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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

LEXY BARAJAS and JASON MARMON,
as aggrieved employees and private attorney
general,

Plaintiffs,

vs.

H. W. HUNTER, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 22STCV01892

Honorable Robert B. Broadbelt
Department 53

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT AND
AWARD OF PAGA COUNSEL FEES
PAYMENT, PAGA COUNSEL LITIGATION
EXPENSES PAYMENT, ENHANCEMENT
PAYMENTS, AND ADMINISTRATION
EXPENSES PAYMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

Reservation ID: 182084061481

Date: February 28, 2024
Time: 10:00 a.m.
Dept.: 53

Complaint Filed: January 18, 2022
FAC Filed: February 23, 2022
Trial Date: March 13, 2024

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on February 28, 2024 at 10:00 a.m. in Department 53 of
3 the above-captioned Court located at Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles,
4 California 90012, Plaintiffs Lexy Barajas and Jason Marmon (together, “Plaintiffs”) will and hereby
5 do move the Court for an Order granting approval of California Labor Code Private Attorneys
6 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) settlement.
7 Specifically, Plaintiffs request that the Court enter an Order:

- 8 1. Granting approval pursuant to California Labor Code section 2699(1)(2) of the PAGA
9 Settlement Agreement (“Settlement” or “Settlement Agreement”) attached as **Exhibit 3**
10 to the Declaration of Jonathan M. Genish in Support of Plaintiffs’ Motion for Approval
11 of PAGA Settlement and Award of PAGA Counsel Fees Payment, PAGA Counsel
12 Litigation Expenses Payment, Enhancement Payments, and Administration Expenses
13 Payment (“Genish Decl.”);
- 14 2. Directing the distribution of the Gross Settlement Amount of Four Hundred Thirty-Seven
15 Thousand Five Hundred Dollars and Zero Cents (\$437,500.00) pursuant to the terms of
16 the Settlement;
- 17 3. Approving the PAGA Penalties, estimated to be Two Hundred Sixty-Two Thousand One
18 Hundred Sixty Dollars and Thirty-Six Cents (\$262,160.36), of which seventy-five
19 percent (75%) will be distributed to the California Labor and Workforce Development
20 Agency (“LWDA”) and twenty-five percent (25%) of which will be distributed to the
21 Aggrieved Employees;
- 22 4. Approving an award of reasonable attorneys’ fees of One Hundred Forty-Five Thousand
23 Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$145,833.33) to PAGA
24 Counsel, Blackstone Law, APC;
- 25 5. Approving the amount of Fourteen Thousand Five Hundred Six Dollars and Thirty-One
26 Cents (\$14,506.31) to PAGA Counsel, Blackstone Law, APC, for reimbursement of
27 actual litigation costs and expenses pursuant to California Labor Code section
28 2699(g)(1);

6. Approving awards of Five Thousand Dollars and Zero Cents (\$5,000.00) each (total, \$10,000.00) to Plaintiffs as Enhancement Payments;
7. Appointing ILYM Group, Inc. as the Administrator; and
8. Approving an award of up to Five Thousand Dollars and Zero Cents (\$5,000.00) in anticipated costs to ILYM Group, Inc. for its settlement administration services.

Pursuant to California Labor Code section 2699(1)(2), a copy of the proposed Settlement, as well as information regarding the approval hearing in this matter, were submitted to the LWDA via online submission through its public portal concurrently with the filing of this Motion. (Genish Decl., ¶ 20).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of PAGA Counsel Jonathan M. Genish and Plaintiffs Lexy Barajas and Jason Marmon, the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: October 9, 2023

BLACKSTONE LAW, APC

By:

Jonathan M. Genish
Attorneys for Plaintiffs
Lexy Barajas and Jason Marmon

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Labor Code Private Attorneys General Act, California Labor Code
4 sections 2698, *et seq.* (“PAGA”), Plaintiffs Lexy Barajas and Jason Marmon (together, “Plaintiffs”)
5 seek approval of the PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”) entered
6 into with Defendant H.W. Hunter, Inc. (“Defendant”) (collectively with Plaintiffs, the “Parties”),
7 which is attached as Exhibit 3 to the Declaration of Jonathan M. Genish in Support of Plaintiffs’
8 Motion for Approval of PAGA Settlement and Award of PAGA Counsel Fees Payment, PAGA
9 Counsel Litigation Expenses Payment, Enhancement Payments, and Administration Expenses
10 Payment (“Genish Decl.”). The Settlement terms are outlined as follows:

- 11 • Number of Aggrieved Employees: 251 individuals.
- 12 • Gross Settlement Amount: Four Hundred Thirty-Seven Thousand Five Hundred Dollars
13 and Zero Cents (\$437,500.00).
- 14 • Requested PAGA Counsel Fees Payment: One Hundred Forty-Five Thousand Eight
15 Hundred Thirty-Three Dollars and Thirty-Three Cents (\$145,833.33) (1/3 of the Gross
16 Settlement Amount).
- 17 • Requested PAGA Counsel Litigation Expenses Payment: Fourteen Thousand Five
18 Hundred Six Dollars and Thirty-One Cents (\$14,506.31).
- 19 • Enhancement Payments: Five Thousand Dollars and Zero Cents (\$5,000.00) each (total,
20 \$10,000.00).
- 21 • Administration Expenses Payment: Not to exceed Five Thousand Dollars and Zero Cents
22 (\$5,000.00).
- 23 • Estimated PAGA Penalties: Two Hundred Sixty-Two Thousand One Hundred Sixty
24 Dollars and Thirty-Six Cents (\$262,160.36), of which 75% (\$196,620.27) will be paid to
25 the California Labor and Workforce Development Agency (“LWDA”) and the remaining
26 25% (\$65,540.09) will be paid to the Aggrieved Employees.

27 As set forth herein, the Settlement is the product of informed discovery, arms-length
28 negotiations, and provides a fair, adequate, and reasonable recovery for the State of California and
Aggrieved Employees. Plaintiffs therefore respectfully request that the Court grant approval of the

1 proposed Settlement, among other requested relief.

