Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Vartan Madoyan (SBN 279015)
Helene Mayer (SBN 332975)
LAWYERS *for* JUSTICE, PC
450 North Brand Blvd., Suite 900
Glendale, CA 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ELIZABETH VILLAVICENCIO, SHAINA SEPULVEDA, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiffs,

vs.

PERFORMANCE AUTOMOTIVE GROUP, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 34-2021-00311505-CU-OE-GDS

Honorable Richard K. Sueyoshi
Department 53

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (CAL. LABOR CODE § 2698, *ET SEQ.*) SETTLEMENT AGREEMENT AND AWARD OF ATTORNEYS' FEES AND COSTS, ENHANCEMENT AWARDS, AND SETTLEMENT ADMINISTRATION COSTS; MEMORANDUM OF POINTS AND AUTHORITIES

[Declaration of Plaintiffs' Counsel (Helene Mayer); Declarations of Plaintiffs (Elizabeth Villavicencio and Shaina Sepulveda); and [Proposed] Order and Judgment filed concurrently herewith]

Reservation ID:	A311505-002
Date:	June 12, 2025
Time:	1:30 p.m.
Department:	53
Complaint Filed:	November 22, 2021
FAC:	December 16, 2024
Trial Date:	None Set

PLEASE TAKE NOTICE that on June 12, 2025 at 1:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Richard K. Sueyoshi in Department 53 of the Superior Court of the State of California, for the County of Sacramento, located at 813 6th Street, Sacramento, California 95814, Plaintiffs Elizabeth Villavicencio and Shaina Sepulveda (together, the "Plaintiffs") will and hereby do move for entry of the following orders:

1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the settlement between Plaintiffs and Defendant Performance Automotive Group, Inc. ("Defendant") of the claims brought pursuant to the Private Attorneys General Act of 2004 ("PAGA"), as set forth in the Private Attorneys General Act Settlement Agreement and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 4**" to the Declaration of Helene Mayer, including and not limited to, the plan of allocation and distribution of the Total Settlement Amount for payment of the PAGA Penalty Amount to the California Labor and Workforce Development Agency ("LWDA"), Individual Settlement Shares to the PAGA Employees, Attorneys' Fees and Costs to Plaintiffs' Counsel, Settlement Administration Costs to the Settlement Administrator, and Enhancement Awards to Plaintiffs;
2. Approving the Net Settlement Amount, estimated to be no less than $191,805.51 which will be distributed to the LWDA and the PAGA Employees, pursuant to California Labor Code section 2699(i), of which 75% will be distributed to the LWDA ("PAGA Penalty Amount") and 25% will be paid to the PAGA Employees ("Employees' Portion");
3. Appointing Simpluris, Inc. ("Simpluris") as the Settlement Administrator, to handle the administration of the Settlement;
4. Directing Defendant to fund the Total Settlement Amount, and directing the Settlement Administrator to distribute payments in accordance with the Settlement Agreement;

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410 West Arden Avenue, Suite 203
Glendale, California 91203

5. Directing the mailing of Individual Settlement Share checks to the PAGA Employees along with the Cover Letter, which is substantially similar in content and form to that attached as "**EXHIBIT A**" to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq*.) Settlement Agreement and Award of Attorneys' Fees and Costs, Enhancement Awards, and Settlement Administration Costs ("[Proposed] Order and Judgement") filed concurrently herewith;
6. Awarding $7,500.00 each, to Plaintiffs Elizabeth Villavicencio and Shaina Sepulveda (totaling, $15,000.00) as their Enhancement Awards;
7. Awarding up to $6,000.00 to the Settlement Administrator as Settlement Administration Costs; and
8. Awarding to Lawyers *for* Justice, PC ("Plaintiffs' Counsel") the amount of $122,500.00 as compensation for reasonable attorneys' fees and the amount of $14,694.49 for reimbursement of litigation costs and expenses (together, "Attorneys' Fees and Costs"), pursuant to California Labor Code section 2699(g)(1).

Unless otherwise specified, all citations and references to the Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* are to the version of statute prior to the recent amendment effective July 1, 2024; the amended statute does not apply to the above-captioned action and the Settlement pursuant to California Labor Code section 2699(v)(1), as amended, because the above-captioned action was filed prior to June 19, 2024.

The Settlement Agreement and moving and supporting papers for this motion are being concurrently submitted to the California Labor and Workforce Development Agency in conformity with California Labor Code section 2699(l)(2).

