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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN BERNARDINO**
14

15 ERICK TORRES, on behalf of himself and all
16 others similarly situated,

17 Plaintiff,

18 v.

19 BECHTEL INFRASTRUCTURE AND
POWER CONSTRUCTION SERVICES, INC.,
a Delaware corporation, and DOES 1-50,
20 inclusive,

21 Defendants.
22
23
24
25

Case No. CIVSB2134046

Assigned for All Purposes To:
Hon. Christian Towns
Dept.: S-26

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION FOR APPROVAL
OF SETTLEMENT PURSUANT TO THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (LAB. CODE §§
2698 ET SEQ.)**

Date: March 19, 2025
Time: 8:30 a.m.
Dept.: S-26

Complaint Filed: November 23, 2021
CMC: January 6, 2025
Trial: Not Set

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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 2698, *et seq.*, Plaintiff Erick Torres (“Plaintiff”) seeks court approval of the settlement of
5 the claim he asserted on a representative basis under PAGA. In the Action, Plaintiff alleges that
6 defendant Bechtel Infrastructure and Power Construction Services, Inc. (“Defendant”) failed to pay
7 minimum wages, failed pay overtime accurately, failed to provide Plaintiff and other Aggrieved
8 Employees with lawful meal and rest periods or premiums in lieu thereof and failed to provide safe
9 and healthy working conditions. Plaintiff additionally alleges that Defendant failed to issue
10 accurate wage statements, failed to timely pay all wages during employment and failed to timely
11 pay all wages due upon separation. Plaintiff further alleges that Defendant failed to reimburse
12 necessary business expenses, failed to keep accurate payroll and timekeeping records, failed to
13 provide a safe and healthful working environment, and failed to record and pay sick leave as
14 required by law.¹ Plaintiff brought this Action as a representative of the state to recover penalties
15 for these alleged Labor Code violations. This action will resolve the PAGA claims of all current
16 and former non-exempt employees who worked for Defendant, in California during the PAGA
17 Period from September 16, 2020, through the date that the Court enters a judgment in this PAGA
18 action. (Declaration of Christina Lucio (“Lucio Decl.”), Ex. 1, PAGA Settlement, ¶1.4.)

19 Under the Settlement, Defendant will pay \$447,500 to settle the PAGA claim. (Lucio Decl.,
20 Ex. 1, PAGA Settlement, ¶1.12) The PAGA penalties secured by the Settlement are genuine and
21 meaningful, and fulfill PAGA’s underlying purpose to benefit the public. As detailed below, the
22 Settlement was reached after discovery, information exchange, and investigation by the Parties,
23 including a thorough review and analysis of Defendant’s wage and hour policies, working

24 _____
25 ¹ As discussed below, Plaintiff filed an amended notice with the LWDA on November 23, 2021
26 asserting additional claims including claims for PAGA penalties for alleged violations of Labor
27 Code section 6300 *et seq.* and section 3395, including, specifically, Labor Code sections 6400,
28 6401, 6401.7, 6402, and 6403. For purposes of this settlement, the parties have filed a stipulation
requesting Plaintiff be allowed to file a First Amended Complaint to add those additional claims,
which are to be released pursuant to the parties’ settlement agreement. Attached as **Exhibit 5B** to
the Declaration of Christina M. Lucio is the amended notice.

1 conditions, an expert review of a sampling of the Aggrieved Employees' time and payroll records,
2 interviews with Aggrieved Employees, and a full-day mediation before an experienced mediator
3 well-versed in wage and hour litigation. (Lucio Decl., ¶¶9–13.) The Settlement is also strongly
4 supported by experienced counsel, who carefully considered the strength of the claims and
5 Defendant's multiple defenses, as well as the expense, complexity, risks, and likely duration of
6 continued litigation. (Lucio Decl. ¶¶14, 16–17, 40–51.) The Settlement is an excellent result given
7 the conflicting evidence and multiple procedural and substantive defenses, which threaten to
8 substantially undercut the projected value of the claims and resultant penalties, or potentially
9 eliminate the claims altogether. In light of the Parties' support for the Settlement, and because it
10 satisfies all the criteria for approval under California law, the Court should approve the Settlement.

11 Plaintiff also respectfully submits that in light of this excellent result, his requests for
12 attorneys' fees in the amount of \$149,166.67, reimbursement of costs and expenses in the amount
13 of \$16,443.95 and PAGA Representative Service Payment in the amount of \$2,500, also are
14 reasonable and thus should be approved by the Court.

