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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF LOS ANGELES**

16 MIGUEL ANGEL RUBALCABA,
17 individually and on behalf of all others
18 similarly situated,

19 Plaintiff,

20 vs.

21 FIRST TO SERVE; and DOES 1 through
22 20, inclusive,

23 Defendants.

Case No. 21STCV39015

Assigned for all purposes to:
Judge: Hon. William F. Highberger
Dept.: 10

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
REPRESENTATIVE ACTION
SETTLEMENT**

Date: November 7, 2025

Time: 3:00 p.m.

Dept.: 10

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1 **I. INTRODUCTION**

2 Plaintiff Miguel Angel Rubalcaba (“Plaintiff”) seeks approval of a settlement of claims under
3 the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA") against
4 Defendant First to Serve, Inc. (“Defendant”) in the amount of \$375,000.00. Plaintiff alleges
5 approximately 613 non-exempt employees who worked for Defendant were not paid wages for all
6 hours worked, not provided with meal periods or compensation in lieu thereof, not provided with rest
7 breaks or compensation in lieu thereof, were not paid all wages owed within the required time and
8 upon separation of employment, and not provided with accurate wage statements.

9 Under Labor Code § 2699(1)(2), the Court must review and approve any proposed PAGA
10 settlement. Here, after the February and March 2025 hearings, the Parties entered into the Settlement
11 Agreement to settle this case on a PAGA basis. The Settlement Agreement is sufficient to deter and
12 punish future violations, and is attached to the Declaration of Alex J. Valle (“Valle Decl.”) as Exhibit
13 1, and the proposed letter to be sent to the Aggrieved Employees is attached hereto as Exhibit 2.
14 Plaintiff now seeks this Court's approval of the settlement terms.

15 **II. FACTUAL AND PROCEDURAL BACKGROUND**

16 On October 22, 2021, Plaintiff’s counsel sent a letter to the California Labor & Workforce
17 Development Agency (“LWDA”) via online submission and to Defendant via certified mail regarding
18 Defendant’s alleged violations. (Valle Decl., ¶ 3, Exhibit 4.) The LWDA did not respond to this
19 notice within 65 days, indicating it did not intend to investigate, thus allowing Plaintiff to file the
20 instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). (*Id.*)

21 That same day, Plaintiff filed his class action Complaint against Defendant for failure to pay
22 minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to permit rest
23 breaks; failure to pay all wages due within the required time and upon separation of employment; and
24 violation of Business and Professions Code §§ 17200 *et seq.* against Defendant in the Los Angeles
25 County Superior Court. (Valle Decl., ¶ 4.) On March 3, 2022, Plaintiff filed his First Amended
26 Complaint (“FAC”) adding a cause of action against Defendant for Enforcement of Labor Code
27 Private § 2698 *et seq.* (“PAGA”). (*Id.*)

1 Due to the presence of arbitration agreements that Plaintiff and putative class members allegedly
2 signed, Defendant filed its motion compelling arbitration, arguing that Plaintiff was required to
3 arbitrate his individual and class claims. (Valle Decl., ¶ 5.) On August 19, 2022, the Court compelled
4 Plaintiff's individual claims to arbitration, struck the class claims, and stayed the PAGA claims. (*Id.*)

5 Plaintiff initiated arbitration. (Valle Decl., ¶ 6.) Before conducting an evidentiary hearing in
6 individual arbitration, the Parties agreed to attend a private mediation session. (*Id.*) Prior to mediation,
7 Defendant produced its employee handbook and other employment policies; Plaintiff's personnel file,
8 timekeeping and payroll records; and the timekeeping and payroll records of other employees. (*Id.*)
9 Plaintiff retained an expert to review the records and calculate potential PAGA damages. (*Id.*)

10 The Parties attended private mediation on February 20, 2024, with mediator Gig Kyriacou.
11 (Valle Decl., ¶ 7.) After arms-length negotiations and bargaining, the Parties reached an agreement
12 to settle and signed a binding MOU. (*Id.*) The Parties were unable to agree to a long-form settlement
13 agreement due to a dispute regarding funding. (*Id.*) Plaintiff moved for approval on the MOU. (*Id.*)
14 Following the hearing on the Parties' memorandum of understanding, the Parties substantially
15 conferred regarding payment terms, and entered into the Settlement Agreement. (*Id.*) Plaintiff now
16 moves for settlement approval based thereon. Plaintiff provided notice of the Settlement Agreement
17 to the LWDA. (*Id.* at ¶ 8.)

18 **III. PAGA REQUIREMENTS**

19 Based on the California Supreme Court's opinions in *Arias v. Superior Court* (2009) 46 Cal. 4th
20 969, and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, plaintiffs can
21 seek appropriate civil penalties as called for under PAGA on behalf of the State of California and
22 other similarly aggrieved employees without seeking class certification or meeting the requirements
23 of class certification (i.e. numerosity, typicality, commonality and adequacy). As such, the class
24 action two-step preliminary and final approval process is not required.