2 II. FACTUAL AND PROCEDURAL BACKGROUND

3 Defendant was a car dealership that provided automobile services until it closed and sold its
4 assets on July 15, 2022. (Genish Decl., ¶ 8). The company offered retail sale of new and used
5 automobiles, finance, parts, and repair services. (*Ibid*). Defendant employed Plaintiff Lexy Barajas
6 (“Plaintiff Barajas”) as an hourly-paid, non-exempt Service Advisor from approximately March 2019
7 to October 2021. (Declaration of Lexy Barajas in Support of Motion for Approval of PAGA
8 Settlement and Award of PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses
9 Payment, Enhancement Payments, and Administration Expenses Payment [“Barajas Decl.”], ¶ 3;
10 Genish Decl., 8). Defendant employed Plaintiff Jason Marmon (“Plaintiff Marmon”) as an hourly-
11 paid, non-exempt Finance Manager from approximately April 2019 to February 2022. (Declaration
12 of Jason Marmon in Support of Motion for Approval of PAGA Settlement and Award of PAGA
13 Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Enhancement Payments, and
14 Administration Expenses Payment [“Marmon Decl.”], ¶ 3; Genish Decl., ¶ 8).

15 On November 10, 2021, Plaintiff Barajas provided written notice by electronic submission to
16 the LWDA and by Certified U.S. Mail to Defendant, pursuant to California Labor Code § 2699.3,
17 providing notice of the specific provisions of the California Labor Code which Plaintiff Barajas
18 alleged Defendant violated, including the facts and theories to support the allegations (“PAGA
19 Notice”). (Genish Decl., ¶ 9, Exh. 1).

20 On January 18, 2022, Plaintiff Barajas filed a Complaint for Enforcement Action Under the
21 Private Attorneys General Act, California Labor Code §§ 2698 Et Seq in the action entitled *Lexy*
22 *Barajas, et al. v. H. W. Hunter, Inc.*, Los Angeles County Superior Court Case No. 22STCV01892
23 (“Action”). (*Id.*, ¶ 10).

24 On February 8, 2022, Plaintiff Barajas propounded multiple sets of formal written discovery
25 requests onto Defendant (specifically, Form Interrogatories – General (Set One), Special
26 Interrogatories (Set One), and Requests for Production of Documents (Set One)), noticed the
27 deposition of Defendant’s Person Most Knowledgeable, and served a proposed *Belaire-West* notice.
28 (*Id.*, ¶ 11).

1 On February 22, 2022, Plaintiffs provided an amended written notice by electronic submission
2 to the LWDA and by Certified U.S. Mail to Defendant, for the limited purpose of adding Plaintiff
3 Marmon as an additional representative plaintiff. (*Id.*, ¶ 12, Exh. 2).

4 On February 23, 2022, Plaintiffs filed a First Amended Complaint for Enforcement Action
5 Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq. (“Operative
6 Complaint”) in the Action, which added Plaintiff Marmon as a named plaintiff. (*Id.*, ¶ 13). The
7 Operative Complaint alleges one cause of action pursuant to PAGA, alleging civil penalties for
8 Defendant’s failure to pay minimum wage, failure to pay overtime wages, failure to provide
9 compliant meal periods and associated premiums, failure to provide compliant rest periods and
10 associated premiums, failure to timely pay wages during employment, failure to timely pay wages
11 upon termination, failure to keep requisite payroll records, failure to provide compliant wage
12 statements, failure to reimburse necessary business expenses, and failure to pay wages owed for
13 accrued vacation time in violation of California Labor Code sections 201, 202, 203, 204, 226(a),
14 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and all applicable
15 Industrial Welfare Commission Wage Orders. (*Ibid*).

16 On March 14, 2023, Defendant responded to Plaintiff Barajas’ formal written discovery
17 requests (specifically, Plaintiff Barajas’ Form Interrogatories – General (Set One), Special
18 Interrogatories (Set One), and Request for Production of Documents (Set One)). (*Id.*, ¶ 14). On April
19 29, 2022, Defendant objected to Plaintiff Barajas’ notice of deposition of Defendant’s Person Most
20 Knowledgeable. (*Ibid*).

21 During the course of formal and informal discovery in the Action, PAGA Counsel conducted
22 an intense investigation into the facts of the Action. (*Id.*, ¶ 15). This included obtaining data,
23 information, and documents relating to the underlying alleged violations, including but not limited
24 to, Plaintiffs’ employee files, a sampling of Aggrieved Employees’ time and payroll records,
25 Defendant’s Employee Handbooks, and Aggrieved Employees’ data points so that Plaintiffs could
26 assess the number of alleged potential violations and value of the recoverable penalties, as well as
27 evaluate the strengths and weaknesses of their claims. (*Ibid*).

28 ///

1 Based on the data, information, and documents received, as well as thorough discussions with
2 Defendant's counsel, PAGA Counsel was able to (i) determine the total number of distinct individuals
3 falling within the definition of "Aggrieved Employees" for the relevant statutory period, (ii) the
4 number of affected pay periods at issue among them, and (iii) construct a damages model that
5 calculated the maximum realistic amount of PAGA penalties that could be levied against Defendant
6 within the relevant statutory period. (*Id.*, ¶ 16). Defendant, however, disputed Plaintiffs' claims and
7 disputed both the existence of and extent of liability as alleged by Plaintiffs, which allowed PAGA
8 Counsel to further assess the strength of Plaintiffs' claims. (*Ibid*). PAGA Counsel's experience in
9 litigating similar representative wage and hour claims, the degree of investigation that was conducted
10 here, and the amount of information that was obtained, was sufficient to determine the potential value
11 of the PAGA claim, and to evaluate the strength of this claim for purposes of settlement. (*Ibid*).

12 On July 10, 2023, the Parties attended a formal mediation conducted by Honorable Carl J.
13 West (Ret.), a neutral and respected mediator with extensive experience in complex wage and hour
14 matters, during which the Parties were able to reach an agreement to resolve the Action in its entirety.
15 (*Id.*, ¶ 17). The Parties believe the Settlement is fair, reasonable, and adequate. (*Id.*, ¶ 18). The
16 Parties understand, acknowledge, and agree that the Settlement Agreement constitutes a compromise
17 of Plaintiffs' PAGA claim, and that it is the desire and intention of the Parties to effect a final and
18 complete resolution of the Released PAGA Claims. (*Ibid*).

