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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – INGLEWOOD COURTHOUSE

JORGE GARCIA, individually and on behalf
of himself and all others similarly situated,

Plaintiff,

v.

US BEST INGREDIENTS, INC., a
California Corporation; and DOES 1-50,
inclusive,

Defendants.

CASE NO.: 21TRCV00813

**MEMORANDUM IN SUPPORT OF
PLAINTIFF JORGE GARCIA'S MOTION
FOR APPROVAL OF PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Dept.: 8
Judge: Hon. Ronald F. Frank
Date: June 16, 2023
Time: 8:30 AM

RES ID: 559232291149

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code
4 section 2699, *et seq.*, plaintiff Jorge Garcia (“Plaintiff”) seeks court approval of the settlement of
5 the claim he asserted under PAGA. In the Action, Plaintiff alleges that defendant US Best
6 Ingredients, Inc. (“Defendant”) failed to provide Plaintiff and other PAGA Settlement Members
7 with all lawful wages earned, including minimum wages and overtime, failed to provide lawful
8 meal or rest periods or premiums in lieu thereof. Plaintiff additionally alleges that Defendant
9 failed to issue accurate wage statements, failed to timely pay all wages during employment and
10 failed to timely pay all wages due upon separation. Plaintiff brought this Action as a
11 representative of the state to recover penalties for these alleged Labor Code violations. This
12 action will resolve the PAGA claims of all non-exempt employees employed by Defendant in
13 California between August 4, 2020 through September 15, 2022. (Ex. 1 to Declaration of
14 Christina M. Lucio (“Lucio Decl.”), Settlement Agreement (“Settlement”), ¶ 7-8.)

15 Under the Settlement, Defendant will pay \$225,000 to settle the PAGA claim.
16 (Settlement, ¶ 22.) The PAGA penalties secured by the Settlement are genuine and meaningful,
17 and fulfill PAGA’s underlying purpose to benefit the public. As detailed below, the Settlement
18 was reached after extensive information exchange, and investigation by the Parties, including a
19 thorough review and analysis of Defendant’s wage and hour policies and a sampling of the PAGA
20 Settlement Members’ time and payroll records, interviews with PAGA Settlement Members, a
21 review of the applicable arbitration agreements, and a full-day mediation before an experienced
22 mediator well-versed in wage and hour litigation. (Lucio Decl., ¶¶ 10-22.) The Settlement is also
23 strongly supported by experienced counsel, who carefully considered the strength of the claims
24 and Defendant’s multiple defenses, as well as the expense, complexity, risks, and likely duration
25 of continued litigation. (Lucio Decl. ¶¶ 26-31.) The Settlement in the amount of \$225,000 is an
26 excellent result given the uncertain state of the law, the conflicting evidence and multiple
27 procedural and substantive defenses, which may substantially undercut the projected value of the
28 claims and resultant damages, or potentially eliminate the claims altogether. In light of the

1 Parties' support for the Settlement, and because it satisfies all the criteria for final settlement
2 approval under California law and will provide significant monetary recovery to the State of
3 California and the PAGA Settlement Members, the Court should approve the Settlement.

4 Plaintiff also respectfully submits that in light of this excellent result, his requests for
5 attorneys' fees in the amount of \$75,000, and reimbursement of costs and expenses in the amount
6 of \$9,500 also are reasonable and thus should be approved by the Court.¹

7 Accordingly, Plaintiff respectfully requests that the Court enter an order granting approval
8 of the Settlement.

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

10 **A. The Parties**

11 Defendant US Best Ingredients, Inc. is a California Corporation doing business in the state
12 of California. It is based at 2927 Lomita Blvd., Torrance, California, 90505. (Complaint, ¶ 9.)
13 Defendant is a research company specializing in healthy food ingredients and development of raw
14 materials for human health. Defendant operates a location in Torrance, California and employs
15 other non-exempt employees like Plaintiff. Plaintiff worked at the Torrance facility as an hourly,
16 non-exempt Machine Operator for Defendants and worked approximately 5 days per week, 40
17 hours per week. (Complaint, ¶ 21.)

