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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JOSE TRUJILLO, DAVID McGRAW, and
LAWRENCE SANCHEZ, as aggrieved
employees and private attorneys general,

Plaintiff,

vs.

PRODUCER'S DAIRY FOODS, INC., a
California Corporation, and DOES 1
through 50, inclusive,

Defendants.

Case No. 34-2022-00313753

Honorable Lauri A. Damrell
Department 22

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

Date: August 2, 2024
Time: 9:00 a.m.
Dept.: 22

Complaint Filed: January 10, 2022
Trial Date: None Set

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

2 **PLEASE TAKE NOTICE THAT** on August 2, 2024 at 9:00 a.m. in Department 22 of the
3 above-captioned Court located at Gordon D. Schaber Sacramento County Courthouse, 720 9th Street,
4 Sacramento, California, 95814, Plaintiffs Jose Trujillo, David McGraw, and Lawrence Sanchez
5 (“Plaintiffs”) will and hereby move the Court for an Order granting approval of California Labor
6 Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”)
7 settlement. Specifically, Plaintiffs request that the Court enter an Order:

- 8 1. Granting approval pursuant to California Labor Code section 2699(l)(2) of the PAGA
9 Settlement Agreement (“Settlement” or “Settlement Agreement”) attached as **Exhibit 2**
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, PAGA Counsel Litigation
12 Expenses, Enhancement Payments, and Costs of Administration (“Genish Decl.”);
- 13 2. Directing the distribution of the Gross Settlement Amount of Eight Hundred Thirty
14 Thousand Dollars and Zero Cents (\$830,000.00) pursuant to the terms of the Settlement;
- 15 3. Approving the PAGA Penalties, estimated to be Four Hundred Forty-Seven Thousand
16 and One Hundred Thirty-One Dollars and Eighteen Cents (\$447,131.18), of which
17 seventy-five percent (75%) will be distributed to the California Labor and Workforce
18 Development Agency (“LWDA”) and twenty-five percent (25%) will be distributed to
19 the Aggrieved Employees;
- 20 4. Approving an award of reasonable attorneys’ fees of Three Hundred Thirty-Two
21 Thousand Dollars (\$332,000.00) to PAGA Counsel, Blackstone Law, APC;
- 22 5. Approving the amount of Sixteen Thousand Three Hundred Sixty-Eight Dollars and
23 Eighty-Two Cents (\$16,382.82) to PAGA Counsel, Blackstone Law, APC, for
24 reimbursement of actual litigation costs and expenses pursuant to California Labor Code
25 section 2699(g)(1);
- 26 6. Approving an award of Seven Thousand Five Hundred Dollars and Zero Cents
27 (\$7,500.00) to each of the three named Plaintiffs as an enhancement payment, for a total
28 of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00);

1 7. Appointing Apex Class Action LLC (“Apex” or “Administrator”) as the Administrator;
2 and

3 8. Approving an award of up to Twelve Thousand Dollars and Zero Cents (\$12,000.00) in
4 anticipated costs to Apex for its settlement administration services.

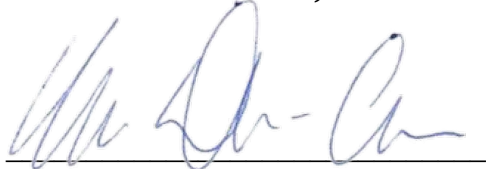
5 Pursuant to California Labor Code section 2699(l)(2), a copy of the proposed Settlement, as
6 well as information regarding the approval hearing in this matter, were submitted to the LWDA via
7 online submission through its public portal concurrently with the filing of this Motion. (Genish Decl.,
8 ¶ 23).

9 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities,
10 the Declarations of PAGA Counsel Jonathan M. Genish and Plaintiffs Jose Trujillo, David McGraw,
11 and Lawrence Sanchez, the pleadings and other records on file with the Court in this matter, and any
12 other further evidence or argument that the Court may properly receive at or before the hearing.

13 Respectfully submitted,

14 Dated: July 12, 2024

BLACKSTONE LAW, APC

15
16
17 By: 

Jonathan M. Genish
Barbara DuVan-Clarke
Alexander K. Spellman
P.J. Van Ert
Annabel Blanchard

20 Attorneys for Plaintiffs
21 Jose Trujillo, David McGraw,
22 and Lawrence Sanchez
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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 Jose Trujillo, David McGraw, and Lawrence Sanchez
5 (“Plaintiffs”) seeks approval of the PAGA Settlement Agreement (“Settlement” or “Settlement
6 Agreement”) entered into with Defendant Producer’s Dairy Foods, Inc. (“Defendant”) (collectively
7 with Plaintiffs, the “Parties”), which is attached as Exhibit 2 to the Declaration of Jonathan M. Genish
8 in Support of Plaintiffs’ Motion for Approval of PAGA Settlement and Award of PAGA Counsel
9 Fees, PAGA Counsel Litigation Expenses, Enhancement Payments, and Costs of Administration
10 (“Genish Decl.”). The Settlement terms are outlined as follows:

