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on behalf of himself and all others similarly situated
6 and on behalf of the general public

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF KERN**

10
11 LELAND LAWSON, on behalf of
himself and all others similarly situated,
12 and on behalf of the general public,

13 Plaintiff,

14 v.

15 COMNET COMMUNICATIONS, LLC;
AND DOES 1 THROUGH 100,

16 Defendants.
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Case No. BCV-21-102757

**PLAINTIFF'S AMENDED MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Date: April 24, 2024

Time: 8:30 a.m.

Dept.: 17

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
a.	Procedural History	2
b.	Discovery and Investigation	2
c.	Mediation	3
III.	THE PARTIES’ CONFLICTING POSITIONS	3
a.	Meal Periods	3
b.	Rest Periods	4
c.	Unpaid Wages	5
d.	Wage Statements, Waiting Time Penalties, and Failure to Pay All Wages Twice Per Month.....	6
e.	Manageability	7
IV.	THE PROPOSED SETTLEMENT	7
a.	Calculation of the Settlement Payments to the Aggrieved Employees.....	8
b.	Funding and Disbursement	9
c.	Undelivered Checks	9
d.	Uncashed Checks	10
e.	Release of Claims	10
V.	THE COURT SHOULD APPROVE OF THE SETTLEMENT	11
a.	The Settlement is Fair, Reasonable, and Adequate.....	13
i.	The Settlement was Reached as a Result of Arm’s Length Negotiations	13
ii.	The Settlement is the Result of Thorough Investigation and Discovery.....	13

1	iii. Counsel for Both Parties are Experienced in Similar Litigation.....	13
2	iv. The Proposed Settlement is a Reasonable Compromise of Claims	14
3	v. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff’s Case and	
4	the Risks and Costs of Further Litigation	15
5		
6	b. The Court Should Approve the Requested Attorneys’ Fees and Costs	18
7	i. The Requested Attorneys’ Fee and Cost Award is Within the Range of Fees Approved	
8	in Comparable Common Fund Cases	18
9	ii. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee	20
10	iii. PAGA Counsel’s Hourly Rates are Reasonable	21
11	iv. PAGA Counsel’s Total Hours are Reasonable	22
12	v. Costs of Litigation.....	22
13		
14	c. The Administration Costs are Reasonable.....	23
15	VI. CONCLUSION	23
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

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2	(1998) 61 Cal. App. 4th 629	21
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27		
28		

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27		
28		

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6	California Code Regulations Tit. 8 § 13520	7
7	California Labor Code § 203	7
8	California Labor Code § 226	7
9	California Labor Code § 2698	10
10	California Labor Code § 2699	passim
11	California Labor Code § 2699.3	2
12	California Labor Code § 512	3, 16
13	Code of Civil Procedure § 382.....	12
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21		
22		
23		
24		
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1 **I. INTRODUCTION**

2 Plaintiff Leland Lawson (“Plaintiff”) respectfully requests that the Court approve of the
3 Joint Stipulation and Settlement Agreement of PAGA Claim (“Settlement Agreement”) entered
4 into between Plaintiff and Defendant, ComNet Communications, LLC, (“Defendant”)
5 (collectively Plaintiff and Defendant are referred to as the “Parties”) which resolves the claims
6 raised against Defendant in exchange for a non-reversionary \$188,500 Gross Settlement Amount
7 (“GSA”).

8 This proposed settlement will settle the claims alleged in Plaintiff’s complaint pursuant to
9 the Private Attorneys General Act of 2004 (“PAGA”) on behalf of the California Labor and
10 Workforce Development Agency (“LWDA”) and all non-exempt, hourly employees who worked
11 in California either directly for Defendant, or through staffing agencies and/or other third-party
12 entities, during the PAGA Period (“Aggrieved Employees”).¹ The PAGA Period is November 22,
13 2020 through February 6, 2023, which was sixty (60) days after the Parties accepted the mediator’s
14 settlement proposal. The relief provided for under the Settlement Agreement is solely for the
15 payment of civil penalties under the PAGA.

16 Pursuant to California Labor Code § 2699(1)(2), a superior court shall review and approve any
17 settlement of any civil action filed pursuant to the PAGA. *See* Cal. Lab. Code § 2699(1)(2).² In
18 deciding whether to grant approval of the proposed settlement, the primary issue to be decided is
19 whether the settlement is fair, adequate, and reasonable. As set forth herein, the proposed settlement
20 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is the product
21 of (1) arms-length negotiations, employing a neutral mediator, (2) negotiations by attorneys
22 experienced in these issues, (3) sufficient investigation which was necessary to evaluate the relative
23 strength and value of Plaintiffs’ claims, and (4) a reasoned compromise based on the strength and
24 value of the case, as well as, the risks, expense, complexity, and likely duration of further litigation.

26 ¹ This definition of Aggrieved Employees does not include employees from Outsource, LLC who
27 were assigned to work for Defendant in California during the PAGA Period.

28 ² Plaintiff has uploaded a copy of the Settlement Agreement to the LWDA’s website at the same time
this motion is filed with the Court. *See* Declaration of David Mara, Esq., **Exhibits 7 and 8**.

1 **II. BACKGROUND**

2 **a. Procedural History**

3 Plaintiff sent his Notice of Labor Code Violations Pursuant to Labor Code § 2699.3 on
4 September 16, 2021. In the notice, Plaintiff, a former hourly, non-exempt employee who worked
5 in California for Defendant or through a staffing agency, apprised the LWDA of his claims against
6 Defendant. His notice alleged that Defendant violated the California Labor Code by failing to pay
7 all straight time wages, failing to pay minimum wages, failing to pay all overtime wages, failing
8 to provide lawful meal and rest periods, failing to provide accurate itemized wage statements,
9 failing to pay all wages owed at termination, and failing to pay wages twice per month. Declaration
10 of David Mara, Esq. (“Mara Dec.”) ¶ 12.

11 Plaintiff then filed this action against Defendant in the Kern County Superior Court on
12 November 22, 2021, alleging causes of action on behalf of Plaintiff and those similarly situated
13 aggrieved employees under the PAGA for the wage and hour violations detailed in the notice sent
14 to the LWDA. Mara Dec. ¶ 13.