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

17 **II. FACTUAL AND PROCEDURAL BACKGROUND**

18 **A. The Parties**

19 Defendant is a Delaware Corporation which is authorized to do business in California.
20 Plaintiff Torres worked for Defendant as a non-exempt employee from approximately April 2018
21 until May 2021. (Declaration of Erick Torres ("Torres Decl.") ¶ 3). Plaintiff worked as a Tower
22 Climber, providing technician services at various locations, while based out of Defendant's Chino
23 facility. (Torres Decl. ¶ 3.)

24 **B. Procedural History**

25 On September 16, 2021, Plaintiff provided written notice to Defendant and the California
26 Labor and Workforce Development Agency ("LWDA") of the alleged Labor Code violations,
27 pursuant to Labor Code section 2699.3. (Lucio Decl. ¶3.)

1 On September 17, 2021, Plaintiff filed a putative class action against Defendant—captioned
2 *Erick Torres v. Bechtel Infrastructure and Power Construction Services, Inc.*, CIVSB2126754,
3 Superior Court of the State of California County of San Bernardino—seeking damages for various
4 Labor Code and Wage Order violations and for an unfair competition law violation. Shortly
5 thereafter, on September 22, 2021, Plaintiff sent supplemental notice to the LWDA to add
6 additional allegations and violations through a representative PAGA action, on behalf of himself
7 and the State of California as well as on behalf of other potentially aggrieved employees. (Lucio
8 Decl. ¶4.)

9 On November 22, 2021, Plaintiff filed an amended notice to the LWDA to add additional
10 allegations and violations, including violations of Labor Code section 6300 et seq. and section
11 3395, including, specifically, Labor Code sections 6400, 6401, 6401.7, 6402, and 6403, through a
12 representative PAGA action, on behalf of himself and the State of California as well as on behalf
13 of other potentially aggrieved employees (the “Amended LWDA Notice”). Following Plaintiff’s
14 Amended LWDA Notice, on November 23, 2021, Plaintiff filed this Action, a representative
15 complaint captioned *Erick Torres v. Bechtel Infrastructure and Power Construction Services, Inc.*,
16 CIV SB 2134046, Superior Court of the State of California County of San Bernardino. Plaintiff’s
17 Representative Complaint, which is currently the operative complaint, seeks civil penalties under
18 PAGA for Defendant’s alleged failure to: (1) pay minimum wages; (2) pay overtime wages; (3)
19 provide lawful meal periods; (4) authorize and permit lawful rest periods; (5) timely pay wages
20 owed at separation; (6) comply with itemized employee wage statement provisions; (7) reimburse
21 necessary expenses; (8) record and pay sick leave; and (9) keep accurate records. Plaintiff also
22 sought all penalties and sums available under Labor Code section 2698 et seq., attorneys’ fees, and
23 costs. (Lucio Decl. ¶5.)

24 On March 24, 2022, the Court entered an order in Case No. CIV SB 2126754 granting
25 Plaintiff’s request for dismissal of class action allegations pursuant to CRC 3.770 without prejudice
26 and dismissal of individual Labor Code and unfair competition claims without prejudice after
27 Defendant presented Plaintiff with a class action waiver in an arbitration agreement that Plaintiff
28 ~~executed during the course of his employment with Defendant.~~ (Lucio Decl. ¶6.)

1 On June 14, 2023, pursuant to the Parties' joint stipulation, the Court compelled Plaintiff's
2 PAGA claim to individual arbitration and stayed the representative PAGA claim pending the
3 outcome of the arbitration. (Lucio Decl. ¶7.)

4 On November 9, 2023, Plaintiff and Defendant commenced arbitration on Plaintiff's
5 individual claims, including individual Labor Code and PAGA claims. The arbitration case is
6 captioned *Erick Torres v. Bechtel Infrastructure and Power Construction Services, Inc.*, JAMS
7 Case No. 5230000245. (Lucio Decl. ¶8.)

8 On August 6, 2024, the Parties attended an all-day mediation with experienced wage-and-
9 hour mediator Hon. Joan M. Lewis (Ret.). At the mediation, and with significant assistance from
10 the mediator, the Parties reached an agreement to resolve the PAGA-only claims in Case No. CIV
11 SB 2134046 and Plaintiff Erick Torres' individual Labor Code claims in JAMS Case No.
12 5230000245. (Lucio Decl. ¶ 9.)