- 11 • Number of Aggrieved Employees: 1,253 individuals.
- 12 • Gross Settlement Amount: Eight Hundred and Thirty Thousand Dollars and Zero Cents
13 (\$830,000.00).
- 14 • Requested PAGA Counsel Attorneys’ Fees: Three Hundred Thirty-Two Thousand
15 Dollars and Zero Cents (\$332,000.00) (40% of the Gross Settlement Amount).
- 16 • Requested PAGA Counsel Litigation Costs: Sixteen Thousand Three Hundred Sixty-
17 Eight Dollars and Eighty-Two Cents (\$16,368.82).
- 18 • Enhancement Payment: Seven Thousand Five Hundred Dollars and Zero Cents
19 (\$7,500.00) for each of the three named Plaintiffs, for a total of Twenty-Two Thousand
20 Five Hundred Dollars (\$22,500.00).
- 21 • Settlement Administration Costs: Not to exceed Twelve Thousand Dollars and Zero
22 Cents (\$12,000.00).
- 23 • Estimated PAGA Penalties: Four Hundred Forty-Seven Thousand and One Hundred
24 Thirty-One Dollars and Eighteen Cents (\$447,131.18), of which 75% (\$335,348.38) will
25 be paid to the California Labor and Workforce Development Agency (“LWDA”) and the
26 remaining 25% (\$111,782.79) will be paid to the Aggrieved Employees.

26 As set forth herein, the Settlement is the product of informed discovery, arms-length
27 negotiations, and provides a fair, adequate, and reasonable recovery for the State of California and
28 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 Producer's Dairy Foods, Inc. ("Defendant") is a supplier and distributor of dairy
4 products with locations and operations throughout California. Defendant employed Plaintiff Jose
5 Trujillo ("Plaintiff Trujillo") as an hourly-paid, non-exempt driver beginning in or around April 2018
6 through approximately May 2021. Defendant employed Plaintiff David McGraw ("Plaintiff
7 McGraw") as an hourly-paid, non-exempt driver beginning in or around October 2013 through the
8 present. Defendant employed Plaintiff Lawrence Sanchez ("Plaintiff Sanchez") as an hourly-paid,
9 non-exempt driver beginning in or around February 2012 through approximately April 2021. (See
10 Declaration of Jose Trujillo ["Trujillo Decl."], ¶ 3; Declaration of David McGraw ["McGraw Decl."],
11 ¶ 3; Declaration of Lawrence Sanchez ["Sanchez Decl."], ¶ 3; Genish Decl., ¶ 8).

12 On November 4, 2021, Plaintiff Trujillo and Plaintiff McGraw provided written notice by
13 electronic submission to the Labor and Workforce Development Agency ("LWDA") and by Certified
14 U.S. Mail to Defendant, pursuant to California Labor Code § 2699.3, providing notice of the specific
15 provisions of the California Labor Code which Plaintiffs alleged Defendant violated, including the
16 facts and theories to support the allegations ("PAGA Notice"). On December 1, 2021, the PAGA
17 Notice was amended to include Plaintiff Sanchez as a third claimant ("Amended PAGA Notice"). A
18 true and correct copy of the Amended PAGA Notice is attached hereto as **Exhibit 1B** (Genish Decl.,
19 ¶ 9, Exhs. 1A, 1B).

20 On January 10, 2022, Plaintiffs filed a Complaint for Enforcement Action Under the Private
21 Attorneys General Act, California Labor Code §§ 2698 Et Seq in the action entitled *Trujillo, et al. v.*
22 *Producer's Dairy Foods, Inc.*, Sacramento County Superior Court Case No. 34-2022-00313753
23 ("Action"). (*Id.*, ¶ 10).

24 On February 10, 2022, Plaintiffs 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). Plaintiffs also
27 noticed the deposition of Defendant's Person Most Qualified. (*Id.*, ¶ 11).

28 On February 18, 2022, Defendant filed an Answer to Plaintiffs' Complaint, including a

1 general denial and fifty-seven boilerplate affirmative defenses. (*Id.*, ¶ 12).

2 On May 5, 2022, Defendant filed a Motion to Stay Action Pending Decision of the Supreme
3 Court of the United States (“Motion to Stay”). Defendant argued that the U.S. Supreme Court’s
4 decision in *Viking River Cruises v. Moriana* would soon determine whether the Federal Arbitration
5 Act preempted California law precluding the enforcement of arbitration agreements as to
6 representative claims under the California Labor Code Private Attorneys’ General Act (“PAGA”).
7 (*Id.*, ¶ 13).

8 On May 19, 2022, Plaintiffs and Defendant (collectively, the “Parties”) filed a Joint
9 Stipulation to stay Action Pending Decision of the Supreme Court of the United States, and a
10 Proposed Order thereon (“Joint Stipulation to Stay”). (*Id.*, ¶ 14).

11 On June 2, 2022, the Court issued a Tentative Ruling to grant Defendant’s Motion to Stay,
12 noting that the tentative to grant was in light of the facts, the law, and the Joint Stipulation to Stay
13 which had been filed by the Parties (“June 2, 2022 Tentative Ruling”). On June 3, 2022, the Court
14 issued a Minute Order adopting its June 2, 2022 Tentative Ruling and staying the Action until fifteen
15 (15) days after the United States Supreme Court issued its decision in *Viking River*. (*Id.*, ¶ 15).

16 On August 24, 2022, the Parties filed a Joint Case Management Conference Statement which
17 informed the Court that the *Viking River* decision had been issued on June 15, 2022, and each of the
18 Parties briefly presented its argument regarding the implications of the *Viking River* decision for the
19 instant Action. (*Id.*, ¶ 16).

