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to Labor Code § 2698 *et seq.*

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN MATEO**

11 JOHN JADELRAH, on behalf of himself and
12 all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

13 Plaintiffs,

14 v.

15 CCFI, LLC, a Delaware limited liability
16 company, and DOES 1 through 10, inclusive,

17
18 Defendants.

CASE NO: 22-CIV-00064

Assigned to the Hon. Marie S. Weiner, Dept. 2

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS’ FEES, COSTS,
SERVICE AWARD, AND REIMBURSEMENT
OF SETTLEMENT ADMINISTRATION
EXPENSES, AND ENTERING JUDGMENT
THEREON; MEMORANDUM OF POINTS
AND AUTHORITIES**

Date: February 1, 2023

Time: 2:00 PM

Dept.: 2

Complaint Filed: January 6, 2022

Trial Date: None

1 **PLEASE TAKE NOTICE THAT** on February 1, 2023 at 2:00 p.m., or as soon thereafter
2 as the matter may be heard, in Department 2 of the above-entitled Court, located at 400 County
3 Center, Redwood City, CA 94063, Plaintiff John Jadelrab will and hereby does move unopposed
4 for an Order: (1) granting approval of the proposed settlement of claims brought pursuant to the
5 Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”) set forth in the
6 Parties’ PAGA Settlement Agreement (the “Settlement Agreement”); (2) appointing Phoenix
7 Settlement Administrators (“Phoenix”) as the Settlement Administrator and approving payment of
8 its fees not to exceed \$11,000 from the Gross Settlement Amount; (3) directing disbursement of
9 the Gross Settlement Amount pursuant to the terms of the Settlement Agreement; (4) directing
10 payment of attorneys’ fees and litigation costs from the Gross Settlement Amount not to exceed
11 \$138,350.63 to Plaintiff’s counsel; (5) directing a Service Award from the Gross Settlement
12 Amount in the amount of \$10,000 to Plaintiff John Jadelrab; and (6) entering judgment thereon.

13 This motion will be based on this Notice, the supporting memorandum of points and
14 authorities, the Parties’ PAGA Settlement Agreement, the Declarations of Daniel F. Gaines and
15 Plaintiff John Jadelrab, the documents and records on file in this matter, and such additional
16 arguments, authorities, and evidence and other matters as may be presented by the Parties hereafter.

17 Date: January 3, 2023

Respectfully submitted,

GAINES & GAINES, APLC

18
19
20 By: 

21 DANIEL F. GAINES
22 ALEX P. KATOFISKY
23 Attorneys for Plaintiff
24 JOHN JADELRAH
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff John Jadelrab (“Plaintiff”) and aggrieved employees under the Labor Code’s
4 Private Attorneys General Act of 2004 (“PAGA”) respectfully move this Court for an Order
5 granting approval of the proposed Settlement of the above-captioned lawsuit against Defendant
6 CCFI, LLC (“Defendant”). The proposed Settlement will dispose of the Released PAGA Claims
7 asserted on behalf of Plaintiff and approximately 2,868 non-exempt employees who worked for
8 Defendant in California at any time between October 28, 2020 and January 15, 2023 (the “PAGA
9 Period”¹), but excluding employees classified as senior store managers, store managers, and
10 assistant store managers who ended their employment before March 8, 2021 (the “PAGA
11 Members”). See Settlement Agreement, at ¶¶ 20, 24.

12 This case addresses claimed violations of employee protections embodied in the California
13 Labor Code and penalties stemming therefrom for the violation of PAGA. Plaintiff alleged that
14 Defendant failed to pay Plaintiff and PAGA Members by an instrument payable on demand and
15 without discount, in violation of Labor Code §§ 212 and 225.5, failed to provide legally compliant
16 rest periods, or compensation in lieu thereof, to Plaintiff and PAGA Members, in violation of Labor
17 Code § 226.7, failed to provide legally compliant meal periods, or compensation in lieu thereof, to
18 Plaintiff and PAGA Members, in violation of Labor Code §§ 226.7, 512, and 558, failed to issue
19 accurately itemized wage statements to Plaintiff and PAGA Members, in violation of Labor Code
20 §§ 226(a) and 226.3, and failed to pay certain PAGA Members all wages due at the separation of
21 their employment, in violation of Labor Code §§ 201-202. As a result of Defendant’s alleged
22 violations of the Labor Code, approximately 2,868 employees are claimed to have suffered Labor

23
24 ¹ A prior PAGA action filed against Defendant, *Alfonso Hernandez v. CCFI, LLC*, Case No.
25 19STCV08383, Los Angeles County Superior Court (the “*Hernandez Action*”), involved the same
26 claims asserted in this Action. The *Hernandez Action* settled claims on behalf of all non-exempt
27 manager employees in California who were employed at any time from January 6, 2018 until March
28 8, 2021 and who held the job title of senior store manager, store manager, and/or assistant store
manager. All pay periods settled in the *Hernandez Action* are excluded from this Action. See
Settlement Agreement, at ¶ 10.

1 Code violations for up to 18,952 aggregate pay periods at the rate of \$100 each based on PAGA's
2 penalty provisions. Gaines Decl., ¶ 16.

3 In deciding whether to grant approval of the proposed Settlement, the primary issue to be
4 decided is whether the Settlement is fair, adequate and reasonable. As set forth herein, the proposed
5 Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is
6 the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and
7 hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative
8 strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on
9 the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and
10 likely duration of further litigation.

11 The value achieved by the Settlement may be gleaned from the fact that the LWDA and the
12 approximately 2,868 PAGA Members encompassed by the Settlement will receive no less than
13 \$225,649.37 under the terms of the Settlement, which, pursuant to the operative statute, shall be
14 allocated "75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the
15 PAGA Members." *See Cal. Lab. Code* § 2699(i). This is a reasonable recovery, not only because
16 further litigation may have resulted in a net-zero recovery based on the defenses available to
17 Defendant, but because the amount secured by Plaintiff is sizable and in line with similar
18 settlements of these types of claims under PAGA. It is also important to underscore that all penalty
19 amounts paid to PAGA Members will be an unexpected windfall, as employees typically do not
20 bring individual lawsuits asserting only PAGA penalties.

21 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this
22 Court enter the Order and Judgment submitted herewith.

23 **II. STATEMENT OF THE CASE AND THE SETTLEMENT**

24 **A. The Parties**

25 Defendant is a holding company for an array of subsidiaries that provide financial services
26 primarily to under-served consumers, including in San Mateo County, California, where Plaintiff
27 works. Gaines Decl. at ¶ 8.

