

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Barbara DuVan-Clarke (State Bar No. 259268)
BDC@blackstonepc.com
Alexander K. Spellman (State Bar No. 250398)
aspellman@blackstonepc.com
P.J. Van Ert (State Bar No. 234858)
pjvanert@blackstonepc.com
Annabel Blanchard (State Bar No. 258135)
ablanchard@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Blvd., Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff
Alexis Cardoza

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

ALEXIS CARDOZA, individually, and on
behalf of Aggrieved Employees pursuant to
the California Private Attorneys General
Act,

Plaintiff,

vs.

BHFC Operating LLC, a California limited
liability company; and DOES 1 through 25,
inclusive,

Defendants.

Case No. 21STCV34040

Honorable Bruce G. Iwasaki
Department 58

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT,
AWARD OF PAGA COUNSEL FEES
PAYMENT, PAGA COUNSEL LITIGATION
EXPENSES PAYMENT, SERVICE AWARD,
AND ADMINISTRATION EXPENSES
PAYMENT; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF**

Reservation ID: 345520299780

Date: July 18, 2024

Time: 9:00 a.m.

Dept.: 58

Complaint Filed: September 15, 2021

FAC Filed: January 28, 2022

Trial Date: Vacated

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

2 **PLEASE TAKE NOTICE THAT** on July 18, 2024 at 9:00 a.m. in Department 58 of the
3 above-captioned Court located at Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles,
4 California 90012, Plaintiff Alexis Cardoza (“Plaintiff”) will and hereby does move the Court for an
5 Order granting approval of California Labor Code Private Attorneys General Act of 2004, California
6 Labor Code sections 2698, *et seq.* (“PAGA”) settlement. Specifically, Plaintiff requests that the Court
7 enter an Order:

- 8 1. Granting approval pursuant to California Labor Code section 2699(1)(2) of the PAGA
9 Settlement Agreement (“Settlement” or “Settlement Agreement”) attached as **Exhibit 3**
10 to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Approval
11 of PAGA Settlement and Award of PAGA Counsel Fees Payment, PAGA Counsel
12 Litigation Expenses Payment, Service Award, and Administration Expenses Payment
13 (“Genish Decl.”);
- 14 2. Directing the distribution of the Gross Settlement Amount of Four Hundred Thirty-Seven
15 Thousand Five Hundred Dollars and Zero Cents (\$350,000.00) pursuant to the terms of
16 the Settlement;
- 17 3. Approving the PAGA Penalties, estimated to be Two Hundred Eight Thousand Three
18 Hundred Forty-Five Dollars and Twenty-Five Cents (\$208,345.25), of which seventy-
19 five percent (75%) will be distributed to the California Labor and Workforce
20 Development Agency (“LWDA”) and twenty-five percent (25%) will be distributed to
21 the Aggrieved Employees;
- 22 4. Approving an award of reasonable attorneys’ fees of One Hundred Twenty-Two
23 Thousand Five Hundred Dollars (\$122,500.00) to PAGA Counsel, Blackstone Law,
24 APC;
- 25 5. Approving the amount of Four Thousand One Hundred Fifty-Four Dollars and Seventy-
26 Five Cents (\$4,154.75) to PAGA Counsel, Blackstone Law, APC, for reimbursement of
27 actual litigation costs and expenses pursuant to California Labor Code section
28 2699(g)(1);

6. Approving an award of Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff as a Service Award;
7. Appointing Apex Class Action Administration (“Apex” or “Administrator”) as the Administrator; and
8. Approving an award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) in anticipated costs to Apex for its settlement administration services.

Pursuant to California Labor Code section 2699(1)(2), a copy of the proposed Settlement, as well as information regarding the approval hearing in this matter, were submitted to the LWDA via online submission through its public portal concurrently with the filing of this Motion. (Genish Decl., ¶ 23).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of PAGA Counsel Jonathan M. Genish and Plaintiff Alexis Cardoza, the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: June 10, 2024

BLACKSTONE LAW, APC

By:

Jonathan M. Genish
Attorneys for Plaintiff
Alexis Cardoza

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Labor Code Private Attorneys General Act, California Labor Code
4 sections 2698, *et seq.* (“PAGA”), Plaintiff Alexis Cardoza (“Plaintiff”) seeks approval of the PAGA
5 Settlement Agreement (“Settlement” or “Settlement Agreement”) entered into with Defendant BHFC
6 Operating LLC d/b/a Bottega Louie (“Defendant”) (collectively with Plaintiff, the “Parties”), which
7 is attached as Exhibit 3 to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for
8 Approval of PAGA Settlement and Award of PAGA Counsel Fees Payment, PAGA Counsel
9 Litigation Expenses Payment, Service Award, and Administration Expenses Payment (“Genish
10 Decl.”). The Settlement terms are outlined as follows:

- 11 • Number of Aggrieved Employees: 1,100 individuals.
- 12 • Gross Settlement Amount: Three Hundred Fifty Thousand Dollars and Zero Cents
13 (\$350,000.00).
- 14 • Requested PAGA Counsel Fees Payment: One Hundred Twenty-Two Thousand Five
15 Hundred Dollars and Zero Cents (\$122,500.00) (35% of the Gross Settlement Amount).
- 16 • Requested PAGA Counsel Litigation Expenses Payment: Four Thousand One Hundred
17 Fifty-Four Dollars and Seventy-Five Cents (\$4,154.75).
- 18 • Service Award: Five Thousand Dollars and Zero Cents (\$5,000.00).
- 19 • Administration Expenses Payment: Not to exceed Ten Thousand Dollars and Zero Cents
20 (\$10,000.00).
- 21 • Estimated PAGA Penalties: Two Hundred Eight Thousand Three Hundred Forty-Five
22 Dollars and Twenty-Five Cents (\$208,345.25), of which 75% (\$156,258.94) will be paid
23 to the California Labor and Workforce Development Agency (“LWDA”) and the
24 remaining 25% (\$52,086.31) will be paid to the Aggrieved Employees.