15 **b. Discovery and Investigation**

16 Through discovery, Plaintiff sought numerous documents and substantial amounts of data
17 that were needed to evaluate the case. These documents included requests for time and wage
18 records for the Aggrieved Employees, employee handbooks in place during the class period, any
19 policies regarding meal breaks, rest breaks, the payment of wages, and employee training in place
20 during the PAGA Period. Plaintiff also requested data surrounding the number of current and
21 former employees, as well as the number of shifts, workweeks, and pay periods worked by
22 employees during the relevant time period. Mara Dec. ¶ 14.

23 This discovery, in conjunction with the Parties’ meet and confer efforts, resulted in the
24 production of over one thousand documents, including the handbooks and policies at issue, as well
25 as a sampling of the wage and time records for the Aggrieved Employees. Using the time and wage
26 records produced by Defendant, and the data surrounding the number of current and former
27 employees, Plaintiff was able to determine numerous data points used in establishing a potential
28 exposure model in preparation for mediation. Mara Dec. ¶ 15.

1 **c. Mediation**

2 The Parties attended mediation with respected wage and hour mediator Steven Mehta on
3 December 5, 2022. Shortly after the mediation, the mediator issued a mediator’s proposal that was
4 ultimately accepted by the Parties. Since then, the Parties have met and conferred extensively
5 regarding the terms of the settlement and finalized their agreement in the Settlement the Parties
6 now ask the Court to approve. A copy of the Settlement Agreement is attached to the Declaration
7 of David Mara, Esq. as **Exhibit 1**. Mara Dec. ¶16.

8 **III. THE PARTIES’ CONFLICTING POSITIONS**

9 **a. Meal Periods**

10 Plaintiff further contends that Defendant fails to provide Class Members with meal periods
11 in which Class Members are relieved of all duty. The right to a duty-free meal period is codified
12 in the California Labor at § 512, which, in relevant part, reads:

13 “[a]n employer shall not employ an employee for a work period of more than five
14 hours per day without providing the employee with a meal period of not less than
15 30 minutes, except that if the total work period per day of the employee is no
16 more than six hours, the meal period may be waived by mutual consent of both
17 the employer and employee. An employer shall not employ an employee for a
18 work period of more than 10 hours per day without providing the employee with
a second meal period of not less than 30 minutes, except that if the total hours
worked is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal period
was not waived.”

19 If an employer fails to provide time records showing a meal break was taken, a presumption can
20 arise that the employee was not offered such a break. *Donohue v. AMN Services, LLC* (2021) 11
21 Cal.5th 58, 74–76. In that case, an employer’s claim that a break was in fact offered but the
22 employee declined it is an affirmative defense that the employer must prove. *Id.*

23 Plaintiff argues that although Defendant’s meal period policy provides Aggrieved
24 Employees with a 30 minute meal period for every 5 consecutive hours worked, Defendant’s time
25 records tell a different story. Nearly 35% of the shifts in the time records provided by Defendant
26 reflect a meal period that was either provided after the fifth hour of work, or simply not at all. This
27 resulted in every single pay period during the relevant time period containing a presumed meal
28

1 period violation under California law for all the Aggrieved Employees. Mara Dec. ¶ 17.

2 Defendant asserts that employees are provided with meal periods in accordance with
3 California law. Defendant claims that the meal period policy in their handbook is facially lawful,
4 and that employees are provided with lawful duty-free meal periods in accordance with the
5 applicable timing requirements. Defendant is confident that it will be able to rebut the presumption
6 through its application of its facially lawful meal period policy, its training procedures, and
7 testimony from employees as evidence that employees had in fact been provided
8 compliant meal periods, but simply chose to take them late or not take them at all due to any variety
9 of other reasons. Once Defendant rebuts the presumption, Defendant argues that Plaintiff would
10 have to ask each employee whether they were provided a lawful meal period on for every instance
11 of a “violation” in the records, rendering the matter entirely unmanageable. Mara Dec. ¶ 18.

12 **b. Rest Periods**

13 Plaintiff further contends that Defendant fails to provide employees with lawful rest
14 periods. Per the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012)
15 53 Cal.4th 1004 (“*Brinker*”), the IWC wage order’s requirements for providing a meal period is
16 satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) **is free to leave the premises.**
17 and (3) is relieved of all duty for the entire period. *Brinker*, 53 Cal.4th at 1036 (citing DLSE Opn.
18 Letter No. 1988.01.05 (Jan. 5, 1988) p. 1; DLSE Opn. Letter No. 1996.07.12 (July 12, 1996) p. 1
19 (emphasis added)). In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257 (“*Augustus*”),
20 the California Supreme Court determined that an employer’s obligation for rest periods follow that
21 of the requirements for meal periods laid out by *Brinker*:

22 It would be difficult to cast aside section 226.7’s parallel treatment
23 of meal periods and rest periods and conclude that employers had completely
24 distinct obligations when providing meal and rest periods. What makes sense
25 instead is to infer that employers’ responsibilities are the same for meal and
26 rest periods—an inference that also reflects the protective purpose of both.

27 *Augustus*, 2 Cal.5th 257, 265. Thus, as an employer must permit the employee to leave premises
28 for meal periods, they must do the same for rest periods.

Plaintiff contends that Defendant fails to permit employees to leave the premises for rest

1 periods and use the time effectively for their own purposes free from employer control. Employees
2 are thereby – as a matter of policy and practice – prevented from using all their break time free of
3 employer control for off-premises pursuits. For this reason, Defendant does not relinquish all
4 control over employees during their rest periods in violation of California law. Mara Dec. ¶ 19.

5 Defendant denies that employees were prevented from leaving the premises, contends that
6 employees are not under Defendant’s control and command during rest periods, and contends that
7 employees are provided with duty-free breaks in which they can choose to do whatever they want.
8 Defendant points out that nothing in its written rest period policy states that employees cannot
9 leave their work location during rest breaks. Further, Defendant also disagrees with Plaintiff’s
10 interpretation of *Augustus*, claiming that the California Supreme Court clearly states that
11 employees will ordinarily have to remain on site or nearby “during a rest period [because] an
12 employee generally can travel at most five minutes from a work post before returning to make it
13 back on time,” and that such a “constraint, which is of course common to all rest periods, is not
14 sufficient to establish employer control.” *Augustus*, 2 Cal.5th at 270. Mara Dec. ¶ 20.