1 Defendant has employed Plaintiff John Jadelrab as a non-exempt employee since 2007. The
2 PAGA Members are all current and former non-exempt employees of Defendant employed in
3 California between October 28, 2020 and January 15, 2023, but excluding employees classified as
4 senior store managers, store managers, and assistant store managers who ended their employment
5 before March 8, 2021. Gaines Decl. at ¶ 9.

6 **B. The Claims Asserted**

7 Plaintiff asserts claims that Defendant failed to pay Plaintiff and PAGA Members by an
8 instrument payable on demand and without discount, failed to provide legally compliant rest
9 periods, or compensation in lieu thereof, to Plaintiff and PAGA Members, failed to provide legally
10 compliant meal periods, or compensation in lieu thereof, to Plaintiff and PAGA Members, failed
11 to issue accurately itemized wage statements to Plaintiff and PAGA Members, and failed to pay
12 certain PAGA Members all wages due at the separation of their employment. Plaintiff asserts these
13 claims under PAGA, seeking civil penalties for the alleged Labor Code violations. Gaines Decl. at
14 ¶ 10.

15 **C. Procedural Posture**

16 On October 28, 2021, pursuant to Labor Code § 2699.3, Plaintiff gave written notice by
17 online filing with the Labor and Workforce Development Agency (“LWDA”) and by certified mail,
18 return receipt requested, to Defendant of the specific provisions of the Labor Code alleged to have
19 been violated, including the facts and theories to support the alleged violation. Gaines Decl., ¶¶ 6-
20 7; **Exhibit B** (LWDA Notice Letter). On January 6, 2022, and after the LWDA declined to take
21 action within the statutorily permissible time with respect to Plaintiff’s October 28, 2021 letter,
22 Plaintiff filed his representative action complaint in this Court. Gaines Decl., ¶ 6.

23 **D. Plaintiff’s Counsel’s Investigation**

24 Counsel for Plaintiff engaged in targeted, informal discovery of Defendant’s alleged Labor
25 Code violations, which specifically targeted evaluating the strength and value of the PAGA claims
26 in preparation for a resolution of this Action. Gaines Decl. at ¶ 12.

27 Plaintiff’s Counsel obtained and reviewed multiple documents, including (i) Plaintiff’s

1 employee file and wage statements, (ii) policy documents relating to the employment of Plaintiff
2 and other PAGA Members, and (iii) data relating to the number of alleged violations and the value
3 of the recoverable penalties, including time and payroll data. Gaines Decl. at ¶ 13.

4 Based on the information received, as well as through discussions with Defendant's
5 Counsel, Plaintiff's Counsel was able to (i) determine the total number of distinct individuals falling
6 within the definition of "PAGA Member" for the relevant statutory period, and (ii) construct a
7 damage model that calculated the maximum realistic amount of PAGA penalties that could be
8 levied against Defendant within the PAGA Period based on employee timekeeping and payroll data
9 produced by Defendant. Defendant, however, disputed Plaintiff's claims and disputed both the
10 existence of and extent of liability as alleged by Plaintiff. Based on the information received, as
11 well as through discussions with Defendant's Counsel, Plaintiff's Counsel was able to ascertain (i)
12 the size of the PAGA Member group, (ii) the number of affected pay periods at issue among them,
13 and (iii) the strength of Plaintiff's claims. Gaines Decl. at ¶ 14. Plaintiff's Counsel's experience in
14 litigating similar "representative" wage and hour claims, the degree of investigation that was
15 conducted here, the amount of data that was obtained, and the discussions guided by mediation,
16 was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of
17 this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-5, 12-15, 23-25.

18 **E. Settlement Negotiations**

19 On August 26, 2022 and October 17, 2022, the Parties participated in mediation sessions
20 with a respected mediator, Hon. Alan G. Perkins (Ret.). During the mediations, the Parties engaged
21 in arm's-length negotiations and reached a resolution of the PAGA claims asserted in this Action.
22 Gaines Decl. at ¶ 15.

23 **F. The Proposed Settlement**

24 The Parties jointly prepared and executed a PAGA Settlement Agreement (the "Settlement
25 Agreement") and Notice of PAGA Settlement Agreement and Release. Gaines Decl., ¶ 15; **Exhibit**
26 **C.** The Agreement sets forth the terms of the Settlement reached by the Parties, including the
27 following key points:

1. Defendant agrees to settle this matter for the payment of Three Hundred Eighty-Five Thousand Dollars (\$385,000) (hereinafter the “Gross Settlement Amount”), which shall be all inclusive, encompassing (i) all payments to the Labor and Workforce Development Agency and PAGA Members, (ii) any and all costs of third-party administration of the settlement, (iii) Plaintiff’s Counsel’s attorneys’ fees and costs of suit, and (iv) a modest service award payment to Plaintiff. *See Settlement Agreement*, at ¶ 9.

2. The total sum available for payment of PAGA penalties shall be calculated by deducting \$138,350.63 for the payment of Plaintiff's Counsel's fees and costs (\$128,334 in fees and \$10,016.63 in costs²), \$10,000 for the payment of Plaintiff's service award payment, and the costs of administration, not to exceed \$11,000, from the \$385,000 Gross Settlement Amount, yielding \$225,649.37. Seventy-five percent (75%) of this amount, or \$169,237.03, shall be distributed to the LWDA, and the remaining twenty-five percent (25%) or \$56,412.34, shall be distributed to the PAGA Members. *See Settlement Agreement*, at ¶¶ 39-42.

3. All PAGA Members will receive a pro rata share of the \$56,412.34 allocated to PAGA Members, which shall be distributed based on the number of pay periods each PAGA Member worked for Defendant in California during the PAGA Period. *See* Settlement Agreement, at ¶ 43. Although these calculations will not be made until after approval, a rough estimation of the value to the 2,868 individuals falling within the definition of “PAGA Member” may be gleaned from the fact that an equal division would provide about \$19.67 to each PAGA Member, net of payments to the LWDA, the Settlement Administrator, attorney’s fees, and costs. The LWDA will be paid a substantial \$169,237.03. *See* Gaines Decl., at ¶ 17; Settlement Agreement, at ¶ 42.

4. In exchange for the above settlement consideration, Defendant and the Released Parties shall be entitled to a limited release from each and every PAGA Member, including Plaintiff³:

² Plaintiff's Counsel's cost request is less than the \$12,000 allotted in the Settlement Agreement. *See* Settlement Agreement, at ¶ 39.