13 On December 4, 2024, the Parties submitted a stipulation and order to the Court seeking
14 leave for the filing of an amended complaint to add claims arising from the allegations in the
15 Amended LWDA Notice. (Lucio Decl. ¶ 10; Ex. 2.)

16 **C. Discovery and Investigation**

17 Plaintiff's counsel engaged in extensive investigation and research in connection with the
18 allegations in this Action and the related arbitration. Plaintiff's counsel reviewed policy
19 documents, time cards, exit forms, acknowledgments, personnel documents, wage statements,
20 onboarding documents, and other policy and procedure documents. Plaintiff and Defendant also
21 engaged in extensive informal discovery prior to resolving the Action, which included the
22 production by Defendant of, among other things: time records, pay records, and sample wage
23 statements for Plaintiff and a sampling of Aggrieved Employees, as well as Bechtel's Handbooks,
24 incentive plans, policies, procedures, work rules, and other documentation pertaining to the claims
25 at issue. Defendant also provided relevant data points including the number of potentially aggrieved
26 employees and the number of pay periods at issue. (Lucio Decl. ¶11.)

27 Based on these records and in consultation with their expert consultant, Plaintiff's counsel
28 ~~was able to extrapolate all pertinent data through the date of mediation, including the approximate~~

1 number of shifts worked, the possible number of Labor Code violations, including without
2 limitation the possible number of meal period violations, the possible number of rest period
3 violations, the number of aggrieved employees eligible for wage statement penalties and waiting
4 time penalties, among others. (Lucio Decl. ¶12.)

5 **D. Settlement Negotiations**

6 The August 6, 2024, mediation with Hon. Joan M. Lewis (Ret.) was successful and the
7 Parties were eventually able to reach a settlement to resolve Plaintiff's Representative and
8 Individual claims alleged against Defendant. (Lucio Decl. ¶13.) After reaching a resolution, the
9 Parties engaged in extensive negotiations in connection with the provisions in the more
10 comprehensive settlement agreement. The Settlement Agreement and Release of PAGA Claims
11 ("Settlement Agreement") was fully executed on December 2, 2024. (*Id.* at ¶ 10).

12 Counsel believes the proposed settlement is fair, reasonable, and adequate in view of
13 PAGA's purposes in light of the complexities of the case, the uncertainties of further litigation, and
14 that it represents a fair and reasonable recovery for the State of California and the aggrieved
15 employees. The Parties have not engaged in any collusion or improper negotiations. The Parties do
16 not have any agreements regarding the proposed settlement that are not reflected in the PAGA
17 Settlement. (Lucio Decl. ¶14.)

18 On December 10, 2024, Plaintiff submitted a copy of the Settlement Agreement to the
19 Labor and Workforce Development Agency ("LWDA"). (*Id.* at ¶ 65, Ex. 4.)

20 **III. SUMMARY OF SETTLEMENT**

21 **A. Aggrieved Employees**

22 "Aggrieved Employees" means all current and former non-exempt employees who worked
23 for Defendant, in California during the PAGA Period from September 16, 2020, through the date
24 that the Court enters a judgment in this PAGA action. (Lucio Decl. ¶15, Ex. 1, PAGA Settlement,
25 ¶1.4) Through August 6, 2024, Defendant estimates that there are approximately 175 Aggrieved
26 Employees who worked a total of 12,062 PAGA Pay Periods. (Lucio Decl. ¶23, Ex. 1, PAGA
27 Settlement, ¶4.1).

1 **B. Settlement Terms**

2 Under the Settlement, the PAGA claims of all Aggrieved Employees shall be settled for the
3 Gross Settlement Amount of \$447,500, which is inclusive of all Individual PAGA Payments to
4 Aggrieved Employees, PAGA Counsel Fees and Litigation Expenses Payment, the PAGA
5 Representative Service Payment, Settlement Administration Expenses, and the LWDA PAGA
6 Payment. (Settlement, ¶¶ 1.12, 3.1.)

7 The Gross Settlement Amount shall be allocated as follows:

8 1. PAGA Penalties. After deducting the PAGA Counsel Fees and Litigation Expenses
9 Payment, PAGA Representative Service Payment, and the Settlement Administration Expenses,
10 the remainder of the Gross Settlement Amount shall be allocated toward payment to the LWDA
11 and Aggrieved Employees (“PAGA Penalties”). The PAGA Penalties are estimated to be
12 approximately \$267,283.33. (Settlement, ¶3.2.4.) Seventy-five percent of the PAGA Penalties,
13 estimated \$200,462.50, will be paid to the LWDA and 25% of the PAGA Settlement Amount,
14 estimated \$66,820.83, will be allocated among the Aggrieved Employees (the “Net Penalty
15 Payment”). (Settlement, ¶3.2.4.)

