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6 Attorneys for Plaintiff Jose Ramon Perez Vaca, on behalf of himself and all “aggrieved
7 employees” pursuant to Labor Code § 2698 *et seq.*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF FRESNO**

10 JOSE RAMON PEREZ VACA, on behalf of
11 himself and all “aggrieved employees”
12 pursuant to Labor Code § 2698 *et seq.*,

13 Plaintiffs,

14 v.

15 SRAN AG II, INC., a California corporation,
and DOES 1 through 10, inclusive,

16 Defendants.
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CASE NO: 22CECG03802

Assigned to the Hon. Jeffrey Y. Hamilton, Dept. 503

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS’ FEES, COSTS,
ENHANCEMENT AWARD PAYMENT, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
DISMISSING ACTION WITH PREJUDICE;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: February 29, 2024

Time: 3:30 p.m.

Dept.: 503

Complaint Filed: November 29, 2022

Trial Date: December 9, 2024

1 **PLEASE TAKE NOTICE THAT** on February 29, 2024 at 3:30 p.m., or as soon thereafter
2 as the matter may be heard, in Department 503 of the above-entitled Court, located at 1130 O Street,
3 Fresno, CA 93724-0002, Plaintiff Jose Ramon Perez Vaca will and hereby does move unopposed
4 for an Order: (1) granting approval of the proposed settlement of claims brought pursuant to the
5 Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”) set forth in the
6 Parties’ Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (the
7 “Settlement Agreement”); (2) appointing Phoenix Settlement Administrators as the Settlement
8 Administrator and approving payment of its fees not to exceed \$3,250 from the PAGA Gross
9 Settlement Amount; (3) directing disbursement of the PAGA Gross Settlement Amount pursuant
10 to the terms of the Settlement Agreement; (4) directing payment of attorneys’ fees and litigation
11 costs from the PAGA Gross Settlement Amount not to exceed \$60,412.30 to Plaintiff’s counsel;
12 (5) directing an enhancement and general release payment from the PAGA Gross Settlement
13 Amount in the amount of \$7,500 to Plaintiff Jose Ramon Perez Vaca; and (6) dismissing this action
14 with prejudice.

15 This motion will be based on this Notice, the supporting memorandum of points and
16 authorities, the Parties’ Settlement Agreement, the Declarations of Daniel F. Gaines, Jose Ramon
17 Perez Vaca, and [Phoenix Settlement Administrators], the documents and records on file in this
18 matter, and such additional arguments, authorities, and evidence and other matters as may be
19 presented by the Parties hereafter.

20 Date: December 19, 2023

Respectfully submitted,

GAINES & GAINES, APLC

23 By: *Daniel F. Gaines*
24 DANIEL F. GAINES
25 ALEX P. KATOFISKY
26 Attorneys for Plaintiff
27 Jose Ramon Perez Vaca
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Ramon Perez Vaca (“Plaintiff” or “Vaca”) and aggrieved employees under
4 the Labor Code’s Private Attorneys General Act of 2004 (“PAGA”) respectfully move this Court
5 for an Order granting approval of the proposed Settlement of the above-captioned lawsuit against
6 Defendant SRAN AG II, Inc. (“Defendant”). The proposed Settlement will dispose of the Released
7 Claims asserted on behalf of Plaintiff and approximately 175 individuals who worked
8 approximately 7,581 pay periods during the PAGA Release Period through August 22, 2023 (the
9 “PAGA Release Period”) (the “Aggrieved Employees”). *See* Settlement Agreement, at § 1.01(a).

10 This case addresses claimed violations of employee protections embodied in the California
11 Labor Code and penalties stemming therefrom for the violation of PAGA. Plaintiff alleges that
12 Defendant failed to pay Plaintiff and other Aggrieved Employees all wages, in violation of Labor
13 Code sections 510, 558, 1194, and 1194.2; failed to pay premium wages to Plaintiff and Aggrieved
14 Employees who were denied rest periods, in violation of Labor Code §§ 226.7 and IWC Wage
15 Order 13-2001; failed to pay premium wages to Plaintiff and other Aggrieved Employees who were
16 denied meal periods, in violation of Labor Code §§ 226.7, 510, 512, 558, 1194, and 1194.2, and
17 IWC Wage Order 13-2001; required Plaintiff and other Aggrieved Employees to work seven or
18 more days in a row, in violation of Labor Code §§ 551 and 552; failed to reimburse business
19 expenses, in violation of Labor Code § 2802; made improper deductions from Plaintiff and other
20 Aggrieved Employees’ wages, in violation of Labor Code § 221; failed to provide Plaintiff and
21 other non-exempt Aggrieved Employees with wage statements that fully and accurately itemized
22 the requirements set forth in Labor Code §§ 226(a) and 226.3; and failed to pay Plaintiff and other
23 Aggrieved Employees all wages due at the separation of their employment based on the time frames
24 required by Labor Code §§ 201 and 202, in violation of Labor Code §§ 201 and 202. As a result
25 of Defendant’s alleged violations of the Labor Code, approximately 175 employees are claimed to
26
27

