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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

MARIE ELSA FIGUEROA GARCIA,
individually and on behalf of similarly
aggrieved employees,

Plaintiffs,

v.

FRESH GRILL, LLC, an active
California Limited Liability Company;
PRIORITYWORKFORCE, INC., an
active California Corporation; and DOES
1 through 10,

Defendants.

Case No.: 30-2021-01226519-CU-OE-CXC

REPRESENTATIVE ACTION

*[Assigned to Hon. William D. Claster
in Dept. CX-101]*

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PAGA SETTLEMENT, AND PAYMENT
OF ATTORNEYS’ FEES AND COSTS,
AND ADMINISTRATION COSTS**

[CONCURRENTLY SUBMITTED WITH
DECLARATION OF ZORIK
MOORADIAN; AND [PROPOSED]
ORDER]

Date: March 14, 2025

Time: 9:00 a.m.

Dept.: CX-101

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1 **PLEASE TAKE NOTICE** that, pursuant to Cal. Lab. Code §2699, on March 14,
2 2025 at 9:00 a.m. or as soon thereafter as the matter may be heard in Department CX-101 of
3 the above-entitled Court located at 751 West Santa Ana Boulevard, Santa Ana, California
4 92701, Plaintiff, Marie Elsa Figueroa Garcia ("Plaintiff"), on behalf of all other similarly
5 aggrieved employees, will and hereby does move this Court for entry of an Order:

6 1. Approving the settlement entered into between Plaintiff, Defendant Fresh
7 Grill, LLC ("Fresh Grill"), and Defendant PriorityWorkforce, Inc. ("Priority") (jointly, Fresh
8 Grill and Priority, "Defendants") for representative claims under the Labor Code Private
9 Attorneys General Act of 2004 ("PAGA"), as reflected by the Parties' PAGA Settlement
10 Agreement ("Settlement Agreement" or "S.A."); and

11 2. Approving a distribution of the Gross Settlement Payment of \$925,000, in
12 accordance with the Settlement Agreement and on account of disputed and alleged civil
13 penalties, as follows: (a) payment of \$308,333.33 in attorneys' fees to Mooradian Law, APC,
14 ("PAGA Counsel"); (b) payment of \$16,572.99 in attorneys' costs to PAGA Counsel; (c)
15 \$10,000.00 in administration costs to CPT Group, Inc. (e) payment to the Labor and
16 Workforce Development Agency ("LWDA") totaling \$442,570.26 which amount represents
17 75% of the total Gross Settlement Payment after attorneys' fees, attorneys' costs, and
18 administration costs ("PAGA Penalties"); and (f) payment of \$147,523.42, which amount
19 represents 25% of the PAGA Penalties, on a pro-rata basis to all PAGA Members (defined as
20 all hourly non-exempt employees who worked for Fresh Grill in California, including non-
21 exempt employees of PriorityWorkforce who were assigned to work at Fresh Grill from
22 October 15, 2020 through July 8, 2024. ("PAGA Period."))

23 This motion is based on this Notice, the attached Memorandum of Points and
24 Authorities, the supporting declaration of Zorik Mooradian and the exhibits attached thereto;
25 the [Proposed] Order Granting Plaintiff's Motion for Approval of PAGA Settlement, and
26 Payment of Attorneys' Fees, and Costs; the Settlement Agreement; all other pleadings and
27 papers on file in this action; and on any further oral or documentary evidence or argument
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presented at the time of hearing.

Dated: February 11, 2025

MOORADIAN LAW, APC

By: /s/Haik Hacopian
Zorik Mooradian, Esq.,
Haik Hacopian, Esq.
Attorneys for Plaintiff and PAGA
Members

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Marie Elsa Figueroa Garcia (“Plaintiff”) hereby seeks court approval of a
4 settlement of a pending Private Attorneys General Act (“PAGA”) claim as initiated by the
5 notice letter from Plaintiff Garcia dated October 15, 2021. The scope of the settlement is
6 limited to civil penalties, does not act as a waiver to any employee’s individual claims for
7 individual relief, and releases “all claims for PAGA penalties that were alleged, or reasonably
8 could have been alleged, based on the PAGA Period facts stated in the Operative Complaint
9 and the PAGA Notice.” (S.A. at §5.1). The Gross Settlement Amount of \$925,000, and
10 allocation for civil penalties therein, is fair, adequate, and reasonable and sufficient to deter
11 further violations and encourage compliance with the law.

12 The Parties reached their settlement after review and analysis of the PAGA claims’
13 predicates through sufficient informal discovery, i.e. a 25% sample of time and payroll
14 records, as well as relevant policies. The settlement was thereafter reached after a mediation
15 session on July 8, 2024 with a well-respected neutral mediator, Tagore Subramaniam.