25 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by the
26 State and by private individuals who have been aggrieved by their employers. The statute calls for
27 75% of any penalties recovered to be paid to California's LWDA and the remaining 25% to the
28 aggrieved employees (Lab. Code § 2699(i).)

1 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee must
2 first provide written notice to the LWDA and the employer of the particular Labor Code violations
3 the aggrieved employee alleges the employer has violated. (Labor Code § 2699.3(a)(1)(A).) Once the
4 LWDA notifies the aggrieved employee that it does not intend to investigate the alleged violations,
5 or if the LWDA does not respond within a certain time period, the aggrieved employee is then allowed
6 to proceed in a civil action against the employer on behalf of the LWDA and all other similarly
7 aggrieved employees. (Labor Code § 2699.3(a)(2)(A).)

8 In 2009, the California Supreme Court considered the issue of whether an aggrieved employee
9 who brings a PAGA representative claim needs to meet class certification requirements. (*Arias*,
10 *supra*, 46 Cal. 4th at 976.) After a substantial review of the legislative history of PAGA, the Court
11 held that an aggrieved employee's representative action brought on behalf of other aggrieved
12 employees against an employer for PAGA violations does not need to meet the requirements for class
13 certification. (*Id.* at 975, 980-88.) As the Court held, a plaintiff bringing suit under PAGA does so
14 as the proxy or agent of California's labor law enforcement agencies. (*Id.* at 986.) Because the
15 employee's PAGA action functions as a substitute for an action brought by the government itself, a
16 judgment in the PAGA action binds all those who would be bound by a judgment in an action brought
17 by the government. (*Id.*)

18 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court need only
19 "review and approve" the settlement. (Lab. Code § 2699(1)(2).) The Parties to this current PAGA
20 action have reached such an agreement and now seek this Court's approval of the proposed settlement.

21 **IV. THE SETTLEMENT TERMS**

22 Defendant will pay \$375,000 to settle this PAGA case. (Valle Decl., Ex. 1, § 3.1.)¹ The
23 Maximum Payment will provide for (1) civil penalties under PAGA to the LWDA and to the
24 Aggrieved Employees; (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement
25 Fund; (3) reimbursement of Class Counsel's litigation costs and expenses of \$23,958.25;² (4) a

27 ¹ The Settlement Agreement also includes a payment of \$15,000 for Plaintiff's individual settlement. Valle Decl., Ex.
1, § 3.2.3.2. This amount will be paid separately from the \$375,000 Maximum Payment.

28 ² The Parties agreed that Plaintiff's counsel could seek reimbursement for expenses not to exceed \$25,000. After
compiling all outstanding litigation expenses, Plaintiff's costs do not exceed \$23,958.25. (Valle Decl., Ex. 3).

1 representative award of up to \$5,000.00 to Plaintiff in addition to his amount under the Settlement;
2 and (5) Settlement Administration costs not to exceed \$6,000. (*Id.*, at § 3.2.) The Aggrieved
3 Employees are all current and former non-exempt employees of Defendant from October 21, 2020
4 through February 20, 2024. (*Id.*, at §§ 1.4, 1.19.)

5 **V. THE COURT’S PRIOR TENTATIVE RULING AND THE PARTIES’ JOINT**
6 **STIPULATION IN RESPONSE**

7 Plaintiff addresses the Court’s February 2025 Tentative Ruling, and directs the Court to the
8 additional terms that were agreed upon in the Parties’ March 3, 2025 Joint Stipulation in response to
9 the Court’s Tentative Ruling, and that were incorporated into the Settlement Agreement:

10 *A. Signed Agreement*

11 After substantive settlement discussions, the Parties entered into and executed the Settlement
12 Agreement in September 2025. (Valle Decl., ¶ 7, Exs. 1 & 6.) The Settlement Agreement based on
13 the LA Model Agreement. (*Id.*)

14 *B. Allocation of Payments to Aggrieved Employees*

15 After deducting the above amounts, the remaining amount (“Net Settlement Amount”) will
16 constitute PAGA Penalties in which 75% will be paid to the LWDA and 25% will be paid to the
17 Aggrieved Employees. Valle Decl., Ex. 1, § 3.2.3. The individual payments shall be paid to the
18 Aggrieved Employees pro rata based on the number of pay periods worked. (*Id.* at § 3.2.3.1.)

19 *C. The Release Language*

20 The Parties agreed that Aggrieved Employees will release Defendant from the following:

21 “all claims for PAGA Penalties that were alleged, or reasonably could have been alleged
22 based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice,
23 including Claims Defendant required Aggrieved Employees to work during off-duty meal
24 breaks and rest breaks and/or that breaks were taken late, were short or missed altogether;
25 that Aggrieved Employees were not provided with a second meal period or third rest break
26 when they worked more than 10 hours; that Aggrieved Employees were similarly required
27 to work through [] rest breaks and were denied [] first, second, and third rest breaks; that
28 Defendant failed to pay premium pay for late, short and missed meal periods and rest breaks;

1 that Defendant denied Aggrieved Employees overtime pay at the regular rate of pay as a
2 result of missed breaks; that Defendant[] failed to pay premium pay, provide accurate
3 paychecks, failed to pay all wages due at the time of termination and failed to maintain
4 accurate records.”