20 On November 9, 2022, the Parties filed a second Joint Stipulation to Stay the Action and
21 Proposed Order thereon, due to the Parties awaiting the California Supreme Court’s decision in
22 *Adolph v. Uber Technologies, Inc.* The Court approved the second Joint Stipulation to Stay, and
23 entered an Order to stay the Action until the California Supreme Court issued its decision in *Adolph*
24 *v. Uber*. (*Id.*, ¶ 17).

25 On October 26, 2023, Plaintiffs and Defendant attended a formal mediation conducted by
26 David A. Lowe, a neutral and respected mediator with extensive experience in complex wage and
27 hour matters. The Parties did not reach an agreement at the mediation and so engaged in ongoing
28 formal and informal discovery and settlement negotiations. (*Id.*, ¶ 18).

1 During the course of formal and informal discovery in the Action, PAGA Counsel conducted
2 an intense investigation into the facts of the Action. This included obtaining data, information, and
3 documents relating to the underlying alleged violations, including, but not limited to, Plaintiffs'
4 personnel files, a sampling of Aggrieved Employees' time and payroll records, Defendant's
5 Employee Handbooks, and Aggrieved Employees' data points so that Plaintiffs could assess the
6 number of alleged potential violations and value of the recoverable penalties, as well as evaluate the
7 strengths and weaknesses of their claims. (*Id.*, ¶ 19).

8 Based on the data, information, and documents received, as well as thorough discussions with
9 Defendant's counsel, PAGA Counsel was able to (i) determine the total number of distinct individuals
10 falling within the definition of "Aggrieved Employees" for the relevant statutory period, (ii)
11 determine the number of affected pay periods at issue among them, and (iii) construct a damages
12 model that calculated the maximum realistic amount of PAGA penalties that could be levied against
13 Defendant within the relevant statutory period. Defendant, however, disputed Plaintiffs' claims and
14 disputed both the existence of and extent of liability as alleged by Plaintiffs, which allowed PAGA
15 Counsel to further assess the strength of Plaintiffs' claims. PAGA Counsel's experience in litigating
16 similar representative wage and hour claims, the degree of investigation that was conducted here, and
17 the amount of data, information, and documents that were obtained, was sufficient to determine the
18 potential value of the PAGA claim, and to evaluate the strength of this claim for purposes of
19 settlement. (*Id.*, ¶ 20).

20 Ultimately, the Parties were able to reach an agreement to resolve the Action in its entirety.
21 (*Id.*, ¶ 21, Exhs 2 – 3). The Parties believe the Settlement is fair, reasonable, and adequate. The Parties
22 understand, acknowledge, and agree that the Settlement Agreement constitutes a compromise of
23 Plaintiffs' PAGA claims, and that it is the desire and intention of the Parties to effect a final and
24 complete resolution of the Released PAGA Claims. (*Id.*, ¶ 22).

25 Defendant denies all of the claims in the Action, and does not waive, but rather expressly
26 reserves, all rights to challenge all such claims and allegations upon all legal, procedural, and factual
27 grounds should the Settlement not be approved by the Court. The Settlement Agreement reflects a
28 compromise reached to end litigation in the Action. Following significant investigation and extensive

1 settlement negotiations, Plaintiffs now seek approval of the proposed Settlement, which will resolve
2 all representative claims alleged in the Operative Complaint. (*Id.*, ¶ 23).

3 **III. THE SETTLEMENT TERMS**

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

5 For purposes of settlement only, the Parties have agreed that “Aggrieved Employees” shall be
6 defined as all individuals who are or previously were employed by Defendant as non-exempt
7 employees in California during the PAGA Period. (Genish Decl., ¶ 25; Settlement Agreement, ¶ 1.4).
8 The “PAGA Period” is the period from January 10, 2021, through January 14, 2024. (Genish Decl.,
9 ¶ 25; Settlement Agreement, ¶ 1.19). Based on its records, Defendant represented that there are 1,253
10 Aggrieved Employees who worked a total of 37,300 Pay Periods during the PAGA Period. (Genish
11 Decl., ¶ 25; Settlement Agreement, ¶ 4.1).

12 **B. Amount of Settlement**

13 The Parties have agreed to settle the PAGA claim at issue in the Operative Complaint for a
14 non-reversionary Gross Settlement Amount of Eight Hundred and Thirty Thousand Dollars and Zero
15 Cents (\$830,000.00). (Genish Decl., ¶ 26; Settlement Agreement, ¶ 4.2).

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

17 1. The Gross Settlement Amount is a common fund and therefore includes all requested
18 costs, fees, and other allocations. (Genish Decl., ¶ 26). The Gross Settlement Amount includes: (1)
19 PAGA Counsel’s fees in the amount of forty percent (40%) of the Gross Settlement Amount, equaling
20 Three Hundred Thirty-Two Thousand Dollars and Zero Cents (\$332,000.00); (2) PAGA Counsel’s
21 actual litigation costs and expenses of Sixteen Thousand Three Hundred Sixty-Eight Dollars and
22 Eighty-Two Cents (\$16,368.82); (3) Costs of Administration, not to exceed Twelve Thousand Dollars
23 and Zero Cents (\$12,000.00); and (4) Enhancement Payments in the amount of Seven Thousand Five
24 Hundred Dollars (\$7,500.00) to *each* of the three named Plaintiffs, for a total of \$22,500.00 in
25 Enhancement Payments. (Genish Decl., ¶ 26; Settlement Agreement, ¶¶ 3.2.1 – 3.2.2).