³ This comports with settled California Supreme Court authority. *See Arias v. Superior Court* (2009)

Effective on the date when CCFI fully funds the entire Gross Settlement Amount, Plaintiff, as a representative of the State of California and on behalf of the Labor & Workforce Development Agency (LWDA) and the PAGA Members, fully and finally releases the Defendant, CCFI, LLC, and its past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parents, subsidiaries, affiliates, divisions, predecessors, assigns, and successors, including its successor CCFI Companies, LLC (collectively, “Released Parties”) from all claims seeking civil penalties and other relief under the PAGA that arose during a Pay Period⁴ and are alleged in, or that could have been alleged based on the facts alleged in, the Action including, without limitation, the following claims to the fullest extent such claims are releasable by law:

All PAGA claims for civil penalties and other relief under the PAGA for failure to provide compliant meal periods and to pay premium wages.

All PAGA claims for civil penalties for failure to provide compliant rest breaks and to pay premium wages.

All PAGA claims for civil penalties, including under section 225.5 of the Labor Code, for failure to provide the required form for payment of wages in violation of Section 212 of the Labor Code, including for any alleged violations related to the use of pay cards.

All PAGA claims for civil penalties for failure to provide complete and accurate wage statements, including, without limitations, for violations of any and all of subparts (1)-(9) of Labor Code section 226(a), including all claims alleging that wage statements lacked accurate information on meal and rest break premium wage payments.

All PAGA claims for civil penalties for failure to timely pay all final wages, including, without limitation, minimum and overtime wages earned, and meal and rest break premium wages. (the “Released PAGA Claims”).

See Settlement Agreement, at ¶ 52.

5. In addition to the limited release above, in exchange for the above settlement consideration, Defendant and the Released Parties shall be entitled to a general release from

46 Cal. 4th 969, 986 (concluding that “with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act . . .”).

⁴ A “Pay Period” means the regular periods of time within the PAGA Period when PAGA Members received their regular pay checks for any amount of work performed for Defendant during the pay period, but excluding pay periods worked by senior store managers, store managers, and assistant store managers between October 28, 2020 and March 8, 2021. *See Settlement Agreement, at ¶ 25.*

1 Plaintiff only:

2 Effective on the date when CCFI fully funds the entire Gross Settlement Amount,
3 Plaintiff Jadelrab – and his respective former and present spouses, representatives,
4 agents, heirs, administrators, successors, and assigns -- generally releases and
5 discharges CCFI and the Released Parties from all claims, transactions, or
6 occurrences to the fullest extent such claims are releasable under the law, including,
7 but not limited to, all claims that were, or reasonably could have been, alleged, based
8 on the facts contained in the Complaint and in the PAGA Notice (“Plaintiff’s
9 Release”). Plaintiff acknowledges that he may discover facts, law, or claims that are
10 different from, or in addition to, the facts, law, or claims that Plaintiff has alleged,
11 now knows, or believes to be true, but Plaintiff agrees, nonetheless, that Plaintiff’s
12 Release shall be and remain effective in all respects, notwithstanding such different
13 or additional facts or Plaintiff’s discovery of them. For purposes of Plaintiff’s
14 Release, Plaintiff expressly waives and relinquishes the provisions, rights, and
15 benefits, if any, of section 1542 of the California Civil Code, which reads:

16 A general release does not extend to claims that the creditor or
17 releasing party does not know or suspect to exist in his or her favor
18 at the time of executing the release, and that if known by him or her
19 would have materially affected his or her settlement with the debtor
20 or Released Party.

21 Plaintiff may later discover claims or facts in addition to, or different from, those
22 which he now knows or believes to exist, but Plaintiff expressly agrees to fully,
23 finally and forever settle and release any and all claims against the Released Parties,
24 known or unknown, suspected or unsuspected, which exist or may exist on behalf
25 of or against the other at the time of execution of this Agreement, including, but not
26 limited to, any and all claims relating to or arising from Plaintiff’s employment with
27 CCFI, and to the fullest extent of the law.

28 See Settlement Agreement, at ¶ 51.

6. Settlement administration, which is to be paid from the Gross Settlement Amount,
will not exceed \$11,000. Phoenix Settlement Administrators, a reputable settlement administration
company, has agreed to administer the settlement for this amount, submitting a competitive bid.
See Gaines Decl., ¶ 18.

7. As detailed herein, Plaintiff’s counsel seeks an award of attorneys’ fees and
litigation costs totaling \$138,350.63, and Plaintiff John Jadelrab seeks a service award payment of
\$10,000. See Settlement Agreement, at ¶¶ 39, 41.

8. Finally, under the terms of Settlement, the value of checks uncashed more than

1 180 days after issuance shall be remitted to the Unclaimed Property Fund of the California State
2 Controller’s Office to be held in the name of the PAGA Member. *See* Settlement Agreement, at
3 ¶ 49.

4 **III. LEGAL ARGUMENT**

5 **A. Standards for Approval of A PAGA Settlement**

6 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
7 statute, which states that the “[t]he superior court shall review and approve any settlement of any
8 civil action filed pursuant to this part.” *See Labor Code* § 2699(1)(2).

9 As with any settlement, the Court must be mindful in conducting its inquiry that
10 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
11 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222,
12 24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding of
13 absolutes and an abandoning of highest hopes’” [*Officers for Justice v. Civil Service Com.*, 688
14 F.2d 615, 624 (9th Cir., 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
15 of wasteful and expensive litigation that induce consensual settlements.” *See id.*, at 625. As such,
16 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
17 or “judged against a hypothetical or speculative measure of what might have been achieved by the
18 negotiators.” *See id.*

19 Although the operative PAGA statute does not set forth the criteria on which a PAGA
20 settlement is to be judged, California law does state that some of the factors for review of a class
21 action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. § 382 and Cal. Rules of Court, Rule
22 3.769, may be “useful in evaluating the fairness of a PAGA settlement” to the reviewing court. *See*
23 *Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56, 77 (“Thus, while PAGA does not require
24 the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for
25 settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public
26 and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors
27 used to evaluate class action settlements bear on a settlement's fairness—including the strength of

1 the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of
2 further litigation, and the settlement amount—these factors can be useful in evaluating the fairness
3 of a PAGA settlement.”) Courts within California have continued to approve settlements of PAGA
4 claims using Rule 23 criteria⁵. However, it is important to underscore that not all Rule 23 factors
5 can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered
6 a class action but a law enforcement action, and therefore does not have to meet the requirements
7 of Rule 23.” *See Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan.
8 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2,
9 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010).
10 Based thereon, a court’s review of a PAGA settlement necessarily implicates the following unique
11 features that render the approval process completely distinct from approval of a class action
12 settlement under Rule 23 or C.C.P. § 382 and Cal. Rules of Court, Rule 3.769.

