

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
TALIA E. LUX (SBN 336074)
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

LAURA IBARRA and NEAL ARUTA,
individually, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA");

Plaintiff,

v.

AJINOMOTO ALTHEA, INC. d/b/a
AJINOMOTO BIO-PHARMA SERVICES, a
Delaware corporation; and DOES 1 through
100, inclusive;

Defendant.

Case No.: 37-2022-00008619-CU-OE-CTL

Assigned for All Purposes to:
Honorable James A. Mangione
Department C-75

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

[Declaration of Counsel (Douglas Han);
Declaration of Plaintiff (Laura Ibarra); and
[Proposed] Order and Judgment filed
concurrently herewith]

Hearing Date: April 28, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department C-75

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

1 **PLEASE TAKE NOTICE** that on April 28, 2023 at 9:00 a.m., or as soon as thereafter
2 as the matter may be heard, before the Honorable James A. Mangione in Department C-75 of the
3 San Diego County Superior Court (Hall of Justice) located at 330 West Broadway, San Diego,
4 California 92101, Plaintiff Laura Ibarra (“Plaintiff”) will and hereby does move for entry of an
5 order and judgment approving the Parties’ Private Attorneys General Act of 2004 (“PAGA”)
6 Settlement Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
7 **Exhibit 2** to the declaration of Douglas Han, pursuant to Labor Code section 2699(1).

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

13 Dated: April 4, 2023

JUSTICE LAW CORPORATION

14
15 By: 
16 Douglas Han
17 Shunt Tatavos-Gharajeh
18 Talia Lux
19 *Attorneys for Plaintiff*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Under Labor Code section 2699(1)(2), Plaintiff seeks approval of the Settlement
4 Agreement entered between Plaintiff and Defendant Ajinomoto Althea, Inc. dba Ajinomoto Bio-
5 Pharma Services, Inc. (“Defendant”). Plaintiff entered the Settlement Agreement on behalf of
6 herself and all non-exempt employees employed by Defendant during the period from December
7 7, 2020, to January 31, 2023 (“PAGA Employees” and “PAGA Period”).

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

9 On December 7, 2021, Plaintiff served a notice letter to the California Labor and
10 Workforce Development Agency (“LWDA”) and Defendant. On March 7, 2022, Plaintiff filed
11 this putative representative PAGA action.¹

12 The Parties engaged in significant discoveries, investigations, negotiations (*i.e.*,
13 propounding formal discovery requests, exchanging documents and information, interviewing
14 PAGA Employees, calculating potential damages). The Parties eventually decided to remotely
15 participate in a full-day, private mediation on October 28, 2022 with experienced mediator Lisa
16 Klerman that resulted in the settlement of this case following a mediator’s proposal.²

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

19 **III. SUMMARY OF THE SETTLEMENT TERMS**

20 **A. Allocation of the Gross Settlement Amount**

21 The Settlement provides Defendant will pay a non-reversionary Gross Settlement Amount
22 of \$440,000. The PAGA Award will be the Gross Settlement Amount less the following: (1)
23 attorneys’ fees of up to \$154,000; (2) attorneys’ costs of up to \$15,000; (3) Service Award of up
24 to \$10,000; and (4) Settlement Administration Costs of up to \$8,000.

25
26 ¹ (Declaration of Douglas Han In Support of Plaintiff’s Motion for Approval of Private
27 Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement Agreement (“Han Decl.”), ¶ 12.)

28 ² (*Id.* at ¶¶ 15-17.)

1 The amount of the PAGA Award is estimated to be approximately \$255,789.05. Twenty-
2 five percent (25%) of the PAGA Award (estimated at \$63,947.26) will be distributed to each of
3 the PAGA Employees as their Individual PAGA Payments. The Settlement Administrator will
4 calculate each Individual PAGA Payment in a manner set forth in the Settlement Agreement. The
5 remaining seventy-five percent (75%) of the PAGA Award (estimated at \$191,841.79) will be
6 transmitted to the LWDA as the LWDA payment, pursuant to Labor Code section 2699(i).³