26 After the above-estimated amounts are deducted from the Gross Settlement Amount, the
27 PAGA Penalties will amount to approximately Four Hundred Forty-Seven Thousand One Hundred
28

1 Thirty-One Dollars and Eighteen Cents (\$447,131.18), of which seventy-five percent (75%), or
2 Three Hundred Thirty-Five Thousand, Three Hundred Forty-Eight Dollars and Thirty-Eight Cents
3 (\$335,348.38), will be paid to the LWDA (“LWDA Payment”), and twenty-five percent (25%), or
4 One Hundred Eleven Thousand, Seven Hundred Eighty-Two Dollars and Seventy-Nine Cents
5 (\$111,782.79), will be distributed and paid to Aggrieved Employees on a *pro-rata* basis based on
6 their number of pay periods employed by Defendant for at least one day during the PAGA Period
7 (“Pay Periods”). (Genish Decl., ¶ 27; Settlement Agreement, ¶¶ 3.2.3, 3.2.3.1).

8 Within fifteen (15) calendar days of the Court’s entry of the Approval Order and Judgment,
9 Defendant will deliver Aggrieved Employee identifying information in Defendant’s possession,
10 including each Aggrieved Employee’s full name, last-known mailing address, telephone number,
11 Social Security number, start and end dates of employment, and number of Pay Periods during the
12 PAGA Period, (collectively, “Aggrieved Employee Data”) to the Administrator in the form of a
13 Microsoft Excel spreadsheet, or a comparable format. (Genish Decl., ¶ 28; Settlement Agreement, ¶
14 4.2).

15 Within fourteen (14) calendar days after the Effective date, Defendant will fund the Gross
16 Settlement Amount by transmitting the funds to the Administrator. (Genish Decl., ¶ 29; Settlement
17 Agreement, ¶ 4.3).

18 Within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount, the
19 Administrator will mail checks for all Individual PAGA Payments, the LWDA Payment, the Costs
20 of Administration, the Enhancement Payments, the PAGA Counsel Fees, and the PAGA Counsel
21 Litigation Expenses. Disbursement of the PAGA Counsel Fees and PAGA Counsel Litigation
22 Expenses shall not precede disbursement of Individual PAGA Payments. (Genish Decl., ¶ 30;
23 Settlement Agreement, ¶ 4.4).

24 Prior to mailing the Individual PAGA Payment checks, the Administrator will update the
25 Aggrieved Employees’ mailing addresses using the National Change of Address Database.
26 Additionally, for all Individual PAGA Payment checks that are returned as undeliverable without a
27 USPS forwarding address, the Administrator will conduct an investigation and search for current
28 Aggrieved Employee mailing addresses using all reasonably available sources, methods, and means

1 including, but not limited to, the National Change of Address database, skip traces, and direct
2 contact by the Administrator with the Aggrieved Employees (“Aggrieved Employee Address
3 Search”). Within seven (7) calendar days of receiving a returned check, the Administrator will re-
4 mail the check to the USPS forwarding address provided or to an address ascertained through the
5 Aggrieved Employee Address search. The Administrator will promptly send a replacement check
6 to any Aggrieved Employee whose original check was lost or misplaced, as requested by the
7 Aggrieved Employee prior to the void date. (Genish Decl., ¶ 31; Settlement Agreement, ¶¶ 4.4.1 –
8 4.4.2).

9 Individual PAGA Payment checks that are issued to Aggrieved Employees will be valid and
10 negotiable for up to one hundred and eighty (180) calendar days after the checks are initially mailed
11 to the Aggrieved Employees, and thereafter, will be canceled. Any funds associated with such
12 canceled checks will be distributed to the State of California’s Unclaimed Property Fund in the name
13 of the Aggrieved Employee. (Genish Decl., ¶ 32; Settlement Agreement, ¶¶ 4.4.1 – 4.4.3).

14 If the actual number of Pay Periods during the PAGA Period exceeds 37,300 by more than
15 seven and one-half percent (7.5%) (i.e., more than 40,097) then Defendant shall choose from the
16 following options: 1) the Gross Settlement Amount will increase by the actual percentage in excess
17 of the 7.5% threshold; or 2) the PAGA Period will be revised to the pay period ending date
18 immediately prior to the pay period upon which the actual percentage of Pay Periods exceeded
19 37,300 Pay Periods by over 7.5%. (Genish Decl., ¶ 33; Settlement Agreement ¶ 8.1).

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

21 The settlement of a PAGA claim requires court approval. (California Labor Code (“Lab.
22 Code”) § 2699(l).) The Court must be mindful that “[s]ettlement is a compromise, which balances
23 the possible recovery against the risks inherent in litigating further.” (*In re TD Ameritrade Account*
24 *Holder Litig.*, 2011 U.S. Dist. LEXIS 103222 at *24 (N.D. Cal. Sep. 12, 2011).) “[T]he very essence
25 of a settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes,’” as “it is the very
26 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
27 consensual settlements.” (*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir.
28 1982).) As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for

1 trial on the merits,” or “judged against a hypothetical or speculative measure of what might have been
2 achieved.” (*Ibid*).