25 As set forth herein, the Settlement is the product of informed discovery, arms-length
26 negotiations, and provides a fair, adequate, and reasonable recovery for the State of California and
27 Aggrieved Employees. Plaintiff therefore respectfully requests that the Court grant approval of the
28 proposed Settlement, among other requested relief.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 Defendant is a restaurant, gourmet market, and bakery with locations in Downtown Los
3 Angles and West Hollywood. (Genish Decl., ¶ 8). Defendant employed Plaintiff Alexis Cardoza
4 (“Plaintiff”) as an hourly-paid, non-exempt server from approximately January 2014 to March 2020,
5 and again from approximately February 2021 to September 2021. (Declaration of Alexis Cardoza in
6 Support of Motion for Approval of PAGA Settlement and Award of PAGA Counsel Fees Payment,
7 PAGA Counsel Litigation Expenses Payment, Service Award, and Administration Expenses Payment
8 [“Cardoza Decl.”], ¶ 3; Genish Decl., ¶ 8).

9 On November 15, 2021, Plaintiff provided written notice by electronic submission to the
10 LWDA and by Certified U.S. Mail to Defendant, pursuant to California Labor Code § 2699.3,
11 providing notice of the specific provisions of the California Labor Code which Plaintiff alleged
12 Defendant violated, including the facts and theories to support the allegations (“PAGA Notice”).
13 (Genish Decl., ¶ 9, Exh. 1).

14 On September 15, 2021, Plaintiff filed a Complaint for Enforcement Action Under the Private
15 Attorneys General Act, California Labor Code §§ 2698 Et Seq in the action entitled *Alexis Cardoza*
16 *v. BHFC Operating LLC.*, Los Angeles County Superior Court Case No. 21STCV34040 (“Action”).
17 (*Id.*, ¶ 10).

18 On January 4, 2022, Plaintiff propounded multiple sets of formal written discovery requests
19 onto Defendant (specifically, Form Interrogatories – General (Set One), Special Interrogatories (Set
20 One), and Requests for Production of Documents (Set One), and Requests for Admission (Set One).
21 (*Id.*, ¶ 11).

22 On January 28, 2022, Plaintiff filed a First Amended Complaint for Enforcement Action
23 Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq. (“Operative
24 Complaint”) in the Action (*Id.*, ¶ 12). The Operative Complaint alleges one cause of action pursuant
25 to PAGA, alleging civil penalties for Defendant’s failure to pay minimum wage, failure to pay
26 overtime wages, failure to provide compliant meal periods and associated premiums, failure to
27 provide compliant rest periods and associated premiums, failure to timely pay wages during
28 employment, failure to timely pay wages upon termination, failure to keep requisite payroll records,

1 failure to provide compliant wage statements, failure to reimburse necessary business expenses, and
2 failure to pay wages owed for accrued vacation time in violation of California Labor Code sections
3 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and
4 2802, and all applicable Industrial Welfare Commission Wage Orders. (*Ibid*).

5 On February 28, 2022, Defendant responded to Plaintiff's formal written discovery requests
6 (specifically, Plaintiff Form Interrogatories – General (Set One), Special Interrogatories (Set One),
7 Request for Production of Documents (Set One), and Requests for Admission (Set One)). (*Id.*, ¶ 13).

8 On December 13, 2023, the Parties attended a formal mediation conducted by Diane Faber, a
9 neutral and respected mediator with extensive experience in complex wage and hour matters.
10 However, the Parties were unable to reach an agreement at mediation to resolve the Action. (*Id.*, ¶
11 14).

12 On January 4, 2024, and January 29, 2024, Plaintiff noticed the deposition of Defendant's
13 person most knowledgeable. On January 31, 2024, Plaintiff served on Defendant a second round of
14 formal written discovery requests (specifically, Special Interrogatories (Set Two), and Requests for
15 Production of Documents (Set Two)). (*Id.*, ¶ 15).

16 On February 5, 2024, Defendant served on Plaintiff formal written discovery requests
17 (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment (Set
18 One), Special Interrogatories (Set One), Requests for Production of Documents (Set One), and
19 Requests for Admission (Set One)). (*Id.*, ¶ 16). On March 15, 2024, Plaintiff responded to
20 Defendant's formal written discovery requests. (*Id.*, ¶ 17).

21 During the course of formal and informal discovery in the Action, PAGA Counsel conducted
22 an intense investigation into the facts of the Action. (*Id.*, ¶ 18). This included obtaining data,
23 information, and documents relating to the underlying alleged violations, including but not limited
24 to, Plaintiff's personnel file, a sampling of Aggrieved Employees' time and payroll records,
25 Defendant's Employee Handbooks, documents regarding Defendant's financial situation, and
26 Aggrieved Employees' data points so that Plaintiff could assess the number of alleged potential
27 violations and value of the recoverable penalties, as well as evaluate the strengths and weaknesses of
28 their claims. (*Ibid*).