7 **B. Distribution of the PAGA Award**

8 Defendant shall fund the Settlement within five (5) business days after the Effective Date.
9 Payments to Plaintiff's Counsel, Plaintiff, Settlement Administrator, and PAGA Employees will
10 occur within ten (10) calendar days after the Settlement is funded.⁴

11 PAGA Employees must cash their settlement checks within one hundred eighty (180)
12 calendar days. Uncashed settlement checks will be transmitted to the California State Controller
13 Unclaimed Property Fund in the name of the PAGA Employee.⁵

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

15 Upon approval from the Court and fully funding of the Gross Settlement Amount, Plaintiff
16 and California (acting through Plaintiff as its authorized PAGA representative) release, and along
17 with the PAGA Employees, will be barred from bringing a PAGA action against the Released
18 Parties for any and all PAGA claims that were asserted or that could have been asserted based
19 on the facts alleged in Plaintiff's complaint and LWDA notice letter submitted by Plaintiff to the
20 LWDA in this matter. The release will be effective through January 31, 2023.⁶ (See *Arias v. Sup.*
21 *Ct.* (2009) 46 Cal.4th 969, 980, 986 [a plaintiff suing under PAGA "does so as the proxy or agent
22

23 ³ (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 § 2698,
25 *et seq.*) ("Settlement Agreement"), §§ 6(k), 6(l).)

26 ⁴ (*Id.* at § 6(q).)

27 ⁵ (*Id.* at §§ 6(l)(iii), 9(b).)

28 ⁶ (*Id.* at § 6(m).)

1 of the state’s labor law enforcement agencies,” and, as such, “represents the same legal right and
2 interest as state labor law enforcement agencies”) A judgment in a PAGA action “binds not
3 only that [plaintiff] employee but also the state labor law enforcement agencies.” (*Arias v. Sup.*
4 *Ct., supra*, 46 Cal.4th at p. 986.) Further, “[b]ecause an aggrieved employee’s action under
5 [PAGA] functions as a substitute for an action brought by the government itself, a judgment in
6 that action binds all those, including nonparty aggrieved employees, who would be bound by a
7 judgment in an action brought by the government.” (*Ibid.*) “Accordingly, with respect to the
8 recovery of civil penalties, nonparty employees as well as the government are bound by the
9 judgment in an action brought under [PAGA]” (*Ibid.*)

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

11 “[A] PAGA action is a statutory action for penalties brought as a proxy for the state, rather
12 than a procedure for resolving the claims of other employees, there is no need to protect absent
13 employees’ due process rights[.]” (*Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 546.) “Unnamed
14 employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out
15 of the representative PAGA claim.” (*Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr.
16 2, 2010), 2010 WL 3570777, at *5.) “PAGA does not make other potentially aggrieved
17 employees parties” and no “due process concerns arise under PAGA because absent employees
18 do not own a personal claim for PAGA civil penalties and whatever personal claims the absent
19 employees might have for relief are not at stake.” (*Williams v. Sup. Ct., supra*, 3 Cal.5th at pp.
20 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO*
21 *v. Sup. Ct.* (2009) 46th Cal.4th 993, 1003 and *Iskanian v. CLS Trans. Los Angeles, LLC*, (2014)
22 58 Cal.4th 348, 381.)) “[A]bsent fellow employees will be bound by the outcome of any PAGA
23 action[.]” (*Williams v. Sup. Ct., supra*, 3 Cal.5th at p. 548 (internal references omitted, citing
24 *Arias v. Sup. Ct., supra*, 46 Cal.4th at pp. 980-981; *Fireside Bank v. Sup. Ct.* (2007) 40 Cal.4th
25 1069, 1074 and *Richmond v. Dart Indus., Inc.* (1981) 29 Cal, 3d 462, 474.)

