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

ERIC DE ALBA, individually, and on behalf
of aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiff,

v.

PACIFIC CONSOLIDATED INDUSTRIES,
LLC, a Delaware limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: CVRI2200092

Assigned for All Purposes to:
Honorable Harold W. Hopp
Department 1

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, ET SEQ.)
SETTLEMENT AGREEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Reservation ID: 215041612864]

[Declaration of Counsel (Douglas Han);
Declaration of Plaintiff (Eric De Alba);
Declaration of Jodey Lawrence; Compliance
Chart; and [Proposed] Order and Judgment
filed concurrently herewith]

Hearing Date: May 28, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: January 7, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 28, 2024 at 8:30 a.m., or as soon as thereafter as
2 the matter may be heard, before the Honorable Harold W. Hopp in Department 1 of the Riverside
3 County Superior Court (Historic Courthouse) located at 4050 Main Street, Riverside, California
4 92501, Plaintiff Eric De Alba (“Plaintiff”) will, and hereby does, move for entry of an order and
5 judgment approving the Parties’ Private Attorneys General Act of 2004 (“PAGA”) Settlement
6 Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to
7 the declaration of Douglas Han, pursuant to Labor Code section 2699(l).

8 This motion is based upon this notice of motion and motion; the Settlement Agreement;
9 the Declarations of PAGA Counsel (Douglas Han), Plaintiff, and proposed Settlement
10 Administrator (Jodey Lawrence) in support thereof; proposed order approving the Settlement
11 Agreement; the pleadings and other records on file with the Court in this matter; and such evidence
12 and oral argument as may be presented at the hearing on this motion.

13
14 Dated: May 2, 2024

JUSTICE LAW CORPORATION

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16 By: 
17 Douglas Han
18 *Attorneys for Plaintiff*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 This is a representative PAGA action. Under Labor Code section 2699(1)(2), Plaintiff Eric
4 De Alba (“Plaintiff”) seeks approval of the Settlement Agreement entered between Plaintiff and
5 Defendant Pacific Consolidated Industries, LLC (“Defendant”). Plaintiff entered the Settlement
6 Agreement on behalf of himself and all current and former non-exempt employees employed by
7 Defendant in California from December 22, 2020 through and including September 15, 2023
8 (“Aggrieved Employees” and “PAGA Period”).

9 The Parties agreed to resolve this case for a Gross Settlement Amount of \$185,000
10 inclusive of the: (1) amount allocated for the Labor Workforce Development Agency (“LWDA”) and for the Aggrieved Employees that will be distributed in accordance with Labor Code section
11 2699(i); (2) Attorney Fee Amount and Cost Amount, pursuant to Labor Code section 2699(g)(1);;
12 and (3) Administration Costs.

13 Plaintiff submits the Settlement is fair, adequate, and reasonable, and meets requirements
14 for Court approval. Thus, Plaintiff requests this Court approve the Settlement.

15 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

16 Defendant, a manufacturer of ruggedized onsite liquid and gaseous oxygen and nitrogen
17 generators for a variety of markets, employed Plaintiff as an Assembler from January 2020 to
18 June 2021 at its Riverside, California location.

19 On December 22, 2021, Plaintiff served a notice letter to the LWDA and Defendant. On
20 January 07, 2022, Plaintiff filed this putative representative PAGA action. Defendant filed an
21 Answer to the Operative Complaint on August 09, 2022, in which it asserted a general denial of,
22 and various affirmative defenses to, the PAGA claim alleged.¹ On October 31, 2022, the Court
23 granted in part and denied in part Defendant’s Motion to Compel Arbitration by compelling
24 Plaintiff to arbitration but staying the PAGA claim in the interim.² PAGA civil penalties based
25

26
27 ¹ (Declaration of Douglas Han In Support of Plaintiff’s Motion for Approval of Private
28 Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement (“Han Decl.”), ¶ 11.)

² (Han Decl., ¶ 11.)

on allegations that Defendant: (1) failed to pay minimum and overtime wages; (2) failed to provide compliant breaks; (3) failed to timely pay wages; (4) failed to provide compliant wage statements; and (5) failed to reimburse necessary business expenses.³

After conducting significant investigation, the Parties' counsel engaged in extensive negotiations to try to resolve the entire matter. The Parties participated in private mediation on July 25, 2022, before Steven G. Mehta that unfortunately did not result in a resolution of the case.⁴

Thereafter, the parties proceeded with the arbitration of Plaintiff's individual claims, initiating arbitration on March 27, 2023.⁵ Amidst the ongoing arbitration, the Parties reinitiated arm's length settlement negotiations for the representative PAGA claims based on the negotiations made at mediation—adjusting for the increase in pay periods and aggrieved employees.⁶ During all settlement discussions, the Parties conducted their negotiations at arm's-length in an adversarial position. Through adversarial arms-length negotiations, the Parties reached a settlement considering Defendant's violations and the additional costs and risks to the Parties.⁷

Plaintiff now moves for an order granting approval of the Settlement, pursuant to Labor Code section 2699(1)(2).