1 have suffered Labor Code violations for up to 7,581 aggregate pay periods at the rate of \$100 each
2 based on PAGA's penalty provisions. Gaines Decl., ¶ 21.

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

11 The value achieved by the Settlement may be gleaned from the fact that the LWDA and the
12 approximately 175 Aggrieved Employees encompassed by the Settlement will receive no less than
13 \$20,209.43 under the terms of the Settlement, which, pursuant to the operative statute, shall be
14 allocated "75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the
15 Aggrieved Employees." *See Cal. Lab. Code* § 2699(i). This is a reasonable recovery, not only
16 because further litigation may have resulted in a net-zero recovery based on the defenses available
17 to Defendant, but because the amount secured by Plaintiff is sizable and in line with similar
18 settlements of these types of claims under PAGA and Defendant suffers from financial limitations.
19 It is also important to underscore that all penalty amounts paid to Aggrieved Employees will be an
20 unexpected windfall, as employees typically do not bring individual lawsuits asserting only PAGA
21 penalties.

22 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this
23 Court enter the Order submitted herewith.

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

25 **A. The Parties**

26 Defendant is a grower of organic almonds. Gaines Decl. at ¶ 6.

27 Plaintiff was employed by Defendant from November 2017 through December 2021.

1 During his employment with Defendant, Plaintiff worked as a Supervisor at Sran Family Orchards
2 in Fresno County, California. Gaines Decl. at ¶ 7.

3 The Aggrieved Employees are all individuals who currently and/or formerly worked for
4 Defendant in California as non-exempt employees at any time from March 9, 2021, through
5 October 11, 2023 (the “PAGA Release Period”). Defendant represents that the total number of
6 Aggrieved Employees is approximately 175 individuals who worked approximately 7,581 pay
7 periods during the PAGA Release Period through August 22, 2023. Gaines Decl. at ¶ 8.

8 **B. The Claims Asserted**

9 Plaintiff asserts claims that Defendant failed to pay Plaintiff and other Aggrieved Employees
10 all wages, in violation of Labor Code sections 510, 558, 1194, and 1194.2; failed to pay premium
11 wages to Plaintiff and Aggrieved Employees who were denied rest periods, in violation of Labor Code
12 §§ 226.7 and IWC Wage Order 13-2001; failed to pay premium wages to Plaintiff and other Aggrieved
13 Employees who were denied meal periods, in violation of Labor Code §§ 226.7, 510, 512, 558, 1194,
14 and 1194.2, and IWC Wage Order 13-2001; required Plaintiff and other Aggrieved Employees to work
15 seven or more days in a row, in violation of Labor Code §§ 551 and 552; failed to reimburse business
16 expenses, in violation of Labor Code § 2802; made improper deductions from Plaintiff and other
17 Aggrieved Employees’ wages, in violation of Labor Code § 221; failed to provide Plaintiff and other
18 non-exempt Aggrieved Employees with wage statements that fully and accurately itemized the
19 requirements set forth in Labor Code §§ 226(a) and 226.3; and failed to pay Plaintiff and other
20 Aggrieved Employees all wages due at the separation of their employment based on the time frames
21 required by Labor Code §§ 201 and 202, in violation of Labor Code §§ 201 and 202. Plaintiff asserts
22 these claims under PAGA, seeking civil penalties for the alleged Labor Code violations. Gaines
23 Decl. at ¶ 9.

24 **C. Procedural Posture**

25 On March 9, 2022, pursuant to Labor Code § 2699.3, Plaintiff gave written notice by online
26 filing with the Labor and Workforce Development Agency (“LWDA”) and by certified mail, return
27 receipt requested, to Defendant of the specific provisions of the Labor Code alleged to have been

1 violated, including the facts and theories to support the alleged violation. Gaines Decl., ¶ 10;
2 **Exhibit B** (LWDA Notice Letter). The Parties agreed to toll the statute of limitations on Plaintiff's
3 PAGA claims between May 13, 2022, and December 13, 2022. On November 29, 2022, and after
4 the LWDA declined to take action within the statutorily permissible time with respect to Plaintiff's
5 March 9, 2022 letter, Plaintiff filed his representative action complaint in this Court. Gaines Decl.,
6 ¶ 11.

