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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF ALAMEDA**

19 **IN RE DILIGENT DELIVERY WAGE**
20 **AND HOUR CASES**

21 *Simmons v. California Logistics dba*
22 *Diligent Delivery Systems*, Superior Court
23 of California, County of Alameda, Case
24 No. RG17863988

25 *Ortega v. Michigan Logistics, Inc., dba*
26 *Diligent Delivery Systems, et al.*, Superior
27 Court of California, County of Los
28 Angeles, Case No. BC720954

Hadley v. California Logistics, Inc., dba
Diligent Delivery Systems, Superior Court
of California, County of Los Angeles, Case
No. 18CMCV00022

Case No. JCCP 4990

Case No. RG17863988

Assigned to the Hon. Evelio Grillo, Dept. 21

**NOTICE OF MOTION AND MOTION FOR
AN ORDER APPROVING SETTLEMENT
OF CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004, AWARDING ATTORNEYS'
FEES, COSTS, SERVICE AWARDS, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
ENTERING JUDGMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: February 7, 2023

Time: 10:00 a.m.

Dept.: 21

Reservation No.: 678208657833

Consolidated Complaint Filed: May 13, 2022

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PLEASE TAKE NOTICE THAT on February 7, 2023 at 10 a.m., or as soon thereafter as the matter may be heard, in Department 21 of the above-entitled Court, located at 1221 Oak Street, Oakland, CA 94612, Plaintiffs Alden Ortega, Aries Simmons, Darryl Hadley, and Claudia Farias will and hereby do move unopposed for an Order: (1) granting approval of the proposed settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”) set forth in the Parties’ Private Attorneys General Act Settlement Agreement (the “Settlement” or “Settlement Agreement”); (2) appointing Rust Consulting (“Rust”) as the Settlement Administrator and approving payment of its fees not to exceed \$25,000 from the Gross Settlement Amount; (3) directing disbursement of the Gross Settlement Amount pursuant to the terms of the Settlement Agreement; (4) directing payment of attorneys’ fees and litigation costs from the Gross Settlement Amount not to exceed \$1,550,000 to Counsel for Plaintiffs; (5) directing Service Awards from the Gross Settlement Amount in the amount of \$5,000 each to Plaintiffs Alden Ortega, Aries Simmons, Darryl Hadley, and Claudia Farias; and (6) entering Judgment consistent with the Settlement Agreement.

This motion will be based on this Notice, the supporting memorandum of points and authorities, the Parties’ Private Attorneys General Act Settlement Agreement, the Declarations of Daniel F. Gaines, Chauniqua D. Young, Rachel Bien, Jocelyn Burton, Plaintiff Alden Ortega, Plaintiff Aries Simmons, Plaintiff Darryl Hadley, and Plaintiff Claudia Farias, the documents and records on file in this matter, and such additional arguments, authorities, and evidence and other matters as may be presented by the Parties hereafter.

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DATED: January 13, 2023

Respectfully submitted,

By: 
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Alden Ortega (“Plaintiff Ortega”), Aries Simmons (“Plaintiff Simmons”), Darryl
4 Hadley (“Plaintiff Hadley”), and Claudia Farias (“Plaintiff Farias”) (hereinafter Plaintiffs Ortega,
5 Simmons, Hadley, and Farias are collectively referred to as “Plaintiffs”), “aggrieved employees”
6 under the Labor Code’s Private Attorneys General Act of 2004 (“PAGA”), respectfully move this
7 Court for an Order granting approval of the proposed Settlement of the above-captioned lawsuit
8 against Defendants California Logistics, Inc., d/b/a Diligent Delivery Systems (“CLI”), Western
9 Delivery & Logistics, LLC. d/b/a Diligent Delivery Systems (“WDL”), Norlyn Enterprises, Inc.,
10 d/b/a Diligent Delivery Systems (“Norlyn”), and Larry Browne (collectively, “Defendants” or
11 “Diligent”). The proposed Settlement will dispose of the Released Claims asserted on behalf of
12 Plaintiffs and individuals or businesses who contracted with Defendants to perform delivery
13 services in California between April 8, 2016 and the Approval Order Date (the “PAGA Period”)¹.
14 Defendants represent there were approximately 1,443 alleged Aggrieved Employees who worked
15 473,572 days between April 8, 2016 and May 31, 2022.² See Gaines Decl. at ¶ 17.

16 Plaintiffs’ consolidated complaint addresses claimed violations of employee protections
17 embodied in the California Labor Code and penalties stemming therefrom for the violation of

18 ¹ The Aggrieved Employees are defined as “any individual or business who contracted with
19 Defendants or either of them to perform delivery services in California from April 8, 2016 to the
20 Effective Date.” See Settlement Agreement, ¶ 1.4. The Effective Date is defined as “the date this
21 Settlement is approved as provided herein and the Court’s order granting Settlement Approval and
22 entry of Final Judgment becomes final and is no longer appealable. For purposes of this Settlement
23 Agreement, “becomes final and is no longer appealable” shall mean the later of: (a) the day after
24 the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment
25 approving this Settlement Agreement may be timely filed and none is filed (i.e., 61 days from notice
26 of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling,
27 dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the
28 day after the last date for filing a request for further review of the order and judgment approving
this Settlement Agreement passes, and no further review is requested; or (c) if an appeal is filed
and the order approving this Settlement Agreement is affirmed and further review of the order is
requested, the day after the review is finally resolved and the order and judgment approving this
Settlement Agreement is affirmed.” See Settlement Agreement, ¶ 1.11.

² The Settlement Agreement’s escalator provision provides that the “settlement is based on
Defendants’ representation that there are a maximum of 838,697 days worked by approximately
1,458 Aggrieved Employees...through May 31, 2022. See Settlement Agreement, ¶ 8. Defendants’
final count provided that there were 1,443 alleged Aggrieved Employees who worked 473,572 days
through May 31, 2022.

1 PAGA. Plaintiffs alleged that Defendants misclassified them and other Aggrieved Employees as
2 independent contractors, in violation of Labor Code § 226.8; failed to pay Plaintiffs and Aggrieved
3 Employees overtime wages in violation of Labor Code §§ 510, 1194, and 1198 and IWC Wage
4 Order 9-2001; failed to pay Plaintiffs and Aggrieved Employees minimum wages, in violation of
5 Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1199 and IWC Wage Order 9-2001;
6 unlawfully deducted wages from Plaintiffs and Aggrieved Employees, in violation of Labor Code
7 §§ 221, 223, and 225.5 and IWC Wage Order 9-2001; failed to provide Plaintiffs and Aggrieved
8 Employees with meal and rest periods, or compensation in lieu thereof, in violation of Labor Code
9 §§ 218.5, 226.7, and 512 and IWC Wage Order 9-2001; failed to pay Plaintiffs and Aggrieved
10 Employees all wages earned during their employment, in violation of Labor Code §§ 204 and 210;
11 failed to pay Plaintiffs and Aggrieved Employees all wages due at the separation of their
12 employment, in violation of Labor Code §§ 201-203; failed to issue Plaintiffs and Aggrieved
13 Employees complete and accurate wage statements, in violation of Labor Code §§ 226(a), 226.3,
14 1174(d), and 1174.5 and IWC Wage Order 9-2001; failed to keep proper payroll records for
15 Plaintiffs and Aggrieved Employees, in violation of Labor Code §§ 353 and 1174 and IWC Wage
16 Order 9-2001; failed to provide and maintain records of paid sick leave and accrual to Plaintiffs
17 and Aggrieved Employees, in violation of Labor Code §§ 246 and 246.7; failed to provide Plaintiffs
18 and Aggrieved Employees written notice upon hire, in violation of Labor Code § 2810.5; and failed
19 to reimburse Plaintiffs and Aggrieved Employees for business expenses, in violation of Labor Code
20 § 2802 and IWC Wage Order 9-2001.