III. SUMMARY OF THE SETTLEMENT TERMS

A. Allocation of the Gross Settlement Amount

The Settlement provides Defendant will pay a non-reversionary Gross Settlement Amount of \$185,000. The PAGA Penalties Fund will be the Gross Settlement Amount less the following: (1) Attorney Fee Amount of \$61,666.66; (2) Cost Amount of \$10,000; and (3) Administration Costs of up to \$3,000.

³ (Han Decl., *supra*, at ¶ 24.)

⁴ (Han Decl., *supra*, at ¶ 16.)

⁵ (Han Decl., *supra*, at ¶ 17.)

⁶ (*Id.* at ¶ 18.)

⁷ (*Id.* at ¶ 19.)

1 The amount of the PAGA Penalties Fund is estimated to be \$108,333.34. Twenty-five
2 percent (25%) of the PAGA Penalties Fund will be distributed to each of the estimated one
3 hundred (100) Aggrieved Employees as their Individual PAGA Payment. The Settlement
4 Administrator will calculate each Individual PAGA Payment by: (1) dividing the total amount of
5 the PAGA Penalties Fund allocated for distribution to Aggrieved Employees as Individual PAGA
6 Payments by the total number of PAGA Pay Periods of all Aggrieved Employees; and (2)
7 multiplying the result by each Aggrieved Employee's PAGA Pay Periods. The remaining
8 seventy-five percent (75%) of the PAGA Penalties Fund will be transmitted to the LWDA as the
9 LWDA PAGA Payment, pursuant to Labor Code section 2699(i).⁸

10 **B. Distribution of the PAGA Penalties Fund**

11 Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the
12 Settlement Administrator no later than thirty (30) calendar days after the Effective Date or
13 otherwise directed by the Court. Within ten (10) calendar days after Defendant funds the Gross
14 Settlement Amount, the Settlement Administrator will issue checks for the Attorney Fee Amount,
15 Cost Amount, Administration Costs, LWDA PAGA Payment, and all Individual PAGA
16 Payments. Disbursement of the Attorney Fee Amount and Cost Amount shall not precede
17 disbursement of Individual PAGA Payments.⁹

18 The Settlement Administrator will issue checks for Individual PAGA Payments and send
19 them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid.¹⁰ Uncashed
20 settlement checks (180 calendar days after their mailing) will be cancelled and distributed to State
21 Controller's Office Unclaimed Property Division in the name of the Aggrieved Employees.¹¹

23 ⁸ (See Settlement Agreement attached as **Exhibit 2** to the Declaration of Douglas Han In
24 Support of Plaintiff's Motion for Approval of Private Attorneys General Act (Labor Code §§
25 I(13)-I(15), I(18), I(21), III(1), III(2).)

26 ⁹ (Settlement Agreement, *supra*, at §§ IV(3), IV(4).)

27 ¹⁰ (*Id.* at § IV(4)(a).)

28 ¹¹ (*Id.* at § IV(4)(c).)

1 **C. The Scope of the Releases in the Settlement Agreement**

2 Effective on the date when Defendant funds the entire Gross Settlement Amount, Plaintiff,
3 individually and in his capacity as a private attorney general proxy or agent of the State, and the
4 State of California, as real party in interest, releases all claims for statutory penalties that could
5 have been sought by the Labor Commissioner for the violations identified in the PAGA Notice
6 and to the extent they are alleged in the Operative Complaint.¹² (See *Arias v. Sup. Ct.* (2009) 46
7 Cal.4th 969, 980, 986 [a plaintiff suing under PAGA “does so as the proxy or agent of the state’s
8 labor law enforcement agencies,” and, as such, “represents the same legal right and interest as
9 state labor law enforcement agencies”].) A judgment in a PAGA action “binds not only that
10 [plaintiff] employee but also the state labor law enforcement agencies.” (*Ibid.*) Further,
11 “[b]ecause an aggrieved employee’s action under [PAGA] functions as a substitute for an action
12 brought by the government itself, a judgment in that action binds all those, including nonparty
13 aggrieved employees, who would be bound by a judgment in an action brought by the
14 government.” (*Arias v. Sup. Ct., supra*, 46 Cal.4th at p. 986.) “Accordingly, with respect to the
15 recovery of civil penalties, nonparty employees as well as the government are bound by the
16 judgment in an action brought under [PAGA]” (*Ibid.*)

