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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF BUTTE

RICK BROWER, on behalf of himself and
all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

AUTOMOTIVE ELITE INVESTMENTS,
INC., a California corporation, d/b/a
CHICO VOLKSWAGEN and CHICO
MAZDA and DOES 1 through 10,
inclusive,

Defendants.

Case No. 22CV00032

Assigned to the Hon. Stephen E. Benson, Dept. 6

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

Date: August 31, 2022

Time: 9:00 a.m.

Dept.: 6

Complaint Filed: January 6, 2022

1 **PLEASE TAKE NOTICE THAT** on August 31, 2022 at 9:00 a.m., or as soon thereafter
2 as the matter may be heard, in Department 6 of the above-entitled Court, located at 1775 Concord
3 Avenue, Chico, California 95928, Plaintiff Rick Brower will and hereby does move unopposed for
4 an Order: (1) granting approval of the proposed settlement of claims brought pursuant to the Private
5 Attorneys General Act of 2004 (Labor Code § 2698 *et seq.*) (“PAGA”) set forth in the parties’
6 Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (the “Settlement”
7 or “Settlement Agreement”); (2) appointing Phoenix Class Action Administration Solutions
8 (“Phoenix”) as the Settlement Administrator and approving payment of its fees not to exceed
9 \$3,500 from the Maximum Settlement Amount; (3) directing disbursement of the Maximum
10 Settlement Amount pursuant to the terms of the Settlement Agreement; (4) directing payment of
11 attorneys’ fees and litigation costs from the Maximum Settlement Amount not to exceed
12 \$32,666.66 and \$5,489.20, respectively, to Counsel for Plaintiff; (5) directing an enhancement
13 payment from the Maximum Settlement Amount in the amount of \$8,000 to Plaintiff Rick Brower;
14 and (6) entering Judgment consistent with the Settlement Agreement.

15 DATED: July 27, 2022

Respectfully submitted,

16 GAINES & GAINES,
17 A Professional Law Corporation

18
19 By: Daniel F. Gaines
20 DANIEL F. GAINES
21 ALEX P. KATOFISKY
22 Attorneys for Plaintiff Rick Brower

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Rick Brower (“Plaintiff”), an “aggrieved employee” under the Labor Code’s
4 Private Attorneys General Act of 2004 (“PAGA”), respectfully moves this Court for an Order
5 granting approval of the proposed Settlement of the above-captioned lawsuit against Defendant
6 Automotive Elite Investments, Inc. d/b/a Chico Volkswagen and Chico Mazda (“Defendant”). The
7 proposed Settlement will dispose of the Settled Claims asserted on behalf of Plaintiff and
8 approximately 49 non-exempt employees who worked approximately 992 pay periods for
9 Defendant in California between October 27, 2020 and June 3, 2022 (the “Settlement Period”) (the
10 “Aggrieved Employees”).

11 Plaintiff’s complaint addresses claimed violations of employee protections embodied in the
12 California Labor Code and penalties stemming therefrom for the violation of PAGA. Plaintiff
13 alleged that Defendant failed to pay Plaintiff and Aggrieved Employees all minimum and overtime
14 wages due, in violation of Labor Code §§ 510, 558 and 1194; failed to pay premium wages to
15 Plaintiff and Aggrieved Employees who were denied rest periods, in violation of Labor Code §§
16 226.7 and 558 and IWC Wage Order 7-2001; failed to pay premium wages to Plaintiff and
17 Aggrieved Employees who were denied meal periods, in violation of Labor Code §§ 226.7, 512,
18 and 558 and IWC Wage Order 7-2001; failed to provide Plaintiff and Aggrieved Employees with
19 wage statements that fully and accurately itemized the requirements set forth in Labor Code §
20 226(a); and failed to timely pay Plaintiff and certain Aggrieved Employees all wages due at the
21 separation of their employment based on the time frames required by Labor Code §§ 201 and 202.

22 As a result of Defendant’s alleged violations of the Labor Code, approximately 49 non-
23 exempt employees are claimed to have suffered Labor Code violations for up to 992 aggregate pay
24 periods, with each pay period warranting a \$100 civil penalty based on PAGA’s penalty provisions.
25 Defendant denies that any of the Aggrieved Employees suffered any Labor Code violations and
26 denies that Plaintiff or the Aggrieved Employees are entitled to recover any civil penalties under
27 PAGA.

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

9 The value achieved by the Settlement may be gleaned from the fact that the Labor and
10 Workforce Development Agency (“LWDA”) and the approximately 49 Aggrieved Employees
11 encompassed by the Settlement will receive no less than \$48,344.14 under the terms of the
12 Settlement, which, pursuant to the operative statute, shall be allocated “75 percent to the Labor and
13 Workforce Development Agency . . . and 25 percent to the aggrieved employees.” *See Labor Code*
14 *§ 2699(i)*. This is a reasonable recovery, not only because further litigation may have resulted in a
15 net-zero recovery based on the defenses available to Defendant, but because the amount secured by
16 Plaintiff is sizable and in line with – if not more substantial than – similar settlements of these types
17 of claims under PAGA. It is also important to underscore that all penalty amounts paid to
18 Aggrieved Employees will be an unexpected windfall, as employees typically do not bring
19 individual lawsuits asserting only PAGA penalties.