21 In deciding whether to grant approval of the proposed Settlement, the primary issue to be
22 decided is whether the Settlement is fair, adequate, and reasonable. As set forth herein, the
23 proposed Settlement embodies all of the features of a settlement that is fair, reasonable, and
24 adequate, as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys
25 experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation
26 necessary to evaluate the relative strength and value of the PAGA claims, and (4) it reflects a
27
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1 reasoned compromise based directly on the relative strength and value of the PAGA claim, as well
2 as the risks, expense, complexity and likely duration of further litigation.

3 The value achieved by the Settlement may be gleaned from the fact that the Labor and
4 Workforce Development Agency (“LWDA”) and the approximately 1,443 Aggrieved Employees
5 encompassed by the Settlement will receive no less than approximately \$1,241,667 under the terms
6 of the Settlement, which, pursuant to the operative statute, shall be allocated “75 percent to the
7 Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.” *See*
8 *Labor Code* § 2699(i). This is a reasonable recovery, not only because further litigation may have
9 resulted in a net-zero recovery based on the defenses available to Defendants, but because the
10 amount secured by Plaintiffs is sizable and in line with – if not more substantial than – similar
11 settlements of these types of claims under PAGA. It is also important to underscore that all penalty
12 amounts paid to Aggrieved Employees will be an unexpected windfall, as employees typically do
13 not bring individual lawsuits asserting only PAGA penalties.

14 For these reasons, as set forth more fully herein, Plaintiffs respectfully request that this
15 Court enter the Order submitted herewith.

16 **II. STATEMENT OF THE CASE AND THE SETTLEMENT**

17 **A. The Parties**

18 Defendants CLI and WDL furnish Aggrieved Employees to make deliveries for their
19 customers. *See* Consolidated Complaint at ¶¶ 51, 57. Defendant Norlyn provides management
20 services to Defendants CLI and WDL. *Id.* at ¶ 63. Defendant Larry Browne is the President and
21 Chief Executive Officer of Diligent. *Id.* at ¶ 73.

22 Plaintiff Ortega worked as a delivery driver for Defendants from approximately August
23 2017 through November 2017. *Id.* at ¶ 10.

24 Plaintiff Simmons worked as a delivery driver for Defendants from approximately July
25 2012 through April 2016. *Id.* at ¶ 21.

26 Plaintiff Hadley worked as a delivery driver for Defendants from approximately March
27 2017 through July 2018. *Id.* at ¶ 32.

1 Plaintiff Farias worked as a delivery driver for Defendants from approximately 2007
2 through January 2021. *Id.* at ¶ 42.

3 **B. The Claims Asserted**

4 Plaintiffs assert claims that Defendants misclassified them and other Aggrieved Employees
5 as independent contractors, in violation of Labor Code § 226.8; failed to pay Plaintiffs and
6 Aggrieved Employees overtime wages in violation of Labor Code §§ 510, 1194, and 1198 and IWC
7 Wage Order 9-2001; failed to pay Plaintiffs and Aggrieved Employees minimum wages, in
8 violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1199 and IWC Wage Order
9 9-2001; unlawfully deducted wages from Plaintiffs and Aggrieved Employees, in violation of
10 Labor Code §§ 221, 223, and 225.5 and IWC Wage Order 9-2001; failed to provide Plaintiffs and
11 Aggrieved Employees with meal and rest periods, or compensation in lieu thereof, in violation of
12 Labor Code §§ 218.5, 226.7, and 512 and IWC Wage Order 9-2001; failed to pay Plaintiffs and
13 Aggrieved Employees all wages earned during their employment, in violation of Labor Code §§
14 204 and 210; failed to pay Plaintiffs and Aggrieved Employees all wages due at the separation of
15 their employment, in violation of Labor Code §§ 201-203; failed to issue Plaintiffs and Aggrieved
16 Employees complete and accurate wage statements, in violation of Labor Code §§ 226(a), 226.3,
17 1174(d), and 1174.5 and IWC Wage Order 9-2001; failed to keep proper payroll records for
18 Plaintiffs and Aggrieved Employees, in violation of Labor Code §§ 353 and 1174 and IWC Wage
19 Order 9-2001; failed to provide and maintain records of paid sick leave and accrual to Plaintiffs
20 and Aggrieved Employees, in violation of Labor Code §§ 246 and 246.7; failed to provide Plaintiffs
21 and Aggrieved Employees written notice upon hire, in violation of Labor Code § 2810.5; and failed
22 to reimburse Plaintiffs and Aggrieved Employees for business expenses, in violation of Labor Code
23 § 2802 and IWC Wage Order 9-2001. Consolidated Complaint at ¶¶ 2, 139-199.

24 **C. Procedural Posture**

25 Plaintiff Simmons exhausted PAGA's administrative notice requirements on or about
26 February 27, 2017, when she submitted a letter by online submission to the LWDA and by certified
27 mail to Defendant CLI outlining the facts and theories underlying her claims. *Id.* at ¶ 9. **See Exhibit**
28

1 A to Burton Decl. at ¶ 2. Plaintiff Simmons then filed her PAGA representative complaint on June
2 12, 2017 in the Alameda County Superior Court. Burton Decl. at ¶ 2.

3 Plaintiff Ortega exhausted PAGA's administrative notice requirements on or about March
4 7, 2017, May 11, 2017, and July 18, 2018, when he submitted letters by online submission to the
5 LWDA and by certified mail to Defendants CLI and WDL outlining the facts and theories
6 underlying his claims. *See Consolidated Complaint at ¶ 9. Exhibit A to Bien Decl. at ¶ 3.* Plaintiff
7 Ortega then filed his PAGA representative complaint on September 14, 2018 in the Los Angeles
8 County Superior Court. Bien Decl. at ¶ 3.

9 Plaintiff Hadley exhausted PAGA's administrative notice requirements on or about August
10 7, 2018, when he submitted a letter by online submission to the LWDA and by certified mail to
11 Defendant CLI outlining the facts and theories underlying his claims. *See Consolidated Complaint*
12 *at ¶ 9. See Exhibit B to Gaines Decl. at ¶ 6.* Plaintiff Hadley then filed his PAGA representative
13 complaint on October 17, 2018 in the Los Angeles County Superior Court. Gaines Decl. at ¶ 6.

14 At a hearing held on February 27, 2019, the Court coordinated the *Simmons* and the *Ortega*
15 actions. On March 11, 2019, the Court so-ordered the parties' stipulation and proposed order
16 coordinating the *Hadley* action with *Simmons* and *Ortega*. Gaines Decl. at ¶ 7.

17 Plaintiffs Simmons, Ortega, and Hadley together exhausted PAGA's administrative notice
18 requirements on or about September 7, 2021, when they submitted a letter by online submission to
19 the LWDA and by certified mail to Defendants Norlyn and Larry Browne outlining the facts and
20 theories underlying their claims. *See Consolidated Complaint at ¶ 9. See Exhibit C to Gaines Decl.*
21 *at ¶ 8.*

22 Plaintiff Farias exhausted PAGA's administrative notice requirements on or about
23 December 9, 2021, when she submitted a letter by online submission to the LWDA and by certified
24 mail to Defendants outlining the facts and theories underlying her claims. *See Consolidated*
25 *Complaint at ¶ 9. See Exhibit A to Bien Decl. at ¶ 3.*

26 Plaintiffs moved for summary adjudication of Defendants' affirmative defense that they
27 properly classified Aggrieved Employees as independent contractors under Part B of the ABC test.
28

1 The Court denied the motion on September 30, 2021.

2 On or about April 19, 2022, the Court granted Plaintiffs' Motion for Leave to File a
3 Consolidated Complaint. On May 13, 2022, Plaintiffs filed their consolidated complaint that (1)
4 consolidated the three coordinated actions; (2) added Claudia Farias as a plaintiff agent and proxy
5 for the LWDA; (3) added Defendants' owner - Larry Browne and another entity owned by Browne
6 - Norlyn Enterprises, Inc.; and (4) dismissed Defendant Michigan Logistics, Inc. without prejudice.
7 Gaines Decl. at ¶ 9. Defendants filed their answer to Plaintiffs' complaint on or about June 13,
8 2022.