This motion is made pursuant to California Labor Code section 2699(l)(2), which provides for review and approval by the Court of the settlement of a civil action filed pursuant to PAGA.

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410 West Arden Avenue, Suite 203
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This motion is based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Plaintiffs' Counsel (Helene Mayer) and Plaintiffs Elizabeth Villavicencio and Shaina Sepulveda in support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: April 10, 2025

LAWYERS *for* JUSTICE, PC

By: Helene Mayer
Helene Mayer
Attorneys for Plaintiffs

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Elizabeth Villavicencio ("Plaintiff Villavicencio") and Shaina Sepulveda ("Plaintiff Sepulveda") (together, the "Plaintiffs") seek approval of the Private Attorneys General Act Settlement Agreement and Release ("Settlement," "Agreement," or "Settlement Agreement") entered into between Plaintiffs, individually and on behalf of the State of California with respect to PAGA Employees, and Defendant Performance Automotive Group, Inc. ("Defendant"), pursuant to California Labor Code section 2699(l)(2).[1] Plaintiffs and Defendant (together, the "Parties") have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* ("PAGA"), for a Total Settlement Amount of $350,000.00.[2]

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise of a disputed claim that has been reached through arm's-length negotiations, in light of the risks, complexity, and expense of further litigation, and the strengths of the PAGA claim. The Settlement meets the requirements for Court approval based upon the relevant fairness factors. The Court is respectfully requested to approve the Settlement award the Attorneys' Fees and Costs, Settlement Administration Costs, and Enhancement Awards and approve the PAGA Penalty Amount.

The Settlement Agreement and moving and supporting papers for this motion are being concurrently submitted to the LWDA and Plaintiffs now move for an order granting approval of the Settlement, in conformity with California Labor Code section 2699(l)(2).[3]

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

For a discussion of relevant procedural history and facts regarding this case, please see the Declaration of Helene Mayer at paragraphs 8 to 11.

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[1] The Private Attorneys General Act Settlement Agreement and Release ("Settlement Agreement") is attached as "**EXHIBIT 4**" to the Declaration of Helene Mayer ("Mayer Decl.").

[2] Settlement Agreement, § 3(a). The Total Settlement Amount is subject to possible increase pursuant to Section 3(b) of the Settlement Agreement.

[3] As reflected in the concurrently-filed Proof of Service, Plaintiffs submitted the Settlement and motion papers to the LWDA.

III. SUMMARY OF THE SETTLEMENT TERMS

A. Scope of the Settlement

If the Court grants approval of the Settlement, Plaintiffs and the State of California, with respect to PAGA Employees,[4] will release the Released Parties[5] from the Released Claims[6].

B. Funding and Distribution of the Total Settlement Amount

Defendant will pay a Total Settlement Amount of $350,000.00[7], inclusive of: (1) Attorneys' Fees and Costs to Lawyers *for* Justice, PC ("Plaintiffs' Counsel"), (2) Enhancement Awards to Plaintiffs, (3) Settlement Administration Costs to the Settlement Administrator, and (4) Net Settlement Amount to the California Labor and Workforce Development Agency ("LWDA") and PAGA Employees.[8] The Net Settlement Amount (estimated to be no less than $191,805.51) is the Total Settlement Amount less the Court-approved Attorneys' Fees and Costs, Settlement Administration Costs, and Enhancement Awards.[9] The Net Settlement Amount will be distributed as follows: 75% of the Net Settlement Amount (or approximately $143,854.13) will be distributed to the LWDA ("PAGA Penalty Amount") and 25% of the Net Settlement Amount (or approximately $47,951.38) ("Employees' Portion") will be distributed to the PAGA Employees on a *pro rata* basis, based on their Compensable Pay Periods.[10]

Within 30 calendar days of the Court's order granting approval of the Settlement, Defendant will transmit the Total Settlement Amount to a qualified settlement account established by the Settlement Administrator.[11] No later than 30 calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the Settlement Administrator with a list of all PAGA Employees, containing the following information for each PAGA Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number;

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[4] Settlement Agreement, § 3(a)(1)-(5). "PAGA Employees" are defined as all non-exempt employees who worked for Defendant during the PAGA Release Period. *Id.*, § 3(a)(5). "PAGA Release Period" is defined as the period of March 22, 2020, through March 20, 2023. Ibid.