18 **B. Procedural History**

19 On or about July 20, 2021, Plaintiff mailed Defendant and the Labor and Workforce
20 Development Agency notice of the alleged Labor Code and IWC Wage Order(s) violations that
21 allegedly subjected Defendant to penalties under the Private Attorneys General Act of 2004, Cal.
22 Lab. Code section 2698 *et seq.* ("PAGA"). (Lucio Decl. ¶ 6.). A true and correct copy of the
23 initial letter to the LWDA is attached to the Lucio Declaration as **Exhibit 2**. Having received no
24 response from the LWDA, Plaintiff filed a complaint against Defendant alleging a single cause
25 of action under PAGA on November 5, 2021 in *Garcia v. US Best Ingredients, Inc.*, Los Angeles
26 Superior Court Case No. 21TRCV00813. The *Garcia* action seeks PAGA penalties for (1) failure

27 ¹ Mr. Garcia has entered into a separate individual settlement agreement to effectuate the
28 general release that he entered into as part of the settlement of the action.

1 to pay minimum wages; (2) failure to pay overtime owed; (3) failure to provide lawful meal
2 periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages owed
3 upon separation from employment; and (6) knowing and intentional failure to comply with
4 itemized wage statement provisions. (Lucio Decl. ¶ 8.) On or about February 7, 2022, Defendant
5 timely answered the Complaint by generally denying all allegations and asserting numerous
6 affirmative defenses. (Lucio Decl. ¶ 9.)

7 **C. Discovery and Investigation**

8 Prior to reaching the Settlement, Plaintiff and his counsel conducted an extensive
9 investigation into the claims alleged and performed legal research. (Lucio Decl. ¶ 10-12.)
10 Plaintiff served employment interrogatories, form interrogatories, special interrogatories, requests
11 for admission, and requests for production. (Lucio Decl. ¶ 13.) In lieu of formally responding
12 to the discovery requests, the Parties agreed to engage in an informal document and information
13 exchange in order to prepare for mediation. (Id.)

14 Defendant produced thousands of lines of time and pay data for evaluation. (Lucio Decl.
15 ¶ 14.) Defendant also provided data points for the PAGA Settlement Members, the number of
16 workweeks and pay periods at issue, the number of purportedly aggrieved employees, and
17 produced hundreds of pages of policy and procedure documents, guidelines, emails, memos,
18 exemplars of the relevant arbitration agreements, and a representative sampling of the time and
19 payroll data for the PAGA Settlement Members. (Id. at ¶ 15.) Plaintiff's counsel also interviewed
20 PAGA Settlement Members, and reviewed personnel file documents, time and pay records for
21 Plaintiff and other Aggrieved Employees. (Id. at ¶ 16.) Plaintiff's counsel analyzed the time and
22 payroll data produced by Defendant, and prepared a damages model prior to the mediation. (Id. at
23 ¶ 17.)

24 **D. Settlement Negotiations**

25 On August 9, 2022, the Parties participated in a private mediation with mediator Steven
26 Paul, Esq. (Lucio Decl. ¶ 19.) The Parties were unable to reach a resolution at the mediation, but
27 continued negotiations with the assistance of a mediator and subsequently accepted a mediator's
28 proposal after such negotiations. (Lucio Decl. ¶19.) Over the course of the next several months,

1 the Parties engaged in extensive negotiations in connection with the provisions in the more
2 comprehensive settlement agreement. (Id. ¶ 21.). The Joint Settlement and Release of Claims
3 (“Settlement Agreement”) was fully executed on April 24, 2023. (Lucio Decl. at Ex. 1.)

4 On May 16, 2023, Plaintiff submitted a copy of the Settlement Agreement to the Labor
5 and Workforce Development Agency (“LWDA”). (Lucio Decl., ¶ 24.)