16 2. Individual PAGA Payments: The Administrator will calculate each Individual
17 PAGA Payment by (a) dividing the Net Penalty Amount by the total number of PAGA Pay Periods
18 worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by
19 each Aggrieved Employee’s PAGA Pay Periods. (Settlement, ¶ 3.2.5.)

20 Individual PAGA Payment checks shall remain valid and negotiable for one hundred and
21 eighty (180) days from the date of mailing. (Settlement, ¶ 4.4.1.) If an Individual PAGA Payment
22 check remains uncashed after one hundred and eighty (180) days from issuance, the Settlement
23 Administrator shall distribute the value of the uncashed check to the California Controller's
24 Unclaimed Property Fund in the name of the Aggrieved Employee. (Settlement, ¶ 4.4.3.)

25 3. PAGA Representative Service Payment. Subject to Court approval, Plaintiff Torres
26 shall be paid a Representative Service Payment not to exceed Two Thousand Five Hundred Dollars
27 (\$2,500.00), for his time and effort in bringing and presenting the Action. (Settlement, ¶ 3.2.1.)

1 4. PAGA Counsel Fees Payment. Subject to Court approval, PAGA Counsel shall be
2 entitled to receive an award of reasonable attorneys' fees in an amount not to exceed one-third of
3 the Gross Settlement Amount, which amounts to \$149,166.67. (Settlement, ¶ 3.2.2.)

4 5. PAGA Counsel Litigation Expenses Payment. Subject to Court approval, PAGA
5 Counsel shall be entitled to receive reimbursement for costs not to exceed \$25,000. (Settlement, ¶
6 3.2.2.) Counsel seeks reimbursement of actual costs incurred in the amount of \$16,443.95.00.
7 (Hawkins Decl. ¶ 23; Lucio Decl. ¶ 35.)

8 6. Administrator Expenses Payment. The Settlement Administration Expenses, which
9 are estimated not to exceed \$3,550 shall be paid from the Gross Settlement Amount. (Settlement,
10 ¶ 3.2.3.)

11 **C. The Release**

12 Upon the entry of Judgment in accordance with this Settlement and payment of the Gross
13 Settlement Amount, Plaintiff, all of the Aggrieved Employees, the State of California, and the
14 Labor and Workforce Development Agency will fully release the Released Parties and be forever
15 barred from pursuing against them, for the duration of the PAGA Period: (a) all claims for civil
16 penalties or relief of any kind under PAGA that were alleged, or reasonably could have been alleged
17 based on the facts stated in the Operative Complaint or the PAGA Notices, including, but not
18 limited to, all claims for or relating to (1) regular, overtime, or premium wages; (2) failure to
19 compensate Aggrieved Employees for all hours worked; (3) failure to pay the appropriate regular
20 rate of pay; (4) failure to comply with payroll or wage record-keeping documentation or wage
21 statement itemization requirements; (5) failure to provide sufficient meal and/or rest periods or pay
22 premiums in lieu thereof; (6) failure to timely pay wages due at termination or otherwise; (7) failure
23 to furnish accurate wage statements; (8) failure to pay minimum wages; (9) failure to reimburse
24 business or other expenses and costs; (10) failure to pay sick or vacation pay; (11) failure to provide
25 suitable facilities for meal and rest periods; (12) failure to provide a place of employment that is
26 safe and healthful; (13) failure to furnish and use safety devises and safeguards and adopt practices
27 to make a place of employment safe and healthful and to protect the life, safety, and health of
28 ~~employees; (14) failure to implement and maintain an effective written illness prevention~~

1 program; (15) requiring or permitting employees to work in a place of employment that is not
2 safe and healthful; and (16) failure to provide, encourage, and permit recovery periods; and (b)
3 any claims for PAGA penalties that could have been awarded pursuant to Labor Code sections
4 201, 201.3, 202, 203, 204, 210, 216, 218.5, 218.6, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7,
5 227.3, 246, 256, 510, 512, 516, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1195, 1197, 1197.1,
6 1198, 2441, 2699, 2802, 6400, 6401, 6401.7, 6402, 6403, and 3395, and applicable IWC
7 California Wage Orders and California Code of Regulations, Title 8, §§ 11000 et seq. (Ex. 1,
8 Settlement, ¶ 5.1.)

