

1 GRAHAMHOLLIS APC  
Graham S.P. Hollis (SBN 120577)  
2 ghollis@grahamhollis.com  
Dawn M. Berry (SBN 292335)  
3 dberry@grahamhollis.com  
3555 Fifth Avenue, Suite 200  
4 San Diego, California 92103  
Telephone: 619.692.0800  
5 Facsimile: 619.692.0822

6 Attorneys for Plaintiff Alejandro Jimenez  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10 ALEJANDRO JIMENEZ, as an individual on  
behalf of himself and all other similarly  
11 situated,

12 Plaintiff,

13 v.

14 GOLDEN STAR TECHNOLOGY, INC., a  
California corporation; DENNIS WANG, an  
individual; and DOES 1 through 50, inclusive,

15 Defendants.  
16  
17

Case No.: 22STCV21510

Assigned to Hon. Stuart M. Rice, Dept. 1

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
UNOPPOSED REVISED MOTION FOR AN  
ORDER APPROVING SETTLEMENT OF  
CLAIMS BROUGHT PURSUANT TO THE  
PRIVATE ATTORNEYS GENERAL ACT OF  
2004 AND REQUEST FOR AWARD OF  
ATTORNEYS' FEES, COSTS, SERVICE  
AWARD, AND SETTLEMENT  
ADMINISTRATION EXPENSES**

Date: August 28, 2024

Time: 10:30 a.m.

Dept: 1

Judge: Hon. Stuart M. Rice

[Notice of Motion; the Declaration of Graham S.P.  
Hollis; and [Proposed] Order are filed concurrently  
herewith]

## TABLE OF CONTENTS

|    |                                                                                                                                  | <b>Page</b> |
|----|----------------------------------------------------------------------------------------------------------------------------------|-------------|
| 1  |                                                                                                                                  |             |
| 2  |                                                                                                                                  |             |
| 3  | I. INTRODUCTION .....                                                                                                            | 1           |
| 4  | II. PROCEDURAL AND FACTUAL BACKGROUND.....                                                                                       | 2           |
| 5  | A. Plaintiff’s Allegations .....                                                                                                 | 2           |
| 6  | B. Defendants’ Position.....                                                                                                     | 3           |
| 7  | C. Case History and Discovery.....                                                                                               | 3           |
| 8  | III. SUMMARY OF SETTLEMENT .....                                                                                                 | 4           |
| 9  | A. Monetary Terms.....                                                                                                           | 4           |
| 10 | B. Distribution Procedure .....                                                                                                  | 5           |
| 11 | C. PAGA Released Claims .....                                                                                                    | 5           |
| 12 | IV. THE PAGA SETTLEMENT SHOULD BE APPROVED.....                                                                                  | 6           |
| 13 | A. The Settlement is the Result of Non-Collusive, Arm’s-Length, and Informed<br>Negotiations .....                               | 7           |
| 14 | 1. <i>The Settlement is the Product of Arm’s-Length Negotiations</i> .....                                                       | 7           |
| 15 | 2. <i>The Settlement is the Product of Informed Investigation and Discovery</i> .....                                            | 8           |
| 16 | 3. <i>Plaintiff’s Counsel is Highly Experienced In Similar Litigation</i> .....                                                  | 8           |
| 17 | B. The Settlement is Fair, Reasonable, and Adequate in Light of the Significant<br>Risks and Expense of Further Litigation ..... | 9           |
| 18 | C. The Court’s Ability to Reduce the Maximum Potential Civil Penalties Justifies<br>Approval of the Settlement. ....             | 10          |
| 19 | D. The Distribution of the Settlement Is Reasonable .....                                                                        | 10          |
| 20 | E. Plaintiff Submitted the Settlement Agreement to the LWDA .....                                                                | 11          |
| 21 | V. THE REQUESTED SERVICE AWARD TO PLAINTIFF IS JUSTIFIED .....                                                                   | 12          |
| 22 | VI. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE FAIR AND<br>REASONABLE .....                                                     | 13          |
| 23 | A. Plaintiff’s Counsel’s Fees Are Supported Under the Common Fund Theory .....                                                   | 13          |
| 24 | B. Plaintiff’s Attorneys’ Fees Are Also Recoverable Under The Lodestar Approach.....                                             | 14          |
| 25 | C. Plaintiff’s Litigation Costs Were Reasonable and Necessarily Incurred.....                                                    | 15          |
| 26 | VII. CONCLUSION.....                                                                                                             | 16          |
| 27 |                                                                                                                                  |             |
| 28 |                                                                                                                                  |             |

# TABLE OF AUTHORITIES

Page(s)

## Cases

|                                                                                               |          |
|-----------------------------------------------------------------------------------------------|----------|
| <i>Arias v. Superior Court</i><br>(2009) 46 Cal.4th 969 .....                                 | 11       |
| <i>Bank of America v. Cory</i><br>(1985) 164 Cal.App.3d 66 .....                              | 14       |
| <i>Bussey v. Affleck</i><br>(1990) 225 Cal.App.3d 1162 .....                                  | 15       |
| <i>Cellphone Termination Fee Cases</i><br>(2010) 186 Cal.App.4th 1380 .....                   | 12       |
| <i>Clark v. American Residential Services LLC</i><br>(2009) 175 Cal.App.4th 785 .....         | 6, 9, 12 |
| <i>Dunk v. Ford Motor Co.</i><br>(1996) 48 Cal.App.4th 1794 .....                             | 6, 7, 8  |
| <i>Harris v. Marhoefer</i><br>(9th Cir. 1994) 24 F.3d 16 .....                                | 15       |
| <i>Iskanian v. CLS Transp. Los Angeles, LLC</i><br>(2014) 59 Cal.4th 348 .....                | 13       |
| <i>Kullar v. Foot Locker Retail, Inc.</i><br>(2008) 168 Cal.App.4th 116 .....                 | 6, 7, 9  |
| <i>Laffitte v. Robert Half Int’l, Inc.</i><br>(2016) 1 Cal.5th 480 .....                      | 13       |
| <i>Lealao v. Beneficial Cal., Inc.</i><br>(2000) 82 Cal.App.4th 19 .....                      | 14       |
| <i>In re Media Vision Tech. Sec. Litig.</i><br>(N.D. Cal. 1996) 913 F.Supp. 1362 .....        | 15       |
| <i>Moniz v. Adecco USA, Inc.</i><br>(2021) 72 Cal.App.5th 56 .....                            | 6        |
| <i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i><br>(2010) 186 Cal.App.4th 399 ..... | 6        |
| <i>Nordstrom Com’n Cases</i><br>(2010) 186 Cal.App.4th 576 .....                              | 7        |

