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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

14 Malachi Maynard, in his individual and
15 representative capacity,

16 Plaintiff,

17 v.

18 TaskRabbit, Inc., IKEA North America
19 Services, LLC, IKEA US Retail LLC,
20 and DOES 1 through 10, inclusive,

21 Defendants.
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CASE NO.: 21CV003513

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF INDIVIDUAL PAGA
SETTLEMENT, ATTORNEY FEES,
AND COSTS**

Date: April 3, 2025

Time: 10:00 AM

Dept: 23

Judge: Hon. Michael Markman

Reservation ID: 513243901220

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1 I. INTRODUCTION

2 Plaintiff and Defendants seek approval of a settlement that would dismiss
3 Plaintiff's claims on an individual basis only. The settlement would not release any
4 claims belonging to the State except for those relating to violations experienced personally
5 by Plaintiff. The settlement would not release any claims owned by any other individual.

6 Settlement is necessary for multiple reasons, including the fact that this Court
7 ordered the instant proceedings to an individual arbitration and the fact that Defendants
8 have now brought a counterclaim against Plaintiff. Plaintiff disputes the company's
9 allegations against him, but his potential recovery from a representative action is not
10 sufficient to allow him to take the risk of litigating the company's claims.

11 The Parties previously sought approval of a settlement in this matter, but this Court
12 noted correctly that, although the settlement does not release the State's PAGA claims
13 with regard to any other purportedly aggrieved employees, it does release the State's
14 PAGA claims with regard to violations experienced by one person: Plaintiff. The Parties
15 have taken this guidance to heart and the settlement now provides that Defendants will
16 make a PAGA payment of \$15,000, including \$11,250 to be paid to the State.

17 Even assuming the absolute maximum possible penalty recovery, including penalty
18 stacking with Defendants being subject to multiple civil penalties for violation of the same
19 primary right, and no use of the Court's discretionary ability to reduce penalties, the
20 highest possible value for PAGA penalties arising from violations purportedly
21 experienced by Plaintiff is just under \$100,000. That means the PAGA recovery
22 represents more than 15% of the maximum possible recovery.

23 In addition to the release of PAGA claims, the individual settlement also has
24 Defendants paying \$120,000 and the Parties agreeing to a complete mutual release of all
25 claims. Given this Court's ruling forcing Plaintiff to individual arbitration, the State and
26 any putative class members would be better served by a representative who had
27 successfully opted out of the arbitration program, such that he could litigate on a
28 representative basis in court. This Court should approve the instant individual settlement.

II. PROCEDURAL HISTORY

Plaintiff filed his Private Attorneys General Act (“PAGA”) Complaint on December 3, 2021 (“Complaint”). As alleged in the Complaint, Plaintiff seeks penalties on behalf of himself and the State of California with regard to alleged “aggrieved employees” against Defendants under California Labor Code §2698, *et seq.* (“PAGA”), predicated on Defendants’ alleged violation of the Labor Code and IWC Wage Orders. On January 27, 2022, Defendants filed a motion to compel arbitration of this matter.

On February 7, 2022, Defendants filed a motion to stay the instant matter pending the United States Supreme Court’s decision in *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022) (“*Viking River*”), and the concurrently-pending motion to compel individual arbitration of Plaintiff’s class claims in the Class Action matter. Plaintiff opposed, arguing that he had opted out of the company’s arbitration program.

On March 29, 2022, the Court stayed this action pending the outcome of an evidentiary hearing in the related *Maynard* Class Action matter, Case No. RG21114858, as well as the United States Supreme Court’s decision in *Viking River*. On June 15, 2022, the Supreme Court issued a decision in *Viking River* with regard to the enforcement of arbitration agreements requiring plaintiffs to arbitrate their individual PAGA claims.

On July 17, 2023, the California Supreme Court issued its decision in *Adolph v. Uber Technologies, Inc.*, (Cal., S274671, July 17, 2023) 2023 WL 4553702, which clarified aspects of the law and procedure concerning standing to bring representative PAGA claims when an individual PAGA claim has been compelled to arbitration.

On August 23, 2023, the Court entered an order compelling arbitration of Plaintiff’s claims in the RG21114858 Class Action matter.