5 (Valle Decl., Ex. 1, §§ 5.2-5.3.) This release is consistent with the law. (*See Amaro v. Anaheim Arena*
6 *Management, LLC* (2021) 69 Cal.App.5th 521, 537-539, 541.) Plaintiff will also release all claims
7 against Defendant and a Civil Code § 1542 waiver will be applied. (*Id.* at §§ 5.1-5.1.1.)

8 D. Funding of the Settlement

9 The Parties have adjusted the funding of the Settlement based on Defendant’s financial condition
10 and the statements of Defendant’s counsel at the prior hearings. (Valle Decl., ¶ 15, Ex. 1 at § 4.3.)

11 E. Other Terms from the Parties’ March 3, 2025 Joint Stipulation

12 On March 3, 2025, the Parties entered into a stipulation to agree to outstanding terms of the
13 settlement that were not addressed in the MOU. The Parties agreed to the following, and incorporated
14 these terms into the Settlement Agreement:

- 15 • No payments would revert to Defendant. (Valle Decl., Ex. 1 at § 3.1.)
- 16 • The administrator shall pay the Aggrieved Employees by way of a single check which will be
17 valid for 180 days, and characterized as penalties for tax purposes and reported on an IRS
18 Form 1099. (*Id.* at §§ 3.2.3.4, 4.4.1.)
- 19 • There is an escalator provision that if the actual number of pay periods at the end of the PAGA
20 Period is 10%, or greater than the 17,859 payroll periods represented by Defendant, the
21 Maximum Payment will be increased on a pro rata basis equal to the increase in number of
22 payroll periods. (*Id.* at § 4.1.)
- 23 • Defendant will deliver the Employee Data to the administrator within 10 business days of the
24 Court’s approval of the settlement. (*Id.* at § 4.2.)
- 25 • Disbursement will occur 14 days after funding. (*Id.* at § 4.4.)
- 26 • Prior to this disbursement, the administrator shall check the Aggrieved Employees’ addresses
27 provided by Defendant using the National Change of Address database, and for any returned
28

1 payments without a forwarding address, the administrator shall run a skip trace and remail
2 checks. (*Id.* at § 4.4.1, 4.4.2.)

3 • Funds from uncashed or returned checks will be sent to the cy pres charity Justice Gap Fund.
4 (*Id.*, at § 4.4.3.)

5 • There will be no further 401(k) contributions or bonuses as a result of the individual payments.
6 (*Id.*, at § 4.4.4.)

7 • The administrator will have its own Employer Identification Number for calculating payroll
8 tax and will establish a compliant Qualified Settlement Fund. (*Id.*, at §§ 7.2-7.3.)

9 The Settlement Agreement has addressed this Court’s concerns and should be approved.

10 **VI. THE SETTLEMENT IS FAIR AND REASONABLE**

11 *A. Standard for Approval.*

12 While there are no statutory or common law standards for approval of PAGA settlements, the
13 legislative history of the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et. seq.*
14 (“PAGA”) sheds some light on the approval requirement as it was phrased in § 2699, subdivision (l)
15 prior to the July 1, 2016 and 2024 amendments. (Lab. Code § 2699(l) (2015) (amended 2016) (“The
16 superior court shall review and approve any penalties sought as part of a proposed settlement...”).)

17 PAGA was passed by the legislature as Senate Bill (“SB”) 796, and it was signed by the
18 Governor and filed with the Secretary of State on October 12, 2003. (Legislative Counsel’s Digest
19 re Senate Bill No. 796, attached as Exhibit A to the Request for Judicial Notice (“RJN”) filed
20 herewith.) It took effect on January 1, 2004. The original version of the act did not contain the court
21 approval requirement now codified in § 2699(l). That subdivision was added as part of the
22 amendments to the Act that were introduced as SB 1809 in February of 2004 and signed by the
23 Governor and filed with the Secretary of State on August 11, 2004. (*See* Exhibit B to the RJN, p. 91.)
24 Those amendments took effect immediately, and the court approval requirement of § 2699(l) was one
25 of the provisions that the legislature made retroactive to January 1, 2004. (*Id.* at pp. 1-2.)

26 Senator Joseph L. Dunn authored both the original PAGA bill (SB 796) and the amendments
27 (SB 1809). (*See* RJN, Exhibits. A & B.) On July 29, 2004, during the consideration of the
28 amendments in SB 1809, Senator Dunn sent a letter addressed to the President Pro Tem of the Senate,

1 which was published in the Senate Daily Journal, “to clarify the intent of subdivision (l)” of what
2 would become § 2699. (See 7/29/04 Letter from Sen. Dunn to Sen. Burton, attached as Exhibit C to
3 the RJN.) He was sending this letter “in response to an issue raised by the Judicial Council of
4 California.” (*Id.*) In the letter, Senator Dunn stated that:

5 The purpose of court review of the penalties in subdivision (l) is to ensure that
6 settlements involving penalties arising under Labor Code Section 2699 do not
7 undercut the dual statutory purposes of punishment and deterrence, or result in
8 unjust, arbitrary, and oppressive, or confiscatory settlements.

