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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**
14

15 ANDERSON HILL; individually, and on
16 behalf of other aggrieved employees
17 pursuant to the California Private Attorneys
18 General Act;

19 Plaintiff,

20 vs.

21 FASHION NOVA LLC.; FASHION
22 NOVA, INC.; NOVA FASHION, INC.;
23 FASHION NOVA HOLDINGS, LLC.; FN
24 LOGISTICS, LLC; and DOES 1 through
25 100, inclusive,

26 Defendant.

Case No.: 21STCV40012

Hon. Bruce G. Iwasaki, Dept. 58

**PLAINTIFF'S MOTION FOR APPROVAL
OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT (CAL.
LABOR CODE §§ 2698, ET SEQ.)
REPRESENTATIVE ACTION**

Date: January 13, 2025

Time: 9:00 a.m.

Dept.: 58

Reservation ID: 248492669816

Complaint Filed: October 29, 2021

1 **PLEASE TAKE NOTICE** that on January 13, 2025, at 8:30 a.m., or as soon as
2 thereafter as the matter may be heard before The Honorable Bruce G. Iwasaki in Department 58
3 of the above captioned court, Plaintiff Anderson Hill (“Plaintiff”) will and hereby does move for
4 entry of the following orders and entry of judgment:

- 5 1. Granting approval, pursuant to California Labor Code section 2699, subdivision (1),
6 of the proposed settlement between Plaintiff and Defendant FN LOGISTICS, LLC
7 (“Defendants”) of the claims brought pursuant to the Labor Code Private Attorneys
8 General Act of 2004 (“PAGA”) as set forth in the parties’ PAGA Settlement
9 Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as
10 Exhibit “A” to the Declaration of Arya Rhodes;
- 11 2. Approving the Total Settlement Amount of \$500,000 to settle the claims asserted in
12 this PAGA action;
- 13 3. Approving the allocation of the Net Settlement Amount of at least \$271,661.70, of
14 which seventy-five percent (75% = \$203,746.27) shall be paid to the California Labor
15 and Workforce Development Agency (“LWDA”) and twenty-five percent (25% =
16 \$67,915.43) shall be paid to the employees identified in the Settlement Agreement as
17 the “PAGA Settlement Group Members”;
- 18 4. Appointing ILYM Group, Inc. (“ILYM”) as the Settlement Administrator for
19 purposes of administering the Settlement;
- 20 5. Directing Defendant to remit payment of the Total Settlement Amount of \$500,000
21 according to the terms of the Settlement Agreement to the Settlement Administrator
22 for disbursement to Plaintiff, Plaintiff’s Counsel, all PAGA Settlement Group
23 Members, and the LWDA;
- 24 6. Directing the Settlement Administrator to mail individual Settlement Shares
25 (individual payments) to the PAGA Settlement Group Members;
- 26 7. Directing the Settlement Administrator to pay the LWDA Payment to the LWDA for
27 its portion of the PAGA penalties;
- 28 8. \$10,000 payment to Plaintiff for the resolution of Plaintiff’s individual claims, in

1 exchange for his Civil Code section 1542 waiver, and as an incentive payment for
2 bringing this action on behalf of the State of California and his coworkers;

3 9. Awarding to Plaintiff's Counsel \$175,000 as reasonable attorneys' fees and up to
4 \$10,788.30 as reimbursement for costs and expenses incurred in litigating the PAGA
5 Claim pursuant to California Labor Code section 2699, subdivision (g)(1); and

6 10. Approving the Administrative Costs from the Total Settlement Amount in an amount
7 up to \$32,550, to be paid to ILYM.

8 This motion will be based upon the following Memorandum of Points and Authorities,
9 the Settlement Agreement, the Declaration of Arya Rhodes, the Declaration of Anderson Hill,
10 and the [Proposed] Order and Judgment, as well as the pleadings and other records on file with
11 the Court in this matter, and such evidence and oral argument as may be presented at the hearing
12 on this motion.

13 Dated: November 18, 2024

SCHIMMEL & PARKS, APLC

14 

15 By:

16 Alan I. Schimmel
17 Michael W. Parks
18 Arya Rhodes
19 Ashtyne Cofer
20 *Attorneys for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the Parties' Settlement Agreement and Release ("Agreement"), Plaintiff
4 Anderson Hill ("Plaintiff") seeks the Court's approval, pursuant to Labor Code section 2699(l),
5 of the parties' settlement of Plaintiff's claims under the Labor Code Private Attorneys General
6 Act of 2004 ("PAGA"). A true and correct copy of the Agreement is attached as Exhibit A to the
7 Arya Rhodes declaration submitted in support of this motion. For the reasons explained below,
8 Plaintiff respectfully requests that the Court approve the settlement.

