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

LETICIA VAZQUEZ, individually, and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act;

Plaintiff,

vs.

MERRICK ENGINEERING, INC., a
California Corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: CVRI2202296

Honorable Harold W. Hopp
Department 1

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (CAL. LABOR CODE § 2698,
ET SEQ.) SETTLEMENT AGREEMENT
AND AWARD OF ATTORNEYS' FEES
AND COSTS, GENERAL RELEASE
FEE, AND SETTLEMENT
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declaration of Plaintiff's Counsel
(Tara Zabehi); Declaration of Plaintiff
(Leticia Vazquez); Declaration of
Proposed PAGA Settlement
Administrator (Michael Moore); and
[Proposed] Order and Judgment filed
concurrently herewith]

Reservation ID: 234849328969
Date: April 7, 2025
Time: 8:30 a.m.
Department: 1

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

1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the settlement between Plaintiff and Defendant Merrick Engineering, Inc., (“Defendant”) of the claims brought by Plaintiff pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as set forth in the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Settlement Agreement,” or “Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Tara Zabehi, filed concurrently herewith;
2. Approving the Total Settlement Amount¹ of \$540,000.00, which is inclusive of Attorneys’ Fees and Costs, a General Release Fee to Plaintiff, the Settlement Administration Costs, and the Net Settlement Amount;
3. Approving the Net Settlement Amount, estimated to be no less than \$328,994.09, which will be distributed to the California Labor and Workforce Development Agency (“LWDA”) and the Aggrieved Employees, pursuant to California Labor Code section 2699(i), of which seventy-five percent (75%) will be paid to the Labor and Workforce Development Agency (“LWDA Payment”) and twenty-five percent (25%) will be paid to the Aggrieved Employees (“Employees’ Portion”);
4. Appointing Phoenix Settlement Administrators as the PAGA Settlement Administrator;
5. Directing Defendant to transmit the Total Settlement Amount into a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement, and directing the PAGA Settlement Administrator

1 to distribute the Total Settlement Amount in accordance with the Settlement
2 Agreement;

3 6. Directing the mailing of Individual Settlement Share checks to the Aggrieved
4 Employees along with the Cover Letter, which shall be substantially similar in content
5 and form to that attached as “EXHIBIT A” to the [Proposed] Order and Judgment
6 Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et*
7 *Seq.*) Settlement Agreement and Award of Attorneys’ Fees and Costs, General
8 Release Fee, and Settlement Administration Costs (“[Proposed] Order and
9 Judgement”), filed concurrently herewith;

10 7. Awarding \$9,000.00 to Plaintiff as a General Release Fee;

11 8. Awarding \$5,000.00 to the PAGA Settlement Administrator as Settlement
12 Administration Costs; and

13 9. Awarding to Plaintiff’s Counsel, Lawyers *for* Justice, PC, \$189,000.00 as
14 compensation for reasonable attorneys’ fees and \$8,005.91 for reimbursement of
15 litigation costs and expenses (collectively, “Attorneys’ Fees and Costs”), pursuant to
16 California Labor Code section 2699(g)(1).

17 The Settlement Agreement and moving and supporting papers for this motion are being
18 concurrently submitted to the Labor and Workforce Development Agency in conformity with
19 California Labor Code section 2699(l)(2).

20 This motion is made pursuant to California Labor Code section 2699(l)(2), which
21 provides for review and approval by the Court of the settlement of a civil action filed pursuant
22 to PAGA, and Rule 3.1113(e) of the California Rules of Court, which permits the Court to
23 extend the page limit for memoranda.

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This motion will be based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Plaintiff's Counsel (Tara Zabehi), Plaintiff (Leticia Vazquez), and the PAGA Settlement Administrator (Michael Moore) in support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: January 29, 2025

LAWYERS for JUSTICE, PC

By:

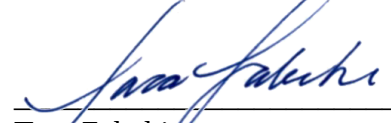

Tara Zabehi
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Leticia Vazquez (“Plaintiff”) seeks approval, pursuant to California Labor Code section 2699(l)(2), of the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Settlement Agreement,” or “Agreement”) entered into between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and Defendant Merrick Engineering, Inc. (“Defendant”). The Settlement Agreement is attached as “**EXHIBIT 1**” to the Declaration of Tara Zabehi (“Zabehi Decl.”), filed concurrently herewith. (Zabehi Decl., ¶ 8, Ex. 1.)

Subject to approval by the Court, Plaintiff and Defendant (the “Parties”) have agreed to resolve this action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Total Settlement Amount² of \$540,000.00. (Settlement Agreement, § 3(a).) The Total Settlement Amount is inclusive of: (1) Attorneys’ Fees and Costs to be paid to Lawyers for Justice, PC (“Plaintiff’s Counsel”), (2) General Release Fee to Plaintiff, (3) Settlement Administration Costs to be paid to the PAGA Settlement Administrator, and (4) Net Settlement Amount to be paid to the California Labor and Workforce Development Agency (“LWDA”) and all current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California who earned shift differentials/non-discretionary performance pay which was not used to calculate the correct regular rate of pay used to calculate overtime rate, at any time during the PAGA Period (“Aggrieved Employees”). (Settlement Agreement, §§ 3(a)(1)-(5).) The PAGA Period is March 23, 2021 to approval. (*Id.*, § 3(a)(5).)

The Net Settlement Amount will be the Total Settlement Amount less the Court-approved Attorneys’ Fees and Costs, General Release Fee, and Settlement Administration Costs. (Settlement Agreement, § 3(a)(4).) If the Court approves the amounts requested for Attorneys’ Fees (\$189,000.00), Costs (\$8,005.91), the General Release Fee (\$9,000.00), and Settlement

² Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Settlement Agreement.

Administration Costs (\$5,000.00), then the Net Settlement Amount will be \$328,994.09.³ The Net Settlement Amount will be distributed as follows: 75 percent, or \$246,745.57, to the LWDA (the “LWDA Payment”), 25 percent, or \$82,248.52, to the Aggrieved Employees (the “Employees’ Portion”). (Settlement Agreement, §3(a)(5).) Each Aggrieved Employee will be entitled to payment of his or her *pro rata* share of the Employees’ Portion, based upon the number of pay periods they each worked during the PAGA Period (“Compensable Pay Periods”). (*Id.*, § 7(b).)