19 Defendant denies all of the claims in the Action, and does not waive, but rather expressly
20 reserves, all rights to challenge all such claims and allegations upon all legal, procedural, and factual
21 grounds should the Settlement Agreement not become final. (*Id.*, ¶ 19). The Settlement Agreement
22 reflects a compromise reached to end litigation in the Action. (*Ibid*). Now, following significant
23 investigation and extensive settlement negotiations, Plaintiffs seek approval of the proposed
24 Settlement, which will resolve all representative claims alleged in the Operative Complaint. (*Ibid*).

25 In accordance with California Labor Code sections 2699 *et. seq.*, PAGA Counsel provided
26 notice of the proposed Settlement to the LWDA by uploading this Motion and the Settlement
27 Agreement to the LWDA's online portal concurrently with the filing of this Motion on October 9,
28 2023. (*Id.*, ¶ 20).

1 **III. THE SETTLEMENT TERMS**

2 **A. Definition of the Aggrieved Employees**

3 For purposes of settlement only, the Parties have agreed that “Aggrieved Employees” shall be
4 defined as all individuals who worked for Defendant in the State of California as hourly-paid and/or
5 non-exempt employees at any time during the PAGA Period. (Genish Decl., ¶ 21; Settlement
6 Agreement, ¶ 1.4). The “PAGA Period” is the period from May 15, 2022 to July 15, 2022. (Genish
7 Decl., ¶ 21; Settlement Agreement, ¶ 1.20). Based on its records, Defendant represented that there
8 are 251 Aggrieved Employees who worked a total of 7,022 Pay Periods during the PAGA Period.
9 (Genish Decl., ¶ 21; Settlement Agreement, ¶ 8).

10 **B. Amount of Settlement**

11 The Parties have agreed to settle the PAGA claim at issue in the Operative Complaint for a
12 non-reversionary Gross Settlement Amount of Four Hundred Thirty-Seven Thousand Five Hundred
13 Dollars and Zero Cents (\$437,500.00). (Genish Decl., ¶ 22; Settlement Agreement, ¶ 1.12).

14 **C. Allocation and Funding of the Gross Settlement Amount**

15 The Gross Settlement Amount is a common fund and therefore includes all requested costs,
16 fees, and other allocations. (Genish Decl., ¶ 22). The Gross Settlement Amount includes: (1) PAGA
17 Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement Amount, equaling One
18 Hundred Forty-Five Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents
19 (\$145,833.33); (2) PAGA Counsel’s actual litigation costs and expenses of Fourteen Thousand Five
20 Hundred Six Dollars and Thirty-One Cents (\$14,506.31); (3) Administration Expenses Payment, not
21 to exceed Five Thousand Dollars and Zero Cents (\$5,000.00); and (4) Enhancement Payments in the
22 amount of Five Thousand Dollars and Zero Cents (\$5,000.00) each (total, \$10,000.00) to Plaintiffs.
23 (Genish Decl., ¶ 22; Settlement Agreement, ¶¶ 1.12, 3.2.1, 3.2.2., & 3.2.2.1).

24 After the above-estimated amounts are deducted from the Gross Settlement Amount, the
25 PAGA Penalties will amount to approximately Two Hundred Sixty-Two Thousand One Hundred
26 Sixty Dollars and Thirty-Six Cents (\$262,160.36), of which seventy-five percent (75%), or One
27 Hundred Ninety-Six Thousand Six Hundred Twenty Dollars and Twenty-Seven Cents
28 (\$196,620.27), will be paid to the LWDA (“LWDA PAGA Payment”), and twenty-five percent

1 (25%), or Sixty-Five Thousand Five Hundred Forty Dollars and Nine Cents (\$65,540.09), will be
2 distributed and paid to Aggrieved Employees on a pro-rata basis based on their number of pay
3 periods worked for Defendant for at least one day during the PAGA Period (“Pay Periods”). (Genish
4 Decl., ¶ 23; Settlement Agreement ¶¶ 1.16, 1.19, 1.23, & 3.2.3).

5 Within fifteen (15) calendar days of the Effective Date, Defendant will deliver Aggrieved
6 Employee identifying information in Defendant’s possession, including each Aggrieved Employee’s
7 full name, last-known mailing address, Social Security number, and number of Pay Periods
8 (collectively, “Aggrieved Employee Data”) to the Administrator in the form of a Microsoft Excel
9 spreadsheet. (Genish Decl., ¶ 24; Settlement Agreement, ¶¶ 1.5 & 4.1).

10 Within fifteen (15) calendar days of the Effective Date, Defendant will fund the Gross
11 Settlement Amount by transmitting the funds to the Administrator. (Genish Decl., ¶ 25; Settlement
12 Agreement, ¶ 4.2).

13 Within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount, the
14 Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the
15 Administration Expenses Payment, the Enhancement Payments, the PAGA Counsel Fees Payment,
16 and the PAGA Counsel Litigation Expenses Payment. (Genish Decl., ¶ 26; Settlement Agreement, ¶
17 4.3). Disbursement of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses
18 Payment will not precede disbursement of Individual PAGA Payments. (Genish Decl., ¶ 26;
19 Settlement Agreement, ¶ 4.3).

20 Prior to mailing the Individual PAGA Payment checks, the Administrator will update the
21 Aggrieved Employees’ mailing addresses using the National Change of Address Database. (Genish
22 Decl., ¶ 27; Settlement Agreement, ¶ 4.4.1). Additionally, for all Individual PAGA Payment checks
23 that are returned as undeliverable without a USPS forwarding address, the Administrator will
24 conduct an investigation and search for current Aggrieved Employee mailing addresses using all
25 reasonably available sources, methods, and means including, but not limited to, the National Change
26 of Address database, skip traces, and direct contact by the Administrator with the Aggrieved
27 Employees (“Aggrieved Employee Address Search”). (Genish Decl., ¶ 27; Settlement Agreement,
28 ¶¶ 1.6 & 4.4.2). Within seven (7) calendar days of receiving a returned check, the Administrator

1 will re-mail the check to the USPS forwarding address provided or to an address ascertained through
2 the Aggrieved Employee Address search. (Genish Decl., ¶ 27; Settlement Agreement, ¶ 4.4.2). The
3 Administrator will promptly send a replacement check to any Aggrieved Employee whose original
4 check was lost or misplaced, requested by the Aggrieved Employee prior to the void date. (Genish
5 Decl., ¶ 27; Settlement Agreement, ¶ 4.4.2).

