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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12

13 ALFONSO BARRON, JR., an individual,

14 Plaintiff,

15 vs.

16 R-COLD, INC., a California corporation;
17 MICHAEL TIMOTHY MULCAHY, an
18 individual; and Does 1-50, inclusive,

19 Defendants.
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Case No.: 22STCV26288

*Assigned for all purposes to the Honorable
Curtis A. Kin, Dept. 72*

**APPLICATION FOR ORDER
APPROVING PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed concurrently with: (1) Declaration of
Kelly Y. Chen in Support of Application for
Order Approving PAGA; and (2) Joint
Stipulation for Order Approving PAGA
Settlement; Proposed Order]

Complaint Filed: August 15, 2022
Trial Date: Not set

1 **TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF**
2 **RECORD:**

3 Plaintiff ALFONSO BARRON, JR. ("Plaintiff") on behalf of himself and other aggrieved
4 employees, hereby applies entry of an order approving settlement of his claims brought pursuant to
5 the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code sections 2698 *et seq.*
6 ("PAGA"). Specifically, by way of this application, Plaintiff requests that the Court enter an order:

- 7 1. Granting approval of the PAGA Settlement Agreement between Plaintiff and
8 Defendants R-Cold, Inc. and Michael Timothy Mulcahy ("Settlement" or "Settlement
9 Agreement"), attached as Exhibit 2 to the Declaration of Kelly Y. Chen in Support of
10 Application for Order Approving PAGA Settlement ("Chen Decl."), including but not
11 limited to, the plan of allocation and distribution of the Gross Settlement Amount.
- 12 2. Approving the distribution of the PAGA Payment, currently estimated to be
13 \$74,916.00, of which seventy-five percent (75%) shall be paid to the California Labor
14 and Workforce Development Agency and twenty-five percent (25%) shall be paid to
15 Alleged Aggrieved Employees on a *pro rata* basis based upon the number of pay
16 periods worked during the PAGA Period;
- 17 3. Awarding Plaintiff's Counsel, Law Office of Kelly Y. Chen, attorney's fees in the
18 amount of \$41,666.00 and payment of \$8,418.00 for reimbursement of actual litigation
19 costs and expenses pursuant to California Labor Code section 2699(g)(1).
- 20 4. Directing Defendants to disburse the Gross Settlement Amount of \$125,000.00 in
21 accordance with the terms of the Settlement Agreement within 30 calendar days of
22 entry of an order approving the Settlement.

23 Pursuant to California Labor Code § 2699(l)(2), a copy of the proposed Settlement, as well as
24 the approval papers, were submitted to the California Labor and Workforce Development Agency via
25 online filing at [https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
26 [Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) on February 1, 2023 . See Chen Decl., ¶ 30, Ex. 3.

27 This application is based on the Parties' Joint Stipulation for an Order Approving PAGA
28 Settlement, the Memorandum of Points and Authorities attached herein, the Declaration of Kelly
Chen in Support of Application for Order Approving PAGA Settlement, and the pleadings and other
records on file with the Court in this matter.

1 Dated: Feb. 1, 2023

LAW OFFICE OF KELLY CHEN

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3 By: /s/Kelly Y. Chen
4 Kelly Chen
5 Attorneys for Plaintiff
6 ALFONSO BARRON, JR.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Alfonso Barron, Jr. (“Plaintiff”) seeks approval of a PAGA Settlement Agreement entered into between Plaintiff and Defendants R-Cold, Inc. and Michael Timothy Mulcahy (“Defendants”) pursuant to the Labor Code Private Attorney General’s Act of 2004, Cal. Labor Code sections 2698, et seq. (“PAGA”). See Declaration of Kelly Y. Chen in Support of Application for Order Approving PAGA Settlement Agreement (“Chen Decl.”), Ex. 2 (“Settlement” or “Settlement Agreement”). The Settlement was reached following a full day mediation with Steve Pearl, Esq. and extensive investigation by Plaintiff and his counsel. By this Application, Plaintiff requests that the Court enter an order approving the Settlement, the key terms of which are as follows:

- Number of Alleged Aggrieved Employees: approximately 102 individuals.
- Gross Settlement Amount: \$125,000.00
- Plaintiff’s Counsel Fees Payment: \$41,666.00
- Plaintiff’s Counsel Costs and Expenses Payment: \$8,418.00
- **PAGA Payment Amount: \$74,916.00**

The PAGA Payment Amount will be distributed as follows: seventy-five percent (75%), *i.e.* \$56,187.00, will be paid to the California Labor and Workforce Development Agency (“LWDA”); twenty-five percent (25%), *i.e.* \$18,729.00, will be paid to Alleged Aggrieved Employees on a *pro rata* basis according to the number of pay periods worked by from March 24, 2021 to October 6, 2022 (“PAGA Period”), for an average payout of approximately \$183.62 per employee.

The Settlement is the product of informed discovery, arms-length negotiations by highly experienced counsel, and is fair, reasonable, and adequate in light of the relative strengths of Plaintiff’s PAGA claims, the risk, expense, and uncertainty of further litigation, the benefit conferred by the Settlement, and the underlying goals associated with recovery under PAGA. Plaintiff therefore respectfully requests that the Court approve the proposed Settlement and enter judgment thereon.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On March 24, 2022, Plaintiff’s Counsel provided a Notice of PAGA Claims to the California Labor and Workforce Development Agency (“LWDA”) on behalf of Plaintiff alleging that Defendants R-Cold, Inc. had violated certain Labor Code violations, and that Plaintiff intended to

1 pursue civil penalties for the alleged violations pursuant to the Labor Code Private Attorneys
2 General Act of 2004, Cal. Labor Code §§ 2698, et seq (“PAGA”). Chen Decl., ¶ 3.

3 On August 15, 2022, Plaintiff commenced a lawsuit against Defendants in the Los Angeles
4 Superior Court, Case No. 22STCV26288 (the “Complaint” or the “Litigation”) in which Plaintiff
5 alleged, among other things, that Defendants failed to pay him all wages owed, failed to provide
6 meal and rest periods and associated premium wages, failed to provide compliant wage statements,
7 failed to reimburse all business expenses, failed to timely pay wages upon termination of
8 employment, and violated California Business and Professions Code §§ 17200, et seq. The
9 Complaint also alleged a representative PAGA cause of action seeking recovery of civil penalties
10 stemming from these unlawful wage and hour practices on behalf of Plaintiff, the State of California,
11 and other Alleged Aggrieved Employees. *See* Complaint; Chen Decl., ¶ 4.

12 Shortly following the filing of Plaintiff’s Notice of PAGA Claims, the Parties met and
13 conferred with respect the possibility of early resolution. Pursuant to these discussions, the Parties
14 agreed to exchange informal discovery and participate in private mediation with Steve Pearl, Esq., a
15 respected and experience wage and hour and employment law mediator. The mediation took place
16 on October 6, 2022, and ultimately led to the execution of a memorandum of understanding
17 documenting the Parties’ agreement to resolve Plaintiff’s PAGA claims for a Gross Settlement
18 Amount of \$125,000.00. Chen Decl., ¶ 6. Thereafter, on December 8th, 2022 the Parties fully
19 executed the long-form PAGA Settlement Agreement. Chen Decl., ¶ 7, Ex. 2.

20 On February 1, 2023, Plaintiff’s counsel submitted the Settlement Agreement and this
21 application to the LWDA via its online filing portal. Chen Decl., ¶ 30, Ex. 3.