1 Based on the data, information, and documents received, as well as thorough discussions with
2 Defendant's counsel, PAGA Counsel was able to (i) determine the total number of distinct individuals
3 falling within the definition of "Aggrieved Employees" for the relevant statutory period, (ii)
4 determine the number of affected pay periods at issue among them, and (iii) construct a damages
5 model that calculated the maximum realistic amount of PAGA penalties that could be levied against
6 Defendant within the relevant statutory period. (*Id.*, ¶ 19). Defendant, however, disputed Plaintiff's
7 claims and disputed both the existence of and extent of liability as alleged by Plaintiff, which allowed
8 PAGA Counsel to further assess the strength of Plaintiff's claims. (*Ibid*). PAGA Counsel's experience
9 in litigating similar representative wage and hour claims, the degree of investigation that was
10 conducted here, and the amount of information that was obtained, was sufficient to determine the
11 potential value of the PAGA claim, and to evaluate the strength of this claim for purposes of
12 settlement. (*Ibid*).

13 Through ongoing settlement discussions and negotiations, the Parties were able to reach an
14 agreement to resolve the Action in its entirety. The Parties believe the Settlement is fair, reasonable,
15 and adequate. (*Id.*, ¶ 21). The Parties understand, acknowledge, and agree that the Settlement
16 Agreement constitutes a compromise of Plaintiff's PAGA claim, and that it is the desire and intention
17 of the Parties to effect a final and complete resolution of the Released PAGA Claims. (*Ibid*)

18 Defendant denies all of the claims in the Action, and does not waive, but rather expressly
19 reserves, all rights to challenge all such claims and allegations upon all legal, procedural, and factual
20 grounds should the Settlement Agreement not become final. (*Id.*, ¶22). The Settlement Agreement
21 reflects a compromise reached to end litigation in the Action. (*Ibid*). Now, following significant
22 investigation and extensive settlement negotiations, Plaintiff seeks approval of the proposed
23 Settlement, which will resolve all representative claims alleged in the Operative Complaint. (*Ibid*).

24 In accordance with California Labor Code sections 2699 *et. seq.*, PAGA Counsel provided
25 notice of the proposed Settlement to the LWDA by uploading this Motion and the Settlement
26 Agreement to the LWDA's online portal concurrently with the filing of this Motion on June 4, 2024.
27 (*Id.*, ¶ 23).

1 **III. THE SETTLEMENT TERMS**

2 **A. Definition of the Aggrieved Employees**

3 For purposes of settlement only, the Parties have agreed that “Aggrieved Employees” shall be
4 defined as all individuals who are or were employed by Defendant in the State of California and
5 classified as non-exempt employees at any time during the PAGA Period. (Genish Decl., ¶ 24;
6 Settlement Agreement, ¶ 1.4). The “PAGA Period” is the period from September 15, 2020 to March
7 20, 2024. (Genish Decl., ¶ 24; Settlement Agreement, ¶ 1.23). Based on its records, Defendant
8 represented that there are 1,100 Aggrieved Employees who worked a total of 13,931 Pay Periods
9 during the PAGA Period. (Genish Decl., ¶ 24; Settlement Agreement, ¶ 8).

10 **B. Amount of Settlement**

11 The Parties have agreed to settle the PAGA claim at issue in the Operative Complaint for a
12 non-reversionary Gross Settlement Amount of Three Hundred Fifty Thousand Dollars and Zero Cents
13 (\$350,000.00). (Genish Decl., ¶ 25; Settlement Agreement, ¶ 1.12).

14 **C. Allocation and Funding of the Gross Settlement Amount**

15 The Gross Settlement Amount is a common fund and therefore includes all requested costs,
16 fees, and other allocations. (Genish Decl., ¶ 22). The Gross Settlement Amount includes: (1) PAGA
17 Counsel’s fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, equaling
18 One Hundred Twenty-Two Thousand Five Hundred Dollars and Zero Cents (\$122,500.00); (2)
19 PAGA Counsel’s actual litigation costs and expenses of Four Thousand One Hundred Fifty-Four
20 Dollars and Seventy-Five Cents (\$4,154.75); (3) Administration Expenses Payment, not to exceed
21 Ten Thousand Dollars and Zero Cents (\$10,000.00); and (4) a Service Award in the amount of Five
22 Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff. (Genish Decl., ¶ 25; Settlement
23 Agreement, ¶¶ 1.12, 3.1, 3.2.1, 3.2.2, & 3.2.3).

24 After the above-estimated amounts are deducted from the Gross Settlement Amount, the
25 PAGA Penalties will amount to approximately Two Hundred Eight Thousand Three Hundred Forty-
26 Five Dollars and Twenty-Five Cents (\$208,345.25), of which seventy-five percent (75%), or One
27 Hundred Fifty-Six Thousand Two Hundred Fifty-Eight Dollars and Ninety-Four Cents
28 (\$156,258.94), will be paid to the LWDA (“LWDA PAGA Payment”), and twenty-five percent

1 (25%), or Fifty-Two Thousand Eighty-Six Dollars and Thirty-One Cents (\$52,086.31), will be
2 distributed and paid to Aggrieved Employees on a *pro-rata* basis based on their number of pay
3 periods worked for Defendant for at least one day during the PAGA Period (“PAGA Pay Periods”).
4 (Genish Decl., ¶ 26; Settlement Agreement ¶¶ 1.16, 1.21, 1.22, & 3.2.4).

5 Within thirty (30) calendar days of the Effective Date, or by December 31, 2024, whichever
6 is later, Defendant will deliver Aggrieved Employee identifying information in Defendant’s
7 possession, including each Aggrieved Employee’s full name, last-known mailing address, phone
8 number, email address (if available), Social Security number, start and end dates of employment, and
9 number of PAGA Pay Periods during the PAGA Period, and number of PAGA Pay Periods during
10 the period beginning September 15, 2020, through March 20, 2024 (collectively, “Aggrieved
11 Employee Data”) to the Administrator in the form of a Microsoft Excel spreadsheet, or a comparable
12 format. (Genish Decl., ¶ 27; Settlement Agreement, ¶ 4.2).

