labor Code or Industrial Welfare Commission Wage Orders, including, but not limited to, those sections for which Plaintiff seeks penalties under PAGA. (*Id.*) Further, it is anticipated that Defendant would argue that, even if Plaintiff were to prove liability, the Court has substantial discretion in determining PAGA penalties and would significantly reduce penalties here.

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

Also, there is a risk that the Court would, in its discretion, significantly reduce the PAGA penalties. The PAGA statute gives courts the discretion to award a lesser amount than the maximum penalties. (See Cal. Lab. Code, § 2699(e)(2) ["In any action by an aggrieved

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

There is also uncertainty due to the fact Defendant also contended that the claims of Plaintiff and other Aggrieved Employees are subject to enforceable arbitration agreements that included a waiver of the right to join or participate in a class action or representative action, act as a private attorney general or representative of others, or otherwise consolidate a covered claim with others. (Maher Decl., ¶¶ 8, 50.) Defendant contended that, taken together, these agreements would have claim preclusive impact, or otherwise, could effectively be used to require Aggrieved Employees to engage in individual arbitration of their individual claims on which the PAGA claim is predicated. (*Id.*) There is uncertainty regarding PAGA claims due to decisions of the high courts and recent amendment of the PAGA statute. The decisions of the high court include, and are not limited to, the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940,[26] and the California

[26] In *Viking River Cruises*, the U.S. Supreme Court determined that PAGA claims can be split into individual claims based on California Labor Code violations suffered by the plaintiff (that can then be subject to arbitration) and non-individual claims (that are representative in nature) and that the "indivisibility rule" recognized by the California

(Footnote continued)

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Supreme Court's decision in *Adolph v. Uber Technologies* (2023) 14 Cal.5th 1104. The decision by the California Supreme Court in *Adolph v. Uber Technologies* confirmed that PAGA representative claims are viable and can continue to be prosecuted, however it also suggests that trial courts will stay the representative/non-individual PAGA claims pending arbitration of a plaintiff's individual PAGA claims. The *Adolph v. Uber Technologies* also suggests that, if a plaintiff is determined to not be an "aggrieved employee" for PAGA purposes, issue preclusion could apply and, once reduced to a final judgment, trial courts are bound by the arbitrator's determination and the plaintiff may lose standing to pursue non-individual PAGA claims.

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 later down the road. (Maher Decl., ¶ 53.)

Furthermore, the recent amendment of the PAGA statute enacted on July 1, 2024, adopting, *inter alia*, modified standing requirements, codifying a manageability requirement, capping civil penalties that can be assessed against an employer if an employer meets certain conditions, and allowing an employer to cure violations to avoid the assessment of civil penalties if an employer meets certain conditions, has created uncertainty regarding the future of claims for civil penalties under PAGA. As such, at the time that the Parties reached the settlement, and also now, there is uncertainty regarding the PAGA claim.

While Plaintiff disagrees with Defendant's contentions and maintains that Defendant has violated the California Labor Code and Industrial Welfare Commission Wage Orders as alleged

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Supreme Court in *Iskanian* v. *CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348 is preempted by the Federal Arbitration Act (FAA) to the extent it circumscribes the freedom of parties to agree to such contractual division or splitting of PAGA actions. *Viking River Cruises, Inc.*, 1923-1925. The U.S. Supreme Court also determined that, important structural differences between PAGA actions and class actions preclude any straightforward application of U.S. Supreme Court precedents invalidating prohibitions on class-action waivers, to *Iskanian*'s ban on wholesale PAGA representative action waivers, and thus this aspect of *Iskanian* is not preempted by the FAA. *Id*. at 1919, 1922-1925. The U.S. Supreme Court also expressed its understanding of California state law, and the impact of its ruling on, PAGA's standing requirement, regarding which California courts will have the last word, as noted by a concurring opinion. *Id.* at 1925-1926 (concurring opinion). Taken together, the substantive statutory right to pursue a PAGA claim has not been eviscerated and has been preserved, however, arbitration agreements may be used to select the forum and procedure to be used to resolve PAGA claims to some extent.