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

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

25 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
26 claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the
27 ability to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS
28 32774 at *13.) Indeed, “[PAGA] does not create property rights or any other substantive rights” as

1 “[i]t is simply a procedural statute allowing an aggrieved employees to recover civil penalties – for
2 Labor Code violations – that otherwise would be sought by state labor law enforcement agencies.”
3 (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009).) This
4 renders the approval process of a PAGA settlement distinct from a class action settlement, as there is
5 no need for the Court to employ the “two-step approval process” required under California Rules of
6 Court Rule 3.769.

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

17 V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

18 A. The Settlement is Presumed to Be Fair

19 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
20 reached through arm’s-length bargaining.” (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
21 245 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009).) Here,
22 the Settlement is presumptively fair because: (1) it occurred after counsel for the Parties engaged in
23 significant investigation to evaluate the strength and potential value of the PAGA claim, and the risks
24 of litigating the PAGA claim through trial; and (2) it was negotiated at great length and effort by
25 counsel with significant experience in similar complex labor and employment matters. (Genish Decl.,
26 ¶ 34).

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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 settlement
6 is “fair, adequate, and reasonable.” (*Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted).) A
7 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor
8 does the settlement have to obtain one hundred percent of the damages sought to be fair and
9 reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250.) In evaluating the reasonableness of a settlement,
10 a trial court must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely
11 duration of further litigation, the risk of maintaining class action status through trial, the amount
12 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
13 experience and views of counsel, the presence of a governmental participant, and the reaction of the
14 class members to the proposed settlement.”¹ (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116,
15 128 (2008)). Even though a Kullar analysis is not required for approval of a PAGA settlement, a brief
16 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 violations of
23 the Labor Code, and demonstrate that Defendant’s conduct gives rise to penalties. (*See Elliot v.*
24 *Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) [“Plaintiffs’ claim under
25 [PAGA] is wholly dependent upon her other claims. Because all of plaintiff’s other claims fail as a
26 matter of law, so does her PAGA 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 This case and settlement address important employee protections embodied in the California
2 Labor Code. (Genish Decl., ¶ 35). Plaintiffs’ core allegations are that Defendant systematically
3 violated the California Labor Code by, *inter alia*, failing to properly pay wages for all hours worked,
4 failing to pay overtime at the correct rate, failing to provide compliant meal and rest periods, failing
5 to pay premiums at the correct rate of pay, failing to timely pay wages during employment and upon
6 termination, failing to maintain accurate payroll records, failing to provide accurate wage statements,
7 and failing to reimburse necessary business expenses. (*Ibid*).

8 Defendant’s maximum theoretical exposure in the Action, without stacking penalties, totals
9 approximately \$3,730,000.00, computed by multiplying 37,300 Pay Periods by \$100 each. (Genish
10 Decl., ¶ 36). While the PAGA does provide the potential for a heightened penalty for subsequent
11 violations, courts are often hesitant to award a heightened penalty where there is no prior citation by
12 the Labor Commissioner, as is the case here. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144
13 (9th Cir. 2021) (holding no heightened penalty where defendant was not notified by Labor
14 Commissioner or any court that it was subject to the California Labor Code). The Ninth Circuit’s
15 holding in *Bernstein* also supports a settlement valuation that does not “stack” penalties. (*Ibid*).

16 Defendant maintained several defenses to Plaintiffs’ theories of liability, including the
17 existence of arbitration agreements with class action and PAGA waiver language, which, if
18 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
19 (Genish Decl., ¶ 37). Throughout this litigation, Defendant maintained, and continues to maintain,
20 that it had, and continues to have, compliant employment policies and practices throughout the time
21 period at issue. (*Ibid*). Defendant denies that it ever violated any provision of the California Labor
22 Code, including, but not limited to, those sections for which Plaintiffs seek penalties under PAGA.
23 (*Ibid*). Defendant further denied, and continues to deny, that the lawsuit is appropriate for
24 representative treatment for any purpose other than settlement. (*Ibid*). Defendant also challenged
25 Plaintiffs’ standing as aggrieved employees and denied that any of Defendant’s other employees
26 whom Plaintiffs seek to represent are aggrieved. (*Ibid*).

27 Defendant also argued that an important feature of PAGA is that the Court retains discretion
28 to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise

1 would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (*Ibid*). (Lab. Code
2 § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136
3 (2012) [holding that a court may reduce the amount of PAGA penalties awarded to an employee
4 based upon discretionary factors].)

5 Even if violations of the California Labor Code occurred, which Defendant denies, Defendant
6 contended that said violations would only be considered “initial violations” and thus heightened
7 “subsequent violation” penalties were not warranted. (Genish Decl., ¶ 38). (Lab. Code § 2699(f)(2);
8 *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) [“Until the employer
9 has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed
10 to be aware that its continuing underpayment of employees is a 'violation' subject to penalties.”].)

11 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess
12 cumulative penalties for the maximum number of possible, separate California Labor Code
13 violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where
14 certain conduct may be regulated by multiple provisions of the California Labor Code that are
15 interrelated and work in tandem. (Genish Decl., ¶ 39). As such, Defendant contended that cumulative
16 penalties and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory. (*Ibid*).