8 (RJN, Exhibit C.)

9 To Plaintiff’s knowledge, this is the only statement in the legislative history directly addressing
10 the purpose of the court approval requirement. (Valle Decl., ¶ 10.) While the letter does not address
11 any specific factual issues to be considered, it does provide some very broad criteria. It suggests that
12 courts consider whether penalties are so small as to “undercut the dual purposes of punishment and
13 deterrence” or so large that they may result in an “unjust, arbitrary and oppressive, or confiscatory”
14 settlement. (RJN, Exhibit C.)

15 These broad criteria appear to give the Court wide latitude in determining whether to approve
16 the penalties proposed as part of a PAGA settlement. Interestingly, the criteria focus on the effect the
17 penalties may have on the defendant/employer rather than the LWDA or the aggrieved employees
18 who will receive the penalties. This is different than the analysis of a class action settlement, which
19 typically focuses on the amount received by the class and compares that to the reasonable range of
20 potential outcomes in the case. (See, e.g., *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
21 116, 130; *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 407.)

22 B. The Settlement Meets the Standard for Approval.

23 The \$375,000.00 Settlement Sum is reasonable when considered in light of the principles
24 discussed in Senator Dunn’s letter. For a group of approximately 613 employees, a penalty of
25 \$375,000 is large enough to punish Defendant for alleged past violations and deter future violations.
26 (Valle Decl., ¶ 11.) Before the division of payment between Aggrieved Employees and the LWDA,
27 the settlement amount is equivalent to a penalty of around \$615.00 per employee or \$21.00 per pay
28 period. (*Id.*) At the same time, the penalty amount is not so large as to be unjust, oppressive or

1 confiscatory, considering the company's potential exposure. (*Id.*) The Maximum Payment is also
2 reasonable in light of the facts of the present action, the real risk that no PAGA penalties would be
3 paid, and inherent risks and uncertainties associated with PAGA claims. (*Id.*)

4 When calculating civil penalties under PAGA, Plaintiff applied the penalty amounts associated
5 with initial violations for each pay period where a violation occurred. This is because a defendant is
6 not subject to heightened penalties for any Labor Code violations unless it is "notified by the Labor
7 Commissioner or any court that it [is] subject to the California Labor Code." (*Amaral v. Cintas Corp.*
8 *No. 2* (2008) 163 Cal.App.4th 1157, 1209.) Here, Plaintiff's counsel did not find any prior PAGA or
9 LWDA actions against Defendant. (Valle Decl., ¶ 12.) As such, heightened penalties were not
10 warranted. (*Id.*)

11 Defendant provided Plaintiff's counsel with the timekeeping and pay records for the Aggrieved
12 Employees, which was analyzed by an expert hired by Plaintiff's counsel. (Valle Decl., ¶ 6.) The
13 Parties estimate that there are 17,859 Pay Periods for all employees. (*Id.* at ¶ 13.) If the Court allowed
14 stacking of different types of penalties in each PAGA Pay Period and Plaintiff could recover penalties
15 for every violation, then the maximum potential exposure would be as follows:

- 16 - 10,587 Pay Periods x \$100 x 100% violation rate (for unpaid regular and overtime wages due to
17 Defendant's alleged requirement of employees to complete COVID-19 health screenings before
18 work through the end of 2022) = \$1,058,700.00 for unpaid wages violations;
- 19 - 17,859 Pay Periods x \$100 x 16.0% violation rate (for meal periods violations [late, short, or
20 interrupted] allegedly shown in the time records) = \$285,700.00 for meal period violations;
- 21 - 17,859 Pay Periods x \$100 x 50% violation rate (for allegedly conditioning rest breaks upon
22 supervisor approval, but failing to provide adequate coverage to actually provide breaks) =
23 \$892,900.00 for rest break violations;
- 24 - 17,859 Pay Periods x \$100 x 100% violation rate (for derivative wage statement penalties) =
25 \$1,785,900.00 for wage statement violations; and
- 26 - 216 separated employees x \$100 x 100% violation rate (for derivative waiting time penalties) =
27 \$21,600.00 for waiting time violations.