The payments to Aggrieved Employees will be treated and reported for tax purposes as 100 percent penalties, and the PAGA Settlement Administrator will be responsible for issuing IRS Forms 1099 as required. (*Id.*, § 7(b)(1).)

Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the requirements for approval by the Court based upon the relevant fairness factors, the relative strengths of the PAGA claim, the risk, expense, and complexity of further litigation, the benefit conferred by the Settlement, the scope of the release of claims, the experience and views of counsel, and the reasonableness of the Net Settlement Amount (consisting of the LWDA Payment and Employees’ Portion), Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee. Plaintiff respectfully requests that this Court approve the Settlement, award the Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee, and approve the LWDA Payment and Employees’ Portion, which are provided for by the Settlement and requested herein.

In order to efficiently present the Court with adequate information to determine whether to grant approval of the Settlement, Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Plaintiff was employed by Defendant as an hourly-paid Assembler from approximately

³ \$540,000 - \$189,000 - \$8,005.91 - \$9,000 - \$5,000 = \$328,994.09.

February 2015 to approximately November 2021. (Declaration of Leticia Vazquez (“Vazquez Decl.”) ¶ 2.)

On March 23, 2022, pursuant to California Labor Code section 2699.3, Plaintiff provided the LWDA and Defendant with written notice (the “PAGA Notice”) of her intent to seek civil penalties under PAGA for alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, to which the LWDA did not respond. (Zabehi Decl., ¶ 10, Ex. 2.)

On June 7, 2022, Plaintiff filed her Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Complaint”) against Defendant. Plaintiff asserts that Defendant has violated the California Labor Code and Industrial Welfare Commission Wage Orders by engaging in a uniform practice and procedure, with respect to Plaintiff and other aggrieved employees, of, *inter alia*, failing to pay minimum, regular, and overtime wages, failing to provide compliant meal and rest periods and associated premiums, failing timely to pay wages during employment and upon termination of employment, failing to provide complete and accurate wage statements, failing to keep complete and accurate payroll records, failing to properly calculate the regular rate of pay, and failing to reimburse necessary business-related expenses and costs.

On May 3, 2023, Defendant filed an Answer to the Complaint. Defendant denies Plaintiff’s allegations and asserts numerous affirmative defenses. Indeed, throughout the litigation of this matter, Defendant has vigorously disputed that it violated any provisions of the California Labor Code. (Zabehi Decl., ¶ 11.)

The Parties agreed to participate in a mediation with the Honorable Raul A. Ramirez (ret.), a well-respected mediator experienced in mediating complex labor and employment matters. (Zabehi Decl., ¶ 9.)

On November 16, 2023, the Parties mediated with the Honorable Raul A. Ramirez (ret.). (Zabehi Decl., ¶ 9.) The matter did not settle at mediation. (*Id.*)

Thereafter, on May 9, 2023, Plaintiff served the following discovery requests on

Defendant: Form Interrogatories-General (Set One), Requests for Production of Documents (Set One), Special Interrogatories (Set One), and Special Interrogatories (Set Two). (Zabehi Decl., ¶ 54.) Plaintiff also propounded two Person Most Knowledgeable (PMK) deposition notices for the organizational structure of Defendant and job description. (*Id.*) Shortly thereafter, on June 26, 2023, the Parties agreed and filed a Joint Stipulation regarding their Agreement to Mediate and therefore stay litigation and formal discovery including depositions pending the mediation. (*Id.*) As stated in the Joint Stipulation filed on June 26, 2023, Defendant produced a variety of information and documents informally in preparation of mediation. (*Id.*) Defendant produced thousands of pages of documents, including but not limited to 25% sampling of time records with corresponding payroll records of aggrieved employees, any and all relevant employee handbooks and policies in effect during the covered period, Plaintiff's time and pay records. (*Id.*) In total, through informal and formal discovery, Defendant produced thousands of pages in documents, which Plaintiff's Counsel analyzed to evaluate the potential PAGA penalties at issue. (*Id.*)

While the action did not settle at the time of mediation, the Parties continued settlement discussions facilitated by the mediator, Honorable Raul A. Ramirez (ret.). (*Id.*, ¶ 9.) In January 2024, the Parties agreed to a settlement based on the Honorable Raul A. Ramirez's (ret.) mediator's proposal. (*Id.*) The Settlement Agreement was fully executed as of April 24, 2024. (*Id.*, ¶ 9, Ex. 1.)

Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(1)(2). The Settlement Agreement and these moving papers are being submitted to the LWDA in conformity with California Labor Code section 2699(1)(2), as stated in the Proof of Service filed concurrently herewith.

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Settlement pertains to the following aggrieved employees: "all current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California who

1 earned shift differentials/non-discretionary performance pay which was not used to calculate the
2 correct regular rate of pay used to calculate overtime rate, at any time during the PAGA Period.”
3 (Settlement Agreement, § 3(a)(5).) The PAGA Period is March 23, 2021 through approval.
4 (*Id.*, § 3(a)(5).) As of December 4, 2024, Defendant’s counsel has confirmed that the Aggrieved
5 Employees are estimated to consist of 307 individuals who worked approximately 12,700
6 Compensable Pay Periods during the PAGA Period.

7 **B. Distribution of the Total Settlement Amount**

8 Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement
9 Amount of \$540,000.00. (*Id.*, §§ 3(a)-(b).) The Net Settlement Amount will be the Total
10 Settlement Amount less the following requested amounts (if approved): (1) Attorneys’ Fees and
11 Costs consisting of attorneys’ fees of \$189,000.00 and reimbursement of litigation costs and
12 expenses of \$8,005.91 to Plaintiff’s Counsel; (2) General Release Fee of \$9,000.00 to Plaintiff;
13 and (3) Settlement Administration Costs of \$5,000.00 to the proposed PAGA Settlement
14 Administrator, Phoenix Settlement Administrators. (“Phoenix” or “PAGA Settlement
15 Administrator”). (*Id.*, § 3(a)(3).) The Net Settlement Amount will be fully distributed to the
16 Aggrieved Employees and the LWDA, as described in Part III.C, *infra*.