16 As part of the settlement and as authorized by the PAGA statute, Plaintiff’s counsel is
17 seeking recovery of \$308,333.33 in attorneys’ fees, which is one-third of the Gross Settlement
18 Amount and less than the thirty-five percent permitted by the Settlement Agreement.
19 Moreover, this requested amount is fair, adequate, and reasonable, in light of the work
20 performed by counsel and recovery obtained. An application of a 3.85 multiplier to counsel’s
21 lodestar of \$80,050 results in the fee request. To the extent rates per the Laffey Matrix are
22 applied, only a 2.03 multiplier would need to be applied. Counsel is additionally seeking
23 \$16,572.99 in costs, which were reasonable and necessary to the prosecution of this action.
24 Plaintiff is also requesting that CPT Group, Inc. be appointed as the settlement administrator
25 and that \$10,000 be paid to CPT for services relating to distributions under the settlement
26 which includes mailing payments to the Aggrieved Employees.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. Plaintiff, Defendants, and Aggrieved Employees**

3 Defendant Fresh Grill is a purveyor of ready-made packaged foods (e.g. sandwiches,
4 fruit cups, etc.) for schools, hospitals, universities, convenience stores, military, government
5 agencies, airports, stadiums and convention centers throughout California and nearby states.
6 Defendant Priority is a staffing agency that placed employees for work with Fresh Grill.
7 Declaration of Zorik Mooradian (hereinafter “ZM Decl.”) ¶6.

8 Aggrieved employees all worked at Fresh Grill’s facility and headquarters in Santa Ana,
9 California. Fresh Grill also had direct employees. At the time of mediation, 731 Aggrieved
10 Employees (53,322 weekly pay periods) were directly employed by Fresh Grill and 940
11 Aggrieved Employees (17,982 weekly pay periods) were employed through Priority. Plaintiff
12 Garcia was employed both through Priority and directly by Fresh Grill. ZM Decl., ¶7.

13 If the number of pay periods ultimately exceeds 10% more than the 71,304 estimate,
14 or 78,434 pay periods, then Plaintiff shall have the right to request a pro-rata increase in the
15 Gross Settlement Amount equal to the percentage increase in pay periods above 10%.
16 Alternatively, Defendants may choose to end the PAGA Period on the date that the increase
17 would otherwise be triggered. (S.A., p.10, §8).

18 **B. Plaintiff’s Lawsuit, Discovery, and Mediation**

19 **1. Plaintiff Marie Elsa Figueroa Garcia’s Lawsuit**

20 On October 15, 2021, Plaintiff communicated a PAGA notice to both Defendants and
21 the LWDA. Upon submission of the PAGA Notice to the LWDA, Plaintiff Garcia’s PAGA
22 claim was assigned Case No. LWDA-CM-848779-21. On October 18, 2021, Plaintiff Garcia
23 filed the instant lawsuit against Defendant as a wage and hour class action which asserted five
24 causes of action as under the Labor Code and a sixth under UCL. Thereafter, on December
25 22, 2021, Plaintiff filed the First Amended Complaint (“FAC”) which added a representative
26 PAGA claim as the seventh cause of action. (ROA #9). The FAC was submitted to the LWDA
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1 online. Both Defendants filed Answers to the First Amended Complaint. (ROA #12 & #15).
2 ZM Decl. ¶8.

3 On November 10, 2022, Priority filed a motion to compel arbitration and stay
4 proceedings, or in the alternative, dismiss the action. (ROA #54). Thereafter, the Parties
5 submitted a Stipulation and Order to Dismiss Class Allegations without Prejudice, Submit
6 Arbitrable Claims to Arbitration, and Stay Action, which the court approved on December 12,
7 2022. (ROA #66). Pursuant to the United States Supreme Court’s decision in *Viking River*
8 *Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, Plaintiff’s individual PAGA claims were
9 submitted to the arbitration. Thereafter, the Parties proceeded to individual arbitration before
10 JAMS. ZM Decl. ¶9.

11 **2. Collective Labor Code/Wage Order sections at Issue**

12 As mentioned, Plaintiff Garcia filed a notice letter with the California Labor and
13 Workforce Development Agency (“LWDA”) on October 15, 2021 giving notice of her intent
14 to pursue a PAGA representative action, on behalf of herself and the State of California as
15 well as on behalf of a group of similarly situated aggrieved employees giving notice of their
16 collective intent to seek penalties under Labor Code sections 2698 et. seq. based on alleged
17 violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, and 1194, (“PAGA
18 letter”). A true and correct copy of the noted PAGA Letter is attached as **Exhibit “1”** to the
19 Declaration of Zorik Mooradian. ZM Decl. ¶10, Exh. 1.