|    |                                                                                |               |
|----|--------------------------------------------------------------------------------|---------------|
| 1  | <i>O'Connor v. Uber Techs, Inc.</i>                                            |               |
| 2  | (2016) 201 F.Supp.3d 1110 .....                                                | 6             |
| 3  | <i>In re Omnivision Technologies, Inc.</i>                                     |               |
| 4  | (N.D. Cal. 2008) 559 F.Supp.2d 1036 .....                                      | 15            |
| 5  | <i>Serrano v. Priest</i>                                                       |               |
| 6  | (1977) 20 Cal.3d 25 .....                                                      | 14            |
| 7  | <i>State v. Levi Strauss &amp; Co.</i>                                         |               |
| 8  | (1986) 41 Cal.3d 460 .....                                                     | 7             |
| 9  | <i>Van Vranken v. Atlantic Richfield Co.</i>                                   |               |
| 10 | (N.D. Cal. 1995) 901 F.Supp. 294 .....                                         | 12            |
| 11 | <i>Viking River Cruises v. Moriana</i>                                         |               |
| 12 | (2022) 142 S. Ct. 1906.....                                                    | 3             |
| 13 | <i>Wershba v. Apple Computer, Inc.</i>                                         |               |
| 14 | (2001) 91 Cal.App.4th 224 .....                                                | 9             |
| 15 | <b>Statutes</b>                                                                |               |
| 16 | California Labor Code section 2698 et seq. (“PAGA”).....                       | <i>passim</i> |
| 17 | California Labor Code section 2699(e)(2).....                                  | 10            |
| 18 | California Labor Code section 2699(g)(1).....                                  | 13            |
| 19 | California Labor Code section 2699(l)(2).....                                  | 6, 11         |
| 20 | <b>Other Authorities</b>                                                       |               |
| 21 | <i>Manual for Complex Litigation</i> (Fourth) (2004) section 21.62 n.971 ..... | 12            |
| 22 | <i>Newberg on Class Actions</i> (5th ed. 2011-2017) section 13:45.....         | 7             |
| 23 | <i>Newberg on Class Actions</i> (5th ed. 2011-2017) section 13:53.....         | 8             |

# MEMORANDUM OF POINTS AND AUTHORITIES

## **I. INTRODUCTION**

Plaintiff Alejandro Jimenez (“Plaintiff”) seeks approval of the parties’ PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”),<sup>1</sup> which provides for Defendants Golden Star Technology, Inc. and Dennis Wang (“Defendants”) to fund a non-reversionary Gross Settlement Amount of \$114,000 on behalf of 43 current and former employees of Defendants in the State of California. The Court should approve the Settlement because it is fundamentally fair and reasonable. The Settlement resolves disputed representative wage and hour claims under the California Labor Code’s Private Attorneys General Act of 2004 (“PAGA”).<sup>2</sup> At all times, the negotiations leading to the Settlement were hard-fought and conducted at arm’s-length between attorneys who are highly experienced in wage and hour litigation, overseen by an experienced mediator.

Under the terms of the Settlement, the Gross Settlement Amount of \$114,000 will be distributed as follows:

- Settlement administration fees in an amount not to exceed \$5,000 to ILYM Group, Inc.;
- Service Award to Plaintiff in the amount of \$1,000;
- Attorneys’ fees to GrahamHollis APC in the amount of \$37,999.62 (one-third of the Gross Settlement Amount);
- Litigation costs to GrahamHollis APC in the amount of \$7,016.90;
- The remainder, the Net Settlement Amount (estimated to be \$62,983.48), will be distributed in accordance with the PAGA statute, with 75-percent (estimated to be \$47,237.61) to be paid to the California Labor and Workforce Development Agency (“LWDA”) and 25-percent (estimated to be \$15,745.87) to be paid to the members of the

<sup>1</sup> To the extent the terms used in this Motion are defined in the PAGA Settlement Agreement, the defined terms contained herein shall have the same meaning as set forth in the Agreement.

<sup>2</sup> In addition to the Gross PAGA Settlement Amount, Defendants have agreed to separately settle Plaintiff’s individual claims pursuant to a separate confidential Individual Settlement Agreement (“Individual Settlement”). (Settlement Agreement, ¶ 5.) The individual claims were not at issue in this action and exist independent and apart from the PAGA claims at issue before the Court. (*See Kim v. Reins Int’l Cal., Inc.* (2020) 9 Cal.5th 73, 80 [the “[s]ettlement of individual claims does not strip an aggrieved employee of standing, as the state’s authorized representative, to pursue PAGA remedies” nor resolve the PAGA claims].)

Aggrieved Employees on a pro-rata basis based on the number of pay periods each individual worked during the relevant time period.