17 **C. Distribution of the Net Settlement Amount**

18 Within fourteen (14) calendar days of the Court’s order granting approval of the
19 Settlement, Defendant will transmit the Total Settlement Amount to a qualified settlement
20 account established by the PAGA Settlement Administrator for administration of the Settlement.
21 (Settlement Agreement, § 7(a).) No later than seven (7) calendar days after the Court’s order
22 granting approval of the Settlement, Defendant shall provide the PAGA Settlement
23 Administrator with a list of all Aggrieved Employees (the “Aggrieved Employees List”),
24 containing the following information for each Aggrieved Employee: (i) first and last name; (ii)
25 last known address; (iii) last known telephone number; (iv) Social Security number; and (v)
26 Compensable Pay Periods. (*Id.*, § 7(c)(1).)

27 Seventy-five percent of the Net Settlement Amount (or approximately \$246,745.57) will
28

be distributed to the LWDA, and 25 percent of the Net Settlement Amount (or approximately \$82,248.52) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods. (*Id.*, § 3(a)(5).) To calculate each Aggrieved Employee’s share of the Employees’ Portion (“Individual Settlement Share”), the PAGA Settlement Administrator will: (i) for each Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees’ Portion to arrive at each Aggrieved Employee’s Individual Settlement Share. (*Id.*, § 7(b).) The payments to Aggrieved Employees for their Individual Settlement Shares will be considered 100 percent penalties to be reported on IRS Form 1099, if required. (*Id.*, § 7(b)(1).)

No later than 14 calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator will mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the “PAGA Settlement Package”) to all Aggrieved Employees by first-class United States mail. (*Id.*, § 7(c)(3).) For each PAGA Settlement Package that is returned as undeliverable within 30 calendar days of the initial mailing, the PAGA Settlement Administrator will promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one re-mailing of the PAGA Settlement Package. (*Id.*)

The Individual Settlement Share checks issued to Aggrieved Employees will remain valid for 90 calendar days, and then will be canceled. (*Id.*, § 7(c)(4).) Funds associated with canceled checks will be transmitted to the State Controller’s Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of their respective Individual Settlement Share(s). (*Id.*)

D. The Scope of the Release in the Settlement Agreement

Upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, Plaintiff and the State of California with respect to the Aggrieved Employees will be deemed to have knowingly and voluntarily released and

forever discharged Released Parties from the Released Claims. (Settlement Agreement, § 8(a).)

The “Released Claims” are defined as:

any and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, *et seq.* (“PAGA”) as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business-related expenses and costs, in violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 1-2001, 4-2001, and 9-2001.

(*Id.*)

The “Released Parties” are defined as:

Defendant, including Defendant’s parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs.

(*Id.*)

The Settlement Agreement also provides for a general release by Plaintiff of her individual claims with California Civil Code section 1542 waiver. (*Id.*, § 8(b).)

E. No Right to Object to, or Opt Out of, the Settlement

“[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546. “Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at 5. A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are “nonparty aggrieved employees who are not given notice of, and an opportunity to be heard in, a representative action that is not brought as a class

1 action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other
2 potentially aggrieved employees parties” to the action and no “due process concerns arise under
3 PAGA because absent employees do not own a personal claim for PAGA civil penalties and
4 whatever personal claims the absent employees might have for relief are not at stake.” *Williams,*
5 *supra*, 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756,*
6 *AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation*
7 *Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

8 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
9 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v.*
10 *Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29
11 Cal.3d 462, 474.) A “judgment in such an action is binding not only on the named employee
12 plaintiff but also on government agencies and any aggrieved employee not a party to the
13 proceeding” because “the employee plaintiff represents the same legal right and interest as state
14 labor law enforcement agencies[.]” “collateral estoppel applies [...] against those for whom the
15 party acted as an agent or proxy[.]” and “[w]hen a government agency is authorized to bring an
16 action on behalf of an individual or in the public interest, and a private person lacks an
17 independent right to bring the action, a person who is not a party but who is represented by the
18 agency is bound by the judgment as though the person were a party.” *Arias, supra*, at 985-86
19 (citations omitted); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476
20 (aggrieved employee cannot opt out of a PAGA settlement).

21 As such, the Settlement is consistent with the law, and there is no requirement that the
22 Aggrieved Employees be provided with a mechanism to opt out of or object to the Settlement.

23 **IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT**

24 PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or
25 herself and on behalf of other aggrieved employees and the State of California to recover civil
26 penalties which, outside of PAGA, only the LWDA can assess upon and collect from an
27 employer. (Lab. Code § 2699(a).) Before bringing a civil action under PAGA, an employee
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1 must comply with California Labor Code section 2699.3 (Lab. Code § 2699(a)), which Plaintiff
2 has done here. (Zabehi Decl., ¶ 10, Ex. 2.)

3 Any settlement of PAGA claims must be reviewed and approved by the trial court to
4 “ensur[e] that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court*
5 (2017) 3 Cal.5th 531, 549; see also Cal. Lab. Code, § 2699(l)(2).) However, “[t]he legal
6 authority identifying the proper standard of review of PAGA settlements to be employed by the
7 court is still nascent.” (*Middleton v. Halliburton Energy Services, Inc.* (E.D. Cal. May 2, 2024)
8 No. 1:19-cv-01747-CDB, 2024 WL 1930691, at *2.)

9 “[A] trial court should evaluate a PAGA settlement to determine whether it is fair,
10 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
11 deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA,*
12 *Inc.* (2021) 72 Cal.App.5th 56, 77.) Factors that “can be useful in evaluating the fairness of a
13 PAGA settlement” include “the strength of the plaintiff’s case, the risk, the stage of the
14 proceeding, the complexity and likely duration of further litigation, and the settlement amount.”
15 (*Id.*)

16 A PAGA settlement is a settlement of claims for penalties and other remedies which the
17 LWDA could assess and collect on behalf of employees without their involvement or approval.
18 “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
19 to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D.
20 Cal. Apr. 2, 2020) No. 08-civ-2073 MHP, 2010 WL 1340777, at *5.) This renders the approval
21 process of a PAGA settlement distinct from a class action settlement, and the Court need not
22 employ the two-step approval process that applies to a class action settlement, under both state
23 and federal law.

