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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SASHA AIONO, individually, and on behalf
of Aggrieved Employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

BENEFIT COSMETICS, LLC, a Delaware
limited liability company; and DOES 1 through
25, inclusive,

Defendants.

Case No. 21STCV33719

Honorable Daniel S. Murphy
Department 32

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT,
AWARD OF ATTORNEYS' FEES AND
COSTS, INCENTIVE AWARD, AND
SETTLEMENT ADMINISTRATION
COSTS; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: August 24, 2022

Time: 8:30

Dept.: 32

RESERVATION ID: 177760093036

Complaint Filed: September 13, 2021
Trial Date: June 6, 2023

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on **August 24, 2022** at **8:30 a.m.** in Department 32 of
3 the above-captioned Court located at 111 North Hill Street, Los Angeles, California, 90012,
4 Plaintiff Sasha Aiono (“Plaintiff”) will and hereby does move the Court for an Order granting
5 approval of a Labor Code Private Attorneys General Act of 2004, California Labor Code sections
6 2698, *et seq.* (“PAGA”) settlement. Specifically, Plaintiff requests that the Court enter an Order:

- 7 1. Granting approval pursuant to California Labor Code section 2699(l)(2) of the PAGA
8 Settlement Agreement (“Settlement” or “Settlement Agreement”) attached as **Exhibit**
9 **B** to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for
10 Approval of PAGA Settlement and Award of Attorneys’ Fees and Costs, Enhancement
11 Fee, and Settlement Administration Costs (“Genish Declaration”);
- 12 2. Directing the distribution of the Gross Settlement Payment of Four Hundred Thirty-
13 Seven Thousand Five Hundred Dollars and Zero Cents (\$437,500.00) pursuant to the
14 terms of the Settlement;
- 15 3. Approving the Net Settlement Amount, estimated to be no less than Two Hundred
16 Seventy-Two Thousand, Two Hundred and Fifty-Nine Dollars and Forty-Nine Cents
17 (\$272,259.49), of which seventy-five percent (75%) will be distributed to the
18 California Labor and Workforce Development Agency (“LWDA”) and twenty-five
19 percent (25%) of which will be distributed to the Aggrieved Employees;
- 20 4. Approving an award of reasonable attorneys’ fees of Attorneys’ fees of One Hundred
21 Forty-Five Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents
22 (\$145,833.33) to Plaintiff’s Counsel, Blackstone Law, APC;
- 23 5. Approving an award of Eight Thousand, Four Hundred, Two Dollars and Sixty-One
24 Cents (\$8,407.18) for reimbursement of actual litigation costs and expenses pursuant
25 to California Labor Code section 2699(g)(1);
- 26 6. Approving an incentive award of Five Thousand Dollars and Zero Cents (\$5,000.00)
27 to Plaintiff for her service to the Aggrieved Employees and to the State of California;
- 28 7. Appointing Simpluris, Inc. as the Settlement Administrator; and

8. Approving an award of no more than Six Thousand Dollars and Zero Cents (\$6,000.00) in anticipated costs to Simpluris, Inc. for its settlement administration services.

Pursuant to California Labor Code section 2699(1)(2), a copy of the proposed Settlement, as well as information regarding the approval hearing in this matter, were submitted to the LWDA via online submission concurrently with the filing of this motion. (Genish Decl. ¶ 55).

This motion is based upon this notice, the attached memorandum of points and authorities, the Genish Declaration; the Declaration of Sasha Aiono in Support of Plaintiff's Motion for Approval of PAGA Settlement and Award of Attorneys' Fees and Costs, Enhancement Fee, and Settlement Administration Costs; the pleadings and other records on file with the Court in this matter; and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: July 29, 2022

BLACKSTONE LAW, APC

By:

Jonathan M. Genish
Attorneys for Plaintiff Sasha Aiono

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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 Pursuant to the Labor Code Private Attorneys General Act, California Labor Code sections
5 2698, *et seq.* (“PAGA”), Plaintiff Sasha Aiono (“Plaintiff”) seeks approval of the PAGA Settlement
6 Agreement (“Settlement” or “Settlement Agreement”) on behalf of all hourly-paid, non-exempt
7 employees employed by Defendant Benefit Cosmetics, LLC (“Defendant”) in the State of
8 California at any time during the PAGA Period. (Declaration of Jonathan M. Genish in Support of
9 Plaintiff’s Motion for Approval of PAGA Settlement and Award of Attorneys’ Fees and Costs,
10 Enhancement Fee, and Settlement Administration Costs [“Genish Decl.”], Exh. A). The Settlement
11 terms are outlined as follows:

- 12 • Number of Representative Action Members: 315 individuals (at the time of mediation).
13 • Gross Settlement Payment: Four Hundred Thirty-Seven Thousand Five Hundred
14 Dollars and Zero Cents (\$437,500.00).
15 • Requested Attorneys’ Fees and Costs: Attorneys’ fees of One Hundred Forty Five
16 Thousand Eight Hundred and Thirty-Three Dollars and Thirty-Three Cents
17 (\$145,833.33) (one-third of the Gross Settlement Payment) plus actual litigation costs
18 and expenses of Eight Thousand, Four Hundred, Seven Dollars and Eighteen Cents
19 (\$8,407.18).
20 • Incentive Payment to Plaintiff: Five Thousand Dollars and Zero Cents (\$5,000.00).
21 • Settlement Administration Costs: Not to exceed Six Thousand Dollars and Zero Cents
22 (\$6,000.00).
23 • Estimated Net Settlement Amount: Net Settlement Amount of Two Hundred Seventy-
24 Two Thousand Two Hundred and Sixty-Four Dollars and Six Cents (\$272,259.49),
25 75% of which will be paid to the California Labor and Workforce Development
26 Agency (“LWDA”) and the remaining 25% to be paid to the Aggrieved Employees.

26 As set forth herein, the Settlement is the product of informed discovery, arms-length
27 negotiations, and provides a fair, adequate, and reasonable recovery for the Aggrieved Employees.
28

1 Plaintiff therefore respectfully requests that the Court grant approval of the proposed Settlement,
2 among other requested relief.