On October 25, 2024, Plaintiff filed a demand for arbitration with the American Arbitration Association, titled *Malachi Maynard v. TaskRabbit, Inc., IKEA North America Services, LLC, IKEA US Retail LLC, and Does 1 Through 10*, Case No.: 01-23-0004-8597. On December 14, 2023, Defendants submitted their answer to Plaintiff’s arbitration demand, including counterclaims against Plaintiff for fraudulent deceit, breach of

1 contract, and malicious prosecution. Although Plaintiff strongly denies all the claims
2 against him, the risk and expense imposed by the counterclaims represents an exceptional
3 burden for an individual acting in a representative capacity for the benefit of others.

4 On May 17, 2024, the Parties entered into a settlement agreement that would
5 resolve Plaintiff's claims against Defendants, as well as the State's PAGA claims only
6 with regard to violations allegedly experienced by Plaintiff himself. Critically, the
7 settlement also releases all of Defendants' claims against Plaintiff. The settlement did not
8 compromise the claims of any other individual or any PAGA claims outside of the
9 violations allegedly experienced by Plaintiff himself.

10 On June 26, 2024, the Court entered an order denying approval of the proposed
11 settlement. The Court's concerns regarding the settlement included a lack of money being
12 paid to the State for the release of PAGA claims related to violations allegedly
13 experienced by Plaintiff. On October 28, 2024, the Parties executed a Revised Settlement
14 that they believe addresses this Court's concerns, including an agreement that will include
15 Defendants making a substantial payment to the LWDA with regard to the release of
16 PAGA claims for violations allegedly experienced by Plaintiff.

17 **III. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

18 **A. Legal Background**

19 PAGA authorizes an aggrieved employee to file an action to recover civil penalties
20 that are authorized to be collected by the LWDA. Labor Code §2699(a). PAGA was
21 adopted because the Legislature determined that "lagging labor law resources made
22 additional private enforcement necessary[.]" *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175,
23 184 (2019). This was the Legislature's "sole purpose." *Kim v. Reins Intern., California,*
24 *Inc.*, 9 Cal. 5th 73, 86 (2020). A PAGA action is a representative action: the employee
25 bringing such action acts as a proxy for the LWDA and "represents the same legal right
26 and interest" as the LWDA to obtain "recovery of civil penalties that otherwise would
27 have been assessed and collected by the Labor Workforce Development Agency."
28 *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348, 380 (2014) ("*Iskanian*").

1 This Court ordered Plaintiff to arbitration on the basis of the United States
2 Supreme Court ruling in *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022).
3 *Viking River* introduced the idea of an “individual PAGA claim.” This term refers to the
4 State’s claim for PAGA penalties on the basis of violations that were experienced by the
5 individual who happens to be serving as a Private Attorney General. *Viking River*
6 explained that PAGA jurisprudence uses the word “representative” in two different ways.
7 First, all PAGA claims are representative in that the Private Attorney General has no
8 personal interest and acts only as a representative of the State. *Viking River Cruises, Inc.*
9 *v. Moriana*, 142 S. Ct. 1906, 1916 (2022).

10 The second use of “representative” looks at PAGA as a joinder mechanism that
11 allows the State to bring all of its claims regarding a particular employer in a single
12 action. *Id.* The distinction is about two different types of representative claims: the
13 State’s claims for violations experienced by the Private Attorney General and the State’s
14 claims for violations experienced by other employees:

15
16 An unfortunate feature of this [PAGA] lexicon is that it tends to use
17 the word “representative” in two distinct ways, and each of those uses of the
18 term “representative” is connected with one of Iskanian’s rules governing
19 contractual waiver of PAGA claims.

20 In the first sense, PAGA actions are “representative” in that they are
21 brought by employees acting as representatives – that is, as agents or
22 proxies – of the State. But PAGA claims are also called “representative”
23 when they are predicated on code violations sustained by other employees.
24 In the first sense, “every PAGA action is . . . representative” and “[t]here
25 is no individual component to a PAGA action,” *Kim*, 9 Cal. 5th, at 87, 459
26 P. 3d, at 1131 (quoting *Iskanian*, 59 Cal. 4th, at 387, 327 P. 3d, at 151),
27 because every PAGA claim is asserted in a representative capacity.

28 But when the word “representative” is used in the second way, it
makes sense to distinguish “individual” PAGA claims, which are premised
on Labor Code violations actually sustained by the plaintiff, from
“representative” (or perhaps quasi-representative) PAGA claims arising out
of events involving other employees. For purposes of this opinion, we will
use “individual PAGA claim” to refer to claims based on code violations
suffered by the plaintiff . . . *Id.* at 1916.