As fully set forth below, the Settlement is fair and reasonable and was reached after two years of litigation, and ultimately a full-day mediation with Hon. Abraham Kahn (Ret.), a highly experienced and well-respected mediator and former Judge of the Los Angeles Superior Court. The terms of the Settlement are fair and reasonable based on the disputed merit of the PAGA claims, the range of possible outcomes in the litigation, the risk, expense, and complexity of further litigation, and the experience and views of counsel. Accordingly, Plaintiff respectfully requests that the Court grant approval of the Settlement.

## II. PROCEDURAL AND FACTUAL BACKGROUND

### A. Plaintiff's Allegations

This Settlement involves the claims of approximately 43 individuals<sup>3</sup> who are or were employed by Defendant Golden Star Technology, Inc. in the State of California at any time during the PAGA Period, which is defined as the period of April 27, 2021 through and including the date of approval of this Settlement ("Aggrieved Employees"). (Declaration of Graham S.P. Hollis ["Hollis Decl."], ¶¶ 8, 15.)

Plaintiff was employed by Defendant as a senior account executive from July 1, 2020, to November 23, 2021. (Hollis Decl., ¶ 7.) He was classified as an exempt employee and was paid a base salary, as well as a commission on sales. (*Ibid.*) On March 21, 2022, Plaintiff notified the California Labor and Workforce Development Agency ("LWDA") and Defendants of his intent to assert the rights granted to him under PAGA. (*Id.*, ¶ 8.) On July 1, 2022, Plaintiff filed a class and representative action against Defendants in this Court. (*Ibid.*)

The complaint alleges that Defendants violated the Labor Code by: (1) failing to timely pay all minimum, regular, and/or overtime wages; (2) failing to provide legally compliant meal periods; (3) failing to provide legally compliant rest periods; (4) failing to timely pay all earned wages during employment; (5) failing to timely pay all wages due and owing upon separation of employment; (6) failing to furnish accurate, itemized wage statements; (7) failing to maintain accurate records; (8) failing to reimburse necessary business expenses; (9) breaching their commission and bonus agreement; (10)

<sup>3</sup> In its July 18, 2024 Tentative Ruling, the Court states that the "\$114,000 settlement represents 668 pay periods for 7 aggrieved employees." This is incorrect. In total, there are 43 Aggrieved Employees who worked 1,909 pay periods in the PAGA Period. (Hollis Decl., ¶ 20(A) n.5.)

conversion/wage theft; (11) violating California’s Unfair Competition Law; and (12) violating the Private Attorneys General Act of 2004 (“PAGA”). (Hollis Decl., ¶ 9.)

**B. Defendants’ Position**

Defendants vehemently deny any liability and wrongdoing of any kind associated with the claims alleged in this action. (Hollis Decl., ¶ 10; Settlement Agreement at ¶ 26.) Among other things, Defendants contend that they paid all minimum, regular, and overtime wages owed; provided nonexempt employees with legally compliant meal and rest periods; paid all wages in a timely manner, including at the time of separation of employment; consistently provided accurate itemized wage statements; consistently maintained accurate records; reimbursed all necessary business expenses; timely paid all commissions, bonuses, and contractual wages; and fully complied with California’s Unfair Competition Law and PAGA. (Hollis Decl., ¶ 10.) Defendants maintain that they did not engage in any Labor Code violations and that Plaintiff will not be able to demonstrate liability under PAGA. (*Ibid.*)

**C. Case History and Discovery**

On January 11, 2023, following the U.S. Supreme Court’s decision in *Viking River Cruises v. Moriana* (2022) 142 S. Ct. 1906, Defendants filed a motion to compel arbitration of Plaintiff’s individual claims and to dismiss his class and representative PAGA claims pursuant to an arbitration agreement Plaintiff signed in connection with his employment. (Hollis Decl., ¶ 11.) Plaintiff filed his opposition to Defendants’ motion on January 25, 2023. (*Ibid.*) On February 8, 2023, the Court granted Defendants’ motion in part by compelling Plaintiff to arbitrate his individual claims and dismissing Plaintiff’s class claims, but staying the representative portion of this action pending resolution of the individual arbitration. (*Ibid.*) Shortly thereafter, on February 22, 2023, Plaintiff filed his demand for arbitration with the American Arbitration Association. (*Ibid.*) A Case Management Conference was held on May 31, 2023, at which time the Arbitrator set the arbitration hearing for July 9-12, 2024. (*Ibid.*)

Over the course of the following months, the parties engaged in voluminous written discovery, including Special Interrogatories, Form Interrogatories – General, and Requests for Production of Documents. (Hollis Decl., ¶ 12.) The parties exchanged thousands of pages of documents, including written policies and procedures related to the claims asserted, payroll records, commission reports, emails and calendar entries. (*Ibid.*)

In September 2023, the parties agreed to mediate Plaintiff's individual and representative PAGA claims. (Hollis Decl., ¶ 13.) Pursuant to the parties' joint request, the Arbitrator vacated all pending dates and stayed arbitration on November 29, 2023. (*Ibid.*) On January 23, 2024, the parties participated in a full-day mediation before Hon. Abraham Kahn (Ret.), an experienced and well-respected mediator and former Judge of the Los Angeles Superior Court. (*Id.*, ¶ 17; Settlement Agreement, ¶ 25.) During mediation, the parties engaged in good-faith, non-collusive negotiations and discussed the realistic exposure to Defendants and the relative strengths and weaknesses of the claims. (*Ibid.*). With the mediator's assistance, the parties reached an agreement to settle Plaintiff's individual claims, as well as the representative PAGA claims through a mediator's proposal. (*Id.*, ¶ 18.) Over the course of the following months, the parties drafted and executed the Settlement Agreement. (*Ibid.*)

### III. SUMMARY OF SETTLEMENT

The Settlement Agreement before the Court provides substantial financial consideration in exchange for releasing the PAGA claims asserted in the Action. The consideration is fair and reasonable in light of the potential liabilities and risks of litigation, particularly in light of the recent change in law regarding the arbitrability of individual PAGA claims. (See Hollis Decl., ¶ 31.) The released claims have been narrowly tailored to ensure the settlement is not unduly expansive. The parties' agreed upon procedure for distributing the settlement funds will ensure efficient distribution to the Aggrieved Employees and the State.