20 **3. Discovery and Mediation**

21 This lawsuit has involved production of a sample of employee time and payroll data
22 to Plaintiff for 25% of aggrieved employees employed directly by Fresh Grill (who cover
23 74.7% of the workweeks for Aggrieved Employees) as well as policies relevant to asserted
24 PAGA claims which included relevant employee handbooks (one effective December 2017
25 and the other effective January 1, 2023). Defendants provided data regarding the total number
26 of Aggrieved Employees (1,671) and total pay periods implicated (71,304). This information
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has been reviewed and assessed by Plaintiff with expert assistance. The Parties have conducted investigation of the operative facts and applicable law during the litigation. The Parties have also investigated the applicable law as applied to the facts, potential defenses thereto, and damages claimed by Plaintiff on behalf of Aggrieved Employees. Subsequently, on July 8, 2024 (the end date of the PAGA Period), Plaintiff and Defendants engaged in mediation before a respected mediator, Mr. Tagore Subramaniam. During the Mediation, and with significant assistance from the mediator, the Parties agreed to a PAGA representative settlement, which was negotiated in light of all known facts and circumstances—including the difficulty of proving some of Plaintiff’s underlying bases for the PAGA penalty claims, potential defenses asserted by Defendants to the PAGA penalty claims, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues. Thereafter, the settlement was solidified between the Parties during the months that followed. Ultimately, the Settlement Agreement was entered into. ZM Decl. ¶11.

C. Essential Terms of the Settlement

The Parties’ settlement allocates \$925,000 for settlement of the PAGA claims which is the total amount to be paid by Defendants under this Settlement. The settlement will be funded by three installments to be completed no later than November 7, 2025. (S.A. at p. 6, § 4.3). After allocated attorneys’ fees of \$308,333.33, requested costs of \$16,572.99, administrative costs of \$10,000, 75% of the Net Settlement Amount, or \$442,570.26, will be paid as the LWDA’s 75% share of PAGA penalties, and \$147,523.42 will be payable to Aggrieved Employees¹. The Individual PAGA Payment will be calculated by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$147,523.42) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period

¹ Plaintiff is not seeking any enhancement award and has separately agreed to resolve her individual claims for a gross sum of \$25,000.

1 Pay Periods. (S.A. at p. 5, § 3.2.3.1). The Gross Settlement Payment is for civil penalties only
2 and does not act as a waiver to any employee's individual claims for individual relief.
3 Assuming participation by 1,671 Aggrieved Employees, the simple average Individual PAGA
4 Payment calculates to \$88.28 ($\$147,523.42 \div 1,671$). ZM Decl. ¶12.

5 A true and correct copy of the PAGA Settlement Agreement ("Settlement Agreement"
6 or "S.A"), is attached as **Exhibit 2** to the Declaration of Zorik Mooradian. ZM Decl. ¶13, Exh.
7 2.

8 The Settlement contemplates inclusion of the "Notice of Settlement of PAGA Action"
9 cover letter with payments to PAGA Members which notifies them of the Lawsuit, Settlement,
10 Release, and calculation of their share. A true and correct copy of the letter is incorporated as
11 **Exhibit "A"** to the Settlement Agreement. (S.A. at p. 3, §1.29, Exh A).

12 The Settlement contemplates maximum coverage for 78,434 Pay Periods during the
13 PAGA Period, which if increases, gives Defendants the option to (1) increase the Gross
14 Settlement Amount on pro rata basis for each additional pay period over 78,434, or (2) end
15 the PAGA Period on the last day before the 78,434 pay period threshold is exceeded. (S.A.,
16 p.10, §8).

17 The Administrator will issue checks for the Individual PAGA Payments and send them
18 to the Aggrieved Employees via First Class U.S. Mail. Aggrieved Employees will have one
19 hundred eighty (180) days to cash their checks. Any uncashed checks will be sent to the
20 Controller of the State of California to be held pursuant to the Unclaimed Property Law for
21 the benefit of those Aggrieved Employees whose checks were voided. (S.A. at pp.5-7, §4).

22 The Settlement Administrator, CPT Group, will format and mail the Settlement Notice
23 and Individual PAGA Payments, perform a National Change of Address database search to
24 update Aggrieved Employees' addresses prior to the mailing, perform skip-traces, locate and
25 update Aggrieved Employees' addresses, calculate, and distribute Individual PAGA
26 Payments, and perform any other required tasks.