3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

4 Defendant originated as a beauty boutique named “The Face Place” in the 1970s in San
5 Francisco. It rebranded as Benefit Cosmetics in 1990, and nine years later was acquired by LVMH
6 Möet Hennesy Louis Vuitton. Throughout California, the company operates stand-alone boutiques
7 and also operates “BrowBars” inside of stores like Macy’s and ULTA. Plaintiff was employed by
8 Defendant from September 2, 2018 through June 29, 2021 as an Aesthetician. She started out
9 working at Defendant’s store in Santa Monica and transferred to its location on West Third Street
10 in 2019. Her duties included waxing, threading, and tinting eyebrows; giving makeovers; selling
11 cosmetics; and providing customer service. Plaintiff was a non-exempt, hourly-paid employee
12 throughout her employment. (Declaration (“Decl.”) of Sasha Aiono in Support of Plaintiff’s
13 Motion for Approval of PAGA Settlement and Award of Attorneys’ Fees and Costs, Enhancement
14 Fee, and Settlement Administration Costs [“Aiono Decl.”] ¶ 3).

15 On August 10, 2021, Plaintiff provided written notice to the Labor Workforce Development
16 Agency (the “LWDA”) and to Defendant via Certified U.S. Mail pursuant to Labor Code § 2699.3,
17 providing notice of the specific provisions of the California Labor Code which Plaintiff alleged
18 Defendant violated, including the facts and theories to support the allegations. (Genish Decl. ¶ 7,
19 Exh. A thereto). Plaintiff filed her complaint on September 13, 2021 in the Los Angeles County
20 Superior Court. She alleged one cause of action pursuant to PAGA, alleging PAGA penalties for
21 Defendant’s failure to pay overtime wages (Labor Code §§ 510 and 1198), failure to pay minimum
22 wages (Labor Code §§ 1194, 1197, and 1197.1), failure to provide meal periods (Labor Code §§
23 226.7 and 512(a)), failure to provide rest periods (Labor Code § 226.7), failure to timely pay wages
24 during employment (Labor Code § 204), failure to timely pay wages upon termination (Labor Code
25 §§ 201, 202, and 203), failure to provide accurate itemized wage statements (Labor Code § 226(a)),
26 failure to keep complete and accurate payroll records (Labor Code § 1174(d)), and failure to
27 reimburse business expenses (Labor Code §§ 2800 and 2802). (Genish Decl. ¶ 8). Plaintiff sought
28 these penalties on behalf of all individuals who worked for Defendant as hourly-paid and/or non-

1 exempt employees in the State of California at any time during the period from August 10, 2020 to
2 final judgment (the “Representative Action Members”). (Genish Decl. ¶ 8.

3 Following the filing of the Complaint, the Parties met and conferred with respect to the
4 potential resolution of this action by means of a private mediation. (Genish Decl., ¶ 9). Both parties
5 propounded initial sets of written discovery and noticed depositions. However, the parties agreed
6 to informally stay discovery pending mediation, and thus have not yet exchanged discovery
7 responses nor have appeared for deposition. (Genish Decl., ¶ 9).

8 Pursuant to this agreement to mediate, Defendant produced a random sampling of
9 Representative Action Members’ timekeeping and wage records. (Genish Decl. ¶ 10).

10 On March 16, 2022, after Plaintiff’s counsel conducted a thorough analysis of the records
11 provided, the parties attended a formal mediation with the Hon. Lisa Cole (Ret.), a neutral and
12 respected mediator with extensive experience in complex wage and hour matters. (Genish Decl., ¶
13 11). At the mediation, the Parties engaged in intensive settlement discussions during which they
14 debated their respective positions and exchanged views regarding the strengths and weaknesses of
15 the alleged claims. (Genish Decl., ¶ 11). After a full day of mediation, and with the help of the
16 mediator, the Parties were able to reach an agreement to resolve this dispute on a representative
17 basis and shortly thereafter executed a memorandum of understanding memorializing the key
18 settlement terms. (Genish Decl. ¶ 11). Following mediation, the Parties worked diligently to
19 negotiate and memorialize the terms in a long form settlement agreement. (Genish Decl. ¶ 11). On
20 June 7, 2022, the Settlement Agreement was fully executed. (Genish Decl. ¶ 11, Exh. B). Now,
21 following substantial investigation and extensive settlement negotiations, Plaintiff seeks approval
22 of the proposed settlement, which will resolve all representative claims alleged in the Complaint.
23 (Genish Decl. ¶ 12).

24 In accordance with Labor Code sections 2699 et. seq., Plaintiff’s counsel provided notice
25 of the proposed settlement to the LWDA concurrently with the filing of this Motion on July 29,
26 2022. (Genish Decl. ¶ 13).

27 **III. THE SETTLEMENT TERMS**
28

1 **A. Definition of the Representative Action Members**

2 For purposes of settlement only, the Parties have agreed that the “Representative Action
3 Members” shall be defined as “all individuals who worked for Defendant in the State of California
4 as hourly-paid, non-exempt employees at any time during the PAGA Period.” (Genish Decl. ¶ 14;
5 Settlement Agreement, ¶ 22). The PAGA Period means the period commencing on August 10,
6 2020 and ending on the Court enters the Settlement Approval Order. (Genish Decl. ¶ 14; Settlement
7 Agreement, ¶ 14). As of the date of mediation , there were 315 Representative Action Members.
8 (Genish Decl. ¶ 14).

9 **B. Amount of Settlement**

10 The Parties have agreed to settle the PAGA claims at issue in the operative Complaint for
11 a non-reversionary Gross Settlement AmountError! Reference source not found. of Four
12 Hundred Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$437,500.00). (Genish
13 Decl. ¶ 15; Settlement Agreement ¶ 34).

14 **C. Allocation and Funding of the Gross Settlement AmountError! Reference source not**
15 **found.**

16 The Gross Settlement Amount is a common fund and therefore, includes all requested costs,
17 fees, and other allocations. (Genish Decl. ¶ 16). As stated above, the Gross Settlement Payment
18 includes: (1) Plaintiff’s Counsel’s fees in the amount of one-third of the, equaling One Hundred
19 Forty-Five Thousand Eight Hundred and Thirty-Three Dollars and Thirty-Three Cents
20 (\$145,833.33); (2) Plaintiff’s Counsel’s actual litigation costs of Eight Thousand, Four Hundred,
21 Seven Dollars and Eighteen Cents (\$8,407.18); (3) Settlement Administration Costs, capped at
22 Gross Settlement Amount; and (4) PAGA Representative Incentive Payment in the amount of Five
23 Thousand Dollars and Zero Cents to Plaintiff. (Genish Decl. ¶ 17; Settlement Agreement ¶ 34).
24 After the above-estimated amounts are deducted from the Gross Settlement Amount, the Gross
25 Settlement Amount will amount to approximately Two Hundred Seventy-Two Thousand Two
26 Hundred and Fifty-Nine Dollars and Forty-Nine Cents (\$272,259.49). (Genish Decl. ¶ 17).