6 Individual PAGA Payment checks that are issued to Aggrieved Employees will be valid and
7 negotiable for up to one hundred and eighty (180) calendar days after the checks are initially mailed
8 to the Aggrieved Employees, and thereafter, will be canceled. (Genish Decl., ¶ 28; Settlement
9 Agreement, ¶ 4.4.1). Any funds associated with such canceled checks will be distributed to the
10 State of California's Unclaimed Property Fund in the name of the Aggrieved Employee. (Genish
11 Decl., ¶ 28; Settlement Agreement, ¶ 4.4.3).

12 If the actual number of Pay Periods during the PAGA Period exceeds 7,022 by more than
13 ten (10%) (i.e., more than 7,724) then the Gross Settlement Amount will increase by the actual
14 percentage. (Genish Decl., ¶ 29; Settlement Agreement, ¶ 8). For example, if the total number of
15 Pay Periods during the PAGA Period is 11% more than 7,022 (i.e., 7,794) then the Gross Settlement
16 Amount will increase 1%. (Genish Decl., ¶ 29; Settlement Agreement, ¶ 8).

17 **IV. STANDARD FOR APPROVAL OF PAGA SETTLEMENT**

18 The settlement of a PAGA claim requires court approval. (California Labor Code ("Lab.
19 Code") § 2699(l).) The Court must be mindful that "[s]ettlement is a compromise, which balances
20 the possible recovery against the risks inherent in litigating further." (*In re TD Ameritrade Account*
21 *Holder Litig.*, 2011 U.S. Dist. LEXIS 103222 at *24 (N.D. Cal. Sep. 12, 2011).) "[T]he very essence
22 of a settlement is ... 'a yielding of absolutes and an abandoning of highest hopes,'" as "it is the very
23 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
24 consensual settlements." (*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir.
25 1982).) As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for
26 trial on the merits," or "judged against a hypothetical or speculative measure of what might have been
27 achieved." (*Ibid*).

28 ///

1 Although the California Labor Code does not set forth the criteria by which a PAGA
2 settlement is to be evaluated, it is presumed that a reviewing court may take into consideration some
3 of the factors that courts use when reviewing a class action settlement. However, “a PAGA claim
4 asserted on a non-class representative basis...is not considered a class action but a law enforcement
5 action, and therefore does not have to meet the requirements of [a class action].” (*Casida v. Sears*
6 *Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302 at *8 (E.D. Cal. Jan. 25, 2012).)

7 A court’s review of a PAGA settlement necessarily implicates the following unique features
8 that render the approval process distinct from approval of a class action settlement under Code of
9 Civil Procedure Section 382 and California Rules of Court Rule 3.769. First, in evaluating the
10 adequacy of the settlement amount, the Court’s focus is not concerned with the amount aggrieved
11 employees are to receive, but rather, must focus on the total settlement amount in achieving PAGA’s
12 objective. Indeed, “[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or
13 class damages,” and while a “[PAGA] action is ... designed to protect the public and penalize the
14 employer for past illegal conduct,” a reviewing Court must be mindful of the fact that settlement of a
15 PAGA claim involves a compromise. (*Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454
16 at *11 (E.D. Cal. June 30, 2010).) “Unlike class actions, these civil penalties are not meant to
17 compensate unnamed employees because the action is fundamentally a law enforcement action.”
18 (*Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774 at *12 (Apr. 2, 2010).) The
19 Court should not lose sight of the fact that, “[u]nlike a class action seeking damages or injunctive
20 relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil
21 penalties for the government that otherwise may not have been assessed and collected by
22 overburdened state enforcement agencies.” (*Ibid*).

23 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
24 claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the
25 ability to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS
26 32774 at *13.) Indeed, “[PAGA] does not create property rights or any other substantive rights” as
27 “[i]t is simply a procedural statute allowing an aggrieved employees to recover civil penalties – for
28 Labor Code violations – that otherwise would be sought by state labor law enforcement agencies.”

1 (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009).) This
2 renders the approval process of a PAGA settlement distinct from a class action settlement, as there is
3 no need for the Court to employ the “two-step approval process” required under California Rules of
4 Court Rule 3.769.

5 Finally, unlike class action settlements, the scope of release permitted in a PAGA settlement
6 is limited. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff
7 but also on government agencies and any aggrieved employee not a party to the proceeding...the non-
8 party employees, because they were not given notice of the action or afforded any opportunity to be
9 heard, would not be bound by the judgment as to remedies other than civil penalties.” (*Arias v. Sup.*
10 *Ct.*, 46 Cal.4th 969, 986-87 (2009).) Thus, the scope of a release in a PAGA settlement is confined
11 to the PAGA penalties alleged in the complaint and to the claims that were, or could have been,
12 alleged pursuant to PAGA based on the factual allegations in the complaint. In the case at hand, as
13 the only claims at issue are PAGA claims, those will be the only claims extinguished through the
14 Settlement.

15 V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

16 A. The Settlement is Presumed to Be Fair

17 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
18 reached through arm’s-length bargaining.” (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
19 245 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009).) Here,
20 the Settlement is presumptively fair because: (1) it occurred after counsel for the Parties engaged in
21 significant investigation to evaluate the strength and potential value of the PAGA claim, and the risks
22 of litigating the PAGA claim through trial; and (2) it was negotiated at great length and effort by
23 counsel with significant experience in similar complex labor and employment matters. (Genish Decl.,
24 ¶ 30).

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1 **B. The Settlement is Fair, Adequate, and Reasonable in Light of the Parties’ Respective**
2 **Legal Positions and Recovery Risks**

3 In deciding whether to approve a proposed settlement, a trial court has broad powers to
4 determine if it is fair given the circumstances of the case. (*Mallick v. Sup. Ct.*, 89 Cal.App.3d 434,
5 438 (1979).) In exercising these powers, the overriding concern is to ensure that a proposed
6 settlement is “fair, adequate, and reasonable.” (*Dunk*, 48 Cal.App.4th at 1801 (internal quotations
7 omitted).) A settlement is not judged against what might have been recovered had a plaintiff
8 prevailed at trial, nor does the settlement have to obtain one hundred percent of the damages sought
9 to be fair and reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250.) In evaluating the reasonableness
10 of a settlement, a trial court must consider “the strength of plaintiffs’ case, the risk, expense,
11 complexity and likely duration of further litigation, the risk of maintaining class action status through
12 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
13 proceedings, the experience and views of counsel, the presence of a governmental participant, and
14 the reaction of the class members to the proposed settlement.”¹ (*Kullar v. Foot Locker Retail, Inc.*,
15 168 Cal.App.4th 116, 128 (2008)). Even though a Kullar analysis is not required for approval of a
16 PAGA settlement, a brief analysis is included to support approval of the Settlement.