22 **III. STANDARD OF REVIEW OF APPROVAL OF PAGA SETTLEMENT**

23 The LWDA and its constituent departments and divisions are authorized to assess and collect
24 civil penalties for specified violations of the Labor Code committed by an employer. See Cal. Labor
25 Code §2699(a). With a stated goal of improving enforcement of existing Labor Code obligations, the
26 Legislature adopted the Labor Code Private Attorneys General Act of 2004, Labor Code sections
27 2698 et seq. (“PAGA”), permitting, as an alternative, an aggrieved employee to initiate a private
28 civil action for "civil penalties" which were previously enforceable only by the State's labor law

1 enforcement agencies. Cal. Labor Code § 2699; *Caliber Bodyworks, Inc. v. Superior Court* (2005)
2 134 Cal.App.4th 365, 377.

3 Before an employee may file an action seeking to recover such "civil penalties" for violations
4 of any of the Labor Code provisions enumerated in section 2699.5 (which include violations of
5 Labor Code claims which Plaintiff asserted in this action against Defendant), he or she must comply
6 with PAGA's administrative procedures as set forth in Labor Code section 2699.3(a) which include
7 providing notice to the LWDA and waiting a prescribed period of time to permit the LWDA to
8 investigate and to decide whether to cite the employer for the alleged violations. *Caliber*
9 *Bodyworks*, supra, 134 Cal.App.4th at 370; see also, *Dunlap v. Superior Court* (2006) 142
10 Cal.App.4th 330. If the LWDA fails to pursue the penalties, the employee may proceed in Court.

11 The settlement of a PAGA action requires court approval. See Cal. Labor Code § 2699(1)(2).
12 The process for PAGA settlement approval is very straightforward: "The superior court shall review
13 and approve any settlement of any civil action filed pursuant to this part." Labor Code § 2699(1)(2).
14 In reviewing a PAGA settlement, the Court need only ensure that "a negotiated resolution is fair to
15 those affected." *Williams v. Sup. Ct.*, 3 Cal.5th 531, 549 (2017). The court's focus is not the
16 monetary amount which aggrieved employees or the State stand to receive, but on whether the total
17 amount achieves PAGA's objective - "to incentive private parties to recover civil penalties for the
18 government that otherwise may not have been assessed and collective by overburdened state
19 enforcement agencies." See *Ochoa-Hernandez v. CJADERS Foods, Inc.*, 2010 WL 1340777 at *4
20 (N.D. Cal. Apr. 2, 2010) (citing *Arias v. Sup. Ct.*, 46 Cal.4th 969, 986 (2009)).

21 Finally, because a PAGA claim is effectively considered a law enforcement action, it does
22 not have to meet the requirements of a class action. See, *Arias v. Superior Court* (2009) 46 Cal.4th
23 969; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348. Accordingly, there is
24 no requirement under PAGA for a plaintiff to establish the requirements of class certification (*i.e.*
25 numerosity, typicality, commonality and adequacy), nor is there the usual two-step preliminary and
26 final approval process as found in class actions. Rather, the PAGA merely requires a one-step
27 review and approval process.

Any PAGA penalties recovered by an employee, however, do not entirely belong to the employee. Instead, PAGA requires that 75% of the recovered penalties must be paid to the LWDA, while the remaining 25% may be retained by the employee who prosecuted the claim. Cal. Labor Code §2699(i).

IV. SUMMARY OF THE SETTLEMENT TERMS.

A. Definition of Alleged Aggrieved Employees

1. Under the Settlement Agreement, Plaintiff's representative claims include "Alleged Aggrieved Employees" defined as "all individuals currently or formerly employed by R-Cold as non-exempt employees in the State of California at any time during the period of March 24, 2021 through October 6, 2022." Chen Decl., ¶ 10; Settlement Agreement, § I(2). The "PAGA Period" means the period of time commencing on March 24, 2021 to October 6, 2022. Chen Decl., ¶ 11; Settlement Agreement, § I(14). There are approximately 102 Alleged Aggrieved Employees. Chen Decl. ¶ 12; Settlement Agreement, § III(3).