17 Some courts have held that the claims raised by a plaintiff may raise individualized issues
18 and/or are unmanageable and thus not suitable for adjudication as to a group of employees. (*See, e.g.*,
19 *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746, 772-775 (2021) [trial court did
20 not abuse discretion in striking PAGA claim that did not allow for Defendant to try its defenses in a
21 manageable manner]; *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 25, 29, 31, 34-35 (2014) [even
22 where employer consistently imposed a uniform policy, plaintiff “must still demonstrate that the
23 illegal effects of this conduct can be proven efficiently and manageably” and in litigating
24 representative actions the procedures utilized by the court “may not be used to abridge a party’s
25 substantive rights”]; *Ali v. U.S.A. Cab Ltd.*, 176 Cal.App.4th 1333, 1341 (2009) [affirming denial of
26 certification because employees’ declarations attesting to having taken meal and rest breaks
27 demonstrated that individualized inquiries were required to show harm]; *Brinker Restaurant Corp. v.*
28 *Superior Court*, 53 Cal.4th 1004, 1018 (2012) [although employers must authorize employees to take

1 duty-free meal and rest breaks, they are not obligated to affirmatively ensure that no work related
2 tasks are performed during such periods]). Although California case law clearly states that PAGA
3 actions need not satisfy class action requirements, PAGA Counsel remained mindful of the fact that
4 some courts have nevertheless held that PAGA claims must meet a threshold “manageability”
5 requirement.

6 While Plaintiffs maintain that their PAGA claims have merit, in reaching the Settlement,
7 Plaintiffs and their counsel took into account the strengths and weaknesses of each side’s position
8 and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon
9 appeal. (Genish Decl., ¶ 40). Based on these disputes, which had the potential to completely eliminate
10 Plaintiffs’ recovery, the range of realistic “litigation outcomes” on Plaintiffs’ PAGA claims was
11 defined by a “maximum possible liability” amount of approximately \$3,730,000.00 [*Id.*, ¶ 36], and a
12 *net-zero recovery* based on the defenses asserted by Defendant. Notwithstanding the existence of
13 these issues, the Settlement achieves a sizeable benefit obtained. (*Id.*, ¶ 40).

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

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

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

27 The Settlement Agreement provides a *significant* monetary benefit that falls well within “the
28 range of an acceptable settlement” under the circumstances, which is the standard on which the instant

1 Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable
2 even where it only provides a fraction of what could have been obtained at trial:

3 The proposed settlement is not to be judged against a hypothetical or speculative measure of
4 what might have been achieved by the negotiators." *Officers for Justice v. Civil Serv. Comm'n*,
5 688 F.2d at 625 (emphasis in original). Thus, "the very essence of a settlement is compromise,
6 'a yielding of absolutes and an abandoning of highest hopes.'" *Id.* at 624 (citations omitted).
7 As the Second Circuit has pointed out: "The fact that a proposed settlement may only amount
8 to a fraction of the potential recovery does not, in and of itself, mean that the proposed
9 settlement is grossly inadequate and should be disapproved." *City of Detroit v. Grinnell Corp.*,
10 495 F.2d 448, 455 & n.2 (2nd Cir. 1974).

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

12 The PAGA Penalties are currently estimated to be \$447,131.18. After all deductions are made
13 from the Gross Settlement Amount for the PAGA Counsel Fees and PAGA Counsel Litigation Costs,
14 Enhancement Payments, and Costs of Administration , \$335,348.38 (i.e. 75% of the PAGA Penalties)
15 will go to the LWDA, and \$111,782.79 (i.e. 25% of the PAGA Penalties) will go to the Aggrieved
16 Employees, as required by California Labor Code § 2699(i) ("civil penalties recovered by aggrieved
17 employees shall be distributed as follows: 75 percent to the Labor and Workforce Development
18 Agency . . . and 25 percent to the aggrieved employees."). (Genish Decl., ¶ 41). There is no reason
19 to doubt the fairness of the proposed plan of allocation of the PAGA Penalties as it fully complies
20 with California Labor Code section 2699(i). (*Ibid*).

21 The Settlement is a compromise of highly disputed claims. (*Id.*, ¶ 42). Plaintiffs and their
22 counsel recognize the expense and length of continued proceedings necessary to litigate the matter
23 through trial and any possible appeals. (*Ibid*). Plaintiffs and their counsel have also taken into account
24 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent
25 in such litigation. (*Ibid*). Plaintiffs and their counsel are also aware of the burdens of proof necessary
26 to establish liability, both generally and in response to Defendant's defenses thereto, and the
27 difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf of
28 Plaintiffs, the State of California, and other Aggrieved Employees. (*Ibid*). Plaintiffs and their counsel
have also taken into account Defendant's agreement to enter into a settlement that confers significant
relief upon the Aggrieved Employees and the State of California. (*Ibid*). Considering all of the facts
in this case, Plaintiffs and their counsel have determined that the Settlement represents a fair,

adequate, and reasonable resolution of the PAGA claims, and that it is in the best interests of the Aggrieved Employees and the State of California. (*Ibid*).

