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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

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

Plaintiff,

vs.

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

Defendants.

Case No.: 21STCV33554

Honorable Cherol J. Nellon
Department 14

**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
(Edwin Aiwarzian); Declaration of Plaintiff
(Martha Yamasaki); Declaration of
Defendant (Erik Hansen); and [Proposed]
Order and Judgment filed concurrently
herewith]

Reservation ID: 446895738511
Date: October 3, 2024
Time: 8:30 a.m.
Department: 14

Complaint Filed: September 10, 2021
Trial Date: None Set

PLEASE TAKE NOTICE that on October 3, 2024, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Cherol J. Nellon in Department 14 of the Superior Court of the State of California, for the County of Los Angeles, located at 111 North Hill Street, Los Angeles, California 90012, Plaintiff Martha Yamasaki (“Plaintiff”) will and hereby does move for entry of the following orders:

1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the settlement between Plaintiff and Defendant Everbowl, LLC (“Defendant”) of the claims brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as set forth in the Amended Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwazian, filed concurrently herewith, including, but not limited to, the plan of allocation and distribution of the Total Settlement Amount¹ for payment of the LWDA Payment to the California Labor and Workforce Development Agency (“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;
2. Approving the Net Settlement Amount, estimated to be no less than \$43,054.19, and the distribution of 75 percent thereof to the LWDA (the “LWDA Payment”) and the remaining 25 percent thereof to the Aggrieved Employees (the “Employees’ Portion”), pursuant to Labor Code section 2699(i);
3. Appointing Simpluris, Inc. (“Simpluris” or the “PAGA Settlement Administrator”) to handle the administration of the settlement;
4. Directing Defendant to transmit the Total Settlement Amount of \$111,250.00 into a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement, and directing the PAGA Settlement Administrator to

¹ Capitalized terms not otherwise defined herein are defined as set forth in the Settlement Agreement.

- 1 distribute the Total Settlement Amount in accordance with the Settlement Agreement;
- 2 5. Directing the mailing of Individual Settlement Share checks to the Aggrieved
- 3 Employees along with a Cover Letter, which shall be substantially similar in content
- 4 and form to that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment
- 5 Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *et seq.*)
- 6 Settlement Agreement and Award of Attorneys’ Fees and Costs, General Release Fee,
- 7 and Settlement Administration Costs (“[Proposed] Order and Judgment”), filed
- 8 concurrently herewith;
- 9 6. Awarding \$10,000.00 to Plaintiff Martha Yamasaki as a General Release Fee;
- 10 7. Awarding up to \$8,000.00 to the PAGA Settlement Administrator as Settlement
- 11 Administration Costs; and
- 12 8. Awarding to Lawyers *for* Justice, PC (“Plaintiff’s Counsel”), the amount of \$44,500.00
- 13 as compensation for reasonable attorneys’ fees and \$5,695.81 for reimbursement of
- 14 litigation costs and expenses (together, “Attorneys’ Fees and Costs”), pursuant to
- 15 California Labor Code section 2699(g)(1).

16 The Settlement Agreement and moving and supporting papers for this motion are being

17 concurrently submitted to the California Labor and Workforce Development Agency in

18 conformity with California Labor Code section 2699(l)(2), as stated in the Proof of Service filed

19 concurrently herewith.

20 This motion is made pursuant to California Labor Code section 2699(l)(2), which requires

21 review and approval by the Court of the settlement of a civil action filed pursuant to PAGA, and

22 Rule 3.1113(e) of the California Rules of Court, which permits the Court to extend the page limit

23 for memoranda.

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25 ///

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This motion will be based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declaration of Edwin Aiwarzian, the Declaration of Plaintiff Martha Yamasaki, 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.

Respectfully,

Dated: August 23, 2024

LAWYERS for JUSTICE, PC

By:



Edwin Aiwarzian
Matthew Richard Soto
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	SUMMARY OF MOTION	1
II.	BACKGROUND	3
III.	SUMMARY OF THE SETTLEMENT TERMS	6
A.	Aggrieved Employees	6
B.	Funding and Distribution of the Total Settlement Amount.....	6
C.	Calculation and Distribution of the Net Settlement Amount.....	7
D.	The Scope of the Release in the Settlement Agreement	8
E.	No Right to Object to, or Opt Out of, the Settlement.....	9
IV.	STANDARDS FOR APPROVAL OF PAGA SETTLEMENT	10
V.	THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED.....	12
A.	The Factors Giving Rise to a Presumption of Fairness Exist.....	12
B.	The Relative Strength of the PAGA Claim and the Range of Possible Outcomes in the Litigation Strongly Favor Approval of the Settlement.....	14
C.	The Settlement Avoids Risky, Complex, and Lengthy Further Litigation.....	18
D.	The Settlement is Fair, Adequate, and Reasonable.....	19
E.	The Experience and Views of Plaintiff’s Counsel Favor Approval of the Settlement	21
VI.	THE REQUESTED ATTORNEYS’ FEES AWARD IS FAIR AND REASONABLE, AND SHOULD BE APPROVED	21
A.	A Fee Award of \$44,500.00, which is 40 percent of the Entire Fund Is Appropriate	21
B.	The Requested Fee Award Is Reasonable Based on the Factors Considered in Determination of Fee Awards	25
1.	<i>Time & Labor.....</i>	25
2.	<i>The Skill Required to Perform Legal Services Properly.....</i>	26

3.	<i>The Value of the Settlement.....</i>	27
4.	<i>Whether the Fee Is Fixed or Contingent.....</i>	27
5.	<i>The Amount Involved and the Results Achieved.....</i>	28
6.	<i>The Reputation and Ability of the Attorneys.....</i>	28
VII.	COSTS TO BE REIMBURSED TO PLAINTIFF’S COUNSEL ARE FAIR AND REASONABLE AND SHOULD BE APPROVED	29
VIII.	THE PROPOSED COVER LETTER TO THE AGGRIEVED EMPLOYEES SHOULD BE APPROVED.....	29
IX.	THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED	30
X.	THE PROPOSED GENERAL RELEASE IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED	30
XI.	CONCLUSION	32