17 Under the Settlement, although judgment entered upon the settlement of the Action is
18 binding on Aggrieved Employees with respect to any claims for civil penalties under PAGA,
19 Plaintiff and the State of California do not release any Aggrieved Employee’s individual, non-
20 representative claim for wages or damages. The Released PAGA Claims shall only apply to the
21 violations that occurred during the PAGA Period. The Released Parties include Defendant
22 together with its parents, subsidiaries, affiliated entities, consultants, independent contractors,
23 representatives, officers, directors, employees, and agents.¹³

24 **D. No Right to Object to or Opt Out of the Settlement**

25 “[A] PAGA action is a statutory action for penalties brought as a proxy for the state, rather
26 than a procedure for resolving the claims of other employees, there is no need to protect absent
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28 ¹² (Settlement Agreement, *supra*, at § V(1).)

¹³ (Settlement Agreement, *supra*, at §§ I(27), V(1).)

employees’ due process rights[.]” (*Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 546.) “Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 3570777, at *5.) “PAGA does not make other potentially aggrieved employees parties” and no “due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and whatever personal claims the absent employees might have for relief are not at stake.” (*Williams*, at pp. 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46th Cal.4th 993, 1003 and *Iskanian v. CLS Trans. Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.))

“[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]” (*Williams v. Sup. Ct.*, *supra*, 3 Cal.5th at p. 548 (internal references omitted, citing *Arias v. Sup. Ct.*, *supra*, at pp. 980-981; *Fireside Bank v. Sup. Ct.* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Indus., Inc.* (1981) 29 Cal, 3d 462, 474.))

Consistent with this law, the Settlement does not provide for a procedure for Aggrieved Employees to opt out or otherwise exclude themselves from the Settlement.

IV. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT

The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself, other aggrieved employees and the State to recover civil penalties with respect to provisions of the Labor Code that do not otherwise provide for civil penalties (Lab. Code § 2699(g)), and also, civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must comply with Labor Code section 2699.3. (See Lab. Code § 2699(a).) Although PAGA penalties must be awarded by a court if a violation is found, a court “may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Lab. Code § 2699(e)(2).)

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1 The settlement of a PAGA claim requires court approval. (See Lab. Code § 2699(1)(2)
2 (“The superior court shall review and approve any settlement of any civil action pursuant to this
3 part.”).) However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
4 considered a class action but a law enforcement action” and, therefore, does not have to meet the
5 requirements of a class action. (*Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012
6 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL
7 2173715, at *11; *Arias v. Sup. Ct., supra*, 46 Cal.4th at pp. 980-88 (affirming lower court’s
8 holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim);
9 *Pedroza v PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15.) As such, a court’s
10 review of a PAGA settlement involves analysis of several unique features that render the approval
11 process distinct from approval of a class action settlement. A court reviewing a PAGA settlement
12 need only “ensur[e] that a negotiated resolution is fair to those affected.” (*Williams v. Sup. Ct.,*
13 *supra*, 3 Cal.5th at p. 549 (citing Lab. Code § 2699(1)(2)).) Although Labor Code section 2699(1)
14 does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved
15 settlements of a PAGA claim.¹⁴ The Court of Appeal has held that “a trial court should evaluate
16 a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s
17 purposes to remediate present labor law violations, deter future ones, and to maximize
18 enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)

19 In a PAGA case, the Court’s focus is not the amount which “aggrieved employees” are to
20 receive but whether the total settlement amount achieves PAGA’s objectives. PAGA’s purpose
21 “to incentivize private parties to recover civil penalties for the government that otherwise may
22 not have been assessed and collected by overburdened state enforcement agencies.” (See *Ochoa-*
23 *Hernandez, supra*, 2010 WL 3570777, at *4 (citing *Arias v. Sup. Ct., supra*, 46 Cal.4th at p. 986).)
24 Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for

25 ¹⁴ (See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Sup. Ct., Case
26 No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No.
27 JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575,
28 at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu*
v. Wells Fargo Invs., LLC (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz*
Food Prods. (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case*
(2010) 186 Cal.App. 4th 576, 589.)