[5] The definition of the "Released Parties" is set forth in the Settlement Agreement, § 8(a).

[6] The definition of the "Released Claims" is set forth in the Settlement Agreement, § 8(a).

[7] Settlement Agreement, § 3(a), Mayer Decl., ¶ 14, and see footnote 2.

[8] *Id.*, § 3(a)(1)-(5).

[9] *Id.*, § 3(a)(4).

[10] *Id.*, § 3(a)(5).

[11] *Id.*, § 7(a).

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(iv) social security number; and (v) Compensable Pay Periods.[12]

No later than 7 calendar days after the Settlement Administrator receives the PAGA Employees List and Total Settlement Amount, the Settlement Administrator will calculate payments and mail the Cover Letter[13] and Individual Settlement Share[14] checks (together, the "PAGA Settlement Package(s)") to all PAGA Employees by first-class U.S. mail.[15] For each PAGA Settlement Package returned as undeliverable within 30 calendar days of the initial mailing, the Settlement Administrator will promptly attempt to locate an alternate, updated address by using a skip-trace search and attempt re-mailing of the PAGA Settlement Package.[16]

The Individual Settlement Share checks issued to PAGA Employees will remain valid for 180 calendar days, and thereafter, will be canceled.[17] Funds associated with canceled checks will be transmitted to Saint John's Program for Real Change in conformity with California Code of Civil Procedure Section 384, as amended.[18]

C. <u>Standards for Approval of PAGA Settlement</u>

PAGA allows an "aggrieved employee" to bring a civil action on behalf of the State of California to recover civil penalties that the LWDA could normally pursue on behalf of employees against an employer. Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.[19] Before

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[12] Settlement Agreement, § 7(c)(1).

[13] The Parties have prepared a simple Cover Letter for transmission to the PAGA Employees along with their Individual Settlement Share checks, substantially in the form attached as "**EXHIBIT A**" to the [Proposed] Order and Judgment and as "**EXHIBIT A**" to the Settlement Agreement. The Cover Letter informs the PAGA Employees about the Action and the Settlement.

[14] Each PAGA Employee's share of the Employees' Portion ("Individual Settlement Share"), will be calculated by the Settlement Administrator based on their Compensable Pay Periods. *Id.*, § 7(b). The payments to PAGA Employees for their Individual Settlement Share are considered 100% penalties to be reported on IRS Form 1099, if required. *Id.*, §§ 3(c) & 7(b)(1).

[15] *Id.*, § 7(c)(3).

[16] Ibid.

[17] *Id.*, § 7(c)(4).

[18] Ibid.

[19] *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (aggrieved employee cannot opt out of a PAGA settlement); *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546-548 ("[A] PAGA action is a statutory action for penalties brought as a proxy for the State," "whatever personal claims the absent employees might have for relief are not at stake[,]" as such, "there is no need to protect absent employees' due process rights" and they "will be bound by the outcome of any PAGA action[.]"); *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5 (Unnamed employees need not be given notice); *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984-86 (Same).

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bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. *See* Cal. Lab. Code § 2699(a). Plaintiffs have complied.

The settlement of a PAGA action requires court approval. *See* Cal. Lab. Code § 2699(l)(2). However, a PAGA claim asserted on a non-class representative basis and is not a class action but a law enforcement action.[20] A court's review of a PAGA settlement involves consideration of unique factors that render the approval process distinct from, and simpler than the two-step court approval process for a class action settlement. A court reviewing a PAGA settlement need only "ensur[e] that a negotiated resolution is fair to those affected." *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims.[21]

In a PAGA case, the court's focus is not on the monetary amount recovered, but instead, whether the total settlement amount achieves the PAGA's objectives. The purpose of the PAGA is "to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to "be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes." *See* Cal. Lab. Code § 2699(j).

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[20] *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (plaintiff need not satisfy class action requirements to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15; *Amalgamated Transit Union, Local 1756, Afl-Cio v. Superior Court* (2009), 46 Cal.4th 993, 1003; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 58 Cal.4th 348, 381.

[21] *See, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576, 589.

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IV. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

The Settlement resulted from hard-fought negotiations, fulfills PAGA's objectives, is fair, adequate, and reasonable, and meets all of the criteria for approval as detailed below.