28 (*Id.*)

1 In negotiating the settlement, Plaintiff's counsel also assessed the risk of whether Plaintiff would
2 prevail in arbitration, and whether the arbitrator would decide that he was an aggrieved employee.
3 (Valle Decl., ¶ 14.) Failing to prevail at arbitration would likely foreclose Plaintiff from recovering
4 any penalties on behalf of himself or other employees under PAGA. (*Id.*) As to the PAGA claims,
5 Plaintiff assessed the risks involved with proceeding with PAGA litigation, as Defendant disputed
6 the expert's calculations, and argued it could defeat Plaintiff's claims: (1) through declarations and
7 testimony from employees that they actually took timely rest breaks and meal periods, and did not
8 work before their shifts; (2) by showing employees completed timesheets voluntarily, and input the
9 time actually worked and meal periods actually taken to defeat meal period and unpaid wages claims;
10 (3) because the actual amount of recorded meal period violations was low; and (4) by showing there
11 would be no PAGA penalties for derivative §§ 203 and 226 claims if Plaintiff failed to prove the
12 other claims. (*Id.*, ¶¶ 15, 16.) Furthermore, Defendant provided its financial records to Plaintiff's
13 counsel, who reviewed them, and confirmed that Defendant is a non-profit organization with a
14 significant amount of its revenue coming from government grants that would affect Defendant's
15 ability to pay a large settlement. (*Id.* at ¶ 15.) Plaintiff's counsel assessed the reasonableness of the
16 settlement with significant consideration to the financial records, including the likelihood of recovery
17 should this matter proceed to trial. (*Id.*)

18 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA awards are
19 discretionary and can be reduced by the Court. The Court can reduce the PAGA penalties "if, based
20 on the facts and circumstances of the particular case, to do otherwise would result in an award that is
21 unjust, arbitrary and oppressive, or confiscatory." (Labor Code § 2966(e)(2).) In other words, were
22 this matter to go to trial, any award granted would be at the discretion of the Court.

23 Plaintiff recognizes that, although he believes there would be no persuasive grounds to reduce
24 the penalties, the Court could determine otherwise and significantly reduce the PAGA penalties,
25 especially given that Defendant operates a non-profit organization that provides services to homeless
26 individuals and domestic violence transitional housing, and has not previously been sued for wage
27 and hour violations. (Valle Decl., ¶¶ 12, 17.) The wide range of potential recovery and the additional
28 delays and risks of trial justified settling at this point for a reasonable amount of recovery. (*Id.*)

1 **VII. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEY’S FEES**

2 For their efforts and the substantial risks Plaintiff’s counsel undertook in obtaining a common
3 fund settlement that benefits the LWDA and Aggrieved Employees, the Parties allocated one-third of
4 the Maximum Amount to Plaintiff’s counsel for reasonable attorneys’ fees, plus actual litigation
5 costs. These fees are warranted under law and within the range of fees commonly awarded in similar
6 cases.

7 *A. Plaintiff’s Counsel Is Entitled to Recover Attorneys’ Fees Under the Common Fund*
8 *Doctrine in This Quasi Qui Tam Action.*

9 PAGA provides that a Plaintiff is entitled to recover reasonable attorneys’ fees, expenses, and
10 costs under Labor Code § 2699(g)(1), which provides that “[a]ny employee who prevails in any action
11 shall be entitled to an award of attorneys’ fees and costs, including any filing fee paid pursuant to . .
12 . Section 2699.3.” As discussed below, in a qui tam action, reasonable attorneys’ fees and costs are
13 typically awarded under the common fund doctrine, where, as here, the litigation creates a common
14 fund of money in a specific amount for the benefit of others.

15 A PAGA action is a *quasi qui tam* action because the statute allows the employee plaintiff, acting
16 as the proxy of the state’s labor law enforcement agency, to sue his employer for Labor Code
17 violations and recover civil penalties that otherwise would have been assessed and collected by the
18 LWDA. (*Iskanian, supra*, 59 Cal. 4th at 380.) “A PAGA representative action is therefore a type of
19 *qui tam* action.” (*Id.* at 382.) Indeed, the majority of the civil penalties recovered in a PAGA action
20 are paid to the state, with the smaller portion paid to the aggrieved employees (*e.g.* 75% to the state,
21 and 25% to the aggrieved employees. (Lab. Code § 2699(i).)

22 As here, where a common fund is created in a qui tam action by the successful litigation of a
23 plaintiff and his attorneys, the attorneys are entitled to recover their fees from the common fund.
24 (*Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91.) In *Bank of America*, attorneys were
25 awarded their fees from the common fund in a taxpayer action to enforce unclaimed property law.
26 Affirming the award, the Court stated:

27 Those benefiting from the recovery of the fund, in this case some depositors and
28 eventually the People of the State of California, must bear their share of the cost

1 of litigation. Fees for taxpayers’ attorneys will be deducted from the judgment,
2 and each claimant’s share reduced proportionately.

3 (*Id.* at 91.)

4 Likewise, in this case, through the successful efforts of Plaintiff and his attorneys, a common
5 fund was created in the amount of \$375,000.00 for the benefit of Defendant’s employees and the
6 State of California. Thus, these beneficiaries must bear their share of the costs and attorneys’ fees
7 which will be deducted from the Settlement Amount under the common fund theory.