15 **c. Unpaid Wages**

16 Employees must be paid for all “hours worked,” as that phrase is defined in the Wage Order
17 and interpreted by California courts. Hours worked is defined in Wage Order 9-2001 – the Wage
18 Order that governs the employees in this case - as “the time during which an employee is subject
19 to the control of an employer, and includes all the time the employee is suffered or permitted to
20 work, whether or not required to do so.” Wage Order 9-2001, Subd. 2(K); *see also Mendiola v.*
21 *CPS Security Solutions, Inc.*, 60 Cal. 4th 833 (2015). Under this standard, “it is only necessary that
22 the worker be subject to the control of the employer in order to be entitled to compensation.”
23 *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 584.

24 The *Morillion* Court reasoned that an employee is under the employer’s control and entitled
25 to compensation when the employer “‘directs, commands or restrains’ an employee.” *Morillion*,
26 *supra*, 22 Cal. 4th at 583, quoting from *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968,
27 975 (1995) Whether time is considered compensable hours worked is based entirely on employer
28 control. *Id.* at 584. That is, whether during the time in question the employee is subject to an

1 employer's directive, command, or restraint. *Id.* at 583. Completely irrelevant to the analysis of
2 whether time is compensable work time is whether employees were permitted to engage in limited,
3 non-working activities, such as eating, reading, or sleeping, while they are under the employer's
4 directive, command, or restraint. *Id.* at 587. Again, it is the existence of the directive, command,
5 or restraint that the employee must oblige that determines whether the employee is engaged in
6 compensable hours worked. *Id.* at 583.

7 Defendant requires employees to keep track of the time worked during their shifts through
8 handwritten time records. However, Defendant requires employees to be ready to work
9 immediately at the start of their shifts, but also does not permit employees to "clock in" prior to
10 the set start time of their shifts. As a result, Plaintiff claims that employees spend several minutes
11 under Defendant's control waiting to "clock in" for the day prior to the start of their shifts. Under
12 California law, Plaintiff asserts that this is compensable time that is not being paid to the employees
13 each and every shift. Mara Dec. ¶ 21.

14 Defendant argues that beyond the limited accusations of Plaintiff, there is no evidence that
15 employees performed *any* work-related tasks for which they were not compensated, and that
16 Defendant has uniform practices and policies *forbidding* employees from working off the clock.
17 Further, Defendant contends that it requires all employees to accurately record *all* time worked on
18 their timesheets, regardless of when their shift is set to start, and therefore indisputably pays
19 employees for all time worked. Mara Dec. ¶ 22.

20 **d. Wage Statements, Waiting Time Penalties, and Failure to Pay All Wages**
21 **Twice Per Month**

22 Plaintiff also pursued claims for failure to provide accurate itemized wage statements,
23 waiting time penalty claims, and failure to pay all wages owed twice per month. These claims are
24 derivative of Plaintiff's underlying meal and rest period claims, as well as his unpaid wages claim.
25 Should Plaintiff's underlying wages claim fail, these claims would also fail. Mara Dec. ¶ 23.

26 In addition, Defendant contends that even if Plaintiff was successful in his underlying
27 claims, he would have to prove Defendant "willfully" failed to pay employees the appropriate
28 wages due upon separation of employment. "A willful failure to pay wages within the meaning of

1 Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee
2 when those wages are due. However, a good faith dispute that any wages are due will preclude
3 imposition of waiting time penalties under Section 203.” Cal. Code Regs. Tit. 8 § 13520. “A ‘good
4 faith dispute’ that any wages are due occurs when an employer presents a defense, based in law or
5 fact, which would preclude any recovery on the part of the employee. The fact that a defense is
6 ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.” *Id.*
7 Defendant contends that any failure to pay wages due at the separate of employment was not
8 willful. Defendant argues that it would not be liable for waiting time penalties because a “good
9 faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral*
10 *v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.

11 Defendant also argues that Plaintiff’s underlying claims cannot form the basis of the wage
12 statement claim or the failure to pay wages twice per month. Defendant relies on the case
13 *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees
14 do not suffer injury under California Labor Code § 226(a) so long as the wage statements correctly
15 reflected the hours worked and the pay received even if the pay is later determined to be inaccurate.
16 Additionally, Defendant points out that Labor Code section 204 “does not provide for the payment
17 of any wages nor create any substantive right to wages,” as “[t]he only right furthered by the
18 section is the timely payment of wages.” *See’s Candy Shops, Inc. v. Superior Court* (2012) 210
19 Cal.App.4th 889, 905.

20 **e. Manageability**

21 Defendant also argues that should litigation continue, they will bring a motion challenging
22 the manageability of trial as Defendant does not believe that this case can be tried manageably and
23 will require the testimony of every individual aggrieved employee. Furthermore, while Defendant
24 does not concede that any of their wage and hour policies are unlawful, Defendant claims that any
25 challenges Plaintiff has posed to these policies are easily refuted by how they are implemented in
26 practice; as a result, no aggrieved employee has suffered any damages. *Mara Dec.* ¶ 24.