13 Within thirty (30) calendar days of the Effective Date, or by December 31, 2024, whichever
14 is later, Defendant will fund the Gross Settlement Amount by transmitting the funds to the
15 Administrator (Genish Decl., ¶ 28; Settlement Agreement, ¶ 4.3).

16 Within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount, the
17 Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the
18 Administration Expenses Payment, the Service Award, the PAGA Counsel Fees Payment, and the
19 PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees Payment
20 and PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual
21 PAGA Payments. (Genish Decl., ¶ 29; Settlement Agreement, ¶ 4.4).

22 Prior to mailing the Individual PAGA Payment checks, the Administrator will update the
23 Aggrieved Employees’ mailing addresses using the National Change of Address Database.
24 Additionally, for all Individual PAGA Payment checks that are returned as undeliverable without a
25 USPS forwarding address, the Administrator will conduct an investigation and search for current
26 Aggrieved Employee mailing addresses using all reasonably available sources, methods, and means
27 including, but not limited to, the National Change of Address database, skip traces, and direct
28 contact by the Administrator with the Aggrieved Employees (“Aggrieved Employee Address

Search”). (Genish Decl., ¶ 30; Settlement Agreement, ¶¶ 1.6 & 4.4.2). Within seven (7) calendar days of receiving a returned check, the Administrator will re-mail the check to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address search. The Administrator will promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date. (Genish Decl., ¶ 30; Settlement Agreement, ¶ 4.4.2).

Individual PAGA Payment checks that are issued to Aggrieved Employees will be valid and negotiable for up to one hundred and eighty (180) calendar days after the checks are initially mailed to the Aggrieved Employees, and thereafter, will be canceled. (Genish Decl., ¶ 31; Settlement Agreement, ¶ 4.4.3). Any funds associated with such canceled checks will be distributed to the State of California’s Unclaimed Property Fund in the name of the Aggrieved Employee. (Genish Decl., ¶ 31; Settlement Agreement, ¶ 4.4.3).

If the actual number of Pay Periods during the PAGA Period exceeds 13,931 by more than ten (10%) (i.e., more than 15,324) then the Gross Settlement Amount will increase by the actual percentage over the 10% threshold. (Genish Decl., ¶ 32; Settlement Agreement, ¶ 8). For example, if the total number of Pay Periods during the PAGA Period is 11% more than 13,931 (i.e., 15,463) then the Gross Settlement Amount will increase 1%. (Genish Decl., ¶ 32; Settlement Agreement, ¶ 8).

IV. STANDARD FOR APPROVAL OF PAGA SETTLEMENT

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

1 achieved.” (*Ibid*).

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

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

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

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

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

16 V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

17 A. The Settlement is Presumed to Be Fair

18 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
19 reached through arm’s-length bargaining.” (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
20 245 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009).) Here,
21 the Settlement is presumptively fair because: (1) it occurred after counsel for the Parties engaged in
22 significant investigation to evaluate the strength and potential value of the PAGA claim, and the risks
23 of litigating the PAGA claim through trial; and (2) it was negotiated at great length and effort by
24 counsel with significant experience in similar complex labor and employment matters. (Genish Decl.,
25 ¶ 33).

26 ///

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

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

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

20 1. Strength of Plaintiff’s Case

21 In order to prevail at trial, Plaintiff would have to prove violations of the California Labor
22 Code underlying her PAGA claim, demonstrate that Aggrieved Employees suffered violations of the
23 Labor Code, and demonstrate that Defendant’s conduct gives rise to penalties. (*See Elliot v. Spherion*
24 *Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) [“Plaintiffs’ claim under [PAGA]
25 is wholly dependent upon her other claims. Because all of plaintiff’s other claims fail as a matter of
26 law, so does her PAGA claim.”].)

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

1 This case and settlement addresses important employee protections embodied in the
2 California Labor Code. (Genish Decl., ¶ 34). Plaintiff’s core allegations are that Defendant
3 systematically violated the California Labor Code by, *inter alia*, failing to properly pay wages for all
4 hours worked, failing to pay overtime at the correct rate, failing to provide compliant meal and rest
5 periods, failing to pay premiums at the correct rate of pay, failing to timely pay wages during
6 employment and upon termination, failing to maintain accurate payroll records, failing to provide
7 accurate wage statements, failing to reimburse necessary business expenses, and failing to pay wages
8 owed for accrued vacation time. (*Ibid*).

9 Defendant’s maximum theoretical exposure in the Action, without stacking penalties, totals
10 approximately \$1,296,800.00, computed by multiplying 12,968 aggregate PAGA Pay Periods by
11 \$100 each. (*Id.*, ¶ 35). While the PAGA does provide the potential for a heightened penalty for
12 subsequent violations, courts are often hesitant to award a heightened penalty where there is no prior
13 citation by the Labor Commissioner, as is the case here. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th
14 1127, 1144 (9th Cir. 2021) (holding no heightened penalty where defendant was not notified by Labor
15 Commissioner or any court that it was subject to the California Labor Code). The Ninth Circuit’s
16 holding in *Bernstein* also supports a settlement valuation that does not “stack” penalties. (*Ibid*).