9 The “Released Parties” are Defendant and its predecessors and successors, corporate
10 parents, corporate subsidiaries, corporate affiliates (including, without limitation, Bechtel
11 Corporation, Bechtel Power Corporation, Bechtel Global Corporation, Bechtel Energy, Inc., and
12 Bechtel National, Inc.) and all of its and those entities’ former and present directors, officers,
13 employees, managing agents, shareholders, owners, members, attorneys, consultants, accountants,
14 insurers, reinsurers, predecessors, successors, and assigns. (Ex. 1, Settlement, ¶ 1.29.)

15 In addition, Plaintiff will enter into an Individual Settlement Agreement to generally release
16 any and all claims against Defendant, known or unknown to Plaintiff. (Ex. 1, Settlement, ¶ 2.13.)

17 **D. Settlement Administration**

18 Defendant shall fund the Gross Settlement Amount within fourteen (14) days of the
19 Effective Date. (Lucio Decl., Ex. 1, PAGA Settlement, ¶4.3) Within fourteen (14) days of the
20 Effective Date, Defendant shall provide the PAGA Member Data to the Administrator. (Lucio
21 Decl., Ex. 1, PAGA Settlement, ¶4.2) Within seven (7) days of Defendant funding the Gross
22 Settlement Amount, the Administrator will issue checks for the Individual PAGA Payments, PAGA
23 Representative Service Payment, LWDA PAGA Payment, Administration Expenses Payment,
24 PAGA Counsel Fees Payment, and PAGA Counsel Litigation Expenses Payment. (Lucio Decl.,
25 Ex. 1, PAGA Settlement, ¶4.4)

26 The Administrator will send the Individual PAGA Payment checks to the PAGA Members
27 via First Class U.S. Mail. (Lucio Decl., Ex. 1, PAGA Settlement, ¶4.4.1) For any checks returned
28

1 as undeliverable, the Administrator shall promptly conduct an Aggrieved Employee Address
2 Search to locate the Aggrieved Employee. (Lucio Decl., Ex. 1, PAGA Settlement, ¶ 4.4.2)

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

4 **A. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful** 5 **and Fulfill PAGA’s Underlying Purpose to Benefit the Public**

6 Because a settlement of PAGA claims compromises a claim that could otherwise be brought
7 by the state, PAGA provides that “court[s] shall review and approve any settlement of any civil
8 action filed pursuant to [PAGA].” *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug. 25, 2017)
9 No. 16-CV-04708-LHK, 2017 WL 3670794, at *2. The Court of Appeal in *Moniz v. Adecco USA,*
10 *Inc.*, 72 Cal. App. 5th 56 (Cal. Ct. App. Nov. 30, 2021), overruled in part on other grounds, defined
11 the standard of review for PAGA settlements, finding that the trial court must consider whether the
12 settlement is “fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor
13 law violations, deter future ones, and to maximize enforcement of state labor laws.” *Id.* at *77-78;
14 see also *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1133
15 (adopting guidance from the LWDA providing that “when a PAGA claim is settled, the relief
16 provided for under the PAGA [must] be genuine and meaningful, consistent with the underlying
17 purpose of the statute to benefit the public”).

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

1 But a PAGA representative action is “not akin to a class action;” it “is a species of *qui*
2 *tam* action.” *Flores*, 253 F.Supp.3d at 1076. When reviewing a PAGA-only settlement, courts do
3 not consider the value of individuals’ claims for damages because a PAGA settlement does not
4 release those claims. See, *Kim v. Reins Int’l California, Inc.*, 9 Cal.5th 73, 87 (2020) (PAGA claims
5 differ from individual claims); *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 188 (noting that
6 PAGA penalties do not seek damages that are compensatory in nature). “The state’s interest in
7 such an action is to enforce its laws, not to recover damages on behalf of a particular individual.”
8 *Huff v. Securitas Sec. Servs., USA, Inc.*, 23 Cal.App.5th 745, 760. Instead of focusing on fair
9 recovery for individual claims, the goal of PAGA enforcement is to achieve “maximum compliance
10 with state labor laws.” *Id.* at 756; see also *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59
11 Cal.4th 348, 383 (noting that the goal of PAGA is to impose civil penalties for Labor Code
12 violations “significant enough to deter violations”); *McKenzie v. Federal Exp. Corp.*, 765
13 F.Supp.2d 1222, 1233 (C.D. Cal. 2011) (“Unlike a class action seeking damages... for injured
14 employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the
15 government that otherwise may not have been assessed and collected by overburdened state
16 enforcement agencies.”).