6 **III. SUMMARY OF SETTLEMENT**

7 **A. The PAGA Settlement Members**

8 The PAGA Settlement Members consist of Plaintiff and all current and former non-
9 exempt employees of Defendant in the State of California during the period of August 4, 2020
10 through September 15, 2022 (“PAGA Period”). (Ex. 1, Settlement, ¶ 7-8.) At the time of
11 mediation, Defendant represented that there were approximately 2000 pay periods and 145 PAGA
12 Settlement Members. (Lucio Decl. ¶ 26.)

13 **B. Settlement Terms**

14 Under the Settlement, the PAGA claims of all PAGA Settlement Members shall be settled
15 for the Total Settlement Amount of \$225,000, which is inclusive of all Individual Shares of
16 PAGA Fund to PAGA Settlement Members, Plaintiff’s Counsel Fees and Costs Award,
17 Settlement Administration Costs, and the LWDA Payment. (Settlement, ¶ 22-23.)

18 The Total Settlement Amount shall be allocated as follows:

19 1. PAGA Settlement Amount. After deducting the requested Plaintiff’s Counsel
20 Fees and Costs award, and the Settlement Administration Costs, the remainder of the Total
21 Settlement Amount (approximately \$134,911.38) shall be allocated toward payment to the
22 LWDA and PAGA Settlement Members (“PAGA Settlement Amount”). Seventy-five percent of
23 the PAGA Settlement Amount, estimated \$101,183.24, will be paid to the LWDA and 25% of
24 the PAGA Settlement Amount, estimated \$33,727.84, will be allocated among the PAGA
25 Settlement Members. (Settlement, ¶ 23, 29-30.)

26 2. Individual Share of PAGA Fund: The portion of the PAGA Fund that is paid to
27 each PAGA Settlement Member shall be determined based on the following formula: The
28 amount to be paid per week worked by a PAGA Settlement Member will be calculated by

1 dividing the value of the portion of the PAGA Fund that will be paid to PAGA Settlement
2 Members by the total number of weeks worked by all PAGA Settlement Members during the
3 PAGA Period. (Settlement, ¶ 33.)

4 All settlement checks will remain valid and negotiable for 180 days from the date of their
5 mailing by the Settlement Administrator. Uncashed checks will be void and escheat to the
6 California State Controller's Office in the name of the employee who did not cash his or her
7 check, pursuant to California's unclaimed property laws. (Settlement, ¶ 42.)

8 3. Attorney's Fees Award. Subject to Court approval, Plaintiff's Counsel shall be
9 entitled to receive an award of reasonable attorneys' fees in an amount not to exceed one-third of
10 the Total Settlement Amount, which amounts to \$75,000. (Settlement, ¶ 23.)

11 4. Plaintiff's Counsel Costs. Subject to Court approval, Plaintiff's Counsel shall be
12 entitled to receive reimbursement for costs not to exceed \$9,500 under the settlement.
13 (Settlement, ¶ 23.) Counsel seeks the reimbursement of reasonable costs incurred in the amount
14 of \$9,088.62. (Lucio Decl. ¶43, Ex. 4.)

15 5. Settlement Administration Costs. The Settlement Administration fees and
16 expenses, which are estimated not to exceed \$6,000 shall be paid from the Total Settlement
17 Amount. (Settlement, ¶ 27.)

18 **C. The Release**

19 Upon the date of entry of an order by the Court in this Action approving this Settlement, the
20 LWDA and PAGA Settlement Members, including Plaintiff, will fully release and forever discharge
21 the Released Parties from any and all Released Claims. As a result of this release, the PAGA
22 Settlement Members will be unable to bring a claim under, or recover in any other claim brought under,
23 the California Private Attorneys General Act, California Labor Code § 2698 *et seq.*, for any violations
24 of the Released Claims that took place during the PAGA Period. (Settlement, ¶ 44.)