17 Defendant maintained several defenses to Plaintiff’s theories of liability, which, if
18 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
19 (Genish Decl., ¶ 36). Throughout this litigation, Defendant maintained, and continues to maintain,
20 that it had, and continues to have, compliant employment policies and practices throughout the time
21 period at issue. (*Ibid*). Defendant denies that it ever violated any provision of the California Labor
22 Code, including, but not limited to, those sections for which Plaintiff seeks penalties under PAGA.
23 (*Ibid*). Defendant further denied, and continues to deny, that the lawsuit is appropriate for
24 representative treatment for any purpose other than settlement. (*Ibid*). Defendant also challenged
25 Plaintiff’s standing as aggrieved employees and denied that any of Defendant’s other employees
26 whom Plaintiff seeks to represent are aggrieved. (*Ibid*).

27 Defendant also argued that an important feature of PAGA is that the Court retains discretion
28 to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise

1 would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (*Ibid*). (Lab. Code
2 § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136
3 (2012) [holding that a court may reduce the amount of PAGA penalties awarded to an employee
4 based upon discretionary factors].)

5 Even if violations of the California Labor Code occurred, which Defendant denies, Defendant
6 contended that said violations would only be considered “initial violations” and thus heightened
7 “subsequent violation” penalties were not warranted. (Genish Decl., ¶ 37). (Lab. Code § 2699(f)(2);
8 *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) [“Until the employer
9 has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed
10 to be aware that its continuing underpayment of employees is a 'violation' subject to penalties.”].)

11 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess
12 cumulative penalties for the maximum number of possible, separate California Labor Code
13 violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where
14 certain conduct may be regulated by multiple provisions of the California Labor Code that are
15 interrelated and work in tandem. (Genish Decl., ¶ 38). As such, Defendant contended that cumulative
16 penalties and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory. (*Ibid*).

17 Some courts have held that the claims raised by a plaintiff may raise individualized issues
18 and/or are unmanageable and thus not suitable for adjudication as to a group of employees. (*See, e.g.*,
19 *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746, 772-775 (2021) [trial court did
20 not abuse discretion in striking PAGA claim that did not allow for Defendant to try its defenses in a
21 manageable manner]; *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 25, 29, 31, 34-35 (2014) [even
22 where employer consistently imposed a uniform policy, plaintiff “must still demonstrate that the
23 illegal effects of this conduct can be proven efficiently and manageably” and in litigating
24 representative actions the procedures utilized by the court “may not be used to abridge a party’s
25 substantive rights”]; *Ali v. U.S.A. Cab Ltd.*, 176 Cal.App.4th 1333, 1341 (2009) [affirming denial of
26 certification because employees’ declarations attesting to having taken meal and rest breaks
27 demonstrated that individualized inquiries were required to show harm]; *Brinker Restaurant Corp. v.*
28 *Superior Court*, 53 Cal.4th 1004, 1018 (2012) [although employers must authorize employees to take

1 duty-free meal and rest breaks, they are not obligated to affirmatively ensure that no work related
2 tasks are performed during such periods]). Although California case law clearly states that PAGA
3 actions need not satisfy class action requirements, PAGA Counsel remained mindful of the fact that
4 some courts have nevertheless held that PAGA claims must meet a threshold “manageability”
5 requirement.

6 While Plaintiff maintains that her PAGA claim has merit, in reaching the Settlement, Plaintiff
7 and her counsel took into account the strengths and weaknesses of each side’s position and the
8 uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon appeal.
9 (Genish Decl., ¶ 39). Based on these disputes, which had the potential to completely eliminate
10 Plaintiff’s recovery, the range of realistic “litigation outcomes” on Plaintiff’s PAGA claim was
11 defined by a “maximum possible liability” amount of approximately \$1,296,800.00 [*Id.*, ¶ 35], and a
12 *net-zero recovery* based on the defenses asserted by Defendant. Notwithstanding the existence of
13 these issues, the Settlement achieves a sizeable benefit obtained. (*Id.*, ¶ 39).

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

15 Approval of the Settlement Agreement is also appropriate in light of the risk, expense, and
16 complexity of further litigation. As discussed above, the Settlement Agreement takes into
17 consideration the specific factual and legal hurdles faced by Plaintiff in establishing Defendant’s
18 penalty-liability in this case, which again, may have resulted in a net-zero recovery. Any recovery on
19 these claims is not certain. And even when liability is found, PAGA claims are discretionary, such
20 that the Court could decline to award their full value. Some of Plaintiff’s claims are also derivative,
21 and as such, Plaintiff must prevail on the underlying California Labor Code claims in order to prevail
22 on the derivative claims. These risks – when balanced with the fact that the Settlement achieved a
23 very significant recovery (as demonstrated below), and that further litigation posed a risk of
24 diminishing such recovery by increasing litigation expenses – weigh strongly in favor of settlement
25 approval.

26 3. The Benefits Conferred by the Settlement Balance in Favor of Approval

27 The Settlement Agreement provides a *significant* monetary benefit that falls well within “the
28 range of an acceptable settlement” under the circumstances, which is the standard on which the instant

1 Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable
2 even where it only provides a fraction of what could have been obtained at trial:

3 The proposed settlement is not to be judged against a hypothetical or speculative measure of
4 what might have been achieved by the negotiators." *Officers for Justice v. Civil Serv. Comm'n*,
5 688 F.2d at 625 (emphasis in original). Thus, "the very essence of a settlement is compromise,
6 'a yielding of absolutes and an abandoning of highest hopes.'" *Id.* at 624 (citations omitted).
7 As the Second Circuit has pointed out: "The fact that a proposed settlement may only amount
8 to a fraction of the potential recovery does not, in and of itself, mean that the proposed
9 settlement is grossly inadequate and should be disapproved." *City of Detroit v. Grinnell Corp.*,
10 495 F.2d 448, 455 & n.2 (2nd Cir. 1974).