27 Seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA.
28 Twenty-five percent (25%) of the Gross Settlement Amount will be distributed and paid to

1 Representative Action Members on a pro-rata basis based on the number of workweeks worked
2 during the PAGA Period. (Genish Decl. ¶ 18; Settlement Agreement ¶ 34(d)).

3 Payments to the Representative Action Members will be allocated as 100% penalties.
4 (Genish Decl. ¶ 19; Settlement Agreement ¶ 42(d)).

5 The Settlement Agreement is a non-reversionary and non-claims made settlement. (Genish
6 Decl. ¶ 20; Settlement Agreement ¶¶ 34, 42(c)). All money from the Gross Settlement Amount will
7 be distributed to the LWDA and to the Representative Action Members. (Genish Decl. ¶ 20;
8 Settlement Agreement ¶ 42, 43). No money will revert to Defendant. (Genish Decl. ¶ 20; Settlement
9 Agreement ¶¶ 34, 42(c)). Any Individual Settlement Share checks remaining uncashed after 120
10 days will be cancelled (Genish Decl. ¶ 21; Settlement Agreement, ¶ 43(c).) For each PAGA
11 Settlement Package that is returned as undeliverable, the Settlement Administrator shall promptly
12 attempt to to locate an alternate updated address for the Representative Action Members at issue
13 by using an address refresher database; the Settlement Administrator shall then attempt one (1) re-
14 mailing of the PAGA Settlement Package. (Genish Decl. ¶ 21; Settlement Agreement ¶ 43(d)). The
15 Settlement Administrator will submit all funds associated with cancelled Individual Settlement
16 Share checks to the State of California’s Unclaimed Property Fund to be held in the name of each
17 Representative Action Member. (Genish Decl. ¶ 22; Settlement Agreement ¶ 43(e)). As such, no
18 “unpaid residue” under California Code of Civil Procedure section 384 will result from the
19 Settlement. (Genish Decl. ¶ 22).

20 **IV. STANDARD FOR APPROVAL OF PAGA SETTLEMENT**

21 The settlement of a PAGA claim requires court approval. (Labor Code (“Lab. Code”) §
22 2699(l).) The Court must be mindful that “[s]ettlement is a compromise, which balances the
23 possible recovery against the risks inherent in litigating further.” (*In re TD Ameritrade Account*
24 *Holder Litig.*, 2011 U.S. Dist. LEXIS 103222 at *24 (N.D. Cal. Sep. 12, 2011.)) “[T]he very essence
25 of a settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes,’” as “it is the very
26 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
27 consensual settlements.” (*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir.
28 1982).) As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for

1 trial on the merits,” or “judged against a hypothetical or speculative measure of what might have
2 been achieved.” (*Id.*)

3 Although the Labor Code does not set forth the criteria by which a PAGA settlement is to
4 be evaluated, it is presumed that a reviewing court may take into consideration some of the factors
5 that courts use when reviewing a class action settlement. However, “a PAGA claim asserted on a
6 non-class representative basis...is not considered a class action but a law enforcement action, and
7 therefore does not have to meet the requirements of [a class action].” (*Casida v. Sears Holdings*
8 *Corp.*, 2012 U.S. Dist. LEXIS 9302 at *8 (E.D. Cal. Jan. 25, 2012).)

9 A court’s review of a PAGA settlement necessarily implicates the following unique features
10 that render the approval process distinct from approval of a class action settlement under Code of
11 Civil Procedure Section 382 and California Rules of Court Rule 3.769. First, in evaluating the
12 adequacy of the settlement amount, the Court’s focus is not concerned with the amount aggrieved
13 employees are to receive, but rather, must focus on the total settlement amount in achieving
14 PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit consists of civil penalties, not
15 individual or class damages,” and while a “[PAGA] action is ... designed to protect the public and
16 penalize the employer for past illegal conduct,” a reviewing Court must be mindful of the fact that
17 settlement of a PAGA claim involves a compromise. (*Mendez v. Tween Brands, Inc.*, 2010 U.S.
18 Dist. LEXIS 66454 at *11 (E.D. Cal. June 30, 2010).) “Unlike class actions, these civil penalties
19 are not meant to compensate unnamed employees because the action is fundamentally a law
20 enforcement action.” (*Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774 at
21 *12 (Apr. 2, 2010).) The Court should not lose sight of the fact that, “[u]nlike a class action seeking
22 damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private
23 parties to recover civil penalties for the government that otherwise may not have been assessed and
24 collected by overburdened state enforcement agencies.” (*Id.*)

25 Second, consistent with the fact that unnamed employees have no property interest in a
26 PAGA claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
27 have the ability to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez*, 2010 U.S. Dist.
28 LEXIS 32774 at *13.) Indeed, “[PAGA] does not create property rights or any other substantive

1 rights” as “[i]t is simply a procedural statute allowing an aggrieved employees to recover civil
2 penalties – for Labor Code violations – that otherwise would be sought by state labor law
3 enforcement agencies.” (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th
4 993, 1003 (2009).) This renders the approval process of a PAGA settlement distinct from a class
5 action settlement, as there is no need for the Court to employ the “two-step approval process”
6 required under California Rules of Court Rule 3.769.

7 Finally, unlike class action settlements, the scope of release permitted in a PAGA settlement
8 is limited. While “judgment in [a PAGA] action is binding not only on the named employee
9 plaintiff but also on government agencies and any aggrieved employee not a party to the
10 proceeding...the non-party employees, because they were not given notice of the action or afforded
11 any opportunity to be heard, would not be bound by the judgment as to remedies other than civil
12 penalties.” (*Arias v. Sup. Ct.*, 46 Cal.4th 969, 986-87 (2009).) Thus, the scope of a release in a
13 PAGA settlement is confined to the PAGA penalties alleged in the complaint and to the claims that
14 were, or could have been, alleged pursuant to PAGA based on the factual allegations in the
15 complaint. In the case at hand, as the only claims at issue are PAGA claims, those will be the only
16 claims extinguished through this Settlement.

17 **V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

18 **A. The Settlement is Presumed to Be Fair**

19 California courts recognize that “a presumption of fairness exists where . . . [a] settlement
20 is reached through arm’s-length bargaining.” (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th
21 224, 245 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009).)
22 Here, the Settlement is presumptively fair because: (1) it is the product of non-collusive, arm’s-
23 length negotiations that were overseen by an independent mediator knowledgeable in complex
24 labor and employment matters; (2) it occurred after counsel for the Parties engaged in significant
25 investigation to evaluate the strength and potential value of the PAGA claims, and the risks of
26 litigating these claims through trial; and (3) it was negotiated by counsel with significant experience
27 in similar complex labor and employment matters.