20 For these reasons, as set forth more fully herein, Plaintiff respectfully request that this Court
21 enter the Order submitted herewith.

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

23 **A. The Parties**

24 Defendant operates Volkswagen and Mazda car dealerships in Butte County, California,
25 where it employed Plaintiff as a non-exempt employee from January 2021 through September 2021.
26 Gaines Decl. at ¶ 6.

27 The Aggrieved Employees were employed by Defendant in a non-exempt position in
28

1 California between October 27, 2020 and June 3, 2022. *See* Settlement Agreement, at ¶ 2.

2 **B. The Claims Asserted**

3 Plaintiff asserts claims that Defendant failed to pay Plaintiff and Aggrieved Employees all
4 minimum and overtime wages due, in violation of Labor Code §§ 510, 558 and 1194; failed to pay
5 premium wages to Plaintiff and Aggrieved Employees who were denied rest periods, in violation
6 of Labor Code §§ 226.7 and 558 and IWC Wage Order 7-2001; failed to pay premium wages to
7 Plaintiff and Aggrieved Employees who were denied meal periods, in violation of Labor Code §§
8 226.7, 512, and 558 and IWC Wage Order 7-2001; failed to provide Plaintiff and Aggrieved
9 Employees with wage statements that fully and accurately itemized the requirements set forth in
10 Labor Code § 226(a); and failed to timely pay Plaintiff and certain Aggrieved Employees all wages
11 due at the separation of their employment based on the time frames required by Labor Code §§ 201
12 and 202. Gaines Decl. at ¶ 7.

13 **C. Procedural Posture**

14 Plaintiff exhausted PAGA's administrative notice requirements on or about October 27,
15 2021, when he submitted a letter by online submission to the LWDA and by certified mail to
16 Defendant outlining the facts and theories underlying his claims. *See Exhibit B* to Gaines Decl. at
17 ¶ 8. Plaintiff then filed his PAGA representative complaint on January 6, 2022 in the Butte County
18 Superior Court on behalf of himself and other Aggrieved Employees seeking penalties pursuant to
19 PAGA for Defendant's violations of Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 510, 512, 558,
20 and 1194. On or about February 24, 2022, Defendant filed its Answer to Plaintiff's complaint.
21 Gaines Decl. at ¶ 9.

22 Concurrently with the filing of this Motion, Plaintiff submitted the Settlement Agreement,
23 together with this Motion and all supporting documents, to the LWDA via online upload on July
24 27, 2022. Service of the LWDA is reflected on the Declaration of Service submitted herewith.
25 Gaines Decl. at ¶ 10.

26 \\\

27 \\\

1 **D. Plaintiff's Counsel's Investigation**

2 Counsel for Plaintiff engaged in informal discovery of Defendant's alleged Labor Code
3 violations, which specifically targeted evaluating the strength and value of the PAGA claims in
4 preparation for a resolution of this Action. Gaines Decl. at ¶ 11.

5 Plaintiff's Counsel obtained and reviewed multiple documents, including (i)
6 Plaintiff's employee file and wage statements, (ii) policy documents relating to the employment
7 of Plaintiff and other Aggrieved Employees, and (iii) data relating to the number of alleged
8 violations and the value of the recoverable penalties. Gaines Decl. at ¶ 12.

9 Based on the information received, as well as through discussions with Defendant's
10 Counsel, Plaintiff's Counsel was able to (i) determine the total number of distinct individuals falling
11 within the definition of "Aggrieved Employee" for the relevant statutory period, and (ii) construct
12 a damage model that calculated the maximum realistic amount of PAGA penalties that could be
13 levied against Defendant within the Settlement Period. Defendant, however, disputed Plaintiff's
14 claims and disputed both the existence of and extent of liability as alleged by Plaintiff. Gaines Decl.
15 at ¶ 13.

16 Based on Plaintiff's Counsel's experience in litigating similar "representative" wage
17 and hour claims, the degree of investigation that was conducted, and the amount of data that
18 was obtained, was sufficient to determine the potential value of the PAGA claim, and to
19 evaluate the strength of this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-5, 12-14.

20 **E. Settlement Negotiations**

21 On May 26, 2022, the Parties participated in mediation session with respected mediator,
22 Daniel J. Turner, Esq. During the mediation, the Parties engaged in arm's-length negotiations. At
23 the conclusion of the mediation, Mr. Turner successfully brought the Parties to agree on a resolution
24 of the PAGA claims asserted in the action. Gaines Decl. at ¶ 15.

25 **F. The Proposed Settlement**

26 The Parties jointly prepared and executed the Private Attorneys General Act (Labor Code
27 § 2698 *et seq.*) Settlement Agreement, attached to the Declaration of Daniel F. Gaines and filed
28

1 concurrently herewith as **Exhibit C** (the “Settlement Agreement,” or “Settlement”). The
2 Settlement Agreement sets forth the terms of the Settlement reached by the Parties, including the
3 following key points:

4 1. Defendant agrees to settle this matter for the payment of Ninety-Eight Thousand
5 Dollars (\$98,000) (the “Maximum Settlement Amount”), which shall be all inclusive,
6 encompassing (i) all payments to the Labor and Workforce Development Agency and Aggrieved
7 Employees, (ii) any and all costs of third-party administration of the settlement, (iii) Plaintiff’s
8 Counsel’s attorneys’ fees and costs of suit, and (iv) an enhancement payment to Plaintiff. *See*
9 Settlement Agreement, at ¶ 11.