11 *See Linney, supra*, 151 F.3d at 1242

12 The PAGA Penalties are currently estimated to be \$208,345.25. After all deductions are made
13 from the Gross Settlement Amount for the PAGA Counsel Fees Payment, PAGA Counsel Litigation
14 Expenses Payment, Service Award, and Administration Expenses Payment, \$156,258.94 (i.e. 75% of
15 the PAGA Penalties) will go to the LWDA, and \$52,086.31 (i.e. 25% of the PAGA Penalties) will go
16 to the Aggrieved Employees, as required by California Labor Code § 2699(i) ("civil penalties
17 recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and
18 Workforce Development Agency . . . and 25 percent to the aggrieved employees."). (Genish Decl.,
19 ¶ 40). There is no reason to doubt the fairness of the proposed plan of allocation of the PAGA
20 Penalties as it fully complies with California Labor Code section 2699(i). (*Ibid*).

21 The Settlement is a compromise of highly disputed claims. (*Id.*, ¶ 41). Plaintiff and her counsel
22 recognize the expense and length of continued proceedings necessary to litigate the matter through
23 trial and any possible appeals. (*Ibid*). Plaintiff and her counsel have also taken into account the
24 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
25 such litigation. (*Ibid*). Plaintiff and her counsel are also aware of the burdens of proof necessary to
26 establish liability, both generally and in response to Defendant's defenses thereto, and the difficulties
27 in establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the
28 State of California, and other Aggrieved Employees. (*Ibid*). Plaintiff and her counsel have also taken
into account Defendant's agreement to enter into a settlement that confers significant relief upon the
Aggrieved Employees and the State of California. (*Ibid*). Considering all of the facts in this case,
Plaintiff and her counsel have determined that the Settlement represents a fair, adequate, and

1 reasonable resolution of the PAGA claim, and that it is in the best interests of the Aggrieved
2 Employees and the State of California. (*Ibid*).

3 The result achieved in this case is well within the range of what is considered an acceptable
4 settlement under the circumstances, especially when compared to the settlement of PAGA claims in
5 other cases. (*Id.*, ¶ 42). (*See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court,
6 Case No. JCCP4833 (May 2017) [approving \$15,000 out of \$4 million toward settlement of PAGA
7 claims]; *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal. Oct. 29,
8 2012) [approving \$10,000 out of \$3.7 million toward settlement of PAGA claims]; *Schiller v. David's*
9 *Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving \$7,500 out
10 of \$518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC*, 2011 U.S.
11 Dist. LEXIS 15821, at *4 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 out of \$6.9 million toward
12 settlement of PAGA claims]; *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, at *14
13 (E.D. Cal. Nov. 27, 2021) [approving \$10,000 out of \$2.5 million toward settlement of PAGA
14 claims]). Here, the value obtained for settlement of the PAGA claim is significant, and it will be
15 distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

16 4. The Scope of the Release is Narrowly Tailored

17 As discussed above, the California Supreme Court has concluded that in the context of PAGA
18 “the nonparty employees, because they were not given notice of the action or afforded any
19 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
20 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in exchange
21 for the foregoing consideration is limited to the civil penalties asserted in the Operative Complaint
22 and PAGA Notice under California Labor Code §§ 2698 *et seq.* *See Settlement Agreement*, at ¶¶
23 1.25 & 5.2. As such, this factor balances strongly in favor of approval of the Settlement.

24 5. Experience and Views of Counsel Favor Approval

25 PAGA Counsel is experienced in complex representative and class action wage-and-hour
26 litigation. (Genish Decl., ¶¶ 2-7, 45, & 47). In the view of PAGA Counsel, the benefits conferred by
27 the Settlement are eminently fair and reasonable, and in the best interests of the State of California
28 and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and

1 the substantial monetary benefits provided for by the Settlement. (*Id.*, ¶ 43). Furthermore, courts
2 have acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees
3 are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code
4 violations as the evidence will sustain[.]” (*Williams v. Superior Court*, 3 Cal. 5th 531, 548 (2017)
5 [citing Labor Code § 2699(g)(1)(i)].)

6 6. The Extent of Discovery and Stage of Proceedings Favor Approval

7 In evaluating this element, the Court should be mindful that ““formal discovery is not a
8 necessary ticket to the bargaining table”” [*Linney*, 151 F.3d at 1239], as the relevant consideration is
9 “whether ‘the parties have sufficient information to make an informed decision about settlement.’”
10 *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal.
11 Nov. 9, 2011).

12 Here, the extent of formal and informal discovery conducted was sufficient to enable PAGA
13 Counsel to evaluate the strength and value of the PAGA claim for purposes of settlement. (Genish
14 Decl., ¶¶ 11, 13-17, & 44). Prior to settling, Defendant provided Plaintiff with data, information, and
15 documents relating to the underlying alleged violations, including but not limited to, Plaintiff’s
16 personnel file, a sampling of Aggrieved Employees’ time and payroll records, Defendant’s Employee
17 Handbooks, documents regarding Defendant’s financial situation, and Aggrieved Employees’ data
18 points. (*Id.*, ¶ 18). As discussed above, PAGA Counsel’s investigation was sufficient to, among other
19 things, tabulate with precision the total number of alleged California Labor Code violations at issue
20 during the relevant statutory period and identify the total number of individuals falling within the
21 definition of “Aggrieved Employees” for the relevant statutory period. (*Id.*, ¶ 19).