B. Gross Settlement Amount

The Parties have agreed to settle the PAGA claims at issue for a non-reversionary Gross Settlement Amount of \$125,000.00. Chen Decl., ¶ 8; Settlement Agreement § I(9).

C. Allocation and Funding of the Gross Settlement Amount

The Settlement is a common fund and therefore includes all requested costs, fees, and other allocations. Chen Decl., ¶ 9. As stated above, subject to Court approval, the Gross Settlement Amount includes: (1) payment of Plaintiff's Counsel's attorneys fees in the amount of \$41,666.00; and (2) reimbursement of Plaintiff's Counsel's costs and expenses in the amount of \$8,418.00.¹ Chen Decl. ¶ 9; Settlement Agreement, §§ I(3)-(4), III(4)(a)-(b). After the foregoing amounts are deducted from the Gross Settlement Amount, the remaining amount shall be the "PAGA Payment" to be paid to the LWDA and Alleged Aggrieved Employees. Chen Decl. ¶ 9; Settlement Agreement,

¹ The Settlement Agreement allows for Plaintiff's Counsel to receive reimbursement in costs up to \$8,500.00. Plaintiff's Counsel have incurred and reasonably expect to incur no more than \$8,418.00 in total costs associated with litigation of this Action. Accordingly, an additional \$82.00 will be included in the PAGA Payment based on these savings.

1 §§ I(13), III(4)(c).

2 The PAGA Payment is estimated to be \$74,916.00 and will be distributed as follows: 75%
3 of the PAGA Payment, will be paid to the LWDA, and the remaining 25% will be paid to all Alleged
4 Aggrieved Employees on a *pro rata* basis based upon the number of pay periods worked by each
5 Aggrieved Employee during the PAGA Period. Chen Decl., ¶ 9; Settlement Agreement, §§ I(6),
6 I(11), III(4)(c). The Individual PAGA Payments will be treated as miscellaneous income for which a
7 1099 will be issued. Chen Decl., ¶ 9; Settlement Agreement, § III(4)(e).

8 No later than forty-five (45) calendar days after the date of the Court's order approving the
9 Settlement, Defendants shall disburse all payments owed under the Settlement Agreement. Chen
10 Decl., ¶ 13; Settlement Agreement, § IV(2)). All checks to Alleged Aggrieved Employees shall
11 remain valid and negotiable for 180 days from their date of issuance. Chen Decl., ¶ 14; Settlement
12 Agreement, § IV(6). If any checks are not cashed within 180 days of mailing, those funds shall be
13 sent to the State of California Unclaimed Property Fund in the name of the employee to whom the
14 check was issued. Chen Decl., ¶ 14; Settlement Agreement, § IV(7).

15 **D. Scope of the Release in the Settlement Agreement**

16 Upon entry of the Judgment, Defendants shall be released from all claims for the recovery of
17 civil penalties, attorney's fees and costs recoverable under PAGA alleged in the PAGA Action
18 including Labor Code §§ 201, 202, 203, 204, 210, 216, 225.5, 226, 226.2, 226.3, 226.7, 510, 512,
19 558, 558.1, 1174, including but not limited to 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
20 1198.5, 1199, 2802, and 2699 which occurred during the PAGA Period ("PAGA Released Claims"),
21 1198.5, 1199, 2802, and 2699 which occurred during the PAGA Period ("PAGA Released Claims").
22 This release of PAGA Released Claims does not release any claims outside of the PAGA Period, nor
23 does it release any of the named Plaintiff's individual non-PAGA claims. Chen Decl., ¶ 15;
24 Settlement Agreement, § III(5).

25 **IV. THE SETTLEMENT IS FAIR AND REASONABLE**

26 As set forth below, the Settlement before the Court is the result of adversarial, arms-length
27 negotiations, extensive investigation, and fulfills the objectives of the PAGA. Moreover, the
28 Settlement is fair and reasonable in light of the relative strengths of the PAGA claims and risks
associated with protracted litigation. Accordingly, the Settlement should be approved by the Court.