10 2. The total sum available for payment of PAGA penalties shall be calculated by
11 deducting \$38,155.86 for the payment of Plaintiff’s Counsel’s fees and costs (\$32,666.66 in fees
12 and \$5,489.20 in costs)¹, \$8,000 to Plaintiff for his enhancement payment, and the costs of
13 administration (up to \$3,500) from the Maximum Settlement Amount, yielding approximately
14 \$48,344.14. Seventy-five percent (75%) of this amount, or \$36,258.10, shall be distributed to the
15 LWDA, and the remaining twenty-five percent (25%) or \$12,086.04, shall be distributed to the
16 Aggrieved Employees. *See* Settlement Agreement, at ¶ 12.

17 3. All Aggrieved Employees will receive a pro rata share of the \$12,086.04, which
18 shall be distributed based on the number of pay periods each Aggrieved Employee worked for
19 Defendant in California during the Settlement Period. *See* Gaines Decl. at ¶ 21; Settlement
20 Agreement, at ¶¶ 12(a)-12(b). Although these calculations will not be made until after approval, a
21 rough estimation of the value to the 49 individuals falling within the definition of “Aggrieved
22 Employee” may be gleaned from the fact that an equal division would provide about \$246.65 to
23 each Aggrieved Employee, net of payments to the LWDA, to the Settlement Administrator,
24 attorneys’ fees and costs. *See* Gaines Decl. at ¶ 22. The amount each Aggrieved Employee actually
25 receives will vary depending on the number of pay period he or she worked during the Settlement
26

27 ¹ Plaintiff’s Counsel’s formal fee request is one-third of the Maximum Settlement Amount and total
28 final costs of \$5,489.20, as discussed herein and set forth in **Exhibit E** to the Gaines Declaration.
This cost request is less than the \$10,000 allocated in the Settlement.

1 Period. Settlement Agreement, at ¶¶ 12(a)-12(b). The LWDA will be paid a substantial
2 \$36,258.10. *See* Gaines Decl. at ¶ 22.

3 4. In exchange for the above settlement consideration, Defendant shall be entitled to
4 the following release from each and every Aggrieved Employee, including Plaintiff²:

5 Upon entry of the Order and Judgment, Plaintiff, and all Aggrieved
6 Employees, will be forever barred from pursuing against Defendant
7 any and all Settled Claims (defined as any and all claims for PAGA
8 civil penalties under the California Labor Code, Wage Orders,
9 regulations, and/or other provisions of law alleged or that could have
10 been alleged to have been violated in the Action with respect to
11 Aggrieved Employees based on the facts alleged in the Action during
the Settlement Period [October 27, 2020 through June 3, 2022]).
Aggrieved Employees, other than Plaintiff, will not be deemed to
have released any individual wage and hour claims by virtue of this
Settlement.

12 *See* Settlement Agreement, at ¶¶ 9, 10, 22.

13 5. Settlement administration, which is to be paid from the Maximum Settlement
14 Amount, will not exceed \$3,500. *See* Settlement Agreement, at ¶ 17. Phoenix Class Action
15 Administration Solutions, a reputable settlement administration company, has agreed to administer
16 the settlement within this amount, submitting a competitive bid. *See* Gaines Decl. at ¶ 23.

17 6. As detailed herein, Plaintiff's Counsel seeks an award of attorneys' fees and
18 litigation costs of a combined \$38,155.86, and Plaintiff seeks an enhancement payment of
19 \$8,000. *See* Settlement Agreement, at ¶ 14.

20 7. Finally, under the terms of the Settlement, funds represented by uncashed checks
21 that remain outstanding 180 days after the mailing of the Settlement checks by the Settlement
22 Administrator will be tendered to the LWDA. *See* Settlement Agreement, at ¶ 21.

23 **III. LEGAL ARGUMENT**

24 **A. Standards For Approval Of A PAGA Settlement**

25 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA

26 ² This comports with settled California Supreme Court authority. *See Arias v. Superior Court*
27 (2009) 46 Cal. 4th 969, 986 (concluding that "with respect to the recovery of civil penalties,
28 nonparty employees as well as the government are bound by the judgment in an action brought
under the act . . .").

1 statute, which states that the “[t]he superior court shall review and approve any settlement of any
2 civil action filed pursuant to this part.” *See Labor Code* § 2699(1)(2).