A. The Factors Giving Rise to a Presumption of Fairness Exist

The Parties reached the Settlement after conducting extensive, arm's-length settlement negotiations and private mediation with Hon. Mark Rudy, Esq.[22] A settlement that is "the product of extensive and hard-fought adversarial negotiations between the parties" is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

As discussed in the Declaration of Helene Mayer, the Settlement is presumptively fair because: (1) it is the product of adversarial non-collusive, and arm's-length negotiations with the assistance of an independent mediator knowledgeable in complex labor and employment matters; (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters; and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claim, and risks and expenses of litigating this claim through trial.[23]

Based on all of the information available to the Parties, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim and the facts and circumstances of the case.[24] Plaintiffs' Counsel has extensive experience handling representative and class action wage-and-hour litigation and used that experience to achieve a settlement recovery for Plaintiffs, the State of California, and the PAGA Employees.[25] Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of arm's length bargaining.[26]

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[22] Mayer Decl., ¶ 16.
[23] *Id.*, ¶¶ 2-6, 16, & 20-30.
[24] *Id.*, ¶ 30.
[25] *Id.*, ¶¶ 2-6.
[26] See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D.

(Footnote continued)

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B. The Relative Strengths and Weaknesses of the PAGA Claim and the Range of Possible Outcomes Strongly Favor Approval of the Settlement

For a discussion of the relative strengths and weaknesses of the PAGA claim and range of possible outcomes in the litigation, see the Declaration of Helene Mayer at paragraphs 20-30.

C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation

Courts favor voluntary conciliation and settlement of complex litigation. *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan. 5, 2004) 221 F.R.D. 523, 526.

Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope of the PAGA claim and allegations and considered thousands of pages of information, documents, and data relevant to Plaintiffs' claim and Defendant's defenses thereto.[27] The Parties thoroughly and sufficiently evaluated the PAGA claim and related allegations, including, and not limited to, calculating the potential monetary recovery under PAGA.[28] Plaintiffs' Counsel performed other work as well, which is discussed in the Declaration of Helene Mayer.[29]

Had the case not settled, the Parties would have conducted extensive additional formal discovery, including propounding additional written discovery requests and multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendant indicated that it would aggressively litigate this case.[30] Even if Defendant failed on its defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.[31] Additionally, there is a real possibility that Plaintiffs could recover

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Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

[27] Mayer Decl., ¶ 17.

[28] Ibid.

[29] *Id.*, ¶¶ 15-19.

[30] *Id.*, ¶¶ 23-27.

[31] *Id.*, ¶¶ 29-30.

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nothing, either for themselves or on behalf of the State of California or other PAGA Employees after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

D. <u>The Settlement Is Fair, Adequate, and Reasonable</u>

The Settlement provides significant benefits to the State of California and the PAGA Employees and falls well-within the range of acceptable settlements under the circumstances. "[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1981) 688 F.2d 615, 624. "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id*. at 625.

The Settlement is a compromise of highly disputed claims. Plaintiffs and their counsel recognize the expense and length of continued proceedings necessary to pursue the matter through trial and any possible appeals.[32] Plaintiffs and their counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.[33] Plaintiffs and their counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiffs, the State of California, and other PAGA Employees.[34] Plaintiffs and their counsel have also taken into account Defendant's agreement to enter into a settlement that confers significant relief upon the PAGA Employees and the State of California.[35]

Considering all of the facts in this case, Plaintiffs and their counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the PAGA Employees and the State of California.[36]

The result achieved in this case, and the monetary recovery provided by this settlement,

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[32] Mayer Decl., ¶¶ 18, 29-30, & 36.
[33] Ibid.
[34] *Id.*, ¶¶ 20-30.
[35] *Id.*, ¶ 30.
[36] *Id.*, ¶ 36.

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are well-within the range of an acceptable settlement, especially when compared to trial court penalties assessments in contested cases and the settlement of PAGA claims in other cases. Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

E. Plaintiffs' Counsel's Experience and Views Favor Settlement Approval

Plaintiffs' Counsel is highly experienced in complex representative and class action wage-and-hour cases.[37] In Plaintiff's Counsel view , the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the PAGA Employees in light of the risk, delay, and uncertainty of continued litigation and of the Settlement's substantial monetary benefits.[38] Furthermore, courts have acknowledged that "the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]" *Williams, supra,* 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

V. THE REQUESTED ATTORNEYS' FEES AWARD SHOULD BE APPROVED

A. A Fee Award of a Percentage of the Entire Fund Is Appropriate

The Settlement provides for attorneys' fees in an amount of up to 35% of the Total Settlement Amount, which is $122,500.00 (assuming the Total Settlement Amount remains $350,000.00)[39], subject to approval and award by the Court.[40] The requested attorneys' fees award is commensurate with: (1) the risk that Plaintiffs' Counsel took in bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that Plaintiffs' Counsel has shown, (4) the results that Plaintiffs' Counsel has achieved in the case, (5) the value that Plaintiffs' Counsel has achieved in the case, and (6) the other cases that Plaintiffs' Counsel has turned down in order to work on this matter.