TABLE OF AUTHORITIES

Cases

<i>Aguirre v Genesis Logistics</i> (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820	20
<i>Allen v American Multi-Cinema</i> (July 24, 2016) Alameda County Superior Court No. RG11585502	20
<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court.</i> (2009) 46th Cal.4th 9939	
<i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969	9, 10
<i>Arnold v San Diego Second Chance Program</i> (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375	20
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F.Supp. 610	14
<i>Carrington v Starbucks Corp.</i> (2018) 30 Cal.App.5th 50	20
<i>Consumer Privacy Cases</i> (2009) 175 Cal. App. 4th 545	23
<i>DCH Auto Wage and Hour Cases</i> (May 2017) Los Angeles Superior Court, Case No. JCCP4833	20
<i>Driscoll v Granite Rock</i> (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426	20
<i>edroza v. PetSmart, Inc.</i> (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667	10
<i>Felczer v Apple Inc.</i> (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593	20
<i>Fleming v Covidien, Inc.</i> , No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 ..	20
<i>Horton v. Jones</i> (1972) 26 Cal.App.3d 952	15
<i>In re Taco Bell Wage and Hour Actions</i> (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557	20
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> , (2014) 58 Cal.4th 348	9, 17
<i>Kirkorian v. Borelli</i> (N.D. Cal. 1988) 695 F.Supp. 446	14
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	23
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	23
<i>Magadia v. Wal-Mart Assocs.</i> (N.D. Cal. 2019) 384 F.Supp. 3d 1058	20
<i>Morales v Bridgestone Retail Operations LLC</i> (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244	20

1	<i>Ochoa-Hernandez v. CJADERS Foods, Inc.</i> (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777 . 11, 12
2	<i>Resendez v. Bridgestone Retail Operations, LLC</i> , Los Angeles Superior Court, Case No. BC596892 (June 2016) 11
3	<i>Satchell v. Fed. Express Corp.</i> (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010..... 13
4	<i>Stafford v. Dollar Tree Stores, Inc.</i> (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396..... 15
5	<i>Thomas v. Aetna Health of Cal., Inc.</i> (E.D. Cal. June 2, 2011) 2011 WL 2173715..... 10
6	Statutes
7	Cal. Lab. Code § 2699(g)(1)(i) 21
8	Cal. Lab. Code § 2699(j) 11
9	Cal. Lab. Code § 2699(l)(2)1, 10, 11
10	Cal. Lab. Code § 2699.3..... 10
11	Cal. Lab. Code §§ 2698, <i>et seq.</i> 1

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Martha Yamasaki (“Plaintiff”) moves, pursuant to California Labor Code section 2699(l)(2), for approval of the Amended Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), dated December 13, 2023, between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and Defendant Everbowl, LLC (“Defendant”), pursuant to California Labor Code section 2699(l)(2). A true and correct copy of the Settlement Agreement is attached as “**Exhibit 1**” to the Declaration of Edwin Aiwasian (“Aiwasian Decl”), filed concurrently herewith.

Subject to the Court’s approval, 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 Amount² of \$111,250.00, subject to possible increase pursuant to Section 3(a)(5) of the Settlement Agreement. (Settlement Agreement, §§ 3(a)-(b).)

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 hourly-paid or non-exempt individuals employed by Defendant within the State of California at any time during the PAGA Period (“Aggrieved Employees”). (*Id.*, §§ 3(a)(1)-(5).) PAGA Release Period is defined as the period of January 19, 2020 through January 15, 2023. (*Id.*, § 3(a)(5).)

The Net Settlement Amount will consist of the Total Settlement Amount less the amounts approved by the Court for: 1) Attorneys’ Fees and Costs, 2) General Release Fee to Plaintiff, and 3) Settlement Administration Costs. (*Id.*, § 3(a)(1)-(4).) Consistent with Labor Code section 2699(i), the Net Settlement Amount will be distributed as follows: 75 percent to the Labor and

² Capitalized terms not otherwise defined herein are defined as set forth in the Settlement Agreement.

Workforce Development Agency (the “LWDA Payment”), and 25 percent to the Aggrieved Employees (the “Employees’ Portion”). (Settlement Agreement, § 3(a)(5).) Each Aggrieved Employee will be entitled to payment of his or her *pro rata* share of the Employees’ Portion, based on the number of pay periods each Aggrieved Employee worked during the period April 12, 2020 through January 31, 2022 (“Compensable Pay Periods”). (*Id.*, § 7(b).) The payments to Aggrieved Employees will be treated and reported for tax purposes as one hundred percent (100%) penalties and the PAGA Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.³ The Aggrieved Employees are estimated to consist of 699 individuals who worked approximately 7,000 Compensable Pay Periods. (*Id.*, § 3(a)(5).)

The below chart summarizes the Total Settlement Amount, the amounts requested by Plaintiff and Plaintiff’s Counsel for Attorneys’ Fees, Attorneys’ Costs, the General Release Fee, and Settlement Administration Costs, the resulting Net Settlement Amount, and the division of the Net Settlement Amount for the LWDA Payment and Employees’ Portion.

Item	Amount
Total Settlement Amount	\$111,250.00
Attorneys’ Fees Requested	\$44,500.00
Attorneys’ Costs Requested	\$5,695.81
General Release Fee to Plaintiff Requested	\$10,000.00
Settlement Administration Costs	\$8,000.00
Net Settlement Amount	\$43,054.19
LWDA Payment (75% of Net Settlement Amount)	\$32,290.64
Employees’ Portion (25% of Net Settlement Amount)	\$10,763.55

set forth in the above chart, if the Court approves the amounts requested for Attorneys’ Fees, Attorneys’ Costs, the General Release Fee to Plaintiff, and Settlement Administration Costs,

³ *Id.*, § 7(b)(1).

1 then the Net Settlement Amount will be \$43,054.19.⁴ The LWDA Payment will be \$32,290.64,
2 and the Employees' Portion will be \$10,763.55. (Settlement Agreement, § 3(a)(5).)

3 As detailed below, the Settlement Agreement warrants approval because it is "fair,
4 reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations,
5 deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.*
6 (2021) 72 Cal.App.5th 56, 77.) The Settlement is the result of arm's length negotiations between
7 Plaintiff and Defendant, including two mediation sessions, on March 25, 2022 and September 15,
8 2023, with Hon. Lesley Green (Ret.), a well-respected mediator experienced in mediating complex
9 labor and employment matters. (Aiwazian Decl., ¶ 13 & 15.)