17 Here, the Settlement is fair, reasonable, and adequate in view of PAGA’s purposes to
18 remediate present labor law violations, deter future ones, and to maximize enforcement of state
19 labor laws. (Lucio Decl. ¶ 14.) In this Action, Plaintiff alleges Defendant committed a number of
20 Labor Code violations during the Settlement Period as a result of its: (1) failure to accurately
21 calculate and pay all wages owed, including minimum wages and overtime wages; (2) failure to
22 provide lawful meal periods and authorize and permit rest periods; (3) failure to provide
23 compensation when lawful meal and rest periods were not provided; (4) failure to timely pay all
24 owed wages during employment and at termination; (5) failure to pay the correct regular rate; (6)
25 failure to indemnify employees for necessary expenses; (6) failure to provide accurate, itemized
26 wage statements and payroll records; (7) failure to keep accurate records; (8) failure to pay sick or
27 vacation pay; (9) failure to provide suitable facilities for meal and rest periods; (10) failure to
28 ~~provide a place of employment that is safe and healthful; (11) failure to furnish and use safety~~

1 devises and safeguards and adopt practices to make a place of employment safe and healthful and
2 to protect the life, safety, and health of employees; (12) failure to implement and maintain an
3 effective written illness prevention program; (13) requiring or permitting employees to work in a
4 place of employment that is not safe and healthful; and (16) failure to provide, encourage, and
5 permit recovery periods. (Lucio Decl. ¶ 18.) Plaintiff contends that he and the Aggrieved
6 Employees are entitled to recover penalties because of the violations. Plaintiff alleges that these
7 violations occurred as a result of Defendant's unlawful policies and practices. Defendant denies
8 Plaintiff's allegations, denies that it violated any law, and contends that it maintains lawful policies
9 and practices with respect to its employees. (Id.) Nevertheless, Defendant has agreed to pay a
10 Gross Settlement Amount of \$447,500 to settle this Action and to avoid the expense and disruption
11 of ongoing litigation.

12 The Settlement of \$447,500 penalizes Defendant for the alleged violations of California's
13 labor laws in an amount that is significant enough to deter violations and provide genuine and
14 meaningful relief—approximately \$267,283.33 in PAGA Penalties to the State and the Aggrieved
15 Employees—thus fulfilling the underlying purpose of PAGA to benefit the public. See *Jordan v.*
16 *NCI Grp., Inc.*, No. EDCV161701JVSSPX, 2018 WL 1409590, at *3 (C.D. Cal. Jan. 5, 2018) (“The
17 proposed settlement imposes a substantial penalty payment of \$150,000, paid in exchange for a
18 release of only those claims pled in the notice to the LWDA and the Complaint. This penalty has a
19 substantial deterrent effect on NCI and other California employers. Furthermore, the proposed
20 settlement encourages compliance with the specific requirements of the Labor Code, which has the
21 effect of protecting workers from unlawful employment practices and working conditions.”);
22 *Echavez v. Abercrombie & Fitch Co.*, No. CV 11-09754-GAF, 2017 WL 3669607, at *3 (C.D. Cal.
23 Mar. 23, 2017) (finding that “[t]he primary purpose of PAGA, i.e., the empowerment of aggrieved
24 employees to act as private attorneys general to collect civil penalties from their employers for
25 Labor Code violations, [was] served by the proposed PAGA penalty in the parties’ settlement
26 agreement,” where \$340,000 of \$700,000 settlement was allocated to PAGA penalties which were
27 divided 75% to the LWDA and 25% to an estimated 10,000 aggrieved employees).

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

2 In assessing whether the amount in civil penalties is genuine and meaningful, the Court may
3 balance the amount in penalties with the risks of further litigation. Here, Plaintiff obtained a
4 meaningful amount in civil penalties despite facing significant legal and evidentiary challenges had
5 the litigation continued.