3 As with any settlement, the Court must be mindful in conducting its inquiry that
4 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
5 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222,
6 24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is . . . ‘a yielding of
7 absolutes and an abandoning of highest hopes”’ [*Officers for Justice v. Civil Service Com.*, 688
8 F.2d 615, 624 (9th Cir., 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
9 of wasteful and expensive litigation that induce consensual settlements.” *See id.*, at 625. As such,
10 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
11 or “judged against a hypothetical or speculative measure of what might have been achieved by the
12 negotiators.” *See id.*

13 Although the operative PAGA statute does not set forth the criteria on which a PAGA
14 settlement is to be judged, California law does state that some of the factors for review of a class
15 action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. § 382 and Cal. Rules of Court, Rule
16 3.769, may be “useful in evaluating the fairness of a PAGA settlement” to the reviewing court. *See*
17 *Moniz v. Adecco USA, Inc.*, (2021) 72 Cal. App. 5th 56, 77 (“Thus, while PAGA does not require
18 the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for
19 settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public
20 and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors
21 used to evaluate class action settlements bear on a settlement's fairness—including the strength of
22 the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of
23 further litigation, and the settlement amount—these factors can be useful in evaluating the fairness
24 of a PAGA settlement.”) Courts within California have continued to approve settlements of PAGA
25 claims encompassed within class action settlements using Rule 23 criteria.³ However, it is

26
27 ³ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
28 balancing of several factors which may include, among others, some or all of the following: [1] the
strength of Plaintiff case; [2] the risk, expense, complexity, and likely duration of further litigation;
[3] the risk of maintaining class action status throughout the trial; [4] the amount offered in

important to underscore that not all Rule 23 factors can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of Rule 23.” *See Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan. 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2, 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010). Based thereon, a court’s review of a PAGA settlement necessarily implicates the following unique features that render the approval process completely distinct from approval of a class action settlement under Rule 23 or C.C.P. § 382 and Cal. Rules of Court, Rule 3.769.

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

While “[a PAGA] action is . . . designed to protect the public and penalize the employer for past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a “compromise” that stops short of rendering findings of liability and damages. Moreover, the Court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” *See Ochoa-Hernandez v. CJADER Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774, 12 (N.D. Cal. Apr. 2, 2010).

B. The Settlement Meets All The Criteria For Approval

Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA

settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a governmental participant; and [8] the 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 considerations detailed above – the proposed Settlement embodies all of the key features of a
2 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for
3 approval.

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

5 In conducting a review of a settlement, it is generally recognized that an “agreement ...
6 reached through arms-length negotiation between experienced parties . . . is entitled to a
7 presumption of fairness.” *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377,
8 44 (C.D. Cal. Apr. 12, 2010).

9 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-
10 length negotiations brokered through a respected third party neutral [Gaines Decl. at ¶ 15], (2) that
11 was negotiated by Counsel with significant experience in similar representative action litigation
12 [*see id.*, at ¶¶ 2-5 and **Exhibit A**] (3) which occurred after Counsel had conducted sufficient
13 investigation to evaluate the strength and potential value of the PAGA claims, as well as evaluating
14 the risks of litigating this claim through trial. *See id.*, at ¶¶ 12-14, 24-26. Based thereon, the court
15 should give considerable weight to the competency and integrity of counsel in assuring itself that
16 the Settlement Agreement represents an arm’s-length transaction entered without self-dealing or
17 other potential misconduct.

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

20 The relative strength of the PAGA claim brought by Plaintiff weighs in favor of the Court
21 finding that the settlement is fair, adequate, and reasonable, as Defendant maintained numerous
22 defenses to the theories of penalty-liability put forward by Plaintiff that, if successful, had the
23 potential to completely eliminate any recovery.

24 This case addresses alleged violations of important employee protections embodied in the
25 California Labor Code – namely, that Defendant failed to pay all minimum and overtime wages
26 due (Labor Code §§ 510, 558, and 1194); failed to provide legally compliant meal and rest periods,
27 or compensation in lieu thereof (Labor Code §§ 226.7, 512, and 558); failed to issue accurate and
28

1 complete wage statements (Labor Code § 226(a)); and failed to pay all wages due and owing upon
2 separation of employment (Labor Code §§ 201-202). Defendant’s maximum theoretical exposure
3 in this action, without stacking potentially duplicative and oppressive penalties, totals
4 approximately \$99,200, computed by multiplying 992 aggregate pay periods by \$100 each. *See*
5 Gaines Decl. at ¶ 18. While the PAGA does provide the potential for a heightened penalty for
6 subsequent violations, courts are often hesitant to award a heightened penalty where there is no
7 prior citation by the Labor Commissioner. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144
8 (9th Cir. 2021) (holding no heightened penalty where defendant was not previously notified of any
9 Labor Code violations). The Ninth Circuit’s holding in *Bernstein* also supports a settlement
10 valuation that does not “stack” penalties. *Id.*

11 Defendant contends it acted within the requirements of California law at all times as to all
12 Aggrieved Employees. It further contends that not every pay period at issue involved an alleged
13 Labor Code violation subject to civil penalties. Moreover, it maintained that even if the Court did
14 award penalties, the Court could and would *substantially* reduce the penalties awarded based on
15 the discretionary factors contained in Labor Code § 2699(e)(2) (“In action by an aggrieved
16 employee . . . , a court may award a lesser amount than the maximum civil penalty amount specified
17 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
18 result in an award that is unjust, arbitrary and oppressive, or confiscatory.”). *See* Gaines Decl. at ¶
19 17. Defendant also argued that it had a valid and enforceable arbitration agreement, which could
20 preclude the litigation of PAGA claims on a representative basis altogether, given the United States
21 Supreme Court’s recent ruling in *Viking River Cruises v. Moriana*, 142 S.Ct. 734 (2022). *Id.*

22 Based on these disputes, which had the potential to completely eliminate Plaintiff’s
23 recovery, the range of realistic “litigation outcomes” on Plaintiff’s PAGA claim was defined by a
24 “maximum possible liability” amount of approximately \$99,200 based on 992 aggregate pay
25 periods in the Settlement Period, without stacking claims, at \$100 per violation, and a net-zero
26 recovery based on the defenses asserted by Defendant. Gaines Decl. at ¶ 18. Notwithstanding the
27 existence of such issues, the Settlement achieves a significant benefit. As such, this factor weighs
28

1 very heavily in favor of resolution by way of the compromise set forth in the Settlement. *Id.* at ¶
2 19.