9 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

10 This is a PAGA action entirely about temperature. Beginning on or around April 2020
11 through June 2021, Anderson Hill was employed by Defendant Fashion Nova and worked in one
12 of Fashion Nova's massive distribution warehouses, located at 12588 Florence Avenue, Santa Fe
13 Springs, California. Mr. Hill's job title was "runner" and his job duties included manually
14 pulling items from the warehouse conveyor belts, sorting items into stacks, loading them onto a
15 dolly, and distributing these items throughout the aisles of the warehouse.

16 Plaintiff alleged violations of the obligation to provide reasonably comfortable
17 temperatures in the workplace pursuant to IWC Wage Order Section 15. IWC Wage Order
18 Section 15 provides that: (A) The temperature maintained in each work area shall provide
19 reasonable comfort consistent with industry-wide standards for the nature of the process and the
20 work performed; (B) If excessive heat or humidity is created by the work process, the employer
21 shall take all feasible means to reduce such excessive heat or humidity to a degree providing
22 reasonable comfort. Where the nature of the employment requires a temperature of less than 60°
23 F, a heated room shall be provided to which employees may retire for warmth, and such room
24 shall be maintained at not less than 68° F; (C) A temperature of not less than 68° F shall be
25 maintained in the toilet rooms, resting rooms, and change rooms during hours of use; and, (D)
26 Federal and State energy guidelines shall prevail over any conflicting provision of this section.
27 Defendant denies all of Plaintiff's allegations.

28 ///

1 Plaintiff filed his PAGA Complaint on October 29, 2021. Prior to filing this lawsuit,
2 Plaintiff complied with the PAGA notice requirement by providing the California Labor and
3 Workforce Development Agency (“LWDA”) with written notice of the claims in this action, by
4 online submission, and to Defendants by certified mail (“PAGA Notice”). A true and correct
5 copy of the PAGA Notices are attached as Exhibit B to the Arya Rhodes declaration submitted in
6 support of this motion.

7 Plaintiff’s individual non-representative PAGA claims were compelled to Arbitration and
8 the representative claims were stayed. The Parties litigated in Arbitration and eventually
9 participated in a private mediation on May 18, 2024, with Monique Ngo-Bonnici, an experienced
10 employment and PAGA mediator. Prior to mediation, the Parties exchanged records spanning
11 hundreds of pages worth of documents including temperature tracking data, employee handbooks
12 and policy manuals, and employee counts and pay period data. The Parties also conducted
13 independent investigations pertaining to the legal and factual issues in this case, including
14 researching the state of the law as to industry wide temperature standards for warehouse work
15 and the ambient/historical temperatures in Santa Fe Springs where the warehouse is located.

16 The matter did not settle at mediation. However, the mediator and the Parties continued
17 to work towards a reasonable resolution. Following extensive negotiations, by and through the
18 mediator, the Parties reached an arms-length settlement which Plaintiff now asks this Court to
19 approve.

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

21 **A. Aggrieved Employees**

22 The aggrieved employees in this PAGA action are alleged to be all current and former
23 hourly paid, non-exempt employees who worked for Defendant at any of its locations in the State
24 of California at any time from August 24, 2020, through November 18, 2024. Based on
25 preliminary information provided by Defendants, there are approximately 12,000 aggrieved
26 employees. It should be noted that many of these employees were staffed through a temp
27 agency, and a large number of individuals only worked one day which somewhat skews the
28 numbers. The temp employees are still included and will receive payment through this

1 settlement for the pay periods they worked, but the total number of employees is significantly
2 inflated due to the structure of the staffing at FN Logistics LLC.

3 **B. Released Claims**

4 In exchange for the Total Settlement Amount, Plaintiff, LWDA, the State of California,
5 and the PAGA Settlement Group Members will release Defendants from all claims which arise
6 from or are related to the allegations in the Action as defined in the Settlement Agreement's
7 definition of Released Claims.

8 **C. Distribution of the Total Settlement Amount**

9 Defendant will pay the Total Settlement Amount of \$500,000 to settle the Action in
10 compliance with the Settlement Agreement. The Total Settlement Amount will be fully
11 distributed, and no portion of it will revert to Defendant.