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 strengths of
12 the PAGA claim, the risk, expense, and complexity of further litigation, the benefit conferred by
13 the Settlement, the scope of the release of claims, the experience and views of counsel, and the
14 reasonableness of the Net Settlement Amount. (Aiwazian Decl., ¶ 16-21 & 26.) Plaintiff
15 respectfully requests that this Court approve the Settlement, approve the LWDA Payment, and
16 award the Attorneys' Fees and Costs, Settlement Administration Costs, and Individual
17 Enhancement Award, which are provided for by the Settlement and requested herein.

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

22 **II. BACKGROUND**

23 During the PAGA Period, April 12, 2020 through January 31, 2022, Defendant owned and
24 operated restaurants throughout the United States that sold fruit bowls and smoothies, including
25 approximately 30 restaurants in California. Plaintiff is a former employee of Defendant.

26
27 ⁴ \$111,250.00 (Total Settlement Amount) less \$44,500.00 (Attorneys' Fees) less \$5,695.81 (Attorneys' Costs) less
28 \$10,000.00 (General Release Fee) less \$8,000.00 (Settlement Administration Costs) equals \$43,054.19 (Net Settlement Amount).

On July 7, 2021, prior to commencing this lawsuit, Plaintiff provided written notice to the LWDA, via online submission, and to Defendant, via certified mail, of her intent to assert a claim under PAGA, the basis for her claim, and the specific provisions of the Labor Code alleged to have been violated. (Aiwazian Decl., ¶ 10, “EXHIBIT 2”). Aside from confirmation of receipt for Plaintiff’s notice, the LWDA did not respond. (Aiwazian Decl., ¶ 10.)

On September 10, 2021, Plaintiff, individually and on behalf of other aggrieved employees and the State of California, filed her Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) against Defendant in the Los Angeles County Superior Court (“Court”), Case No. 21STCV33554 (the “Action”). Plaintiff alleges that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and other aggrieved employees, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide compliant meal and rest periods and associated premiums, failing to pay timely wages during employment and upon termination of employment, failing to provide complete and accurate itemized wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

On November 29, 2021, Defendant answered the Operative Complaint. 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 also 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 PAGA.

The Parties agreed to participate in mediation. In advance of the mediation, Plaintiff’s Counsel obtained, through informal discovery, substantial information and documents from Defendant to enable Plaintiff’s Counsel to analyze and evaluate the potential PAGA civil penalties at issue. (Aiwazian Decl., ¶ 16.) The documents and data analyzed by Plaintiff’s counsel included Plaintiff’s employment records, a sampling of aggrieved employee time and pay data, Defendant’s Employment Handbook and various agreements and acknowledgments (such as Defendant’s Meal

Break Waiver Agreement, Statement and Acknowledgment of At-Will Employment, Arbitration Acknowledgment, Acknowledgment of Receipt and Review of Defendant’s Employee Handbook, and Non-Disclosure Agreement). (*Id.*)

On March 25, 2022, the Parties participated in a full-day mediation with Hon. Lesley Green (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters. (Aiwazian Decl., ¶ 13.) With the aid of the mediator and the mediator’s evaluation, the Parties reached a settlement following the mediation on March 25, 2022 (the “First PAGA Settlement”), which provided for a Total Settlement Amount of \$285,000.00, Attorneys’ Fees of up to \$114,000, Attorneys’ Costs of up to \$9,000.00, a General Release Fee of up to \$10,000, and Settlement Administration Costs of up to \$8,000. (*Id.*)

On December 12, 2022, Plaintiff filed a Motion for Approval of the First PAGA Settlement. (*Id.*, ¶ 14.)

On January 5, 2023, the Court, the Honorable Terry A. Green presiding, denied Plaintiff’s Motion for Approval of the PAGA Settlement. (*Id.*, ¶ 14.) The Court reasoned that “Counsel’s fees cannot be taken out of the amount of settlement of the penalty claims. The value of the substantive penalty claims and the amount of recoverable attorney’s fees must be calculated and adjudicated (if necessary) as entirely separate items.” (January 5, 2023 Order, at p. 4.) This reasoning is contrary to the Los Angeles County Superior Court’s Model PAGA Settlement Agreement, which expressly provides, for instance, that “[t]he Gross Settlement Amount will be used to pay,” *inter alia*, “PAGA Counsel Fees Payment.” (LASC CIV 298, Model PAGA Settlement Agreement, § 1.10.) The reasoning in the Court’s January 5, 2023 Order is also contrary to orders from other trial courts, approving PAGA settlements where counsel’s fees were paid from the gross or total settlement amount. (*See, e.g., Middleton v. Halliburton Energy Services, Inc.* (E.D. Cal. May 2, 2024) No. 1:19-cv-01747-CDB, 2024 WL 1930691, at *25 [granting counsel fee award calculated as 33 percent of gross settlement payment in PAGA settlement].)

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On September 15, 2023, the Parties participated in a second mediation with the Hon. Lesley Green (Ret.), which yielded the Settlement Agreement that Plaintiff now moves the Court to approve. (*Id.*, ¶ 15.) As of this second mediation, Defendant has been exposed to additional significant financial distress. (Declaration of Erik Hansen (“Hansen Decl.”), ¶¶ 3 & 4.) As a result, the Total Settlement Amount agreed to per the second mediation, \$112,250.00, is significantly less than the total settlement amount of \$285,000 agreed to in the First Settlement Agreement.

On December 13, 2023, the Parties executed a Private Attorneys General Act Settlement Agreement and Release which was latter amended and fully executed on July 29, 2024. (Aiwazian Decl., ¶ 8, Ex. 1.) The Settlement Agreement and the papers for this motion are being submitted to the LWDA in conformity with California Labor Code section 2699(l)(2), concurrently with this filing.⁵

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Settlement pertains to the following allegedly aggrieved employees:
All current and former hourly-paid or non-exempt individuals employed by Defendant within the State of California at any time during the PAGA Period. (Settlement Agreement, § 3(a)(5).)