1 **B. The Settlement Was Reached as a Result of Arm’s-Length Bargaining**

2 On March 16, 2022, the Parties mediated with the Honorable Lisa Hart Cole (Ret.) and
3 reached a Settlement as a result of a mediator’s proposal. The Parties’ settlement discussions were
4 conducted at arms’ length and were adversarial. The Settlement is the result of an informed and
5 detailed analysis of Defendant’s potential liability and exposure in relation to the costs and risks
6 associated with continued litigation. Based on Plaintiff’s Counsel’s investigation, Plaintiff’s
7 Counsel believes that the Settlement for consideration on the terms set forth in the Settlement
8 Agreement are fair, reasonable, and adequate, in the best interest of Plaintiff, the Representative
9 Action Members, and the State of California in the light of all known facts and circumstances,
10 including the risk of significant delay and uncertainty associated with litigation and various
11 defenses asserted by Defendant. (Genish Decl. ¶¶ 23-24, Settlement Agreement ¶ 32).

12 **C. Sufficient Investigation and Discovery**

13 Courts typically assess the status of discovery in determining whether a settlement
14 agreement is fair, reasonable, and adequate. (*Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801
15 (1996).) As discussed above, the parties agreed to an informal stay of discovery pending mediation.
16 (Genish Decl., ¶ 9.) Nonetheless, pursuant to the agreement to mediate, Defendant produced a
17 random sampling of Representative Action Members’ time and wage records, along with all
18 relevant written policies, employee handbooks, and job descriptions, which were subjected to
19 rigorous analysis by Plaintiff’s counsel and Plaintiff’s hired expert. (Genish Decl. ¶ 25). The
20 information and documents provided by Defendant allowed Plaintiff’s counsel to conduct an
21 informed assessment of the potential PAGA penalties at issue. (Genish Decl., ¶ 25).

22 **D. The Settlement was Negotiated by Experienced Counsel**

23 Settlement negotiations were conducted by highly capable and experienced counsel.
24 Plaintiff’s Counsel are respected members of the bar with strong records of vigorous and effective
25 advocacy, and are experienced in handling complex wage and hour class action litigation. (Genish
26 Decl., ¶¶ 2-6, 26). Accordingly, Plaintiff’s Counsel had sufficient information and experience to
27 act intelligently in negotiating the Settlement.
28

1 **E. The Settlement is Fair, Adequate, and Reasonable in Light of the Parties’ Respective**
2 **Legal Positions and Recovery Risks**

3 In deciding whether to approve a proposed settlement, a trial court has broad powers to
4 determine if it is fair given the circumstances of the case. (*Mallick v. Sup. Ct.*, 89 Cal.App.3d 434,
5 438 (1979).) In exercising these powers, the overriding concern is to ensure that a proposed
6 settlement is “fair, adequate, and reasonable.” (*Dunk*, 48 Cal.App.4th at 1801 (internal quotations
7 omitted).) A settlement is not judged against what might have been recovered had a plaintiff
8 prevailed at trial, nor does the settlement have to obtain one hundred percent of the damages sought
9 to be fair and reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250.) In evaluating the reasonableness
10 of a settlement, a trial court must consider “the strength of plaintiffs’ case, the risk, expense,
11 complexity and likely duration of further litigation, the risk of maintaining class action status
12 through trial, the amount offered in settlement, the extent of discovery completed and the stage of
13 the proceedings, the experience and views of counsel, the presence of a governmental participant,
14 and the reaction of the class members to the proposed settlement.”¹ (*Kullar v. Foot Locker Retail,*
15 *Inc.*, 168 Cal.App.4th 116, 128 (2008).) Even though a Kullar analysis is not required for approval
16 of a PAGA settlement, a brief analysis is included to support approval of this settlement.

17 These factors require balancing and are non-exhaustive. Trial courts should therefore tailor
18 the factors to each case and give due regard to “what is otherwise a private consensual agreement
19 between the parties.” (*Id.*)

20 1. Strength of Plaintiff’s Case

21 In order to prevail at trial, Plaintiff would have to prove violations of the California Labor
22 Code underlying her PAGA claims, demonstrate that Representative Action Members suffered, and
23 demonstrate that Defendant’s conduct gives rise to penalties. (*See Elliot v. Spherion Pac. Work,*
24 *LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) [“Plaintiffs’ claim under [PAGA] is wholly
25
26

27
28 ¹ As this is not a class action, the *Kullar* factors pertaining to the risk of maintaining class action
status through trial and the reaction of class members to the proposed settlement are inapplicable.

1 dependent upon her other claims. Because all of plaintiffs other claims fail as a matter of law, so
2 does her PAGA claim.”].)

3 Plaintiff’s core allegations are that Defendant systematically violated the Labor Code by,
4 *inter alia*, failing to properly pay wages for all hours worked, failure to pay overtime at the correct
5 rate, failure to provide compliant meal and rest periods, failure to pay premiums at the correct rate
6 of pay, failure to timely pay wages during employment and upon termination, failure to maintain
7 accurate payroll records, failure to provide accurate wage statements, and failure to reimburse
8 necessary business expenses. (Genish Decl., ¶ 27).

9 Some courts have held that the claims raised by Plaintiff may raise individualized issues
10 and/or are unmanageable and thus not suitable for adjudication as to a group of employees. (*See*,
11 *e.g.*, *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746, 772-775 (2021) [trial court
12 did not abuse discretion in striking PAGA claim that did not allow for Defendant to try its defenses
13 in a manageable manner]; *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 25, 29, 31, 34-35 (2014)
14 [even where employer consistently imposed a uniform policy, plaintiff “must still demonstrate that
15 the illegal effects of this conduct can be proven efficiently and manageably” and in litigating
16 representative actions the procedures utilized by the court “may not be used to abridge a party’s
17 substantive rights”]; *Ali v. U.S.A. Cab Ltd.*, 176 Cal.App.4th 1333, 1341 (2009) [affirming denial
18 of certification because employees’ declarations attesting to having taken meal and rest breaks
19 demonstrated that individualized inquiries were required to show harm]; *Brinker Restaurant Corp.*
20 *v. Superior Court*, 53 Cal.4th 1004, 1018 (2012) [although employers must authorize employees to
21 take duty-free meal and rest breaks, they are not obligated to affirmatively ensure that no work
22 related tasks are performed during such periods].)