6 While Plaintiff is confident in the merits of the case, a legitimate controversy exists as to
7 each cause of action for penalties, the factual allegations, the evidentiary basis, and the underlying
8 claims. (Lucio Decl. ¶¶ 26–29). Plaintiff also took into account the fact that continued litigation
9 would be expensive, involving a trial and possible appeals, and would substantially delay and
10 potentially reduce any recovery to the state and the Aggrieved Employees. (*Id.* at ¶ 26). Assuming
11 Plaintiff could prove at least one violation per pay period and the Court awarded \$100.00 in PAGA
12 penalties for each of the 12,062 pay periods during the PAGA Period, the total penalties would be
13 approximately \$1,206,200. (Lucio Decl. ¶ 26.) As such, the Gross Settlement Amount of \$447,500
14 is approximately 37.1% of the maximum realistic liability in this case.

15 Thus, when the risks of litigation, the burdens of proof necessary to establish liability, and
16 the probability of appeal of a favorable judgment are considered, it is clear that the settlement
17 amount of \$447,500 is reasonable and in the best interest of the state and the public. (*Id.* at ¶ 26.)
18 Plaintiff objectively and knowledgably balanced the strengths and weaknesses of their claims
19 against the risk of continued litigation, and were able to determine a realistic range of settlement
20 recovery for PAGA penalties. *Id.* The Settlement therefore accomplishes PAGA’s objectives by
21 imposing sufficient civil penalties “to punish and deter” Defendant from future alleged Labor Code
22 violations, while also ensuring that the penalties are not “unjust, arbitrary and oppressive, or
23 confiscatory.” Lab. Code § 2699(e)(2); *Iskanian*, 59 Cal. 4th at 384.

24 **V. PLAINTIFF’S COUNSEL’S REQUESTED FEES AND COSTS ARE**
25 **REASONABLE**

26 The Settlement provides for attorneys’ fees to Plaintiff’s Counsel in an amount not to exceed
27 one-third of the Gross Settlement Amount, which amounts to \$149,166.67, plus reasonable and
28 ~~actual litigation expenses not to exceed \$25,000. (Settlement Agreement ¶ 3.2.2.) Plaintiff’s~~

Counsel is entitled to reasonable attorneys' fees pursuant to Labor Code § 2699(g)(1). The requested fees are reasonable as a percentage of the settlement fund.

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

Plaintiff is entitled to attorneys' fees under Labor Code section 2699(g)(1), which provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Lab. Code § 2699(g)(1); see also *Gouskos v. Aptos Village Garage, Inc.* (2001) 94 Cal.App.4th 754, 765 (holding that attorneys' fees to prevailing party are mandatory when the statute uses the word "shall"). It is undisputed that Plaintiff is the prevailing party. See *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal. App. 4th 140, 153 ("[P]laintiffs may be considered 'prevailing parties' for attorney's fee purposes if they succeed on any significant issue in the litigation that achieves some of the benefit the parties sought in bringing suit.") (internal citation omitted). Accordingly, Plaintiff is entitled to recover attorneys' fees and costs.

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

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

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

A number of other courts have recognized the advantages of awarding fees as a percentage of the common fund over the alternative lodestar approach, which usually involves wading through

1 voluminous and often indecipherable time records. *See, e.g., In re Activision Securities Litigation*
2 (N.D. Cal. 1989) 723 F.Supp. 1373, 1375. The percentage approach is preferable to the lodestar
3 method because: (1) it provides predictability to counsel; (2) encourages efficient resolution of the
4 litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the
5 demands on judicial records. *Id.* at 1378-79; *see also Lealao v. Beneficial Cal., Inc.* (2000) 82
6 Cal.App.4th 19, 28 (discussing findings of task force commissioned by the Third Circuit, which
7 “concluded that the lodestar approach (1) increases the workload of an already overtaxed judicial
8 system, (2) is insufficiently objective and produces results that are far from homogenous, (3) creates
9 a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law,
10 (4) is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the
11 settlement fund or the amounts recovered by the Claimants or of an overall dollar amount, (5)
12 encourages lawyers to expend excessive hours, and engage in duplicative and unjustified work, (6)
13 creates a disservice for the early settlement of cases, (7) deprives trial courts of flexibility to reward
14 or deter lawyers so that desirable objectives, such as early settlement, will be fostered, (8) works to
15 the particular disadvantage of the public interest bar, and (9) results in confusion and lack of
16 predictability.”).