Defendant represents that during the PAGA Period there were approximately 699 Aggrieved Employees who worked approximately 7,000 Compensable Pay Periods. (*Id.*)

B. Funding and Distribution of the Total Settlement Amount

The Settlement Agreement provides that Defendant will pay a Total Settlement Amount of \$111,250.00, subject to possible increase (Settlement Agreement, §§ 3(a) & 3(a)(5)). If the Court approves the amounts requested by Plaintiff and Plaintiff’s Counsel, the Net Settlement Amount will be the Total Settlement Amount less the following:

- (1) Attorneys’ Fees of \$44,500.00 (*id.*, § 3(a)(1));
- (2) Attorneys’ Costs of \$5,695.81 (*id.*);

⁵ The Court is referred to the concurrently-filed Proof of Service, which confirms submission of the papers to the LWDA.

(3) General Release Fee of \$10,000.00 to Plaintiff (*id.*, § 3(a)(2));

(4) Settlement Administration Costs of up to \$8,000.00 to the PAGA Settlement Administrator (*id.*, § 3(a)(3)).

Thus, assuming the Court approves the above amounts, the Net Settlement amount will be \$43,054.19.

C. Calculation and Distribution of the Net Settlement Amount

Within 6 months of the Court’s order granting approval of the Settlement, Defendant will transmit the Total Settlement Amount to a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement. No later than 14 calendar days after the Court’s order granting approval of the Settlement, Defendant will provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (“Aggrieved Employees List”), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) Social Security number; and (v) the number of Compensable Pay Periods worked by each Aggrieved Employee during the PAGA Period. (Settlement Agreement, §§ 7(a), 7(c)(1).)

As required by Labor Code section 2699(i), 75 percent of the Net Settlement Amount will be distributed to the LWDA, and the remaining 25 percent will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods. (Settlement Agreement, § 3(a)(5).) Assuming the Net Settlement Amount is \$43,054.19, the LWDA Payment will be \$32,290.64, and the Employees’ Portion will be \$10,763.55.

To calculate the Individual Settlement Share due to a particular Aggrieved Employee, the PAGA Settlement Administrator will (i) divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees’ Portion to arrive at each Aggrieved Employee’s Individual Settlement Share. (Settlement Agreement, § 7(b).)

The payments to Aggrieved Employees for their Individual Settlement Shares are considered one hundred percent (100%) penalties to be reported on IRS Form 1099, if required.

(*Id.*, § 7(b)(1).)

No later than 14 calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator will mail the Court-approved Cover Letter and Individual Settlement Share checks (together, the “PAGA Settlement Package”) to all Aggrieved Employees by first-class United States mail. (Settlement Agreement, § 7(c)(3).) For each PAGA Settlement Package that is returned as undeliverable within 30 calendar days of the initial mailing, the PAGA Settlement Administrator will promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search, and will attempt one re-mailing of the PAGA Settlement Package. (*Id.*)

The Individual Settlement Share checks issued to Aggrieved Employees will remain valid for 90 calendar days, and thereafter will be cancelled. (*Id.*, § 7(c)(4).) 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 his or her respective Individual Settlement Share(s). (*Id.*)

D. The Scope of the Release in the Settlement Agreement

Upon the Court’s entry of an order and judgment approving the Settlement Agreement and the full funding of the Total Settlement Amount, Plaintiff and the State of California with respect to Aggrieved Employees will be deemed to have knowingly and voluntarily released and forever discharged Released Parties, to the full extent permitted by law, of and from the Action and Released Claims.

The “Released Parties” means Defendant, including Defendant’s parent corporation, franchisees, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs.

The “Released Claims” means any and all claims, arising during the PAGA Period, for civil penalties under the California Labor Code, Wage Orders, and/or regulations, pursuant to California Labor Code section 2698, et seq. (“PAGA”) as well as any interest, fees, and costs available under PAGA, including but not limited

to, for failure to pay minimum, regular, and overtime, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, failure to reimburse necessary business-related expenses and costs, and for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including inter alia, Wage Orders 4-2001 and 5-2001.

(Settlement Agreement, § 8(a).)

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

“[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior Court* (2017) 3 Cal.5th 531, 547 n.4 (quoting *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 436.) “Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5. A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are “nonparty aggrieved employees who are not given notice of, and an opportunity to be heard in, a representative action that is not brought as a class action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other potentially aggrieved employees parties” to the action and no “due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and whatever personal claims the absent employees might have for relief are not at stake.” *Williams, supra*, 547 n.4 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

“[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]” *Williams, supra*, at 548 (internal references omitted, citing *Arias, supra*, 986.) A “judgment in such an action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding” because “the employee

plaintiff represents the same legal right and interest as state labor law enforcement agencies[.]" "collateral estoppel applies [...] against those for whom the party acted as an agent or proxy[.]" and "[w]hen a government agency is authorized to bring an action on behalf of an individual or in the public interest, and a private person lacks an independent right to bring the action, a person who is not a party but who is represented by the agency is bound by the judgment as though the person were a party." *Arias, supra*, at 985-86 (citations omitted); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (aggrieved employee cannot opt out of a PAGA settlement).

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

IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT

PAGA allows an "aggrieved employee" to bring a civil action on behalf of himself or herself and on behalf of other aggrieved employees and the State of California to recover civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer. Cal. Lab. Code § 2699(a). Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. Cal. Lab. Code § 2699(a). Plaintiff has complied. (Aiwazian Decl., ¶ 10, Ex. 2.)

The settlement of a PAGA action requires court approval. *See* Cal. Lab. Code § 2699(l)(2) ("The superior court shall review and approve any settlement of any civil action filed pursuant to this part."). However, "[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action" and, therefore, does not have to meet the requirements of a class action. *See 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); see also *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; and *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court's review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from, and simpler than, the process for approval of a class action settlement. A

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

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

25 A PAGA settlement is a settlement of claims for penalties and other remedies which the
26 LWDA could assess and collect on behalf of employees without their involvement or approval.
27 “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
28

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

“[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) Factors that “can be useful in evaluating the fairness of a PAGA settlement” include “the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount.” (*Id.*) In the comparable context of class action settlements, courts have held that a settlement is entitled to “a presumption of fairness . . . where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objections is small.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The fourth factor is not applicable to PAGA settlements, as there is no class notice provided to aggrieved employees. But the first three factors are applicable and are satisfied here.