9 Concurrently with the filing of this Motion, Plaintiffs submitted the Settlement Agreement,
10 together with this Motion and all supporting documents, to the LWDA via online upload on January
11 13, 2023. Service of the LWDA is reflected on the Declaration of Service submitted herewith.
12 Gaines Decl. at ¶ 10; Burton Decl. at ¶ 3; Bien Decl. at ¶ 4.

13 **D. Plaintiffs' Counsel's Investigation**

14 Counsel for Plaintiffs engaged in extensive discovery of Defendants' alleged Labor Code
15 violations, which specifically targeted evaluating the strength and value of the PAGA claims in
16 preparation for a resolution of this Action. Gaines Decl. at ¶ 11; Burton Decl. at ¶ 4; Bien Decl. at
17 ¶ 6. Specifically, Defendants produced thousands of pages of electronically stored information,
18 policies and other relevant documents, contracts with their delivery customers, and pay data, for a
19 significant number of allegedly Aggrieved Employees. Gaines Decl. at ¶ 12; Burton Decl. at ¶ 4;
20 Bien Decl. at ¶ 6. Defendants also deposed Plaintiffs Simmons and Ortega. Burton Decl. at ¶ 4;
21 Bien Decl. at ¶ 6.

22 Plaintiffs' Counsel took the depositions of Defendants' corporate witnesses and managers,
23 reviewed relevant policies, including Defendants' form contracts with drivers, communications
24 among Defendants' managers and with delivery customers regarding drivers, and Defendants'
25 contracts with customers discussing the terms of drivers' work. Bien Decl. at ¶ 6.

26 Based on Defendants' records, Plaintiffs' Counsel were able to (i) determine the total
27 number of distinct individuals falling within the definition of "Aggrieved Employee" for the
28

1 relevant statutory period, and (ii) construct a damages model that calculated the maximum realistic
2 amount of PAGA penalties that could be levied against Defendants within the PAGA Period.
3 Defendants, however, disputed Plaintiffs' claims and disputed both the existence of and extent of
4 liability as alleged by Plaintiffs. Gaines Decl. at ¶ 13.

5 Based on Plaintiffs' Counsel's experience in litigating class and representative cases, as
6 well as dozens of arbitrations and a class action lawsuit against Diligent on behalf of Diligent
7 drivers, the degree of discovery that was conducted, and the amount of information that was
8 obtained, Plaintiffs' Counsel was well positioned to determine the potential value of the PAGA
9 claim and to evaluate the strength of this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-5,
10 23-25; Burton Decl. at ¶¶ 5-14; Bien Decl. at ¶¶ 8-14; Young Decl. at ¶¶ 4-17; 19-23.

11 E. Settlement Negotiations

12 On September 10, 2019, the Parties participated in a private mediation with mediator
13 Tripper Ortman, Esq., which was unsuccessful. Gaines Decl. at ¶ 14. Thereafter, on January 14,
14 2021, the Parties participated in a second private mediation with mediator John Adler, Esq., and it
15 was likewise unsuccessful. *Id.* Finally, on March 1, 2022, the Parties participated in a (successful)
16 third private mediation with mediator Hon. Dan Downey, a retired judge in Texas. *Id.* This
17 mediation culminated in a resolution of the PAGA claim. *Id.*

18 F. The Proposed Settlement

19 The Parties jointly prepared and executed the Private Attorneys General Act Settlement
20 Agreement, attached to the Declaration of Daniel F. Gaines filed concurrently herewith as **Exhibit**
21 **D** (the "Settlement Agreement," or "Settlement"). The Settlement Agreement sets forth the terms
22 of the Settlement reached by the Parties, including the following key points:

23 1. Defendants agree to settle this matter for the payment of Two Million Eight Hundred
24 Thirty-Six Thousand Six Hundred Sixty-Seven (\$2,836,667) (the "Gross Settlement Amount"),
25 which shall be all inclusive, encompassing (i) all payments to the Labor and Workforce
26 Development Agency and Aggrieved Employees, (ii) all costs of third-party administration of the
27 settlement, (iii) Plaintiffs' Counsel's attorneys' fees and costs of suit, and (iv) Service Awards to
28

1 Plaintiffs.³ *See* Settlement Agreement, at ¶¶ 3.1, 3.2.1-3.2.3.

2 2. Defendants will have no more than 48 months from the date on which the Settlement
3 Agreement is executed to pay the Gross Settlement Amount (“Payment Period”). The first
4 installment payment shall be paid no later than 15 days after the Effective Date. The amount of
5 that payment will be calculated by dividing the Gross Settlement Amount by the number of months
6 remaining in the Payment Period as of the initial payment date. For example, if the initial payment
7 date occurs six months after this Agreement is executed, the initial payment will be calculated as
8 follows: $\$2,836,667/42 \text{ months} = \$67,539.69$. In the month following the initial payment,
9 Defendants will begin making monthly payments on or before the 10th day of each month of at
10 least \$67,539.69 until they have fully paid the Gross Settlement Amount. *See* Settlement
11 Agreement, at ¶ 4.3.⁴

12 3. Should Defendants accelerate payments and satisfy their entire obligation to pay the
13 Gross Settlement Amount by (i) December 31, 2022, they shall be entitled to a \$240,000 discount
14 of the balance owed. If Defendants satisfy their entire obligation to pay the Gross Settlement
15 Amount by (ii) June 1, 2023, a \$180,000 discount will be applied. And if Defendants satisfy their
16 entire obligation to pay the Gross Settlement Amount by (iii) June 1, 2024, a \$90,000 discount will
17 be applied. If a discount is applied, it shall be applied proportionately to all allocations from the
18 Gross Settlement Amount except for the Service Awards and Administration Expenses Payment.
19 *See* Settlement Agreement, at ¶ 4.4.

20 4. The total sum available for payment of PAGA Penalties shall be calculated by
21 deducting \$1,550,000 for the payment of Plaintiffs’ Counsel’s fees and costs (\$1,400,000 in fees
22 and \$150,000 in costs, including anticipated costs of \$57,126.90 related to the review of
23 Defendants’ financial records and tax filings), \$5,000 to each Plaintiff (\$20,000 total) for their
24 Service Awards, and the costs of administration (up to \$25,000) from the Gross Settlement Amount,
25 yielding approximately \$1,241,667. Seventy-five percent (75%) of this amount, or \$931,250.25,

26 ³ Defendants and Plaintiffs have entered into individual Settlement Agreements through which they
27 will be paid for a general release of all claims. *See* Gaines Decl., ¶ 34.

28 ⁴ The Settlement is paid over time premised on financial data supplied by Defendants. *See* Gaines
Decl., ¶ 15.

1 shall be distributed to the LWDA, and the remaining twenty-five percent (25%) or \$310,416.75,
2 shall be distributed to the Aggrieved Employees. *See* Settlement Agreement, at ¶¶ 1.22 and 3.2.4.

3 5. All Aggrieved Employees will receive a pro rata share of the \$310,416.75, which
4 shall be distributed based on the number of days each Aggrieved Employee worked with
5 Defendants during the PAGA Period (“PAGA Days Worked”). *See* Gaines Decl. at ¶ 17;
6 Settlement Agreement, at ¶ 3.2.4.1. Although these calculations will not be made until after
7 approval, the average payment to Aggrieved Employees is estimated to be approximately \$215, net
8 of payments to the LWDA, to the Settlement Administrator, attorneys’ fees and costs, and Service
9 Awards to each Plaintiff. The amount each Aggrieved Employee actually receives will vary
10 depending on the number of days he or she worked during the PAGA Period. Settlement
11 Agreement, at ¶ 3.2.4.1. The LWDA will be paid \$931,250.25. Gaines Decl. at ¶ 17.