1 **A. Plaintiff Has Complied with the Administrative Requirements of California**
2 **Labor Code Section 2699.**

3 Before bringing a civil action under PAGA, an employee must comply with the notice
4 requirements set for in Labor Code section 2699.3. Plaintiff complied with these requirements. *See*
5 Chen Decl. ¶ 3, Ex. 1. In addition, the Settlement Agreement and this application are being
6 concurrently submitted to the California Labor and Workforce Development Agency, as required by
7 California Labor Code section 2699(1)(2). Chen Decl. ¶ 7, Ex. 2.

8 **B. Arm’s-Length Negotiations.**

9 Although PAGA settlements are not subject to the same, heightened requirements as a class
10 action settlement, the underlying guidelines utilized in class action settlements may be useful in
11 evaluating the fairness of a PAGA settlement. California courts recognize that “a presumption of
12 fairness exists where . . . [a] settlement is reached through arm’s-length bargaining.” *Wershba v.*
13 *Apple Computer*, 91 Cal.App.4th 224, 245 (2001) (disapproved on other grounds). Here, the Parties
14 engaged in arms-length, non-collusive negotiations at all times including attending a full day
15 mediation with Steve Pearl, Esq., a highly-respected mediator with extensive experience in wage and
16 hour matters including actions brought pursuant to PAGA. Chen Decl. ¶ 6. The proposed Settlement
17 was reached at the end of a process that was neither fraudulent nor collusive. To the contrary,
18 counsel for the Parties advanced their respective positions throughout the settlement negotiations.
19 Davis Decl. ¶ 21.

20 **C. Sufficient Investigation and Discovery by Experienced Counsel.**

21 The Parties engaged in extensive informal discovery prior to reaching a settlement. Prior to
22 filing the lawsuit, Plaintiff’s counsel investigated Defendants’ wage and hour practices. Chen Decl.,
23 ¶ 16. Prior to mediation, Defendants informally produced a random sampling of time and payroll
24 records for the Alleged Aggrieved Employees, as well as information regarding the total number of
25 non-exempt employees, the number of pay periods, Defendant’s relevant policies and procedures,
26 and other relevant information. Chen Decl., ¶ 19. This allowed Plaintiff’s Counsel to conduct an
27 informed assessment and analysis of Defendants’ potential exposure. Chen Decl., ¶ 20. Furthermore,
28 negotiations were conducted by highly capable and respected counsel with strong records of

1 vigorous and effective advocacy handling complex wage and hour litigation. Chen Decl., ¶ 32.
2 Accordingly, Plaintiff's Counsel had sufficient information and experience to act intelligently in
3 negotiating the Settlement.

4 **D. The Settlement is Reasonable in Light of the Parties' Legal Positions, the Risks**
5 **of Continued Litigation, and the Underlying Purpose of the PAGA.**

6 The Gross Settlement Amount of \$125,000.00 is a reasonable settlement in light of the
7 strength of Plaintiff's claims and Defendants' defenses, the risks of further litigation, and the unique
8 risks associated with litigation of PAGA claims. At mediation, there were approximately 103
9 employees and approximately 3,690 pay periods at issue. Plaintiff's Counsel reviewed and analyzed
10 an extensive sampling of time records and other relevant documents and data and estimated with all
11 claims adjudicated in favor of Plaintiff, Defendants' estimated liability was approximately
12 \$369,000.00. Chen Decl., ¶ 22.