First, the Settlement is presumptively fair because it is the product of non-collusive, arm’s-length negotiations. The Parties reached the present Settlement Agreement only after participating in two mediations (on March 25, 2022 and September 15, 2023) with the assistance of Hon. Lesley Green (ret.), an experienced neutral knowledgeable in complex labor and employment matters. (Aiwazian Decl., ¶¶ 13 & 15.) The fact that the Settlement Agreement was the product of two

1 mediations with a respected, experienced mediator supports a finding that the Settlement
2 Agreement is fair, adequate, and reasonable. (See, e.g., *Fritsch v. Swift Transportation Co. of*
3 *Arizona, LLC* (C.D. Cal. Jan. 4, 2022) No. 5:17-cv-02226-VAP, 2022 WL 17095951, at *2 [noting
4 that the settlement agreement was the product of three mediation sessions and “therefore
5 presumptively the product of a non-collusive, arms-length negotiation”]); see also *Satchell v. Fed.*
6 *Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the “assistance of
7 an experienced mediator in the settlement process confirms that the settlement is non-collusive”).

8 Second, Plaintiff and Plaintiff’s Counsel engaged in investigation and informal discovery
9 in advance of the mediations to evaluate the strengths and weaknesses of Plaintiff’s claims and
10 the potential value of the PAGA claim, and risks and expenses of litigating this claim through
11 trial. (Aiwazian Decl., ¶ 16). The information and documents reviewed included Plaintiff’s
12 employment records, a sampling of Aggrieved Employee time and pay data, Defendant’s internal
13 memorandum, Defendant’s Employee Handbook, various agreements and acknowledgments
14 (such as Defendant’s Meal Break Waiver Agreement, Statement and Acknowledgement of At-
15 Will Employment, Arbitration Acknowledgement, Acknowledgement of Receipt and Review of
16 Defendant’s Employee Handbook, and Non-Disclosure Agreement), and Defendant’s operations
17 and employment practices, policies, and procedures documents (such as Defendant’s Paid Time
18 Off Policy, Sick Leave Policy, Workplace Code of Conduct & Behavior Policy, and Wage and
19 Hour Policies). (*Id.*) Counsel for the parties undertook significant investigation, and also invested
20 time reviewing and analyzing relevant documents and data to evaluate Plaintiff’s claims and
21 allegations, including, and not limited to, calculating the potential monetary recovery under
22 PAGA. (*Id.*)

23 Third, Plaintiff’s Counsel has extensive experience handling representative and class
24 action wage-and-hour litigation and used that experience to achieve a settlement recovery for
25 Plaintiff, the State of California, and the Aggrieved Employees. (Aiwazian Decl., ¶¶ 2-7.) Based
26 on that experience, Plaintiff’s Counsel believes that the settlement is a fair, adequate, and
27 reasonable resolution of this matter. (*Id.*, ¶ 11 & 26.) Therefore, the Court should give
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considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of arm's length bargaining. (See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 [opinion of experienced counsel is entitled to considerable weight]; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 [recommendations of plaintiffs' counsel should be given a presumption of reasonableness

Because the Settlement Agreement was the product of arm's-length negotiations between adversarial parties (including via two mediations with an experienced mediator), was based on Plaintiff's Counsel's review and analysis of substantial information, data, and documents obtained through informal discovery, and, in the opinion of Plaintiff's Counsel, is a fair result for Plaintiff, the Aggrieved Employees and the State, the Court should approve the Settlement Agreement as fair, adequate and reasonable.

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, she 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 properly pay minimum, regular, and/or overtime wages, failing to provide compliant meal-and-rest periods and associated premiums, failing to timely pay wages during employment and upon termination of employment, failing to provide complete and accurate wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

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

4 Defendant also maintained several defenses to Plaintiff's theory of liability, which, if
5 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
6 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and
7 continues to have, legally-compliant employment policies and practices throughout the time
8 period at issue. (Aiwazian Decl., ¶ 19.) Defendant denies that it ever violated any provision of
9 the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks
10 penalties under the PAGA. (*Id.*) Defendant further denied, and continues to deny, that the lawsuit
11 is appropriate for representative treatment for any purpose other than settlement. (*Id.*)

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

25 Defendant also argued that an important feature of PAGA is that the Court retains
26 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to
27 do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory."
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1 See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.* (2012)
2 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties
3 awarded to an employee based upon discretionary factors). Defendant maintained, and continues
4 to maintain, that it had and continues to have, legally-compliant employment policies and practices
5 throughout the time period at issue. (Aiwazian Decl., ¶ 19.) Defendant denies that it ever violated
6 any provision of the California Labor Code. (Aiwazian Decl., ¶ 21.) Even if, *arguendo*, such
7 violations occurred, which Defendant denies, Defendant contended that said violations would only
8 be considered “initial violations” and thus heightened “subsequent violation” penalties were not
9 warranted. See Cal. Lab. Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163
10 Cal.App.4th 1157, 1208-09 (“Until the employer has been notified that it is violating a Labor Code
11 provision [...], the employer cannot be presumed to be aware that its continuing underpayment of
12 employees is a ‘violation’ subject to penalties.”).

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

19 Importantly, Defendant also contended that the claims of Plaintiff and other Aggrieved
20 Employees are subject to enforceable agreements that included, *inter alia*, binding individual
21 arbitration and class and collective action waiver provisions. (Aiwazian Decl., ¶ 20.) There is
22 uncertainty regarding PAGA claims and arbitration agreements due to decisions of the high courts
23 and recent amendment of the PAGA Statute. (*Id.*) For example, as a result of a recent United
24 States Supreme Court decision, it may be more likely that employment agreements containing
25 arbitration terms will impact the viability of adjudication of PAGA claims in the judicial forum,
26 which is relevant to this matter in light of the arbitration agreements that Defendant obtained from
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its employees. *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.⁶ Recently, the California Supreme Court confirmed that an aggrieved employee who has been compelled to arbitrate claims under PAGA that are premised on California Labor Code violations actually sustained by the plaintiff still maintains statutory standing to pursue a PAGA claim arising out of events involving other employees through a PAGA representative claim. *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104. Nevertheless, while the arbitrable and non-arbitrable components of an action are not severed from one another, it is still possible that trial courts will stay the representative/non-individual PAGA claims pending arbitration of a plaintiff's individual PAGA claims. If a plaintiff is determined to not be an "aggrieved employee" for PAGA purposes in arbitration, issue preclusion may apply and the plaintiff may lose standing to pursue non-individual PAGA claims. *Id.* at 693.