1 **III. THIS COURT SHOULD APPROVE THIS PAGA SETTLEMENT**
2 **BECAUSE IT IS A FAIR, ADEQUATE, AND REASONABLE**
3 **COMPROMISE OF HIGHLY DISPUTED CLAIMS**

4 Labor Code section 2699(l)(2) provides that the Court shall review and approve any
5 settlement of any civil action filed pursuant to PAGA. A PAGA settlement is different from
6 one in a class action, however, and a PAGA settlement is not subject to the same level of
7 scrutiny in approving an associated settlement. These distinctions include the fact that a
8 PAGA representative action is fundamentally a law enforcement action designed to protect
9 the public and penalize the employer for past illegal conduct. *Cunningham v. Leslie's*
10 *Poolmart, Inc.* (C.D. Cal. June 25, 2013) 2013 U.S.Dist. LEXIS 90256, 16-17 [internal
11 citation omitted].) The purpose of a PAGA action is not to collect damages on behalf of
12 employees or provide restitution for Labor Code violations. *Id. see also Franco v. Athens*
13 *Disposal Co., Inc.* (2009) 171 Cal.App.4th 1277, 1300 (“Restitution is not the primary
14 objection of a PAGA action, as it is in most class action.”) Also, PAGA does not require notice
15 requirements for unnamed aggrieved employees nor may such employees opt out of a PAGA
16 action. *Baumann v. Chase Ins. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122).

17 Civil Penalties assessed under PAGA are primarily intended to deter violations of the
18 employment laws of the State of California. *Iskanian v. CLS Transportation Los Angeles, LLC*
19 (2015) 59 Cal.4th 348. Whether the total settlement of a PAGA claim achieves the objectives
20 of the statute is a factor that should strongly be considered in evaluating this instant settlement.
21 Significantly, pursuant to Labor Code Section 2699(e)(2), in any action brought by an
22 aggrieved employee under PAGA, a court may award a lesser amount than the maximum civil
23 penalty amount if to do otherwise would result in an award that is unjust, arbitrary and
24 oppressive, or confiscatory. Courts routinely exercise this discretion. See e.g., *Parr v. Golden*
25 *State Overnight* (Alameda S.Ct., 2014, RG12-618103) (93% reduction in PAGA penalties
26 even after plaintiffs prevailed at trial); *Kileigh Carrington v. Starbucks Corp.* (2018) 30
27 Cal.App.5th 504 (reducing potential PAGA liability to only \$5 per proven violation). As
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1 explained below, the weaknesses of the claim would potentially justify significant reduction
2 of maximum available penalties. The terms of the settlement sufficiently act to deter
3 Defendants from further violations alleged in the matter.

4 PAGA was passed because the Legislature believed it necessary “to achieve maximum
5 compliance with state labor laws” and “to ensure an effective disincentive for employers to
6 engage in unlawful and anticompetitive business practices.” 2003 Cal. Legis. Serv. Ch. 906 §
7 1(a). The Legislature further found that, while self-policing efforts have had some success,
8 “in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment
9 and collection of civil penalties as provided in the Labor Code.” *Id.* at § 1(b). Through PAGA,
10 the Legislature thus: (1) sought to “enlist[] willing citizens in the task of private enforcement,”
11 *Iskanian*, 59 Cal.4th at 390; (2) “deputized” aggrieved employees to sue on behalf of the State
12 to enforce state labor laws; and (3) authorized them to recover civil penalties, attorneys’ fees,
13 and costs. 2003 Cal. Legis Serv. Ch. 906 (Legislative Counsel’s Digest). In bringing a PAGA
14 action, “[t]he employee-plaintiff acts as the proxy or agent of the state labor enforcement
15 agencies, representing the same legal right and interest as those agencies” *Id.* at 394.

16 As for the interests of the LWDA (in whose shoes Plaintiff stands), its top enforcement
17 priorities are “to vigorously enforce minimum labor standards in order to ensure employers
18 are not required or permitted to work under substandard unlawful conditions . . .” and to
19 “protect employers who comply with the law from those who attempt to gain a competitive
20 advantage at the expense of their workers by failing to comply with minimum labor
21 standards.” Labor Code § 90.5(a). Moreover, in addition to the collection of civil penalties,
22 Labor Code § 1194.5 (which is specifically referenced in Labor Code § 90.5) authorizes the
23 LWDA to seek injunctive relief.

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1 **A. Analysis of Plaintiff's PAGA Claim**

2 1. Payment of Wages

3 Employees clocked in and out digitally at time clock stations. Plaintiff and other
4 employees routinely complained to managers about wage underpayments. Despite promises
5 by management to look into and correct any underpayment, no additional wages were ever
6 paid. Plaintiff further notes that time clocks were often five minutes behind or five minutes
7 ahead, usually the latter, likely contributing to the underpayment problems. Plaintiff's analysis
8 of the time data identified detrimental rounding at the start of shifts impacting 6.8% of the pay
9 periods (3,607) with an average loss of 3.2 minutes per shift. Plaintiff also identified 6.9% of
10 shifts (3,696) with an overtime underpayment due to payment at 1.5 times an employee's base
11 rate and not the regular rate as employees received quarterly/annual bonuses². Further, 1.5%
12 of pay periods would have underpaid overtime, assuming no valid AWS was in place. There
13 is no AWS discussion in the handbooks provided. Plaintiff also contended that employees had
14 to sign in with security guards before clocking in to start their day such that unpaid wages
15 would be owed, however, the available data did not capture this claim, which will be anecdotal
16 and difficult to prove. ZM Decl. ¶15.