12 6. In exchange for the above settlement consideration, Defendants and the Released
13 Parties⁵ shall be entitled to the following release from Aggrieved Employees, including Plaintiffs⁶:

14 Upon entry of final judgment and Defendants’ satisfaction of their
15 obligation to pay the Gross Settlement Amount in full in accordance
16 with the timing requirements set forth in this Agreement, the
17 Released Parties shall be entitled to a release from the Aggrieved
18 Employees for any and all claims under or pursuant to PAGA based
19 on Aggrieved Employees’ alleged misclassification by Defendants
20 as independent contractors or any PAGA-enabling violation of any
21 law arising from any act or omission by the Released Parties relating

22 ⁵ Released Parties means: Defendants California Logistics, Inc. d/b/a/ Diligent Delivery Systems,
23 Western Delivery & Logistics, LLC d/b/a Diligent Delivery Systems, Michigan Logistics, Inc. d/b/a
24 Diligent Delivery Systems, Norlyn Enterprises, Inc. d/b/a/ Diligent Delivery Systems, any
25 commonly owned entities operating as “Diligent Delivery Systems”, and any and all parents,
26 subsidiaries and affiliate entities and each of their past, present, and future parents, affiliated
27 companies, subsidiaries, divisions, predecessors, successors, partners, joint venturers, shareholders,
28 insurers, reinsurers and assigns, and each of their past, present and future officers, investors,
directors, executives, trustees, agents, employees, attorneys, representatives, benefit plans
sponsored or administered by the Released Parties, including, but not limited to Larry Browne, any
entities for whom Drivers performed services through the Drivers’ relationship with Defendants,
any commonly owned entities operating as “Diligent Delivery Systems,” or any of them, and any
other persons or entities acting on behalf of or in concert with any of the foregoing. *See* Settlement
Agreement, ¶ 1.27.

⁶ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*
(2009) 46 Cal. 4th 969, 986 (concluding that “with respect to the recovery of civil penalties,
nonparty employees as well as the government are bound by the judgment in an action brought
under the act . . .”).

1 to Aggrieved Employees' alleged misclassification by Defendants as
2 independent contractors, whether known or unknown, suspected or
3 unsuspected, to which Aggrieved Employees and Plaintiffs may have
4 been entitled or may be entitled under the California Labor Code,
5 sections 1-9104, 200-3122.4 inclusive, from April 8, 2016 up to and
6 including the Approval Order Date against any of the Released
7 Parties, and for the Sanctions Order. This includes, but is not limited
8 to, civil penalties based on or arising from alleged violations of
9 California Labor Code sections 200, et seq., 201-203, 204, 207, 208,
10 210, 212, 221-224, 222.5, 225.5, 226, 226.3, 226.7, 226.8, 231, 245-
11 249, 256, 351, 352, 353, 354, 432.5, 450, 500, et seq., 510, 512, 515,
12 550, 551, 552, 558, 1024.5, 1174, 1174.5, 1182, 1182.11-1182.13,
13 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2804, 2753, 3700,
14 3700.5, 3712, 3715; and to the fullest extent permissible under
15 governing law, the California Code of Regulations and/or Industrial
16 Welfare Commission Wage Orders, including, but not limited to
17 Wage Order 9-2001, and any and all other statutes, laws, or
18 regulations on which a claim for penalties under PAGA may be
19 based.

20 *See* Settlement Agreement, at ¶ 5.1.

21 7. Settlement administration, which is to be paid from the Gross Settlement Amount,
22 will not exceed \$25,000. *See* Settlement Agreement, at ¶ 3.2.3. Rust Consulting, a reputable
23 settlement administration company, has agreed to administer the settlement within this amount,
24 submitting a competitive bid. Gaines Decl. at ¶ 18.

25 8. As detailed herein, Plaintiffs' counsel seeks an award of attorneys' fees and
26 litigation costs of \$1,550,000, and Plaintiffs seek a Service Award of \$5,000 each. *See* Settlement
27 Agreement, at ¶¶ 3.2.1.-3.2.2.

28 9. Finally, under the terms of the Settlement, funds represented by uncashed checks
that remain outstanding 180 days after the mailing of the Settlement checks by the Settlement
Administrator will be tendered to the unclaimed property fund of the State Controller's
Unclaimed Office, to be held in the name of the respective Aggrieved Employee. *See* Settlement
Agreement, at ¶ 4.4.1.

III. LEGAL ARGUMENT

A. Standards For Approval Of A PAGA Settlement

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA

1 statute, which states that the “[t]he superior court shall review and approve any settlement of any
2 civil action filed pursuant to this part.” *See* Lab. Code § 2699(1)(2).

3 As with any settlement, the Court must be mindful in conducting its inquiry that
4 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
5 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222,
6 *24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is . . . ‘a yielding of
7 absolutes and an abandoning of highest hopes”’ [*Officers for Justice v. Civil Service Com.*, 688
8 F.2d 615, 624 (9th Cir. 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
9 of wasteful and expensive litigation that induce consensual settlements.” *See id.* at 625. As such,
10 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
11 or “judged against a hypothetical or speculative measure of what might have been achieved by the
12 negotiators.” *See id.*

13 Although the operative PAGA statute does not set forth the criteria on which a PAGA
14 settlement is to be judged, California law does state that some of the factors for review of a class
15 action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. § 382 and Cal. Rules of Court, Rule
16 3.769, may be “useful in evaluating the fairness of a PAGA settlement” to the reviewing court. *See*
17 *Moniz v. Adecco USA, Inc.*, (2021) 72 Cal. App. 5th 56, 77 (“Thus, while PAGA does not require
18 the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for
19 settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public
20 and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors
21 used to evaluate class action settlements bear on a settlement’s fairness—including the strength of
22 the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of
23 further litigation, and the settlement amount—these factors can be useful in evaluating the fairness
24 of a PAGA settlement.”) Courts within California have continued to approve settlements of PAGA
25 claims encompassed within class action settlements using Rule 23 criteria.⁷ However, it is

26 ⁷ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
27 balancing of several factors which may include, among others, some or all of the following: [1] the
28 strength of plaintiffs’ case; [2] the risk, expense, complexity, and likely duration of further

important to underscore that not all Rule 23 factors can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of Rule 23.” *See Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, *8 (E.D. Cal. Jan. 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2, 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010). Based thereon, a court’s review of a PAGA settlement necessarily implicates the following unique features that render the approval process completely distinct from approval of a class action settlement under Rule 23 or C.C.P. § 382 and Cal. Rules of Court, Rule 3.769.

First, in evaluating the adequacy of the settlement amount, the Court’s focus is not concerned with the amount which “aggrieved employees” are to receive, but rather, must focus on the total settlement amount in achieving PAGA’s objective

While “[a PAGA] action is . . . designed to protect the public and penalize the employer for past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a “compromise” that stops short of rendering findings of liability and damages. Moreover, the Court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” *See Ochoa-Hernandez v. CJADER Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774, 12 (N.D. Cal. Apr. 2, 2010).

B. The Settlement Meets All The Criteria For Approval

Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA

litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a governmental participant; and [8] the reaction of the class members to the proposed settlement.” *See Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir., 1998). “Not all of these factors will apply to every class action settlement” and “[u]nder certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval.” *See Nat’l Rural Telcoms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-526 (C.D. Cal., 2004).

1 considerations detailed above – the proposed Settlement embodies all of the key features of a
2 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for
3 approval.

4 **1. The Factors Giving Rise to a Presumption of Fairness Exist**

5 In conducting a review of a settlement, it is generally recognized that an “agreement ...
6 reached through arms-length negotiation between experienced parties . . . is entitled to a
7 presumption of fairness.” *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377,
8 44 (C.D. Cal. Apr. 12, 2010).