1 enforcement of labor laws . . . and for education of employers and employees about their rights
2 and responsibilities under this code, to be continuously appropriated to supplement and not
3 supplant the funding to the agency for those purposes.” (See Lab. Code § 2699(j).) The recovery
4 of penalties on behalf of the state, by way of a PAGA claim, is essentially a law enforcement
5 action. (See *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, *supra*, 46 Cal.4th at
6 p. 1003 (stating the PAGA is mechanism for “an aggrieved employee to recover civil penalties –
7 for Labor Code violations – that otherwise would be sought by state labor law enforcement
8 agencies”); see also *Iskanian v. CLS Trans. Los Angeles, LLC*, *supra*, 58 Cal.4th at p. 381.)

9 **V. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED.**

10 **A. The Factors Giving Rise to a Presumption of Fairness Exist.**

11 A settlement agreement that is “the product of extensive and hard-fought adversarial
12 negotiations between the parties” is entitled to a presumption of fairness. (*Wershba v. Apple*
13 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)

14 The Settlement is presumptively fair. This is because the Settlement: (1) is the product of
15 non-collusive, arm’s-length negotiations; (2) was negotiated by counsel with significant
16 experience in similar wage-and-hour litigation following a full-day mediation with an
17 experienced mediator; and (3) occurred after Parties’ counsel engaged in significant investigation
18 of the strengths of this case and the risks of continued litigation. PAGA Counsel also have
19 extensive experience in representative and class action wage-and-hour litigation and used that
20 experience to achieve a reasonable result.¹⁵

21 Therefore, the Court should give considerable weight to the competency, experience, and
22 opinion of counsel and the involvement of a neutral mediator in assuring the Settlement is a
23 product of hard-fought negotiations that was entered without collusion. (See *Kirkorian v. Borelli*
24 (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable
25 weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations
26 of plaintiffs’ counsel should be given a presumption of reasonableness); see also *Satchell v. Fed.*
27 *Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating the “assistance of an
28

¹⁵ (Han Decl., *supra*, at ¶¶ 6-8, 16-19, 23-24, and 26.)

experienced mediator in the settlement process confirms that the settlement is non-collusive”).)

B. The Relative Strength of the PAGA Claim and the Range of Possible Outcomes in the Litigation Strongly Favor Approval of the Settlement.

Plaintiff contends the provisions of the Labor Code potentially triggering PAGA penalties in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. For Plaintiff to recover civil penalties, he must prove the underlying Labor Code violations with respect to the Aggrieved Employees and show Defendant’s conduct gave rise to penalties. (See, e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 (“Plaintiffs’ claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiffs’ other claims fail as a matter of law, so does her PAGA claim.”).)

Defendant maintained it had legally compliant employment policies and practices throughout the statutory period. Defendant also denied it ever violated any provision of the Labor Code. Next, Defendant denied this case is appropriate for representative treatment for any purpose other than the Settlement. If this case had not settled, Defendant would likely have challenged Plaintiff’s standing as an Aggrieved Employee and denied its other employees were aggrieved. Finally, Defendant argued the Court was unlikely to assess cumulative penalties for the maximum number of possible separate Labor Code violations because the “subsequent violation” theory of PAGA recovery would not be triggered in this case, and it would be unjust, arbitrary, oppressive, and/or confiscatory. (See, e.g., *Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144.) Collectively, this meant Plaintiff and PAGA Counsel had to consider the strengths and weaknesses of each side’s position and the uncertainty of how the case might have ended.¹⁶ Defendant asserted, regardless of any alleged liability for Labor Code violations, PAGA penalties are not mandatory but permissive and discretionary. Defendant also maintained it had a strong argument it would be unjust to award maximum PAGA penalties given the unsettled state of PAGA liability. (*Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)

¹⁶ (Han Decl., *supra*, at ¶¶ 25-26.)

1 Although wage-and-hour actions are amenable to class-wide resolution,¹⁷ courts have
2 found certain Labor Code violations raise individualized issues and/or are unmanageable and are
3 not suitable for class adjudication.¹⁸ Similarly, in PAGA-only actions, Defendant contends courts
4 have found due process requires the adjudication of a PAGA claim meet a “manageability”
5 requirement. (See, e.g., *Liuy v. Merrill Lynch & Co.* (C.D.Cal. Nov. 10, 2014) No. CV-14-0425-
6 PA, WL 5904904 at **3-4 (Court dismissed the PAGA claim because a multitude of
7 individualized assessments would be necessary, making the PAGA claim unmanageable); see
8 also *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 766-767.)