13 Despite this potentially large liability, substantial barriers to recovery of such penalties exist.
14 PAGA provides that the trial court has the discretion to reduce PAGA civil penalties "if, based on
15 the facts and circumstances of the particular case, to do otherwise would result in an award that is
16 unjust, arbitrary and oppressive, or confiscatory." See Cal. Labor Code § 2699(e)(2). Thus,
17 Defendants' maximum potential liability does not factor in the likelihood that the Court would
18 reduce the amount of penalties at trial, particularly if the Court were to ultimately find that
19 Defendants presented a good faith defense to Plaintiffs' claims. Chen Decl., ¶ 23. Plaintiff's counsel
20 remained cognizant of the fact that the Court might accept Defendants' argument that that the
21 damages are *de minimis*, even if Plaintiff showed that Defendants' wage and hour practices were
22 deficient. Chen Decl., ¶ 24. Plaintiff's counsel also considered the fact that the Court would likely
23 factor in Defendant's willingness to rectify the alleged violations in reducing any penalties awarded.
24 Chen Decl., ¶ 25.²

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26 ² See, e.g., *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing maximum
27 penalties by 97.5%); *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590, *8-9 (C.D. Cal. 2011)
28 (reducing maximum penalties by over 80%); *Magadia v. Wal-Mart Assocs. et al.*, 384 F. Supp. 3d
1058, 1069 (N.D. Cal. 2019) (reduced PAGA penalties by 67% and 80%); *Carrington v. Starbucks
Corp.*, 30 Cal.App.5th 504, 529 (2018) (approving reduction in penalties from \$50 per pay period to

1 In addition to these factors, Plaintiff’s counsel also considered additional factors that added
2 significant risk to continued prosecution of this matter, including: (1) the difficulties of establishing
3 that the Alleged Aggrieved Employees actually suffered the alleged violations; (2) potential
4 challenges to “manageability” of a PAGA action; (3) the significant investments of time and
5 expense by the Parties to litigate the claims for penalties under PAGA; (4) the uncertainty of
6 prevailing at trial; (5) even if a trial victory is secured, the risk of further delay due to appeals; and
7 (6) the sparsity and ever-changing nature of case law on PAGA claims.

8 Given Court’s broad discretion to reduced PAGA civil penalties and the factors set forth
9 above., Plaintiff’s counsel applied a two-thirds reduction on the total PAGA penalties recovery (one-
10 third of total maximum penalties), resulting in a *risk-adjusted total recovery* for PAGA claims due to
11 the alleged violation at trial would be approximately \$123,000.00. The proposed settlement amount
12 of \$125,000.00 as PAGA penalties therefore represents about 101.6% of the adjusted forecasted
13 recovery. Chen Decl., ¶ 26. If this Court approves the PAGA Settlement, Alleged Aggrieved
14 Employees will reach an average payment of about \$183.82, an excellent result given that they
15 remain free to pursue their own individual wage and hour claims if they so choose.

16 Finally, it is important to note that PAGA is fundamentally not intended to be compensatory
17 in nature, but is instead intended to facilitate enforcement of California’s labor laws by financing
18 state activities and educating and deterring non-compliance. *See* Cal. Labor Code § 2699(i); *Arias v.*
19 *Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3 Cal.5th 531, 546. Thus, the overall relief obtain by
20 the Settlement is significant, not only from a monetary perspective, but also because it fulfills the
21 public policy objectives of PAGA—to promote enforcement of California’s labor laws and deter
22 future non-compliance by Defendants.

23 Thus, taking into consideration both the potential value of the PAGA claim, the significant
24 risks associated with continued litigation, and the underlying objectives of PAGA, the Parties have
25 agreed that the Settlement presented herein is fair, reasonable, and adequate. *See* Joint Stipulation for

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27 \$5 per pay period based on good faith attempts to comply with obligations and minimal violations);
28 *Parr v. Golden State Overnight*, Alameda Superior Court Case No. RG12618103 (reducing
maximum PAGA penalties by 93%) .

1 Order Approving PAGA Settlement and Entering Judgment, ¶ 8. The reasonableness of the
2 Settlement if further confirmed by the fact that the LWDA was provided notice of the alleged
3 violations and terms of the Settlement, and has decided not to intervene. Accordingly, Plaintiff
4 requests the Court enter an order approving the PAGA Settlement and entering judgment thereon.