17 2. Meal Break and Rest Violations

18 The meal break policies were facially compliant except that the policy in effect prior
19 to January 2023 allowed for waiver only through completion of a "Meal Waiver Request
20 Form" which Plaintiff did not receive any copies of. Plaintiff's analysis reveals 27,619 unique
21 meal period violations, which accounts for premiums paid and valid meal waivers. This
22 includes 14,932 shifts over 12 hours without a recorded second meal break. If there are no
23 valid meal waivers, an additional 45,837 shifts between 10 and 12 hours do not have a
24 recorded second meal break. ZM Decl. ¶16.

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26 ² Plaintiff also identified 251 pay periods (0.5%) with sick leave underpayments and 592 pay periods (1.1%)
27 with meal premium underpayments due to failure to base payments on employees' regular rate of pay.
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1 As to rest breaks, the written policy in effect prior to January 2023 indicated that
2 employees are to remain on-premises and may only leave with supervisor authorization. The
3 issue of whether there existed rest break violations under this policy would depend on denial
4 and any implementation of authorization by specific managers. The rest period policies were
5 otherwise facially compliant and rest breaks were not tracked. ZM Decl. ¶17.

6 3. Vacation Pay Violations

7 The handbook references the availability of a vacation pay/PTO benefit that starts to
8 accrue after 90 days of employment for all administrative/managerial employees, and
9 production employees hired before February 1, 2021, like Plaintiff. Despite this, the records
10 reflect that Plaintiff never received any vacation/PTO payouts including at separation.
11 Plaintiff will note, however, that 20% of former employees had a PTO payout at separation
12 and concludes that the vacation/PTO benefit was not applied evenly. ZM Decl. ¶18.

13 4. Wage Statement and Waiting Time Violations

14 These claims would be derivative of the above claims. For instance, to the extent
15 wages were underpaid, final wages would not be complete in violation of Labor Code Sections
16 201-203 and to the extent any additional wages or break premiums are owed, the wage
17 statements would not be accurate. ZM Decl. ¶19.

18 5. Potentially Available PAGA Penalties/Realistic Exposure

19 This lawsuit implicates 71,304 weekly pay periods during the PAGA Period.
20 Maximum penalties, assuming a violation for each and every pay period, assessed at the \$100
21 violation rate, for each of the 71,304 pay periods results in maximum potential exposure of
22 \$7,130,400. To the extent Plaintiff is able to stack PAGA penalties, the potential maximum
23 could be higher. ZM Decl. ¶20. Although no California appellate decision has addressed
24 whether a plaintiff can stack penalties for different predicate violations, the California
25 Supreme Court's decision in *ZB, N.A. v. Superior Court*, (2019) 8 Cal.5th 175, rejected an
26 employee's attempt to recover default civil penalties in addition to civil penalties assessed
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1 with respect to unpaid wages under Cal. Labor Code Sec. 558. The Court highlighted that civil
2 penalties “are intended ‘to punish the employer’ for wrongdoing, often ‘without reference to
3 the actual damage sustained’” (*citing Murphy v. Kenneth Cole Productions, Inc.* (2007) 40
4 Cal.4th 1094, 1104). Plaintiff ultimately does not anticipate being able to stack PAGA
5 penalties as she deems it highly likely that a court will potentially be persuaded that
6 assessment of a single penalty per pay period per employee will be sufficient to punish past
7 violations and deter future ones. ZM Decl. ¶20.

8 Furthermore, discretionary reductions are anticipated in addition to general litigation
9 risk and delay. Taking the \$7,130,400 sum as the maximum potential figure and applying a
10 discretionary reduction of 80% (consistent with reported cases) results in \$1,426,080 in
11 available penalties. The Gross Settlement Amount of \$925,000 captures 64.8% of this sum.
12 The penalties to be distributed (\$590,093.68) captures 41.3% of this sum. The Parties’
13 settlement substantially captures these valuations, provides for significant recovery of civil
14 penalties by the state, and is expected to deter future Labor Code violations by Defendants.
15 Accordingly, Plaintiff’s counsel believes that this PAGA settlement is fair, reasonable, and in
16 the best interests of the Aggrieved Employees and the State of California. ZM Decl. ¶21.