1 Thus, the current state of proceedings is that this Court has ordered Plaintiff to
2 arbitrate his own claims and that subset of the State’s PAGA claims that are limited to
3 violations experienced just by Plaintiff himself. This Court expressed concern that the
4 Parties’ settlement failed to ensure that “PAGA’s allocation of a 25 percent share of civil
5 penalties does not go disproportionately to the PAGA plaintiff[.]” *See* Court’s June 26,
6 2024 Ruling. The Court’s point is well taken, but it is important to understand the scope
7 of the concern in this setting. Representative claims that Plaintiff has been ordered to
8 arbitrate and the representative claims that are released by the settlement are limited to the
9 State’s claims for violations experienced by Plaintiff. The State’s claims with regard to
10 other employees are not affected.

11 **B. The Settlement is Without Prejudice to the Rights of Any Aggrieved Employee**

12 The Parties’ settlement agreement is without prejudice to the rights of any alleged
13 aggrieved employees, and without prejudice to the rights of the State with regard to any
14 employee other than Plaintiff. Graves Decl. Exh. 1 at ¶¶ 2(c)(c); 3(c). The Parties further
15 agreed that no claims are being settled on behalf of or with regard to any alleged
16 aggrieved employee other than Plaintiff. *Id.* No settlement amount will be paid on behalf
17 of any alleged aggrieved employee other than Plaintiff, and no other alleged aggrieved
18 employee’s interests will be impacted other than the interests of Plaintiff.

19 **C. Payment to the Aggrieved Employees is Unwarranted Here**

20 The circumstances here are different from most PAGA settlements in one critical
21 respect: the Revised Settlement affects only Plaintiff’s rights, and no other alleged
22 aggrieved employee’s interests will be impacted by the settlement. Where the Parties’
23 settlement agreement is without prejudice to the rights of any alleged aggrieved employee,
24 and no claims are being settled on behalf of or with regard to any alleged aggrieved
25 employee other than Plaintiff, payment to aggrieved employees is unwarranted.

26 The California Supreme Court addressed this issue in *Iskanian*. As the Supreme
27 Court explained, a PAGA representative action “conforms to [the] traditional criteria” for
28 bringing a qui tam action, “except that a portion of the penalty goes not only to the citizen

1 bringing the suit but to all employees affected by the Labor Code violation.” *Iskanian*,
2 *supra*, 59 Cal. 4th 348 at p.382; *see also Williams v. Superior Court*, 3 Cal. 5th 531, 545
3 (2017) (PAGA “deputiz[es] employees harmed by labor violations to sue on behalf of the
4 state and collect penalties, to be shared with the state and other affected employees”).

5 But allocation of 25 percent to aggrieved employees only applies to the employees
6 for whom the State’s claims are being released. *See Iskanian, supra*, 59 Cal. 4th at p.381
7 (“Because an aggrieved employee’s action under the [PAGA] functions as a substitute for
8 an action brought by the government itself, a judgment in that action binds all those,
9 including nonparty aggrieved employees, who would be bound by a judgment in an action
10 brought by the government.”); *accord Arias v. Superior Court*, 46 Cal. 4th 969, 986
11 (2009). Here, settlement only resolves the State’s claims with regard to violations
12 experienced by Plaintiff. Graves Decl. Exh. 1 at ¶¶ 2(c)(c); 3(c). Other individuals
13 remain free to file their own lawsuits, provided they are still within the statutory period
14 and have complied with the PAGA’s pre-filing notice requirements.

15 Section 2699, subdivision (l)(2) [now (s)(2)] requires the trial court to “review and
16 approve” any PAGA settlement. The court must “ensure that any negotiated resolution is
17 fair to those affected.” *Williams, supra*, 3 Cal. 5th at 549. In this case, the only affected
18 interests are those related to violations personally experienced by Plaintiff. The
19 settlement is fair in that regard, providing substantial compensation to the State for a
20 release that only touches on violations experienced by a single employee who worked just
21 41 weeks.