9 Plaintiff alleges, under Defendant’s argument that stacking penalties does not apply to the
10 PAGA claim, and limiting potential exposure to an initial violation only, PAGA penalties would
11 be **\$10,000** (100 employees x \$100 initial violation) on the low end and **\$60,000** (100 employees
12 x \$100 initial violation x 6 theories of recovery) on the high end.¹⁹

13 Plaintiff also recognized the risk any PAGA award could be significantly reduced. Many
14 of the claimed Labor Code violations underlying the PAGA claim were cumulative for which the
15 Court may or may not stack. Thus, a Gross Settlement Amount of \$185,000 for PAGA civil
16 penalties was reasonable and significant. When PAGA penalties are negotiated in good faith and
17 “there is no indication that [the] amount was the result of self-interest at the expense of other
18 Class Members,” such amounts are generally considered reasonable. (*Hopson v. Hanesbrands*
19 *Inc.* (N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900 at *24; see, e.g.,
20 *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its
21 discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).)
22 PAGA Counsel negotiated about an average of **\$44.42** in penalties per pay period would be fair
23 and reasonable [$\$180,000 \div 4,052$ total pay periods in PAGA Period]. Considering the recent
24 cases justifying \$5 per pay period, (see e.g., *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th

25 ¹⁷ (See, e.g., *Martinez vs. Joe’s Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362,
26 383-84, modified on other grounds by *Martinez v. Joe’s Crab Shack Holdings, et al.* (Dec. 3,
27 2014 B242807) 2014 Cal.App. LEXIS 1102, *1-2.)

28 ¹⁸ (See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35.)

¹⁹ (Han Decl., *supra*, at ¶¶ 31.)

504), the recovery is reasonable.²⁰

C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation.

Courts favor the voluntary conciliation and settlement of complex litigation. (*Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276.) Generally, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” (*Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan. 5, 2004) 221 F.R.D. 523, 526 (citation omitted).)

Both sides used the pre-mediation time to investigate the veracity, strength, and scope of the PAGA claim. The Parties engaged in written discovery and exchanged documents and data for purposes of mediation relevant to the claim of Labor Code violations and applicable defenses thereto to determine the potential value and strength of the PAGA claim. After engaging in extensive investigation and negotiations, PAGA Counsel believed it would be best to pursue a settlement rather than take the risky and uncertain trial route. In other words, the Settlement offers immediate recovery rather than only the possibility of recovery at some indeterminate later date.²¹

D. The Settlement Is Fair, Adequate, and Reasonable.

“[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1981) 688 F.2d 615, 624.) “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” (*Id.* at p. 625.)

The Settlement provides a significant monetary benefit to the LWDA and Aggrieved Employees. Specifically, the PAGA Penalties Fund is currently estimated to equal \$108,333.34. In addition, the proposed plan of allocation of the PAGA Penalties Fund to the LWDA and Aggrieved Employees fully complies with Labor Code section 2699(i).

After their investigations and inquiries, Plaintiff and PAGA Counsel recognize the expense, length, risk, and uncertainty of continued proceedings necessary to litigate this dispute.

²⁰ (Han Decl., *supra*, at ¶ 33.)

²¹ (*Id.* at ¶¶ 13-16, 24.)

1 To recover civil penalties, Plaintiff would have to prove the Aggrieved Employees suffered from
2 the underlying Labor Code violations and that Defendant's conduct gave rise to penalties, which
3 could take several months or even years to prove, assuming liability is found, and Plaintiff could
4 proffer a manageable trial plan to the Court to prove penalties. Plaintiff and PAGA Counsel are
5 aware of the burdens of proof necessary to establish liability and the difficulties in establishing
6 liability for penalties. Plaintiff and PAGA Counsel also considered Defendant's agreement to
7 enter a settlement that confers significant relief. Plaintiff and PAGA Counsel determined the
8 Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim.²²

9 Therefore, the results achieved, and the PAGA allocation provided by the Settlement
10 Agreement, is within the range of acceptable settlement under the circumstances.²³

11 **E. The Experience and Views of PAGA Counsel Favor Settlement Approval.**

12 PAGA Counsel are experienced in complex representative and class action wage-and-
13 hour litigation. PAGA Counsel believe the benefit conferred by the Settlement is eminently fair
14 and reasonable and in the best interests of the LWDA and Aggrieved Employees.²⁴

15 **VI. APPROVAL OF THE REQUESTED ATTORNEYS' FEES.**

16 **A. A Fee Award of Percentage of the Entire Fund is Appropriate.**

17 The Settlement provides for PAGA Counsel to apply for an Attorney Fee Amount
18 \$61,666.66 (33% of the Gross Settlement Amount). Per the Settlement, Defendant does not
19 oppose Court approval of, but makes no claims or admissions with respect to, the reasonableness

20 _____
21 ²² (Han Decl., *supra*, at ¶¶ 24-26.)