26 Consistent with this law, the Settlement does not provide for a procedure for PAGA
27 Employees to opt out or otherwise exclude themselves from the Settlement.
28

1 **IV. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

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

12 The settlement of a PAGA claim requires court approval. (See Lab. Code § 2699(l)(2)
13 (“The superior court shall review and approve any settlement of any civil action pursuant to this
14 part.”).) However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
15 considered a class action but a law enforcement action” and, therefore, does not have to meet the
16 requirements of a class action. (*Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012
17 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL
18 2173715, at *11; *Arias v. Sup. Ct., supra*, 46 Cal.4th at pp. 980-988 (affirming lower court’s
19 holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim);
20 *Pedroza v PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15.) As such, a court’s
21 review of a PAGA settlement involves analysis of several unique features that render the approval
22 process distinct from approval of a class action settlement. A court reviewing a PAGA settlement
23 need only “ensur[e] that a negotiated resolution is fair to those affected.” (*Williams v. Sup. Ct.,*
24 *supra*, 3 Cal.5th at p. 549 (citing Lab. Code § 2699(l)(2)).) Although Labor Code section 2699(l)
25 does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved
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1 settlements of a PAGA claim.⁷ The Court of Appeal has held that “a trial court should evaluate
2 a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s
3 purposes to remediate present labor law violations, deter future ones, and to maximize
4 enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)

5 In a PAGA case, the Court’s focus is not the amount which “aggrieved employees” are
6 to receive but whether the total settlement amount achieves PAGA’s objectives. PAGA’s purpose
7 “to incentivize private parties to recover civil penalties for the government that otherwise may
8 not have been assessed and collected by overburdened state enforcement agencies.” (See *Ochoa-
9 Hernandez, supra*, 2010 WL 3570777, at *4 (citing *Arias v. Sup. Ct., supra*, 46 Cal.4th at p.
10 986).) Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for
11 enforcement of labor laws . . . and for education of employers and employees about their rights
12 and responsibilities under this code, to be continuously appropriated to supplement and not
13 supplant the funding to the agency for those purposes.” (See Lab. Code § 2699(j).) The recovery
14 of penalties on behalf of the state, by way of a PAGA claim, is essentially a law enforcement
15 action. (See *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct., supra*, 46 Cal.4th at
16 p. 1003 (stating the PAGA is mechanism for “an aggrieved employee to recover civil penalties –
17 for Labor Code violations – that otherwise would be sought by state labor law enforcement
18 agencies”); see also *Iskanian v. CLS Trans. Los Angeles, LLC, supra*, 58 Cal.4th at p. 381.)

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

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

21 A settlement agreement that is “the product of extensive and hard-fought adversarial
22 negotiations between the parties” is entitled to a presumption of fairness. (*Wershba v. Apple*
23

24 ⁷ (See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Sup. Ct., Case
25 No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No.
26 JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575,
27 at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu*
28 *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 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) The Settlement is presumptively fair. This is
2 because the Settlement: (1) is the product of non-collusive, arm's-length negotiations; (2) was
3 negotiated by counsel with significant experience in similar wage-and-hour litigation following
4 a full-day mediation with an experienced mediator; and (3) occurred after Parties' counsel
5 engaged in significant investigation of the strengths of this case and risks of continued litigation.

6 The Court should give considerable weight to the competency, experience, and opinion
7 of counsel and the involvement of a neutral mediator in assuring the Settlement is a product of
8 hard-fought negotiations that was entered without collusion. (See *Kirkorian v. Borelli* (N.D. Cal.
9 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight);
10 *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of
11 plaintiffs' counsel should be given a presumption of reasonableness); see also *Satchell v. Fed.*
12 *Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating the "assistance of an
13 experienced mediator in the settlement process confirms that the settlement is non-collusive").)

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

16 Plaintiff contends the provisions of the Labor Code potentially triggering PAGA penalties
17 in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5,
18 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1,
19 1198, 2800, and 2802. For Plaintiff to recover civil penalties, she must prove the underlying
20 Labor Code violations with respect to the PAGA Employees and show Defendant's conduct gave
21 rise to penalties. (See, e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d
22 1169, 1181-82 ("Plaintiffs' claim under [PAGA] is wholly dependent upon her other claims.
23 Because all of Plaintiffs' other claims fail as a matter of law, so does her PAGA claim.").)