13 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
14 concerned with the amount which “PAGA Members” are to receive, but rather, must focus on the
15 total settlement amount in achieving PAGA’s objective.

16 While “[a PAGA] action is . . . designed to protect the public and penalize the employer for
17 past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take
18 into account the fact that settlement of a PAGA claim – like any settlement – involves a
19 “compromise” that stops short of rendering findings of liability and damages. Moreover, the Court
20 must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for

21 ⁵ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
22 balancing of several factors which may include, among others, some or all of the following: [1] the
23 strength of plaintiffs’ case; [2] the risk, expense, complexity, and likely duration of further
24 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
25 in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the
26 experience and views of counsel; [7] the presence of a governmental participant; and [8] the
27 reaction of the class members to the proposed settlement.” *See Linney v. Cellular Alaska P’ship*,
151 F.3d 1234, 1242 (9th Cir., 1998). “Not all of these factors will apply to every class action
settlement” and “[u]nder certain circumstances, one factor alone may prove determinative in
finding sufficient grounds for court approval.” *See Nat’l Rural Telcoms. Coop. v. DIRECTV, Inc.*,
221 F.R.D. 523, 525-526 (C.D. Cal., 2004).

1 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties
2 for the government that otherwise may not have been assessed and collected by overburdened state
3 enforcement agencies.” *See Ochoa-Hernandez v. CJADER Foods, Inc.*, 2010 U.S. Dist. LEXIS
4 32774, 12 (N.D. Cal. Apr. 2, 2010).

5 **B. The Settlement Meets All the Criteria For Approval**

6 Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA
7 considerations detailed above – the proposed Settlement embodies all of the key features of a
8 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for
9 approval.

10 **1. The Factors Giving Rise to a Presumption of Fairness Exist**

11 In conducting a review of a settlement, it is generally recognized that an “agreement . . .
12 reached through arms-length negotiation between experienced parties . . . is entitled to a
13 presumption of fairness.” *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377,
14 44 (C.D. Cal. Apr. 12, 2010).

15 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-
16 length negotiations brokered through a respected third party neutral [Gaines Decl. at ¶ 15], (2) that
17 was negotiated by Counsel with significant experience in similar wage and hour litigation [*see id.*,
18 at ¶¶ 2-5, 23-25 and **Exhibit A**], (3) which occurred after Counsel had conducted sufficient
19 investigation to evaluate the strength and potential value of the PAGA claims, as well as evaluating
20 the risks of litigating this claim through trial. *See id.*, at ¶¶ 12-14, 20-21. Based thereon, the Court
21 should give considerable weight to the competency and integrity of counsel in assuring itself that
22 the Settlement Agreement represents an arm’s-length transaction entered without self-dealing or
23 other potential misconduct.

24 **2. The Relative Strength Of The PAGA Claim, And the Realistic Range of**
25 **Outcomes In The Litigation, Strongly Favor Approval of the Settlement**

26 The relative strength of the PAGA claim brought by Plaintiff weighs in favor of the Court
27 finding that the settlement is fair, adequate, and reasonable, as Defendant maintained numerous

1 defenses to the theories of penalty-liability put forward by Plaintiff that, if successful, had the
2 potential to completely eliminate any recovery.

3 This case addresses violations of important employee protections embodied in the
4 California Labor Code – namely, that Defendant failed to pay Plaintiff and PAGA Members by an
5 instrument payable on demand and without discount, in violation of Labor Code §§ 212 and 225.5,
6 failed to provide legally compliant rest periods, or compensation in lieu thereof, to Plaintiff and
7 PAGA Members, in violation of Labor Code § 226.7, failed to provide legally compliant meal
8 periods, or compensation in lieu thereof, to Plaintiff and PAGA Members, in violation of Labor
9 Code §§ 226.7, 512, and 558, failed to issue accurately itemized wage statements to Plaintiff and
10 PAGA Members, in violation of Labor Code §§ 226(a) and 226.3, and failed to pay certain PAGA
11 Members all wages due at the separation of their employment, in violation of Labor Code §§ 201-
12 202. Defendant’s maximum theoretical exposure in this Action, without stacking penalties, totals
13 approximately \$1,895,200 computed by multiplying 18,952 aggregate pay periods by \$100 each.
14 See Gaines Decl. at ¶ 19. While the PAGA does provide the potential for a heightened penalty for
15 subsequent violations, courts are often hesitant to award a heightened penalty where there is no
16 prior citation by the Labor Commissioner. See *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144
17 (9th Cir. 2021) (holding no heightened penalty where defendant was not notified by Labor
18 Commissioner or any court that it was subject to the California Labor Code). The Ninth Circuit’s
19 holding in *Bernstein* also supports that a settlement valuation that does not “stack” penalties. *Id.*

20 Defendant, however, contends it acted within the requirements of California law at all times
21 as to all PAGA Members. For example, Defendant contends that employees have the voluntary
22 option to receive their wages in pre-paid visa debit cards that provide employees with immediate,
23 on-demand access to all of their wages without any fees charged. Defendant also contends that the
24 company has compliant meal and rest break practices, as evidenced by daily attestation practices
25 that enable employees to confirm that they received compliant meal and rest break opportunities,
26 and additional such attestations on a pay period basis. Defendant further contends that not every
27 pay period at issue involved an alleged Labor Code violation subject to civil penalties. Moreover,

1 it maintained that even if the Court did award penalties, the Court could and would *substantially*
2 reduce the penalties awarded based on the discretionary factors contained in Labor Code §
3 2699(e)(2) (“In action by an aggrieved employee . . . , a court may award a lesser amount than the
4 maximum civil penalty amount specified by this part if, based on the facts and circumstances of the
5 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
6 confiscatory.”). *See* Gaines Decl., ¶ 20.

7 Based on these disputes, which had the potential to completely eliminate Plaintiff’s
8 recovery, the range of realistic “litigation outcomes” on the Plaintiff’s PAGA claim was defined
9 by a “maximum possible liability” amount of approximately \$1,895,200 [Gaines Decl., ¶ 19], and
10 a net-zero recovery based on the defenses asserted by Defendant. Notwithstanding the existence
11 of such issues, the Settlement achieves a significant benefit – approximately 20% recovery of the
12 maximum possible liability. As such, this factor weighs very heavily in favor of resolution by way
13 of the compromise set forth in the Settlement. Gaines Decl., ¶ 21.