24 The appropriate appellate standard of review for PAGA settlements is “abuse of
25 discretion.” (*Moniz, supra*, 72 Cal.App.5th at 78.) The appellate court “determine[s] only
26 whether the trial court acted within its broad discretion in approving the settlement.” (*Id.*)
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V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

The Settlement resulted from hard-fought negotiations, fulfills the objectives of the PAGA statute, is fair, adequate, and reasonable, and meets all of the criteria for approval for the reasons discussed below.

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

A settlement that is “the product of extensive and hard-fought adversarial negotiations between the parties” is entitled to a presumption of fairness. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) In the comparable context of class action settlements, courts have held that a settlement is entitled to “a presumption of fairness . . . where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objections is small.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The fourth factor is not applicable to PAGA settlements, as there is no class notice provided to aggrieved employees. But the first three factors are applicable and are satisfied here.

The Settlement Agreement here was reached through arm’s-length negotiations and sufficient investigation and discovery. Through informal discovery, Plaintiff’s Counsel obtained substantial documentation from Defendant, including the employment records of Plaintiff, a sampling of aggrieved employees’ time and pay data, Defendant’s Employee Handbook, Timekeeping policy, Meal and Rest Period Obligations Policy, Employee List, Dress Code Policy, various agreements and acknowledgments (such as, Defendant’s Arbitration Agreement, Acknowledgement of Standards of Work Conduct Policy, Acknowledgement of Meal and Rest Period Obligation), and Defendant’s operations and employment practices, policies, and procedures, among other documents; after evaluating extensive information, data, and documents obtained from Plaintiff, Defendant, and other sources, Plaintiff’s Counsel calculated the potential PAGA Penalties, and then embarked upon negotiating and reaching a settlement (*Zabehi Decl.*, ¶¶ 11-47.) The parties participated in a full-day mediation with Defendant and mediator the Honorable Raul A. Ramirez (ret.), but the matter did not settle right

away at the mediation, and Plaintiff's Counsel thereafter served written discovery requests on Defendant, to which Defendant responded, and continued to engage with Defendant in settlement discussions facilitated by Judge Ramirez. (*Id.*, ¶¶ 9 & 54.) Ultimately, the Parties reached a settlement based on Judge Ramirez's mediator's proposal. (*Id.*, ¶ 9.) The fact that the Settlement Agreement was the product of a mediation, continued discussions, and a mediator's proposal, supports a finding that the Settlement Agreement is fair, adequate, and reasonable. (See, e.g., *Fritsch v. Swift Transportation Co. of Arizona, LLC* (C.D. Cal. Jan. 4, 2022) No. 5:17-cv-02226-VAP, 2022 WL 17095951, at *2 [noting that the settlement agreement was the product of three mediation sessions and "therefore presumptively the product of a non-collusive, arms-length negotiation"].)

Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring regarding the arbitration agreement allegedly signed by Plaintiff, drafting and opposing Defendant's Motion to Compel Arbitration, attending court hearings, evidentiary hearings, meeting and conferring with Defendant's counsel regarding the mediation and settlement, among other issues; case strategy and analysis; drafting, reviewing, and revising the mediation brief; and preparing for the mediation and settlement negotiations. (*Id.*, ¶ 54.) Counsel for the Parties have further invested time to research the applicable law, which is evolving as it relates to representative PAGA actions, off-the-clock theory, regular rate, wage-and-hour enforcement, and arbitration agreements, Plaintiff's claims and allegations, and Defendant's defenses, as well as facts discovered. (*Id.*)

Plaintiff's Counsel has extensive experience handling representative and class action wage-and-hour litigation. (Zabehi Decl., ¶¶ 2-7.) Based on that experience, Plaintiff's Counsel believes that the settlement is a fair, adequate, and reasonable resolution of this matter. (*Id.*, ¶ 65.) (See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 [opinion of experienced counsel is entitled to considerable weight]; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 [recommendations of plaintiffs' counsel should be given a presumption of reasonableness].)

1 Because the Settlement Agreement was the product of arm's-length negotiations
2 between adversarial parties, including via a mediation and mediator's proposal issued by an
3 experienced mediator, was based on Plaintiff's Counsel's review and analysis of substantial
4 information and documents obtained from Defendant (in advance of mediation and subsequent
5 to mediation through informal discovery), and, in the opinion of Plaintiff's Counsel, is an
6 excellent result for Plaintiff, the Aggrieved Employees and the State of California, the Court
7 should approve the Settlement Agreement as fair, adequate and reasonable. (*Id.* ¶¶ 54 & 65.)

8 **B. The Relative Strength of the PAGA Claims and the Range of Possible**
9 **Outcomes in the Litigation Strongly Favor Approval of the Settlement**

10 In order for Plaintiff to prevail on the PAGA claim, she would have to prove that
11 Defendant engaged in the alleged California Labor Code and Industrial Welfare Commission
12 Wage Order violations and demonstrate that Defendant's conduct warrants the imposition of
13 penalties. (See, e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169,
14 1181-82 ["Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because
15 all of plaintiff's other claims fail as a matter of law, so does her PAGA claim."].)

16 Here, based on Plaintiff's Counsel's analysis of the records and other discovery obtained
17 from Defendant, Plaintiff's Counsel is confident in her claims and believes she would prevail at
18 trial. Nonetheless, there are always risks in litigation, and Defendant has maintained several
19 defenses to Plaintiff's theory of liability, which, if successfully argued and proven, had the
20 potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendant
21 maintained, and continues to maintain, that it had, and continues to have, legally-compliant
22 employment policies and practices throughout the time period at issue. (Zabehi Decl., ¶ 11.)
23 Defendant denies that it ever violated any provision of the California Labor Code or Industrial
24 Welfare Commission Wage Orders, including, but not limited to, those sections for which
25 Plaintiff seeks penalties under PAGA. (*Id.*) Further, it is anticipated that Defendant would argue
26 that, even if Plaintiff were to prove liability, the Court has substantial discretion in determining
27 PAGA penalties and would significantly reduce penalties here.