23 Defendant also maintained several defenses to Plaintiff’s theories of liability, which, if
24 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
25 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and
26 continues to have, compliant employment policies and practices throughout the time period at issue.
27 Defendant denies that it ever violated any provision of the Labor Code, including, but not limited
28 to, those sections for which Plaintiff seeks penalties under PAGA. Defendant further denied, and

1 continues to deny, that the lawsuit is appropriate for representative treatment for any purpose other
2 than settlement. Defendant also challenged Plaintiff's standing as an aggrieved employee and
3 Representative Action Member and denied that any of Defendant's other employees whom Plaintiff
4 seeks to represent are aggrieved or Representative Action Members. (Genish Decl., ¶ 28).

5 Defendant also argued that an important feature of PAGA is that the Court retains discretion
6 to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise
7 would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." (Genish Decl.,
8 ¶ 28). (Lab. Code § 2699 (e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*, 203
9 Cal.App.4th 1112, 1136 (2012) [holding that a court may reduce the amount of PAGA penalties
10 awarded to an employee based upon discretionary factors].)

11 Even if violations of the Labor Code occurred, which Defendant denies, Defendant
12 contended that said violations would only be considered "initial violations" and thus heightened
13 "subsequent violation" penalties were not warranted. (Genish Decl., ¶ 29). (Lab. Code § 2699
14 (f)(2); *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) ["Until the
15 employer has been notified that it is violating a Labor Code provision [...], the employer cannot
16 be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to
17 penalties."].)

18 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to
19 assess cumulative penalties for the maximum number of possible, separate California Labor Code
20 violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where
21 certain conduct may be regulated by multiple provisions of the California Labor Code that are
22 interrelated and work in tandem. As such, Defendant contended that cumulative penalties and
23 heightened penalties would be unjust, arbitrary, oppressive, and confiscatory. (Genish Decl., ¶ 31).

24 While Plaintiff maintains that her PAGA claims have merit, in reaching the settlement,
25 Plaintiff and her counsel took into account the strengths and weaknesses of each side's position and
26 the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon
27 appeal. (Genish Decl., ¶ 32).

28 2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

1 While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a
2 recovery existed. Although California case law clearly states that PAGA actions need not satisfy
3 class action requirements, Plaintiff's Counsel remained mindful of the fact that some courts have
4 nevertheless held that PAGA claims must meet a threshold "manageability" requirement.
5 Defendant contended that Plaintiff's representative PAGA claims were not manageable because
6 individual issues and affirmative defenses would predominate should this case go to trial. (Genish
7 Decl., ¶ 33). (See *Wesson*, 68 Cal.App.5th at 772-775; *Brinker*, 53 Cal.4th at 1018; *Duran*, 59
8 Cal.4th at 35-36; *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011).) While Plaintiff and
9 Plaintiff's Counsel disagree with Defendant's predictions, they also recognize that there is a
10 significant risk that the Court may strike Plaintiff's PAGA claim as unmanageable. (Genish Decl.
11 ¶ 33).

12 By way of example, Plaintiff's theory of liability for meal period violations was based on
13 allegations that Defendant had a facially unlawful policy and failed to implement policies and
14 practices that allowed Representative Action Members to take meal breaks in the manner required
15 under California law. (Genish Decl., ¶ 34). (See *Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th
16 1129, 1150 (2012) [holding that "the lack of a meal/rest break policy and uniform failure to
17 authorize such breaks are matters of common proof."].) In contrast, Defendant argued that its
18 practices at all times during the PAGA Period were lawful. Defendant argued that the rate of
19 purported meal period violations reflected in the data throughout the PAGA Period illustrated that
20 meal breaks were authorized and not impeded, and that any purported meal period violations would
21 require individualized inquiry. (Genish Decl., ¶ 34). Indeed, Plaintiff's analysis of Defendant's
22 data revealed there was a very low rate of meal break violations. Only slightly over 2% of shifts
23 (i.e., 96 of the aggregate shifts) that were over five hours in length failed to record a 30 minute
24 meal period. Even fewer shifts (0.33%) showed late meal breaks taken after the fifth hour of work,
25 and 0.27% of shifts showed a meal break of less than 30 minutes. In addition, the records showed
26 that Defendant paid meal break premiums. Therefore, the potential value of this claim was low.
27 (Genish Decl. ¶ 34).

1 Plaintiff's rest period allegations were based on a similar alleged facially unlawful policy
2 and failure to provide employees with timely, full, and uninterrupted rest periods. As with the meal
3 period allegations, Defendant contended that it provided rest breaks and relieved Representative
4 Action Members of all duties as required under California law. Additionally, this claim was even
5 more uncertain given the difficulties associated with proving the alleged rest period violations, as
6 Defendant was not required to record these breaks. Given the lack of records demonstrating rest
7 period violations, there were legitimate concerns Plaintiff would not be able to try these claims on
8 a representative basis or prove damages. (Genish Decl. ¶ 35).

9 Plaintiff also faced challenges proving liability for her minimum wage and overtime claims.
10 These claims were largely based on unrecorded, off-the-clock work performed by the
11 Representative Action Members both before and after their shifts and during purported meal
12 periods. Plaintiff's off-the-clock claim was based on the time that she and other Representative
13 Action Members spent arriving before the start of their shift to put on required clothing and
14 protective equipment (masks, aprons, plastic capes), undergoing COVID-19 screenings, reviewing
15 daily sales goals, and securing personal items in lockers, so that they would be ready to begin
16 working at the start of their shift. Additionally, Plaintiff and others often had to wait outside their
17 work location when the Keyholder (the employees who were entrusted with keys to the store) for
18 the opening shift was not on time to unlock the door at the start of the work day. Plaintiff also
19 claimed that she and other employees would have to clock out and then perform closing tasks such
20 as cleaning beauty stations and counters, taking out the trash, shutting down the computers, turning
21 off lights, setting the alarm, and locking the doors. Last, Plaintiff claimed that she and others
22 responded to calls and text messages regarding work when they were not at work. However, the
23 individualized nature of when and why this work was performed, as well as the individualized
24 nature of damages for purposes of evaluating and assessing penalties, presented substantial
25 concerns regarding the manageability of the case and the risk the Court could find these issues
26 prevented trial on a representative basis. Based thereon, this claim was discounted for settlement
27 purposes. (Genish Decl. ¶ 36).

1 Plaintiff further learned in analyzing the data provided by Defendant that her overtime claim
2 had a very low value. Defendant's alleged failure to properly blend bonuses into employees'
3 overtime rate, while appearing to be correct, amounted to almost no damages: only 3% of the 2,351
4 aggregate pay periods analyzed had both overtime *and* bonus compensation. Based thereon, the
5 value of this claim was significantly discounted for settlement. (Genish Decl. ¶ 37).