22 While PAGA actions are distinct from and serve a different purpose than class
23 actions, *Arias, supra*, 46 Cal. 4th at p.986, courts often use many of the same factors to
24 evaluate the fairness of a PAGA settlement. In this regard, Plaintiff’s individual PAGA
25 settlement is analogous to an individual class dismissal under California Rules of Court,
26 Rule 3.770(c), which states that an “action may be dismissed without notice to the class
27 members if the court finds that the dismissal will not prejudice them.” In other words,
28 litigants are free to settle out and dismiss their own claims without the usual notice

1 procedures intended to protect the class, provided that the dismissal will not prejudice the
2 class members. Similarly, it should be possible for a PAGA Plaintiff to dismiss claims
3 where, as here, there is no prejudice to any other worker.

4 Although not necessary for approval, it is worth noting that this resolution also
5 serves the interest of the State and other potentially aggrieved employees. Throughout
6 this litigation, Plaintiff contended that he had opted out of arbitration and had standing to
7 litigate a representative action in court. In light of the inherent inferiority of arbitration as
8 a forum to vindicate representative rights, the State and any potential aggrieved
9 employees would be well-served by having their claims litigated by an individual who
10 was not subject to arbitration. In addition, as described above, Defendants have brought a
11 series of counterclaims against Plaintiff which put him in the impossible position of
12 bearing tremendous personal financial risk in a representative action that primarily would
13 benefit others. Plaintiff vehemently denies all of Defendants' claims, but the fact remains
14 that the State and other aggrieved employees would be well-served to be represented by
15 an individual who had not been placed in such an untenable procedural vice.

16 **D. The Settlement Provides Penalties to the LWDA**

17 In light of this Court's concern regarding the State's release of claims for PAGA
18 penalties regarding violations that were experienced by Plaintiff, the Revised Settlement
19 includes an additional \$15,000 payment from Defendants in settlement of Plaintiff's
20 individual claims in the PAGA Action, payment of which is to be allocated to Plaintiff
21 and the Labor and Workforce Development Agency ("LWDA"), as required under
22 PAGA. Specifically, TaskRabbit will make payment to the LWDA in the amount of
23 \$11,250.00, the LWDA's 75% share of the PAGA payment.

24 This payment represents a substantial percentage of the maximum possible penalty
25 recovery with regard to violations that were purportedly experienced directly by Plaintiff.
26 According to records produced by Defendants, Plaintiff worked a total of 41 weeks on
27 Defendants' platform. Graves Decl. ¶24. Assigning the maximum possible value to
28 every recurring penalty associated with every cause of action, the maximum penalty

1 recovery for violations purportedly experienced by Plaintiff would be \$99,500. *Id.* at ¶25.
2 The Declaration of Allen Graves filed herewith breaks down the maximum potential value
3 of each penalty applicable to Plaintiff's PAGA complaint¹ at paragraphs 24-34.

4 Plaintiff's calculation of the maximum possible penalty value truly is a theoretical
5 maximum. For example, it assumes penalty stacking in which an employer can be
6 required to pay multiple civil penalties for the violation of a single primary right, despite
7 the fact that courts have questioned this premise. *See Smith v. Lux Retail N. Am., Inc.*,
8 Case No. 13-cv-1579-WHA, 2013 U.S. Dist. LEXIS 83562, at *9 (N.D. Cal. June 13,
9 2013) (raising doubts "that we would really pile one penalty on another for a single
10 substantive wrong.") It likewise assumes the absolute maximum possible award without
11 any discount to reflect the Court's discretionary authority to reduce PAGA penalties. In
12 this regard, it is important to observe cases like *Carrington v. Starbucks Corp.*, 30 Cal.
13 App. 5th 504, 517 (2018), in which the Court of Appeals approved reduction of total
14 penalties from \$70 million to \$150,000, a 99.98% reduction. Moreover, the recovery of
15 more than 15% of the maximum PAGA penalty is objectively excellent. Courts routinely
16 approve settlements that recover much less. *See, e.g., Custom LED, LLC v. eBay, Inc.*,
17 2014 WL 2916871, at *4 (N.D. Cal. Jun. 24, 2014) ("[C]ourts have held that a recovery of
18 only 3% of the maximum potential recovery is fair and reasonable when the plaintiffs face
19 a real possibility of recovering nothing absent the settlement."); *In re OmniVision Techs.*,
20 559 F. Supp. 2d 1036, 1042 (2007) (6% of potential damages); *In re LDK Solar Secs.*
21 *Litig.*, No. 07-5182 WHA, 2010 U.S. Dist. LEXIS 87168 at *7 (N.D. Cal. July 29, 2010)