22 ²³ (See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833
23 (May 2017) (approving \$15,000 out of \$4 million toward settlement of the PAGA claim); *Garcia*,
24 *supra*, 2012 WL 5364575, at *3 (approving \$10,000 out of \$3.7 million toward settlement of the
25 PAGA claim); *Schiller v. David's Bridal, Inc.*, *supra*, 2012 WL 2117001, at *14 (approving
26 \$10,000 out of \$518,245 toward settlement of the PAGA claim); *Chu v. Wells Fargo Invs.*, *supra*,
27 2011 WL 672645, at *1 (approving \$10,000 out of \$6.9 million toward settlement of the PAGA
28 claim); *Franco v. Ruiz Food Prods.*, *supra*, 2012 WL 5941801, at *14 (approving \$10,000 out of
\$2.5 million toward settlement of the PAGA claim); *Nordstrom Commissions Case*, *supra*, 186
Cal.App.4th at p. 589 (finding no abuse of discretion by the trial court in approving a settlement
that allocates \$0 toward the settlement of the PAGA claim at issue in the lawsuit).)

²⁴ (Han Decl., *supra*, at ¶¶ 2-8; Exhibit 1.)

1 of the Attorney Fee Amount, or the grounds and attorney billing rates supporting such Attorney
2 Fee Amount claimed by PAGA Counsel. The Attorney Fee Amount is commensurate with the:
3 (1) risks undertaken; (2) time, effort, and expense dedicated; (3) skills and determination shown;
4 (4) value achieved; and (5) other cases turned down.

5 PAGA Counsel are entitled to recover reasonable attorneys' fees and costs as a matter of
6 right under PAGA. (See Lab. Code § 2699(g)(1).) PAGA Counsel is entitled to fees and costs
7 under Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for
8 the benefit" of others and has secured monetary awards for Aggrieved Employees.²⁵ The payment
9 to the LWDA will also benefit the agency in enforcing labor laws and educating "employers and
10 employees about their rights and responsibilities under [the Labor Code]." (Lab. Code § 2699(i).)

11 PAGA Counsel investigated and litigated this case for over one and one-half (1.5) years
12 before reaching a settlement with a real chance of not reaching a resolution. The ongoing work
13 has been extensive and successful in achieving a settlement. PAGA Counsel have borne all the
14 risks and costs of litigation and will not receive any compensation until recovery via this
15 Settlement.²⁶

16 **B. The Requested Attorneys' Fees is Reasonable Based on the Factors**
17 **Considered in Determination of Fee Awards.**

18 The factors courts consider in determining whether fee awards are reasonable are: (1) time
19 and labor required; (2) novelty and difficulty of the questions; (3) requisite skills to perform the
20 legal services; (4) preclusion of other employment by the attorney; (5) customary fee; (6) whether
21 the fee is fixed or contingent; (7) time limitation imposed; (8) amount involved and results
22 obtained; (9) experience, reputation and ability of the attorney; (10) undesirability of the case;
23 (11) nature and length of the professional relationship; and (12) awards in similar cases. (*Camden*
24 *I Condo. Ass'n, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.)

25
26 ²⁵ (See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
27 (recognizing that recovery obtained on behalf of 209 individual satisfies the "significant benefit,"
28 "public interest," and "large class of persons" requirements of Code of Civil Procedure section
1021.5, regardless of plaintiff's personal motivation).)

²⁶ (Han Decl., *supra* at ¶ 49.)

1 It should be highlighted the percentage award sought is commensurate with the: (1) results
2 obtained; (2) extraordinary risks undertaken; (3) novelty and difficulty of this case; and (4) skills
3 displayed and the quality of work, which are each addressed below.

4 **1. The Results Obtained**

5 The results attorneys obtain for their clients is an important factor when determining the
6 reasonability of a percentage-based fee. (See *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
7 480, 489.) Law firms that obtain exceptional results expect them to be reflected in their fees.

8 The results obtained are reasonable as PAGA Counsel obtained a settlement of \$185,000
9 without the need for extended litigation. If this case went to trial, there was no guarantee the trial
10 would have been short or either party would have prevailed. Even if the Parties reached a similar
11 settlement, it would have been undercut by additional expenses incurred. Resolution of this
12 dispute at this stage is preferred as the Parties were moving to the phase where significant time
13 and money would inevitably have to be spent to prepare for trial. Preparation for trial would have
14 also entailed preparing for and deposing persons most qualified, which would have been a lengthy
15 and expensive endeavor with no guarantee of a successful resolution.