25 The "Released Claims" shall mean any and all claims, whether known or unknown, to
26 recover civil penalties pursuant to PAGA, Labor Code section 2698 *et seq.*, for any violations
27 alleged in the Action, or that could have been alleged in the Action, that are based on the alleged
28 failure to provide meal and rest breaks, failure to pay minimum wage, failure to pay overtime

1 compensation, failure to provide lawful itemized wage statements, failure to provide paid sick
2 leave, and final pay violations, and any resulting claim for penalties under PAGA alleged to have
3 been violated in the Action during the PAGA Period. Released Claims include, but are not
4 limited to, alleged violations by Defendant of the California Labor Code sections 226, 226.3,
5 226.7, 510, 512, 201-204, 210, 216, 218.6, 225.5, 558, 1194, 1197, 1198, and the related
6 applicable IWC Wage Order provisions for the PAGA Period. (Settlement, ¶ 13.)

7 The “Released Parties” shall mean Defendant, and all of its subsidiary companies,
8 affiliates, holding companies, successors, partners, owners, shareholders, insurers, legal
9 representatives, assigns, employees, officers, directors, attorneys, and agents. (Settlement, ¶ 14.)

10 **D. Settlement Administration**

11 Defendant shall provide the Settlement Administrator with a list of the names and addresses of
12 the PAGA Settlement Members within seven (7) days after the Court issues an Order approving the
13 Settlement. (Settlement, ¶ 34.) Within seven (7) days of the receipt of the necessary funding, the
14 Settlement Administrator will mail the notice and Individual Payment to the PAGA Settlement
15 Members as provided for in the Settlement. (Id, ¶¶ 34-40.)

16 Any Individual Payment returned to the Settlement Administrator as non-deliverable shall
17 be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the
18 Settlement Administrator shall promptly attempt to determine a correct address by the use of
19 skip-tracing, or other type of automated search. The Settlement Administrator shall attempt no
20 more than two re-mailings. (Settlement, ¶ 40.)

21 **IV. THE COURT SHOULD GRANT APPROVAL OF THE PAGA SETTLEMENT**

22 **A. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful**
23 **and Fulfill PAGA’s Underlying Purpose to Benefit the Public**

24 Because a settlement of PAGA claims compromises a claim that could otherwise be
25 brought by the state, PAGA provides that “court[s] shall review and approve any settlement of
26 any civil action filed pursuant to [PAGA].” *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal.
27 Aug. 25, 2017) No. 16-CV-04708-LHK, 2017 WL 3670794, at *2. The Court of Appeal in
28 *Moniz v. Adecco USA, Inc.* (Cal. Ct. App. Nov. 30, 2021) 2021 WL 5578298, recently defined the

1 standard of review for PAGA settlements, finding that the trial court must consider whether the
2 settlement is “fair, reasonable, and adequate in view of PAGA’s purposes to remediate present
3 labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Id.* at
4 *9; see also *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1133
5 (adopting guidance from the LWDA providing that “when a PAGA claim is settled, the relief
6 provided for under the PAGA [must] be genuine and meaningful, consistent with the underlying
7 purpose of the statute to benefit the public”).

8 The court’s role in reviewing PAGA settlements differs from its gatekeeping function in
9 the class action context. In class actions, courts have a fiduciary duty to protect the interests of
10 absent class members, whose individual claims will be discharged. *Kullar v. Foot Locker Retail,*
11 *Inc.* (2008) 168 Cal.App.4th 116, 129. In this role, courts conduct an “independent assessment of
12 the adequacy of the settlement terms,” which requires them to have sufficient data and
13 information about the amount in controversy and the realistic range of outcomes. *Id.* at 132.
14 Courts consider a variety of factors in conducting this analysis, including whether the settlement
15 is negotiated at an arm’s length, whether there is sufficient discovery and information to permit
16 parties and the court to act intelligently, whether the attorneys have experience with the type of
17 issues, and whether the number of objectors is small. *Dunk v. Ford Motor Co.* (1996) 48
18 Cal.App.4th 1794, 1800-1801.