12 **D. Distribution of the Net Settlement Amount**

13 The Net Settlement Amount will be the Total Settlement Amount, less the following
14 amounts: (1) Plaintiff's Counsel Payment of up to \$175,000 as attorneys' fees and
15 reimbursement of litigation costs and expenses in the amount of \$10,788.30, to be paid to
16 Schimmel & Parks, APLC ("Plaintiff's Counsel"); (2) \$10,000 payment to Plaintiff for the
17 resolution of Plaintiff's individual claims, in exchange for his Civil Code section 1542 waiver,
18 and as an incentive payment for bringing this action on behalf of the State of California and his
19 coworkers; and (3) all costs associated with administration of the Settlement (Administrative
20 Costs) in an amount up to \$32,550.

21 The Net Settlement Amount is currently estimated to be at least \$271,661.70, 75 percent
22 of which (approximately \$203,746.27) will be allocated toward LWDA's share of the recovery
23 of civil penalties under PAGA (the "LWDA Payment") and 25 percent of which (approximately
24 \$67,915.43) will be allocated toward the PAGA Settlement Group Members' share of recovery
25 of civil penalties under PAGA ("Individual Settlement Shares"). The amount of each Individual
26 Settlement Share will be calculated on the basis of attributed pay periods, as determined by the
27 Settlement Administrator pursuant to the formula set forth in the Agreement.

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1 The Individual Settlement Shares in their entirety will be considered penalties, such that
2 no payroll deductions or withholding will be taken from the Individual Settlement Shares. The
3 Settlement Administrator will issue an IRS Form 1099 to each PAGA Settlement Group Member
4 for his or her Individual Settlement Share.

5 The Settlement Administrator will distribute the Individual Settlement Share checks. The
6 checks issued to PAGA Settlement Group Members will expire 180 days from the date of the
7 mailing. Upon expiration of the 180-day period, any unpaid cash residue or unclaimed or
8 abandoned PAGA Settlement Group Member funds generally attributable to California residents,
9 plus any accrued interest that has not otherwise been distributed pursuant to order of the court,
10 shall be transmitted to the California Controller's Unclaimed Property Fund in the name of the
11 Allegedly Aggrieved Employee.

12 **E. Settlement Administration**

13 Plaintiff has selected, subject to court approval, to retain ILYM Group, Inc. ("ILYM" or
14 "Settlement Administrator") to handle the administration of the settlement fund. ILYM is a
15 major third-party neutral settlement administrator. The Settlement Administrator will establish a
16 Qualified Settlement Fund ("QSF"). The Settlement Administrator will send the LWDA
17 Payment to the LWDA, calculate the amount to be paid to each PAGA Settlement Group
18 Member and distribute the Individual Settlement Payments to all PAGA Settlement Employees.
19 The Settlement Administrator will distribute attorneys' fees and costs to Plaintiff's Counsel, as
20 well as Plaintiff's individual payment. The Settlement Administrator will handle and administer
21 all required tax reporting on behalf of Defendant as a result of this Settlement, and perform any
22 other customary duties of a Settlement Administrator in administering a PAGA settlement.

23 **F. Attorneys' Fees, Costs, Etc.**

24 The Agreement permits attorneys' fees not to exceed 35 % of the Total Settlement
25 Amount or \$175,000 plus reimbursement of litigation costs in the amount of \$10,788.30. The
26 Agreement permits Plaintiff to receive \$10,000 from the Gross Settlement Amount for the
27 resolution of Plaintiff's individual claims, in exchange for his Civil Code section 1542 waiver,
28 and as an incentive payment for bringing this action on behalf of the State of California and his

1 coworkers. Absent something unanticipated, the Administrative Costs are estimated to be no
2 more than \$32,550. Defendant agreed not to oppose such applications.

3 **IV. THE PAGA SETTLEMENT SHOULD BE APPROVED**

4 **A. The Settlement provides genuine and meaningful relief to the State, Plaintiff,**
5 **and the PAGA Settlement Employees**

6 Labor Code section 2699(1)(2) states that “[t]he superior court shall review and approve
7 any settlement of any civil action filed pursuant to” PAGA. “When a PAGA claim is settled, the
8 relief provided for under the PAGA [should] be genuine and meaningful, consistent with the
9 underlying purpose of the statute to benefit the public.” (*Villalobos v. Calandri Sonrise Farm*
10 *LP, supra*, 2015 WL 12732709, at *13.)

11 In this action, Plaintiff alleged that Defendant failed to maintain indoor temperatures in
12 the workplace, in violation of Wage Order section 15, and that Defendant lacked adequate
13 temperature controls and monitoring of workplace temperatures to ensure compliance with Wage
14 Order section 15. Defendant denied those allegations.