17 These factors require balancing and are non-exhaustive. Trial courts should therefore tailor
18 the factors to each case and give due regard to “what is otherwise a private consensual agreement
19 between the parties.” (*Ibid*).

20 1. Strength of Plaintiffs’ Case

21 In order to prevail at trial, Plaintiffs would have to prove violations of the California Labor
22 Code underlying their PAGA claim, demonstrate that Aggrieved Employees suffered, and
23 demonstrate that Defendant’s conduct gives rise to penalties. (*See Elliot v. Spherion Pac. Work, LLC*,
24 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) [“Plaintiffs’ claim under [PAGA] is wholly dependent
25 upon her other claims. Because all of plaintiff’s other claims fail as a matter of law, so does her PAGA
26 claim.”].)

27 _____
28 ¹ As this is not a class action, the *Kullar* factors pertaining to the risk of maintaining class action
status through trial and the reaction of class members to the proposed settlement are inapplicable.

1 Crucial to Plaintiffs’ analysis of the relative strengths and weaknesses of their PAGA claim
2 is the fact that Defendant closed and sold its assets on July 15, 2022. (Genish Decl., ¶ 31).
3 Therefore, Defendant’s violations were finite and not ongoing. (*Ibid*).

4 Notwithstanding this consideration, this case and settlement addresses important employee
5 protections embodied in the California Labor Code. (*Id.*, ¶ 32). Plaintiffs’ core allegations are that
6 Defendant systematically violated the California Labor Code by, *inter alia*, failing to properly pay
7 wages for all hours worked, failing to pay overtime at the correct rate, failing to provide compliant
8 meal and rest periods, failing to pay premiums at the correct rate of pay, failing to timely pay wages
9 during employment and upon termination, failing to maintain accurate payroll records, failing to
10 provide accurate wage statements, failing to reimburse necessary business expenses, and failing to
11 pay wages owed for accrued vacation time. (*Ibid*).

12 Defendant’s maximum theoretical exposure in the Action, without stacking penalties, totals
13 approximately \$702,200.00, computed by multiplying 7,022 aggregate Pay Periods by \$100 each.
14 (*Id.*, ¶ 33). While the PAGA does provide the potential for a heightened penalty for subsequent
15 violations, courts are often hesitant to award a heightened penalty where there is no prior citation by
16 the Labor Commissioner, as is the case here. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144
17 (9th Cir. 2021) (holding no heightened penalty where defendant was not notified by Labor
18 Commissioner or any court that it was subject to the California Labor Code). The Ninth Circuit’s
19 holding in *Bernstein* also supports that a settlement valuation that does not “stack” penalties. (*Ibid*).

20 Defendant maintained several defenses to Plaintiffs’ theories of liability, which, if
21 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
22 (Genish Decl., ¶ 34). Throughout this litigation, Defendant maintained, and continues to maintain,
23 that it had, and continues to have, compliant employment policies and practices throughout the time
24 period at issue. (*Ibid*). Defendant denies that it ever violated any provision of the California Labor
25 Code, including, but not limited to, those sections for which Plaintiffs seek penalties under PAGA.
26 (*Ibid*). Defendant further denied, and continues to deny, that the lawsuit is appropriate for
27 representative treatment for any purpose other than settlement. (*Ibid*). Defendant also challenged
28 Plaintiffs’ standing as aggrieved employees and denied that any of Defendant’s other employees

1 whom Plaintiffs seek to represent are aggrieved. (*Ibid*).

2 Defendant also argued that an important feature of PAGA is that the Court retains discretion
3 to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise
4 would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (*Ibid*). (Lab.
5 Code § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112,
6 1136 (2012) [holding that a court may reduce the amount of PAGA penalties awarded to an employee
7 based upon discretionary factors].)

8 Even if violations of the California Labor Code occurred, which Defendant denies, Defendant
9 contended that said violations would only be considered “initial violations” and thus heightened
10 “subsequent violation” penalties were not warranted. (Genish Decl., ¶ 35). (Lab. Code § 2699(f)(2);
11 *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) [“Until the employer
12 has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed
13 to be aware that its continuing underpayment of employees is a 'violation' subject to penalties.”].)

14 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess
15 cumulative penalties for the maximum number of possible, separate California Labor Code
16 violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where
17 certain conduct may be regulated by multiple provisions of the California Labor Code that are
18 interrelated and work in tandem. (Genish Decl., ¶ 36). As such, Defendant contended that cumulative
19 penalties and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory. (*Ibid*).

20 Some courts have held that the claims raised by a plaintiff may raise individualized issues
21 and/or are unmanageable and thus not suitable for adjudication as to a group of employees. (*See*,
22 *e.g., Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746, 772-775 (2021) [trial court
23 did not abuse discretion in striking PAGA claim that did not allow for Defendant to try its defenses
24 in a manageable manner]; *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 25, 29, 31, 34-35 (2014) [even
25 where employer consistently imposed a uniform policy, plaintiff “must still demonstrate that the
26 illegal effects of this conduct can be proven efficiently and manageably” and in litigating
27 representative actions the procedures utilized by the court “may not be used to abridge a party’s
28 substantive rights”]; *Ali v. U.S.A. Cab Ltd.*, 176 Cal.App.4th 1333, 1341 (2009) [affirming denial of

1 certification because employees’ declarations attesting to having taken meal and rest breaks
2 demonstrated that individualized inquiries were required to show harm]; *Brinker Restaurant Corp. v.*
3 *Superior Court*, 53 Cal.4th 1004, 1018 (2012) [although employers must authorize employees to take
4 duty-free meal and rest breaks, they are not obligated to affirmatively ensure that no work related
5 tasks are performed during such periods]]. Although California case law clearly states that PAGA
6 actions need not satisfy class action requirements, PAGA Counsel remained mindful of the fact that
7 some courts have nevertheless held that PAGA claims must meet a threshold “manageability”
8 requirement.