7 **D. Plaintiff's Counsel's Investigation**

8 Counsel for Plaintiff engaged in targeted, informal discovery of Defendant's alleged Labor
9 Code violations, which specifically evaluated the strength and value of the PAGA claims in
10 preparation for a resolution of this Action. Gaines Decl. at ¶ 12.

11 Plaintiff's Counsel obtained and reviewed thousands of documents, including (i) Plaintiff's
12 employee file and wage statements, (ii) policy documents relating to the employment of Plaintiff
13 and other Aggrieved Employees, (iii) Aggrieved Employee's time and wage records, and (iv) data
14 relating to the number of alleged violations and the value of the recoverable penalties, including
15 time and payroll data. Gaines Decl. at ¶ 13.

16 Based on the information received, as well as through discussions with Defendant's
17 Counsel, Plaintiff's Counsel was able to (i) determine the total number of distinct individuals falling
18 within the definition of "Aggrieved Employee" for the relevant statutory period, and (ii) construct
19 a damage model that calculated the maximum realistic amount of PAGA penalties that could be
20 levied against Defendant within the PAGA Release Period based on employee timekeeping and
21 payroll data produced by Defendant. Defendant, however, disputed Plaintiff's claims and disputed
22 both the existence of and extent of liability as alleged by Plaintiff. Based on the information
23 received, as well as through discussions with Defendant's Counsel, Plaintiff's Counsel was able to
24 ascertain (i) the size of the Aggrieved Employee group, (ii) the number of affected pay periods at
25 issue among them, and (iii) the strength of Plaintiff's claims. Gaines Decl. at ¶ 14. Plaintiff's
26 Counsel's experience in litigating similar "representative" wage and hour claims, the degree of
27 investigation that was conducted here, the amount of data that was obtained, and the discussions

1 guided by mediation, was sufficient to determine the potential value of the PAGA claim, and to
2 evaluate the strength of this claim for purposes of settlement. Gaines Decl. at ¶ 16.

3 **E. Settlement Negotiations**

4 On August 22, 2023, the Parties participated in a mediation session with a respected
5 mediator, Brandon McKelvey, Esq. During the mediation, the Parties engaged in arm's-length
6 negotiations and reached a resolution of the PAGA claims asserted in this Action only after many
7 weeks of continued negotiations. Gaines Decl. at ¶ 17.

8 **F. The Proposed Settlement**

9 The Parties jointly prepared and executed a Private Attorneys General Act (Labor Code §
10 2698 *et seq.*) Settlement Agreement (the "Settlement Agreement"). Gaines Decl., ¶ 17; **Exhibit C**.
11 The Agreement sets forth the terms of the Settlement reached by the Parties, including the following
12 key points:

13 1. Defendant agrees to settle this matter for the payment of One Hundred Fifty-Two
14 Thousand Dollars (\$152,000) (hereinafter the "PAGA Gross Settlement Amount"), which shall be
15 all inclusive, encompassing (i) all payments to the LWDA and Aggrieved Employees, (ii) any and
16 all costs of third-party administration of the settlement, (iii) Plaintiff's Counsel's attorneys' fees
17 and costs of suit, and (iv) a modest enhancement award payment to Plaintiff. *See* Settlement
18 Agreement, at §§ 4.02(a)(1) – (4).

19 2. The total sum available for payment of PAGA penalties shall be calculated by
20 deducting \$60,412.30 for the payment of Plaintiff's Counsel's fees and costs (\$50,666.67 in fees
21 and \$9,745.63 in costs¹), \$7,500 for the payment of Plaintiff's enhancement and general release
22 payment², and the costs of administration, not to exceed \$3,250, from the \$152,000 PAGA Gross
23 Settlement Amount, yielding \$80,837.70. Seventy-five percent (75%) of this amount, or

24 ¹ Plaintiff's Counsel's cost request is less than the \$12,000 allotted in the Settlement Agreement.
25 *See* Settlement Agreement, at § 4.02(a)(2).

26 ² The Parties have resolved all of Plaintiff's individual claims through a comprehensive general
27 release in favor of Defendant. In connection with his general release of all claims, Plaintiff will be
28 paid Seven Thousand Five Hundred Dollars (\$7,500). **Exhibit F** to Gaines Decl.