24 Defendant maintained it had compliant employment policies and practices throughout the
25 statutory period. Defendant also denied it ever violated any provision of the Labor Code. Next,
26 Defendant denied this case is appropriate for representative treatment for any purpose other than
27 the Settlement because resolution of this matter on a representative basis in a non-settlement
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1 context would be unmanageable including because individualized issues would predominate over
2 Plaintiff's claims. If this case had not been settled, Defendant would likely have challenged
3 Plaintiff's standing as a PAGA Employee and denied its other employees were aggrieved.
4 Finally, Defendant argued the Court was unlikely to assess cumulative penalties for the maximum
5 number of possible separate Labor Code violations because the "subsequent violation" theory of
6 PAGA recovery would not be triggered in this case, and it would be unjust, arbitrary, oppressive,
7 and/or confiscatory. (See, e.g., *Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144.)

8 Plaintiff and Plaintiff's Counsel had to consider the strengths and weaknesses of each
9 side's position and the uncertainty of how the case might have ended.⁸ Defendant asserted,
10 regardless of any alleged liability for Labor Code violations, PAGA penalties are not mandatory
11 but permissive and discretionary. Defendant also maintained it had a strong argument it would
12 be unjust to award maximum PAGA penalties given the unsettled state of PAGA liability and
13 based on the facts of this case. (See Cal. Lab. Code § 2699(e)(2) (specifying that "a court may
14 award a lesser amount than the maximum civil penalty amount specified by this part if, based on
15 the facts and circumstances of the particular case, to do otherwise would result in an award that
16 is unjust, arbitrary and oppressive, or confiscatory"); *Thurman v. Bayshore Transit Mgmt., Inc.*
17 (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority]; *Sanchez v.*
18 *McDonald's Rests. Of Cal.*, Los Angeles Superior Court Case No. BC499888, 2017 WL
19 4620746, at *8 (rejecting plaintiffs' request to "stack" penalties).)⁹

20 Although some wage-and-hour actions are amenable to class-wide resolution,¹⁰ courts
21 have found certain Labor Code violations raise individualized issues and/or are unmanageable
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23

24 ⁸ (Han Decl., *supra*, at ¶¶ 22-25.)

25 ⁹ (*Id.* at ¶ 26.)

26 ¹⁰ (See, e.g., *Martinez vs. Joe's Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362,
27 383-84, modified on other grounds by *Martinez v. Joe's Crab Shack Holdings, et al.* (Dec. 3,
28 2014 B242807) 2014 Cal.App. LEXIS 1102, *1-2.)

1 and not suitable for class adjudication.¹¹ Similarly, in PAGA-only actions, Defendant contends
2 courts have found due process requires the adjudication of a PAGA claim meet a “manageability”
3 requirement. (See, e.g., *Liuy v. Merrill Lynch & Co.* (C.D.Cal. Nov. 10, 2014) No. CV-14-0425-
4 PA, WL 5904904 at **3-4 (Court dismissed the PAGA claim because a multitude of
5 individualized assessments would be necessary, making the PAGA claim unmanageable); see
6 also *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 766-767.)

7 Plaintiff alleges, under Defendant’s argument stacking penalties does not apply to the
8 PAGA claim, and limiting potential exposure to an initial violation only, PAGA penalties would
9 be **\$94,200** (942 employees x \$100 penalty for initial violation) on the low end and **\$753,600**
10 (942 employees x \$100 penalty for initial violation x 8 theories of recovery) on the high end.¹²

11 Plaintiff also recognized the risk any PAGA award could be reduced. Many of the claimed
12 Labor Code violations underlying the PAGA claim were cumulative, and the Court may exercise
13 its discretion not to stack penalties for those underlying claims even if permitted to do so. Thus,
14 a Gross Settlement Amount of \$440,000 for PAGA civil penalties was reasonable and significant.
15 When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount
16 was the result of self-interest at the expense of other Class Members,” such amounts are generally
17 considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. 08-00844,
18 2009 U.S. Dist. LEXIS 33900 at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th
19 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which does not
20 allocate any damages to the PAGA claims.”).)¹³

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

22 Courts favor voluntary conciliation and settlement of complex litigation. (*Class Plaintiffs*
23 *v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276.) Generally, “unless the settlement is clearly
24 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with
25

26 ¹¹ (See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35.)

27 ¹² (Han Decl., *supra*, at ¶ 28.)

28 ¹³ (*Id.* at ¶ 30.)