18 **IV. AN AWARD OF ATTORNEYS’ FEES SHOULD BE APPROVED**

19 California Labor Code § 2699(g) states that an employee whose action results in the
20 payment of civil penalties “shall be entitled to an award of reasonable attorneys’ fees and
21 costs.” Here, Plaintiff’s counsel is seeking recovery of \$308,333.33 in attorneys’ fees, or one-
22 third of the Gross Settlement Amount, which is less than the maximum 35% permitted by the
23 Settlement Agreement. The incurred fees are necessary and reasonable. Significantly, these
24 fees are contingent in nature for counsel. ZM Decl. ¶22.

25 In Counsel’s experience, a gross PAGA settlement of \$925,000 is a fair, reasonable,
26 and adequate settlement in light of the strength of the claim, Defendants’ defenses, and the
27 strong possibility there would be no recovery without this settlement. Even if Plaintiff was to
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1 prevail on the underlying claim, she would face the potential of significant discretionary
2 reduction of maximum penalties by the Court. Counsel's efforts have resulted in a recovery
3 of over four hundred forty thousand dollars by the State of California. ZM Decl. ¶23.

4 **A. PAGA Counsel's Fees Should be Approved as a Percentage of the**
5 **Total Common Fund Created**

6 PAGA Counsel seeks a fee award calculated as a percentage of the total value of the
7 settlement for successful prosecution and resolution of all existing claims. Both California
8 State and Federal Courts have recognized that an appropriate method in determining an
9 attorney fee award may be based on the percentage on the total value of the benefits conferred
10 by the settlement. *Serrano v. Priest* (1997) 20 Cal. 3d 25-34 [*Serrano III*]; *Boeing Company*
11 *v. Van Gemert* (1980) 344 U.S. 472, 478; *Vincent v. Hughes Airwest, Inc.* (9th Cir. 1977) 557
12 F.2d 759, 769. The purpose of this equitable doctrine is to avoid unjust enrichment and to
13 "spread litigation costs proportionately among all the beneficiaries so that the active
14 beneficiary does not bear the entire burden alone." *Id.* at 768. The monetary benefits will then
15 be paid from a common fund.

16 The California Supreme Court endorsed a fee award as a percentage of the common
17 fund; the Court clarified "that when an attorney fee is awarded out of a common fund
18 preserved or recovered by means of litigation (internal citation omitted), the award is not per
19 se unreasonable merely because it is calculated as a percentage of the common fund." *Laffitte*
20 *v. Robert Half Int'l. Inc.* (2016) 1 Cal. 5th 480, 486. Also "[t]hat the recognized advantages
21 of the percentage method...convince us that the percentage method is a valuable tool that
22 should not be denied in our trial courts." *Id.* at 503.

23 The Common Fund Doctrine is predicated on the principle of preventing unjust
24 enrichment. When a litigant's efforts create or preserves, or generates a fund from which
25 others derive benefits, he may require the passive beneficiaries to compensate those who
26 created the fund. Both California State and Federal Courts have embraced this Doctrine.
27 *Serrano III, supra*, at 35; *Vincent, supra*, at 769.

1 Since *Serrano III, supra*, there has been a ground swell of support for mandating the
2 percentage of the fund approach in common fund cases. Both State and Federal Court have
3 found the percentage approach preferable to the Lodestar because; (1) it aligns the interest of
4 counsel and absent parties (PAGA Counsel and the LWDA here); (2) it encourages efficient
5 resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and
6 (3) it reduces the demand on judicial resources. *In re Activision Sec. Litig.* (N.D. Cal. 1989)
7 723 F Supp. at 1378-79. The Ninth Circuit now routinely uses the percentage of the common
8 fund approach to determine the award of attorney fees. *Lealao v. Beneficial Calif., Inc.* (2000)
9 82 Cal.App.4th 19, 30-31.

10 Collectively, PAGA counsel seeks \$308,333.33 which is one-third percent of the
11 \$925,000 Settlement Amount. Class Counsel's request for one-third of the monetary fund
12 recovered is well within the range customarily approved by California courts in class actions
13 as well as with contingency contracts negotiated by Plaintiff and her counsel. "Empirical
14 studies show that regardless of whether or not the percentage method or Lodestar method is
15 used, fee awards in class actions average around one-third of the recovery." See e.g., *Chavez*
16 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 66, fn. 11; *In re California Indirect Purchases* (October
17 22, 1998) WL1031494 at *9 (citing *In re Milk Antitrust Litigation* (L.A. Sup. Ct. 1998) Civ.
18 Case No. BC070061 (33 1/3% award); *In re Facsimile Paper Antitrust Litigation* (San
19 Francisco Sup. Ct. 1997) Civ. Case No. BC 0070061 (33 1/3% award); *In re Liquid Carbon*
20 *Dioxide Cases* (San Diego Sup. Ct. 1996) J.C.C.P. 3012 (33 1/3% award); *Romero v.*
21 *Producers Dairy Foods, Inc.* (E.D. Cal. November 14, 2007) WL 3492841 at *4 ("fee awards
22 in class actions average around one-third of the recovery." (Quoting Newberg on Class
Actions § 14.6 (4th ed. 2007)).