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in the Complaint, Plaintiff and his counsel, in reaching the Settlement, with the benefit of the mediator's evaluation, took into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or appeals. (*Id*.) In light of these risks, Plaintiff's Counsel strongly believes that the Settlement achieved is a good result for the State of California and the Aggrieved Employees

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

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

Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope of the PAGA claim and allegations and considered thousands of pages of information, documents, and data relevant to Plaintiff's claim and SHEMRAN's defenses thereto.[27] The Parties thoroughly and sufficiently evaluated the PAGA claim and related allegations, including, and not limited to, calculating the potential monetary recovery under PAGA.[28] PAGA Counsel performed other work as well, which is discussed in the Declaration of Travis J. Maher.[29]

Had the case not settled, the Parties would have conducted extensive additional formal discovery, including propounding additional written discovery requests as well as multiple depositions of party and percipient witnesses all over the State of California, to both prepare for arbitration, and, depending on that result, for trial. From the inception of this litigation, SHEMRAN indicated that they would aggressively litigate this case.[30] Even if SHEMRAN failed on their defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings. Additionally, there is a real possibility that Plaintiff could recover nothing, either for himself or on behalf of the State of California or other Aggrieved Employees after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which

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[27] Maher Decl., ¶ 62.
[28] *Id*.
[29] *Id*., ¶ 19-54.
[30] *Id*., ¶ 53.

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would involve significant costs, favors settlement.

D. The Settlement Is Fair, Adequate, and Reasonable

The Settlement provides significant benefits to the State of California and the Aggrieved Employees and falls well-within the range of acceptable settlements under the circumstances. "[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1981) 688 F.2d 615, 624. "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625.

The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel recognize the expense and length of continued proceedings necessary to pursue the matter through trial and any possible appeals. Plaintiff and his counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.[31] Plaintiff and his counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to SHEMRAN's defenses thereto, and the difficulties in establishing SHEMRAN's liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other Aggrieved Employees.[32] Plaintiff and his counsel have also taken into account SHEMRAN's agreement to enter into a settlement that confers significant relief upon the Aggrieved Employees and the State of California.[33]

Considering all of the facts in this case, Plaintiff and his counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the Aggrieved Employees and the State of California.[34]

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

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[31] Maher Decl., ¶¶ 9, 54.
[32] *Id.*, ¶¶ 50-54.
[33] *Id.*, ¶ 58.
[34] *Id.*, ¶ 76.

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E. The Experience and Views of PAGA Counsel Favor Approval of the Settlement

PAGA Counsel are highly experienced in complex representative and class action wage-and-hour litigation.[35] In the view of PAGA 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.[36] Furthermore, courts have acknowledged that "the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]" *Williams, supra,* 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

V. THE REQUESTED ATTORNEYS' FEES AWARD SHOULD BE APPROVED

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

The Settlement provides for attorneys' fees in an amount of up to 40% of the Gross Settlement Amount, which is $130,000.00 (assuming the Gross Settlement Amount remains $325,000.00)[37], subject to approval and award by the Court.[38] The requested attorneys' fees award is commensurate with: (1) the risk that PAGA Counsel took in bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that PAGA Counsel has shown, (4) the results that PAGA Counsel has achieved in the case, (5) the value that PAGA Counsel has achieved in the case, and (6) the other cases that PAGA Counsel has turned down in order to work on this matter.

PAGA 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"). PAGA 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 allegedly aggrieved employees, as well as the State of California.[39] The settlement will also provide funds to the

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[35] *Id.*, ¶¶ 2-6.
[36] *Id.*, ¶¶ 9, 53.
[37] See footnote 2.
[38] Settlement Agreement § 3.2.1.
[39] *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17 (recognizing that recovery obtained on behalf of 209 individuals satisfies the "significant benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff's personal motivation).

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state labor agency, to enhance enforcement of labor laws and education of "employers and employees about their rights and responsibilities under [the California Labor Code]." Cal. Lab. Code § 2699(i).