Plaintiffs' Counsel is entitled to recover reasonable attorneys' fees and costs as a matter of right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) ("Any employee who prevails in any

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[37] Mayer Decl., ¶¶ 2-6.
[38] *Id.*, ¶ 36.
[39] Settlement Agreement, § 3(a)(1). See also note 2.
[40] *Id.*, § 3(a)(1).

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[PAGA] action shall be entitled to an award of reasonable attorney's fees and costs"). Plaintiffs' Counsel is also entitled to fees and costs under California Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for the benefit" of others and secures monetary recovery for a large number of allegedly aggrieved employees, as well as the State of California.[41] The settlement will also provide funds to the state labor agency, to enhance enforcement of labor laws and education of "employers and employees about their rights and responsibilities under [the California Labor Code]." Cal. Lab. Code § 2699(i).

Courts may calculate and award attorneys' fees as a percentage of a monetary fund that has, by litigation, been preserved or recovered for the benefit of others. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480 at 486 & 506. Trial courts "retain the discretion to forgo a lodestar cross-check and [may] use other means to evaluate the reasonableness of a requested percentage fee." *Id.* (internal quotes omitted); see also *Wershba*, *supra*, 91 Cal.App. 4th at 253.

Courts award fees as an economic incentive for lawyers to pursue litigation that will enhance and facilitate access to the judicial system for meritorious claims, deter wrongdoing, and address multiple similar alleged wrongs that would not be economically feasible to pursue individually, such as here. See A. Conte, *Attorney Fee Awards* (2d ed. 1993) 104, at 6.

The percentage method is particularly appropriate where a monetary settlement has been recovered and "the benefit [recovered can be] easily quantified." *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, section 14:145; *Dunk v. Ford Motor Co.*(1996) 48 Cal. App. 4th 1794, 1808.

The percentage fee method is preferred in representative actions because "it better approximates the workings of the marketplace than the lodestar approach." *Lealao v. Beneficial*

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[41] *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17 (recognizing that recovery obtained on behalf of 209 individuals satisfies the "significant benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff's personal motivation).

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Cal., Inc. (2000) 82 Cal.App.4th 19, 49. California law provides that the award for attorneys' fees should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at 47-50; *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the defendant will pay the plaintiff's attorneys a percentage of the fund created by the settlement, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Id.* at 53. Therefore, fees in representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id*. at 48. "The ultimate goal . . . is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th, 1253, 1270).

Plaintiffs' Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the case is well-within the range of reasonableness. Courts have awarded fees as high as 50% of the settlement in complex actions, depending on the circumstances of the case.[42]

Plaintiffs' Counsel has performed significant work in this matter, as discussed in the Declaration of Helene Mayer with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.[43] Plaintiffs' Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[44] Plaintiffs' Counsel is

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[42] *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the $7.3 million total settlement amount); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve attorneys' fees awards "average[ing] around one-third of the recovery." *Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency fees in marketplace to be 20%-40% and determined such a percentage fee was appropriate).

[43] Mayer Decl., ¶ 34.

[44] Ibid.

experienced in complex wage-and-hour litigation and used that experience to obtain a significant settlement recovery for Plaintiffs, the PAGA Employees, and the State of California.[45] Considering the amount of fees requested, work performed, risks incurred, results obtained, and experience of Plaintiffs' Counsel in handling similar matters, Plaintiffs maintain that the requested attorneys' fees are reasonable and should be awarded.

B. <u>The Requested Fee Award is Reasonable Based on the Factors Considered in Determination of Fee Awards</u>

Courts consider the following factors in determining reasonable fee awards, all of which support the fee award requested here: the time and labor required; the novelty and difficulty of the questions involved; the skill requisite to properly perform the legal services; the preclusion of other employment by the attorney due to the acceptance of the case; the customary fee; whether the fee is fixed or contingent; the time limitation imposed by the client or the circumstances; the amount involved and results obtained; the experience, reputation, and ability of the attorney; the undesirability of the case; the nature and length of the professional relationship with the client; and awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772. These factors are addressed below.