27 **IV. THE PROPOSED SETTLEMENT**

28 The Parties have agreed (subject to and contingent upon the Court’s approval) that this

1 action be settled and compromised for the non-reversionary total sum of \$188,500.00 (“Gross
2 Settlement Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of
3 \$62,833.33 (one-third of the GSA) to compensate PAGA Counsel for work already performed and
4 work remaining to be performed in securing Court approval and overseeing administration of the
5 settlement; (b) litigation costs in the amount of \$10,934.63; and (c) administration fees and
6 expenses to Apex Class Action LLC (“Apex”) in the amount of \$3,990.00.³

7 After all Court-approved deductions from the GSA, it is estimated that the Net Settlement
8 Amount (“NSA”) will be \$110,742.04. California Labor Code § 2699(i) states that “civil penalties
9 recovered by aggrieved employees shall be distributed in accordance with Labor Code § 2699 *et*
10 *seq.* as follows: 75% to the LWDA for enforcement of labor laws, including the administration of
11 this part, and for education of employers and employees about their rights and responsibilities
12 under this code, to be continuously appropriated to supplement and not supplant the funding to the
13 agency for those purposes; and 25% to the aggrieved employees.” Therefore, of the NSA,
14 \$83,056.53 (75% of the NSA) will go to the LWDA and \$27,685.51 (25% of the NSA) will be
15 distributed to Aggrieved Employees.⁴

16 **a. Calculation of the Settlement Payments to the Aggrieved Employees**

17 Subject to the terms and conditions of the Settlement Agreement, the Settlement
18 Administrator will calculate and issue Individual Settlement Shares to Aggrieved Employees based
19 on the following formula:

20 Aggrieved Employees will receive a proportionate share of the Net Settlement
21 Amount that is equal to the number of pay periods they worked for Defendant in
22 California during the PAGA Period, divided by the total number of pay periods
23 worked by all Aggrieved Employees, which will then be multiplied by the Net
24 Settlement Amount. One day worked in a given pay period will be credited as a pay
25 period for purposes of this calculation. Therefore, the value of Aggrieved
Employees’ Individual Settlement Shares is tied directly to the amount of pay
periods that they worked.

26 ³ See Declaration of Sean Hartranft of Apex Class Action LLC in Support of PAGA Settlement
27 (“Hartranft Dec.”), **Exhibit B**.

28 ⁴ Aggrieved Employees are estimated to receive an average payment of approximately \$223.27
[\$27,685.51 divided by approximately 124 Aggrieved Employees during the PAGA Period (per
the preliminary data provided by Defendant)].

1 **Exhibit 1** at Section III, B(1)(a). One hundred percent (100%) of each Individual Share is
2 considered to be a civil penalty. Payroll tax withholdings and deductions will not be withheld from
3 these Individual Settlement Shares. Each Individual Settlement Share will be reported on IRS 1099
4 Forms. *See Exhibit 1* at Section III, B(2).

5 **b. Funding and Disbursement**

6 Within thirty (30) days after the Effective Date,⁵ Defendant will provide Apex an electronic
7 database, which will list for each Aggrieved Employee: (1) first and last name; (2) last known
8 mailing address; (3) last known telephone number; (4) social security number; and (5) the total
9 number of pay periods during which Aggrieved Employees performed work for Defendant in
10 California during the PAGA Period (“Aggrieved Employee List”). *See Exhibit 1* at Section III,
11 E(2)(a). Apex will conduct a skip trace for the address of all Aggrieved Employees who are former
12 employees of Defendant and an NCOA search on all addresses. *Id.*

13 The Gross Settlement Amount will be wired by Defendant to Apex within thirty (30) days
14 of the Effective Date. *See Exhibit 1* at Section I, K. Apex will disburse the GSA within ten (10)
15 days after funding. The Settlement Administrator shall disburse: (1) the Net Settlement Amount
16 to be paid to Aggrieved Employees; (2) the Attorney Fee Award and Cost Award to Plaintiff’s
17 Counsel; (3) the Administration Costs, as approved by the Court; and (4) the LWDA Payment. *See*
18 **Exhibit 1** at Section III, E(2)(d). A Notice of PAGA Settlement, substantially similar to the form
19 attached to the Settlement Agreement as **Exhibit A**, subject to Court approval, shall accompany
20 each check mailed to the Aggrieved Employees.

21 **c. Undelivered Checks**

22 Any checks returned as non-deliverable on or before the check cashing deadline will be
23 sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no
24 forwarding address is provided, the Settlement Administrator will promptly attempt to determine
25 the correct address using a skip-trace, or other search using the name, address or Social Security
26 number of the Aggrieved Employee involved, and will take reasonable steps to obtain an updated

27 _____
28 ⁵ The effective date of this Agreement will be when the Court enters an order granting approval of
the Settlement.

address. *See Exhibit 1* at Section III, E(2)(e).

d. Uncashed Checks

Checks will remain negotiable for 180 days. Individual Settlement Share checks remaining un-cashed, shall be transmitted by Apex to the State of California unclaimed property fund in the name of the Aggrieved Employee. *See Exhibit 1* at Section III, E(6)(b).

e. Release of Claims

Upon entry of the order and judgment granting approval of the Settlement Agreement, Plaintiff and the LWDA will be forever barred from pursuing against Released Parties⁶ any and all Released Claims during the PAGA Period. “Released Claims” means all claims alleged, or could have been alleged, by Plaintiff and Aggrieved Employees in the operative complaint for any and all debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys’ fees, damages, or interest based on any and all PAGA claims seeking civil penalties under California Labor Code sections 2698, et seq., Wage Orders, regulations, and/or other provisions of law alleged or, based on the facts pled in the First Amended Complaint and notices to the LWDA, and could have been alleged to have been violated in the operative complaint with respect to the Aggrieved Employees, including, but not limited to, all claims for failure to provide meal periods, all claims for failure to authorize and permit rest breaks, all claims for failure to pay all wages, including overtime and premium wages, all claims for failure to provide compensation for all hours worked, all claims for failure to pay minimum wages, all claims for waiting time penalties and/or late payment of wages at termination, all claims for failure to maintain and provide accurate itemized wage statements, and failure to pay all wages owed twice per month during the PAGA Period. Aggrieved Employees, other than Plaintiff, will not be deemed to have released any individual wage and hour claims by virtue of this Settlement. *See Exhibit 1* at Section I, X.

⁶ “Released Parties” means Defendant, including its past, present, and future divisions, affiliates, parents, subsidiaries, predecessors, successors, assigns, members, shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, privies, and partners (including, but not limited to SitePro Solutions, Inc. (“SitePro”); Rightech Corporation and RTI Services, Inc.; Verigent, LLC; TEKsystems, Inc.; Tekk Force, LLC; and Anistar Technologies, Inc. (“Defendant’s Partners”)). Outsource, LLC is not a Released Party under this Agreement. *See Exhibit 1* at Section I, Y.