8 In *Laffitte*, the California Supreme Court held that it is not an abuse of discretion for a trial court
9 to utilize the percentage method for calculating an attorneys’ fee award in a common fund case, which
10 this case is. (*Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal. 5th 480, 503; *see also Serrano v. Priest*
11 (1977) 20 Cal. 3d 25, 35-40; *City and County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105,
12 110 (the common fund doctrine has been applied “consistently in California when an action brought
13 by one party creates a fund in which other persons are entitled to share.”).) The Court held “that
14 when class action litigation establishes a monetary fund for the benefit of the class members, and the
15 trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine
16 the amount of a reasonable fee by choosing an appropriate percentage of the fund created.” (*Laffitte*,
17 *supra*, 1 Cal. 5th at 503.) Explaining that the percentage method “is a valuable tool” for trial courts
18 to calculate attorneys’ fees, the Court extolled “[t]he recognized advantages” of the method, such as
19 “ease of calculation, alignment of incentives between counsel and the class, a better approximation
20 of market conditions in a contingency case, and the encouragement it provides counsel to seek an
21 early settlement and avoid unnecessarily prolonging the litigation.” (*Id.* (citations omitted).)

22 In applying the common fund doctrine, California courts routinely award attorneys’ fees
23 equaling one-third of the common fund’s total potential value. (*See, e.g., Laffitte v. Robert Half*
24 *Int’l Inc.*, 231 Cal. App. 4th 860, 878 (2014) (“trial court’s use of a percentage of 33 1/3 percent of
25 the common fund is consistent with [] awards in other class action lawsuits” and “studies show that
26 ... fee awards in class actions average around one-third of the recovery”), *aff’d by Laffitte, supra*, 1
27 Cal. 5th at 489; *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (“Empirical studies
28 show that, regardless of whether the percentage method or the lodestar method is used, fee awards

1 in class actions average around one-third of the recovery”); Eisenberg & Miller, *Attorney Fees in*
2 *Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-
3 78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that a
4 one-third fee is consistent with market rates).)

5 One-third of the common fund is also reasonable because it best reflects the market rate for
6 contingency fees. (See *Lealoe v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 47
7 (“attorneys providing the essential enforcement services must be provided incentives roughly
8 comparable to those negotiated in the private bargaining that takes place in the legal marketplace”).)
9 Fees representing up to forty percent of the recovery reflect the rate negotiated in “typical
10 contingency fee agreements [which] provide that class counsel will recover 33% if the case is
11 resolved before trial and 40% if the case is tried.” (*Fernandez v. Victoria Secret Stores LLC*, 2008
12 U.S. Dist. LEXIS 123546, *55-57 (C.D. Cal. July 21, 2008) (citing an academic study collecting
13 contingency fee agreements and finding that a fee award constituting 34% of the fund is reasonable
14 on that basis).) Because the negotiated fee structure mimics the marketplace, it is reasonable and
15 should be approved.

16 Here, Plaintiff’s counsel efficiently litigated this matter, making the entire Net Settlement
17 Amount available to Aggrieved Employees with no reversion to Defendant. The percentage of fees
18 sought by Plaintiff’s counsel is in line with awards in similar cases in California and is reasonable
19 for the benefit obtained for Aggrieved Employees in this case.

20 *B. Lodestar Cross-Check Confirms the Reasonableness of the Fee Award.*

21 Despite recognized limitations of the so-called lodestar method, some California and federal
22 courts acknowledge the utility of a lodestar “cross-check” for common fund awards (*Lealoe, supra*,
23 82 Cal.App.4th at 46-47.) In *Laffitte*, the court permitted use of a “lodestar cross check,” by which
24 the trial court would first select a percentage of the common fund for the fee award, and then verify
25 that the percentage chosen is fair and reasonable in light of the attorney hours spent on the case.
26 (*Laffitte, supra*, 1 Cal. 5th at 504.) While some “multiplier” would be expected, the multiplier
27 should be “evaluated for reasonableness;” “rough parity” between the lodestar and the percentage-
28 based recovery would make sense. (*Id.* at 496.) Use of the lodestar cross-check, the court explained,

1 represents a “blending of the two fee calculation methods” (percentage and lodestar), where “one
2 method is used to confirm or question the reasonableness of the other’s result.” (*Id.* at 497.) The
3 court, however, did not require a lodestar cross check, explaining that courts “retain the discretion
4 to forego a lodestar cross-check and use other means to evaluate the reasonableness of a requested
5 percentage fee.” (*Id.* at 505.)

6 California’s lodestar/multiplier method is a two-step process of fee calculation under which
7 the court first determines a lodestar value for the fees by multiplying the time reasonably spent by
8 plaintiff’s counsel on the case by a reasonable hourly rate. (*In re Consumer Privacy Cases* (2014)
9 175 Cal.App.4th 545, 556-557.) The starting point in determining the appropriate hourly fee is to
10 discern the prevailing rate for similar work in the pertinent geographic region. (*PLCM Group, Inc.*
11 *v. Drexler* (2000) 22 Cal.4th 1084, 1096-97 (using prevailing hourly rate in community for
12 comparable legal services even though party used in-house counsel); *see also* Herr, David F., *Manual*
13 *for Complex Litigation*, § 14.122 (“reasonable fees . . . are to be calculated according to the prevailing
14 market rates in the relevant community.”).