While Plaintiff disagrees with Defendant's contentions and maintains that her PAGA claim has merit, in reaching the settlement, Plaintiff and her counsel took into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or appeals. (*Id.*, ¶ 22.) Finally, an additional consideration in evaluating the propriety of the Settlement Agreement was Defendant's disclosure that as to its financial difficulties, which raises the concern that, if this matter litigated to trial, Defendant may not have the ability to fund any judgment obtained. (Hansen Decl. ¶ 3 & 4.)

Furthermore, the recent amendment of the PAGA statute enacted on July 1, 2024, adopting, *inter alia*, modified standing requirements, codifying a manageability requirement,

⁶ Ghosh Decl., ¶ 20. 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 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.

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. (*Id.*) As such, at the time that the Parties reached the settlement, and also now, there is uncertainty regarding the PAGA claim.

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).

Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the PAGA claim and allegations, based in part on analysis of substantial documentation and information provided by Defendant to Plaintiff via informal discovery in advance of mediation, as described above. (Aiwazian Decl., ¶ 13 & 16.)

Absent settlement, the Parties would have conducted extensive formal discovery, including propounding written discovery requests as well as multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendant indicated that it would aggressively litigate this case. (Aiwazian Decl., ¶ 19.) Even if Defendant failed on its defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings. Additionally, there is a real possibility that Plaintiff would recover nothing, either for herself or on behalf of the State of California or other Aggrieved Employees after years of costly and labor-intensive litigation.

Further, given Defendant’s representations as to its financial difficulties (Hansen Decl., ¶¶ 3 & 4), there is also a significant risk that, even if this matter proceeded to trial and Plaintiff prevailed, Defendant would be unable to pay the resulting judgment.

1 Avoiding the aforementioned risks and the likelihood of future contentious litigation,
2 which would involve significant fees and costs, favors approval of the Settlement.

3 **D. The Settlement is Fair, Adequate, and Reasonable**

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

8 Here, the Settlement provides significant benefits to the State of California and the
9 Aggrieved Employees and falls well within the range of acceptable settlements under the
10 circumstances. Defendant has agreed to pay a Total Settlement Amount of \$111,250.00, subject
11 to possible increase pursuant to the Settlement Agreement, which encompasses the Net Settlement
12 Amount, Attorneys’ Fees and Costs, Settlement Administration Costs, and the General Release
13 Fee. (Settlement Agreement, §§ 3(a), 3(a)(1)-(5).) If the Court approves the requested amounts
14 for Attorneys’ Fees and Costs, Settlement Administration Costs, and the General Release Fee, the
15 Net Settlement Amount would be \$43,054.19, of which \$10,763.55 would be distributed to
16 Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods, and
17 \$32,290.64 would be distributed to the LWDA. There is no reason to doubt the fairness of the
18 proposed plan of allocation of the Net Settlement Amount as it fully complies with California
19 Labor Code section 2699(i).

20 The Settlement is a compromise of highly disputed claims. Plaintiff and her counsel
21 recognize the expense and length of continued proceedings necessary to litigate the matter through
22 trial and any possible appeals. (Aiwazian Decl., ¶ 22.) Plaintiff and her counsel have also taken
23 into account the uncertainty and risk of the outcome of further litigation, and the difficulties and
24 delays inherent in such litigation. (*Id.*) Plaintiff and her counsel are also aware of the burdens of
25 proof necessary to establish liability, both generally and in response to Defendant’s defenses
26 thereto, and the difficulties in establishing Defendant’s liability for, and the right to recover,
27 penalties on behalf of Plaintiff, the State of California, and other Aggrieved Employees.

(Aiwazian Decl., ¶ 18.) Plaintiff and her counsel have also taken into account Defendant's agreement to enter into a settlement that confers relief upon the Aggrieved Employees and the State of California. (Aiwazian Decl., ¶ 22.)

Considering all of the facts in this case, Plaintiff and her 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. (Aiwazian Decl., ¶ 26.)

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 cases⁷ and the settlement of PAGA claims in other cases.⁸ Here, the value obtained for settlement of the PAGA claim is fair given

⁷ *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp. 3d 1058, 1100-1101, 1103-1104, 1111 (finding that, under Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA penalties as the Court sees fit" and reducing the PAGA penalty award significantly from the maximum penalties possible); *Morales v Bridgestone Retail Operations LLC* (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244 (of \$7 million PAGA penalties requested, the court awarded \$425,000); *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty rate to \$5 per violation); *Arnold v San Diego Second Chance Program* (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375 (no PAGA penalties awarded); *Felczer v Apple Inc.* (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593 (no PAGA penalties awarded); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557 at *41 (the court declined to award PAGA penalties after trial); *Allen v American Multi-Cinema* (July 24, 2016) Alameda County Superior Court No. RG11585502 (no PAGA penalties awarded); *Atempa v Pama* (July 31, 2015) San Diego County Superior Court (of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00); *Driscoll v Granite Rock* (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426 (the court declined to award PAGA penalties); *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at **8-9 (of \$2,800,000 PAGA penalties requested, the court awarded \$500,000); *Aguirre v Genesis Logistics* (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820 at **6-7 (of \$1,800,000 PAGA penalties requested, the court awarded \$500,000); *Halevi v Aroma Bakery Café, Inc.*, Los Angeles County Superior Court No. 468146 (Aug. 30, 2013) (the court declined to award PAGA penalties after trial awarding wages to class on the basis that, *inter alia*, the lawsuit was not prompted by availability of PAGA penalties, penalties were not necessary to remedy ongoing or future violations, corporate defendants corrected violations and were no longer in business, and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory).

⁸ See, e.g., *DCH Auto Wage and Hour Cases* (May 2017) Los Angeles Superior Court, Case No. JCCP4833 (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit).

Defendant's financial limitations, (Hansen Decl. ¶¶ 3 & 4), 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. (Aiwazian Decl., ¶ 2-7.) 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 monetary benefits provided for by the Settlement. (Aiwazian Decl., ¶ 26.) Furthermore, courts have acknowledged that "the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]" *Williams, supra*, 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

VI. THE REQUESTED ATTORNEYS' FEES AWARD IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

A. A Fee Award of \$44,500.00, which is 40 percent of the Entire Fund Is Appropriate

Total Settlement Amount. Plaintiff's Counsel respectfully submits that this amount of up to \$44,500.00 which is 40% of the Total Settlement Amount, (assuming the Total Settlement Amount remains \$112,500.00)⁹, is reasonable and warrants approval. The requested attorneys' fees award is commensurate with: (1) the risk that Plaintiff's Counsel took in bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that Plaintiff's Counsel has shown, (4) the results that Plaintiff's Counsel has achieved in the case, (5) the value that Plaintiff's Counsel has achieved in the case, and (6) the other cases that Plaintiff's Counsel has turned down in order to devote its time and effort to this case.