6 There were also substantial risks associated with Plaintiff's recordkeeping and wage
7 statement claims. First, these claims were wholly derivative of Plaintiff's claims for unpaid meal
8 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime
9 wages. If the Court were to find these claims to be unmanageable, the derivative claims for penalties
10 would also likely fail. Accordingly, these derivative claims, which comprised a substantial portion
11 of Defendant's estimated liability, were uncertain. (Genish Decl. ¶ 38).

12 Plaintiff's Counsel also recognized that proving the each Labor Code violation as needed
13 to establish the amount of penalties due to Representative Action Members would be an expensive,
14 time-consuming, and uncertain proposition. In order to prove liability and entitlement to penalties,
15 Plaintiff's Counsel would need to request and analyze thousands of pages of documents, obtain the
16 Representative Action Members' contact information, contact each of them, and obtain declarations
17 at great expense. Obtaining the cooperation of current employees would also be difficult, given the
18 likely reluctance to aid prosecution of a lawsuit against a current employer. On the other hand,
19 Defendant would likely be able to obtain the cooperation of its employees. Moreover, even if
20 Plaintiff prevailed at trial, possible appeals would substantially delay any recovery by the
21 Representative Action Members. (Genish Decl. ¶ 39).

22 Finally, Plaintiff's Counsel was also mindful of the fact that PAGA is fundamentally not
23 intended to be compensatory in nature, but is instead intended to facilitate enforcement of
24 California's labor laws by financing state activities and educating and deterring non-compliance.
25 (Genish Decl., ¶ 40).

26 Based on the total aggregate number of pay periods at mediation (6,499), and assuming only
27 one penalty per pay period *without* stacking penalties for multiple violations within the same pay
28 period, the total penalties amounted to \$649,900. Therefore, after considering all of the above

1 factors, Plaintiff and Plaintiff's Counsel concluded that it was in the best interest of the State of
2 California and the Representative Action Members to enter into the Settlement. Moreover, the
3 overall relief obtained by the Settlement is significant, not only from a monetary perspective, but
4 also because it fulfills the public policy objectives of PAGA—to promote enforcement of
5 California's labor laws, provide funds to the state, and deter future non-compliance by the
6 employer. (Genish Decl., ¶ 41).

7 In light of the parties' respective legal positions and the risks of continued litigation, the
8 Gross Settlement Payment for resolution of the PAGA claims, is fair, adequate, and reasonable.
9 (Genish Decl., ¶ 42).

10 3. The Amount Offered in Settlement

11 The Net Settlement Amount is currently estimated to be \$272,259.49, of which an estimated
12 \$68,064.87 is to be distributed to Representative Action Members on a pro rata basis, based on their
13 number of Pay Periods during the PAGA Period, and \$204,194.62 is to be distributed to the LWDA.
14 There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement
15 Amount as it fully complies with California Labor Code section 2699 (i). (Genish Decl., ¶ 43).

16 The Settlement is a compromise of highly disputed claims. Plaintiff and her counsel
17 recognize the expense and length of continued proceedings necessary to litigate the matter through
18 trial and any possible appeals. Plaintiff and her counsel have also taken into account the uncertainty
19 and risk of the outcome of further litigation, and the difficulties and delays inherent in such
20 litigation. Plaintiff and her counsel are also aware of the burdens of proof necessary to establish
21 liability, both generally and in response to Defendant's defenses thereto, and the difficulties in
22 establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the
23 State of California, and other Representative Action Members. Plaintiff and her counsel have also
24 taken into account Defendant's agreement to enter into a settlement that confers significant relief
25 upon the Representative Action Members and the State of California. Considering all of the facts
26 in this case, Plaintiff and her counsel have determined that the Settlement represents a fair,
27 adequate, and reasonable resolution of the PAGA claims, and that it is in the best interests of the
28 Representative Action Members and the State of California. (Genish Decl., ¶ 44).

1 The result achieved in this case, and the monetary recovery provided by this settlement, are
2 well within the range of an acceptable settlement under the circumstances, especially when
3 compared to the settlement of PAGA claims in other cases. (Genish Decl., ¶ 45). (See, e.g., *DCH*
4 *Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017)
5 [approving \$15,000 out of \$4 million toward settlement of PAGA claims]; *Garcia v. Gordon*
6 *Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal. Oct. 29, 2012) [approving \$10,000
7 out of \$3.7 million toward settlement of PAGA claims]; *Schiller v. David's Bridal, Inc.*, 2012 U.S.
8 Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving \$7,500 out of \$518,245 toward
9 settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC*, 2011 U.S. Dist. LEXIS 15821,
10 at *4 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 out of \$6.9 million toward settlement of PAGA
11 claims]; *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, at *14 (E.D. Cal. Nov. 27,
12 2021) [approving \$10,000 out of \$2.5 million toward settlement of PAGA claims].) Here, the value
13 obtained for settlement of the PAGA claims is significant, and it will be distributed in accordance
14 with and in fulfillment of the objectives of the PAGA statute.

15 4. Discovery and Stage of the Proceedings

16 As discussed above, the parties agreed to an informal stay of discovery pending mediation.
17 (Genish Decl., ¶ 9.) Nonetheless, pursuant to the agreement to mediate, Defendant produced a
18 random sampling of Representative Action Members' meal and rest records, which were subjected
19 to rigorous analysis by Plaintiff's counsel and expert. (Genish Decl. ¶ 10). This allowed Plaintiff's
20 counsel to conduct an informed assessment of the potential PAGA penalties at issue, and Plaintiff's
21 counsel and their expert formulated a damages analysis based on the records provided by
22 Defendant. (Genish Decl., ¶ 9, 10).

23 5. Experience and Views of Counsel

24 Plaintiff's Counsel is experienced in complex representative and class action wage-and-
25 hour litigation. In the view of Plaintiff's Counsel, the benefits conferred by the settlement are
26 eminently fair and reasonable, and in the best interests of the State and the Representative Action
27 Members in light of the risk, delay, and uncertainty of continued litigation and the substantial
28 monetary benefits provided for by the Settlement. (Genish Decl., ¶¶ 2-6, 46). Furthermore, courts

1 have acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved
2 employees are largely aligned. All stand to gain from proving as convincingly as possible as many
3 Labor Code violations as the evidence will sustain[.]” (*Williams v. Superior Court*, 3 Cal. 5th 531,
4 548 (2017) [citing Labor Code § 2699(g)(1)(i)].)