15 Here, Plaintiff’s counsel’s hourly rates are comparable to those charged by other class action
16 plaintiff’s counsel and the firms defending class actions. (Valle Decl., ¶ 37.) Further, the total
17 attorney hours expended on this action are reasonable and in line with comparable cases. Plaintiff’s
18 counsel billed a total of 167.5 hours prosecuting this case. (*Id.*, at ¶ 36.) The firm dedicated
19 significant resources to this case by dividing the tasks required according to skill level; the
20 professional hours generated by each attorney are not unreasonable or duplicative. (*Id.*)

21 Multiplying the total hours billed by Plaintiff’s counsel in this litigation by their reasonable
22 hourly rates yields a lodestar of \$105,652.50. (Valle Decl., ¶ 36.) Plaintiff’s counsel accordingly
23 requests a lodestar multiplier of approximately 1.18 to meet the fee award. (*Id.*, at ¶ 38.)

24 *C. A Multiplier is Justified in Light of the Results Achieved and Plaintiff’s Counsel’s*
25 *Extensive Work Performed at the Risk of Receiving No Payment.*

26 The Court may enhance or reduce the lodestar by applying a multiplier to take into account
27 multiple factors, including the following: (1) the results achieved on behalf of the Aggrieved
28 Employees; (2) the novelty and difficulty of the questions involved and the skills displayed in

1 presenting them; (3) counsel's experience, reputation and ability; (4) counsel's preclusion from other
2 work; and (5) the contingent nature of the fee award. (*See Ketchum v. Moses* (2001) 24 Cal.4th 1122,
3 1139; *Cundiff v. Verizon Cal., Inc.* (2008) 167 Cal.App.4th 718, 724.) Application of each of these
4 factors strongly favors granting the full attorneys' fees and costs award that Plaintiff's counsel has
5 requested in this case, as explained in detail below.

6 California courts routinely award multipliers on plaintiff's counsel's lodestars ranging from 2
7 to 4, or even higher. (*See, e.g. Chavez, supra*, 162 Cal. App. 4th at 49-50 (approving multiplier of
8 approximately 2.5); *Ridgeway v. Wal-Mart Stores Inc.* (N.D. Cal. 2017) 269 F.Supp.3d 975, 1000
9 (approving multiplier of 2.0).) Here, Plaintiff's counsel requests a modest 1.364 multiplier to reach
10 the one-third fee amount provided in the Settlement. (Valle Decl., ¶ 38.)

11 1. The Results Achieved on Behalf of the Aggrieved Employees

12 Due to Plaintiff's counsel's efforts, Aggrieved Employees will receive immediate and
13 reasonable payment for their claims. (Valle Decl., ¶ 39.) A settlement at this juncture also avoids the
14 risk and expense of losing on some or all of the claims at trial. (*Id.*) Plaintiff's counsel believed it
15 was preferable here to reach a resolution at this stage of the case to save time and money that would
16 otherwise go to litigation and would not have guaranteed any larger of an award than the Settlement.
17 (*Id.*) Accordingly, the benefits achieved by Plaintiff's counsel favor approval of the requested fees.

18 2. The Novelty and Difficulty of the Questions Involved, and the Skill in Presenting Them.

19 Plaintiff's counsel used their experience to negotiate a suitable settlement that avoided potential
20 pitfalls for Aggrieved Employees who would be forced to arbitrate their claims. (Valle Decl., ¶ 40.)
21 First, Plaintiff's counsel engaged in discovery with Defendant to prove PAGA claims. (*Id.* at ¶ 9.)
22 Additionally, in 2022, Plaintiff's counsel spent a significant amount of time briefing and opposing
23 Defendant's Motion to Compel Arbitration. (*Id.*, at ¶ 40.) Plaintiff's counsel thoroughly briefed and
24 researched novelty in the changing law resulting from the *Viking River Cruises, Inc. v. Moriana's*,
25 (2022) 142 S.Ct. 1906, change to splitting of PAGA claims into representative and individual claims,
26 and successfully argued against unconscionable provisions of the arbitration agreement. (*Id.*)
27 Plaintiff's counsel was successful in allowing this Action to proceed. (*Id.*) Had Plaintiff's counsel
28 lost this Opposition, Plaintiff would have been forced to arbitrate his individual PAGA claim only

1 and would have been precluded from recovering penalties on behalf of the State of California or
2 other employees for Defendant's employment violations. (*Id.*)

3 In preparation for mediation, Plaintiff's counsel also extensively reviewed and analyzed
4 discovery provided by Defendant and reviewed applicable law and other authority. (Valle Decl., ¶
5 6.) Plaintiff's counsel's skill in researching and presenting the issues in this case resulted in a fair
6 settlement for the Aggrieved Employees, and weighs in favor of approving the fee request.