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2 Plaintiff's Counsel is entitled to recover reasonable attorneys' fees and costs as a matter of
3 right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) (" "). Plaintiff's Counsel is also entitled to
4 fees and costs under California Code of Civil Procedure section 1021.5, as the instant PAGA
5 action is by definition "for the benefit" of others and secures monetary recovery for a large number
6 of Aggrieved Employees, as well as the State of California. *See Estrada v. FedEx Ground Package*
7 *Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17 (recognizing that recovery obtained on behalf of 209
8 individuals satisfies the "significant benefit," "public interest," and "large class of persons"
9 requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff's personal
10 motivation). The settlement will also benefit the LWDA in enforcing labor laws and educating
11 "employers and employees about their rights and responsibilities under [the California Labor
12 Code]." Cal. Lab. Code § 2699(i).

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

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

26 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
27 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
28

1 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *see also Laffitte, supra*, 1 Cal.5th 480 at 506
2 (holding that “trial court did not abuse its discretion in using [the percentage of fund method], in
3 part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is the
4 best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001)
5 24 Cal.4th 1122, 1132.

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

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

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

11 Plaintiff's Counsel has litigated this case since it was commenced, with the very real
12 possibility of an unsuccessful outcome and no fee recovery of any kind. (Aiwazian Decl., ¶ 27.)
13 Plaintiff's Counsel undertook significant investigation, and also invested time reviewing and
14 analyzing relevant information, documents, and data to evaluate the allegations, including, and
15 not limited to, calculating the potential monetary recovery under PAGA. (*Id.*, ¶ 13.) Other work
16 performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with
17 Defendant's counsel regarding the pleadings, case management, mediation, settlement
18 negotiations, and settlement, among other issues; case strategy and analysis; researching, drafting,
19 reviewing, and revising pleadings, court filings, the mediation brief, settlement agreement, and
20 settlement approval motion papers,; and preparing for and attending mediations and settlement
21 negotiations. (Aiwazian Decl., ¶ 16.)

22 Further, the percentage rate sought here (40 percent) is justified by Plaintiff's Counsel
23 extensive experience in complex wage-and-hour litigation, which Plaintiff's Counsel applied to
24 obtain a great result for Plaintiff, the Aggrieved Employees and the State of California. (*Id.*, ¶¶ 4-
25 7.) Considering the amount of fees requested, work performed, risks incurred, results obtained,
26 and experience of Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the
27 requested attorneys' fees are reasonable and should be awarded.

**B. The Requested Fee Award Is Reasonable Based on the Factors Considered in
Determination of Fee Awards**

The factors which courts consider in determining whether fee awards are reasonable, all of which support the fee award requested by Plaintiff's Counsel, are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772. Some of the most relevant factors to this Court's fee determination will be addressed below.

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

1. *Time & Labor*

Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures. (Aiwazian Decl., ¶ 16.) During the litigation of the Action, Plaintiff's Counsel interviewed and obtained information from Plaintiff, Defendant, and other sources, conducted legal research,

1 reviewed and analyzed a large volume of documents and data, prepared for and attended
2 mediation, evaluated the PAGA claim, and calculated the potential monetary recovery under
3 PAGA. (*Id.*) Plaintiff's Counsel also met and conferred with Defendant's counsel regarding the
4 pleadings, case management, mediation, settlement negotiations, and settlement, among other
5 issues. (*Id.*) Plaintiff's Counsel performed other work including, *inter alia*, case strategy and
6 analysis; researching, drafting, reviewing, and revising pleadings, court filings, the mediation
7 brief, settlement agreement, and settlement approval motion papers, claims evaluation and
8 analysis; preparing for and participating in settlement negotiations and the mediation; and
9 appearing for court proceedings. (*Id.*)

10 Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary
11 to prosecute the case with maximum efficiency and has fully and actively participated in the
12 litigation process. (Aiwazian Decl., ¶ 23.) In light of the value of time expended and the carrying
13 of costs involved in this litigation, the requested attorneys' fees award is fair, adequate, and
14 reasonable.

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

16 The skill required to properly litigate this case is evident not only in the results achieved,
17 but in the steps necessary to reach the same. Defendant retained highly-respected counsel to
18 represent its defenses. (Aiwazian Decl., ¶ 17.) Defendant and its counsel felt very strongly about
19 Defendant's ability to prevail on the merits and avoid representative adjudication of the PAGA
20 claim. (*Id.*) Plaintiff and Plaintiff's Counsel believe that the PAGA claim has merit and that
21 Plaintiff will prevail at trial. (*Id.*) Plaintiff's Counsel undertook extensive investigation, analysis,
22 and research prior to filing the lawsuit and during the litigation of the matter. (Aiwazian Decl., ¶
23 16.) Plaintiff's Counsel took steps to prepare the case for trial and had every intention of taking
24 the case to trial if Defendant did not offer an appropriate settlement. (Aiwazian Decl., ¶ 13.)

25 Plaintiff's Counsel's effort and skill were used to, among other things, investigate the
26 allegations and gather facts; research the legal issue; analyze data, documents, and information
27 obtained from Defendant, Plaintiff, and through other sources; evaluate the PAGA claim; and
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1 negotiate the settlement. (Aiwazian Decl., ¶ 16.) Despite all of the obstacles that had to be
2 overcome, Plaintiff's Counsel used its extensive experience and skill in the handling of complex
3 wage-and-hour matters to advocate for and obtain Aggrieved Employees and the State of
4 California a recovery now, with maximum efficiency, as opposed to the possibility of recovery in
5 the future, after significant expense and time. (Aiwazian Decl., ¶ 22.)