9 While Plaintiffs maintain that their PAGA claim has merit, in reaching the Settlement,
10 Plaintiffs and their counsel took into account the strengths and weaknesses of each side’s position
11 and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon
12 appeal. (Genish Decl., ¶ 37). Based on these disputes, which had the potential to completely
13 eliminate Plaintiffs’ recovery, the range of realistic “litigation outcomes” on Plaintiffs’ PAGA claim
14 was defined by a “maximum possible liability” amount of approximately \$702,200.00 [*Id.*, ¶ 33], and
15 a *net-zero recovery* based on the defenses asserted by Defendant. Notwithstanding the existence of
16 these issues, the Settlement achieves a sizeable benefit obtained. (*Id.*, ¶ 37).

17 2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

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

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

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

6 The proposed settlement is not to be judged against a hypothetical or speculative measure of
7 what might have been achieved by the negotiators.” *Officers for Justice v. Civil Serv. Comm’n*,
8 688 F.2d at 625 (emphasis in original). Thus, “the very essence of a settlement is compromise,
9 ‘a yielding of absolutes and an abandoning of highest hopes.’” *Id.* at 624 (citations omitted).
10 As the Second Circuit has pointed out: “The fact that a proposed settlement may only amount
11 to a fraction of the potential recovery does not, in and of itself, mean that the proposed
12 settlement is grossly inadequate and should be disapproved.” *City of Detroit v. Grinnell Corp.*,
13 495 F.2d 448, 455 & n.2 (2nd Cir. 1974).

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

15 The PAGA Penalties are currently estimated to be \$262,160.36. After all deductions are made
16 from the Gross Settlement Amount for the PAGA Counsel Fees Payment, PAGA Counsel Litigation
17 Expenses Payment, Enhancement Payments, and Administration Expenses Payment, \$196,620.27
18 (i.e. 75% of the PAGA Penalties) will go to the LWDA, and \$65,540.09 (i.e. 25% of the PAGA
19 Penalties) will go to the Aggrieved Employees, as required by California Labor Code § 2699(i) (“civil
20 penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor
21 and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”). (Genish
22 Decl., ¶ 38). There is no reason to doubt the fairness of the proposed plan of allocation of the PAGA
23 Penalties as it fully complies with California Labor Code section 2699(i). (*Ibid*).

24 The Settlement is a compromise of highly disputed claims. (*Id.*, ¶ 39). Plaintiffs and their
25 counsel recognize the expense and length of continued proceedings necessary to litigate the matter
26 through trial and any possible appeals. (*Ibid*). Plaintiffs and their counsel have also taken into
27 account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
28 inherent in such litigation. (*Ibid*). Plaintiffs and their counsel are also aware of the burdens of proof
necessary to establish liability, both generally and in response to Defendant’s defenses thereto, and
the difficulties in establishing Defendant’s liability for, and the right to recover, penalties on behalf
of Plaintiffs, the State of California, and other Aggrieved Employees. (*Ibid*). Plaintiffs and their

1 counsel have also taken into account Defendant's agreement to enter into a settlement that confers
2 significant relief upon the Aggrieved Employees and the State of California. (*Ibid*). Considering all
3 of the facts in this case, Plaintiffs and their counsel have determined that the Settlement represents a
4 fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the
5 Aggrieved Employees and the State of California. (*Ibid*).

6 The result achieved in this case is well within the range of what is considered an acceptable
7 settlement under the circumstances, especially when compared to the settlement of PAGA claims in
8 other cases. (*Id.*, ¶ 40). (*See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court,
9 Case No. JCCP4833 (May 2017) [approving \$15,000 out of \$4 million toward settlement of PAGA
10 claims]; *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal. Oct. 29,
11 2012) [approving \$10,000 out of \$3.7 million toward settlement of PAGA claims]; *Schiller v. David's*
12 *Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving \$7,500 out
13 of \$518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC*, 2011 U.S.
14 Dist. LEXIS 15821, at *4 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 out of \$6.9 million toward
15 settlement of PAGA claims]; *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, at *14
16 (E.D. Cal. Nov. 27, 2021) [approving \$10,000 out of \$2.5 million toward settlement of PAGA
17 claims]). Here, the value obtained for settlement of the PAGA claim is significant, and it will be
18 distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

19 4. The Scope of the Release is Narrowly Tailored

20 As discussed above, the California Supreme Court has concluded that in the context of PAGA
21 "the nonparty employees, because they were not given notice of the action or afforded any
22 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
23 penalties." *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in exchange
24 for the foregoing consideration is limited to the civil penalties asserted in the Operative Complaint
25 and PAGA Notice under California Labor Code §§ 2698 *et seq.* *See Settlement Agreement*, at ¶¶
26 1.24 & 5.2.

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

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1 5. Experience and Views of Counsel Favor Approval

2 PAGA Counsel is experienced in complex representative and class action wage-and-hour
3 litigation. (Genish Decl., ¶¶ 2-7, 41, & 45). In the view of PAGA Counsel, the benefits conferred by
4 the Settlement are eminently fair and reasonable, and in the best interests of the State of California
5 and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and
6 the substantial monetary benefits provided for by the Settlement. (*Id.*, ¶ 41). Furthermore, courts
7 have acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees
8 are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code
9 violations as the evidence will sustain[.]” (*Williams v. Superior Court*, 3 Cal. 5th 531, 548 (2017)
10 [citing Labor Code § 2699(g)(1)(i)].)

11 6. The Extent of Discovery and Stage of Proceedings Favor Approval

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

17 Here, the extent of formal and informal discovery conducted was sufficient to enable PAGA
18 Counsel to evaluate the strength and value of the PAGA claim for purposes of settlement. (Genish
19 Decl., ¶¶ 11, 14-15, & 42). Prior to settling, Defendant provided Plaintiffs with data, information,
20 and documents relating to the underlying alleged violations, including but not limited to, Plaintiffs’
21 employee files, a sampling of Aggrieved Employees’ time and payroll records, Defendant’s
22 Employee Handbooks, and Aggrieved Employees’ data points. (*Id.*, ¶ 15). As discussed above,
23 PAGA Counsel’s investigation was sufficient to, among other things, tabulate with precision the total
24 number of alleged California Labor Code violations at issue during the relevant statutory period and
25 identify the total number of individuals falling within the definition of “Aggrieved Employees” for
26 the relevant statutory period. (*Id.*, ¶ 16).