15 This was not a garden variety PAGA action and involved a claim that is rarely litigated in
16 depth and without much authority on the various issues at play. Plaintiff and PAGA Counsel
17 recognize the expense and length of continued proceedings necessary to litigate their disputes
18 through trial and through any possible appeals. Plaintiff and PAGA Counsel have also taken into
19 account the uncertainty and risk of the outcome of further litigation, and the difficulties and
20 delays inherent in such litigation. Plaintiff and PAGA Counsel are also aware of the burdens of
21 proof necessary to establish liability for the claims asserted in the Action, both generally and in
22 response to Defendant’s defenses thereto (many of which have been shared at the mediation and
23 in settlement discussions), and the obligation to establish liability and penalties for the Aggrieved
24 Employees.

25 Plaintiff and PAGA Counsel have also taken into account the extensive settlement
26 negotiations conducted. Further, Plaintiff and PAGA Counsel have taken into account
27 Defendant’s agreement to enter into a settlement that confers substantial relief upon the LWDA
28 and Aggrieved Employees. Based on the foregoing, Plaintiff and PAGA Counsel have

1 determined that the settlement set forth in this Agreement is a fair, adequate and reasonable
2 settlement, and is in the best interests of the Aggrieved Employees.

3 In addition to the defenses on the merits, Plaintiff also considered Defendants' position
4 that PAGA penalties are discretionary in nature. For instance, the California Court of Appeal
5 upheld the San Diego Superior Court's heavily-discounted award of only \$5 per pay period in
6 *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504. The plaintiffs in *Carrington* had requested
7 more than \$70 million in damages and were successful in proving their PAGA claim during a
8 bench trial. However, the trial court ruled that Starbucks had attempted to comply with the law
9 and reduced the total award after trial to only \$150,000 out of the \$70 million requested by the
10 plaintiffs. In affirming the trial court's ruling, the Court of Appeal confirmed that it was within
11 the trial court's discretion to significantly reduce PAGA penalties even when there is a finding
12 that a violation of the California Labor Code occurred. Moreover, at least one appellate court
13 holds, in the context of other Labor Code violations, that the "subsequent" violation penalty rate
14 for a Labor Code violation does not apply until an employer is notified that its conduct violates
15 the law. (*Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, 1207-09.)

16 While Plaintiff believes that the PAGA Claim is meritorious, Defendants asserted
17 numerous defenses the outcome of which was truly uncertain given the paucity of appellate case
18 law on these temperature claims. Defendants have many potentially meritorious challenges and
19 defenses to many of the claims in this action which, given the burdens of proof, could have
20 resulted in no gain to the employees or the State of California. It appears, whether by way of this
21 lawsuit or otherwise, the enforcement policy behind the PAGA has been accomplished. Given
22 all of the risks to both parties, the proposed Settlement provides genuine and meaningful relief to
23 the State and the PAGA Settlement Employees, including Plaintiff. Defendant has agreed to pay
24 a Total Settlement Amount of \$500,000 to resolve this case.

25 Defendant realizes that any further defense of this litigation may be protracted and
26 expensive for all parties. Substantial amounts of time, energy and resources of Defendant, unless
27 this Settlement is made, may be devoted to the defense of the claims asserted by Plaintiff.
28 Defendant has also taken into account the risks of further litigation in reaching the decision to

1 enter into this Settlement. Despite continuing to contend that they are not liable for any of the
2 claims set forth by Plaintiff, Defendant has, nonetheless, agreed to settle in the manner and upon
3 the terms set forth in the Agreement to put to rest the claims as set forth in the Action.

4 Based on the information available to the Parties and with the assistance of the
5 experienced mediator and their experienced counsel, the Parties have agreed that this PAGA
6 action is well-suited for settlement given its strengths and weaknesses.

7 A settlement may be fair and reasonable even where it only provides a fraction of what
8 could have been obtained at trial. (See *Officers for Justice v. Civil Service Comm'n* (9th Cir.
9 1981) 688 F.2d 615, 625 [“The proposed settlement is not to be judged against a hypothetical or
10 speculative measure of what might have been achieved by the negotiators.”]; accord *City of*
11 *Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455 n.2 [“The fact that a proposed
12 settlement may only amount to a fraction of the potential recovery does not, in and of itself,
13 mean that the proposed settlement is grossly inadequate and should be disapproved.”].) Indeed,
14 “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of
15 highest hopes.’” (*Officers for Justice, supra*, 688 F.2d at p. 624.) Moreover, “[t]he purpose of
16 the PAGA is not to recover damages or restitution, but to create a means of ‘deputizing’ citizens
17 as private attorneys general to enforce the Labor Code. [Citation.]” (*Brown v. Ralphs Grocery*
18 *Co.* (2011) 197 Cal.App.4th 489, 501.)