22
23 ¹ The 4th cause of action in Plaintiff's PAGA complaint sought to recover payments
24 pursuant to Labor Code §203. In light of case law like *Esparza v. KS Indus., L.P.*, 13 Cal.
25 App. 5th 1228, 1242 (2017) (interpreting *Iskanian*'s distinction between civil penalties
26 and statutory damages), Plaintiff has not included the value of section 203 penalties
27 among civil penalties for purposes of valuation. *See, e.g., Carter v. Jai-Put Enter.*, No.
28 18-cv-06313-DMR, 2022 U.S. Dist. LEXIS 170818, at *10 (N.D. Cal. Sep. 21, 2022)
("Section 203 waiting time penalties are a type of statutory damages that employees may
collect in their individual capacity and do not constitute a civil penalty.") (citing to
Esparza, supra, 13 Cal. App. 5th 1228 at 1242).

(5% of potential damages); *In re Veritas Software Corp. Sec. Litig.*, 2005 U.S. Dist. LEXIS 30880, *5 (N.D. Cal. Nov. 15, 2005) (from 1991 to 2003, the median percentage of losses paid in settlement ranged from 2.7% to 7.2%), vacated in part on other grounds, 496 F. 3d 962 (9th Cir. 2007).

E. The Settlement is Fair, Reasonable, and Adequate in View of PAGA’s Purpose

The standard this Court must apply when assessing PAGA settlements was described in *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 76 (2021), *disapproved on another ground in Turrieta v. Lyft, Inc.*, 16 Cal. 5th 664, 710-711 (2024)). There, the court held that “[a] trial court should evaluate the PAGA settlement to determine whether it is fair, reasonable and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.”

The proposed settlement is fair in light of these goals. First, the settlement will encourage remediation of present labor law violations. Defendants have agreed to pay a substantial sum to settle the claims related to a single employee alleging Labor Code violations. A PAGA payment of \$15,000 with regard to violations experienced by just one single employee will serve to remediate any alleged labor law violations. Second, the fact that the settlement is without prejudice to the rights of any alleged aggrieved employees (and therefore does not prohibit any other alleged aggrieved employee from being their own actions) will also serve as an effective deterrent. Indeed, in light of this Court’s rejection of Plaintiff’s argument that he opted out of arbitration, the interests of deterrence may well be better served by having these issues litigated by an employee who can successfully establish that he is not subject to binding arbitration. Likewise, the fact that the company has brought claims against Plaintiff (the validity of which he stringently denies) supports the conclusion that a settlement in this case which leaves room for other litigants to advance the public interest is the best possible outcome.

Plaintiff submits that the proposed settlement addresses the concerns expressed by the Court in its June 26, 2024 Order, by including an agreement that will include Defendants making a substantial payment to the LWDA with regard to the release of

1 PAGA claims for violations allegedly experienced by Plaintiff. Graves Decl. Exh. 2.
2 Moreover, Plaintiff has addressed the Court's concerns about counsel's hourly rate and
3 the time spent on the case, by submitting concurrently with this approval motion, detailed
4 briefing with regard to the allocation of fees and costs to Plaintiff's counsel.

5 The allocation of payments is also fair. From the total payment of \$135,000 includes:
6 \$15,000 in a PAGA payment, \$18,580.29 will be allocated to out-of-pocket costs incurred
7 by Plaintiff's counsel, \$46,816.46 will be allocated to attorney fees, and the remainder will
8 be paid to Plaintiff himself in exchange for a full release of all of his individual claims.

9 **IV. THE ATTORNEY FEES AND COSTS ARE APPROPRIATE**

10 The agreement provides for a total payment to Plaintiff's counsel of \$65,396.75.
11 Graves Decl. Exh. 1 at ¶ 1(a)(1). This consists of \$18,580.29 to reimburse Plaintiff's
12 counsel for out-of-pocket expenses (*Id.* at Exh. 5) and \$46,816.46 in attorney fees. The
13 attorney fee represents less than 35% of the total recovery and less than 10% of the actual
14 time billed in this matter. *Id.* at Exh. 4. Plaintiff's counsel devoted extraordinary
15 resources to this case and now seeks recovery of only a fraction of the work required to
16 obtain this recovery. This modest award is reasonable under every standard.