9 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-
10 length negotiations brokered through a respected third party neutral [Gaines Decl. at ¶ 14], (2) that
11 was negotiated by Counsel with significant experience in similar representative action litigation
12 [see *id.*, at ¶¶ 2-5, 23-25 and **Exhibit A**] [see also Burton Decl. at ¶¶ 5-14; Young Decl. at ¶¶ 4-17;
13 19-23; Bien Decl. at ¶¶ 8-14], (3) which occurred after Counsel had conducted sufficient
14 investigation to evaluate the strength and potential value of the PAGA claims, as well as evaluating
15 the risks of litigating this claim through trial. *See* Gaines Decl. at ¶¶ 11-13; Burton Decl. at ¶¶ 4,
16 21; Young Decl. at ¶¶ 24-25; Bien Decl. at ¶¶ 6, 8. Based thereon, the court should give
17 considerable weight to the competency and integrity of counsel in assuring itself that the Settlement
18 Agreement represents an arm’s-length transaction entered without self-dealing or other potential
19 misconduct.

20 **2. The Relative Strength Of The PAGA Claim, And the Realistic Range of**
21 **Outcomes In The Litigation, Strongly Favor Approval of the Settlement**

22 The relative strength of the PAGA claim brought by Plaintiffs weighs in favor of the Court
23 finding that the settlement is fair, adequate, and reasonable, as Defendants maintained numerous
24 defenses to the theories of penalty-liability put forward by Plaintiffs that, if successful, had the
25 potential to completely eliminate any recovery.

26 This case addresses alleged violations of important employee protections embodied in the
27 California Labor Code – namely, that Defendants misclassified Plaintiffs and other Aggrieved
28

1 Employees as independent contractors (Labor Code § 226.8); failed to pay Plaintiffs and Aggrieved
2 Employees overtime wages (Labor Code §§ 510, 1194, and 1198); failed to pay Plaintiffs and
3 Aggrieved Employees minimum wages (Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and
4 1199); unlawfully deducted wages from Plaintiffs and Aggrieved Employees (Labor Code §§ 221,
5 223, and 225.5); failed to provide Plaintiffs and Aggrieved Employees with meal and rest periods,
6 or compensation in lieu thereof, (Labor Code §§ 218.5, 226.7, and 512); failed to pay Plaintiffs and
7 Aggrieved Employees all wages earned during their employment, (Labor Code §§ 204 and 210);
8 failed to pay Plaintiffs and Aggrieved Employees all wages due at the separation of their
9 employment (Labor Code §§ 201-203); failed to issue Plaintiffs and Aggrieved Employees
10 complete and accurate wage statements (Labor Code §§ 226(a), 226.3, 1174(d), and 1174.5); failed
11 to keep proper payroll records for Plaintiffs and Aggrieved Employees (Labor Code §§ 353 and
12 1174); failed to provide and maintain records of paid sick leave and accrual to Plaintiffs and
13 Aggrieved Employees (Labor Code §§ 246 and 246.7); failed to provide Plaintiffs and Aggrieved
14 Employees written notice upon hire (Labor Code § 2810.5); and failed to reimburse Plaintiffs and
15 Aggrieved Employees for business expenses (Labor Code § 2802). Defendants' maximum
16 theoretical exposure in this action, without stacking penalties, totals approximately \$3,313,900
17 computed by multiplying 31,139 aggregate pay periods by \$100 each. *See* Gaines Decl. at ¶ 20.
18 While the PAGA does provide the potential for a heightened penalty for subsequent violations,
19 courts are often hesitant to award a heightened penalty where there is no prior citation by the Labor
20 Commissioner. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no
21 heightened penalty where Defendants was not notified by Labor Commissioner or any court that it
22 was subject to the California Labor Code).

23 Defendants contend they acted within the requirements of California law at all times as to
24 all Aggrieved Employees. They further contend that not every pay period at issue involved an
25 alleged Labor Code violation subject to civil penalties. Moreover, they maintain that even if the
26 Court did award penalties, the Court could and would *substantially* reduce the penalties awarded
27 based on the discretionary factors contained in Labor Code § 2699(e)(2) ("In action by an aggrieved
28

employee . . . , 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.”). *See* Gaines Decl. at ¶ 19. Defendants also argued that they had valid and enforceable arbitration agreements, which could preclude the litigation of PAGA claims on a representative basis altogether, given the United States Supreme Court’s recent ruling in *Viking River Cruises v. Moriana*, 142 S.Ct. 734 (2022). *Id.*

Based on these disputes, which had the potential to completely eliminate Plaintiffs’ recovery, the range of realistic “litigation outcomes” on the Plaintiffs’ PAGA claim was defined by a “maximum possible liability” amount of approximately \$3,313,900 computed by multiplying 31,139 aggregate pay periods in the PAGA Period, without stacking claims, at \$100 per violation, and a net-zero recovery based on the defenses asserted by Defendants. *See* Gaines Decl. at ¶ 20. Notwithstanding the existence of such issues, the Settlement achieves a significant benefit. As such, this factor weighs very heavily in favor of resolution by way of the compromise set forth in the Settlement. Gaines Decl. at ¶¶ 19-20.

3. **The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor of Approval of the Settlement**

Approval of the proposed Settlement is also appropriate in light of the risk, expense, and complexity of further litigation. As discussed above, the proposed Settlement takes into consideration the specific factual and legal hurdles faced by the Plaintiffs in establishing Defendants’ penalty-liability in this case, which again, may have resulted in a net-zero recovery. These risks – when balanced with the fact that the settlement achieves a very significant recovery (as demonstrated below), and that further litigation poses a risk of diminishing such recovery by increasing litigation expenses – weigh strongly in favor of Settlement approval.

4. **The Benefits Conferred by the Settlement Balance in Favor of Approval**

The Settlement provides a significant monetary benefit that falls well within “the range of an acceptable settlement” under the circumstances, which is the standard on which the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable

1 even where it only provides a fraction of what could have been obtained at trial:

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

13 *See Linney*, 151 F.3d at 1242.

14 Here, after all deductions are made for administration, Service Awards, attorneys' fees and
15 costs, \$1,241,667 will be paid out, of which approximately \$931,250.25 (i.e. 75%) will go to the
16 LWDA, and approximately \$310,416.75 (i.e. 25%) will go to the Aggrieved Employees, as required
17 by Labor Code § 2699(i) ("civil penalties recovered by aggrieved employees shall be distributed as
18 follows: 75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the
19 aggrieved employees."). *Gaines Decl.* at ¶ 16.

20 This result is remarkable, as settlements of PAGA claims impacting thousands of
21 individuals have been approved as reasonable for amounts far less than the payment in this case.
22 *See Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012)
23 ("Defendant has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the \$10,000,
24 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will benefit
25 the class The Court finds that the PAGA payment is set at a reasonable amount, and it shall be
26 approved."); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal.
27 Oct. 29, 2012) ("GTI agrees to allocate \$10,000 to the plaintiff's PAGA claims, and will pay \$7,500
28 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports with
settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
allocation of the Settlement to the plaintiff's PAGA claim."); *Schiller v. David's Bridal, Inc.*, 2012
U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) ("Pursuant to the Settlement Agreement, the
parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .

1 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
2 be approved.”); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
3 2012) (“Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
4 California Labor and Workforce Development Agency The Court finds that the PAGA
5 payment is set at a reasonable amount, and it shall be approved.”).⁸

6 Thus, notwithstanding the existence of issues having the potential to completely eliminate
7 recovery on the PAGA claims, the Settlement Agreement not only achieves a recovery that exceeds
8 typical PAGA awards routinely approved by the courts, it recovers significant monies for
9 Aggrieved Employees which they otherwise would not receive. As such, this factor balances
10 strongly in favor of approval of the Settlement. *Gaines Decl.* at ¶¶ 19-20.

11 **5. The Scope of the Release is Narrowly Tailored**

12 As discussed above, the California Supreme Court has concluded that in the context of
13 PAGA “the nonparty employees, because they were not given notice of the action or afforded any
14 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
15 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the release provided in exchange for
16 the foregoing consideration is limited to civil penalties flowing from Defendants’ alleged
17 misclassification of drivers. *See Settlement Agreement*, at ¶ 5.1.