14 **3. The Risk, Expense, and Complexity of Further Litigation Balances**
15 **Strongly in Favor of Approval of the Settlement**

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

1 **4. The Benefits Conferred by the Settlement Balance in Favor of Approval**

2 The Settlement Agreement provides a significant monetary benefit that falls well within
3 “the range of an acceptable settlement” under the circumstances, which is the standard on which
4 the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and
5 reasonable even where it only provides a fraction of what could have been obtained at trial:

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

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

14 Here, after all deductions are made for administration, a service award payment, attorneys’
15 fees and costs, \$225,649.37 will be paid out, of which \$169,237.03 (i.e. 75%) will go to the LWDA,
16 and \$56,412.34 (i.e. 25%) will go to the PAGA Members, as required by Labor Code § 2699(i)
17 (“civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to
18 the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”).
19 *See Settlement Agreement*, at ¶ 42.

20 This result is exceptional, as settlements of PAGA claims impacting thousands of
21 individuals have been approved as reasonable for amounts far less than the payment in this case.
22 *See Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012)
23 (“Defendant has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the \$10,000,
24 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will benefit
25 the class The Court finds that the PAGA payment is set at a reasonable amount, and it shall be
26 approved.”); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal.
27 Oct. 29, 2012) (“GTI agrees to allocate \$10,000 to Plaintiff’s PAGA claims, and will pay \$7,500

1 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports with
2 settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
3 allocation of the Settlement to Plaintiff's PAGA claim."); *Schiller v. David's Bridal, Inc.*, 2012
4 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) ("Pursuant to the Settlement Agreement, the
5 parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .
6 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
7 be approved."); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
8 2012) ("Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
9 California Labor and Workforce Development Agency The Court finds that the PAGA
10 payment is set at a reasonable amount, and it shall be approved.").⁶

11 Thus, notwithstanding the existence of issues having the potential to completely eliminate
12 recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds
13 typical PAGA awards routinely approved by the courts, but it also recovers monies for PAGA
14 Members which they otherwise would not receive. As such, this factor balances strongly in favor
15 of approval of the Settlement.

16 **5. The Scope of the Release is Narrowly Tailored**

17 As discussed above, the California Supreme Court has concluded that in the context of
18 PAGA "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
21 exchange for the foregoing consideration is limited to the civil penalties asserted in the Action
22 under Labor Code §§ 2698 *et seq.* *See Settlement Agreement*, at ¶ 52.

23 As such, this factor balances strongly in favor of approval of the Settlement.

24 ⁶ Significantly, each of the above-cited actions involved a comparable number of "aggrieved
25 employees" as at issue here. *See Franco*, 2012 U.S. Dist. LEXIS 169057, 14 ("2,055 Class
26 Members were ultimately identified"); *Garcia*, 2012 U.S. Dist. LEXIS 160052, at 12 (class
27 comprised of "approximately 1,869 individuals"); *Schiller*, 2012 U.S. Dist. LEXIS 80776, 16
28 ("3,327 California Class members were ultimately identified"); *Gong-Chun*, 2012 U.S. Dist.
LEXIS 96828, 18 ("2,051 California Class Members were ultimately identified").

1 **6. The Experience and Views of Plaintiff's Counsel Favor Approval of the**
2 **Settlement**

3 Plaintiff's Counsel has a significant degree of experience in complex wage and hour
4 litigation. *See* Gaines Decl., ¶¶ 2-5, 23-25, Gaines Decl. at **Exhibit A**. In the view of Plaintiff's
5 Counsel, the benefit conferred by the proposed Settlement is fair, reasonable, and adequate under
6 the circumstances, as it reflects a reasoned compromise which takes into consideration the risks
7 inherent in this case which had the potential to completely eliminate recovery. Gaines Decl., ¶¶
8 20-21, 28. As such, this factor balances in favor of approval of the Settlement.

9 **7. The Extent of Discovery Completed And The Stage Of The Proceedings**
10 **Favor Approval of the Settlement**

11 In evaluating this element, the Court should be mindful that ““formal discovery is not a
12 necessary ticket to the bargaining table”” [*Linney*, 151 F.3d at 1239], as the relevant consideration
13 is “whether ‘the parties have sufficient information to make an informed decision about
14 settlement.’” *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at
15 26 (C.D. Cal. Nov. 9, 2011).

16 Here, the extent of informal discovery conducted was sufficient to enable Plaintiff's
17 Counsel to evaluate the strength and value of the claim for purposes of settlement. Gaines Decl.,
18 ¶¶ 12-15. Prior to mediation, Defendant provided Plaintiff with documents related to the policies
19 and practices at issue in this PAGA action, as well as plaintiff's personnel file and timekeeping and
20 payroll data and wage statements. As discussed above, Plaintiff's Counsel's investigation was
21 sufficient to, among other things, tabulate with precision the total number of alleged Labor Code
22 violations at issue during the PAGA Period and identify the total number of individuals falling
23 within the definition of “PAGA Member” for the PAGA Period.

24 Based on Plaintiff's Counsel's experience litigating wage and hour claims, such
25 investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate
26 the strength of this claim for purposes of settlement. *See* Gaines Decl., ¶¶ 2-5; 23-25.

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8. Additional Factors Weigh In Favor Of Finding The Terms Of The Proposed Settlement To Be Fair, Adequate, And Reasonable

In addition to the factors presented above, the proposed Settlement does not possess any obvious deficiencies. The Settlement contemplates entry of an order (submitted concurrently herewith) which approves the Settlement and enters judgment thereon. Paragraph 60 of the Settlement Agreement and paragraph 8 of the proposed order authorize the Court to retain jurisdiction over the Parties, the Action, and the Settlement. This procedure effectively disposes of the Action in its entirety, documents the Court's approval of the Settlement as required by PAGA, and allows for Court intervention if necessary to enforce the terms of the Settlement Agreement. In sum, under the applicable standards for approval of PAGA settlements in California, the settlement in this case meets the standards for approval.