5 **V. THE REQUESTED FEES ARE FAIR AND REASONABLE.**

6 Plaintiff's Counsel is entitled to recover reasonable attorneys' fees and costs as a matter of
7 right under PAGA. *See* Cal. Labor Code § 2699(g)(1). Plaintiff's Counsel is also entitled to fees and
8 costs under Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for
9 the benefit" of other and secures substantial monetary recovery of State of California and the
10 Aggrieved Employees. *See Estrada v. FedEx Ground Package Sys. Inc.*, 154 Cal.App.4th 1, 16-17
11 (2007) (recovery obtained on behalf of 209 individuals satisfies C.C.P. § 1021.5). Where the amount
12 of a settlement is a "certain easily calculable sum of money," California courts may calculate
13 attorneys' fees as a reasonable percentage of the settlement created. *See Dunk v. Ford Motor Co.*, 48
14 Cal.App.4th 1794, 1808 (1996). The California Supreme Court has confirmed the propriety of
15 awarding attorneys' fees based on a percentage of the total value made available by the settlement.
16 *See Serrano v. Priest*, 20 Cal.3d 25, 34 (1977). The ultimate goal is the award of a "reasonable" fee
17 to compensate counsel for their efforts, irrespective of the method of calculation. *See Apple*
18 *Computer, Inc. v. Super. Ct.*, 126 Cal.App.4th 1253, 1270 (2005).

19 Here, the Settlement provides for payment of attorneys' fees to Plaintiff's Counsel in the
20 amount of \$41,666.00, e.g., approximately 33.33% of the Gross Settlement Amount, subject to Court
21 approval. Settlement Agreement § 4(a). The requested fee award is well-within the range of
22 reasonableness in light of the facts and circumstances surrounding this case, and reflects the work
23 performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar
24 matters. Chen Decl., ¶¶ 32-37.

25 Furthermore, while percentage common fund is both common and universally accepted in
26 wage and hour representative action litigation, the requested fee award is also justified under a lodestar
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“cross-check.”³ In this matter, Plaintiff’s counsel expended at least 61.6 hours on this matter, for a total lodestar of \$46,2000.00 - more than the fee award sought by way of this Application. Chen Decl., ¶ 36-37. This lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys who worked on these matters. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-32 (2001). Plaintiff’s counsel are entitled to compensation for every hour reasonably spent on the matter. *See Id.* at 1133. For these reasons, Plaintiff respectfully requests the Court award the requested attorneys’ fees of \$41,666.00.

VI. THE REQUESTED COSTS ARE FAIR AND REASONABLE.

Plaintiff’s Counsel requests the reimbursement of the costs incurred litigating this case in the total amount of \$8,418.00. These costs include filing fees, mediation fees, and other costs associated with the Action. This figure excludes anticipated future costs that will be necessary in order to successfully resolve this action including costs associated with the filing of this Motion, attendance at the approval hearing, and additional costs for filing declarations following distribution of the Gross Settlement Amount. Chen Decl. ¶ 39. These costs are less than maximum costs recoverable under the Settlement and were necessary for the prosecution of the Action. Accordingly, Plaintiff respectfully requests these costs be reimbursed in full.

VII. CONCLUSION.

For the foregoing reasons, Plaintiff respectfully requests that this Court enter an order approving of the Parties’ PAGA Settlement and entering judgment thereon.

DATED: February 1, 2023

LAW OFFICE OF KELLY Y. CHEN

By: /s/Kelly Y. Chen
Kelly Y. Chen
Attorney for Plaintiff

³ It should be noted that courts have cautioned that the primary basis of the fee award in common fund cases remains the percentage of the fund method and have advised that plaintiff’s counsel should not necessarily receive a lesser fee achieving a speedy and timely result for individuals in need of immediate relief. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d. 1043, 1050 fn.1 (9th Cir. 2002). “[I]t is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement.” *Id.*