19 But a PAGA representative action is “not akin to a class action;” it “is a species of *qui*
20 *tam* action.” *Flores*, 253 F.Supp.3d at 1076. When reviewing a PAGA-only settlement, courts do
21 not consider the value of individuals’ claims for damages because a PAGA settlement does not
22 release those claims. *Kim v. Reins Int’l California, Inc.*, 9 Cal.5th 73, 87 (2020) (PAGA claims
23 have no individual component); *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 188 (noting that
24 PAGA penalties do not seek damages that are compensatory in nature). “The state’s interest in
25 such an action is to enforce its laws, not to recover damages on behalf of a particular individual.”
26 *Huff v. Securitas Sec. Servs., USA, Inc.*, 23 Cal.App.5th 745, 760. Instead of focusing on fair
27 recovery for individual claims, the goal of PAGA enforcement is to achieve “maximum
28 compliance with state labor laws.” *Id.* at 756; see also *Iskanian v. CLS Transp. Los Angeles, LLC*

1 (2014) 59 Cal.4th 348, 383 (noting that the goal of PAGA is to impose civil penalties for Labor
2 Code violations “significant enough to deter violations”); *McKenzie v. Federal Exp. Corp.*, 765
3 F.Supp.2d 1222, 1233 (C.D. Cal. 2011) (“Unlike a class action seeking damages... for injured
4 employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the
5 government that otherwise may not have been assessed and collected by overburdened state
6 enforcement agencies.”).

7 Here, the Settlement is fair, reasonable, and adequate in view of PAGA’s purposes to
8 remediate present labor law violations, deter future ones, and to maximize enforcement of state
9 labor laws. (Lucio Decl. ¶ 25-37.) In this Action, Plaintiff alleges Defendant committed a
10 number of Labor Code violations during the PAGA Period as a result of its (1) failure to pay
11 minimum wages; (2) failure to pay overtime owed; (3) failure to provide lawful meal periods; (4)
12 failure to authorize and permit rest periods; (5) failure to timely pay wages owed upon separation
13 from employment; and (6) knowing and intentional failure to comply with itemized wage
14 statement provisions. (Lucio Decl. ¶ 8.). At all times, Defendant has denied Plaintiff’s allegations
15 and contends that it maintains lawful policies and practices with respect to its employees.
16 Defendant also raised a number of defenses and issues which threatened all recovery to the State
17 and the employees. (Lucio Decl. ¶ 9, 23.).

18 The Settlement of \$225,000 penalizes Defendant for the alleged violations of California’s
19 labor laws in an amount that is significant enough to deter violations and provide genuine and
20 meaningful relief—approximately \$134,911 to the State and the PAGA Settlement Members—
21 thus fulfilling the underlying purpose of PAGA to benefit the public. See *Jordan v. NCI Grp.,*
22 *Inc.*, No. EDCV161701JVSSPX, 2018 WL 1409590, at *3 (C.D. Cal. Jan. 5, 2018) (“The
23 proposed settlement imposes a substantial penalty payment of \$150,000, paid in exchange for a
24 release of only those claims pled in the notice to the LWDA and the Complaint. This penalty has
25 a substantial deterrent effect on NCI and other California employers. Furthermore, the proposed
26 settlement encourages compliance with the specific requirements of the Labor Code, which has
27 the effect of protecting workers from unlawful employment practices and working conditions.”);
28 *Echavez v. Abercrombie & Fitch Co.*, No. CV 11-09754-GAF, 2017 WL 3669607, at *3 (C.D.