7 3. Plaintiff's Counsel's Experience, Reputation, and Ability.

8 Plaintiff's counsel submit that their skill contributed to the efficient resolution of this case. They
9 are experienced litigators who focus their practices on wage and hour class actions and PAGA cases,
10 with extensive experience litigating both. (Valle Decl., ¶¶ 18-34.) Plaintiff's counsel has been
11 appointed class counsel or co-class counsel in many cases, have obtained substantial recoveries for
12 thousands of employees through these cases, and have the requisite skill and experience to justify
13 the requested fees. (*See id.*)

14 4. Plaintiff's Counsel's Preclusion from Other Work

15 During the pendency of this action, Plaintiff's counsel thoroughly investigated and researched
16 the claims in controversy, their defenses, and the relevant body of law. (Valle Decl., ¶ 44.) Overall,
17 Plaintiff's counsel performed extensive work and obtained a favorable result through time-consuming
18 litigation (both in court and in arbitration), substantial analysis of the records, a full day of mediation,
19 and negotiation of the Settlement and memorandum of understanding over many months. (*Id.*, ¶¶ 7,
20 44) This time could have been spent on other potentially lucrative cases. (*Id.* at ¶ 44.) Accordingly,
21 Plaintiff's counsel's time should be compensated.

22 5. The Contingent Nature of the Fee Award

23 The California Supreme Court has recognized that attorney fee awards should be enhanced to
24 compensate attorneys for the risks of loss involved in contingency fee cases. (*Graciano v. Robinson*
25 *Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 154.) The main criterion for risk is the risk of complete
26 loss, which would leave counsel unable to recover fees. (*Graham v. DaimlerChrysler Corp.*, (2004)
27 34 Cal.4th 553, 583 (explaining that a multiplier corresponds to risk of loss, with the risk of not being
28

1 the successful party ranking highest).) In *Ketchum*, the California Supreme Court instructed courts
2 to adjust fee compensation to ensure that the fees account for contingency risk:

3 A lawyer who both bears the risk of not being paid and provides legal services is
4 not receiving fair market value of his work if he is paid only for the second of these
5 functions. If he is paid no more, competent counsel will be reluctant to accept fee
6 award cases.

7 (*Ketchum, supra*, 24 Cal.4th at 1132-33.)

8 A fee award that adjusts for contingency fee risk “constitutes earned compensation; unlike a
9 windfall, it is neither expected or fortuitous.” (*Id.* at 1138.) The contingent risk factor is the single
10 most important enhancement factor under California law even for actions where statutory fees are
11 available. (*See Horsford v. Board of Trustees of Calif. State Univ.* (2005) 132 Cal.App.4th 359, 399
12 (reversing a trial court order for failure to consider contingent risk for statutory fees under FEHA).)
13 The main criterion for the risk is the risk of complete loss, which would leave counsel unable to
14 recovery any fees. (*Graham, supra*, 34 Cal.4th at 583 (explaining that a multiplier corresponds to risk
15 of loss, with the risk of not being the successful party ranking highest).) This risk is particularly acute
16 for contingency fee attorneys because they “must use savings or incur debt to keep their offices afloat
17 and their families fed during the years-long litigation.” (*Horsford, supra*, 132 Cal.App.4th at 400.)

18 Here, Plaintiff’s counsel bore the entire risk of recovery. They took Plaintiff’s case on a pure
19 contingency basis, with no guarantee of payment. (Valle Decl., ¶ 42.) Before mediation, Plaintiff’s
20 counsel spent significant time litigating arbitration issues in court, analyzing records, proceeding
21 in arbitration, and researching theories of liability despite the risk of recovering nothing. (*Id.*) A
22 defeat at one of these stages could have foreclosed the possibility of Plaintiff’s counsel recovering
23 full remuneration for their time and effort. (*Id.*) Yet, in spite of these considerable challenges that
24 enhanced the already-high contingency risk, Plaintiff’s counsel was able to obtain a settlement
25 amount of \$375,000.00. A fee award in the amount of \$125,000.00 is fair and reasonable.

26 **VIII. THE SETTLEMENT ADMINISTRATOR COSTS ARE REASONABLE**

27 The Parties agreed to hire Phoenix Settlement Administrators as the Settlement Administrator.
28 The Settlement Administrator will be responsible for updating the mailing addresses of the Aggrieved

1 Employees, mailing the Notice to each Aggrieved Employees, disbursing payments as ordered by the
2 Court, responding to Aggrieved Employees' inquiries, and providing a declaration to document its
3 duties and responsibilities under the Settlement. The requested amount of \$6,000.00 for services
4 rendered and to be rendered is fair and reasonable and should be granted.

5 **IX. CONCLUSION**

6 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement pursuant
7 to PAGA in this Action.

8
9 Dated: September 2, 2025

AEGIS LAW FIRM, PC



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11 By _____

12 Alex J. Valle
13 Attorneys for Plaintiff Miguel Angel Rubalcaba
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