Also, there is a risk that the Court would, in its discretion, significantly reduce the PAGA penalties. The PAGA statute gives courts the discretion to award a lesser amount than the maximum penalties. (See Cal. Lab. Code, § 2699(e)(2) [“In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), 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.”].) Applying this discretion, courts often significantly reduce the amount awarded for PAGA penalties. (See, e.g., *Fleming v. Covidien Inc.* (C.D. Cal. Aug. 12, 2011) No. 10-cv-01487, 2011 WL 7563047, at *4 [court reduces \$2.8 million PAGA penalty to \$500,000 pursuant to § 2699(e)]; *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming trial court’s reduction of the \$50 maximum penalty (per initial violation) to only \$5 per initial violation]; *Kaanaana v. Barrett Bus. Servs.* (2018) 29 Cal.App.5th 778, 787 [trial court reduced PAGA penalties from \$1,390,800 to \$53,293.50].) Third, the above calculations for PAGA penalties assume that the Court would apply increased penalty rates for subsequent violations. However, some courts have required a showing of the employer’s notice of an initial violation before heightened penalties apply for subsequent violations. (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.)

There is also uncertainty due to the fact Defendant also contended that the claims of Plaintiff and other Aggrieved Employees are subject to enforceable arbitration agreements that included a waiver of the right to join or participate in a class action or representative action, act as a private attorney general or representative of others, or otherwise consolidate a covered claim with others. (Zabehi Decl., ¶ 42.) Defendant contended that, taken together, these agreements would have claim preclusive impact, or otherwise, could effectively be used to require Aggrieved Employees to engage in individual arbitration of their individual claims on which the PAGA claim is predicated. (*Id.*) There is uncertainty regarding PAGA claims due to decisions of the high courts and recent amendment of the PAGA statute. The decisions of the high court include, and are not limited to the U.S. Supreme Court’s decision in *Viking River Cruises, Inc.*

1 v. *Moriana* (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940,4 and the California Supreme
2 Court's decision in *Adolph v. Uber Technologies* (2023) 14 Cal.5th 1104. The decision by the
3 California Supreme Court in *Adolph v. Uber Technologies* confirmed that PAGA representative
4 claims are viable and can continue to be prosecuted, however it also suggests, that trial courts
5 will stay the representative/non-individual PAGA claims pending arbitration of a plaintiff's
6 individual PAGA claims. The *Adolph v. Uber Technologies* also suggests that, if a plaintiff is
7 determined to not be an "aggrieved employee" for PAGA purposes, issue preclusion could apply
8 and, once reduced to a final judgment, trial courts are bound by the arbitrator's determination
9 and the plaintiff may lose standing to pursue non-individual PAGA claims. (Zabehi Decl., ¶ 46.)

10 Moreover, while Plaintiff disagrees with Defendant's contentions and maintains that
11 Defendant has violated the California Labor Code and Industrial Welfare Commission Wage
12 Orders as alleged in the Complaint, Plaintiff and her counsel, in reaching the Settlement, with
13 the benefit of the mediator's evaluation, took into account the strengths and weaknesses of each
14 side's position and the uncertainty of how the case might have concluded as litigation continued,
15 at trial, and/or appeals. (*Id.*, ¶ 44.) In light of these risks, Plaintiff's Counsel strongly believes
16 that the Settlement achieved is a good result for the State of California and the Aggrieved
17 Employees.

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

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

24 Prior to reaching the Settlement, Plaintiff's Counsel investigated the veracity, strength,
25 and scope of the PAGA claim and was preparing for trial. (Zabehi Decl., ¶ 54.) Plaintiff's
26 Counsel considered a large volume of information, documents, and data obtained from Plaintiff,
27 Defendant, and other sources, that were relevant to the PAGA claim and alleged violations and
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1 calculated the potential monetary recovery under PAGA. (*Id.*) Other work performed by
2 Plaintiff's Counsel included, but was not limited to: meeting and conferring regarding the
3 arbitration agreement allegedly signed by Plaintiff, drafting and opposing Defendant's Motion
4 to Compel Arbitration, meeting and conferring with Defendant's counsel regarding the
5 mediation and settlement, among other issues; case strategy and analysis; drafting, reviewing,
6 and revising the mediation brief; drafting discovery requests; drafting notices of deposition; and
7 preparing for and attending the mediation and settlement negotiations as well as court
8 proceedings. (*Id.*)

9 Had the case not settled, the Parties would have conducted extensive formal discovery,
10 including continued meet and confer efforts regarding discovery, potentially seeking informal
11 discovery conferences and/or filing motions to compel discovery, propounding additional
12 written discovery requests as well as multiple depositions of party and percipient witnesses all
13 over the State of California, to prepare the case for trial. From the inception of this litigation,
14 Defendant indicated that it would aggressively litigate this case. (Zabehi Decl., ¶ 11.) Even if
15 Defendant failed on its defenses, litigating a complex PAGA action is inherently expensive, and
16 the litigation could continue beyond entry of judgment if either party were to appeal adverse
17 rulings. Additionally, there is a real possibility that Plaintiff would recover nothing, either for
18 herself or on behalf of the State of California or other Aggrieved Employees after years of costly
19 and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious
20 litigation, which would involve significant costs, favors settlement.

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

22 “[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an
23 abandoning of highest hopes.’” (*Officers for Justice v. Civil Service Comm’n* (9th Cir. 1981)
24 688 F.2d 615, 624.) “The proposed settlement is not to be judged against a hypothetical or
25 speculative measure of what might have been achieved by the negotiators.” (*Id.* at 625.)

26 The Settlement provides significant benefits to the State of California and the Aggrieved
27 Employees and falls well within the range of acceptable settlements under the circumstances.
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Under the Agreement, Defendant has agreed to pay a Total Settlement Amount of \$540,000.00, which encompasses the Net Settlement Amount, Attorneys' Fees and Costs, Settlement Administration Costs, and General Release Fee. (Settlement Agreement, §§ 3(a), 3(a)(1)-(5).) Subject to approval by the Court, the following amounts will be subtracted from the Total Settlement Amount to yield the Net Settlement Amount: (1) Attorneys' Fees and Costs consisting of attorneys' fees in the amount of \$189,000.00 and reimbursement of litigation costs and expenses in the amount of \$8,005.91 to Plaintiff's Counsel; (2) the Settlement Administration Costs of \$5,000.00; and (3) General Release Fee of \$9,000.00 to Plaintiff. (*Id.*, §§ 3(a)(1)-(4).)