The results achieved in this case are well within the range of what is considered an acceptable settlement under the circumstances, especially when compared to the settlement of PAGA claims in other cases. (*Id.*, ¶ 43). (*See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) [approving \$15,000 out of \$4 million toward settlement of PAGA claims]; *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal. Oct. 29, 2012) [approving \$10,000 out of \$3.7 million toward settlement of PAGA claims]; *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving \$7,500 out of \$518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC*, 2011 U.S. Dist. LEXIS 15821, at *4 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, at *14 (E.D. Cal. Nov. 27, 2011) [approving \$10,000 out of \$2.5 million toward settlement of PAGA claims]). Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

4. The Scope of the Release is Narrowly Tailored

As discussed above, the California Supreme Court has concluded that in the context of PAGA “the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in exchange for the foregoing consideration is limited to the civil penalties asserted in the Operative Complaint , the PAGA Notice, and the Amended PAGA Notice under California Labor Code §§ 2698 *et seq.* (*See Settlement Agreement*, at ¶ 5.1). As such, this factor balances strongly in favor of approval of the Settlement.

5. Experience and Views of Counsel Favor Approval

PAGA Counsel is experienced in complex representative and class action wage-and-hour litigation. (Genish Decl., ¶¶ 2 – 7, 44 – 45 & 48). In the view of PAGA Counsel, the benefits conferred by the Settlement are eminently fair and reasonable, and in the best interests of the State of

1 California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued
2 litigation and the substantial monetary benefits provided for by the Settlement. (*Id.*, ¶ 44).
3 Furthermore, courts have acknowledged that “the interests of plaintiff, counsel and other potentially
4 aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible
5 as many Labor Code violations as the evidence will sustain[.]” (*Williams v. Superior Court*, 3 Cal.
6 5th 531, 548 (2017) [citing Labor Code § 2699(g)(l)(i)].)

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

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

13 Here, the extent of formal and informal discovery conducted was sufficient to enable PAGA
14 Counsel to evaluate the strength and value of the PAGA claims for purposes of settlement. (Genish
15 Decl., ¶¶ 19 – 20, 34 & 45). Prior to settling, Defendant provided Plaintiffs with data, information,
16 and documents relating to the underlying alleged violations, including but not limited to, Plaintiffs’
17 personnel files, a sampling of Aggrieved Employees’ time and payroll records, Defendant’s
18 Employee Handbooks, and Aggrieved Employees’ data points. (*Id.*, ¶¶ 19 – 20). As discussed above,
19 PAGA Counsel’s investigation was sufficient to, among other things, tabulate with precision the total
20 number of alleged California Labor Code violations at issue during the relevant statutory period and
21 identify the total number of individuals falling within the definition of “Aggrieved Employees” for
22 the relevant statutory period. (*Id.*, ¶ 20).

23 Based on PAGA’ Counsel’s experience litigating wage and hour claims, such investigation
24 was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of
25 this claim for purposes of settlement. (*Id.*, ¶¶ 19 – 20, 34).

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1 **VI. THE REQUESTED PAGA COUNSEL FEES PAYMENT IS FAIR AND**
2 **REASONABLE**

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

15 In *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016), the California Supreme Court
16 confirmed that "[t]he percentage of fund method survives in California class action cases."
17 Specifically, the *Laffitte* Court held:

18 The recognized advantages of the percentage method-including relative ease of
19 calculation, alignment of incentives between counsel and the class, a better
20 approximation of market conditions in a contingency case, and the encouragement it
21 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.

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

26 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
27 method, the California Supreme Court has taken the position that trial courts also "retain the
28 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a

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

12 The percentage method is particularly appropriate where a monetary settlement has been
13 recovered and “the benefit [recovered can be] easily quantified.” (*In re Bluetooth Headset Prods.*
14 *Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).) Where the amount of a settlement is a “certain or
15 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
16 percentage of the settlement created. (Weil and Brown, California Practice Guide, *Civil Procedure*
17 *Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.) The percentage fee
18 method is preferred in representative actions because “it better approximates the workings of the
19 marketplace than the lodestar approach.” (*Lealao, supra*, 82 Cal.App.4th at 49.) California law
20 provides that the award for attorneys’ fees should be equivalent to fees freely negotiated in the legal
21 marketplace and paid in comparable litigation based on the result achieved and risk incurred. (*See*
22 *Lealao*, 82 Cal.App.4th at 47-50; *Laffitte*, 1 Cal.5th 480 at 503.) In cases where the settlement
23 agreement provides that the defendant will pay the plaintiffs’ attorneys a percentage of the fund
24 created by the settlement, use of that percentage method is appropriate. (*Lealao*, 82 Cal.App.4th at
25 32.) Fee awards that are too small will “chill the private enforcement essential to the vindication of
26 many legal rights and obstruct the representative actions that often relieve the courts of the need to
27 separately adjudicate numerous claims.” (*Id.* at 53). Therefore, fees in representative actions should
28 approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney

1 and client in comparable litigation. (*Id.* at 48). “The ultimate goal ... is the award of a ‘reasonable’
2 fee to compensate counsel for their efforts, irrespective of the method of calculation.” (*Consumer*
3 *Privacy Cases*, 175 Cal.App.4th 545, 557-58 (2009) [quoting *Apple Computer, Inc. v. Superior Court*,
4 *supra*, 126 Cal.App.4th at 1270].)