IV. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER THEIR REASONABLE FEES AND COSTS

Pursuant to the terms of the Settlement, Plaintiff's Counsel seeks attorneys' fees of one-third of the Gross Settlement Amount (\$128,334) and reimbursement of litigation costs of \$10,016.63, falling within the bounds authorized by the Settlement Agreement. *See* Settlement Agreement, at ¶ 39. Plaintiff's Counsel's entitlement to an award of attorneys' fees and costs is warranted on multiple independent grounds. Further, the amount of fees requested falls well within the range of reasonableness under applicable standards, as the amount requested constitutes a "percentage of the fund" deemed reasonable in similar wage and hour settlements of this size and approved by California courts, which is not only warranted based on the contingency risk Plaintiff's Counsel has agreed to incur for the benefit of the State of California and PAGA Members, but also based on the significant results achieved, as the Settlement obtains a recovery substantially above the range approved as reasonable by California state and federal courts. Based thereon, Plaintiff's Counsel respectfully requests that the Court enter an order approving the fee and cost amounts requested.

1
2 **A. Plaintiff's Counsel Are Entitled To Recover Their Reasonable Fees And**
3 **Costs As A Matter Of Right**

4 Plaintiff's Counsel are entitled to recover attorneys' fees and costs under the "common
5 fund" doctrine as a matter of right. As held by the U.S. Supreme Court, "a lawyer who recovers a
6 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
7 attorney's fee from the fund as a whole." *See Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.

8 Courts have long recognized the "common fund" or "common benefit" doctrine, under
9 which attorneys who create a common fund or benefit for a group of persons may be awarded their
10 fees and costs to be paid out of the fund. *Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25,
11 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
12 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
13 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
14 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

15 The California Supreme Court has held that, "when a number of persons are entitled in
16 common to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all
17 results in the creation or preservation of that fund, such Plaintiff or Plaintiffs may be awarded
18 attorneys' fees out of the fund." *Serrano III, supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d
19 1; *see also Boeing, supra*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit
20 of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as
21 a whole."); *Mills, supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common
22 fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter
23 Group) at § 17:172.3 explains the common fund doctrine as follows:

24 Where the lawsuit results in the recovery of a fund or property
25 benefiting others as well as Plaintiffs (e.g., a class action), the court
26 has inherent equitable power to order Plaintiffs' attorney fees paid
27 out of the common fund or property [citations]. Such fee spreading
28 assures that all of those benefited by the litigation pay their fair share
 of obtaining the recovery.

1 The percentage-of-the-fund approach appears to be the preferred method of awarding fees
2 in traditional common fund cases, such as this case. Where the settlement amount is a “certain or
3 easily calculable sum of money,” use of the percentage-of-the-fund method is appropriate. *Serrano*
4 *III*, 20 Cal. 3d at 35.

5 In *Glendale City Employees’ Association v. City of Glendale* (1975) 15 Cal.3d 328, 341
6 fn.19, the California Supreme Court upheld an attorney’s fee award based on a percentage of the
7 common benefit obtained in a lawsuit by a city employee’s association for retroactive wages:

8 It is not necessary to find this suit a proper class action in order to
9 uphold the portion of the judgment awarding counsel for Plaintiffs
10 25 percent of all retroactive salaries and wages received. That award
11 may be sustained under the rule that a litigant who creates a fund in
12 which others enjoy beneficial rights may require those beneficiaries
13 to pay their fair share of the expense of litigation. (*See Sprague v.*
14 *Ticonic National Bank* (1939) 307 U.S. 161, 159; *Estate of Stauffer*
15 (1959) 53 Cal.2d 124, 132).

16 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court
17 stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which
18 others derive benefits may require those passive beneficiaries to bear a fair share of the litigation
19 costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111,
20 the California Supreme Court recognized that the common benefit doctrine has been applied
21 “consistently in California when an action brought by one party creates a fund in which other
22 persons are entitled to share.”

23 Numerous appellate courts have similarly found. *See e.g., Knoff v. City and County of San*
24 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
25 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable
26 powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and
27 expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
28 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit
created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974)
44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners

1 of residential property in an inverse condemnation action).

2 Moreover, at least eight federal courts of appeal-the First, Third, Sixth, Seventh, Ninth,
3 Tenth, Eleventh and the D.C. Circuit-have endorsed the “percentage fee” method for determining
4 reasonable attorneys’ fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.* 74 F.
5 Supp. 2d 393, 396-398 (S.D.N.Y. 1999) (describing the overwhelming weight of federal authority
6 in favor of the percentage fee method); *see also, Lealao v. Beneficial California, Inc.* (2000) 82
7 Cal.App.4th 19, 30-31 (describing same).

8 Thus, as Plaintiff’s Counsel has expended a significant amount of time and money to secure
9 a \$385,000 settlement fund for the LWDA and PAGA Members [*Schiller*, 2012 U.S. Dist. LEXIS
10 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees have resulted
11 in the preservation or recovery of a certain or easily calculable sum of money-out of which sum or
12 ‘fund’ the fees are to be paid.”)], and in doing so, has exclusively bore the risk of loss for such
13 expenditures of time and expenses (as the LWDA elected not to take the case after receiving the
14 PAGA Notice), Plaintiff’s Counsel is entitled to claim reasonable fees from that fund under
15 applicable precedent.⁷

16 **B. The Fee Amount Requested Is Reasonable**

17 In addition to the forgoing, Plaintiff’s Counsel’s request for attorneys’ fees in the amount
18 of one-third of the \$385,000 Gross Settlement Amount, falls well within the “zone of
19 reasonableness.”

20 It is important to highlight at the outset that the fee amount presently sought is not
21

22 ⁷ Plaintiff’s Counsel is also entitled to recover attorney’s fees and costs as a matter of right under
23 the PAGA statute [*Labor Code* § 2699(g)(1) (“Any employee who prevails in any action shall be
24 entitled to an award of reasonable attorney’s fees and costs.”)], and under *C.C.P.* § 1021.5, as the
25 instant PAGA action was by definition “for the public benefit” and secured monetary awards for
26 approximately 110 aggrieved employees. *See e.g., Estrada v. FedEx Ground Package System, Inc.*
27 (2007) 154 Cal. App. 4th 1, 16-17 (2007) (“Estrada’s personal motivation does not diminish the
28 fact that he pursued this public interest class action not only for himself but on behalf of a class
comprised of FedEx’s past and present drivers and ultimately obtained awards for 209 drivers. []
No more is required to satisfy the ‘significant benefit,’ ‘public interest,’ and ‘large class of persons’
requirements of Code of Civil Procedure section 1021.5.”).