The Net Settlement Amount is currently estimated to be \$328,994.09, of which an estimated \$82,248.52 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods, and \$246,745.57 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i). Considering all of the facts in this case, Plaintiff and her counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the Aggrieved Employees and the State of California. (Zabehi Decl., ¶ 65.)

The result achieved in this case, and the monetary recovery provided by this settlement, are well-within the range of an acceptable settlement under the circumstances, especially when compared to the settlement of PAGA claims in other cases. See, e.g. *Matter of Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 588-590 (No abuse of discretion by the trial court in approving the allocation of \$0 toward PAGA penalties, where PAGA claim is resolved as a part of an overall resolution of the underlying California Labor Code violations); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL 5941801, at *14 (Approving allocation of \$10,000, out of the settlement of \$2.5 million, toward the settlement of the PAGA claim); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) No.1:10-CV-0324-AWI-SKO, 2012 WL 5364655, at *3 (Approving the allocation of \$10,000, out of the

1 settlement of \$3.7 million, toward the settlement of the PAGA claim); *Chu v. Wells Fargo*
2 *Investments, LLC* (N.D. Cal. Feb. 16, 2011) No. C 05-4526 MHP, C 0647924 MHP, 2011 WL
3 672645, at *1 (Approving the allocation of \$10,000, out of the settlement of \$6.9 million, toward
4 the settlement of the PAGA claim); *Jack v. Hartford Ins. Co.* (S.D. Cal. Oct. 13, 2011) No. 3:09-
5 cv-1683-MMA (JMA), 2011 WL 4899942, at *18 (Approving the allocation of \$3,000, out of
6 the settlement of \$1.2 million, toward the settlement of the PAGA claim); *Schiller v. David's*
7 *Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14 (approving the allocation of
8 \$10,000, out of the settlement of \$518,245, toward settlement of the PAGA claim).

9 Plaintiff's Counsel also considered that a court may reduce the amount of PAGA
10 penalties awarded to an employee based upon discretionary factors other than the employer's
11 ability to pay, and that many trial courts have significantly reduced PAGA civil penalties or
12 altogether declined to award PAGA civil penalties. See, e.g., *Fleming v. Covidien, Inc.* (C.D.
13 Cal. Aug. 12, 2011) No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590, at **8-
14 9 (Out of \$2,800,000 PAGA penalties requested, the court awarded \$500,000.); *Thurman v.*
15 *Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136, disapproved on other
16 grounds (Out of \$512,000 PAGA penalties requested, the court awarded \$358,588.); *Aguirre v.*
17 *Genesis Logistics* (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist.
18 LEXIS 189820, at **6-7 (Out of \$1,800,000 PAGA penalties requested, the court awarded
19 \$500,000.); *Halevi v. Aroma Bakery Café, Inc.* (Aug. 30, 2013) Los Angeles County Superior
20 Court No. 468146 (The court declined to award PAGA penalties after trial, although at trial the
21 court awarded wages to class, on the basis that, *inter alia*, action was not prompted by
22 availability of PAGA penalties, penalties were not necessary to remedy ongoing or future
23 violations, and plaintiffs did not offer evidence establishing imposition of penalties on
24 individual defendants would not be confiscatory.); *Makabi v. Gedalia* (Mar. 2, 2016) No.
25 B261005, 2016 Cal. App. Unpub. LEXIS 1489, at **6-7 (Noting that the trial court found in
26 favor of plaintiffs on California Labor Code violation claims, but declined to award any PAGA
27 penalties.); *Arnold v. San Diego Second Chance Program* (Dec. 18, 2017) San Diego County
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Superior Court No. 37-2016-00018375 (No PAGA penalties awarded.); *Felczner v. Apple Inc.* (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593 (No PAGA penalties awarded.); *Allen v. American Multi-Cinema* (July 24, 2016) Alameda County Superior Court No. RG11585502 (No PAGA penalties awarded.); *Atempa v Pama* (July 31, 2015) San Diego County Superior Court (Out of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00.); *Driscoll v Granite Rock* (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426 (The court declined to award PAGA penalties.); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, at *41 (The court declined to award PAGA penalties after trial.); *Morales v Bridgestone Retail Operations LLC* (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244 (Out of \$7 million PAGA penalties requested, the court awarded \$425,000.); *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (Out of \$75 million in penalties sought, the court affirmed the trial court’s \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty rate to \$5 per violation.).

Here, the value obtained for settlement of the PAGA claims is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

E. The Experience and Views of Plaintiff’s Counsel Favor Approval of the Settlement

Plaintiff’s Counsel is highly experienced in complex representative and class action wage-and-hour litigation. (Zabehi Decl., ¶¶ 2-7.) In the view of Plaintiff’s Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement. (Zabehi Decl., ¶ 65) Furthermore, courts have acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]” *Williams, supra*, 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

VI. **THE PROPOSED ATTORNEYS' FEES PAYMENT IS FAIR AND REASONABLE, AND SHOULD BE APPROVED**

Plaintiff's Counsel requests an award of Attorneys' Fees of \$189,000.00, which is 35 percent of the Total Settlement Amount. Plaintiff's Counsel respectfully submits that this amount is reasonable and warrants approval.

"Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs." (Cal. Lab. Code § 2699(g)(1).) Plaintiff's Counsel is also entitled to fees and costs under Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for the benefit" of others and secures a significant monetary recovery for approximately 1,205 Aggrieved Employees, as well as the State of California. (See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17 [recognizing that recovery obtained on behalf of 209 individuals satisfies the "significant benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff's personal motivation].) The settlement will also benefit the LWDA in enforcing labor laws and educating "employers and employees about their rights and responsibilities under [the California Labor Code]." (Cal. Lab. Code § 2699(i).)

In evaluating the reasonableness of a requested attorneys' fees award, the court has the discretion to apply a percentage-of-the-fund method or a lodestar method. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 489.) While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund method, the California Supreme Court has taken the position that trial courts also "retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee" and "[t]he percentage of fund method survives in California." *Id.* (internal quotes omitted); see also *Wershba, supra*, 91 Cal.App. 4th at 253.