#### A. Monetary Terms

The Gross Settlement Amount is \$114,000. (Settlement Agreement, ¶ 4.) Under the terms of the settlement, \$37,999.62 (or one-third of the Gross Settlement Amount) will be awarded to Plaintiff's Counsel for attorneys' fees, \$7,016.90 will be awarded to Plaintiff's Counsel for costs, \$1,000 will be awarded to Plaintiff as a Service Award, and \$5,000 is allocated to Third-Party Settlement Administration Fees. (*Ibid.*) Of the remaining \$62,983.48, defined as the Net Settlement Amount, 75-percent (\$47,237.61) will be paid to the LWDA. (*Id.*, ¶ 6.) The remaining 25-percent (\$15,745.87) will be distributed amongst the 43 Aggrieved Employees. (*Ibid.*) On average, each Aggrieved Employee will receive approximately \$366.18.

///

**B. Distribution Procedure**

The parties have agreed to use ILYM Group, Inc. (“ILYM”) to administer the distribution of funds from the Settlement. (Settlement Agreement, ¶ 7.) Within 10 calendar days of the Effective Date, Defendants shall deposit the Gross Settlement Amount with the Settlement Administrator and provide the Settlement Administrator with a list of all Aggrieved Employees, with each listed employee’s full name, dates of employment during the PAGA Period, last known mailing address, and Social Security number. (*Id.*, ¶ 10). Within 10 days of receipt of the list of all Aggrieved Employees, the Settlement Administrator shall run all the addresses of the Aggrieved Employees through the United States Postal Service National Change of Address database to obtain current address information, and issue payments to the Aggrieved Employees, the LWDA, Plaintiff’s Counsel, Plaintiff, and itself. (*Ibid.*) The Settlement Administrator will skip-trace any returned mail and re-mail within five calendar days. (*Ibid.*) The Settlement Administrator will issue the appropriate tax forms for all payments issued under this Settlement.<sup>4</sup> (*Ibid.*) The Individual PAGA Payments will be valid for a period of 180 days, after which time any unclaimed funds will be directed to the California Controller in the name of the Aggrieved Employees member. (*Id.*, ¶ 11.)

**C. PAGA Released Claims**

The Settlement provides that except as to the right to enforce the terms and conditions of the settlement, Plaintiff, in his representative capacity as a private attorney general and acting on behalf of himself, the State of California, and the Aggrieved Employees, releases the Released Parties of all claims for civil penalties that were alleged in, or reasonably could have been alleged, based on the factual allegations and/or legal assertions made in the Action, including claims for civil penalties relating to GST’s alleged failure to pay all wages due including, commissions, bonuses, and contractual wages, and to provide minimum wages or pay for all hours worked; failure to pay overtime compensation; failure to provide meal and/or rest periods; failure to pay meal or rest period penalties; failure to provide and maintain accurate, itemized wage statements; failure to maintain accurate records; failure to timely pay wages due during or at separation of employment, failure to reimburse all business-related expenses, and claims arising under or reasonably relating to the alleged violations of California Labor Code §§ 201, 202,

<sup>4</sup> A copy of the proposed notice to be included with settlement checks is attached as Exhibit A to the Settlement Agreement.

203, 204, 210, 218.6, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.1, 2698 et seq., 2699 et seq., 2800, and 2802; and applicable California Industrial Welfare Commission (“IWC”) Wage Orders, including but not limited to IWC Wage Order No. 4 (Cal. Code Regs., tit. 8, § 11040 (“PAGA Released Claims”), against the Released Parties. (Settlement Agreement, ¶ 13.) The Released PAGA Claims shall cover the PAGA Period. (*Id.*, ¶ 2.)

#### IV. THE PAGA SETTLEMENT SHOULD BE APPROVED

Pursuant to Labor Code section 2699(l)(2), the settlement of a civil action brought under PAGA must be submitted to the LWDA and must be approved by the trial court. Where a settlement purports to resolve PAGA claims, courts must examine the settlement as a whole and the amount allocated to PAGA, including the amount distributed to the LWDA. (*O’Connor v. Uber Techs, Inc.* (2016) 201 F.Supp.3d 1110, 1134-1135.) In order to warrant approval, a PAGA settlement must be fair, adequate, and reasonable. (*Ibid.*)

To determine whether a settlement is fair, adequate, and reasonable, a court must be provided with “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” (See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 799.) In the class action context, the trial court must exercise its discretion through the application of several well-recognized factors when deciding whether the settlement is fair. (*Ibid.*) The California Court of Appeal has held that in determining whether a PAGA settlement is fair, a court may refer to the well-developed settlement standards analyzed by courts in the class actions. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) The list of factors, which “is not exhaustive and should be tailored to each case,” includes “the strength of plaintiff’s case, the risk, expense, complexity and likely duration of further litigation . . . the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the [represented] members to the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801].) The most important factor the trial court should consider in determining whether to approve a settlement is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement. (*Munoz v. BCI Coca-Cola Bottling Co. of*

1 *Los Angeles* (2010) 186 Cal.App.4th 399, 407-408; *Kullar, supra*, 168 Cal.App.4th at p. 130.) In sum, the  
2 trial court must determine that the settlement was not the product of fraud, overreaching or collusion, and  
3 that the settlement is fair, reasonable, and adequate. (*Nordstrom Com’n Cases* (2010) 186 Cal.App.4th  
4 576, 581.)