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

19 **6. The Experience and Views of Plaintiffs’ Counsel Favor Approval of the** 20 **Settlement**

21 Plaintiffs’ Counsel has a significant degree of experience in complex wage and hour
22 litigation. *See Gaines Decl.* at ¶¶ 2-5, 23-25; **Exhibit A** to *Gaines Decl.*; *Burton Decl.* at ¶¶ 5-14;
23 *Young Decl.* at ¶¶ 4-17; 19-23; *Bien Decl.* at ¶¶ 9-14. In Plaintiffs’ Counsel’s view, the benefit
24

25 ⁸ Significantly, several of the above-cited actions involved substantially more “aggrieved
26 employees” than the approximately 1,443 aggrieved employees in the instant Lawsuit. *See Franco*,
27 2012 U.S. Dist. LEXIS 169057, 14 (“2,055 Class Members were ultimately identified”); *Garcia*,
28 2012 U.S. Dist. LEXIS 160052, at 12 (class comprised of “approximately 1,869 individuals”);
Schiller, 2012 U.S. Dist. LEXIS 80776, 16 (“3,327 California Class members were ultimately
identified”); *Gong-Chun*, 2012 U.S. Dist. LEXIS 96828, 18 (“2,051 California Class Members
were ultimately identified”).

1 conferred by the proposed Settlement is fair, reasonable, and adequate under the circumstances, as
2 it reflects a reasoned compromise which takes into consideration the risks inherent in this case
3 which had the potential to completely eliminate recovery. Gaines Decl. at ¶¶ 19-20, 29. As such,
4 this factor balances in favor of approval of the Settlement.

5 7. **The Extent Of Discovery Completed And The Stage Of The Proceedings**
6 **Favor Approval of the Settlement**

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

12 Here, the extent of discovery conducted was sufficient to enable Plaintiffs’ Counsel to
13 evaluate the strength and value of the claim for purposes of settlement. Gaines Decl. at ¶¶ 11-13.
14 As discussed above, Plaintiffs’ Counsel’s investigation was sufficient to, among other things,
15 evaluate the merits of the claims and Defendants’ defenses, develop an understanding of the
16 frequency of alleged Labor Code violations at issue during the PAGA Period, and identify the total
17 number of individuals falling within the definition of “Aggrieved Employee” for the PAGA Period.

18 Based on Plaintiffs’ Counsel’s experience litigating wage and hour claims, such
19 investigation was sufficient to determine the potential value of the PAGA claims, and to evaluate
20 the strength of these claims for purposes of settlement. *See* Gaines Decl. at ¶ 2-5, 11-14.

21 8. **Additional Factors Weigh In Favor Of Finding The Terms Of The**
22 **Proposed Settlement To Be Fair, Adequate, And Reasonable**

23 In addition to the factors presented above, the proposed Settlement Agreement does not
24 possess any obvious deficiencies. The Settlement contemplates entry of an order and judgment
25 (submitted concurrently herewith) which approves the Settlement and enters Judgment. Paragraph
26 9 of the Settlement Agreement and paragraph 10 of the proposed order authorize the Court to retain
27 jurisdiction over the Action. This procedure effectively disposes of the Action in its entirety,
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documents the Court's approval of the Settlement Agreement as required by PAGA, and allows for Court intervention if necessary to enforce the terms of the Settlement Agreement. In sum, under the applicable standards for approval of PAGA settlements in California, the settlement in this case meets the standards for approval.

IV. PLAINTIFFS' COUNSEL ARE ENTITLED TO RECOVER THEIR REASONABLE FEES AND COSTS

Pursuant to the terms of the Settlement, Plaintiffs' Counsel seeks attorneys' fees of \$1,400,000, reimbursement of litigation costs of \$92,873.10, and anticipated costs of \$57,126.90 related to the review of Defendants' financial records and tax filings. *See* Settlement Agreement, at ¶ 3.2.1. Plaintiffs' Counsel's request is significantly less than Plaintiffs' lodestar. Further, the amount of fees requested is reasonable under applicable standards not only based on the contingency risk Plaintiffs' Counsel took on for the benefit of the State of California and Aggrieved Employees, but also based on the significant results achieved, as the Settlement obtains a recovery substantially above the range approved as reasonable by California state and federal courts. Based thereon, Plaintiffs' Counsel respectfully requests that the Court enter an order approving the fee and cost amounts requested.

A. Plaintiffs Are Entitled To Recover Their Reasonable Fees And Costs As the Prevailing Parties

As prevailing parties under PAGA, Plaintiffs are entitled to "reasonable attorney's fees and costs." Cal. Labor Code § 2699(g)(1). Plaintiffs are also entitled to fees under C.C.P. § 1021.5, because this case was "for the public benefit" and secured penalties for thousands of aggrieved employees and the state of California. *See e.g., Estrada v. FedEx Ground Package Sys., Inc.* (2007) 154 Cal. App. 4th 1, 16-17 ("Estrada's personal motivation does not diminish the fact that he pursued this public interest class action not only for himself but on behalf of a class comprised of FedEx's past and present drivers and ultimately obtained awards for 209 drivers. [] No more is required to satisfy the 'significant benefit,' 'public interest,' and 'large class of persons' requirements of Code of Civil Procedure section 1021.5.").

1 Given Plaintiffs' Counsel's efforts, the amounts requested are reasonable and warrant
2 approval. "Courts recognize two methods for calculating attorney fees in civil class actions: the
3 lodestar/multiplier method and the percentage of recovery method." *Wershba v. Apple Computer,*
4 *Inc.* (2001) 91 Cal.App.4th 224, 254; *see also Consumer Privacy Cases* (2009) 175 Cal. App. 4th
5 545, 557 (noting that a court has the discretion to use the lodestar method alone). "The lodestar fee
6 method pays counsel for the time that they invested in the case . . . Paying lawyers for the time that
7 they expended is appropriate in that the lawyers are providing a service and ought to be
8 compensated according to the value of that service." 5 Newberg on Class Actions § 15:65. Here,
9 the requested fees are significantly less than Plaintiffs' Counsel's combined lodestar to date. *See*
10 Gaines Decl. at ¶ 21; **Exhibit E**; Burton Decl. at ¶¶ 15-17; **Exhibit C**; Young Decl. at ¶¶ 27-32;
11 **Exhibits A and B**; Bien Decl. at ¶¶ 15, 17, 19; **Exhibit B**. Moreover, Plaintiffs' Counsel bore a
12 contingency risk and achieved an excellent result for the State and Aggrieved Employees.

13 **B. Plaintiffs' Counsel's Lodestar Is Reasonable**

14 Under the lodestar method, the court computes the "lodestar" amount by multiplying the
15 number of hours reasonably expended by each attorney or legal staff member by their reasonable
16 hourly rates. *See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 48. "California courts do not require
17 detailed time records, and trial courts have discretion to award fees based on declarations of
18 Counsel describing the work they have done and the court's own view of the number of hours
19 reasonably spent." *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal. App. 4th 691, 698.