19 Moreover, the purpose of PAGA is not to compensate employees, who retain any private
20 right of action they may have under the applicable Labor Code provisions. The purpose of the
21 PAGA is deterrence and enforcement, and both of those purposes have been realized here.
22 Public policy strongly favors the settlement of litigation. (*Consumer Advocacy Group v.*
23 *Kintetsu Enterprises of America, Inc.* (2006) 141 Cal.App.4th 46, 63. Because the proposed
24 Settlement serves the public interest and the purposes of PAGA, it should be approved. (*Id.*)
25 Accordingly, the proposed Settlement provides genuine and meaningful relief to the State,
26 Plaintiff, and the PAGA Settlement Employees, and should be approved.

27 ///

28 ///

1 **B. The Proposed Payment to Plaintiff Is Reasonable and Should Be Approved.**

2 Plaintiff's individual PAGA case was compelled to arbitration. The Parties have agreed
3 to a \$10,000 settlement payment Plaintiff to settle his individual claims and in exchange for a
4 1542 waiver. The payment is also reasonable as an incentive payment appropriate in
5 representative litigation, including class cases (where an individual sues on behalf of those
6 similarly-situated) and derivative cases (where an individual sues on behalf of a legal entity). (*In*
7 *re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1383 [class action]; *Barovic*
8 *v. Ballmer* (W.D. Wash. 2016) 2016 WL 199674, *5.) "The rationale for making an
9 enhancement or incentive awards to named plaintiffs is that they should be compensated for the
10 expense or risk they have incurred in conferring a benefit on other members of the class."
11 Among other things, incentive payment to a named plaintiff can be used to "recognize their
12 willingness to act as a private attorney general." (*Rodriguez v. West Publishing Corp.* (9th Cir.
13 2009) 563 F.3d 948, 958.).

14 While not expressly saying so, PAGA clearly supports an incentive award for a named
15 plaintiff. As with class and derivative cases, the named plaintiff brings PAGA claims on behalf
16 of a legal entity (the State), and similarly-situated employees share in any resolution. Moreover,
17 "the lack of government resources to enforce the Labor Code led to a legislative choice to
18 deputize and incentivize employees uniquely positioned to detect and prosecute such violations
19 through PAGA." (*Iskanian v. CLS Transportation, supra*, 59 Cal.4th at p. 390.)

20 Here, Plaintiff, as the PAGA representative, contributed considerable time and efforts to
21 provide the facts and evidence necessary to support the PAGA claim over the course of three (3)
22 years. Despite having his individual claims severed from his coworkers and compelled to
23 arbitration, Plaintiff was available whenever counsel needed him and tried to obtain information
24 that would benefit the State and the PAGA Settlement Group Members. Because of Plaintiff's
25 decision to bring this action, hundreds of workers across the State of California and the LWDA
26 will realize a net benefit. Accordingly, it is appropriate and just for Plaintiff to receive \$10,000 to
27 settle his individual claims and in exchange for a 1542 waiver. Alternatively, the \$10,000 is a
28 reasonable incentive payment for her services on behalf of the State and PAGA Settlement

1 Group Members, in addition to the Individual Settlement Share she will receive as a PAGA
2 Settlement Group Member. Plaintiff has submitted a declaration in support of this request which
3 outlines his contributions in further detail.

4 **C. The Proposed Plaintiff's Counsel Payment Is Reasonable and Should Be**
5 **Approved.**

6 **1. Plaintiff's Counsel Payment should be awarded from the common fund**
7 **created by the Settlement.**

8 Plaintiff's Counsel is entitled to recover reasonable attorneys' fees and costs as a matter
9 of right under PAGA. (See Lab. Code § 2699(g)(1) ["Any employee who prevails in any
10 [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs."].
11 Plaintiff's counsel is also entitled to fees and costs under California Code of Civil Procedure
12 section 1021.5, as the instant PAGA action is by definition "for the benefit" and secured
13 monetary awards for a large number of aggrieved employees, as well as the State of California.
14 (Accord *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
15 [recognizing that recovery obtained on behalf of 209 individuals "satisf[ies] the 'significant
16 benefit,' 'public interest,' and 'large class of persons' requirements of Code of Civil Procedure
17 section 1021.5, regardless of plaintiff's personal motivation].) The LWDA Payment will also
18 benefit the LWDA in enforcing labor laws and educating "employers and employees about their
19 rights and responsibilities under [the Labor Code]." (Lab. Code § 2699(i).)