Courts award fees to serve as an economic incentive for lawyers to undertake litigation, and thereby enhance and facilitate access to the judicial system for adjudication of meritorious claims, and to deter wrongdoing. This is especially true in situations where multiple similar

1 alleged wrongs would not be economically feasible to pursue individually, such as here. See *A.*
2 *Conte, Attorney Fee Awards* (2d ed. 1993) 104, at 6.

3 The court has “wide latitude” in assessing the value of attorneys’ fees, and its decision
4 will “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial*
5 *Cal., Inc.* (2000) 82 Cal.App.4th 19, 41.) Indeed, the “experienced trial judge is the best judge
6 of the value of professional services rendered in his court.” (*Ketchum v. Moses* (2001) 24
7 Cal.4th 1122, 1132.)

8 The percentage method is particularly appropriate where a monetary settlement has been
9 recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset Prods.*
10 *Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a “certain
11 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
12 percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil*
13 *Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.

14 The percentage fee method is preferred in representative actions because “it better
15 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
16 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be
17 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
18 based on the result achieved and risk incurred. See *Lealao, supra*, 82 Cal.App.4th at 47-50;
19 *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the
20 defendant will pay the plaintiff’s attorneys a percentage of the fund created by the settlement,
21 use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards
22 that are too small will “chill the private enforcement essential to the vindication of many legal
23 rights and obstruct the representative actions that often relieve the courts of the need to
24 separately adjudicate numerous claims.” *Id.* at 53. Therefore, fees in representative actions
25 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
26 attorney and client in comparable litigation. *Id.* at 48. “The ultimate goal . . . is the award of a
27 ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of
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calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court*, *supra*, 126 Cal.App.4th at 1270)

A. Under the Percentage-of-the-Fund Method, the Requested Attorneys’ Fees Award is Reasonable

Here, the requested Attorneys’ Fees amount of \$189,000.00, which is 35 percent of the Total Settlement Amount (\$540,000.00), is justified. Historically, courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of the case. (*See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 [awarding attorneys’ fees in the amount of 45% of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 [awarding approximately 53% of the settlement as attorneys’ fees].) California courts routinely approve attorneys’ fees awards “averag[ing] around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 [lower court found the range of contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee was appropriate].)

Plaintiff’s Counsel has litigated this case for over two years, since prior to the submission of the PAGA Notice to the LWDA and Defendant on March 23, 2022, with the very real possibility of an unsuccessful outcome and no fee recovery of any kind. Plaintiff’s Counsel undertook significant investigation, and also invested time reviewing and analyzing relevant documents and data to evaluate the claims, including, and not limited to, calculating the potential monetary recovery under PAGA. (*Id.*, ¶¶ 11-47.) Other work performed by Plaintiff’s Counsel included, but was not limited to: meeting and conferring regarding the arbitration agreement allegedly signed by Plaintiff, drafting and opposing Defendant’s Motion to Compel Arbitration, meeting and conferring with Defendant’s counsel regarding case management, mediation and settlement, among other issues; case strategy and analysis; drafting, reviewing, and revising pleadings, the mediation brief and analyses, and discovery; and preparing for and participating in mediation and continued settlement negotiations. (*Id.*)

Further, the percentage rate sought here (35 percent) is justified by Plaintiff's Counsel's extensive experience in complex wage-and-hour litigation, which Plaintiff's Counsel applied to obtain a great result for Plaintiff, the Aggrieved Employees, and the State of California. (*Id.*, ¶¶ 6-7.) Considering the amount of fees requested, work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar matters, the requested attorneys' fees are reasonable.

B. The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Plaintiff's Counsel Has Performed Work That Is of Significant Value Based on Reasonable Hours and Prevailing Hourly Rates of Compensation

The lodestar cross-check confirms that the amount of Attorneys' Fees requested is reasonable. The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. (*Ketchum, supra*, 24 Cal.4th at 1131-32.) Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. (*Id.* at 1133.)

1. Plaintiff's Counsel Performed Work for a Reasonable Number of Hours

The reasonableness of hours is assessed by "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" (*Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.)

As discussed above, this case was highly contested and required a significant amount of time and labor, including drafting the Complaint, analyzing thousands of pages of information, documents, and data, preparing liability and penalties exposure analyses, drafting and opposing Defendant's Motion to Compel Arbitration, preparing for evidentiary hearing on arbitration agreement, preparing the mediation brief, drafting discovery, drafting deposition notices, meeting and conferring with Defendant's counsel, continuing settlement discussions, and negotiating the Settlement Agreement. Defendant made it clear very early on that it disputed all of Plaintiff's allegations and disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*, that it had compliant employment policies and practices

throughout the time period at issue. (Zabehi Decl., ¶ 11.) Defendant raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and analyzing information, documents, and data from Plaintiff, Defendant, and other sources. (*Id.*, ¶¶ 11, 44, 48, 53, 54.) The handling of this litigation involved a great amount of effort, and also required and involved the exercise of a high level of skill and experience, which Plaintiff’s Counsel has, as a result of Counsel’s extensive experience in complex wage-and-hour litigation. (*Id.*, ¶¶ 2-7.)

Attached as “**Exhibit 3**” to the Declaration of Tara Zabehi is the Attorney Task and Time Chart that sets forth in detail the numerous tasks that Plaintiff’s Counsel performed in this case, and the time required for completing those tasks. (Zabehi Decl., ¶ 50, Ex. 3.) The chart demonstrates that Lawyers *for* Justice, PC has spent a total of **248.60 hours** on this matter. (*Id.*) In light of the facts and circumstances of this case, as well as the results Plaintiff’s Counsel has achieved on behalf of Plaintiff, the Aggrieved Employees, and the State of California, the amount of hours Plaintiff’s Counsel has dedicated to this matter is reasonable.

**2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation
in Light of Plaintiff’s Counsel’s Efforts and Experience**

Courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this matter. (See *Ketchum, supra*, 24 Cal.4th at 1132-33.) In awarding attorneys’ fees, the aim is to mirror “the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases.” (*Id.*)

Plaintiff’s Counsel has been actively involved in the prosecution of this case, prior to its commencement through the present, and their dedication to the representation of Plaintiff, the Aggrieved Employees, and the State of California has precluded other employment. Here, Plaintiff’s Counsel bore the risk that, despite all of their efforts and skills employed, there may

be no recovery. Ultimately, Plaintiff's Counsel was successful in reaching the Settlement, which involves a Total Settlement Amount of \$540,000.00.