17 **A. The Fee Is Supported by Lodestar Analysis**

18 Courts begin fee awards with the lodestar method. "The starting point of every fee
19 award, once it is recognized that the court's role in equity is to provide just compensation
20 for the attorney, must be a calculation of the attorney's services in terms of the time he has
21 expended on the case. Anchoring the analysis to this concept is the only way of
22 approaching the problem that can claim objectivity, a claim which is obviously vital to the
23 prestige of the bar and the courts." *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th
24 19, 26-27 (2000) quoting *Detroit v. Grinnell Corp.*, 495 F. 2d 448, 470 (2nd Cir. 1974).
25 "[T]his simple mathematical exercise is the only legitimate starting point for analysis."

26 **1. Plaintiff's Counsel has Devoted Extensive Time To this Matter**

27 In this case, the requested fee is far less than the value of time billed. Exh. 4 to the
28 Declaration of Allen Graves provides a detailed description of each task performed by

1 Plaintiff's Counsel's firm in this matter. It includes total time worked for each day by
2 each individual listed by task and is billed in 1/10th of an hour increments. Obtaining the
3 instant settlement required an extraordinary amount of work. First, Plaintiff litigated
4 vigorously until he could recover a substantial settlement for his individual claims,
5 engaging in extensive motion work in both the PAGA action and the related Class Action.
6 Second, Defendants mounted an unusually robust opposition, that required extraordinary
7 amounts of attorney time. During this case, Defendants:

- 8 • Filed two separate motions to compel arbitration, first in the earlier-filed Maynard
9 Class Action, Case No. RG21114858, and in the subsequent Maynard PAGA
10 action, requiring Plaintiff to completely brief the issue of arbitration in two
11 different actions;
- 12 • Disputed the validity of Plaintiff's arbitration opt-out notice, which the Court
13 resolved with a multi-day evidentiary hearing;
- 14 • Filed numerous objections to Plaintiff's deposition designations and exhibits in
15 anticipation of the Parties' evidentiary hearing;
- 16 • Filed an Opposition to Remote Proceedings for the evidentiary hearing, which
17 Plaintiff had to oppose. Defendants' Opposition to Remote Proceedings came at a
18 time when Alameda County reimposed an indoor mask mandate because of the
19 extreme level of infection in the County; and
- 20 • Engaged in extensive motion work, including filing a Motion to Compel in the
21 Maynard Class Action and Motion to Stay the Maynard PAGA action, both of
22 which Plaintiff had to oppose.

23 Other areas that required work in this case are described below:

24 **Pre-Litigation Interviews and Investigation.** The instant case required
25 substantial work before it was filed. Graves Decl. ¶9. In addition to interviewing Plaintiff
26 and other Taskers regarding their claims, Plaintiff's Counsel also obtained and reviewed
27 numerous documents and policies related to Defendant's employment practices and
28 policies prior to filing the case. *Id.*

Discovery. Plaintiff served a significant amount of discovery in the litigation.
Plaintiff engaged in extensive arbitration-related discovery in preparation for the Parties'
evidentiary hearing, including serving to written discovery and conducting the deposition
of five witnesses identified by Defendants. Graves Decl. ¶49. Plaintiff was required to

1 file a motion to compel documents in response to his document demands, and initiated
2 numerous informal discovery conferences to obtain more documents and records in
3 response to his discovery. *Id.* at ¶50.

4 **Ongoing Research of Developing Law.** Throughout the pendency of this case,
5 the law applicable to Plaintiff's case has evolved and required Plaintiff's Counsel to
6 evaluate and address these changes. The *Viking River* decision resulted in a motion to
7 stay the Maynard PAGA action. Shortly after *Viking River* opened the door for forced
8 arbitration of PAGA claims, the California Supreme Court took up the question of how
9 those forced arbitrations would impact PAGA standing in *Adolph v. Uber Techs.*, 14 Cal.
10 5th 1104 (2023). It was necessary for counsel to closely follow this evolving law.