16 Consequently, agreeing to settle this case prior to trial meant PAGA Counsel used their
17 skills and experience to obtain a reasonable result for the Aggrieved Employees at far less
18 expense. Also, by avoiding the uncertainties associated with conducting trial and Defendant's
19 responses to the allegations, PAGA Counsel obtained those results more quickly and surely than
20 if the matter had been litigated to final resolution. Under California law, this factor also supports
21 the requested fee. (See *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App. 4th 19, 51.)

22 **2. The Extraordinary Risk Taken by PAGA Counsel**

23 Whether or not representation is provided on a contingency basis is an important factor:

24 A contingent fee must be higher than a fee for the same legal services paid as they are
25 performed [and] [...] compensates the lawyer not only for the legal services he renders
26 but for the loan of those services. A lawyer who both bears the risk of not being paid and
27 provides legal services is not receiving the fair market value of his work if he is paid
only for the second of these functions. If he is paid no more, competent counsel will be
reluctant to accept fee award cases. (internal quotes and citations omitted)

28 (*Cates v. Chiang* (2013) 213 Cal.App.4th 791, 823.)

1 Plaintiff executed a contingent fee agreement. This meant no recovery would have equated
2 to no compensation for 290 hours of work and \$10,657.65 litigation costs incurred.²⁷ Several
3 factors also made this case difficult, thereby contributing to the risks undertaken. These factors
4 included: (1) size of Aggrieved Employees; (2) difficulties in pinning down job responsibilities,
5 wages paid, meal and rest breaks taken; (3) number of documents that had to be analyzed; (4)
6 shifting wage-and-hour laws; and (5) Defendant’s firm resistance to the relief.²⁸

7 **3. The Difficulty of the Litigation**

8 The unsettled nature of the law, factual complexities underlying the policies and practices
9 in place, and other issues made this case complex and difficult. Yet, PAGA Counsel overcame
10 these obstacles by obtaining a settlement that is fair, adequate, and reasonable. PAGA Counsel
11 obtaining a fair settlement despite these roadblocks speaks volumes of their skill and experience.
12 (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p. 42 (the “special skill and
13 experience of counsel” is a relevant factor when determining fee award).)

14 Due to the novelty and difficulty of this case, PAGA Counsel devoted substantial hours
15 to this matter. The Task & Time Chart sets forth these hours, allocating the total time to the tasks
16 required to conclude this lawsuit. The chart is thorough, comprehensive, and demonstrates the
17 effort to diligently manage this case. The work commenced with the pre-filing case analysis and
18 research and continues up to the moment of the work for final approval.²⁹

19 As stated in the previous section, this was not a clear-cut case, and PAGA Counsel had to
20 overcome several roadblocks and obstacles before they could reach a reasonable settlement. The
21 fact this case has been litigated for almost two (2) years speaks volumes of the challenges PAGA
22 Counsel had to deal with and overcome.

23 ///

24 ///

25 ///

26 ²⁷ (Han Decl., *supra*, at ¶¶ 45-49.)

27 ²⁸ (*Id.* at ¶ 35.)

28 ²⁹ (*Id.* at ¶ 45; Exhibit 4.)

1 **4. *The Skill Displayed and Quality of Work***

2 The level of skill displayed and the excellent quality of work it produced also justify the
3 requested fee. PAGA Counsel are skilled and experienced representative and class action wage-
4 and-hour litigators, and the Task & Time Chart further illustrates this assertion.

5 PAGA Counsel used the pre-mediation time period to investigate the veracity, strength,
6 and scope of the PAGA claim and to prepare for representative adjudication. This included,
7 among other things: (1) case strategy and analysis; (2) drafting, reviewing, and revising pleadings
8 and a mediation brief; (3) preparing for and appearing at court proceedings; (4) undertaking
9 calculations of potential damages; (5) preparing for and attending mediation and settlement
10 negotiations; and (6) working with Defense Counsel to draft, update and finalize the Settlement
11 Agreement following mediation. In addition to determining the scope of the Aggrieved
12 Employees, PAGA Counsel undertook the time-consuming task of locating and interviewing
13 Aggrieved Employees to verify if the PAGA claim raised individualized issues.³⁰

14 Thus, PAGA Counsel's accumulated skill and expertise contributed to the Settlement in
15 this case. Under California law, this factor (skills displayed and quality of work) also supports
16 the Attorney Fee Amount. (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p. 51.)