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 to determine the potential value and strength of the PAGA claim. After engaging in extensive investigation and negotiations, Plaintiff’s 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.¹⁴

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.)

After their investigations and inquiries, Plaintiff and Plaintiff’s Counsel recognize the expense, length, risk, and uncertainty of continued proceedings necessary to litigate this dispute. To recover civil penalties, Plaintiff would have to prove the PAGA Employees suffered from the underlying Labor Code violations and that Defendant’s conduct gave rise to penalties, which could take a significant amount of time to prove, assuming liability is found, and Plaintiff could proffer a manageable trial plan to the Court to prove penalties. Plaintiff and Plaintiff’s Counsel are aware of the burdens of proof necessary to establish liability and difficulties in establishing liability for penalties. Plaintiff and Plaintiff’s Counsel also considered Defendant’s agreement to enter a settlement that confers significant relief. Plaintiff and Plaintiff’s Counsel determined the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim.¹⁵

¹⁴ (Han Decl., *supra*, at ¶¶ 14-17, 25.)

¹⁵ (*Id.* at ¶¶ 22-25.)

1 Thus, the results achieved, and the PAGA allocation provided by the Settlement, is within
2 the range of acceptable and reasonable settlement terms under the circumstances.¹⁶

3 **E. Experience and Views of Plaintiff's Counsel Favor Settlement Approval.**

4 Plaintiff's Counsel are experienced in complex representative and class action wage-and-
5 hour litigation. Plaintiff's Counsel also used this experience to negotiate a reasonable settlement.
6 Thus, Plaintiff's Counsel believe the benefit conferred by the Settlement is eminently fair and
7 reasonable and in the best interests of the LWDA and PAGA Employees.¹⁷

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

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

10 The Settlement provides for Plaintiff's Counsel to apply for an attorneys' fees of up to
11 \$154,000. The attorneys' fees aligns with the: (1) risks undertaken; (2) time and effort dedicated;
12 (3) skills and determination shown; (4) value achieved; and (5) other cases turned down.

13 Plaintiff's Counsel are entitled to recover reasonable attorneys' fees and costs as a matter
14 of right under PAGA. (See Lab. Code § 2699(g)(1).) Plaintiff's Counsel is entitled to fees and
15 costs under Code of Civil Procedure section 1021.5, as this matter is by definition "for the
16 benefit" of others and has secured monetary awards for the PAGA Employees.¹⁸ The payment to
17 the LWDA will also benefit the agency in enforcing labor laws and educating "employers and
18

19 ¹⁶ (See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833
20 (May 2017) (approving \$15,000 out of \$4 million toward settlement of the PAGA claim); *Garcia*,
21 *supra*, 2012 WL 5364575, at *3 (approving \$10,000 out of \$3.7 million toward settlement of the
22 PAGA claim); *Schiller v. David's Bridal, Inc.*, *supra*, 2012 WL 2117001, at *14 (approving
23 \$10,000 out of \$518,245 toward settlement of the PAGA claim); *Chu v. Wells Fargo Invs.*, *supra*,
24 2011 WL 672645, at *1 (approving \$10,000 out of \$6.9 million toward settlement of the PAGA
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).)

25 ¹⁷ (Han Decl., *supra*, at ¶¶ 3-9; Exhibit 1.)

26 ¹⁸ (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).)

employees about their rights and responsibilities under [the Labor Code].” (Lab. Code § 2699(i).)

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

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

1. *The Results Obtained*

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

The results obtained are reasonable as Plaintiff’s Counsel obtained a sizeable settlement without the need for extended litigation. If this case went to trial, there was no guarantee the trial would have been short or either party would have prevailed. Even if the Parties reached a similar settlement, it would have been undercut by additional expenses incurred. Resolution of this dispute at this stage is preferred as the Parties were moving to the phase where significant time and money would inevitably have to be spent to prepare for trial.

Finally, by avoiding the uncertainties associated with conducting trial and Defendant’s responses to the allegations, Plaintiff’s Counsel obtained those results more quickly and surely than if the matter had been litigated to final resolution. Under California law, this factor also supports the requested fee. (See *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App. 4th 19, 51.)