1 Cal. Mar. 23, 2017) (finding that “[t]he primary purpose of PAGA, i.e., the empowerment of
2 aggrieved employees to act as private attorneys general to collect civil penalties from their
3 employers for Labor Code violations, [was] served by the proposed PAGA penalty in the parties’
4 settlement agreement,” where \$340,000 of \$700,000 settlement was allocated to PAGA penalties
5 which were divided 75% to the LWDA and 25% to an estimated 10,000 aggrieved employees).

6 **B. The Settlement Is Reasonable Given the Risks of Further Litigation**

7 In assessing whether the amount in civil penalties is genuine and meaningful, the Court
8 may balance the amount in penalties with the risks of further litigation. Here, Plaintiff obtained a
9 meaningful amount in civil penalties despite facing significant challenges had the litigation
10 continued. At the time of mediation, Defendant represented that there were approximately 145
11 PAGA Employees who worked approximately 2000 pay periods during the PAGA Period.
12 Plaintiff alleged that Defendant committed a litany of violations of the Labor Code that exposed
13 them to liability under PAGA. Generally, Plaintiff sought penalties for six violations for failure
14 to pay minimum wage, failure to pay overtime, failure to provide meal periods, failure to
15 authorize and permit rest periods, failure to provide lawful itemized wage statements, failure to
16 pay all wages during employment and at termination. Assuming for the sake of argument that
17 Plaintiff could prove six violations for each pay period at \$100.00² in PAGA penalties for each
18 violation each pay period, the total penalties would be approximately \$1,200,000. Plaintiff
19 estimated that realistic liability, not taking into account any discount in the Court’s discretion,
20 was approximately \$400,000 (2,000 pay periods at 2 violations at \$100). Thus, the negotiated
21 settlement is approximately 56 % of the realistic liability, or 18.75% of the maximum liability.
22 (Lucio Decl. ¶ 26.)

23 While Plaintiff is confident in the merits of the case, a legitimate controversy exists as to
24 the PAGA cause of action, the factual allegations, the evidentiary basis, and the underlying

25 ² Under Labor Code §2699, Defendant is subject to a civil penalty in the amount of \$100
26 for each aggrieved employee per pay period for the initial violation, and \$200 for each subsequent
27 violation for each aggrieved employee for each pay period. However, Defendant argued that the
28 maximum penalty was \$100 per employee per pay period, because it had not previously been
cited by the LWDA.

1 claims. (Id. ¶ 33.). Plaintiff also took into account the fact that continued litigation would be
2 expensive, involving a trial and possible appeals, and potentially threaten all recovery in light of
3 potential financial condition issues. In addition, continued litigation would certainly delay and
4 reduce any recovery to the state and the PAGA Settlement Members. (Id. ¶ 27-35.). Finally,
5 Plaintiff took into account the significant risk that Defendant could compel Plaintiff's PAGA
6 claim to arbitration on an individual basis following the United States Supreme Court's decision
7 in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906, which was issued in June 2022.
8 *Id.* at ¶ 34.

9 Thus, when the risks of litigation, the burdens of proof necessary to establish liability, and
10 the probability of appeal of a favorable judgment are considered, the settlement amount of
11 \$225,000 is reasonable and in the best interest of the state and the public. *Id.* at ¶ 27-37. Plaintiff
12 objectively and knowledgably balanced the strengths and weaknesses of their claims against the
13 risk of continued litigation, and were able to determine a realistic range of settlement recovery for
14 PAGA penalties. *Id.* The Settlement therefore accomplishes PAGA's objectives by imposing
15 sufficient civil penalties "to punish and deter" Defendant from future alleged Labor Code
16 violations, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or
17 confiscatory." Lab. Code § 2699(e)(2); *Iskanian*, 59 Cal. 4th at 384.