22 Based on PAGA Counsel’s experience litigating wage and hour claims, such investigation
23 was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of
24 this claim for purposes of settlement. (*Id.*, ¶¶ 11, 13-17, & 44).

25 **VI. THE REQUESTED PAGA COUNSEL FEES PAYMENT IS FAIR AND**
26 **REASONABLE**

27 As the prevailing party in settlement, Plaintiff is entitled to recover attorneys’ fees and costs
28 for bringing their PAGA claim. (Lab. Code § 2699(g) [“Any employee who prevails in any action

1 shall be entitled to an award of reasonable attorney's fees and costs.”].) PAGA Counsel is also entitled
2 to attorneys’ fees pursuant to Code of Civil Procedure section 1021.5(a), as the instant action has
3 resulted in the enforcement of important rights benefitting the public and secures monetary recovery
4 for the State of California as well as the Aggrieved Employees. A fee award is justified where the
5 legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles*,
6 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33
7 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) [“when a number of persons
8 are entitled in common to a specific fund, and an action brought by a plaintiff ... for the benefit of all
9 results in the creation or preservation of that fund, such plaintiff ... may be awarded attorney’s fees
10 out of the fund.”].)

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

14 The recognized advantages of the percentage method-including relative ease of
15 calculation, alignment of incentives between counsel and the class, a better
16 approximation of market conditions in a contingency case, and the encouragement it
17 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
litigation-convince us the percentage method is a valuable tool that should not be
denied our trial courts.

18 (*Id.*, at 503 [internal citation omitted].) Fee awards of roughly one-third of the settlement fund are
19 routinely awarded in California state and federal courts in class actions. (*Chavez v. Netflix, Inc.*, 162
20 Cal.App.4th 43, 66, fn. 11 (2008); *see also, e.g., In re Pacific Enterprises Securities Litig.*, 47 F.3d
21 373, 379 (9th Cir. 1995) [affirming 33% fee award]).

22 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
23 method, the California Supreme Court has taken the position that trial courts also “retain the
24 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
25 requested percentage fee.” (*Lafitte*, 1 Cal.5th at 506; *see also Wershba*, 91 Cal.App. 4th at 253.)
26 Courts award fees to serve as an economic incentive for lawyers to undertake litigation, and thereby
27 enhance and facilitate access to the judicial system for adjudication of meritorious claims, and to
28 deter wrongdoing. This is especially true in situations where multiple similar alleged wrongs would

1 not be economically feasible to pursue individually, such as here. Trial courts have “wide latitude”
2 in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a
3 manifest abuse of discretion.” (*Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000); *see also*
4 *Laffitte*, 1 Cal.5th at 506 [holding that “trial court did not abuse its discretion in using [the percentage
5 of fund method], in part to approve the fee request”].) Indeed, it is long settled that the “experienced
6 trial judge is the best judge of the value of professional services rendered in his court.” (*Ketchum v.*
7 *Moses*, 24 Cal.4th 1122, 1132 (2001).)

8 The percentage method is particularly appropriate where a monetary settlement has been
9 recovered and “the benefit [recovered can be] easily quantified.” (*In re Bluetooth Headset Prods.*
10 *Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).) Where the amount of a settlement is a “certain or
11 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
12 percentage of the settlement created. (Weil and Brown, California Practice Guide, *Civil Procedure*
13 *Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.) The percentage fee
14 method is preferred in representative actions because “it better approximates the workings of the
15 marketplace than the lodestar approach.” (*Lealao, supra*, 82 Cal.App.4th at 49.) California law
16 provides that the award for attorneys’ fees should be equivalent to fees freely negotiated in the legal
17 marketplace and paid in comparable litigation based on the result achieved and risk incurred. (*See*
18 *Lealao*, 82 Cal.App.4th at 47-50; *Laffitte*, 1 Cal.5th 480 at 503.) In cases where the settlement
19 agreement provides that the defendant will pay the plaintiffs’ attorneys a percentage of the fund
20 created by the settlement, use of that percentage method is appropriate. (*Lealao*, 82 Cal.App.4th at
21 32.) Fee awards that are too small will “chill the private enforcement essential to the vindication of
22 many legal rights and obstruct the representative actions that often relieve the courts of the need to
23 separately adjudicate numerous claims.” (*Id.* at 53). Therefore, fees in representative actions should
24 approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney
25 and client in comparable litigation. (*Id.* at 48). “The ultimate goal ... is the award of a ‘reasonable’
26 fee to compensate counsel for their efforts, irrespective of the method of calculation.” (*Consumer*
27 *Privacy Cases*, 175 Cal.App.4th 545, 557-58 (2009) [quoting *Apple Computer, Inc. v. Superior Court*,
28 *supra*, 126 Cal.App.4th at 1270].)

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

14 Here, PAGA Counsel’s fee request of thirty-five percent (35%) of the Gross Settlement
15 Amount (i.e., \$122,500.00) is fair and reasonable based on the percentage of the recovery method.
16 PAGA Counsel has vigorously litigated this case since it was commenced, with the very real
17 possibility of an unsuccessful outcome and no fee recovery of any kind. (Genish Decl., ¶ 45).
18 Counsel for Plaintiff undertook significant investigation and invested a significant amount of time
19 analyzing relevant documents and data to evaluate the nature and extent of the alleged underlying
20 Labor Code violations and calculation of the potential monetary recovery as they relate to Plaintiff’s
21 PAGA claim under PAGA. (*Id.*, ¶¶ 11, 13-17, & 44). The attorneys at Blackstone Law, APC possess
22 combined extensive experience litigating wage and hour and other complex litigation matters, and
23 the attorneys who worked on this matter have been approved as class counsel and/or have had their
24 billable rates approved in the settlement of other class and PAGA actions, numerous times. (*Id.*, ¶
25 47).