5 **VI. THE REQUESTED ATTORNEYS’ FEES AWARD IS FAIR AND**
6 **REASONABLE**

7 Plaintiff, as the prevailing party in settlement, is entitled to recover attorneys’ fees and costs
8 for bringing her PAGA claim. (Lab. Code § 2699 (g) [“Any employee who prevails in any action
9 shall be entitled to an award of reasonable attorney's fees and costs.”].) Plaintiff’s Counsel is also
10 entitled to attorneys’ fees pursuant to Code of Civil Procedure section 1021.5 (a), as the instant
11 action has resulted in the enforcement of important rights benefitting the public and secures
12 monetary recovery for the State as well as the Representative Action Members. A fee award is
13 justified where the legal action has produced its benefits by way of a voluntary settlement. (*See*,
14 *e.g.*, *Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent*
15 *Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)
16 [“when a number of persons are entitled in common to a specific fund, and an action brought by a
17 plaintiff... for the benefit of all results in the creation or preservation of that fund, such plaintiff...
18 may be awarded attorney’s fees out of the fund.”].)

19 In *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016), the California Supreme Court
20 confirmed that “[t]he percentage of fund method survives in California class action cases.”
21 Specifically, the *Laffitte* Court held:

22 The recognized advantages of the percentage method-including relative ease of
23 calculation, alignment of incentives between counsel and the class, a better
24 approximation of market conditions in a contingency case, and the
25 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.

26 (*Id.*, at 503 [internal citation omitted].) Fee awards of roughly one-third of the settlement fund are
27 routinely awarded in California state and federal courts in class actions. (*Chavez v. Netflix, Inc.*, 162
28 Cal.App.4th 43, 66, fn. 11 (2008); *see also, e.g., In re Pacific Enterprises Securities Litig.*, 47 F.3d 373,

1 379 (9th Cir. 1995) [affirming 33% fee award].) Here, Plaintiff’s Counsel’s fee request of \$145,833.33
2 (one-third of the Gross Settlement Payment) is fair and reasonable based on the percentage of the
3 recovery method.

4 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
5 method, the California Supreme Court has taken the position that trial courts also “retain the discretion
6 to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested
7 percentage fee.” (*Laffitte*, 1 Cal.5th at 506; *see also Wershba*, 91 Cal.App. 4th at 253.) Courts award
8 fees to serve as an economic incentive for lawyers to undertake litigation, and thereby enhance and
9 facilitate access to the judicial system for adjudication of meritorious claims, and to deter wrongdoing.
10 This is especially true in situations where multiple similar alleged wrongs would not be economically
11 feasible to pursue individually, such as here. Trial courts have “wide latitude” in assessing the value of
12 attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of
13 discretion.” (*Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000); *see also Laffitte*, 1 Cal.5th
14 at 506 [holding that “trial court did not abuse its discretion in using [the percentage of fund method], in
15 part to approve the fee request”].) Indeed, it is long settled that the “experienced trial judge is the best
16 judge of the value of professional services rendered in his court.” (*Ketchum v. Moses*, 24 Cal.4th 1122,
17 1132 (2001).)

18 The percentage method is particularly appropriate where a monetary settlement has been
19 recovered and “the benefit [recovered can be] easily quantified.” (*In re Bluetooth Headset Prods. Liab.*
20 *Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).) Where the amount of a settlement is a “certain or easily
21 calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable percentage
22 of the settlement created. (Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*,
23 Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.) The percentage fee method is
24 preferred in representative actions because “it better approximates the workings of the marketplace than
25 the lodestar approach.” (*Lealao, supra*, 82 Cal.App.4th at 49.) California law provides that the award
26 for attorneys’ fees should be equivalent to fees freely negotiated in the legal marketplace and paid in
27 comparable litigation based on the result achieved and risk incurred. (*See Lealao*, 82 Cal.App.4th at
28 47-50; *Laffitte*, 1 Cal.5th 480 at 503.) In cases where the settlement agreement provides that the

1 defendant will pay the plaintiffs’ attorneys a percentage of the fund created by the settlement, use of
2 that percentage method is appropriate. (*Lealao*, 82 Cal.App.4th at 32.) Fee awards that are too small
3 will “chill the private enforcement essential to the vindication of many legal rights and obstruct the
4 representative actions that often relieve the courts of the need to separately adjudicate numerous
5 claims.” (*Id.* at 53.) Therefore, fees in representative actions should approximate the probable terms
6 of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation.
7 (*Id.* at 48.) “The ultimate goal ... is the award of a ‘reasonable’ fee to compensate counsel for their
8 efforts, irrespective of the method of calculation.” (*Consumer Privacy Cases*, 175 Cal.App.4th 545,
9 557-58 (2009) [quoting *Apple Computer, Inc. v. Superior Court*, *supra*, 126 Cal.App.4th at 1270].)

10 Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and circumstances
11 surrounding the case is well-within the range of reasonableness. Historically, courts have awarded fees
12 as high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of
13 the case. (*See In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) [awarding attorneys’
14 fees in the amount of 45% of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v.*
15 *Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195 (S.D.N.Y. 1979) [awarding approximately 53%
16 of the settlement as attorneys’ fees].) California courts routinely approve attorneys’ fees awards
17 “average[ing] around one-third of the recovery.” (*Chavez*, 162 Cal.App.4th at 66 [trial court found the
18 range of contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee
19 was appropriate]; *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles
20 County Superior Court, Case No. BC596892 (June 2016) [approving a fee award of one-third of the
21 settlement amount of \$950,000 in a PAGA action, because it was “reasonable and consistent with fee
22 awards in class action cases”].)

23 Plaintiff’s Counsel has litigated this case since it was commenced, with the very real possibility
24 of an unsuccessful outcome and no fee recovery of any kind. Plaintiff’s Counsel conducted informal
25 discovery and exchanged large amounts of data and documents with Defendant’s counsel. The data and
26 documents reviewed and analyzed by Plaintiff’s Counsel included a sampling of time and pay data,
27 Defendant’s employee handbook, Defendant’s travel and entertainment policy, information regarding
28 the number of meal period and rest period premiums paid, and information regarding the number of pay

1 periods worked. Counsel for the Parties undertook significant investigation, and also invested time
2 reviewing and analyzing relevant documents and data to evaluate Plaintiff's claims, including, but not
3 limited to, calculating the potential monetary recovery under PAGA. Other work performed by
4 Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's counsel
5 regarding informal discovery, mediation, and settlement, among other issues; participating in case
6 strategy and analysis; drafting, reviewing, and revising the mediation brief; and preparing for and
7 attending mediation. (Genish Decl., ¶ 47).