While the circumstances of every case are unique, the fact remains that the work performed and efforts undertaken by Plaintiff's Counsel in this matter justify the requested attorneys' fees award.

The lodestar method, as a cross-check to the percentage fee sought, strongly supports the reasonableness of the requested attorneys' fees award. Applying the individual hourly rates the attorneys at Lawyers for Justice, PC who performed **248.60 hours** of work in this matter, would place a base lodestar value of at least \$236,324.50 on the services provided by Plaintiff's Counsel. However, Plaintiff's Counsel only seeks an attorneys' fee award of \$189,000.00 (equal to 35% of the Total Settlement Amount based on the Settlement Agreement). As set forth in the Declaration of Tara Zabehi, the professional backgrounds and experience of Plaintiff's Counsel support a reasonable blended hourly rate of compensation of at least \$850 per hour for services provided by Plaintiff's Counsel. (Zabehi Decl., ¶ 52.)

Accordingly, Plaintiff respectfully requests that the Court approve and grant an attorneys' fees award in the amount of \$189,000.00 to Plaintiff's Counsel, which is reasonable and justified based on both the percentage-basis and the lodestar cross-check.

VII. COSTS TO BE REIMBURSED TO PLAINTIFF'S COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

Plaintiff's Counsel requests reimbursement for the litigation costs and expenses incurred in prosecuting this matter, in the total amount of \$8,005.91. (Zabehi Decl., ¶ 55, Ex. 4.) The requested amount is less than the maximum amount provided for in the Settlement Agreement of \$25,000.00. (Settlement Agreement, § 3(a)(1).) The cost savings of \$16,994.09 will be part of the Net Settlement Amount. (*Id.*, § 3(a)(4).)

The costs and expenses for which reimbursement is sought – including court filing fees, service fees, and mediation fees – are reasonable and were necessary to the prosecution and settlement of this matter. Further, Plaintiff's counsel has borne all of the risks and costs of

litigation to date and will not receive any compensation until a recovery is obtained in this matter.

Accordingly, Plaintiff's Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$8,005.91 to Plaintiff's Counsel. (See, e.g., *Bruce v. Del Monte Foods, Inc.* (N.D. Cal. Mar. 29, 2018) No. 16-cv-05891-JD, 2018 WL 8017998, at *2 [approving reimbursement of \$12,000 in costs for PAGA settlement].)

VIII. THE PROPOSED COVER LETTER TO THE AGGRIEVED EMPLOYEES SHOULD BE APPROVED

Although PAGA does not require notice to unnamed aggrieved employees of a settlement, the Parties prepared, and now present for the Court's consideration and approval, the Cover Letter for transmission to the Aggrieved Employees along with their Individual Settlement Share checks (together, the "PAGA Settlement Package"), substantially in the form attached as **Exhibit A** to the [Proposed] Order and Judgment and as "EXHIBIT A" to the Settlement Agreement. The Cover Letter informs the Aggrieved Employees about the action and the Settlement. Accordingly, Plaintiff respectfully requests that the Court approve the Cover Letter for transmission to the Aggrieved Employees at the time of disbursing their Individual Settlement Shares.

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Phoenix Settlement Administrator to handle the administration of the Settlement. (Settlement Agreement, § 3(a)(3).) The fees and expenses of the PAGA Settlement Administrator are estimated not to exceed \$5,000.00. (Declaration of Michael Moore, ¶ 17). The requested amount is less than the maximum amount provided for in the Settlement Agreement of \$7,500.00. (Settlement Agreement, § 3(a)(3).) The cost savings of \$2,500 will be part of the Net Settlement Amount. (*Id.*, § 3(a)(4).) The settlement administration costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual

Settlement Shares checks to the Aggrieved Employees (i.e., PAGA Settlement Package); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages to any updated addresses located; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of \$5,000.00 to Phoenix, a necessary third-party for handling the settlement process. (*See, e.g., Connelly v. Starbucks Corporation* (E.D. Cal. Sep. 29, 2023) 1:21-cv-000746-SAB, 2023 WL 6387077, at *19 [approving administration costs of up to \$16,000].)

X. THE PROPOSED GENERAL RELEASE FEE IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for a General Release Fee to be paid to Plaintiff in the amount of \$9,000.00 for her broader individual waiver and release of claims with a California Civil Code Section 1542 waiver (as set forth in Section 8(b) of the Settlement Agreement). (Settlement Agreement, § 3(a)(2).)

It is also worth nothing that Plaintiff contributed considerable time and effort to the litigation of this case in order to enforce the California Labor Code on behalf of the State of California and for the benefit of other Aggrieved Employees. Plaintiff discussed her employment with Plaintiff's Counsel, gathered and produced relevant documents and information, attended and was subject to testimony during an evidentiary hearing in Court, and provided the facts and evidence necessary to attempt to prove the allegations. (Vazquez Decl., ¶¶ 3 & 4.) Plaintiff was available whenever her counsel needed her and tried to obtain and provide documents and information that would aid in the litigation of the PAGA claim and pursuit of recovery on behalf of the State of California and Aggrieved Employees. (*Id.*)

Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the amount of \$9,000.00, in addition to the Individual Settlement Share she will receive as an Aggrieved Employee.

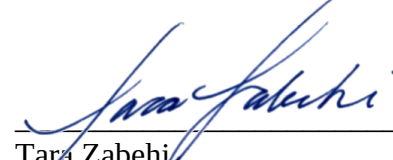
XI. CONCLUSION

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise of disputed claims that has been reached through arm's-length negotiations, in light of the risks, complexity, and expense of further litigation. Plaintiff respectfully requests that the Court approve the Settlement, including the plan of allocation and distribution of the Total Settlement Amount for the LWDA Payment to the LWDA, Individual Settlement Shares to the Aggrieved Employees, Attorneys' Fees and Costs to Plaintiff's Counsel, Settlement Administration Costs to the PAGA Settlement Administrator, and General Release Fee to Plaintiff, and permit the filing of a memorandum that exceeds the page limit.

Dated: January 29, 2025

LAWYERS for JUSTICE, PC

By:


Tara Zabehi
Attorneys for Plaintiff