5 **A. The Settlement is the Result of Non-Collusive, Arm’s-Length, and Informed**  
6 **Negotiations**

7 California courts recognize that a “presumption of fairness exists where (1) the settlement is  
8 reached through arm’s-length bargaining; (2) sufficient investigation allows counsel and the court to act  
9 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.”  
10 (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) Here, the Settlement objectively meets all these requirements,  
11 and this Court should undoubtedly give considerable weight to the competency and integrity of the parties’  
12 respective counsel, who are experienced in wage and hour class action litigation and reached the settlement  
13 through arm’s-length negotiations without self-dealing or other misconduct. (*Kullar, supra*, 168  
14 Cal.App.4th at p. 129.)

15 **1. The Settlement is the Product of Arm’s-Length Negotiations**

16 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed  
17 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the  
18 absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered.  
19 In short, there is a presumption that the negotiations were conducted in good faith. (*William B. Rubenstein,*  
20 *et al.*, Newberg on Class Actions § 13:45 (5th ed. 2011-2017).) Here, there can be no doubt as to the  
21 fairness of the settlement as the parties did not engage in settlement negotiations until they possessed  
22 sufficient information and documents to conduct a comprehensive review and analysis of the facts and  
23 legal issues raised by the action to make an informed decision. (Hollis Decl., ¶¶ 14-18.) At all times, the  
24 negotiations were conducted with the assistance of mediator, Hon. Abraham Khan (Ret.), an experienced  
25 and well-respected mediator and former Judge of the Los Angeles Superior Court. (*Id.*, ¶ 17.)

26 In reaching the settlement, Plaintiff’s Counsel took into consideration relevant factors such as the  
27 information and documents obtained in formal and informal discovery, Defendants’ projected liability,  
28 the expense of continued litigation, the inherent risks in litigating complex representative actions,

1 particularly given the dependent nature of an employee's retained standing to pursue representative claims  
2 on the outcome of an individual arbitration, and the potential for appeals. (Hollis Decl., ¶¶ 28-31.) Based  
3 on Plaintiff's Counsel's experience, they are of the belief that the settlement represents a favorable  
4 resolution without the further expense and uncertainty of continued litigation, while at the same time  
5 maintaining the enforcement purpose behind the PAGA statute. (*Id.*, ¶ 31.)

6 **2. The Settlement is the Product of Informed Investigation and Discovery**

7 There is a presumption that a proposed settlement is fair and reasonable when there has been  
8 sufficient investigation and discovery to permit counsel and the court to act intelligently, and counsel are  
9 experienced in similar litigation. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) Here, the parties conducted a  
10 lengthy and thorough investigation into the merits of Plaintiff's claims prior to attending mediation and  
11 ultimately settling this case. (Hollis Decl., ¶¶ 14-17.) Plaintiff's Counsel's investigation included the  
12 exchange of extensive formal discovery, in which Defendants produced thousands of pages of written  
13 policies and procedures, payroll records, commission reports, emails and calendar entries, as well as the  
14 informal exchange of information. (*Id.*, ¶¶ 12, 15.) Plaintiff's Counsel undoubtedly obtained sufficient  
15 information to adequately evaluate the merits of the claims asserted and Defendants' maximum potential  
16 liability. (*Id.*, ¶¶ 15-16.) Therefore, this Court can and should presume the fairness of the proposed  
17 settlement.

18 **3. Plaintiff's Counsel is Highly Experienced In Similar Litigation**

19 Throughout this litigation, Plaintiff has been represented by well-qualified counsel who have years  
20 of experience in wage and hour litigation. (Hollis Decl., ¶¶ 37-41, Ex. 3.) To date, Plaintiff's Counsel has  
21 handled well over 150 class, collective, and representative action cases. (*Id.*, ¶ 38.) Plaintiff's Counsel  
22 relied on their extensive experience while negotiating the settlement. (*Id.* ¶¶ 37-41.) As discussed, the  
23 settlement negotiations were conducted with consideration of the strength of the case versus the amount  
24 offered in settlement; the risk, expense, complexity, and likely duration of further litigation; the present  
25 state of the law as it applies to the claims asserted; and the burdens of proof necessary to establish liability  
26 against Defendants. (*Id.*, ¶¶ 28-29.) Although the recommendations of counsel proposing the settlement  
27 are not conclusive, courts can properly consider the recommendations, particularly if counsel have been  
28 involved in litigation for some period of time, appear to be competent, have experience with this type of

1 litigation, and significant discovery has been completed. (*Newberg on Class Actions* § 13:53 (5th ed. 2011-  
2 2017).)

3 The Court should presume the proposed settlement is fair because it was the result of arm's-length  
4 negotiations, sufficient investigation and discovery, and the experience of Plaintiff's Counsel.

5 **B. The Settlement is Fair, Reasonable, and Adequate in Light of the Significant Risks**  
6 **and Expense of Further Litigation**

7 In order to determine whether a representative settlement is fair, adequate and reasonable, courts  
8 must be provided with "basic information about the nature and magnitude of the claims in question and  
9 the basis for concluding that the consideration being paid for the release of those claims represents a  
10 reasonable compromise." (*Kullar, supra*, 168 Cal.App.4th at p. 133; *Clark, supra*, 175 Cal.App.4th at p.  
11 799.) A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial,  
12 nor does the settlement have to provide 100-percent of the damages sought to be fair and reasonable.  
13 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 246, 250.)