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1 Based on PAGA Counsel’s experience litigating wage and hour claims, such investigation
2 was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of
3 this claim for purposes of settlement. (*Id.*, ¶¶ 11, 14-16, 30, & 42).

4 **VI. THE REQUESTED PAGA COUNSEL FEES PAYMENT IS FAIR AND**
5 **REASONABLE**

6 As the prevailing party in settlement, Plaintiffs are entitled to recover attorneys’ fees and costs
7 for bringing their PAGA claim. (Lab. Code § 2699(g) [“Any employee who prevails in any action
8 shall be entitled to an award of reasonable attorney's fees and costs.”].) PAGA Counsel is also entitled
9 to attorneys’ fees pursuant to Code of Civil Procedure section 1021.5(a), as the instant action has
10 resulted in the enforcement of important rights benefitting the public and secures monetary recovery
11 for the State of California as well as the Aggrieved Employees. A fee award is justified where the
12 legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles*,
13 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33
14 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) [“when a number of persons
15 are entitled in common to a specific fund, and an action brought by a plaintiff ... for the benefit of all
16 results in the creation or preservation of that fund, such plaintiff ... may be awarded attorney’s fees
17 out of the fund.”].)

18 In *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016), the California Supreme Court
19 confirmed that “[t]he percentage of fund method survives in California class action cases.”
20 Specifically, the *Laffitte* Court held:

21 The recognized advantages of the percentage method-including relative ease of
22 calculation, alignment of incentives between counsel and the class, a better
23 approximation of market conditions in a contingency case, and the encouragement it
24 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
litigation-convince us the percentage method is a valuable tool that should not be
denied our trial courts.

25 (*Id.*, at 503 [internal citation omitted].) Fee awards of roughly one-third of the settlement fund are
26 routinely awarded in California state and federal courts in class actions. (*Chavez v. Netflix, Inc.*, 162
27 Cal.App.4th 43, 66, fn. 11 (2008); *see also, e.g., In re Pacific Enterprises Securities Litig.*, 47 F.3d
28 373, 379 (9th Cir. 1995) [affirming 33% fee award]).

1 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
2 method, the California Supreme Court has taken the position that trial courts also “retain the
3 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
4 requested percentage fee.” (*Laffitte*, 1 Cal.5th at 506; *see also Wershba*, 91 Cal.App. 4th at 253.)
5 Courts award fees to serve as an economic incentive for lawyers to undertake litigation, and thereby
6 enhance and facilitate access to the judicial system for adjudication of meritorious claims, and to
7 deter wrongdoing. This is especially true in situations where multiple similar alleged wrongs would
8 not be economically feasible to pursue individually, such as here. Trial courts have “wide latitude”
9 in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a
10 manifest abuse of discretion.” (*Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000); *see also*
11 *Laffitte*, 1 Cal.5th at 506 [holding that “trial court did not abuse its discretion in using [the percentage
12 of fund method], in part to approve the fee request”].) Indeed, it is long settled that the “experienced
13 trial judge is the best judge of the value of professional services rendered in his court.” (*Ketchum v.*
14 *Moses*, 24 Cal.4th 1122, 1132 (2001).)

15 The percentage method is particularly appropriate where a monetary settlement has been
16 recovered and “the benefit [recovered can be] easily quantified.” (*In re Bluetooth Headset Prods.*
17 *Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).) Where the amount of a settlement is a “certain or
18 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
19 percentage of the settlement created. (Weil and Brown, California Practice Guide, *Civil Procedure*
20 *Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.) The percentage
21 fee method is preferred in representative actions because “it better approximates the workings of the
22 marketplace than the lodestar approach.” (*Lealao, supra*, 82 Cal.App.4th at 49.) California law
23 provides that the award for attorneys’ fees should be equivalent to fees freely negotiated in the legal
24 marketplace and paid in comparable litigation based on the result achieved and risk incurred. (*See*
25 *Lealao*, 82 Cal.App.4th at 47-50; *Laffitte*, 1 Cal.5th 480 at 503.) In cases where the settlement
26 agreement provides that the defendant will pay the plaintiffs’ attorneys a percentage of the fund
27 created by the settlement, use of that percentage method is appropriate. (*Lealao*, 82 Cal.App.4th at
28 32.) Fee awards that are too small will “chill the private enforcement essential to the vindication of

1 many legal rights and obstruct the representative actions that often relieve the courts of the need to
2 separately adjudicate numerous claims.” (*Id.* at 53). Therefore, fees in representative actions should
3 approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney
4 and client in comparable litigation. (*Id.* at 48). “The ultimate goal ... is the award of a ‘reasonable’
5 fee to compensate counsel for their efforts, irrespective of the method of calculation.” (*Consumer*
6 *Privacy Cases*, 175 Cal.App.4th 545, 557-58 (2009) [quoting *Apple Computer, Inc. v. Superior Court*,
7 *supra*, 126 Cal.App.4th at 1270].)

8 PAGA Counsel’s application for attorneys’ fees in light of the facts and circumstances
9 surrounding the case is within the range of reasonableness. Historically, courts have awarded fees as
10 high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of
11 the case. (*See In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) [awarding attorneys’
12 fees in the amount of 45% of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v.*
13 *Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195 (S.D.N.Y. 1979) [awarding approximately 53%
14 of the settlement as attorneys’ fees].) California courts routinely approve attorneys’ fees awards
15 “average[ing] around one-third of the recovery.” (*Chavez*, 162 Cal.App.4th at 66 [trial court found
16 the range of contingency fees in marketplace to be 20 to 40 percent and determined such a percentage
17 fee was appropriate]; *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles
18 County Superior Court, Case No. BC596892 (June 2016) [approving a fee award of one-third of the
19 settlement amount of \$950,000 in a PAGA action, because it was “reasonable and consistent with fee
20 awards in class action cases”].)