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

5 Approval of the proposed Settlement is also appropriate in light of the risk, expense, and
6 complexity of further litigation. As discussed above, the proposed Settlement takes into
7 consideration the specific factual and legal hurdles faced by the Plaintiff in establishing
8 Defendant's penalty-liability in this case, which again, may have resulted in a net-zero recovery.
9 These risks – when balanced with the fact that the settlement achieves a very significant recovery
10 (as demonstrated below), and that further litigation poses a risk of diminishing such recovery by
11 increasing litigation expenses – weigh strongly in favor of Settlement approval.

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

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

17 The proposed settlement is not to be judged against a hypothetical or
18 speculative measure of what might have been achieved by the
19 negotiators." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d at
20 625 (emphasis in original). Thus, “the very essence of a settlement is
21 compromise, ‘a yielding of absolutes and an abandoning of highest
22 hopes.’” *Id.* at 624 (citations omitted). As the Second Circuit has
23 pointed out: “The fact that a proposed settlement may only amount
24 to a fraction of the potential recovery does not, in and of itself, mean
25 that the proposed settlement is grossly inadequate and should be
26 disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 &
27 n.2 (2nd Cir. 1974).

28 *See Linney*, 151 F.3d at 1242.

Here, after all deductions are made for administration, an enhancement payment, attorneys’
fees and costs, \$48,344.14 will be paid out, of which \$36,258.10 (i.e. 75%) will go to the LWDA,
and \$12,086.04 (i.e. 25%) will go to the Aggrieved Employees, as required by Labor Code § 2699(i)

1 (“civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to
2 the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”).
3 Gaines Decl. at ¶¶ 21-22.

4 This result is remarkable, as settlements of PAGA claims impacting thousands of
5 individuals have been approved as reasonable for amounts far less than the payment in this case.
6 *See Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012)
7 (“Defendant has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the \$10,000,
8 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will benefit
9 the class The Court finds that the PAGA payment is set at a reasonable amount, and it shall be
10 approved.”); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal.
11 Oct. 29, 2012) (“GTI agrees to allocate \$10,000 to the plaintiff’s PAGA claims, and will pay \$7,500
12 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports with
13 settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
14 allocation of the Settlement to the plaintiff’s PAGA claim.”); *Schiller v. David's Bridal, Inc.*, 2012
15 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) (“Pursuant to the Settlement Agreement, the
16 parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .
17 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
18 be approved.”); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
19 2012) (“Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
20 California Labor and Workforce Development Agency The Court finds that the PAGA
21 payment is set at a reasonable amount, and it shall be approved.”).⁴

22 Thus, notwithstanding the existence of issues having the potential to completely eliminate
23 recovery on the PAGA claims, the Settlement Agreement not only achieves a recovery that exceeds
24

25 ⁴ Significantly, several of the above-cited actions involved substantially more “aggrieved
26 employees” than the approximately 49 Aggrieved Employees in the instant Lawsuit. *See Franco*,
27 2012 U.S. Dist. LEXIS 169057, 14 (“2,055 Class Members were ultimately identified”); *Garcia*,
28 2012 U.S. Dist. LEXIS 160052, at 12 (class comprised of “approximately 1,869 individuals”);
Schiller, 2012 U.S. Dist. LEXIS 80776, 16 (“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 typical PAGA awards routinely approved by the courts, it recovers significant monies for
2 Aggrieved Employees which they otherwise would not receive. As such, this factor balances
3 strongly in favor of approval of the Settlement. Gaines Decl., ¶ 19.

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

5 As discussed above, the California Supreme Court has concluded that in the context of
6 PAGA “the nonparty employees, because they were not given notice of the action or afforded any
7 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
8 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the release provided in exchange for
9 the foregoing consideration is limited to the civil penalties asserted in the Action under Labor Code
10 §§ 2698 *et seq.* *See* Settlement Agreement, at ¶¶ 9, 10, and 22.

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

12 **6. The Experience and Views of Plaintiff’s Counsel Favor Approval of the**
13 **Settlement**

14 Plaintiff’s Counsel has a significant degree of experience in complex wage and hour
15 litigation. *See* Gaines Decl., ¶¶ 2-5, Gaines Decl. at **Exhibit A**. In Plaintiff’s Counsel’s view, the
16 benefit conferred by the proposed Settlement is fair, reasonable, and adequate under the
17 circumstances, as it reflects a reasoned compromise which takes into consideration the risks
18 inherent in this case which had the potential to completely eliminate recovery. Gaines Decl., ¶¶
19 16-19. As such, this factor balances in favor of approval of the Settlement.