11 **Motion Practice.** The instant litigation required extensive motion practice,
12 including: two separate oppositions to motions to compel arbitration, two separate
13 motions to compel discovery, multiple informal discovery conferences, opposition to
14 Defendants' opposition to remote proceeding, a motion for reconsideration, and
15 opposition to Defendants' motion to stay pending the *Viking River* ruling. Graves Decl.
16 ¶50. One of Defendants' discovery motions also led to appellate practice, requiring
17 Plaintiff to file a petition for writ of mandate. Ultimately, this case has required Plaintiff
18 to litigate in state court, appellate court, and arbitration.

19 **2. Plaintiff's Counsel's Hourly Rates Are Reasonable**

20 Plaintiff Counsel Graves' hourly rates are a product of his experience. After
21 graduating with honors from the University of Michigan School of Law, Graves practiced
22 at Paul, Hastings, Janofsky & Walker from 1999 until 2004, focusing exclusively on
23 employment litigation. Graves Decl. ¶¶1-4. Since leaving Paul Hastings, Graves has
24 served as lead counsel in numerous class and PAGA actions. *Id.* at ¶5.

25 Courts have consistently approved the rates charged by The Graves Firm. In
26 August 2018, Judge Amy D. Hogue, filling in for Judge Ann Jones of the Los Angeles
27 Superior Court Complex Division, approved the then-current rate of \$625 per hour as
28 "reasonable and appropriate in light of Counsel's skill and experience." Request for

1 Judicial Notice (“RJN”) Exh. 4. In 2020, Judge Sunshine S. Sykes of the Riverside
2 Superior Court Complex Division approved Counsel’s rates as “reasonable and
3 appropriate in light of Counsel’s skill and experience,” and made the same finding with
4 regard to the hourly rates for each associate and the current paralegal who billed time to
5 this case. *Id.* at Exh. 5. In 2021, this Court approved Counsel’s then-current hourly rate
6 as reasonable and appropriate, and made the same finding with regard to the then-current
7 hourly rates for each of the associates and the current paralegal who billed time to this
8 case. *Id.* at Exh. 6. In 2021, Judge Thomas Anderle of the Santa Barbara Superior
9 approved the then-current hourly rate of \$685 per hour as well as the then-current rates for
10 associate attorneys Jacqueline Treu (\$565/hour) and Jenny Yu (\$510/hour), as well as
11 paralegal staff at \$195/hour. Judge Anderle found that the rates were “reasonable and
12 appropriate in light of [counsel’s] skill and experience.” *Id.* at Exh. 7.

13 Since 2021, The Graves Firm’s rates have increased twice, with the most recent
14 increase being in January 2023. Both increases have been consistent with the rate of
15 inflation. Graves Decl. at ¶43. The current rates at The Graves Firm are: Allen Graves
16 (\$795/hour), Jacqueline Treu (\$715/hour), Adrian Hernandez (\$625/hour), and paralegal
17 time at \$210/hr. *Id.* These rates are also the same rates that The Graves Firm charged
18 hourly fee-paying clients. During the time this action has been pending, approximately
19 20% of The Graves Firm’s practice has come from hourly fee-paying clients and more
20 than a dozen clients have paid the hourly rates described here. Graves Decl. ¶44.

21 As recently as February of this year, independent expert Richard Pearl reviewed
22 the background and qualifications of Plaintiff’s Counsel, as well as the background and
23 qualifications of counsel’s associate attorneys and billing staff in connection with another
24 matter. Pearl is nationally-recognized scholar in the field of attorney fees and author of
25 California Attorney Fee Awards (3d ed Cal. CEB 2010). Graves Decl. Exh. 3 (Pearl
26 Decl.) at 2:15-23. Multiple courts have referred to Pearl’s work as “[t]he leading
27 California attorney fee treatise.” *Id.* at 2:20-3:20. Starting at page 21 of his declaration,
28 Pearl examines the hourly rates of Plaintiff’s Counsel, his associates, and paralegals, and

1 concludes they are reasonable. *Id.* at 22:1-5. Mr. Pearl’s opinion is supported by more
2 than 20 pages of research identifying hourly rates charged by other firms and attorneys of
3 similar background and experience and surveys of marketplace rates. *Id.* at ¶¶45-46.