2. *The Extraordinary Risk Taken by Plaintiff’s Counsel*

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

A contingent fee must be higher than a fee for the same legal services paid as they are performed [and] [...] compensates the lawyer not only for the legal services he renders

1 but for the loan of those services. A lawyer who both bears the risk of not being paid and
2 provides legal services is not receiving the fair market value of his work if he is paid
3 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)

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

5 Plaintiff executed a contingent fee agreement. This meant no recovery would have equated
6 to no compensation for 379.4 hours of work and \$12,210.95 litigation costs incurred. This, in
7 turn, contributed to the extraordinary risks undertaken by Plaintiff's Counsel.¹⁹

8 By extension, several factors made this case difficult, thereby exacerbating the risks
9 undertaken. These factors included: (1) number of PAGA Employees; (2) drafting and
10 propounding formal discovery requests and reviewing Defendant's responses; (3) reviewing
11 Defendant's formal discovery requests; (4) difficulties in pinning down job responsibilities,
12 wages paid, meal and rest breaks taken; (5) number of documents that had to be analyzed; (6)
13 shifting wage-and-hour laws; and (7) Defendant's initial resistance to the relief.²⁰

14 3. *The Difficulty of the Litigation*

15 The unsettled nature of the law, factual complexities underlying the policies and practices
16 in place, and other issues made this case complex and difficult. Yet, Plaintiff's Counsel overcame
17 these obstacles by obtaining a settlement that is fair, adequate, and reasonable. Plaintiff's Counsel
18 obtaining a fair settlement despite these roadblocks speaks volumes of their skill and experience.
19 (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p. 42 (the "special skill and
20 experience of counsel" is a relevant factor when determining fee award).)

21 Due to the difficulty of this case, Plaintiff's Counsel devoted substantial hours to this
22 matter. The Task & Time Chart sets forth these hours, allocating the total time to the tasks
23 required to conclude this lawsuit. The work commenced with the pre-filing case analysis and
24 research and continues up to the moment of the work for final approval.²¹ This was not a clear-

25 ¹⁹ (Han Decl., *supra*, at ¶¶ 41-42, 45.)

26 ²⁰ (*Id.* at ¶ 31.)

27 ²¹ (*Id.* at ¶ 41; Exhibit 3.)

1 cut case, and Plaintiff's Counsel had to overcome several roadblocks and obstacles before they
2 could reach a settlement. These roadblocks ranged from reviewing a wide range of documents
3 produced, propounding formal discovery requests, reviewing Defendant's responses, etc.

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

5 The level of skill displayed and the excellent quality of work it produced also justify the
6 requested fee. Plaintiff's Counsel are skilled and experienced representative and class action
7 wage-and-hour litigators, and the Task & Time Chart further illustrates this assertion.

8 Plaintiff's Counsel used the pre-mediation period to investigate the veracity, strength, and
9 scope of the PAGA claim and to prepare for representative adjudication. This included: (1) case
10 strategy and analysis; (2) drafting, reviewing, and revising pleadings and a mediation brief; (3)
11 preparing for and appearing at court proceedings; (4) undertaking calculations of potential
12 damages; (5) preparing for and attending mediation and settlement negotiations; and (6) working
13 with Defense Counsel to draft, update and finalize the Settlement. Plaintiff's Counsel also
14 undertook the time-consuming task of locating and interviewing PAGA Employees.²²

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

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

19 Plaintiff's Counsel spent 379.4 hours litigating this matter. Plaintiff's Counsel's hourly
20 rates are supported by the 2021 Real Rate Report that was compiled by Wolter Kluwer that
21 surveyed the hourly rates charged in 2021 by hundreds of attorneys in California. Likewise,
22 Plaintiff's Counsel's hourly rates are also in line with the Laffey Matrix.²³

23 ///

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26
27 ²² (Han Decl., *supra*, at ¶ 15.)

28 ²³ (*Id.* at ¶¶ 41-43; Exhibits 4-5.)