1 \$60,628.28, shall be distributed to the LWDA, and the remaining twenty-five percent (25%) or
2 \$20,209.43, shall be distributed to the Aggrieved Employees. *See* Settlement Agreement, at §
3 4.02(a)(3).

4 3. All Aggrieved Employees will receive a pro rata share of the \$20,209.43 allocated
5 to Aggrieved Employees, which shall be distributed based on the number of pay periods each
6 Aggrieved Employees worked for Defendant in California during the PAGA Release Period. *See*
7 Settlement Agreement, at § 4.02(a)(4). Although these calculations will not be made until after
8 approval, a rough estimation of the value to the 175 individuals falling within the definition of
9 “Aggrieved Employee” may be gleaned from the fact that an equal division would provide about
10 \$269.46 to each Aggrieved Employee, net of payments to the LWDA, the Settlement
11 Administrator, attorney’s fees, and costs. The LWDA will be paid a substantial \$60,628.28. *See*
12 Gaines Decl., at ¶ 17; Settlement Agreement, at § 4.02(a)(3).

13 4. In exchange for the above settlement consideration, Defendant and the Released
14 Parties shall be entitled to a limited release from each and every Aggrieved Employee, including
15 Plaintiff³:

16 Upon Court approval of the Settlement, dismissal of the action, and subject to
17 Defendant’s funding in full of the PAGA Gross Settlement Amount, Plaintiff and
18 the Aggrieved Employees will fully and finally release and discharge Defendant and
19 its former, present, and future owners, parents, affiliates, and subsidiaries, and all of
20 their current, former, and future officers, directors, members, managers, partners,
21 shareholders, agents, employees, joint ventures, successors, assigns, attorneys,
22 accountants, insurers, or legal representatives (the “Released Parties”), from all
23 claims, rights, demands, liabilities, and causes of action for civil penalties under the
24 PAGA that arose during the PAGA Release Period that were alleged in the Action,
including but not limited to the following claims: (a) failure to pay all wages owed;
(b) failure to provide compliant meal periods, or premium pay for non-compliant
meal periods; (c) failure to authorize and permit complaint rest periods, or premium
pay for non-complaint rest periods; (d) failure to provide accurate, itemized wage
statements; (e) failure to timely pay wages upon separation of employment; (f)

25 ³ This comports with settled California Supreme Court authority. *See Arias v. Superior Court* (2009)
26 46 Cal. 4th 969, 986 (concluding that “with respect to the recovery of civil penalties, nonparty
27 employees as well as the government are bound by the judgment in an action brought under the act
....”).

1 failure to reimburse all necessary business expenses; (g) illegal deductions from
2 wages; (h) requiring Aggrieved Employees to work seven or more days in a row; (i)
3 all claims for PAGA penalties that could have been premised on the facts, claims,
4 causes of action, or legal theories described above; and (j) all other claims under
5 PAGA that could have been premised on the facts, claims, causes of action, or legal
6 theories described above and in Plaintiff's Complaint, including but not limited to
7 California Labor Code sections 201, 202, 221, 226(a), 226.3, 226.7, 510, 512, 551,
8 552, 558, 1194, 2802, and 2699 (the "Released Claims").

6 Plaintiff and the State of California shall be deemed to have, and by operation of the
7 Order granting approval of this Agreement, shall have fully, finally, and forever
8 released, relinquished, and discharged each and all of the Released Parties from the
9 Released Claims that arose during the PAGA Release Period. As a result of this
10 release, Aggrieved Employees will be unable to bring a claim under, or recover in
11 any other claim brought under the PAGA for any violations of the Released Claims
12 that took place during the PAGA Release Period.

11 *See* Settlement Agreement, at § 6.01.

12 5. Settlement administration, which is to be paid from the PAGA Gross Settlement
13 Amount, will not exceed \$3,250. Phoenix Settlement Administrators, a reputable settlement
14 administration company, has agreed to administer the settlement for this amount, submitting a
15 competitive bid. *See* Gaines Decl., ¶ 20.

16 6. As detailed herein, Plaintiff's counsel seeks an award of attorneys' fees and
17 litigation costs totaling \$60,412.30, and Plaintiff Jose Ramon Perez Vaca seeks an enhancement
18 and general release payment of \$7,500. *See* Settlement Agreement, at §§ 4.02(a)(2) – (3).