14 Here, the settlement results in a substantial benefit to the Aggrieved Employees, the State of  
15 California, and the general public because it achieves the enforcement objectives of PAGA while  
16 providing compensatory relief to the Aggrieved Employees and the State. (Hollis Decl., ¶ 43.) In reaching  
17 this settlement, Plaintiff's Counsel carefully considered the strength of the case versus the amount offered  
18 in settlement and the risk, expense, and complexity of the case. (*Id.*, ¶ 28.)

19 While Plaintiff believes that his claims are meritorious and would have prevailed had the issues  
20 gone to trial, Plaintiff also acknowledges that Defendants possess legitimate defenses, including to  
21 liability, manageability, and the stacking of civil penalties. (Hollis Decl., ¶ 21.) Defendants have  
22 consistently denied all material allegations in the operative complaint and denied that they violated any  
23 laws or are liable for any civil penalties. (*Id.*, ¶ 10.)

24 Plaintiff also acknowledges that even if he was successful, continued litigation would likely result  
25 in additional attorneys' fees and costs, as Defendants would undoubtedly appeal any judgment in  
26 Plaintiff's favor. (Hollis Decl., ¶ 30.) Moreover, continued litigation would result in a substantial delay of  
27 any recovery to the Aggrieved Employees and the State of California. (*Ibid.*) Given the risks, expenses,  
28 and delays associated with further litigation, the Gross Settlement Amount of \$114,000 is an excellent

1 result for the approximately 43 Aggrieved Employees.

2 **C. The Court's Ability to Reduce the Maximum Potential Civil Penalties Justifies**  
3 **Approval of the Settlement.**

4 Plaintiff's Counsel estimated Defendants' maximum potential liability for civil penalties to be  
5 \$303,200. (Hollis Decl., ¶ 20.) This estimate was based on the assumption that Plaintiff would prevail on  
6 all claims at trial and recover all penalties sought. (*Ibid.*) Thus, Defendants' maximum potential liability  
7 of civil penalties is premised on an "everything goes right" scenario. (*Ibid.*)

8 Although the \$114,000 Gross Settlement Amount accounts for approximately 37.6-percent of  
9 Defendants' maximum potential exposure in this case, and thus represents a significant discount on  
10 Defendants' potential liability, this reduction represents an extremely reasonable compromise considering  
11 the substantial and significant risks Plaintiff faced in this litigation. (Hollis Decl., ¶ 29.) As explained  
12 above, Defendants have legitimate defenses on the merits to Plaintiff's claims. (*Id.*, ¶ 21.) These risks are  
13 obviated by the proposed settlement, which strikes a balance between providing monetary relief to the  
14 State and the members of the Aggrieved Employees, while still penalizing Defendants for the violations  
15 alleged. (*Id.*, ¶ 29.)

16 Further, even in the event of Plaintiff's success at trial, Defendants would likely argue that any  
17 civil penalties awarded should be reduced because they are unjust, arbitrary, oppressive, or confiscatory.  
18 As Defendants likely have sufficient defenses limiting Plaintiff's ability to recover at least some of the  
19 civil penalties sought, there is a significant likelihood that the Court would exercise its discretion to reduce  
20 any recovery under Labor Code § 2699(e)(2). Given this additional risk, the settlement on the terms  
21 outlined in the Settlement Agreement justifies approval of the proposed settlement.

22 **D. The Distribution of the Settlement Is Reasonable**

23 The Settlement provides that Defendants will pay a non-reversionary Gross Settlement Amount of  
24 \$114,000. (Settlement Agreement, ¶ 4.) The Gross Settlement Amount will fund: (a) payment to the  
25 Aggrieved Employees; (b) payment to the LWDA; (c) an award of Attorneys' Fees to Plaintiff's Counsel;  
26 (d) an award of Litigation Costs to Plaintiff's Counsel; (e) a Service Award to Plaintiff; and (e)  
27 Administration Costs. (*Ibid.*)

28 The following chart reflects the estimated payments from the Gross Settlement Amount:

|                                      |                    |
|--------------------------------------|--------------------|
| <b>Gross Settlement Amount</b>       | <b>\$114,000</b>   |
| Service Award                        | \$1,000            |
| Settlement Administration Costs      | \$5,000            |
| Attorneys' Fees                      | \$37,999.62        |
| Litigation Costs                     | \$7,016.90         |
| <b>PAGA Fund</b>                     | <b>\$62,983.48</b> |
| • To the LWDA (75% of PAGA Fund)     | \$47,237.61        |
| • To PAGA Members (25% of PAGA Fund) | \$15,745.87        |

It is estimated that the LWDA will receive \$47,237.61 and the Aggrieved Employees will receive \$15,745.87. The \$15,745.87 will be allocated to each Aggrieved Employee based on his or her proportionate share of Pay Periods Worked during the PAGA Period. (Settlement Agreement, ¶ 6.) The Settlement Administrator is to ensure proper distribution of payments within 20 calendar days of the Court's entry of an order and judgment approving the settlement and dismissing this action with prejudice. (*Id.*, ¶¶ 2, 10.) All Individual PAGA Payments will be valid for a period of 180 days, after which any unclaimed funds will be directed to the California State Controller to be held in the name of the Aggrieved Employees member. (*Id.*, ¶11.)