The percentage fee award sought is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Plaintiffs' Counsel's representation and the risks taken in this case, the skill and determination required, the results that Plaintiffs' Counsel has achieved, and the value of the settlement that Plaintiffs' Counsel has obtained on behalf of Plaintiffs, the PAGA Employees, and the State of California. For the reasons discussed herein, an award of attorneys' fees in the amount of 35% of the Total Settlement Amount is reasonable.

1. Time & Labor

Plaintiffs' Counsel has used its experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, Plaintiffs' Counsel conducted a significant amount of investigation into the factual and legal

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[45] Mayer Decl., ¶¶ 2-6.

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issues, Defendant's business, and its operations and employment policies, practices, and procedures.[46] During the litigation, Plaintiffs' Counsel interviewed and obtained information from Plaintiffs, Defendant, and other sources, conducted legal research, reviewed and analyzed thousands of pages of documents and data, prepared for and participated in mediation and robust settlement discussions, evaluated the PAGA claim, and calculated the potential monetary recovery under PAGA.[47] Plaintiffs' Counsel also met and conferred with Defendant's counsel regarding the pleadings, case management, arbitration, mediation, and settlement negotiations, among other issues.[48] Plaintiffs' Counsel performed other work including, *inter alia*, case strategy and analysis; and engaging in extensive settlement negotiations.[49]

Plaintiffs' Counsel dedicated the full extent of staffing and monetary resources necessary to prosecute the case with maximum efficiency and has fully and actively participated in the litigation process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT 5**" to the accompanying Declaration of Helene Mayer, sets forth in detail the hours that Plaintiffs' Counsel has spent performing tasks in this matter. Attorneys at Lawyers *for* Justice, PC have spent **194.50 hours** to obtain a recovery on behalf of Plaintiffs, the PAGA Employees, and the State of California. These hours were required to bring the case to its successful conclusion.

In light of the value of time expended and the carrying of costs involved in this litigation, the requested attorneys' fees award is fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly

The skill required to properly litigate this case is evident not only in the results achieved, but in the steps necessary to reach the same. Defendant retained highly-respected counsel to represent its defenses. Plaintiffs' Counsel's effort and skill were used to, among other things, investigate the allegations and gather facts, research the legal issues, analyze data, documents, and information obtained from Defendant, Plaintiffs, and through other sources, to evaluate the PAGA claim and negotiate the settlement. Despite all of the obstacles that had to be overcome,

[46] Mayer Decl., ¶ 17.
[47] Ibid.
[48] Ibid.
[49] Ibid.

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Plaintiffs' Counsel used its extensive experience and skill in the handling of complex wage-and-hour matters to advocate for and obtain a recovery now, with maximum efficiency, as opposed to the possibility of recovery in the future, after significant expense and time.[50]

3. Whether the Fee Is Fixed or Contingent

Plaintiffs' Counsel has provided representation on a contingency basis, has borne all risks and costs of litigation, and will not receive any compensation until recovery is obtained.[51] If Plaintiffs' Counsel had not been successful, the time devoted to litigating the case would have been for naught and no fees or costs would be recovered. Plaintiffs' Counsel is well-experienced in complex wage-and-hour litigation and used its experience to obtain a great result.[52] The skill and determination Plaintiffs' Counsel has shown throughout prosecution of this case justifies the requested attorneys' fees and costs. Considering the amounts requested, work performed, and risks incurred, the requested fees and costs are reasonable and should be awarded.

4. The Amount Involved and the Results Achieved

The Settlement represents an excellent resolution of this lawsuit, given the uncertainty and risks of further litigation.[53] Had the case not settled, Defendant would have vigorously defended the case, and would have challenged manageability and liability, and also sought a reduction in the amount assessed as civil penalties. Defendant, however, faced risks too, including and not limited to, the risk of trial and the risk of having the Court assess civil penalties. Additionally, preparing for trial would have been extraordinarily expensive for the Parties. At this stage, the settlement is preferred over continued litigation because such resolution saves time and money that would otherwise go to litigation. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery and avoids an uncertain result in the future and additional risk, expense, and delay (e.g., prolonged expert discovery, trial preparation, and appellate review of those proceedings).