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

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

27 Here, the extent of discovery conducted was sufficient to enable Plaintiff’s Counsel to
28

1 evaluate the strength and value of the claim for purposes of settlement. Gaines Decl. at ¶¶ 11-14.
2 As discussed above, Plaintiff's Counsel's investigation was sufficient to, among other things,
3 tabulate with precision the total number of alleged Labor Code violations at issue during the
4 Settlement Period, identify the total number of individuals falling within the definition of
5 "Aggrieved Employee" for the Settlement Period, and assess the strength of the claims alleged.

6 Based on Plaintiff's Counsel's experience litigating wage and hour claims, such
7 investigation was sufficient to determine the potential value of the PAGA claims, and to evaluate
8 the strength of these claims for purposes of settlement. *See* Gaines Decl. at ¶ 14.

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

11 In addition to the factors presented above, the proposed Settlement Agreement does not
12 possess any obvious deficiencies. The Settlement contemplates entry of an order and judgment
13 (submitted concurrently herewith) which approves the Settlement and enters Judgment. Paragraph
14 27 of the Settlement Agreement and paragraph 7 of the proposed order authorize the Court to retain
15 jurisdiction over the Action. This procedure effectively disposes of the Action in its entirety,
16 documents the Court's approval of the Settlement Agreement as required by PAGA, and allows for
17 Court intervention if necessary to enforce the terms of the Settlement Agreement. In sum, under
18 the applicable standards for approval of PAGA settlements in California, the settlement in this case
19 meets the standards for approval.

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

22 Pursuant to the terms of the Settlement, Plaintiff's Counsel seeks attorneys' fees of
23 \$32,666.66 and reimbursement of total litigation costs of \$5,489.20, falling within the bounds
24 authorized by the Settlement Agreement. *See* Settlement Agreement, at ¶ 13. Plaintiff's Counsel's
25 entitlement to an award of attorneys' fees and costs is warranted on multiple independent grounds.
26 Further, the amount of fees requested falls well within the range of reasonableness under applicable
27 standards, as the amount requested constitutes a "percentage of the fund" deemed reasonable in
28 similar wage and hour settlements of this size and approved by California courts, which is not only

1 warranted based on the contingency risk Plaintiff's Counsel has agreed to incur for the benefit of
2 the State of California and Aggrieved Employees, but also based on the significant results achieved,
3 as the Settlement obtains a recovery substantially above the range approved as reasonable by
4 California state and federal courts. Based thereon, Plaintiff's Counsel respectfully requests that the
5 Court enter an order approving the fee and cost amounts requested.

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

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

12 Courts have long recognized the "common fund" or "common benefit" doctrine, under
13 which attorneys who create a common fund or benefit for a group of persons may be awarded their
14 fees and costs to be paid out of the fund. *Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25,
15 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
16 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
17 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
18 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

19 The California Supreme Court has held that, "when a number of persons are entitled in
20 common to a specific fund, and an action brought by a Plaintiff or Plaintiff for the benefit of all
21 results in the creation or preservation of that fund, such Plaintiff or Plaintiff may be awarded
22 attorneys' fees out of the fund." *Serrano III, supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d
23 1; *see also Boeing, supra*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit
24 of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as
25 a whole."); *Mills, supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common
26 fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter
27 Group) at § 17:172.3 explains the common fund doctrine as follows:
28

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

5 The percentage-of-the-fund approach appears to be the preferred method of awarding fees
6 in traditional common fund cases, such as this case. Where the settlement amount is a “certain or
7 easily calculable sum of money,” use of the percentage-of-the-fund method is appropriate. *Serrano*
8 *III*, 20 Cal. 3d at 35; *see also Laffitte v. Robert Half Int’l*, (2016) 1 Cal.5th 480, 503 (“We join the
9 overwhelming majority of federal and state courts in holding that when class action litigation
10 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
11 powers awards class counsel a fee out of that fund, the court may determine the amount of a
12 reasonable fee by choosing an appropriate percentage of the fund created.”).

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

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

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

28 Numerous appellate courts have similarly found. *See e.g., Knoff v. City and County of San*

1 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
2 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable
3 powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and
4 expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
5 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit
6 created by action compelling state to claim dormant bank accounts); *Parker v. Butte* (1974) 44
7 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners of
8 residential property in an inverse condemnation action).

9 Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth,
10 Tenth, Eleventh and the D.C. Circuit—have endorsed the “percentage fee” method for determining
11 reasonable attorneys’ fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.*
12 (S.D.N.Y. 1999) 74 F. Supp. 2d 393, 396-398 (describing the overwhelming weight of federal
13 authority in favor of the percentage fee method); *see also, Lealao v. Beneficial California, Inc.*
14 (2000) 82 Cal.App.4th 19, 30-31 (describing same).