The California Supreme Court has explained that a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding," (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 985-986.) In accordance with this rule, the release in the Settlement Agreement binds Plaintiff, the State of California and the Aggrieved Employees for civil penalties, attorneys' fees, and costs under California Labor Code §§ 201, 202, 203, 204, 210, 218.6, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.1, 2698 et seq., 2699 et seq., 2800, and 2802; and applicable California Industrial Welfare Commission ("IWC") Wage Orders, including but not limited to IWC Wage Order No. 4 (Cal. Code Regs., tit. 8, § 11040 ("PAGA Released Claims")). (Settlement Agreement, ¶ 13.)

#### **E. Plaintiff Submitted the Settlement Agreement to the LWDA**

In 2016, the Labor Code was amended to require the Court to review and approve any settlement of a civil action brought pursuant to PAGA. (Labor Code § 2699(l)(2).) The amendment also requires that the "proposed settlement [] be submitted to the agency at the same time that it is submitted to the court." (*Ibid.*)

In accordance with the statute, the Settlement Agreement, Notice of Motion, and Memorandum of Points and Authorities were submitted to the LWDA on August 2, 2024, via the agency’s online portal. (Hollis Decl., ¶ 5, Ex. 2.) Therefore, the LWDA has had the opportunity to review the Settlement and advise the parties or the Court of any objections. To date, the LWDA has not indicated any objection to the Settlement. As such, the Court should approve the Settlement.

**V. THE REQUESTED SERVICE AWARD TO PLAINTIFF IS JUSTIFIED**

Courts routinely approve Service Awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of the class litigation. (See e.g., *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380 [affirming \$10,000 service award to four named plaintiffs]; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 [awarding \$50,000 incentive award to a representative]; *Manual for Complex Litigation* (Fourth) § 21.62 n.971 (2004) [noting that service or enhancement awards may be warranted based on the named plaintiff’s participation in the litigation and the benefits conferred on the class].) While such awards are discretionary, they are “intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” (*Cellphone Termination Fee Cases*, *supra*, 186 Cal.App.4th at pp. 1393-1394.) In determining whether an award is appropriate, courts consider several different factors, including: (1) the actions the plaintiff has taken to protect the interest of the class; (2) the degree to which the class has benefited from those actions; and (3) the amount of time and effort the plaintiffs expended in pursuing the litigation. (*Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 805 (2009).)

Here, the settlement contemplates that Plaintiff’s Counsel will seek a Service Award not to exceed \$1,000 on behalf of Plaintiff. (Settlement Agreement at ¶ 4(d).) As the named representative, Plaintiff has performed his duties without exception. (Hollis Decl., ¶¶ 33-35; Declaration of Alejandro Jimenez [“Jimenez Decl.”], ¶¶ 10-15.) Plaintiff has actively participated in this lawsuit since its inception, including, but not limited to, providing documents related to the claims asserted, communicating with his attorneys by phone and email, responding to written discovery, and assisting his counsel in preparing for mediation. (Hollis Decl., ¶ 33; Jimenez Decl., ¶¶ 10-15.) The time and effort Plaintiff put into this litigation allowed Plaintiff’s Counsel to negotiate a fair and reasonable settlement on behalf of the Aggrieved

Employees. (Hollis Decl., ¶ 33.) For example, Plaintiff took the time to explain Defendants’ policies and practices, which were instrumental to counsel’s understanding of the claims and defenses asserted, as well as Defendants’ potential liability. (Hollis Decl., ¶ 33; Jimenez Decl., ¶ 11.)

By bringing and maintaining this lawsuit, Plaintiff assumed the risk of an adverse judgment, award of costs to Defendants, and the risk that his future employment may be negatively impacted by his involvement in this litigation. (Hollis Decl., ¶ 34; Jimenez Decl., ¶ 8.) Plaintiff went above and beyond what was required of him, and in the absence of his participation and efforts, there undoubtedly would have been no recovery. (Hollis Decl., ¶ 35.) The requested Service Award of \$1,000 is very fair and reasonable in light of the work performed and the risks undertaken by Plaintiff. (*Id.*, ¶ 36.)

## **VI. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE FAIR AND REASONABLE**

Pursuant to section 2699(g)(1) of the Labor Code, “[a]ny employee who prevails in a PAGA action shall be entitled to an award of reasonable attorney’s fees and costs.” Accordingly, Plaintiff’s Counsel requests that this Court approve an award of attorneys’ fees award in the amount of \$37,999.62, or one-third of the Gross Settlement Amount, as well as the reimbursement of actual litigation costs of \$7,016.90.<sup>5</sup> (Hollis Decl., ¶ 42.) As discussed below, these awards are not only recoverable under the common fund theory and lodestar approach, but also are within the range of awards granted in similar cases. (*Id.*, ¶¶ 45-48.)

### **A. Plaintiff’s Counsel’s Fees Are Supported Under the Common Fund Theory**

In a PAGA action, which is a type of *qui tam* action, reasonable attorneys’ fees are typically awarded under the common fund theory where, as here, the litigation creates a common fund of a specific amount for the benefit of others. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) When a common fund is created, attorneys who secured the fund are entitled to a percentage of the fund. (*See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 [“[T]he court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created”].) The bases of the common fund doctrine are:

Fairness to the successful litigant, who might otherwise receive no benefit

<sup>5</sup> Fees and costs incurred in arbitrating and mediating Plaintiff’s individual claims were billed directly to Plaintiff. (Hollis Decl., ¶ 42 fn.5.) All of the fees and costs Plaintiff seeks to recover in this action were incurred in representing the Aggrieved Employees and the State of California

1 because his recovery might be consumed by the expenses; correlative  
2 prevention of an unfair advantage to the others who are entitled to share in  
3 the fund and who should bear their share of the burden of its recovery; and  
4 encouragement of the attorney for the successful litigant, who will be more  
5 willing to undertake and diligently prosecute proper litigation for the  
6 protection or recovery of the fund if he is assured that he will be promptly  
7 and directly compensated should his efforts be successful.