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

7 The Settlement represents a fair resolution of this lawsuit, given Defendant's financial
8 limitations (Hansen Decl. ¶¶ 3 & 4), as well as, the uncertainty and risks of further litigation.
9 (Aiwazian Decl., ¶ 22.) Had the case not settled, Defendant would have vigorously challenged
10 liability, and also sought a reduction in the amount assessed as civil penalties. (Aiwazian Decl.,
11 ¶¶ 19-21.) Defendant, however, faced risks too, including and not limited to, the risk of having
12 the Court assess civil penalties. (Aiwazian Decl., ¶ 21.) Additionally, preparing the case for trial
13 would have been extraordinarily expensive for the Parties. (Aiwazian Decl., ¶ 22.)

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. (*Id.*) The risks and expenses of
16 further litigation outweighed any benefit that might have been gained otherwise, especially when
17 Defendant's financial condition is taken into consideration. (Hansen Decl. ¶¶ 3 & 4.) The
18 Settlement provides an immediate recovery, as opposed to an uncertain result in the future after
19 prolonged litigation involving expert discovery, trial preparation, and appellate review of those
20 proceedings. (Aiwazian Decl., ¶ 12.) The Settlement offers present monetary relief to Plaintiff,
21 the Aggrieved Employees, and the State of California while avoiding additional expense, risk, and
22 delay in obtaining possible further recovery. (Aiwazian Decl., ¶ 22.)

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

24 The representation provided by Plaintiff's Counsel has been wholly contingent, and
25 Plaintiff's Counsel took on this matter without knowing whether any recovery would be obtained.
26 Plaintiff's Counsel is also requesting reimbursement of litigation costs and expenses in the amount
27 of \$5,695.81. (Aiwazian Decl., ¶ 24.)

1 In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will
2 not receive any compensation until recovery is obtained. (*Id.*) If Plaintiff's Counsel had not been
3 successful, the time that they have devoted to litigating the case would have been for naught and
4 would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel
5 is well-experienced in complex wage-and-hour litigation and used that experience to obtain a fair
6 result for Plaintiff, the Aggrieved Employees, and the State of California. (Aiwazian Decl., ¶¶ 2-
7 7 & 26.) The skill and determination that Plaintiff's Counsel has shown throughout the
8 prosecution of the case justifies the requested attorneys' fees and costs. (Aiwazian Decl., ¶ 23.)
9 Considering the amounts requested, work performed, and risks incurred, the requested fees and
10 costs are reasonable and should be awarded.

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

12 The results achieved, in light of the difficulties inherent in similar cases and the specific
13 difficulties faced in this case, are considerable. Here, the results achieved, and the recovery
14 obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent a
15 fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a
16 settlement that provides for a Total Settlement Amount of \$112,500.00, subject to possible
17 increase pursuant to Section 3(b) of the Settlement Agreement, and it is currently estimated that
18 the Net Settlement Amount available for distribution to the Aggrieved Employees and the State
19 of California, is approximately \$43,054.19. (Settlement Agreement § 3(a).)

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

21 Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its
22 attorneys employed their knowledge, skill, and experience to bring the case to a successful
23 conclusion. (Aiwazian Decl., ¶¶ 2-7.) Plaintiff's Counsel has years of wage-and-hour class action
24 and complex litigation experience, has recovered millions of dollars on behalf of thousands of
25 individuals in California, and has successfully handled numerous significant wage-and-hour class
26 action and representative action cases. (*Id.*)

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

Plaintiff's Counsel requests reimbursement for the litigation costs and expenses incurred in prosecuting this matter, in the total amount of \$5,695.81. (Aiwazian Decl., ¶ 24, Ex. 3.) The requested amount is less than the maximum amount provided for in the Settlement Agreement, of \$9,000.00. (Settlement Agreement, § 3(a)(1).) The cost savings of \$3,304.19 will be part of the Net Settlement Amount. (*Id.*, § 3(a)(4).)

The costs and expenses for which reimbursement is sought – including court filing fees, service fees, and mediation fees – are reasonable and were necessary to the prosecution and settlement of this matter. (Aiwazian Decl., ¶ 24, Ex. 3.) Further, Plaintiff's Counsel has borne all of the risks and costs of litigation to date and will not receive any compensation until a recovery is obtained in this matter. (Aiwazian Decl., ¶ 24.)

Accordingly, Plaintiff's Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$5,695.81 to Plaintiff's Counsel. (See, e.g., *Bruce v. Del Monte* Mar. 29, 2018) No. 16-cv-05891-JD, 2018 WL 8017998, at *2 [approving reimbursement of \$12,000 in costs for PAGA settlement].)

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.

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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 \$8,000.00. (Settlement Agreement § 3(a)(3).) 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 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 \$8,000.00 to Simpluris, Inc., a necessary third-party for handling the settlement process. (See, e.g., *Middleton v. Halliburton Energy Services, Inc.* (E.D. Cal. May 2, 2024) No. 1:19-cv-01747-CDB, 2024 WL 1930691, at *8 [approving settlement administration costs of up to \$4,250 for administration of PAGA settlement for 350 aggrieved employees]; *Granillo v. Weatherford U.S.*, L.P. (Sept. 14, 2023) No. 1:20-cv-01614-CDB, 2023 WL 5985321, at * [approving settlement administration costs of up to \$3,000 for administration of PAGA settlement for 191 aggrieved employees]; *Connelly v. Starbucks Corporation* (E.D. Cal. Sep. 29, 2023) 1:21-cv-000746-SAB, 2023 WL 6387077, at *19 [approving administration costs of up to \$16,000].)

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

For her individual settlement agreement which includes a broad release of individual claims and a general release with a California Civil Code Section 1542 waiver (as set forth in Section 8(b) of the Settlement Agreement and provided in the separate Confidential Settlement and Release Agreement), the Settlement provides for a General Release Fee to be paid to Plaintiff in the amount of \$10,000.00. (Settlement Agreement, § 3(a)(2).) 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.

It is also worth noting that 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 her employment with her counsel, gathered and produced relevant documents and information, and provided the facts and evidence necessary to attempt to prove the allegations. (Aiwazian Decl., ¶ 25; Declaration of Martha Yamasaki (“Yamasaki Decl.”), ¶¶ 3 & 4.) Plaintiff was available whenever her counsel needed her 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. (Aiwazian Decl., ¶ 25; Yamasaki Decl., ¶¶ 3 & 4.)

Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the amount of \$10,000.00, in addition to the Individual Settlement Share she will receive as an Aggrieved Employee. for her share of the Net Settlement Amount.

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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.

Respectfully,

Dated: August 23, 2024

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Matthew Richard Soto
Attorneys for Plaintiff