1 ***1. Plaintiff's Counsel Worked for a Reasonable Number of Hours.***

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

5 The case involved, among other things, gathering and analyzing data from Defendant and
6 the PAGA Employees. Plaintiff's Counsel undertook intense preparation to resolve the entire
7 matter through mediation. These intense preparations ranged from locating and interviewing
8 PAGA Employees, reviewing a myriad of documents, determining the scope of the PAGA
9 Employees, verifying the strengths of the PAGA claim, etc.

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

11 Plaintiff's Counsel's hourly rates are within the range of rates charged by comparably
12 qualified attorneys in California and the legal profession in general for comparably complex
13 work. By extension, Plaintiff's Counsel's hourly rates are in line with the Laffey Matrix.²⁴

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

19 Based on the attorney time expended, the base lodestar fees calculation is \$250,520,
20 resulting in a negative multiplier of 0.61 when cross-checked to the attorneys' fees.²⁵

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

22 The Settlement provides for Cost Amount not to exceed \$15,000. Plaintiff's Counsel have
23 incurred \$12,210.95 in litigation costs and expenses, which were reasonable and necessary.²⁶
24 Thus, Plaintiff's Counsel request the Court order reimbursement for these costs and expenses.

25

26 ²⁴ (Han Decl., *supra*, at ¶¶ 42-43; Exhibits 4-5.)

27 ²⁵ (*Id.* at ¶¶ 42, 44.)

28 ²⁶ (*Id.* at ¶ 45; Exhibit 6.)

1 **VIII. APPROVAL OF THE SERVICE AWARD TO PLAINTIFF**

2 The Settlement provides for a Service Award of \$10,000 to Plaintiff for her services and
3 contributions on behalf of the PAGA Employees.

4 Plaintiff spent a substantial amount of time and effort in locating and producing relevant
5 documents and past employment records, reviewing relevant documents, and providing the facts
6 and evidence supporting her allegations. Plaintiff was available whenever Plaintiff's Counsel
7 needed her and actively tried to obtain and provide as much information as she could. Plaintiff
8 spent numerous hours speaking with Plaintiff's Counsel about the alleged Labor Code violations,
9 discussing her work experiences, helping Plaintiff's Counsel develop a strategy to obtain
10 additional documents from Defendant and other sources, aiding Plaintiff's Counsel to determine
11 the importance of the documents produced, and reviewing the operative complaint and
12 Settlement. Plaintiff also prepared for and participated in a full day of mediation.²⁷

13 Plaintiff was advised of and accepted the risks and sacrifices associated with serving as
14 the named plaintiff. Plaintiff is also not related to anyone associated with Plaintiff's Counsel, has
15 not entered any undisclosed agreement, and has not received undisclosed compensation. In other
16 words, Plaintiff elected to serve as the named plaintiff to her own detriment.²⁸

17 **IX. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED**

18 The total cost for the administration of the notice and settlement process in this case is up
19 to \$8,000. The costs to be incurred include performing duties pursuant to the administration
20 process. Thus, the Court should approve the Settlement Administration Costs.

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23 ///

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25 _____
26 ²⁷ (Han Decl., *supra*, at ¶ 48; Declaration of Laura Ibarra In Support of Plaintiff's Motion
27 for Approval of Private Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement Agreement
("Ibarra Decl."), ¶¶ 6-10.)

28 ²⁸ (Han Decl., *supra*, at ¶ 48; Ibarra Decl., *supra*, at ¶¶ 11-14.)

1 **X. CONCLUSION**

2 Based thereon, Plaintiff requests the Court approve the Settlement, including the plan of
3 allocation and distribution of the above-mentioned amounts.

4
5 Dated: April 4, 2023

JUSTICE LAW CORPORATION

6
7 By: 
8 Douglas Han
9 Shunt Tatavos-Gharajeh
10 Talia Lux
11 *Attorneys for Plaintiff*
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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is jtorrez@justicelawcorp.com

On April 4, 2023, I served the foregoing document described as

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

for the following case: **Ibarra v. Ajinomoto Althea, Inc. d/b/a Ajinomoto Bio-Pharma Services**

LWDA/Court Case No.: **LWDA Case No.: CM-856411-21**

Court Case No.: 37-2022-00008619-CU-OE-CTL

San Diego County Superior Court

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

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 4, 2023, at Pasadena, California.


Jessica Torrez