15 Thus, as Plaintiff’s Counsel have expended a significant amount of time and money to
16 secure a \$48,344.14 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S.
17 Dist. LEXIS 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees
18 have resulted in the preservation or recovery of a certain or easily calculable sum of money-out of
19 which sum or ‘fund’ the fees are to be paid.”)], and in doing so, have exclusively borne the risk of
20 loss for such expenditures of time and expenses (as the LWDA elected not to take the case after
21 receiving the PAGA Notices), Plaintiff’s Counsel are entitled to claim reasonable fees from that
22 fund under applicable precedent.⁵

23
24 ⁵ Plaintiff’s Counsel is also entitled to recover attorney’s fees and costs as a matter of right under
25 the PAGA statute [*Labor Code* § 2699(g)(1) (“Any employee who prevails in any action shall be
26 entitled to an award of reasonable attorney’s fees and costs.”)], and under *C.C.P.* § 1021.5, as the
27 instant PAGA action was by definition “for the public benefit” and secured monetary awards for
28 approximately 188 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.*
(2007) 154 Cal. App. 4th 1, 16-17 (2007) (“Estrada’s personal motivation does not diminish the
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 **B. The Fee Amount Requested Is Reasonable**

2 In addition to the forgoing, Plaintiff’s Counsel’s request for attorneys’ fees in the amount of
3 \$32,666.66, or one-third of the \$98,000 Maximum Settlement Amount, falls well within the “zone
4 of reasonableness.”

5 It is important to highlight at the outset that the fee amount presently sought is not
6 extraordinary, but actually falls at the “average” fee deemed reasonable under California State court
7 authority, as it is recognized that “courts may award attorney’s fees in the 30-40% range in wage
8 and hour class actions that result in recovery of a common fund under \$10 million.” *See e.g. Martin*
9 *v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). In fact, this fee
10 request falls right in the middle of that range.

11 Moreover, taking into account the contingency risk Plaintiff’s Counsel agreed to incur for
12 the benefit of the State of California (which elected not to take the case after receiving the PAGA
13 Notice), and the significant results achieved – facts which justify the requested fee – Plaintiff’s
14 Counsel’s requested fee is reasonable under all applicable standards.

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

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

23 First, the results achieved by Plaintiff’s Counsel are significant, as Defendant shall
24 pay \$98,000 pursuant to the Settlement. This is a significant recovery given the risk of
25 success in obtaining any recoverable penalties [Gaines Decl. at ¶ 25], and further, as the
26 settlement of PAGA claims impacting much higher numbers of individuals have been
27 approved as reasonable for between \$7,500 and \$15,000. *See* Section III.B.4., *supra*.

28 Second, such results were achieved in the face of significant risks. As explained above,

1 Defendant maintained defenses to Plaintiff's PAGA claim that very well could have resulted in a
2 net-zero recovery at trial. Gaines Decl. at ¶ 26.

3 Third, notwithstanding this risk of loss, Plaintiff's Counsel undertook representation of the
4 instant PAGA claim for the benefit of the State of California on a contingency basis. Gaines Decl.
5 at ¶ 27. This not only required Plaintiff's Counsel to personally assume the risk of nonpayment in
6 securing the very substantial financial benefit the State of California stands to receive, but
7 constitutes a "loan" on Plaintiff's Counsel services – both of which are factors warranting fee
8 enhancement under applicable California Supreme Court authority:

9 One of the most common fee enhancers . . . is for contingency risk.
10 We reaffirmed the propriety of a contingency risk enhancement in
11 Ketchum: The economic rationale for fee enhancement in
12 contingency cases has been explained as follows: A contingent fee
13 must be higher than a fee for the same legal services paid as they are
14 performed. The contingent fee compensates the lawyer not only for
15 the legal services he renders but for the loan of those services. The
16 implicit interest rate on such a loan is higher because the risk of
17 default (the loss of the case, which cancels the debt of the client to
18 the lawyer) is much higher than that of conventional loans. A lawyer
19 who both bears the risk of not being paid and provides legal services
20 is not receiving the fair market value of his work if he is paid only
21 for the second of these functions. If he is paid no more, competent
22 counsel will be reluctant to accept fee award cases.

23 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, 579-580 (internal citations and
24 quotations omitted).

25 Finally, the percentage requested by Plaintiff's Counsel falls within a typical range,
26 particularly in light of the settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796, 23
27 ("[C]ourts may award attorney's fees in the 30-40% range in wage and hour class actions that result
28 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.

1 **D. Plaintiff's Counsel's Request for Costs is Reasonable**

2 In the course of this litigation, Plaintiff's Counsel collectively incurred out-of-pocket costs
3 of \$5,489.20 through the conclusion of this matter. *See* Gaines Decl. at ¶ 31, **Exhibit D**.

4 As demonstrated in the Gaines Declaration submitted herewith, the incurred costs included
5 filing fees, mediation fees, service of process fees, mailing charges, and other charges typical of
6 litigation of this nature. *Id.* Such costs are appropriate for cost reimbursement in these types of
7 cases. *See e.g., In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (quoting
8 *Newberg*, Attorney Fee Awards, § 2.19 (1987)); *In re GNC Shareholder Litigation* (W.D. Pa. 1987)
9 668 F. Supp. 450, 452.

10 The costs incurred by Plaintiff's Counsel in this litigation benefited Plaintiff, Aggrieved
11 Employees, and the State. In light of the litigation costs that Plaintiff's Counsel was required to
12 incur to prosecute this action, Plaintiff's Counsel's cost request is reasonable and should be granted.

13 **V. THE ENHANCEMENT AWARD SOUGHT BY PLAINTIFF IS REASONABLE**
14 **AND SHOULD BE APPROVED**

15 The Parties have agreed that Plaintiff will be paid an enhancement award in the amount of
16 \$8,000. This payment is intended to recognize both the time and effort that Plaintiff spent on behalf
17 of other Aggrieved Employees and the State as well as in exchange for a general release in favor
18 of Defendant due to Plaintiff's valuable individual claims to be extinguished. *See* Settlement
19 Agreement at ¶¶ 14-15. *See* Gaines Decl., ¶ 32; and Declaration of Rick Brower ("Brower Dec.");
20 submitted herewith.