26 In the present case, PAGA Counsel has borne all of the risks and costs of litigation and will
27 not receive any compensation until recovery is obtained. (*Id.*, ¶ 46). PAGA Counsel is experienced
28 in complex wage-and-hour litigation and used that experience to obtain a favorable result for

1 Plaintiffs, the Aggrieved Employees, and the State of California. (*Id.*, ¶¶ 2-7; 47). Considering the
2 amount of fees requested, work performed, risks incurred, and experience of PAGA Counsel in
3 handling similar matters, Plaintiff maintains that the requested attorneys' fees of thirty-five percent
4 (35%) of the Gross Settlement Amount (i.e., \$122,500.00) are reasonable and should be awarded.
5 (*Id.*, ¶ 46).

6 **VII. THE REQUESTED PAGA COUNSEL LITIGATION EXPENSES PAYMENT**
7 **IS FAIR AND REASONABLE**

8 The Settlement provides for reimbursement of actual litigation costs and expenses up to the
9 amount of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). (Genish Decl., ¶ 50;
10 Settlement Agreement, ¶ 3.2.1). PAGA Counsel only seeks reimbursement of a total of \$4,154.75 in
11 litigation costs and expenses. (Genish Decl., ¶ 50, Exhibit 4). Accordingly, PAGA Counsel
12 respectfully requests that the Court reimburse them for actual litigation costs and expenses in the
13 amount of \$4,154.75.

14 **VIII. THE ADMINISTRATION EXPENSES PAYMENT IS FAIR AND**
15 **REASONABLE**

16 As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval
17 by the Court, Apex Class Action Administration to handle the administration of the Settlement.
18 (Genish Decl., ¶ 51; Settlement Agreement, ¶ 1.2). The fees and expenses of the Administrator are
19 estimated not to exceed \$10,000.00. (Genish Decl., ¶ 51; Settlement Agreement, ¶ 3.2.2). These costs
20 include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and
21 Individual PAGA Payment checks to the Aggrieved Employees, re-mailing the returned Individual
22 PAGA Payment checks to any new addresses obtained, and handling inquiries from Aggrieved
23 Employees regarding the Settlement, among other things. (Genish Decl., ¶ 51). Accordingly, the
24 Court should grant approval of the Administration Expenses Payment in the amount of up to
25 \$10,000.00 to Apex Class Action Administration, a necessary third-party for handling the settlement
26 process. (*Ibid.*).

27 ///

28 ///

1 **IX. THE REQUESTED SERVICE AWARD IS FAIR AND REASONABLE**

2 The purpose of an enhancement award is to incentivize aggrieved employees to step into the
3 shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit
4 and serving in a representative capacity. *See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715,
5 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the action);
6 *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) (“an incentive award is
7 appropriate ‘if it is necessary to induce an individual to participate in the suit’”). Plaintiff initiated
8 this litigation on behalf of the State of California and her former co-workers who will now be entitled
9 to receive payment from the Settlement. By initiating and pursuing the Action, Plaintiff stepped into
10 the shoes of the State of California and undertook the responsibilities of serving in a representative
11 capacity. (Genish Decl., ¶ 52; Cardoza Decl., ¶¶ 4-11). Plaintiff was available whenever Plaintiff’s
12 counsel needed her and actively tried to obtain information that would benefit the prosecution of the
13 Action. (Genish Decl., ¶ 52; Cardoza Decl. ¶¶ 4-11). The Service Award is eminently reasonable
14 given the time and effort Plaintiff spent on the Action, the benefit to the other Aggrieved Employees
15 and the State of California as a result of Plaintiff’s actions, and her broader individual waiver and
16 release of claims with a California Civil Code Section 1542 waiver (set forth in Section 5.1 of the
17 Settlement Agreement). (Genish Decl., ¶ 52). Accordingly, Plaintiff respectfully submits that it is
18 appropriate and just for Plaintiff to receive a Service Award in the amount of \$10,000.00 in addition
19 to the Individual PAGA Payments she will receive as Aggrieved Employees, for her services on
20 behalf of the State of California and the other Aggrieved Employees, as well as for their broader,
21 general release of claims. (*Ibid*).

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Make a Reservation

ALEXIS CARDOZA, INDIVIDUALLY, AND ON BEHALF OF AGGRIEVED EMPLOYEES PURSUANT TO THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT vs BHFC OPERATING LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

Case Number: 21STCV34040 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2021-09-15 Location: Stanley Mosk Courthouse - Department 58

Reservation

Case Name: ALEXIS CARDOZA, INDIVIDUALLY, AND ON BEHALF OF AGGRIEVED EMPLOYEES PURSUANT TO THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT vs BHFC OPERATING LLC, A CALIFORNIA LIMITED LIABILITY COMPANY		Case Number: 21STCV34040
Type: Motion re: (Motion for Fina Approval)	Status: RESERVED	
Filing Party: ALEXIS CARDOZA (Plaintiff)	Location: Stanley Mosk Courthouse - Department 58	
Date/Time: 07/18/2024 9:00 AM	Number of Motions: 1	
Reservation ID: 345520299780	Confirmation Code: CR-KQ5ENVTZYDZGZ5TDV	

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: 1969-12-31	

Print Receipt

Reserve Another Hearing

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