20 In addition, when the prosecution of a matter results in the creation of a common fund, a
21 court can and should award fees and costs from that fund. The reason is "that persons who
22 obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the
23 successful litigant's expense. Jurisdiction over the fund involved in the litigation allows a court
24 to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees
25 proportionately among those benefitted by the suit. (*Boeing Co. v. Van Gemert* (1980) 444 U.S.
26 472, 478.) Thus, it is proper to award from a fund attorneys' fees and costs "to a party who has
27 recovered or preserved a monetary fund for the benefit of himself or herself and others."
28 (*Laffitte v. Robert Half Intern., Inc.* (2016) 1 Cal.5th 480, 488 ["*Laffitte II*"].).

1 Accordingly, Plaintiff's Counsel's Payment is properly paid from the common fund
2 created by the Settlement.

3 **2. The Court should use the percentage-of-recovery method in**
4 **calculating the fee award,**

5 Under California and federal authorities, a court has discretion to determine attorneys'
6 fees using either the lodestar method or the percentage-of-recovery method. (*Vizcaino v.*
7 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043.) In *Laffitte II*, the Supreme Court approved a
8 superior court's use of the percentage-of-recovery method in common fund cases. (*Id.* at p. 503.)

9 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
10 decisions will "not be disturbed on appeal absent a manifest abuse of discretion":

11 The recognized advantages of the percentage method—including
12 the relative ease of calculation, alignment of incentives between
13 counsel and the class, a better approximation of market conditions
14 in a contingency case, and the encouragement it provides counsel
to seek an early settlement and avoid unnecessarily prolonging the
litigation . . . convince us the percentage method is a valuable tool
that should not be denied our trial courts.

15 (*Id.*) The Supreme Court further found that, while a trial court may adjust the percentage based
16 on a "lodestar cross check," it is not required to do so. (*Id.* at pp. 505-506 ["We further hold that
17 the trial courts have discretion to do a lodestar cross-check on a percentage fee . . . they also
18 retain the discretion to forego the lodestar cross-check and use other means to evaluate the
19 reasonableness of a requested fee percentage."])

20 Consistent with *Laffitte II*, the Court should exercise its discretion and utilize the
21 percentage-of-recovery method in awarding attorneys' fees. Here, the common fund with a
22 lodestar cross-check, confirms the reasonableness of the 35% requested fee. (E.g., *Jones v. J.C.*
23 *Penny Corp.*, Los Angeles Superior Court, Case No. BC451823 [approving fee award from
24 PAGA-only settlement of \$1.375M (42%) against a common fund of \$3.2M].)

25 **3. The Requested Fee Falls Within the Range of Typical Marketplace**
26 **Contingency Fee Arrangements**

27 Plaintiff's Counsel seeks an attorney fee's award of \$175,000, or 35% of the \$500,000
28 common fund. California courts have been expressly authorized "to ensure that the fee awarded

1 is within the range of fees freely negotiated in the legal marketplace in comparable litigation.”
2 *Lealao, supra*, 82 Cal.App.4th at p. 31. During the past few years, the Parties have engaged in
3 extensive litigation and discovery. Defendants had a strong legal team providing an aggressive
4 defense, and the risks for Plaintiff’s Counsel given the unknowns and certain likelihood of a
5 protracted appellate process were immense. While the gross amount may not be massive, the
6 result achieved by Plaintiff’s Counsel is nevertheless exceptional. The gross settlement and
7 monetary amount being paid to the State of California is still significant. Because of this, a 35%
8 attorney fee award to Plaintiff’s Counsel is reasonable and just.