8 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will
9 not receive any compensation until recovery is obtained. Plaintiff's Counsel is experienced in complex
10 wage-and-hour litigation and used that experience to obtain a favorable result for Plaintiff, the
11 Representative Action Members, and the State of California. Considering the amount of fees requested,
12 work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling
13 similar matters, Plaintiff maintains that the requested attorneys' fees are reasonable and should be
14 awarded. (Genish Decl., ¶¶ 48, 49).

15 **VII. THE REQUESTED COSTS TO BE REIMBURSED TO PLAINTIFF'S**
16 **COUNSEL ARE FAIR AND REASONABLE**

17 The Settlement provides for reimbursement of litigation costs and expenses of up to
18 \$30,000. As set forth in the Genish Declaration, Plaintiff's Counsel has presently incurred a total
19 of \$8,402.61 in litigation costs and expenses and anticipates expending \$4.57 more through the
20 approval process. This amount was and is reasonable and necessary in the prosecution of this
21 matter, and is less than the maximum amount allocated under the Settlement. Accordingly,
22 Plaintiff's counsel respectfully request that the Court reimburse them for litigation costs and
23 expenses in the amount of \$8,407.18. (Genish Decl., ¶ 50, Exhibit C).

24 **VIII. THE REQUESTED INCENTIVE PAYMENT IS FAIR AND REASONABLE**

25 The purpose of an enhancement award is to incentivize aggrieved employees to step into
26 the shoes of the state labor agency and undertake the responsibilities associated with initiating a
27 lawsuit and serving in a representative capacity. (*See, e.g., Bell v. Farmers Ins. Exch.*, 115
28 Cal.App.4th 715, 726 (2004) [upholding "service payments" to named plaintiffs for their efforts in

1 bringing the action]; *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) [“an
2 incentive award is appropriate ‘if it is necessary to induce an individual to participate in the suit’”].)

3 Plaintiff initiated this litigation on behalf of her former co-workers who will now be entitled
4 to receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation
5 including her own research, reviewing documents, and extensive discussions with Plaintiff’s
6 Counsel. (Aiono Decl. ¶¶ 4-9). For these reasons, Plaintiff requests that an incentive payment of
7 \$5,000.00. (Genish Decl. ¶ 51; Aiono Decl. ¶ 10).

8 **IX. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND**
9 **REASONABLE**

10 As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to
11 approval by the Court, Simpluris, Inc. to handle the administration of the Settlement. The fees and
12 expenses of the PAGA Settlement Administrator are estimated not to exceed \$6,000. These costs
13 include, but are not limited to, expenses for preparing, printing, and mailing the Notice of
14 Representative PAGA Action Settlement and Individual Settlement Share checks (i.e., PAGA
15 Settlement Package) to the Representative Action Members, re-mailing the returned PAGA
16 Settlement Packages to any new addresses obtained, and handling inquiries from Representative
17 Action Members regarding the Settlement, among other things. Accordingly, the Court should
18 grant approval of the Settlement Administration Costs in the amount of up to \$6,000 to Simpluris,
19 Inc., a necessary third-party for handling the settlement process. (Genish Decl. ¶ 52).

20 **X. NOTICE TO REPRESENTATIVE ACTION MEMBERS**

21 Although PAGA does not require notice to unnamed aggrieved employees of a settlement,
22 the parties have jointly drafted a Notice for the Court’s approval which will be delivered to the
23 Representative Action Members along with their Individual Settlement Share Checks. (*See*
24 [Proposed] Order Granting Motion for Approval of PAGA Settlement, Exhibit 1). The Notice
25 includes information regarding the nature of the lawsuit, the claims being released and a summary
26 of the terms of the Settlement. *Id.* The Notice will be provided to Representative Action Members
27 in English since they speak and understand English as part of their employment requirements.
28 (Genish Decl., ¶ 53).

1 No later than thirty (30) calendar days after the Court grants approval of the Settlement,
2 Defendant will provide a list to the Settlement Administrator containing the following information
3 for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known
4 telephone number; (iv) social security number; and (v) Eligible Pay Periods (the “Representative
5 Members List”). (Settlement Agreement, ¶ 43(a)). The Settlement Administrator shall perform
6 any searches necessary to confirm the Representative Action Members’ addresses, and no later than
7 fourteen (14) calendar days after receiving the Representative Action Members’ List from
8 Defendant, the Settlement Administrator shall mail the Notice to all Representative Action
9 Members via first class mail. (Genish Decl., ¶ 54). (Settlement Agreement, ¶ 43(c)).

10 **XI. CONCLUSION**

11 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant
12 Plaintiff’s Motion for Approval of PAGA Settlement and grant the relief requested herein.

13 Respectfully submitted,

14 DATED: July 29, 2022

BLACKSTONE LAW, APC

15
16 By:



Jonathan M. Genish
Miriam L. Schimmel
Attorneys for Plaintiff Sasha Aiono

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PROOF OF SERVICE

I, Paulette Proctor, certify and declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On July 29, 2022, I served a copy of the following document(s):

NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT, AWARD OF ATTORNEYS' FEES AND COSTS, INCENTIVE AWARD, AND SETTLEMENT ADMINISTRATION COSTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
on the interested parties as follows:

Emilie C. Woodhead
ewoodhead@winston.com
Jason S. Campbell
jscampbell@winston.com
Rachel A.D. Busch
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Winston & Strawn LLP
333 S. Grand Avenue, 38th Floor
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Facsimile: (213) 615-1750

Attorneys for Defendant Benefit Cosmetics, LLC

☒ **BY ELECTRONIC MAIL (E-MAIL):** I caused said document(s) to be delivered electronically to be delivered to the above referenced addressee(s) via email from email address pproctor@blackstonepc.com pursuant to California Code of Civil Procedure section 1010.6(e)(1). I did not receive any electronic message or other indication that the transmission was unsuccessful.

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

Executed on July 29, 2022 at Beverly Hills, California.



Paulette Proctor



Court Reservation Receipt

Reservation

Reservation ID: 177760093036	Status: RESERVED
Reservation Type: Motion re: (Approval of PAGA Settlement)	Number of Motions: 1
Case Number: 21STCV33719	Case Title: SASHA AIONO vs BENEFIT COSMETICS, LLC
Filing Party: Sasha Aiono (Plaintiff)	Location: Stanley Mosk Courthouse - Department 32
Date/Time: August 24th 2022, 8:30AM	Confirmation Code: CR-2NQEJBTQQDUNZVJZD

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: AmericanExpress
Account Number: XXXX1008	Authorization: 227691

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