21 Here, PAGA Counsel’s fee request of one-third (1/3) of the Gross Settlement Amount (i.e.,
22 \$145,833.33) is fair and reasonable based on the percentage of the recovery method. PAGA Counsel
23 has vigorously litigated this case since it was commenced, with the very real possibility of an
24 unsuccessful outcome and no fee recovery of any kind. (Genish Decl., ¶ 43). Counsel for Plaintiffs
25 undertook significant investigation and invested a significant amount of time analyzing relevant
26 documents and data to evaluate the nature and extent of the alleged underlying Labor Code violations
27 and calculation of the potential monetary recovery as they relate to Plaintiffs’ PAGA claim under
28 PAGA. (*Id.*, ¶¶ 11, 14-16, 30, & 42). The attorneys at Blackstone Law, APC possess combined

1 extensive experience litigating wage and hour and other complex litigation matters, and the attorneys
2 who worked on this matter have been approved as class counsel and/or have had their billable rates
3 approved in the settlement of other class and PAGA actions, numerous times. (*Id.*, ¶ 45).

4 In the present case, PAGA Counsel has borne all of the risks and costs of litigation and will
5 not receive any compensation until recovery is obtained. (*Id.*, ¶ 44). PAGA Counsel is experienced
6 in complex wage-and-hour litigation and used that experience to obtain a favorable result for
7 Plaintiffs, the Aggrieved Employees, and the State of California. (*Id.*, ¶¶ 2-7; 45). Considering the
8 amount of fees requested, work performed, risks incurred, and experience of PAGA Counsel in
9 handling similar matters, Plaintiffs maintain that the requested attorneys' fees of one-third (1/3) of
10 the Gross Settlement Amount (i.e., \$145,833.33) are reasonable and should be awarded. (*Id.*, ¶ 45).

11 **VII. THE REQUESTED PAGA COUNSEL LITIGATION EXPENSES PAYMENT**
12 **IS FAIR AND REASONABLE**

13 The Settlement provides for reimbursement of actual litigation costs and expenses up to the
14 amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00). (Genish Decl., ¶ 48; Settlement
15 Agreement, ¶ 3.2.1). PAGA Counsel only seeks reimbursement of a total of \$14,506.31 in litigation
16 costs and expenses. (Genish Decl., ¶ 48, Exhibit 4). Accordingly, PAGA Counsel respectfully
17 requests that the Court reimburse them for actual litigation costs and expenses in the amount of
18 \$14,506.31.

19 **VIII. THE ADMINISTRATION EXPENSES PAYMENT IS FAIR AND**
20 **REASONABLE**

21 As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval
22 by the Court, IYLM Group, Inc. to handle the administration of the Settlement. (Genish Decl., ¶ 49;
23 Settlement Agreement, ¶ 1.2). The fees and expenses of the Administrator are estimated not to exceed
24 \$5,000.00. (Genish Decl., ¶ 49; Settlement Agreement, ¶ 3.2.2.1). These costs include, but are not
25 limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual PAGA
26 Payment checks to the Aggrieved Employees, re-mailing the returned Individual PAGA Payment
27 checks to any new addresses obtained, and handling inquiries from Aggrieved Employees regarding
28 the Settlement, among other things. (Genish Decl., ¶ 49). Accordingly, the Court should grant

1 approval of the Administration Expenses Payment in the amount of up to \$5,000.00 to ILYM Group,
2 Inc., a necessary third-party for handling the settlement process. (*Ibid*).

3 **IX. THE REQUESTED ENHANCEMENT PAYMENTS ARE FAIR AND**
4 **REASONABLE**

5 The purpose of an enhancement award is to incentivize aggrieved employees to step into the
6 shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit
7 and serving in a representative capacity. *See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715,
8 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the action);
9 *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) (“an incentive award is
10 appropriate ‘if it is necessary to induce an individual to participate in the suit’”). Plaintiffs initiated
11 this litigation on behalf of the State of California and their former co-workers who will now be entitled
12 to receive payment from the Settlement. By initiating and pursuing the Action, Plaintiffs stepped into
13 the shoes of the State of California and undertook the responsibilities of serving in representative
14 capacities. (Genish Decl., ¶ 50; Barajas Decl., ¶¶ 4-11; Marmon Decl., ¶ 4-11). Plaintiffs were
15 available whenever Plaintiffs’ counsel needed them and actively tried to obtain information that
16 would benefit the prosecution of the Action. (Genish Decl., ¶ 50; Barajas Decl., ¶¶ 6-7; Marmon
17 Decl., ¶ 6-7). The Enhancement Payments are eminently reasonable given the time and effort
18 Plaintiffs spent on the Action, the benefit to the other Aggrieved Employees and the State of
19 California as a result of Plaintiffs’ actions, and their broader individual waiver and release of claims
20 with a California Civil Code Section 1542 waiver (set forth in Section 5.1 of the Settlement
21 Agreement). (Genish Decl., ¶ 50). Accordingly, Plaintiffs respectfully submit that it is appropriate
22 and just for Plaintiffs to each receive an Enhancement Payment in the amount of \$5,000.00 in addition
23 to the Individual PAGA Payments they will receive as Aggrieved Employees, for their services on
24 behalf of the State of California and the other Aggrieved Employees, as well as for their broader,
25 general release of claims. (*Ibid*).

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Make a Reservation

LEXY BARAJAS vs H. W. HUNTER, INC., A CALIFORNIA CORPORATION

Case Number: 22STCV01892 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2022-01-18 Location: Stanley Mosk Courthouse - Department 53

Reservation

Case Name: LEXY BARAJAS vs H. W. HUNTER, INC., A CALIFORNIA CORPORATION	Case Number: 22STCV01892
Type: Motion re: (Approval of PAGA Settlement)	Status: RESERVED
Filing Party: LEXY BARAJAS (Plaintiff)	Location: Stanley Mosk Courthouse - Department 53
Date/Time: 02/28/2024 10:00 AM	Number of Motions: 1
Reservation ID: 182084061481	Confirmation Code: CR-F6QQWKZBT8Z2XPMR9

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: AmericanExpress
Account Number: XXXX2006	Authorization: 298913
Payment Date: 1969-12-31	

[Print Receipt](#)[+ Reserve Another Hearing](#)[View My Reservations](#)