1 **V. THE COURT SHOULD APPROVE OF THE SETTLEMENT**

2 The PAGA allows for the private enforcement of certain California Labor Code sections
3 relating to wage and hour violations. The settlement of a PAGA action requires court approval
4 pursuant to the operative PAGA statute, which states that a superior court shall review and approve
5 the settlement of any civil action filed pursuant to the PAGA. *See* Cal. Lab. Code § 2699(1)(2).
6 However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not
7 obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain
8 approval of the PAGA settlement through a motion for preliminary or final approval. The only
9 requirement placed on settling parties under California Labor Code § 2699(1)(2) is that the
10 proposed settlement must be submitted to the LWDA at the same time it is filed with the Court.
11 Cal. Lab. Code § 2699(1)(2). As noted above, Plaintiff already provided the Parties' Settlement
12 Agreement to the LWDA. Other than this requirement, the PAGA does not set forth any standards
13 by which the Court must conduct its review of the Settlement Agreement. *See Id.*

14 In evaluating the adequacy of the settlement amount, a court is not concerned with the
15 amount the aggrieved employees are to receive, but rather, a court must focus on the total
16 settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit
17 consists of civil penalties, not individual or class damages." *Mendez v. Tween Brands, Inc.* (E.D.
18 Cal. July 1, 2010) 2010 WL 2650571 *4. "Unlike class actions, these civil penalties are not meant
19 to compensate unnamed employees because the action is fundamentally a law enforcement action."
20 *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. April 2, 2010) 2010 WL 1340777 *4.
21 Moreover, a court must not lose sight of the fact that "[u]nlike a class action seeking damages or
22 injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to
23 recover civil penalties for the government that otherwise may not have been assessed and collected
24 by overburdened state enforcement agencies." *Id.*

25 As with any settlement, a court must be mindful in conducting its inquiry that "[s]ettlement
26 is a compromise, which balances the possible recovery against the risks inherent in litigating
27 further." *See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) 2011 U.S.
28 Dist. LEXIS 103222, *24. Indeed, "the very essence of a settlement is ... 'a yielding of absolutes

1 and an abandoning of highest hopes” [*Officers for Justice v. Civil Service Com.* (9th Cir. 1982)
2 688 F.2d 615, 624], as “it is the very uncertainty of outcome in litigation and avoidance of wasteful
3 and expensive litigation that induce consensual settlements.” *Id.* at 625.

4 In analyzing PAGA settlements, it is important that “the relief provided for under the
5 PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit
6 the public[.]” *O’Connor v. Uber Techs., Inc.* (N.D. Cal. Aug. 18, 2016) 201 F.Supp.3d 1110, 1133.
7 The court in *O’Connor* suggests that courts can look at the factors outlined in *Hanlon v. Chrysler*
8 *Corp.* (9th Cir. 1998) 150 F.3d 1011, in evaluating a PAGA settlement. *See O’Connor*, 201
9 F.Supp.3d at 1134.

10 Under *Hanlon*, a court must conclude that a settlement is “fundamentally fair, adequate,
11 and reasonable” before it approves of the settlement. *Hanlon*, 150 F.3d at 1026. The analysis in
12 *Hanlon* is typically used in federal district courts to evaluate proposed class action settlements. In
13 California state courts, settlements are more typically evaluated under the standards set forth in the
14 cases *Dunk v. Ford Motor Co.* (“*Dunk*”) (1996) 48 Cal.App.4th 1794, and *Kullar v. Foot Locker*
15 *Retail, Inc.* (“*Kullar*”) (2008) 168 Cal.App.4th 116. Similar to *Hanlon*, *Dunk* found that in deciding
16 whether to approve a proposed class action settlement under California Code of Civil Procedure §
17 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” *Dunk*, 48
18 Cal.App.4th at 1801.

19 A proposed settlement is presumed fair under the following circumstances: (1) the Parties
20 reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient
21 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
22 and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802. Here, as will be shown
23 herein, all of these elements bearing on the fairness of the proposed settlement—with the exception
24 of the percentage of objectors, which is not applicable in a PAGA action⁷—are present.

25 *Kullar* instructs that an understanding of the amount in controversy is an important factor

26 ⁷ The PAGA provides no notice or claim procedures. Therefore, objections, other than the potential
27 objection of the LWDA, are not contemplated in PAGA actions. *See Baumann v. Chase Inv. Servs.*
28 *Corp.* (2014) 747 F.3d 1117, 1122 (“Unlike *Rule 23(c)(2)*, PAGA has no notice requirements for
unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”).

1 into whether the settlement “of the class members’ claims is reasonable in light of the strengths
2 and weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker*
3 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of*
4 *Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the
5 strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”
6 *Id.* In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to “decide
7 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of
8 the attorneys.” *Kullar*, 168 Cal.App.4th at 133.

9 **a. The Settlement is Fair, Reasonable, and Adequate**

10 **i. The Settlement was Reached as a Result of Arm’s Length Negotiations**

11 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
12 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
13 nature. At the mediation, counsel for the Parties conducted extensive arm’s length settlement
14 negotiations until the settlement was reached.

15 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

16 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
17 before reaching the proposed settlement, and engaged in sufficient investigation, research and
18 discovery to support the settlement. The significant amount of discovery, the production and
19 analysis of hundreds of policy documents and employee records, and protracted settlement
20 negotiations through the mediation and in the extensive discussions that followed were the
21 substantial bases upon which the Parties’ “clear view of the strengths and weaknesses of their
22 cases” was made possible. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

23 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

24 Both Plaintiff’s Counsel and Defendant’s Counsel are particularly experienced in wage and
25 hour employment law and class actions. Plaintiff’s Counsel has significant experience in litigating
26 unpaid wages, unprovided meal and rest periods, and overtime claims. Indeed, Mara Law Firm,
27 PC, was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject
28 case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th

1 1004. Mara Dec. ¶ 4. Plaintiff's Counsel has prosecuted numerous wage and hour cases on behalf
2 of employees for California Labor Code violations and thus are experienced and qualified to
3 evaluate the claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate
4 the viability of the defenses. Mara Dec. ¶¶ 2-11. This experience instructed Plaintiff's Counsel on
5 the risks and uncertainties of further litigation and guided their determination to endorse the
6 proposed settlement. Defendant's Counsel practices labor and employment law and have
7 represented numerous employers in similar types of claims. Accordingly, both Parties' Counsel
8 are experienced in wage and hour employment law and class and representative actions.