Courts may calculate and award attorneys' fees as a percentage of a monetary fund that has, by litigation, been preserved or recovered for the benefit of others. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480 at 486 & 506. Trial courts "retain the discretion to forgo a lodestar cross-check and [may] use other means to evaluate the reasonableness of a requested percentage fee." *Id*. (internal quotes omitted); see also *Wershba*, *supra*, 91 Cal.App. 4th at 253.

Courts award fees as an economic incentive for lawyers to pursue litigation that will enhance and facilitate access to the judicial system for meritorious claims, deter wrongdoing, and address multiple similar alleged wrongs that would not be economically feasible to pursue individually, such as here. See A. Conte, *Attorney Fee Awards* (2d ed. 1993) 104, at 6.

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 v. Ford Motor Co.*(1996) 48 Cal. App. 4th 1794, 1808.

The percentage fee method is preferred in representative actions because "it better approximates the workings of the marketplace than the lodestar approach." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 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

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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* (2005) 126 Cal.App.4th, 1253, 1270).

PAGA Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the case is well-within the range of reasonableness. Courts have awarded fees as high as 50% of the settlement in complex actions, depending on the circumstances of the case.[40]

PAGA Counsel has performed significant work in this matter, as discussed in the Declaration of Travis J. Maher with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.[41] In the present case, PAGA Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[42] PAGA Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a significant settlement recovery for Plaintiff, the Aggrieved Employees, and the State of California.[43] Considering the amount of fees requested, work performed, risks incurred, results obtained, and experience of PAGA Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees are reasonable and should be awarded.

B. <u>The Requested Fee Award is Reasonable Based on the Factors Considered in Determination of Fee Awards</u>

The factors which courts consider in determining whether fee awards are reasonable, all of which support the fee award requested by PAGA Counsel, are: the time and labor required; the novelty and difficulty of the questions involved; the skill requisite to perform the legal services properly; the preclusion of other employment by the attorney due to the acceptance of the case; the customary fee; whether the fee is fixed or contingent; the time limitation imposed by the client or the circumstances; the amount involved and results obtained; the experience, reputation, and ability of the attorney; the

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[40] *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%-40% and determined such a percentage fee was appropriate).
[41] Maher Decl., ¶¶ 20-59.
[42] *Id.*, ¶ 66.
[43] *Id.*, ¶¶ 2-6.

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undesirability of the case; the nature and length of the professional relationship with the client; and awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772. Some of the most relevant factors to this Court's fee determination will be addressed below.

It should be highlighted that the percentage award sought is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of PAGA Counsel's representation and the risks taken in commencing the case, the skill and determination required, the results that PAGA Counsel has achieved, and the value of the settlement that PAGA Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California. For the reasons discussed herein, an award of attorneys' fees in the amount of 40% of the Gross Settlement Amount is reasonable.

1. Time & Labor

PAGA Counsel has used its experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, PAGA Counsel conducted a significant amount of investigation into the factual and legal issues, SHEMRAN's business, and their operations and employment policies, practices, and procedures.[44] During the litigation of the case, PAGA Counsel interviewed and obtained information from Plaintiff, SHEMRAN, and other sources, conducted legal research, reviewed and analyzed thousands of pages of documents and data, prepared for and participated in mediation and robust settlement discussions, evaluated the PAGA claim, and calculated the potential monetary recovery under PAGA.[45] PAGA Counsel also met and conferred with SHEMRAN's counsel regarding the pleadings, case management, discovery, arbitration, mediation, and settlement negotiations, among other issues.[46] PAGA Counsel performed other work including, *inter alia*, case strategy and analysis, in addition to engaging in extensive settlement negotiations.[47]

PAGA Counsel dedicated the full extent of staffing and monetary resources necessary to prosecute the case with maximum efficiency and has fully and actively participated in the litigation process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT 3**" to the accompanying Declaration of Travis J. Maher, sets forth in detail the hours that PAGA Counsel has spent performing

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[44] Maher Decl., ¶¶ 17-19, 64.
[45] *Id.*, ¶¶ 11-55.
[46] *Id.*, ¶ 66.
[47] *Id.*, ¶¶ 10, 66.