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

1 The Court should also consider that PAGA Counsel's efforts have resulted in substantial
2 benefits to the State of California and the Aggrieved Employees, in the form of a significant, non-
3 reversionary settlement fund established to compensate the State and the Aggrieved Employees and
4 to punish Defendant for the alleged PAGA violations. Without the efforts of PAGA Counsel over
5 the last three years, the claims alleged in the complaint would likely have gone without remedy.
6 While it is not necessary to substantiate the fee award with a lodestar in this PAGA action, it should
7 be noted that PAGA counsel and their paralegals have invested approximately 289 hours in the
8 litigation of this matter. (Lucio Decl. ¶37; Hawkins Decl. ¶ 19.)

9 **D. PAGA Counsel's Costs Are Reasonable**

10 PAGA Counsel is entitled to reimbursement of its litigation costs under PAGA. See Lab.
11 Code § 2699(k)(1) ("Any employee who prevails in any action shall be entitled to an award of
12 reasonable attorney's fees and costs."). The Settlement provides for reimbursement of costs not to
13 exceed \$25,000.00. (Ex. 1, Settlement, ¶ 3.2.2. To date, Plaintiffs' Counsel has incurred actual
14 costs in the amount of \$16,443.95 (Lucio Decl. ¶ 63, Ex. 3; Hawkins Decl. ¶23, Ex. 8.) These costs
15 were reasonably incurred in prosecuting this Action on behalf of the Aggrieved Employees and
16 should be approved by the Court. *Id.* Accordingly, PAGA Counsel respectfully requests the Court
17 approve costs in the amount of \$16,443.95.

18 **VI. THE REQUESTED PAGA REPRESENTATIVE SERVICE PAYMENT TO**
19 **PLAINTIFF IS REASONABLE**

20 Both the State of California and the Aggrieved Employees are beneficiaries of a settlement
21 that would not have been made possible but for the effort and commitment of Plaintiff. The
22 Settlement provides that Plaintiff Torres shall be paid a PAGA Representative Service Payment not
23 to exceed \$2,500.00, in recognition of his effort in bringing and presenting the Action. (Settlement
24 Agreement ¶ 3.2.1.) The requested payment is intended to recognize Plaintiff's effort in bringing
25 the Action, serving as private attorney general under PAGA, assisting counsel with the
26 investigation, litigation, and settlement, regularly conferring with counsel on the status of the
27 case, and reviewing the proposed settlement to ensure that its terms are fair and achieve PAGA's
28 objectives.

1 The amount of the requested fee and award is reasonable. See *Blanchard v. BJ's*
2 *Restaurants, Inc.*, Orange County Superior Court Case No. 30-2014-00761961-CU-OE-CX
3 (Sept. 26, 2016) (approving \$10,000 service award); *Bui v. Vitamin Shoppe Industries Inc.*, Los
4 Angeles County Superior Court Case No. BC518486 (Aug. 31, 2016) (approving \$10,000 service
5 award); *Jesus Miranda v. HomeDeliveryLink, Inc.*, San Bernardino County Superior Court Case
6 No. CIV DS1505393 (Aug. 9, 2016) (approving \$10,000 service award); *Mohamad Najjar v.*
7 *Calop Business Systems, Inc. d/b/a Ca/op Aeroground Service*, Los Angeles County Superior
8 Court Case No. BC582290 (April 5, 2016) (approving \$10,000 service award); *Sheldon v. AHMC*
9 *Monterey Park Hospital LP*, Los Angeles County Superior Court Case No. BC440282 (March 2,
10 2016) (approving \$10,000 service award). Significantly, the PAGA Representative Service
11 Payment collectively represents approximately 0.5% of the Gross Settlement Amount.

12 During the nearly 3 years since the Action was filed, Plaintiff has actively participated in
13 this case. (Torres Decl. ¶¶ 7–10). Plaintiff Torres devoted approximately 30–40 hours of their time
14 to the case. (Torres Decl. ¶ 10.) Plaintiff also faced the real risk that future employers may not hire
15 him because he lent his name as PAGA representative in this case, and he could have been liable
16 for Defendant's litigation costs if the case went to trial, and then lost. (*Id.* at ¶9.)

17 Accordingly, Plaintiff respectfully requests that the Court approve the PAGA
18 Representative Service Payment in the amount of \$2,500.00.

19 VII. CONCLUSION

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

22 DATED: December 9, 2024, Respectfully submitted,

23 **FARNAES & LUCIO, APC**
24 **JAMES HAWKINS APLC**

25 By: 

26 CHRISTINA M. LUCIO
27 Attorneys for Plaintiff ERICK TORRES,
28 individually and on behalf of all other aggrieved
employees