9 In California, “[c]ourts agree that, because the percentage-of-the-fund approach is results-
10 oriented rather than process-oriented, it better approximates the workings of the marketplace
11 than the lodestar approach.” *Id. at p. 48* [citation and quotation marks omitted]; *see also In re*
12 *Continental Illinois Securities Litigation* (7th Cir. 1992) [noting the trial court’s function “is to
13 determine what the lawyer would receive if he were selling his services in the market rather than
14 being paid by court order”].) California courts recognize that marketplace contingency fees
15 percentages generally range between 10% to 50% of total recovery, with most between the 20%
16 to 40%. *E.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, pp. 65–66 [affirming trial
17 court’s cross-check of fee award against estimate that marketplace contingency fees range
18 between 20 and 40 percent after deducting costs]; *see also Ridgeway v. Wal-Mart Stores Inc.*
19 (N.D.Cal. 2017) 269 F.Supp.3d 975, 1000 [noting that “contingency fee contracts charged by
20 law firms in large damages cases typically range from 10 to 50 percent”]; *Katz v. China Century*
21 *Dragon Media, Inc.* (C.D.Cal., Oct. 10, 2013, No. LA CV11-02769 JAK (SSx)) 2013 U.S.Dist.
22 Lexis 189987, at pp. *23-24 [recognizing that the prevailing market rate for contingency fee
23 cases is 30% to 40%] *In re M.D.C. Holdings Securities Litigation* (S.D. Cal., Aug. 30, 1990, No.
24 CV 89-0090 E (M)) 1990 U.S.Dist. Lexis 15488, at p. *22 [“In private contingent litigation, fee
25 contracts have traditionally ranged between 30% and 40% of the total recovery.”].

26 California courts have approved fee awards of 40% (and more) of the common fund in
27 class action settlements. *See, e.g., Erlandsen v. FlexCare, LLC* (Super. Ct. Santa Barbara
28 County, July 23, 2014, No. 1390595) [awarding 40% of the settlement funds for attorney’s fees]

1 *Adaauto v. Door Components, Inc.* (Super. Ct. LA County, Jul. 1, 2013, No. BC469230 [awarding
2 attorney’s fees equal to 40% of the settlement fund, plus costs]; *Ayala v. Denbeste*
3 *Manufacturing, Inc.* (Super. Ct. Kern County, Feb. 7, 2013, No. S-1500-CV-275248) [awarding
4 attorney’s fees equal to approximately 40% of the settlement funds, plus costs]; *Crandall v. U-*
5 *Haul International, Inc.* (Super. Ct. LA County, Aug. 17, 2001, No. BC178775 [awarding
6 attorney’s fees equal to 40% of the settlement fund]; *Abzug v. Kerkorian* (Super. Ct. LA County,
7 Nov. 1990, No. CA-000981) [45% fee of \$35 million class action settlement, plus costs]; *Haitz v.*
8 *Meyer, et al.* (Super. Ct. Alameda County, Aug. 20, 1990, No. 572968-3 [45% fee award]; *Birch*
9 *v. Office Depot, Inc.* (S.D.Cal., Sept. 28, 2007, No. 06 CV 1690 DMS (WMC)) 2007 U.S.Dist.
10 Lexis 102747, at pp. *7–8 [40% award of attorney’s fees and costs in wage and hour class
11 action]; *Rippee v. Boston Market Corp.* (S.D.Cal. Oct. 10, 2006, No. 05cv1359 BTM(JMA))
12 2006 U.S.Dist. Lexis 101136, at pp. *11–12 [awarding a 40% fee on a \$3.75 million wage and
13 hour class action].)

14 Plaintiff’s Counsel’s request of 35% of the common fund falls within the range of typical
15 contingency fee arrangements. Attorneys and courts throughout the state recognize that 30-40%,
16 plus costs, is the prevailing local market rate for contingent employment litigation.

17 **4. Plaintiff’s Counsel’s Lodestar**

18 If the Court chooses to perform a lodestar cross-check in this case, it will confirm the
19 reasonableness of Plaintiff’s fee request. In calculating an initial lodestar figure, a court
20 considers: (1) the reasonable hours spent; and (2) the prevailing hourly rates for “private
21 attorneys in the community conducting *non-contingent* litigation of the same type.” (*Ketchum v.*
22 *Moses* (2001) 24 Cal.4th 1122, 1134 [emphasis in original].). These facts may be established
23 through a declaration by counsel. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
24 254-55 [relying on plaintiffs’ counsel’s declarations as sufficient evidence to demonstrate the
25 appropriate hourly rate].) In performing a cross-check, the Court may also rely on a declaration
26 “summarizing overall time spent, rather than demanding and scrutinizing daily time sheets in
27 which the work was broken down by individual task.” (*Laffitt II, supra*, 1 Cal.5th at p. 505.)

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1 of this case, drafting the PAGA notice, drafting the pleadings, seeking and analyzing discovery,
2 analyzing voluminous records, significant meet and confers, preparing for and attending the
3 mediation and status conferences, vetting experts, negotiating the terms of a settlement, devising
4 a trial plan, and preparing this approval motion, among other things.