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tasks in this matter. Attorneys at Lawyers *for* Justice, PC have spent **202.40 hours** to obtain a recovery on behalf of Plaintiff, the Aggrieved Employees, and the State of California. These hours were required to bring the case to its successful conclusion.

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

2. The Skill Required to Perform Legal Services Properly

The skill required to properly litigate this case is evident not only in the results achieved, but in the steps necessary to reach the same. SHEMRAN retained highly-respected counsel to represent their defenses. PAGA Counsel's effort and skill were used to, among other things, investigate the allegations and gather facts, research the legal issues, analyze data, documents, and information obtained from SHEMRAN, Plaintiff, and through other sources, to evaluate the PAGA claim and negotiate the settlement. Despite all of the obstacles that had to be overcome, PAGA Counsel used their extensive experience and skill in the handling of complex wage-and-hour matters to advocate for and obtain a recovery now, with maximum efficiency, as opposed to the possibility of recovery in the future, after significant expense and time.[48]

3. Whether the Fee Is Fixed or Contingent

PAGA Counsel has provided representation on a contingency basis, has borne all of the risks and costs of litigation, and will not receive any compensation until recovery is obtained.[49] PAGA Counsel have invested **202.40 hours** performing work in this matter. PAGA Counsel is also requesting reimbursement of litigation costs and expenses of $16,797.29.[50] If PAGA 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. PAGA Counsel are well-experienced in complex wage-and-hour litigation and used that experience to obtain a great result in this matter.[51] The skill and determination that PAGA Counsel has shown throughout the prosecution of the

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[48] Maher Decl., ¶¶ 2-6, 58.
[49] *Id.*, ¶ 66.
[50] *Id.*, ¶ 66, Ex. 4.
[51] *Id.*, ¶¶ 2-6.

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case justifies 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.

4. The Amount Involved and the Results Achieved

The Settlement represents an excellent resolution of this lawsuit, given the uncertainty and risks of further litigation.[52] Had the case not settled, SHEMRAN would have vigorously defended the case, and would have challenged manageability and liability, and also sought a reduction in the amount assessed as civil penalties. SHEMRAN, however, faced risks too, including and not limited to, the risk of trial and the risk of having the Court assess civil penalties. Additionally, preparing for trial would have been extraordinarily expensive for the Parties. At this stage, the settlement is preferred over continued litigation because such resolution saves time and money that would otherwise go to litigation. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery and avoids an uncertain result in the future and additional risk, expense, and delay (e.g., prolonged expert discovery, trial preparation, and appellate review of those proceedings).

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this case, are considerable. PAGA Counsel obtained a settlement that provides for a Gross Settlement Amount of $325,000.00, and it is currently estimated that the Net Settlement Amount available for distribution to the Aggrieved Employees and the State of California, is approximately $164,702.71.[53]

5. The Reputation and Ability of the Attorneys

PAGA 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. PAGA 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.[54]

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[52] Maher Decl., ¶¶ 10, 53.
[53] Settlement Agreement, § 1.15.
[54] Maher Decl., ¶¶ 2-6.

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C. The Lodestar Methodology Also Justifies Approval of the Requested Fees.

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.[55] The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys, and counsel is entitled to compensation for every hour reasonably spent on the matter. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-33.

The reasonableness of hours is assessed by "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447. As set forth above in the Declaration of Travis J. Maher, PAGA Counsel performed significant work in this matter. The Attorney Task and Time Chart sets forth in detail the numerous tasks that PAGA Counsel performed in this case, and the time required for completing those tasks.[56] The chart demonstrates that Lawyers *for* Justice, PC has spent a total of **202.40 hours** on this matter, which is reasonable.

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, and be provided with financial incentives to enforce important rights and protections like those at issue here. *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.*

PAGA Counsel has been actively involved in the prosecution of this case and their work on this matter has precluded other employment. Here, PAGA Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, PAGA Counsel was successful in reaching a settlement of $325,000.00.[57]

[55] *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" and "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."); *see also, e.g., Vizcaino v. Microsoft Corp.,* (9th Cir. 2002) 290 F.3d 1043, 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.").