8 (*Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 90; *see Serrano v. Priest* (1977) 20 Cal.3d 25, 34  
9 “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which other derive  
10 benefits, may require those passive beneficiaries to bear a fair share of the litigation costs.”].)

11 Here, a common fund was created in the amount of \$114,000 for the benefit of the Aggrieved  
12 Employees and the State of California. As such, these beneficiaries must bear their share of the costs and  
13 attorneys’ fees, to be deducted from the \$114,000 Gross Settlement Amount under the common fund  
14 theory. The parties allocated one-third of the Gross Settlement Amount to Plaintiff’s Counsel for their  
15 reasonable attorneys’ fees. (Settlement Agreement, ¶ 4(b).) The award sought is justified in light of the  
16 amount of work Plaintiff’s Counsel performed over the course of more than two and a half years and the  
17 substantial risks involved in litigating this type of case. (Hollis Decl., ¶¶ 46-56.) Indeed, the requested  
18 attorneys’ fees award of \$37,999.62, or one-third of the Gross Settlement Amount, constitutes a fair  
19 market cost for the benefits conferred by the Settlement because Plaintiff’s Counsel’s skills in negotiating  
20 the Settlement resulted in the substantial benefit for the Aggrieved Employees, the State of California, the  
21 general public.

## 22 **B. Plaintiff’s Attorneys’ Fees Are Also Recoverable Under The Lodestar Approach**

23 The reasonableness of Plaintiffs’ Counsel’s requested Attorneys’ Fees award is also supported  
24 under the lodestar method. (*See e.g., Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 “[F]ees  
25 have traditionally been allowed in such common fund cases, although . . . the lodestar methodology may  
26 also be utilized in this context.”].) Under the lodestar approach, the number of hours reasonably expended  
27 is multiplied by a reasonable hourly rate. (*Ibid.*) Once the Court has established the lodestar, it may be  
28 increased or decreased “by applying a positive or negative ‘multiplier’ to consider a variety of other  
factors, including the quality of the representation, the novelty and complexity of the issues, the results  
obtained, and the contingent risk presented.” (*Ibid.*; *see, e.g., Serrano, supra*, 20 Cal.3d at p. 49.)

Here, Plaintiff’s Counsel has expended over 211 hours litigating this case. This includes time spent

investigating and researching the legal issues raised in this litigation; drafting the notice to the LWDA and the complaint; drafting the opposition to Defendants’ motion to compel arbitration; drafting and responding to correspondence; communicating with Plaintiff and other Aggrieved Employees; reviewing and analyzing documents produced by Defendants; conducting the damages analysis; drafting the detailed mediation brief; preparing for and attending mediation; negotiating the terms of the settlement and finalizing the written agreement; and moving for approval of the settlement. (Hollis Decl., ¶ 56.) At Plaintiff’s Counsel’s usual and customary rates, this would result in a total lodestar of more than \$110,034. (*Id.*, ¶ 51.) Thus, Plaintiff’s Counsel’s request for an award of attorneys’ fees in the amount of \$37,999.62 or approximately 35-percent of the firm’s total lodestar, is undoubtedly fair and reasonable given the nature and complexity of the litigation and the experience level of each timekeeper. (*Id.*, ¶ 54.)

### C. Plaintiff’s Litigation Costs Were Reasonable and Necessarily Incurred

It is appropriate for litigation costs to be paid from the common fund. (*In re Media Vision Tech. Sec. Litig.* (N.D. Cal. 1996) 913 F.Supp. 1362, 1366 [“Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionally by those class members who benefit from the settlement.”].) Courts permit attorneys to “recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters.” (*See In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1048; *see also Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 [“[Plaintiff] may recover as part of the award of attorney’s fees those out-of-pocket expenses that “would normally be charged to a fee-paying client.”].) Recoverable expenses may include photocopying, document scanning, postage and delivery charges, travel, attorney services fees, and legal research costs. (*Bussey v. Affleck* (1990) 225 Cal.App.3d 1162, 1166 [“[A]ttorneys’ fees and expenses are inseparably intertwined as equally vital components of the costs of litigation . . . expenses such as supplemental secretarial costs, copying, telephone costs and necessary travel, are integrally related to the work of an attorney and the services for which outlays are made may play a significant role in the ultimate success of litigation . . . ”].)

Here, Plaintiff’s Counsel seeks reimbursement of \$7,016.90 for costs and expenses incurred in connection with this Action from its inception to the present. (Hollis Decl., ¶ 58, Ex. 4.) As set forth above, Plaintiff’s Counsel’s costs are warranted as they include filing fees, court fees, postage, attorney services

1 fees, and mediation fees. (*Ibid.*) The costs incurred are also the same as those that would normally have  
2 been billed to a client paying for Plaintiff's counsel's services on a non-contingency basis. (*Ibid.*)  
3 Plaintiff's Counsel's costs are more than reasonable in light of the work that has been performed in this  
4 matter. (*Id.*, ¶ 59.)

5 **VII. CONCLUSION**

6 Plaintiff respectfully requests that this Court approve the settlement on the terms outlined in the  
7 parties' Agreement. As set forth herein, the Settlement is fair, reasonable, and adequate given the range  
8 of possible outcomes of the litigation, the risks and expenses associated with further litigation, the scope  
9 of the release and the experience and views of Plaintiff's Counsel.

10 Respectfully submitted,

11 Dated: August 2, 2024

GRAHAM HOLLIS APC

12 By: \_\_\_\_\_

13 Graham S.P. Hollis  
14 Dawn M. Berry  
15 Attorneys For Plaintiff Alejandro Jimenez  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28