5 Under California law, every hour reasonably spent on the Plaintiff's case is compensable:
6 "absent circumstances rendering the award unjust, an attorney fee award should ordinarily
7 include compensation for all the hours reasonably spent, including those relating solely to the
8 fee." *Ketchum, supra*, 24 Cal. 4th at p. 1133 [original emphasis].) Hours are reasonable if "at the
9 time rendered, [they] would have been undertaken by a reasonable and prudent lawyer to
10 advance or protect his client's interest in the pursuit of a successful recovery of [] damages."
11 *Moore v. Jas. H. Matthews & Co.* (9th Cir. 1982) 682 F.2d 830, 839.

12 Courts properly rely on declarations by counsel to determine the lodestar. *Concepcion v.*
13 *Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1324 ["Declarations of counsel setting
14 forth the reasonable hourly rate, the number of hours worked and the tasks performed are
15 sufficient."]; *see also Wershba, supra*, 91 Cal.App.4th at p. 255 ["Here plaintiffs' attorneys
16 submitted declarations evidencing the reasonable hourly rate for their services and establishing
17 the number of hours spent working on the case . . . California case law permits fee awards in the
18 absence of detailed time sheets." (citations omitted)]; *Dunk v. Ford Motor Co.* (1996) 48
19 Cal.App.4th 1794, 1810 [noting that a lodestar calculation could be based on counsel's estimate
20 of time spent].) "An experienced trial judge is in a position to assess the value of the professional
21 services rendered in his or her court." *Wershba*, at p. 255.

22 For purposes of the lodestar cross check, Plaintiff thus recommends attributing 228.6
23 hours of Plaintiff's Counsel's time. Applying the above reasoning, Plaintiff's Counsel's
24 collective lodestar for purposes of the cross-check is \$205,805 which exceeds the fees being
25 requested, even without applying a multiplier. Adding a 1.5 or 2.0 multiplier, as is customary
26 and common in these high-risk contingency type cases, would show a lodestar cross-check that
27 far exceeds what is being requested by Plaintiff.

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1 ***c. Plaintiff's Counsel's costs should be approved.***

2 Plaintiff's Counsel have collectively incurred, to date, approximately \$10,788.30 in costs.
3 It is appropriate for these costs to be paid from the common fund. *In re Omnivision*
4 *Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036 ("Attorneys may recover their
5 reasonable expenses that would typically be billed to paying clients in non-contingency
6 matters."); *In re Media Vision Tech. Sec. Litig.* (N.D. Cal. 1996) 913 F.Supp. 1362, 1366
7 ("Reasonable costs and expenses incurred by an attorney who creates or preserves a common
8 fund are reimbursed proportionally by those class members who benefit by the settlement.').
9 Accordingly, Plaintiff's Counsel requests reimbursement of litigation costs in the amount of
10 \$13,650. A true and correct copy of Plaintiff's Counsel's near final cost bill is attached as
11 Exhibit C to the Arya Rhodes declaration submitted in support of this motion.

12 **D. The Proposed Administrative Costs Are Reasonable and Should Be**
13 **Approved.**

14 Plaintiff respectfully requests that the Court approve the proposed Administrative Costs.
15 ILYM, a major third party neutral administrator agreed to by the parties, will perform all usual
16 and customary duties of a settlement administrator to administer and complete the Settlement.
17 The Settlement allocates up to \$32,550 toward the Administrative Costs, which shall be paid out
18 of the Total Settlement Amount. Based on information available to Defendants, as of the filing
19 of this motion, the total number of PAGA Settlement Group Members was estimated to be
20 12,000 individuals. The Parties obtained a quote for ILYM for the administration of the
21 settlement. Any leftover money will be put back into the distribution and ILYM will provide a
22 declaration accounting for such funds. Accordingly, the Administrative Costs of up to \$32,550
23 is reasonable and should be approved. A true and correct copy of ILYM's quote is attached as
24 Exhibit D to the Arya Rhodes declaration submitted in support of this motion.

25 **V. CONCLUSION**

26 For the foregoing reasons, Plaintiff respectfully requests that the Court approve the
27 proposed Settlement, including the Total Settlement Amount, and the proposed allocation for the

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1 individual payment to Plaintiff, Plaintiff's Counsel Fee and Costs, and the Administrative Costs.

2 Dated: November 18, 2024

SCHIMMEL & PARKS, APLC

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4 By:

5 _____
6 Alan I. Schimmel
7 Michael W. Parks
8 Arya Rhodes
9 Ashtyne Cofer
10 Attorneys for Plaintiff
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