20 Counsel's lodestar through January 13, 2023 is \$1,993,929.67 based on 3,991.62 billable
21 hours of work for almost six years, all of which is documented in counsel's contemporaneous time
22 records. *See* Gaines Decl. at ¶ 21; **Exhibit E**; Burton Decl. at ¶¶ 15-17, ; **Exhibit C**; Young Decl.
23 at ¶¶ 27-32; **Exhibits A and B**; Bien Decl. at ¶¶ 15, 17, 19; **Exhibit B**. Based on this lodestar,
24 Plaintiffs' Counsel's request for \$1,400,000 in attorneys' fees represents a negative multiplier of
25 approximately 0.70. *See Id.*

26 **1. Counsel's Hourly Rates Are Reasonable.**

27 Under California law, attorneys are entitled to their requested rates if those rates are "within
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1 the range of reasonable rates charged by and judicially awarded comparable attorneys for
2 comparable work.” *Children’s Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal. App. 4th 740, 783; *see*
3 *also Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) (“the established standard
4 when determining a reasonable hourly rate is the ‘rate prevailing in the community for similar work
5 performed by attorneys of comparable skill, experience, and reputation’”) (citation omitted). “The
6 fee applicant has the burden of producing satisfactory evidence, in addition to the affidavits of its
7 counsel, that the requested rates are in line with those prevailing in the community for similar
8 services of lawyers of reasonably comparable skill and reputation.” *Ridgeway v. Wal-Mart Stores,*
9 *Inc.*, 269 F. Supp. 3d 975, 985 (N.D. Cal. 2017) (quoting *Jordan v. Multnomah Cty.*, 815 F.2d 1258,
10 1263 (9th Cir. 1987) (internal quotation marks omitted). The relevant community for purposes of
11 determining the prevailing market rate is generally “that where the court is located.” *Altavion v.*
12 *Konica Minolta Sys. Lab. Inc.* (2014) 226 Cal. App. 4th 26, 71.

13 Here, the billing rates of Plaintiffs’ attorneys are commensurate with the prevailing rates in
14 Northern California for attorneys with comparable skill and experience. In support of Counsel’s
15 hourly rates, Counsel have submitted declarations discussing their qualifications. *See* Gaines Decl.
16 at ¶¶ 2-5, 23-25; **Exhibit A**; Burton Decl. at ¶¶ 6-14; Young Decl. at ¶¶ 4-17; 19-23; Bien Decl. at
17 ¶¶ 9-14. Counsel also provided cases approving the rates that they seek in this case. *See* Gaines
18 Decl. at ¶¶ 2-5, 23-25; **Exhibit A**; Burton Decl. at ¶ 14; Young Decl. at ¶¶ 30-32; Bien Decl. at ¶¶
19 9-14, 21.

20 Finally, an attorney’s billing rate itself carries a presumption of reasonableness. 2 Pearl,
21 Cal. Attorney Fee Awards (3d ed. 2014) § 9.121, p. 9-106; *see Mandel v. Lackner* (1979) 92 Cal.
22 App. 3d 747, 761 (“The value of an attorney’s time generally is reflected in his normal billing
23 rate.”). Here, the rates that Plaintiffs’ Counsel seek are paid by their fee-paying clients who pay on
24 an hourly basis. *See* Young Decl. at ¶ 31; Bien Decl. at ¶ 17.

25 2. Counsel’s Time Was Reasonably Spent.

26 The number of hours for which Plaintiffs’ Counsel requests compensation is also
27 reasonable. Under California law, every hour reasonably spent on this action is compensable:
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1 “Absent special circumstances rendering the award unjust, an attorney fee award should ordinarily
2 include compensation for *all* the hours *reasonably spent*, including those relating solely to the fee.”
3 *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1133 (emphasis in original); *Vo v. Las Virgenes Mun.*
4 *Water Dist.* (2000) 79 Cal. App. 4th 440, 446 (“Under the lodestar method, a party who qualifies
5 for a fee should recover for all hours reasonably spent unless special circumstances would render
6 an award unjust.”). In making that determination, courts must look at “the entire course of the
7 litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the
8 trial itself ...[.]” *Id.* at 447.

9 Plaintiffs’ Counsel seek recovery for approximately 3,991.62 hours spent litigating and
10 settling Plaintiffs’ claims. *See* Gaines Decl. at ¶ 21; **Exhibit E**; Burton Decl. at ¶¶ 15-17; **Exhibit**
11 **C**; Young Decl. at ¶¶ 27-32; **Exhibits A and B**; Bien Decl. at ¶¶ 15, 17, 19; **Exhibit B**.

12 Generally, an attorney’s hours are justified if they were “reasonably expended in pursuit of
13 the ultimate result achieved in the same manner that an attorney traditionally is compensated by a
14 fee-paying client.” *Hensley v. Eckerhart* (1983) 461 U.S. 424, 431; *see Moreno v. City of*
15 *Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). Categories of legal work that are compensable
16 include ordinary litigation activities: “correspondences and telephone conferences with opposing
17 counsel, legal research, drafting legal documents, reviewing opposing counsel’s filings, and
18 preparation for and attending hearings.” *MBNA America Bank, N.A. v. Gorman* (2006) 147 Cal.
19 App. 4th Supp. 1, 12; *Citizens Against Rent Control v. City of Berkeley* (1983) 181 Cal. App. 3d
20 213, 234 (research, preparation for oral arguments, and drafting motions).

21 Here, the number of hours Plaintiffs’ Counsel spent litigating and settling Plaintiffs’ claims
22 is reasonable and was required by the circumstances of the case. Counsel’s sworn declarations and
23 attached time summaries fully document the time spent in the successful prosecution and settlement
24 of this action. *See* Gaines Decl. at ¶¶ 21-22; **Exhibit E**; Burton Decl. at ¶¶ 15-17; **Exhibit C**;
25 Young Decl. at ¶¶ 27-32; **Exhibits A and B**; Bien Decl. at ¶¶ 15, 17, 19; **Exhibit C**. These time
26 records are *prima facie* evidence that counsel’s hours were reasonable. *See Horsford v. Board of*
27 *Trustees of Cal. State Univ.* (2008) 132 Cal. App. 4th 359, 396 (“the verified time statements of the
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1 attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the
2 records are erroneous”). As Counsel’s declarations make clear, the time reported was devoted to
3 necessary and worthwhile litigation tasks. *See* Gaines Decl. at ¶¶ 21-22; **Exhibit E**; Burton Decl.
4 at ¶¶ 15-17; **Exhibit C**; Young Decl. at ¶¶ 27-32; **Exhibits A and B**; Bien Decl. at ¶¶ 15-17;
5 **Exhibit C**.

6 As discussed above, Counsel were required to expend considerable time and resources to
7 litigate and settle this case. Counsel prosecuted the claims efficiently, making every effort to
8 prevent the duplication of work among the firms. *See* Gaines Decl. at ¶ 22; Bien Decl. at ¶ 16.
9 Further, tasks were delegated appropriately among partners, associate attorneys, and other staff
10 according to their complexity. *Id.* Counsel’s contemporaneous time records were carefully
11 reviewed, and duplicative or inefficient work, as well as *de minimis* time billed by attorneys who
12 had little participation in the action, was eliminated. *Id.*

13 **C. Plaintiffs’ Counsel Achieved an Excellent Result at Great Risk**

14 This settlement will result in a significant recovery of civil penalties in the face of
15 substantial risks. [Gaines Decl. at ¶¶ 19-20]. *See* Section III.B.4., *supra*. As explained above,
16 Defendants maintained defenses to Plaintiffs’ PAGA claims that very well could have resulted in
17 no recovery at all.

18 Notwithstanding the risk of loss, Plaintiffs’ Counsel undertook this case on a contingency
19 basis. *See* Gaines Decl. at ¶¶ 27-28; Burton Decl. at ¶¶ 19; Young Decl. at ¶¶ 4, 31; Bien Decl. at
20 ¶¶ 23-24. This required Plaintiffs’ Counsel to personally assume the risk of nonpayment in securing
21 the very substantial financial benefit the State of California and Aggrieved Employees stand to
22 receive, and also constitutes a “loan” on Plaintiffs’ Counsel’s services – both of which are factors
23 that warrant fee *enhancement* under applicable California Supreme Court authority:

24 One of the most common fee enhancers . . . is for contingency risk.
25 We reaffirmed the propriety of a contingency risk enhancement in
26 Ketchum: “The economic rationale for fee enhancement in
27 contingency cases has been explained as follows: ‘A contingent fee
28 must be higher than a fee for the same legal services paid as they are
performed. The contingent fee compensates the lawyer not only for
the legal services he renders but for the loan of those services. The

1 implicit interest rate on such a loan is higher because the risk of
2 default (the loss of the case, which cancels the debt of the client to
3 the lawyer) is much higher than that of conventional loans.’ (Posner,
4 *Economic Analysis of Law* (4th ed. 1992) pp. 534, 567.) ‘A lawyer
5 who both bears the risk of not being paid and 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.”