1 extraordinary, but actually falls at the “average” fee deemed reasonable under California State court
2 authority, as it is recognized that “courts may award attorney’s fees in the 30-40% range in wage
3 and hour class actions that result in recovery of a common fund under \$10 million.” *See e.g. Martin*
4 *v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). This fee falls
5 directly within that range.

6 Moreover, Plaintiff’s Counsel agreed to incur the contingency risk for the benefit of the
7 State of California (which elected not to take the case after receiving the PAGA Notice). Gaines
8 Decl., ¶¶ 26-31. The significant results achieved, and the underlying facts therefrom, justify
9 Plaintiff’s Counsel’s requested fee as reasonable under all applicable standards.

10 **C. The Fee Amount Allocated by The Settlement Agreement Is Within the**
11 **Zone of Reasonableness Under the “Percentage of the Fund” Method**

12 The amount of fees requested by Plaintiff’s Counsel is reasonable based on standards
13 applicable to the “percentage of the fund” method. “When assessing whether the percentage
14 requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of
15 litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the
16 financial burden; and (f) the awards made in similar cases.” *See Vasquez v. Coast Valley Roofing,*
17 *Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

18 First, the results achieved by Plaintiff’s Counsel are significant, as Defendant has agreed to
19 pay \$385,000 under the Settlement. This is a significant recovery given the risk of success in
20 obtaining any recoverable penalties [Gaines Decl., ¶¶ 20-21, 28], and further, as the settlement of
21 PAGA claims impacting a comparable number of individuals have been approved as reasonable for
22 between \$7,500 and \$15,000. *See* Section III.B.4., *supra*.

23 Second, such results were achieved in the face of significant risks. As explained above,
24 Defendant maintained defenses to Plaintiff’s PAGA claims that very well could have resulted in a
25 net-zero recovery at trial.

26 Third, notwithstanding this risk of loss, Plaintiff’s Counsel undertook representation of the
27 instant PAGA claim for the benefit of the State of California on a contingency basis. *See* Gaines

Decl. at ¶¶ 26-31. This required Plaintiff's Counsel to personally assume the risk of nonpayment in securing the very substantial financial benefit the State of California stands to receive, and also constitutes a "loan" on Plaintiff's Counsel services – both of which are factors that warrant fee enhancement under applicable California Supreme Court authority:

One of the most common fee enhancers . . . is for contingency risk. We reaffirmed the propriety of a contingency risk enhancement in *Ketchum*: "The economic rationale for fee enhancement in contingency cases has been explained as follows: 'A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.' (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534, 567.) 'A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.'"

Graham v. DaimlerChrysler Corp. (2004) 34 Cal. 4th 553, 579-580.

Finally, the percentage requested by Plaintiff's Counsel falls within a typical range, particularly in light of the modest settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796, 23 ("[C]ourts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million." See also *Crandall v. U-Haul International, Inc.*, LASC Case No. BC178775 (awarding attorneys' fees of 40% of a common fund).

Attorneys' fee awards in the amount sought here are well-established by California law and practice. Accordingly, Plaintiff's Counsel's fee request is fair and reasonable and is consistent with the awards in California and the Ninth Circuit. It is also reasonable given the history of this action and the results obtained.

D. While the Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common Fund, It is Further Confirmed by a Lodestar Cross-Check

The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* (2016) 1

1 Cal.5th 480, 506, that “[t]he percentage of fund method survives in California class action cases.”

2 Specifically, the *Laffitte* Court held:

3 The recognized advantages of the percentage method—including relative
4 ease of calculation, alignment of incentives between counsel and the class, a
5 better approximation of market conditions in a contingency case, and the
6 encouragement it 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.

7 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when
8 a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff
9 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or
10 plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d
11 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties, the trial
12 court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v.*
13 *Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
14 method for calculating attorneys’ fees more accurately reflects the results achieved for the putative
15 class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’
16 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
17 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
18 percentage-of-recovery method is generally favored in common fund cases because it allows courts
19 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
20 failure.”).

21 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with
22 tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar
23 (hours worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed
24 to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-
25 06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold
26 further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the
27 court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to

1 evaluate the reasonableness of a requested percentage fee.”)

2 Here, Plaintiff’s Counsel’s fee request of one-third of the Gross Settlement Amount is fair
3 and reasonable based on a percentage of the recovery, and as well as when confirmed with a lodestar
4 cross-check. First, “regardless whether the percentage method or the lodestar method is used, fee
5 awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008)
6 162 Cal.App.4th 43, 66, fn. 11. This is also consistent with Plaintiff’s Counsel’s experience in
7 similar wage and hour class action matters. *Gaines Decl.*, ¶ 2-5; 23-25. Thus, the percentage sought
8 by Plaintiff’s Counsel here is reasonable.

9 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
10 multiplying the number of hours reasonably expended by each attorney or legal staff member by
11 their reasonable hourly rates. *See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 48. The court then
12 enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty
13 and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49;
14 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92
15 Cal.App.4th 819, 834 (“There is no hard-and-fast rule limiting the factors that may justify an
16 exercise of judicial discretion to increase or decrease a lodestar calculation”).

17 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
18 *Chavez, supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of*
19 *Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (approving multiplier of ~2.34); *Coalition*
20 *for L. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving
21 multiplier of ~2.04). In representative actions such as this one, where the value of the benefit
22 conferred to the class “can be monetized with a reasonable degree of certainty,” a court may “adjust
23 the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
24 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
25 litigation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557. In doing so, “the court
26 determines, retrospectively, whether the litigation involved a contingent risk or required
27 extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate

1 the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at 503-05.

2 In this case, Plaintiff’s Counsel is submitting an attorney fee request equaling \$128,334.
3 Based on a projected final lodestar of \$72,325, this yields a “multiplier” of approximately 1.77 over
4 the \$128,334 fee request. Gaines Decl., ¶ 22; **Exhibit D** to Gaines Decl. The billing rates used to
5 compute the lodestar are reasonable in view of the evidence submitted herewith. Gaines Decl., ¶¶
6 2-5; 23-25; **Exhibit D**.

7 Based thereon, and for the reasons discussed above (the significant risk in continuing to
8 litigate this matter and in seeking to obtain penalties based on the claims asserted; the risks and
9 burden involved in representation on a contingency basis; the knowledge and experience of
10 Plaintiff’s Counsel; and the value obtained by Plaintiff’s Counsel for the PAGA Members), it is fair
11 and reasonable to account for these risks and compensate Plaintiff’s Counsel with a fee award of
12 \$128,334 (one-third of the Gross Settlement Amount).