18 **V. PLAINTIFF'S COUNSEL'S REQUESTED FEES AND COSTS ARE** 19 **REASONABLE**

20 The Settlement provides for attorneys' fees to Plaintiff's Counsel in an amount not to
21 exceed one-third of the Total Settlement Amount, which amounts to \$75,000, plus reasonable and
22 actual litigation expenses not to exceed \$9,500. (Settlement, ¶ 22, 23.) Plaintiff's Counsel is
23 entitled to reasonable attorneys' fees pursuant to Labor Code § 2699(g)(1). The requested fees
24 are reasonable as a percentage of the settlement fund.

25 **A. Plaintiff's Counsel Is Entitled to Attorneys' Fees and Costs under PAGA**

26 Plaintiff is entitled to attorneys' fees under Labor Code section 2699(g)(1), which provides
27 that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable
28 attorney's fees and costs." Lab. Code § 2699(g)(1); see also *Gouskos v. Aptos Village Garage*,

1 *Inc.* (2001) 94 Cal.App.4th 754, 765 (holding that attorneys' fees to prevailing party are
2 mandatory when the statute uses the word "shall"). It is undisputed that Plaintiff is the prevailing
3 party. *See Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal. App. 4th 140, 153 ("[P]laintiffs
4 may be considered 'prevailing parties' for attorney's fee purposes if they succeed on any
5 significant issue in the litigation that achieves some of the benefit the parties sought in bringing
6 suit.") (internal citation omitted). Accordingly, Plaintiff is entitled to recover attorneys' fees and
7 costs.

8 **B. Plaintiff's Counsel's Requested Attorneys' Fees Are Reasonable under the**
9 **Common Fund Method**

10 The request for attorneys' fees as a percentage of the Total Settlement Amount is
11 supported by the "common fund theory," where "one who expends attorneys' fees in winning a
12 suit which creates a fund from which others derive benefits, may require those passive
13 beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest* (1977) 20 Cal.3d 25,
14 35.

15 The purpose of the common fund approach is to "spread litigation costs proportionally
16 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone."
17 *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. Thus, the common fund
18 doctrine has been applied "consistently in California when an action brought by one party creates
19 a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*
20 (1995) 12 Cal.4th 105, 110; *see Quinn v. State of California* (1975) 15 Cal.3d 162, 167 ("[O]ne
21 who expends attorneys' fees in winning a suit which creates a fund from which others derive
22 benefits may require those passive beneficiaries to bear a fair share of the litigation costs.").

23 A number of other courts have recognized the advantages of awarding fees as a
24 percentage of the common fund over the alternative lodestar approach, which usually involves
25 wading through voluminous and often indecipherable time records. *See, e.g., In re Activision*
26 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375. The percentage approach is
27 preferable to the lodestar method because: (1) it provides predictability to counsel; (2) encourages
28 efficient resolution of the litigation by providing an Service for early, yet reasonable, settlement;

1 and (3) reduces the demands on judicial records. *Id.* at 1378-79; *see also Lealao v. Beneficial*
2 *Cal., Inc.* (2000) 82 Cal.App.4th 19, 28 (discussing findings of task force commissioned by the
3 Third Circuit, which “concluded that the lodestar approach (1) increases the workload of an
4 already overtaxed judicial system, (2) is insufficiently objective and produces results that are far
5 from homogenous, (3) creates a sense of mathematical precision that is unwarranted in terms of
6 the realities of the practice of law, (4) is subject to manipulation by judges who prefer to calibrate
7 fees in terms of percentages of the settlement fund or the amounts recovered by the Claimants or
8 of an overall dollar amount, (5) encourages lawyers to expend excessive hours, and engage in
9 duplicative and unjustified work, (6) creates a disservice for the early settlement of cases, (7)
10 deprives trial courts of flexibility to reward or deter lawyers so that desirable objectives, such as
11 early settlement, will be fostered, (8) works to the particular disadvantage of the public interest
12 bar, and (9) results in confusion and lack of predictability.”).