23 In *Lealao, supra*, at 46-47, the Court indicated that in defining a "reasonable" fee in
24 representative actions, the law should "mimic the market." The Court went on to state:

25 "Given the unique reliance of our legal system on private litigants to enforce
26 substantive provisions of law through class and derivative actions, attorneys
27 providing the essential enforcement services must be provided incentives roughly
28 comparable to those negotiated in the private bargaining that takes place in the

1 legal marketplace as it will otherwise be economic for Defendant's to increase
2 injurious behavior. *Lealao, supra*, 82 Cal.App.4th at 46-47, and *Graciano v.*
3 *Robinson Ford Sales, Inc.* (2006) 144 Cal. App.4th 140, 163.

4 For the following reasons, awarding one-third of the gross settlement for attorney fees
5 is fair, reasonable and appropriate.

6 **B. Factors Supporting the Fee Award**

7 1. The Amount of the Settlement

8 In Counsel's experience, a PAGA settlement for \$925,000 is a fair, reasonable, and
9 adequate settlement in light of the asserted claims, Defendants' defenses, and the strong
10 possibility that there would be no recovery without this settlement. ZM Decl., ¶5. The LWDA
11 will be recovering a significant penalty award and PAGA Members will be receiving
12 noteworthy payments as well. The average amount expected to be paid amongst 1,671
13 Aggrieved Employees is \$88.28. ($\$147,523.42 \div 1,671$). ZM Decl., ¶12.

14 2. The Named Plaintiff Signed a Retainer Agreement

15 Plaintiff Garcia signed a single retainer with Mooradian Law, APC. The Retainer
16 Agreement had language providing a maximum of thirty-five percent (40%) in attorneys' fees,
17 of course, subject to court approval on class and representative issues. The Retainer
18 Agreement also had a provision for recovery of costs in relation to the representation. ZM
19 Decl. ¶24.

20 In *Lealao, supra*, 82 Cal.App.4th at 46-47, the court indicated that in defining a
21 "reasonable" fee in representative actions, the law should "mimic the market." Here, as for
22 the representation of the individual rights of Ms. Garcia, a retainer agreement for one-third of
23 gross recovery would be consistent with the market rate, and there is no reason to believe that
24 if counsel had signed a retainer agreement with the LWDA to prosecute claims on the
25 LWDA's behalf, it would be any different. ZM Decl. ¶25.

26 In, *In re Cont'l Ill. Secs. Litig.*, Judge Posner endorsed a market-based approach to
27 evaluating fee requests, stating that the function of judges in fee litigation "is to determine
28 what the lawyer would receive if he were selling his services in the market rather than being
paid by court order." (7th Cir. 1992) 962 F.2d 566, 568. In a law review article (Silver) entitled

1 “A Restitutionary Theory of Attorneys’ Fees in Class Actions (1991) 76 Cornell L.Rev. 656,
2 702-703 (it stated that the goal “is to pay attorneys on terms they would probably accept in an
3 ex ante bargain, before the outcome of litigation is known”).

4 3. Defendants Do Not Object to the Attorney Fee Agreement

5 In almost all the mediations that Mr. Mooradian has attended, a one-third to 35%
6 attorney fee percentage is generally agreed upon by the defendant and the plaintiff subject to
7 court approval. In this matter, the Parties agreed that PAGA Counsel may request up to thirty-
8 five percent due to the amount of the settlement and the significant work completed by counsel
9 in litigation, arbitration, mediation, and seeking approval. ZM Decl. ¶26.

10 Here, it is beyond any reasonable dispute that, if PAGA counsel had been able to
11 negotiate directly with the LWDA, the LWDA would have found that a one-third fee
12 arrangement to be eminently reasonable. ZM Decl. ¶27.

13 4. The Contingent Risk Factor

14 For PAGA Counsel, the fees in this case are entirely contingent in nature. As the 9th
15 Circuit noted, class counsel who take a case on a contingency basis bears a “double
16 contingency: first they must prevail on the class claims, and then they must find some way to
17 collect what they win.” *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1377.
18 The fees received from one case are often used to finance and move forward other cases that
have failed and bring in revenue for counsel. ZM Decl. ¶22.