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

18 Here, PAGA Counsel’s fee request of forty percent (40%) of the Gross Settlement Amount
19 (*i.e.*, \$332,000.00) is fair and reasonable based on the percentage of the recovery method. Plaintiffs’
20 Counsel has vigorously litigated this case since it was commenced, with the very real possibility of
21 an unsuccessful outcome and no fee recovery of any kind. (Genish Decl., ¶ 47). Counsel for Plaintiffs
22 undertook significant investigation and invested a significant amount of time analyzing relevant
23 documents and data to evaluate the nature and extent of the alleged underlying Labor Code violations
24 and calculation of the potential monetary recovery as they relate to Plaintiffs’ PAGA claim. (*Id.*, ¶¶
25 19 – 20, 34 & 45). The attorneys at Blackstone Law, APC possess combined extensive experience
26 litigating wage and hour and other complex litigation matters, and the attorneys who worked on this
27 matter have been approved as class counsel and/or have had their billable rates approved in the
28 settlement of other class and PAGA actions, numerous times. (*Id.*, ¶¶ 2 – 7, 48).

1 In the present case, PAGA Counsel has borne all of the risks and costs of litigation and will
2 not receive any compensation until recovery is obtained. (*Id.*, ¶ 47). PAGA Counsel is experienced
3 in complex wage-and-hour litigation and used that experience to obtain a favorable result for
4 Plaintiffs, the Aggrieved Employees, and the State of California. (*Id.*, ¶¶ 2 – 7, 48). Considering the
5 amount of fees requested, work performed, risks incurred, and experience of PAGA Counsel in
6 handling similar matters, Plaintiffs maintain that the requested attorneys’ fees of forty percent (40%)
7 of the Gross Settlement Amount (*i.e.*, \$332,000.00) are reasonable and should be awarded. (*Id.*, ¶
8 47).

9 **VII. THE REQUESTED PLAINTIFFS’ COUNSEL LITIGATION COSTS**
10 **AMOUNT IS FAIR AND REASONABLE**

11 The Settlement provides for reimbursement of actual litigation costs and expenses up to the
12 amount of Forty Thousand Dollars and Zero Cents (\$40,000.00). (Genish Decl., ¶ 51; Settlement
13 Agreement, ¶ 3.2.1). Plaintiffs’ Counsel only seeks reimbursement of a total of \$16,368.82 in
14 litigation costs and expenses. (Genish Decl., ¶ 46, Exhibit 4). Accordingly, Plaintiffs’ Counsel
15 respectfully requests that the Court reimburse them for actual litigation costs and expenses in the
16 amount of \$16,368.82.

17 **VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND**
18 **REASONABLE**

19 As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval
20 by the Court, Apex Class Action LLC to handle the administration of the Settlement. (Genish Decl.,
21 ¶ 52; Settlement Agreement, ¶ 7.1). The fees and expenses of the Administrator are estimated not to
22 exceed \$12,000.00. (Genish Decl., ¶ 52; Settlement Agreement, ¶ 3.2.2). These costs include, but are
23 not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual PAGA
24 Payment checks to the Aggrieved Employees, re-mailing the returned Individual PAGA Payment
25 checks to any new addresses obtained, and handling inquiries from Aggrieved Employees regarding
26 the Settlement, among other things. (Genish Decl., ¶ 52). Accordingly, the Court should grant
27 approval of the Settlement Administration Costs in the amount of up to \$12,000.00 to Apex Class
28 Action LLC, a necessary third-party for handling the settlement process. (*Ibid*).

1 **IX. THE REQUESTED ENHANCEMENT PAYMENTS ARE FAIR AND**
2 **REASONABLE**

3 The purpose of an enhancement award is to incentivize aggrieved employees to step into the
4 shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit
5 and serving in a representative capacity. *See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715,
6 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the action);
7 *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) (“an incentive award is
8 appropriate ‘if it is necessary to induce an individual to participate in the suit’”). Plaintiffs initiated
9 this litigation on behalf of the State of California and their former co-workers who will now be entitled
10 to receive payment from the Settlement. By initiating and pursuing the Action, Plaintiffs stepped into
11 the shoes of the State of California and undertook the responsibilities of serving in a representative
12 capacity. (Genish Decl., ¶ 53; Trujillo Decl., ¶¶ 4 – 13; McGraw Decl., ¶¶ 4 – 13; Sanchez Decl., ¶¶
13 4 – 13). Plaintiffs were available whenever Plaintiffs’ counsel needed them and actively tried to
14 obtain information that would benefit the prosecution of the Action. (*Ibid*). The requested
15 enhancement fees are eminently reasonable given the time and effort Plaintiffs spent on the Action,
16 and the benefit to the other Aggrieved Employees and the State of California as a result of Plaintiffs’
17 actions. (Genish Decl., ¶ 53). Accordingly, Plaintiffs respectfully submit that it is appropriate and just
18 for Plaintiffs to receive an enhancement fee in the amount of \$7,500.00 for each Plaintiff, \$22,500.00
19 in total for all three Plaintiffs, in addition to the Individual PAGA Payments they will receive as
20 Aggrieved Employees, for their services on behalf of the State of California and the other Aggrieved
21 Employees. (*Ibid*).

22 **X. THE INSTANT SETTLEMENT MAY EXTINGUISH CLAIMS IN A**
23 **RELATED CASE**

24 The Settlement Agreement, should it receive Court approval, may extinguish claims in, or
25 impact the related case entitled *Jesse Manuel Hernandez v Producers Dairy Foods, Inc.*, Fresno
26 County Superior Court Case No. 22CECG03389. (Genish Decl., ¶ 54).

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Dated: July 12, 2024

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