9 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

10 An understanding of the amount in controversy is an important factor into whether the
11 settlement of the Aggrieved Employees' "claims is reasonable in light of the strengths and
12 weaknesses of the claims and the risks of the particular litigation." *Kullar*, 168 Cal.App.4th 116,
13 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
14 409. The most important factor in this regard is "the strength of the case for plaintiffs on the merits,
15 balanced against the amount offered in settlement." *Id.*

16 In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to
17 "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
18 that of the attorneys." *Kullar*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit
19 statement of the maximum amount the Aggrieved Employees could recover if it prevailed on all
20 its claims, provided there is a record which allows "an understanding of the amount that is in
21 controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409.
22 Put differently, "as the court does when it approves a settlement as in good faith under *Code of*
23 *Civil Procedure* section 877.6, the court must at least satisfy itself that the [PAGA] settlement is
24 within the 'ballpark' of reasonableness." *Kullar*, 168 Cal.App.4th at 133, citing *Tech-Bilt v.*
25 *Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.

26 As the following section shows, the Parties' investigation and discovery revealed a healthy
27 discount was needed in order to reach a settlement.
28

v. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case and the Risks and Costs of Further Litigation

At the time of mediation, Plaintiff determined that there were approximately 124 Aggrieved Employees who worked approximately 2,192 pay periods based upon the data provided by Defendant.

Plaintiff claims that there are six (6) core violations under § 2699(f)(2) – failure to provide lawful meal breaks or pay a premium, failure to provide lawful rest breaks or pay a premium, failure to pay all wages, failure to pay for failure to provide accurate itemized wage statements, failure to pay wages at the time of termination, and failure to pay wages twice per month – of the Labor Code sections which give rise to PAGA penalties. *Mara Dec.* ¶ 25.

The PAGA allows the private enforcement of certain California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2) reads, in part, as follows:

[T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

California courts have interpreted this language to require notice to the employer that an initial violation occurred before penalties for subsequent violations could be assessed. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1210. Under *Amaral*, “subsequent” has a special meaning within the California Labor Code that triggers heightened statutory penalties only after an employer has learned that its conduct violates the Labor Code—that is, pursuant to *Amaral*, courts may reject a purely chronological understanding of the term “subsequent” and interpret its use in California Labor Code to require that “the employer has been notified that it is violated a Labor Code provision” before higher penalties are triggered. *Amaral*, 163 Cal.App.4th at 1157, 1207–09. Each of Plaintiff’s claims, with the exception of Plaintiff’s claim for failure to pay wages at the time of termination, occurred at least once in every pay period. Plaintiff’s claim for failure to pay wages at the time of termination only occurred in a maximum of 124 pay periods. Thus, Defendants’ **maximum** exposure under §2699(f)(2) is \$1,108,400:

\$100 x 5 PAGA violations x 2,192 pay periods = \$1,096,000

\$100 x 1 PAGA violations x 124 pay periods = \$12,400

Maximum Exposure: \$1,108,400

Mara Dec. ¶ 26.

In exploring the settlement of any PAGA action, the critical fact that the Court is permitted discretion to award a “lesser amount than the maximum penalty amount” must be heavily taken into consideration. *Lab. Code*. 2699 § (e)(2). Unlike the underlying violations upon which the Plaintiffs seek to impose PAGA civil penalties, there is no set amount the Court must levy on an employer Defendant it finds to have violated the underlying claims. Under “the facts and circumstances of the particular case,” the Court is permitted wide discretion to slash civil penalty amounts. This discretion and how a particular court will exercise it is always an unknown variable in predicting the dollar outcome of any PAGA action when evaluating settlement. Under its wide discretion to award lesser amounts, a Court could side with Plaintiffs on their claims and find that the underlying Labor Code rights were violated but decide to substantially moderate the imposition of PAGA penalties for those violations.

Courts have used this discretion to massively discount PAGA penalties imposed where it found the defendant employer took its Labor Code obligations seriously, even if the employer fell short of complying with them. In *Thurman v. Bayshore Transit Management, Inc.* (“*Thurman*”) (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum penalty allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112, 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has taken its obligations to comply with the law seriously. *Id.* In *Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778, 788 & 809, the Court of Appeals took no issue with the trial court exercising its discretion in slashing PAGA civil penalties for violations of Labor Code section 512 to 13% of the total recoverable penalties. In *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504, the plaintiff requested penalties in excess of \$70 million, based on a \$25 to \$75 penalty per violation. The court reduced the award, stating that awarding the maximum penalty would be unjust, arbitrary, and oppressive based on Starbucks’s good faith attempts to comply with the law. The lower court’s reduced award of \$150,000 was affirmed on appeal, which reflects .2%

1 of the total recoverable penalties sought.⁸

2 Thus, the projected value of PAGA claims is a variable value of two predictive indexes: 1)
3 the likelihood that Plaintiff will succeed in proving the underlying claims were violated, and 2) the
4 extent to which the Court will impose Civil Penalties permitted under PAGA. This is to be
5 distinguished from the projected values of class claims of Labor Code and Wage Order violations.
6 For instance, and relevant to the underlying claims in this action, class claims alleging California's
7 meal and rest break, minimum wage, and wage statement laws were violated, the predictive value
8 for purposes of determining whether settlement values are fair and reasonable rests only on the
9 likelihood of prevailing on the merits and the exposure related thereto, as there is no judicial
10 discretion to award lesser amounts owed for adjudged violations. It is for these reasons that, in
11 assessing and judging the reasonableness of PAGA settlements, the touchstone feature is the
12 "remedial purpose" achieved in the settlement amount, which takes into account the defendant
13 employer's "good faith" belief that it complied with the laws claimed to be violated. *Bernstein*,
14 365 F. Supp. 3d at 991.