19 **C. The Lodestar/Multiplier Cross-Check**

20 Even though class counsel is requesting fees with the percentage of the benefit
21 approach, some courts nevertheless use a Lodestar/Multiplier cross check to confirm the fees’
22 reasonableness. *Lealao v. Beneficial California, Inc., supra*, 82 Cal.App.4th 19-45; *Vizcaino*
23 *v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051. The Lodestar Analysis (Lodestar-
24 Multiplied Method) begins with a calculation of time spent in reasonable hourly compensation
25 of each attorney and paralegal who worked on the case and then to compensation counsel for
26 risk, quality and result, courts commonly apply a “multiplier” to the Lodestar in awarding
27 attorney fees.
28

The first step is to determine the Lodestar individually for each attorney and/or paralegal that has worked on the case and is claiming fees. The Lodestar analysis for the attorneys appears PAGA Counsel's supporting declaration, which is summarized below:

Attorney(s)	Billable Rate(s)	Hours	Lodestar	Laffey Rate	Laffey Lodestar
Zorik Mooradian ZM Decl., ¶28	\$650.00	74	\$48,100	\$1,141.00	\$84,434
Haik Hacopian <i>Id.</i>	\$450.00	71	\$31,950	\$948.00	\$67,308
Total Minimum Lodestar		145	\$80,050		\$151,742

In this matter, the lodestar tallies to \$80,050.00 and which results in the requested \$308,333.33 fee award after the application of 3.85 multiplier. To the extent current Laffey Matrix rates are applied, the lodestar will total \$151,742 and only a 2.03 multiplier would need to be applied. ZM Decl., ¶29., Exh. "3" (Laffey Matrix").

D. A Lodestar Multiplier of 2.03 to 3.85 is Reasonable

"It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases." *Fischell v. Equitable Life Assur. Society of U.S.* (9th Cir. 2002) 307 F.3d 997, 1008. In the Ninth Circuit, a lodestar amount is "routinely enhanced...to reflect the risk of non-payment in common fund cases." *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125 (awarding multiplier of 5.2 and collecting cases with cross-check multipliers ranging from 4.5 to 19.6); *Morgret v. Applus Tech., Inc.* (E.D. Cal. Jun. 1, 2015) Case No. 1:13-cv-01801-JLT, 2015 WL 3466389 at *17 (awarding multiplier of 3.9, "which is within the range typically awarded in the Ninth Circuit."); *Torchia v. W.W. Grainger, Inc.* (C.D. Cal. Dec. 29, 2014) 304 F.R.D. 256, 277 (Thurston, J.) (awarding multiplier of about 3.6).

1 Here, the lodestar multiplier of 2.03 to 3.85 is well within the range of reasonableness,
2 as has been held by numerous courts, especially in light of the significant work performed in
3 this case and the efficiency with which it was done.

4
5 **E. Attorneys Fees v. Benefits Conferred**

6 While it's generally true that the greater the attorney fees, the less funds there will be
7 for distribution as damages, nevertheless, a balance must be achieved. In the instant matter,
8 the LWDA and PAGA Members got a very balanced and fair settlement. Given the strengths
9 and weaknesses of the case, they will be receiving a fair sum of money. The results and the
10 case law support that the settlement was fair, reasonable and adequate. In light of the favorable
11 settlement, giving more money to the LWDA and PAGA Members after an excellent
12 settlement had been achieved punishes the attorneys without whom such a settlement would
13 not have been attained but for the efforts of good lawyering. Punishing lawyers when they do
14 well is potentially sending the wrong message and serves as a disincentive and unjustly
15 enriches the LWDA and PAGA Members who will be receiving a fair and adequate amount
16 of benefits. ZM Decl. ¶31.

17
18 **V. PAYMENT OF COSTS TO COUNSEL SHOULD BE APPROVED**

19 Counsel has incurred \$16,572.99 in total costs in prosecuting this matter, which is less
20 than the \$25,000 maximum contemplated by the settlement, and is the amount that Plaintiff is
21 requesting that the Court approve. (S.A., pp. 4-5, §3.2.1). All costs are necessary and
22 reasonable. ZM Decl. ¶30.

23 **VI. PAYMENT FOR ADMINISTRATION EXPENSES SHOULD BE APPROVED**

24 Counsel will secure a not to exceed bid from CPT Group, Inc., the Parties' selected
25 administrator, in the amount of \$10,000 in relation to dissemination of payments to the various
26 parties as contemplated by the settlement including to all Aggrieved Employees. CPT will
27

1 also be responsible for the escheatment of uncashed checks. ZM Decl., ¶32.

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5 **VIII. CONCLUSION**

6 For the reasons stated herein, this Court should grant Plaintiff's Motion in its entirety
7 and adopt the [Proposed] Order submitted concurrently herewith.

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9
10 Dated: February 11, 2025

MOORADIAN LAW, APC

11 By: /s/ Haik Hacopian

12 Zorik Mooradian, Esq.,
13 Haik Hacopian, Esq.,

14 Attorneys for Plaintiff and
15 Aggrieved Employees
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