[56] Maher Decl., ¶ 60, Ex. 3.

[57] *Id*.

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The lodestar method, as a cross-check to the percentage fee sought, strongly supports the reasonableness of the requested attorneys' fees award. Applying the individual hourly rates of the attorneys at Lawyers for Justice, PC who performed 202.40 hours of work in this matter, would place a base lodestar value of $182,104.50 on the services provided by Plaintiff's Counsel. Plaintiff's Counsel seeks an attorneys' fee award of $130,000.00 (equal to 40% of the Total Settlement Amount based on the Settlement Agreement). In light of the time expended, the requested fee award, factoring in the multiplier discussed below, represents a reasonable hourly rate of compensation to Lawyers *for* Justice, PC.

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that the Court approve and grant an attorneys' fees award in the amount of $130,000.00 to PAGA Counsel, which is reasonable and justified on a percentage-basis, and also based on a lodestar cross-check.

VI. REIMBURSEMENT OF PAGA COUNSEL LITIGATION COSTS AND EXPENSES SHOULD BE APPROVED

The Settlement provides for reimbursement of litigation costs and expenses of up to $25,000.00. As set forth in the Declaration of Travis J. Maher, PAGA Counsel seeks reimbursement of $16,797.29 in litigation costs and expenses.[58] These expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement, and is less than the maximum amount allocated under the Settlement Agreement.[59] The cost savings of $8,202.71 will be part of the Net Settlement Amount.[60] Accordingly, the Court is requested to award reimbursement of litigation costs and expenses to PAGA Counsel in the amount of $16,797.29.

VII. THE ADMINISTRATOR EXPENSES PAYMENT SHOULD BE APPROVED

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Xpand Legal Consulting LLC to handle the administration of the Settlement. The fees and expenses of the Administrator are estimated not to exceed $6,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual PAGA Payments checks to the Aggrieved Employees (i.e., Individual PAGA Payments); performing skip-trace searches;

[58] Settlement Agreement § 3.2.1.
[59] *Id*.
[60] *Id*.

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re-mailing the returned Individual PAGA Payments; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Administrator Expenses Payment in the amount of up to $6,000.00 to Xpand Legal Consulting LLC, a necessary third-party for handling the settlement process.

VIII. PLAINTIFF'S GENERAL RELEASE FEE SHOULD BE APPROVED

The Settlement provides for Plaintiff's General Release Fee to be paid to Plaintiff in the amount of $7,500.00 for his broader individual waiver and release of claims with a California Civil Code Section 1542 waiver (set forth in Sections 3.2.1 and 5.1 of the Settlement Agreement).[61] It is reasonable and just for Plaintiff to receive this payment. Plaintiff contributed considerable time and effort to the litigation of this case in order to enforce the California Labor Code on behalf of the State of California and for the benefit of other Aggrieved Employees. Plaintiff discussed his employment with his counsel, gathered and produced relevant documents and information, and provided the facts and evidence necessary to attempt to prove the allegations.[62] 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 Aggrieved Employees.[63]

IX. CONCLUSION

For the reasons discussed above and in the accompanying declarations, the Court is respectfully requested to approve the Settlement, including the plan of allocation and distribution of the Gross Settlement Amount, and permit the filing of a memorandum that exceeds the page limit.

Dated: April 15, 2025

LAWYERS *for* JUSTICE, PC

By: 

Travis J. Maher
Attorneys for Plaintiff

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[61] Settlement Agreement, §§ 3.2.1 & 5.1. The PAGA statute recognizes that a plaintiff employee may pursue or recover other remedies and relief available to the plaintiff employee under state or federal law through an action under PAGA. See, Cal. Lab. Code § 2699(k)(1) (formerly Cal. Lab. Code § 2699(g)(1). As such, it is appropriate for Plaintiff to receive a payment for her broader individual release of claims.

[62] Maher Decl., ¶¶ 67-69; Declaration of Blaine Nickson ("Nickson Decl."), ¶¶ 2-5.

[63] Maher Decl., ¶¶ 67-69; Declaration of Blaine Nickson ("Nickson Decl."), ¶¶ 2-5.