15 Based on this blind spot of how the Court would exercise its discretion in addition to the
16 likelihood the Court would side with Plaintiff on the underlying Labor Code violations, Plaintiff
17 necessarily and substantially had to discount the settlement value off of the full PAGA penalty
18 amounts. As discussed earlier, Defendant argues its meal and rest policies and practices track the
19 Labor Code and Wage Order requirements and the standards articulated in *Brinker* and *Augustus*.
20 Likewise, Defendant argues that they pay employees for all time worked. Thus, even if Defendant
21 was proven wrong on these fronts and ultimately found to have violated the underlying Labor Code
22 claims, the court could find a good faith reliance on *Brinker*, *Augustus*, and other governing
23 authorities justifiably instructed Defendant's actions and thereby impose a massive reduction of
24 PAGA penalties akin to the Courts in *Kaanaana* and *Carrington*.

25
26 ⁸ These instances of judicial discretion imposing massive reductions in recoverable penalties is to
27 be contrasted with *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) 365 F.Supp. 3d 980, 992, where
28 the trial court reduced the recoverable PAGA penalties by only 25%. *Bernstein*, however, only
amplifies the predictive blind spot of how a court can exercise its wide-discretion to reduce full
PAGA exposure.

1 Good faith settlement negotiations, after considerable discovery, investigation, and
2 litigation, necessarily had to focus on amounts far less than that potential exposure. The proposed
3 PAGA settlement here of \$188,500, which takes into account the realistic exposure, the very real
4 impediments of succeeding on the merits, the risk of further litigation, and, even if Plaintiff
5 succeeded on the merits, persuading against a robust discount, reflects an appropriate, balanced,
6 and reasonable settlement value of the PAGA claims. The settlement amount fits within the
7 “remedial purpose” of PAGA of enforcing compliance with important employee protections in the
8 Labor Code and Wage Order.

9 **b. The Court Should Approve the Requested Attorneys’ Fees and Costs**

10 The PAGA provides that any employee who prevails is entitled to an award of reasonable
11 attorneys’ fees and costs. Cal. Lab. Code § 2699(g)(1). The PAGA statute provides for approval
12 of the settlement but does not specifically provide that the amount or reasonableness of attorneys’
13 fees and costs is subject to court approval. Cal. Lab. Code §§ 2699(g)(1) and (l)(2). A reasonable
14 interpretation of the PAGA is that the amount of attorneys’ fees need only be addressed by a court
15 when the LWDA objects because there is no need to provide absent employees’ due process rights
16 in a PAGA settlement since the aggrieved employees do not have their own substantive rights. *See*
17 *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 436. And, the LWDA,
18 as the real party in interest and the primary beneficiary of the settlement, has an opportunity to
19 review the settlement before it is approved. Cal. Lab. Code § 2699(l)(2). Unlike a class action,
20 where the purpose of court approval is to protect absent class members, in a PAGA settlement the
21 real party in interest, the LWDA, has the opportunity to review and consider the reasonableness of
22 the fees and object before the court hears the approval motion. If a court considers the
23 reasonableness of the attorneys’ fees requested, it should be guided by the common fund doctrine
24 typically applied in class action cases.

25 **i. The Requested Attorneys’ Fee and Cost Award is Within the Range of**
26 **Fees Approved in Comparable Common Fund Cases**

27 California state and federal courts have recognized that an appropriate method for
28 determining an award of attorneys’ fees is based on a percentage of the total value of benefits to

1 class members by a settlement, also known as the “common fund” method. *Serrano v. Priest*
2 (1977) 20 Cal.3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent*
3 *v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. “Despite its primacy, the lodestar
4 method is not necessarily utilized in common fund cases.” *Lealao v. Beneficial California, Inc.*
5 (2000) 82 Cal.App.4th 19, 27 [*Lealao*]; *Dunk*, 48 Cal. App. 4th at 1808 (the percentage method
6 calculates attorney fees as a reasonable percentage of the common fund and may be used where
7 the amount of the settlement is a certain or easily calculable sum of money). The purpose of the
8 common fund/percentage approach is to “spread litigation costs proportionally among all the
9 beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent*, 557
10 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: “[O]ne
11 who expends attorneys’ fees in winning a suit which creates a fund from which others derive
12 benefits may require those passive beneficiaries to bear a fair share of the litigation costs.”

13 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the
14 California Supreme Court recognized that the common fund doctrine has been applied
15 “consistently in California when an action brought by one party creates a fund in which other
16 persons are entitled to share.” The reasons for applying the common fund doctrine include:
17 “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery
18 might be consumed by the expenses; correlative prevention of an unfair advantage to the others
19 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
20 encouragement of the attorney for the successful litigant, who will be more willing to undertake
21 and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured
22 that he will be properly and directly compensated should his efforts be successful.” *Id.*

23 Assessing an appropriate fee based on a percentage of the fund involves taking into account
24 “all of the circumstances of the case.” There is sparse case law addressing the evaluation of
25 reasonable attorneys’ fees in employee representative or class actions as appellate cases addressing
26 fees arise almost exclusively where awards were challenged by defendants or objectors – the only
27 parties with standing to appeal. *Wershba*, 91 Cal.App.4th at 236. Several studies of class action
28 fee awards have found that the median common fund fee award is approximately one-third of the

total settlement fund. *See, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that “fee awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 546 ; T. Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules*, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in the traditional range of approximately one-third of the total settlement”).

Here, PAGA Counsel applies for an award of attorneys’ fees in the sum of \$62,833.33 (which is one-third of the GSA). The requested fee falls in the mid-range of percentage class fee awards, which commonly range from 20% to 50% of a common fund, and constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates PAGA Counsel for their efforts, as well as the result achieved for the benefit of the State of California and the Aggrieved Employees. *Mara Dec.* ¶ 27.

Numerous state and federal courts in California routinely approve fee requests equal to or greater than one-third of the common fund. In short, PAGA Counsel’s fee request of \$62,833.33 is in line with awards in California and nationwide and demonstrates that PAGA Counsel’s fee request is consistent with market rates and is reasonable.

ii. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

PAGA Counsel’s fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.*, at 49; see also *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 834, (“[t] there is no ... rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar”).