13 **E. Plaintiff’s Counsel’s Request for Costs is Reasonable**

14 In the course of this litigation, Plaintiff’s Counsel incurred out-of-pocket costs of
15 \$10,016.63. *See* Gaines Decl. at ¶ 32, **Exhibit E**. As demonstrated in the Gaines Declaration
16 submitted herewith, the incurred costs included filing fees, expert analysis fees, mediation fees,
17 service of process fees, and other charges typical of litigation of this nature. *Id.* Such costs are
18 appropriate for cost reimbursement in these types of cases. *See e.g., In re United Energy Corp. Sec.*
19 *Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (C.D. Cal. 1989) (quoting *Newberg*, Attorney Fee
20 Awards, § 2.19 (1987)); *see also, In re GNC Shareholder Litigation* 668 F. Supp. 450, 452 (W.D.
21 Pa. 1987).

22 The costs incurred by Plaintiff’s Counsel in this litigation benefited Plaintiff, PAGA
23 Members, and the State. Plaintiff’s cost request is reasonable and represents the costs that
24 Plaintiff’s Counsel was required to incur to prosecute this action and should therefore be granted.

25 **V. THE SERVICE AWARD PAYMENT SOUGHT BY PLAINTIFF IS**
26 **REASONABLE AND SHOULD BE APPROVED**

27 The Parties have agreed that Plaintiff John Jadelrab will be paid a service award payment

1 in the amount of \$10,000. This payment is intended to recognize the time and effort that Mr.
2 Jadelrab spent on behalf of other PAGA Members and the State and compensate him for his general
3 release of all claims against Defendant. *See* Settlement Agreement at ¶ 41. *See* Declaration of John
4 Jadelrab, submitted herewith. *See* Gaines Decl., ¶ 36.

5 As to an incentive award, case law supports the award of incentive payments in private
6 attorney general actions. The Ninth Circuit has recognized that a named Plaintiff's "willingness to
7 act as a private attorney general" may justify the award of an incentive payment. *Rodriguez v. West*
8 *Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub*
9 *LLC*, 2013 WL 12415482 (E.D. Cal., Sep. 6, 2013), the United States District Court for the Eastern
10 District of California approved a similar PAGA-only settlement and awarded a service payment to
11 the representative Plaintiff in recognition of his efforts.

12 The traditional bases for awarding incentive awards in class settlements support the award
13 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
14 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive
15 awards and held that "the rationale for making enhancement or incentive awards to named Plaintiffs
16 is that he or she should be compensated for the expense or risk he has incurred in conferring a
17 benefit" on others. *Id.* at 806. That rationale applies synonymously in this Action.

18 Without Plaintiff's efforts, there would be no recovery at all. The requested award is
19 appropriate to compensate Plaintiff for the risk and expense he incurred in conferring a benefit on
20 other of Defendant's employees and the State of California. As a result of the named Plaintiff's
21 efforts, PAGA Members will receive monetary settlement payments, and the State of California
22 will receive \$169,237.03 to be put toward education about and enforcement of California's labor
23 laws. *See* Gaines Decl., ¶ 37.

24 In this case, Plaintiff performed the following tasks, among others: (1) assisted Counsel in
25 investigating and substantiating the claims alleged in this action, including multiple interviews with
26 counsel to review facts, documents, and Defendant's policies; (2) assisted in the preparation of the
27 complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the

1 settlement of this litigation. *See generally*, Jadelrab Declaration. Moreover, as with any Plaintiff
2 who files a civil action, the named Plaintiff undertook the financial risk that, in the event of a
3 judgment for Defendant in this action, he could have been personally responsible for any attorneys'
4 fees and costs awarded in Defendant's favor.

5 The award of such payment to Plaintiff is especially warranted in a case like this one. It is
6 necessary to ensure that employees continue to bring forth claims that enforce their rights.
7 Individuals like the named Plaintiff (and most PAGA Members) would have little, if any, recourse
8 without the representative action device. Most PAGA Members – like the named Plaintiff – would
9 be fearful of retaliation in response to filing any lawsuit, much less a representative action suit.
10 Plaintiff must be commended for pursuing his claims; the modest payment sought here is an
11 appropriate means of doing so.

12 Plaintiff is also entering into a full general release against Defendant and its Released
13 Parties, which is far broader than the release by other PAGA Members. Specifically, PAGA
14 Members are releasing only limited PAGA civil penalty claims, while Plaintiff is releasing all
15 claims which he asserts or could assert against Defendant. *See* Settlement Agreement at ¶¶ 51-52.
16 His individual wage and hour claims are valued at no less than \$56,697.10. Gaines Decl. at ¶ 38;
17 **Exhibit F**. No other PAGA Members is subject to this broad form of release. *Id.*

18 This broad release by Plaintiff was negotiated (and necessary) to resolve the Action.
19 Plaintiff threatened to assert his individual claims and Defendant required that they be resolved in
20 connection with the resolution of the Action. Without the resolution and release of Plaintiff's
21 individual claims, litigation would continue in a piecemeal fashion. Defendant is buying peace with
22 this settlement, such that its objectives would not be achieved absent the general release. Gaines
23 Decl. at ¶ 39.

24 **VI. CONCLUSION**

25 As shown herein, the Settlement Agreement is fair, adequate and reasonable, as it represents
26 a reasoned compromise obtained through arms-length negotiations. For all the reasons set forth
27 above, Plaintiff respectfully requests that this Court, as set forth in the proposed Order and

1 Judgment Approving Settlement, do the following:

- 2 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
3 2699, subpart 1;
- 4 2. Appoint Phoenix Settlement Administrators as the Settlement Administrator and
5 approve its administration fees up to \$11,000 for payment out of the Gross Settlement Amount;
- 6 3. Approve the award of attorneys' fees of \$128,334, and costs of \$10,016.63, to
7 Plaintiff's Counsel, payment of which shall come from the Gross Settlement Amount;
- 8 4. Approve the service award payment to Plaintiff John Jadelrab in the amount of
9 \$10,000 from the Gross Settlement Amount;
- 10 5. Direct disbursement of the Net Settlement Amount to the LWDA and all PAGA
11 Members as provided for in the Settlement Agreement; and
- 12 6. Enter judgment in accordance with the Settlement Agreement.

13 Date: January 3, 2023

14 Respectfully submitted,

15 GAINES & GAINES, APLC

16
17 By: 

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