21 As to an incentive award, case law supports the award of incentive payments in private
22 attorney general actions. The Ninth Circuit has recognized that a named plaintiff's "willingness to
23 act as a private attorney general" may justify the award of an incentive payment. *Rodriguez v. West*
24 *Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub*
25 *LLC*, no. 2:12-CV-02716-TLN-CKD (E.D. Cal., Sep. 6, 2013), the United States District Court for
26 the Eastern District of California approved a similar PAGA-only settlement and awarded a service
27 payment to the representative plaintiff in recognition of her efforts.

28 The traditional bases for awarding incentive awards in class settlements support the award

1 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
2 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive
3 awards and held that “the rationale for making enhancement or incentive awards to named Plaintiff
4 is that he or she should be compensated for the expense or risk he has incurred in conferring a
5 benefit” on others. *Id.* at 806. This rationale applies in this Action exactly the same it would in a
6 traditional class action.

7 Without Plaintiff’s efforts, there would be no recovery at all. The requested enhancement
8 award is appropriate to compensate Plaintiff for the risk and expense he incurred in conferring a
9 benefit on behalf of other of Defendant’s employees and the State of California. *See Settlement*
10 *Agreement*, ¶¶ 14-15.

11 As a result of the named Plaintiff’s efforts, Aggrieved Employees will receive monetary
12 settlement payments totaling approximately \$12,086.04 in the aggregate, and the State of California
13 will receive approximately \$36,258.10 to be put toward education about and enforcement of
14 California’s labor laws.

15 In this case, Plaintiff performed the following tasks, among others: (1) assisted Counsel in
16 investigating and substantiating the claims alleged in this action, including multiple interviews with
17 counsel to review facts, documents, and Defendant’s policies; (2) assisted in the preparation of the
18 complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the
19 settlement of this litigation. *See Gaines Decl.*, ¶ 33; *See generally*, Brower Declaration. Moreover,
20 as with any plaintiff who files a civil action, the named Plaintiff undertook the financial risk that,
21 in the event of a judgment in favor of Defendant in this action, they could have been personally
22 responsible for any attorneys’ fees and costs awarded in Defendant’s favor.

23 The award of such payment to Plaintiff is especially warranted in a case like this one. It is
24 necessary to ensure that employees, like Plaintiff, continue to bring claims like those brought here
25 to enforce the rights of employees. Individuals like Plaintiff (and most Aggrieved Employees)
26 would have little, if any, recourse without the representative action device. Most Aggrieved
27 Employees – like the Plaintiff—would be fearful of retaliation in response to filing any lawsuit,
28

1 much less a representative action suit. Plaintiff must be commended for pursuing their claims; a
2 modest payment like that sought here is an appropriate means of doing so.

3 Plaintiff is also entering into a full general release against Defendant, which is far broader
4 than the release by other Aggrieved Employees. Specifically, Aggrieved Employees are releasing
5 only limited PAGA civil penalty claims, while Plaintiff is releasing all claims which he asserts or
6 could assert against Defendant. *See* Settlement Agreement at ¶¶ 14-15. No other Aggrieved
7 Employee is subject to this broad form of release. Gaines Decl. at ¶ 34.

8 This broad release by Plaintiff was negotiated (and necessary) to resolve the Action.
9 Plaintiff threatened to assert his individual claims and Defendant required that they be resolved in
10 connection with the resolution of the Action. Without the resolution and release of Plaintiff's
11 individual claims, litigation would continue in a piecemeal fashion. Defendant is buying peace with
12 this settlement, such that its objectives would not be achieved absent the general releases. Gaines
13 Decl. at ¶ 35.

14 **VI. CONCLUSION**

15 As shown herein, the Settlement Agreement is fair, adequate and reasonable, as it represents
16 a reasoned compromise obtained through arms-length negotiations. For all the reasons set forth
17 above, Plaintiff respectfully request that this Court, as set forth in the proposed Order and Judgment
18 Approving Settlement, do the following:

- 19 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
20 2699, subpart 1;
- 21 2. Appoint Phoenix Class Action Administration Solutions as the Settlement
22 Administrator and approve its administration fees up to \$3,500 for payment out of the Maximum
23 Settlement Amount;
- 24 3. Approve the award of attorneys' fees and costs to Plaintiff's Counsel in the
25 amount of \$38,155.86 from the Maximum Settlement Amount;
- 26 4. Approve the enhancement payment to Plaintiff in the amount of \$8,000 from the
27 Maximum Settlement Amount;
- 28

1 5. Direct disbursement of the remaining Maximum Settlement Amount to the LWDA
2 and all Aggrieved Employees as provided for in the Settlement Agreement; and

3 6. Enter judgment consistent with the Settlement Agreement.

4 Date: July 27, 2022

Respectfully submitted,

5 GAINES & GAINES,
6 A Professional Law Corporation

7
8 By: *Daniel F. Gaines*
9 DANIEL F. GAINES
10 ALEX P. KATOFISKY
11 Attorneys for Plaintiff Rick Brower
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