6 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, 579-580.

7 Despite the complexity of this case and the risk involved in prosecuting it, Plaintiffs’
8 Counsel request a fee that amounts to a negative multiplier of their lodestar. Based on a projected
9 final lodestar of \$1,993,929.67, this yields a “negative multiplier” of approximately 0.70. *See* Gaines
10 Decl. at ¶ 21; **Exhibit E** to Gaines Decl.; Burton Decl. at ¶¶ 15-17; **Exhibit C**; Young Decl. at ¶¶
11 27-32; **Exhibits A and B**; Bien Decl. at ¶¶ 15, 17, 19; **Exhibit B**. The negative multiplier supports
12 the reasonableness of the fee request. *See Chun-Hoon v. McKee Foods Corp.*, 716 F.Supp.2d 848,
13 854 (N.D. Cal. 2010) (“This resulting multiplier of less than one, (sometimes called a negative
14 multiplier) suggests that the negotiated fee award is a reasonable and fair valuation of the services
15 rendered to the class by class counsel.”). Given the complexity of the litigation and the risk that it
16 entailed, the Court should award the requested fees. *See Parkinson v. Hyundai Motor Am.*, 796 F.
17 Supp. 2d 1160, 1171, 1177 (C.D. Cal. 2010) (approving \$3,719,282 fee in case in which class
18 recovered \$1,400,000, and holding that the fee award should not be reduced by size of the class
19 recovery).

20 **D. Plaintiffs’ Counsel’s Request for Costs Is Reasonable**

21 In the course of this litigation, Plaintiffs’ Counsel incurred out-of-pocket costs of
22 approximately \$92,873.10 and expect to incur costs related to the review of Defendants’ financial
23 records and tax filings in the amount of \$57,126.90. *See* Gaines Decl. at ¶ 32; **Exhibit F** to Gaines
24 Decl.; Burton Decl. at ¶ 18; Young Decl. at ¶¶ 33-36; Bien Decl. at ¶ 18. As demonstrated in the
25 Declarations submitted herewith, the costs include filing fees, expert analysis fees, mediation fees,
26 service of process fees, mailing charges, and other costs typical of litigation of this nature, *id.*, as
27 well as anticipated costs paid to Plaintiffs’ Counsel’s financial consultant to review and analyze
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1 Defendants' financial records during the Payment Period and advise Plaintiffs' Counsel regarding
2 Defendants' financial condition and ability to make remaining settlement payments. Young Decl.
3 at ¶ 36. Such costs are appropriate for cost reimbursement. *See e.g., In re United Energy Corp.*
4 *Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (quoting *Newberg*, Attorney Fee Awards, § 2.19
5 (1987)); *see also, In re GNC Shareholder Litigation*, 668 F. Supp. 450, 452 (W.D. Pa. 1987).

6 The costs incurred by Plaintiffs' Counsel benefited or will benefit Plaintiffs, Aggrieved
7 Employees, and the State. Plaintiffs' Counsel's cost request is reasonable and represents the costs
8 that Plaintiffs' Counsel was required to incur or will be required to incur to prosecute this action
9 and should therefore be granted.⁹

10 **V. THE SERVICE AWARDS SOUGHT BY PLAINTIFFS ARE REASONABLE AND**
11 **SHOULD BE APPROVED**

12 The Parties have agreed that Plaintiffs will be paid Service Awards in the amount of \$5,000
13 each. These payments are intended to recognize both the time and effort that Plaintiffs spent on
14 behalf of other Aggrieved Employees and the State. *See Settlement Agreement at ¶ 3.2.2. See*
15 *Gaines Decl. at ¶¶ 33. See also Declaration of Alden Ortega, Declaration of Aries Simmons,*
16 *Declaration of Darryl Hadley, and Declaration of Claudia Farias submitted herewith.*

17 As to an incentive award, case law supports the award of incentive payments in private
18 attorney general actions. The Ninth Circuit has recognized that a named plaintiff's "willingness to
19 act as a private attorney general" may justify the award of an incentive payment. *Rodriguez v. West*
20 *Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub*
21 *LLC*, no. 2:12-CV-02716-TLN-CKD (E.D. Cal., Sep. 6, 2013), the United States District Court for
22 the Eastern District of California approved a similar PAGA-only settlement and awarded a service
23 payment to the representative plaintiff in recognition of her efforts.

24 The traditional bases for awarding incentive awards in class settlements support the award
25 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
26 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive

27 ⁹ Plaintiffs' Counsel anticipates that the cost for the consultant's review of Defendants' financial
28 records will not exceed \$57,126.90. Any unused costs will become part of the Net Settlement
Amount. Young Decl. ¶ 36.

1 awards and held that “the rationale for making enhancement or incentive awards to named Plaintiffs
2 is that he or she should be compensated for the expense or risk he has incurred in conferring a
3 benefit” on others. *Id.* at 806. This rationale applies in this Action exactly the same it would in a
4 traditional class action.

5 Without Plaintiffs’ efforts, there would be no recovery at all. The requested Service Awards
6 are appropriate to compensate Plaintiffs for the risk and expense they incurred in conferring a
7 benefit on behalf of other of Defendants’ employees and the State of California. *See Settlement*
8 *Agreement*, ¶ 3.2.2.

9 As a result of the named Plaintiffs’ efforts, Aggrieved Employees will receive monetary
10 settlement payments totaling approximately \$310,416.75 in the aggregate, and the State of
11 California will receive approximately \$931,250.25 to be put toward education about and
12 enforcement of California’s labor laws.

13 In this case, Plaintiffs performed the following tasks, among others: (1) assisted Counsel in
14 investigating and substantiating the claims alleged in this action, including multiple interviews with
15 counsel to review facts, documents, and Defendants’ policies; (2) assisted in the preparation of the
16 complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the
17 settlement of this litigation. *See generally*, Ortega, Simmons, Hadley, and Farias Declarations.
18 Moreover, as with any plaintiff who files a civil action, the named Plaintiffs undertook the financial
19 risk that, in the event of a judgment in favor of Defendants in this action, they could have been
20 personally responsible for any attorneys’ fees and costs awarded in Defendants’ favor.

21 The award of such payment to Plaintiffs is especially warranted in a case like this one. It is
22 necessary to ensure that employees, like Plaintiffs, continue to bring claims like those brought here
23 to enforce the rights of employees. Individuals like Plaintiffs (and most Aggrieved Employees)
24 would have little, if any, recourse without the representative action device. Most Aggrieved
25 Employees – like the Plaintiffs—would be fearful of retaliation in response to filing any lawsuit,
26 much less a representative action suit. Plaintiffs must be commended for pursuing their claims; a
27 modest payment like that sought here is an appropriate means of doing so.

1 **VI. CONCLUSION**

2 As shown herein, the Settlement Agreement is fair, adequate and reasonable, as it represents
3 a reasoned compromise obtained through arms-length negotiations. For all the reasons set forth
4 above, Plaintiffs respectfully request that this Court, as set forth in the proposed Order and
5 Judgment Approving Settlement, do the following:

6 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
7 2699, subpart 1;

8 2. Appoint Rust Consulting as the Settlement Administrator and approve its
9 administration fees up to \$25,000 for payment out of the Gross Settlement Amount;

10 3. Approve the award of attorneys' fees and costs to Plaintiffs' Counsel in the amount
11 of \$1,550,000 from the Gross Settlement Amount;

12 4. Approve the Service Awards to Plaintiffs in the amount of \$5,000 each from the
13 Gross Settlement Amount;

14 5. Direct disbursement of the remaining Gross Settlement Amount to the LWDA and
15 all Aggrieved Employees as provided for in the Settlement Agreement; and

16 6. Enter judgment consistent with the Settlement Agreement.
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1 DATED: January 13, 2023

Respectfully submitted,

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