4 **3. Adverse Outcomes Do Not Weigh Against the Fee Award**

5 Despite the efforts of Plaintiff’s Counsel, this Court ultimately rejected Plaintiff’s
6 argument that he had properly opted out of arbitration and ordered him to arbitrate his
7 claims on an individual basis. The fact that Plaintiff has not been successful in every
8 motion does not weigh against the modest fee award requested here. Controlling case law
9 recognizes that fee awards are appropriate when there is a recovery even for work on
10 motions or other procedural practice that did not yield victory. *Cheema v. L.S. Trucking,*
11 *Inc.*, 39 Cal. App. 5th 1142, 1154 (2019) (holding that “[A] court is not required to
12 apportion counsel’s time between successful and unsuccessful motions or issues, awarding
13 fees only for the former”); *Sundance v. Mun. Court*, 192 Cal. App. 3d 268, 273-74 (1987)
14 (“Where a plaintiff has obtained excellent results, his attorney should recover a fully
15 compensatory fee...In these circumstances the fee award should not be reduced simply
16 because the plaintiff failed to prevail on every contention raised in the lawsuit”); *Michell*
17 *v. Olick*, 49 Cal. App. 4th 1194, 1200 (1996) (Proof that parties that were unsuccessful on
18 particular motions is not tantamount to a demonstration that such expenses were
19 unreasonably incurred).

20 **B. The Fee is Supported as A Percentage of Recovery**

21 To the extent fees are viewed as a percentage of the recovery, the fee award here is
22 reasonable. The fees represent less than 35% of the total recovery. The fee agreement
23 between Plaintiff and his counsel provides for 35% fee. Graves Decl. ¶52. Courts have
24 long approved attorney fee awards with much higher percentages. *See, e.g.*, RJN Exh. 1:
25 *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826 (N.D. Cal. Apr. 1, 2011)
26 (approving attorney fees constituting 42% of total settlement amount); RJN Exh. 2:
27 *Gonzalez v. Freedom Communications*, Orange County Superior Court Case No.
28 03CC08756 (2009) (awarding attorney fees representing 55% of the common fund of

1 \$22,000,000); RJN Exh. 3: *Coordination Proceeding Special Title Rule 1550b Natural*
2 *Gas Trust Cases*, 2006 Cal. Super. LEXIS 889, 139-140 (July 20, 2006) (fees representing
3 42% of fund approved).

4 **C. The Costs Are Reasonable**

5 Plaintiff's counsel has documented his out-of-pocket expenses in this case in Exh.
6 5 to the Declaration of Allen Graves. Total expenses are \$18,580.29. The fee agreement
7 between Plaintiff and his counsel provides for reimbursement of all out-of-pocket
8 expenses in exactly this fashion. Graves Decl. ¶52. The law is clear that reimbursement
9 of out-of-pocket expenses for attorneys is appropriate, specifically in the context of class
10 and PAGA cases. *Rider v. County of San Diego*, 11 Cal. App. 4th 1410, 1423 (1992) fn.
11 6; *Melendres v. Los Angeles*, 45 Cal. App. 3d 267, 272 (Cal. App. 2d Dist. 1975).

12 **V. CONCLUSION**

13 It would be unfair to force Plaintiff to continue litigating in light of the current
14 situation. This Court has rejected Plaintiff's argument that he is not subject to arbitration
15 and ordered him to arbitrate his claims on an individual basis. He now seeks to settle on
16 exactly that basis. Moreover, Plaintiff is now subject to a counterclaim, the validity of
17 which he strongly denies, but which nonetheless makes it economically impossible for
18 him to continue functioning in a representative capacity whereby he would bear
19 tremendous personal risk and expense for an endeavor that primarily benefits others.

20 The instant settlement provides an excellent recovery for the State with regard to
21 the narrow set of PAGA claims being released, and the State as well as any other
22 potentially aggrieved employee will be better off with a willing litigant representing them.
23 Plaintiff respectfully submits that approving the instant settlement is the right thing to do.

24
25 Dated: December 27, 2024

THE GRAVES FIRM

26
27 By: 

ALLEN GRAVES

Attorney for Plaintiff Malachi Maynard

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 122 N. Baldwin Avenue, Main Floor, Sierra Madre, California 91024.

On December 27, 2024, I served the following document(s) described as:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL OF INDIVIDUAL PAGA
SETTLEMENT, ATTORNEY FEES, AND COSTS**

on the interested parties by transmitting a true and correct copy thereof addressed as follows:

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☒ **VIA EMAIL:** I personally sent such document(s) via email to the known email address of the person(s) on whom it is to be served.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on December 27, 2024, at Sierra Madre, California.

Mimi Li

Type or Print Name

Signature