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[50] Mayer Decl., ¶¶ 15-30.
[51] *Id.*, ¶ 34.
[52] *Id.*, ¶¶ 2-6.
[53] *Id.*, ¶¶ 19, 29, 30, & 36.

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The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this case, are considerable. Plaintiffs' Counsel obtained a settlement that provides for a Total Settlement Amount of $350,000.00, and it is currently estimated that the Net Settlement Amount available for distribution to the PAGA Employees and the State of California, is approximately $191,805.51.[54]

5. The Reputation and Ability of the Attorneys

Plaintiffs' Counsel is a recognized class action and complex litigation law firm, and its attorneys employed their knowledge, skill, and experience to bring the case to a successful conclusion. Plaintiffs' Counsel has years of wage-and-hour class action and complex litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and representative action cases.[55]

VI. REIMBURSEMENT OF PLAINTIFFS' COUNSEL LITIGATION COSTS AND EXPENSES SHOULD BE APPROVED

The Settlement provides for reimbursement of litigation costs and expenses of up to $30,000.00. As set forth in the Declaration of Helene Mayer, Plaintiffs' Counsel seeks reimbursement of $14,694.49 in litigation costs and expenses.[56] These expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement.[57] Accordingly, the Court is requested to award reimbursement of litigation costs and expenses to Plaintiffs' Counsel in the amount of $14,694.49.

VII. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to Court approval, Simpluris, Inc. to handle the administration of the Settlement. The fees and expenses of the Settlement Administrator are estimated not to exceed $6,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter

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[54] Settlement Agreement, § 3(a) and see footnote 2.
[55] Mayer Decl., ¶¶ 2-6.
[56] *Id.*, ¶ 34.
[57] Ibid.

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and Individual Settlement Shares checks to the PAGA Employees (i.e., PAGA Settlement Packages); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages; and handling inquiries from PAGA Employees regarding the Settlement, among other things. Thus, the Court should grant approval of the Settlement Administration Costs in the amount of up to $6,000.00 to Simpluris, Inc., a necessary third-party, for handling the settlement process.

VIII. <u>THE ENHANCEMENT AWARDS SHOULD BE APPROVED</u>

The Settlement provides for Enhancement Awards to be paid to each Plaintiff in the amount of $7,500.00 each (totaling $15,000.00) for their broader individual waiver and release of claims with a California Civil Code Section 1542 waiver (set forth in Section 8(b) of the Settlement Agreement).[58] It is reasonable and just for Plaintiffs to each receive this payment. Plaintiffs contributed considerable time and effort to the litigation of this case in order to enforce the California Labor Code on behalf of the State of California and for the benefit of the PAGA Employees. Plaintiffs discussed their employment with their counsel, gathered and produced relevant documents and information, and provided the facts and evidence necessary to attempt to prove the allegations.[59] Plaintiffs were available whenever their counsel needed them and tried to obtain and provide documents and information that would aid in the litigation and pursuit of recovery on behalf of the State of California and PAGA Employees.[60]

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[58] Settlement Agreement, §§ 3(a)(2) & 8(b). The PAGA statute recognizes that a plaintiff employee may pursue or recover other remedies and relief available to the plaintiff employee under state or federal law through an action under PAGA. See, Cal. Lab. Code § 2699(k)(1) (formerly Cal. Lab. Code § 2699(g)(1). As such, it is appropriate for Plaintiffs to receive a payment for their broader individual release of claims.

[59] Mayer Decl., ¶ 35; Declaration of Elizabeth Villavicencio ("Villavicencio Decl."), ¶¶ 3 & 4; Declaration of Shaina Sepulveda ("Sepulveda Decl."), ¶¶ 3 & 4.

[60] Mayer Decl., ¶ 35; Villavicencio Decl., ¶¶ 3 & 4; Sepulveda Decl., ¶¶ 3 & 4.

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410 West Arden Avenue, Suite 203
Glendale, California 91203

IX. CONCLUSION

For the reasons discussed above and in the accompanying declarations, the Court is respectfully requested to approve the Settlement, including the plan of allocation and distribution of the Total Settlement Amount.

Dated: April 10, 2025

LAWYERS *for* JUSTICE, PC

By: Helene Mayer

Helene Mayer
Attorneys for Plaintiffs

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203