As of the date of filing this motion, Plaintiff’s counsel has worked a total of 169 hours on

1 this case and calculated the base lodestar at \$117,600 at rates reflecting those currently earned in
2 the marketplace. Mara Dec. ¶¶ 28-31, **Exhibit 3**. All of the work and tasks performed by Plaintiff's
3 counsel were reasonable and necessary to the prosecution of this case. Mara Dec. ¶¶ 28-31, **Exhibit**
4 **3**. As PAGA Counsel's lodestar fee is in excess of their fee request, a multiplier on their lodestar
5 fee is not sought herein. Mara Dec. ¶ 32. In fact, the requested fee results in a so-called "negative
6 multiplier" which suggests the percentage of the fund amount is reasonable and fair. *See Chun-*
7 *Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc.*
8 *Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at *16.

9 **iii. PAGA Counsel's Hourly Rates are Reasonable**

10 PAGA Counsel's hourly rates are between \$600 and \$800 and are in line with rates
11 typically approved in wage and hour class action and PAGA litigation and which rates have been
12 approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda,
13 Orange and San Diego County Superior Courts. Mara Dec. ¶ 33; **Exhibit 4**, Westlaw Court
14 Express's Legal Billing Report, Volume 14, Number 3, California Region for December 2012;
15 **Exhibit 5**, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC
16 GIC834348; **Exhibit 6**, 2012 National Law Journal Survey of Hourly Billing Rates for Partners
17 and Associates).

18 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
19 experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson*
20 *v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining a
21 reasonable hourly rate, courts may consider factors such as the attorney's skill and experience, the
22 nature of the work performed, the relevant area of expertise and the attorney's customary billing
23 rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.

24 PAGA Counsel's skill and experience support their hourly rates. Their practice is limited
25 exclusively to litigation, focusing on the representation of employees in wage and hour class action
26 and PAGA matters. As prominent attorneys in the field of wage and hour employment litigation,
27 Plaintiff's counsel continually monitors the prevailing market rates charged by both defense and
28 plaintiff law firms and set the billing rates of their attorneys and paralegals/law clerks to be
consistent with the prevailing market rates in the private sector for attorneys and staff of

comparable skill, qualifications and experience. Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates.

iv. PAGA Counsel's Total Hours are Reasonable

In determining a lodestar fee, reasonable hours include, in addition to time spent during litigation, the time spent before the action was filed, including time spent interviewing clients, investigating the facts and the law, and preparing the initial pleadings.⁹ Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 ("*Serrano IV*"). PAGA Counsel has expended a total of 169 hours on this case. The work performed by PAGA Counsel in order to achieve a settlement that will provide valuable consideration to the State of California and the Aggrieved Employees is summarized by PAGA Counsel in the declarations submitted herewith. Mara Dec. ¶¶ 28, 30.

Counsel's many tasks, in summary form, included the following: pre-filing investigation and legal research; communicating with Plaintiff; drafting PAGA letter notifying the LWDA of Plaintiff's claims; investigation into Defendant's pay-structures and policies; draft and file pleadings; numerous conferences with Defendant's Counsel regarding a variety of issues throughout the litigation; draft case management statements and various stipulations; attend case management conferences; draft and propound discovery; review proposed protective order; review handbooks, policies, and employee records produced by Defendant; analyze records produced by Defendant; prepare for and attend mediation; draft mediation brief and mediation damage and exposure models; engage in extensive post-mediation settlement negotiations; draft and revise the settlement agreement; discussions with settlement administrator regarding their duties; draft settlement approval motion and supporting papers; review settlement administrator's declaration; and appearing at the settlement approval hearing. Mara Dec. ¶¶ 28, 30. All of the tasks and work performed were reasonable and necessary to the prosecution of this case.

v. Costs of Litigation

PAGA Counsel seeks reimbursement of the litigation costs and expenses of \$10,934.63. These costs were all reasonable and necessary to the prosecution of this case and the results

⁹ See *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.

1 achieved, and are fair, reasonable, and unopposed by Defendant. Mara Dec. ¶ 34, **Exhibit 3**.

2 **c. The Administration Costs are Reasonable**

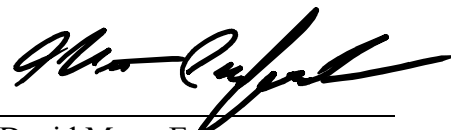
3 The Parties agreed to hire Apex as the Administrator.¹⁰ Apex will be responsible for
4 formatting, printing, and mailing an agreed upon Notice of Settlement of PAGA Action to be sent
5 along with the checks to be mailed to the Aggrieved Employees. It will also be responsible for
6 updating addresses and re-mailing checks returned as undeliverable, responding to Aggrieved
7 Employee inquiries, and answering questions from the Parties. Apex also provided a declaration
8 for filing with the settlement motion. Apex seeks a fee of up to \$5,000¹¹, currently estimated to be
9 \$3,990, for the services it will provide in conjunction with this settlement. *See Hartranft Dec.,*
10 **Exhibit B**. Plaintiffs now request that the Court approve a fee of up to \$5,000 to Apex for services
11 to be rendered. Following the grant of approval, Apex will calculate and mail the checks to the
12 Aggrieved Employees, disburse other payments as ordered by the Court, and perform such other
13 duties as set forth in the Settlement Agreement. Apex's fee of up to \$5,000 for services rendered
14 and to be rendered is fair and reasonable and should be granted.

15 **VI. CONCLUSION**

16 For the reasons stated herein, the Court should grant Plaintiff's motion in its entirety.

17
18 Dated: March 29, 2024

MARA LAW FIRM, PC

19
20 

21 _____
22 David Mara, Esq.
23 Matthew Crawford, Esq.
24 Attorneys for Plaintiff

25 ¹⁰ *See Hartranft Dec.*, which outlines Apex's qualifications and experience.

26 ¹¹ Once Defendant have provided Apex with the data for the Aggrieved Employees upon approval
27 of the settlement, Apex will be able to calculate the exact administration costs. Based on the
28 preliminary data provided by Defendant, Apex has estimated the administration costs will be
\$3,990. The Parties do not expect this estimate to change drastically but have accounted for any
such contingency through the Settlement Agreement, which permits up to \$5,000 in administration
costs. *See Exhibit 1* at Section I, B.