17 **C. The Lodestar Methodology Justifies Approval of the Requested Fees.**

18 PAGA Counsel spent 290.30 hours litigating this matter. PAGA Counsel's hourly rates
19 are supported by the 2021 Real Rate Report that was compiled by Wolter Kluwer that surveyed
20 the hourly rates charged in 2021 by hundreds of attorneys in California. Likewise, PAGA
21 Counsel's hourly rates are also in line with the Laffey Matrix.³¹

22 **1. *PAGA Counsel Performed Work for a Reasonable Number of Hours.***

23 This matter required a significant amount of time and labor, and Defendant disputed the
24 PAGA claim and questioned its manageability. The Task & Time Chart evidence the numerous
25 tasks that were performed to seek all necessary information. Specifically, the Task & Time Chart
26

27 ³⁰ (Han Decl., *supra*, at ¶ 14.)

28 ³¹ (*Id.* at ¶¶ 45-47; Exhibits 5-6.)

1 illustrates PAGA Counsel spent a reasonable number of hours working on this case, thereby
2 demonstrating the application for the attorneys' fees is within the range of reasonableness.³²

3 The case involved, among other things, gathering and analyzing data from Defendant and
4 the Aggrieved Employees. PAGA Counsel undertook intense preparation to resolve the entire
5 matter through mediation. These intense preparations ranged from locating and interviewing
6 several putative aggrieved employees, reviewing a myriad of documents, determining the scope
7 of the Aggrieved Employees, verifying the strengths of the PAGA claim, etc.

8 ***2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation.***

9 PAGA Counsel's hourly rates are well within the range of rates charged by comparably
10 qualified attorneys in California and the legal profession in general for comparably complex
11 work. By extension, PAGA Counsel's hourly rates are also in line with the Laffey Matrix.³³

12 PAGA Counsel's hourly rates are also reasonable for the following reasons: (1) comparable
13 hourly rates for similar services have been deemed to be reasonable in several cases in California;
14 and (2) several surveys of legal rates have supported PAGA Counsel's hourly rates. This shows
15 PAGA Counsel's hourly rates used for the lodestar calculation are well within the range of non-
16 contingent rates charged by comparable attorneys for similar work performed in California.

17 Based on the attorney time expended, the base lodestar fees calculation is \$188,465,
18 resulting in a negative multiplier of 0.32 when cross-checked to the Attorney Fee Amount.³⁴

19 **VII. THE LITIGATION COSTS TO BE REIMBURSED SHOULD BE APPROVED**

20 The Settlement provides for Cost Amount not to exceed \$10,000. PAGA Counsel have
21 incurred \$10,657.67 in litigation costs and expenses, which were reasonable and necessary. Thus,
22 PAGA Counsel request the Court order reimbursement for these costs and expenses.³⁵

23
24
25 ³² (Han Decl., *supra*, at ¶ 45; Exhibit 4.)

26 ³³ (*Id.* at ¶¶ 45-47; Exhibits 5-6.)

27 ³⁴ (*Id.* at ¶¶ 46, 48.)

28 ³⁵ (Han Decl., *supra*, at ¶ 49; Exhibit 7.)

1 **VIII. THE ADMINISTRATION COSTS SHOULD BE APPROVED**

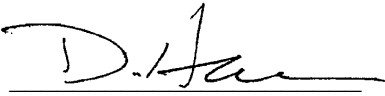
2 The Agreement provides for the payment of Administration Costs of up to \$3,000 to the
3 Settlement Administrator. The Administration Costs are intended to cover the costs incurred by
4 the Settlement Administrator for performing its duties outlined in the Agreement. PAGA Counsel
5 has worked with the desired Settlement Administrator in the past and are familiar with its superior
6 reputation and work product. Thus, the Court should approve the payment of the Administration
7 Costs to the Settlement Administrator.

8 **IX. CONCLUSION**

9 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise.
10 Based thereon, Plaintiff requests the Court approve the Settlement, including the plan of
11 allocation and distribution of the Gross Settlement Amount, Attorney Fee Amount, Cost
12 Amounts, Administration Costs, and Enhancement Payment.

13
14 Dated: May 2, 2024

JUSTICE LAW CORPORATION

15 By: 
16 Douglas Han
17 Attorneys for Plaintiff
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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On May 2, 2024, I served the foregoing document described as

on interested parties in this action by electronically submitting as follows:
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Executed on May 2, 2024, at Pasadena, California.

Mariah Anderson