13 The percentage of attorneys’ fees set forth in the Settlement Agreement—33.33% of the
14 Total Settlement Amount—is reasonable. Historically, courts have awarded percentage fees in
15 the range of 20% to 50% in common fund cases. Newberg on Class Actions, 4th Ed. 2002, § 14:
16 6. Newberg notes that achievement of a substantial recovery with modest hours expended should
17 not be penalized, but should be rewarded for considerations of time saved by superior services
18 performed. *Id.* Furthermore, California and federal courts have long recognized that a
19 percentage of recovery for attorneys’ fees is properly awarded on the basis of the total value.
20 *Boeing v. Van Gemert* (1980) 444 U.S. 472, 480-481; *see also In re Consumer Privacy Cases*,
21 175 Cal.App.4th at 558 n.13 (“Empirical studies show that, regardless whether the percentage
22 method or the lodestar method is used, fee awards in class actions average around **one-third** of
23 the recovery.”) (emphasis added).

24 The Court should also consider that Plaintiff’s Counsel’s efforts have resulted in
25 substantial benefits to the State of California and the PAGA Settlement Members, in the form of a
26 significant, non-reversionary settlement fund established to compensate the State and the PAGA
27 Settlement Members and to punish Defendant for the alleged PAGA violations. Without the
28 efforts of Plaintiff’s Counsel over the last two years, the claims alleged in the complaint would

likely have gone without remedy. While it is not necessary to substantiate the fee award with a lodestar in this PAGA action, it should be noted that Plaintiff's counsel has invested over 185 hours in the litigation of this matter through this litigation, and Counsel's lodestar is significantly in excess of the \$75,000 requested as Plaintiff's Counsel's fee award. (Lucio Decl. ¶ 40.)

C. . Plaintiffs' Counsel's Costs Are Reasonable

Plaintiff's Counsel is entitled to reimbursement of its litigation costs under PAGA. *See* Lab. Code § 2699(g)(1) ("Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."). The Stipulation provides for reimbursement of costs not to exceed \$9,500.00. Stipulation ¶ 23. To date, Plaintiffs' Counsel has incurred actual costs in the amount of \$9,088.62. Lucio Decl. ¶45, Ex. 4. These costs were reasonably incurred in prosecuting this Action on behalf of the PAGA Settlement Members and should be approved by the Court. *Id.* Accordingly, Plaintiff's Counsel respectfully requests the Court approve costs in the amount of \$9,088.62.

VI. CONCLUSION

Based on the foregoing argument and authority, Plaintiff respectfully request that the Court grant approval of the Settlement.

DATED: May 16, 2023

Respectfully submitted,

JAMES HAWKINS APLC

By:



JAMES R. HAWKINS

CHRISTINA M. LUCIO

Attorneys for Plaintiff JOSE GARCIA, individually
and on behalf of all other aggrieved employees



Make a Reservation

JORGE GARCIA, INDIVIDUALLY AND ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED vs US BEST INGREDIENTS, INC., A CALIFORNIA CORPORATION

Case Number: 21TRCV00813 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2021-11-03 Location: Inglewood Courthouse - Department 8

Reservation

Case Name:

JORGE GARCIA, INDIVIDUALLY AND ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED vs US BEST INGREDIENTS, INC., A CALIFORNIA CORPORATION

Case Number:

21TRCV00813

Type:

Motion re: (Motion for PAGA Approval)

Status:

RESERVED

Filing Party:

JORGE GARCIA, individually and on behalf of himself and all others similarly situated (Plaintiff)

Location:

Inglewood Courthouse - Department 8

Date/Time:

06/14/2023 8:30 AM

Number of Motions:

1

Reservation ID:

559232291149

Confirmation Code:

CR-FMY8C5TMEXZJVAPPX

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

Chat

Description	Fee	Qty	Amount
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: Visa
Account Number: XXXX6358	Authorization: 05102D
Payment Date: 1969-12-31	

 Print Receipt

[!\[\]\(76a3e8b971e3f4e3e7bf4f40612c8a29_img.jpg\) Reserve Another Hearing](#)