19 7. Finally, under the terms of Settlement, the value of checks uncashed more than
20 180 days after issuance shall be remitted to the Unclaimed Property Fund of the California State
21 Controller's Office to be held in the name of the Aggrieved Employee. *See* Settlement
22 Agreement, at § 4.02(a)(9).

23 **III. LEGAL ARGUMENT**

24 **A. Standards for Approval of A PAGA Settlement**

25 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
26 statute, which states that the "[t]he superior court shall review and approve any settlement of any
27 civil action filed pursuant to this part." *See Labor Code* § 2699(1)(2).

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

11 Although the operative PAGA statute does not set forth the criteria on which a PAGA
12 settlement is to be judged, California law does state that some of the factors for review of a class
13 action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. § 382 and Cal. Rules of Court, Rule
14 3.769, may be “useful in evaluating the fairness of a PAGA settlement” to the reviewing court. *See*
15 *Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56, 77 (“Thus, while PAGA does not require
16 the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for
17 settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public
18 and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors
19 used to evaluate class action settlements bear on a settlement's fairness—including the strength of
20 the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of
21 further litigation, and the settlement amount—these factors can be useful in evaluating the fairness
22 of a PAGA settlement.”) Courts within California have continued to approve settlements of PAGA
23 claims using Rule 23 criteria⁴. However, it is important to underscore that not all Rule 23 factors

24 ⁴ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
25 balancing of several factors which may include, among others, some or all of the following: [1] the
26 strength of plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further
27 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the

1 can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered
2 a class action but a law enforcement action, and therefore does not have to meet the requirements
3 of Rule 23.” *See Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan.
4 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2,
5 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010).
6 Based thereon, a court’s review of a PAGA settlement necessarily implicates the following unique
7 features that render the approval process completely distinct from approval of a class action
8 settlement under Rule 23 or C.C.P. § 382 and Cal. Rules of Court, Rule 3.769.

9 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
10 concerned with the amount which “Aggrieved Employees” are to receive, but rather, must focus on
11 the total settlement amount in achieving PAGA’s objective.

12 While “[a PAGA] action is . . . designed to protect the public and penalize the employer for
13 past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take
14 into account the fact that settlement of a PAGA claim – like any settlement – involves a
15 “compromise” that stops short of rendering findings of liability and damages. Moreover, the Court
16 must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for
17 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties
18 for the government that otherwise may not have been assessed and collected by overburdened state
19 enforcement agencies.” *See Ochoa-Hernandez v. CJADER Foods, Inc.*, 2010 U.S. Dist. LEXIS
20 32774, 12 (N.D. Cal. Apr. 2, 2010).

21 **B. The Settlement Meets All the Criteria For Approval**

22 Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA
23 considerations detailed above – the proposed Settlement embodies all of the key features of a

24 _____
25 experience and views of counsel; [7] the presence of a governmental participant; and [8] the
26 reaction of the class members to the proposed settlement.” *See Linney v. Cellular Alaska P’ship*,
27 151 F.3d 1234, 1242 (9th Cir., 1998). “Not all of these factors will apply to every class action
28 settlement” and “[u]nder certain circumstances, one factor alone may prove determinative in
finding sufficient grounds for court approval.” *See Nat’l Rural Telcoms. Coop. v. DIRECTV, Inc.*,
221 F.R.D. 523, 525-526 (C.D. Cal., 2004).

1 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for
2 approval.

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

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

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

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

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

23 This case addresses violations of important employee protections embodied in the
24 California Labor Code – namely, that Defendant failed to pay Plaintiff and other Aggrieved
25 Employees all wages, in violation of Labor Code sections 510, 558, 1194, and 1194.2; failed to pay
26 premium wages to Plaintiff and Aggrieved Employees who were denied rest periods, in violation of
27 Labor Code §§ 226.7 and IWC Wage Order 13-2001; failed to pay premium wages to Plaintiff and

1 other Aggrieved Employees who were denied meal periods, in violation of Labor Code §§ 226.7, 510,
2 512, 558, 1194, and 1194.2, and IWC Wage Order 13-2001; required Plaintiff and other Aggrieved
3 Employees to work seven or more days in a row, in violation of Labor Code §§ 551 and 552; failed to
4 reimburse business expenses, in violation of Labor Code § 2802; made improper deductions from
5 Plaintiff and other Aggrieved Employees' wages, in violation of Labor Code § 221; failed to provide
6 Plaintiff and other non-exempt Aggrieved Employees with wage statements that fully and accurately
7 itemized the requirements set forth in Labor Code §§ 226(a) and 226.3; failed to pay Plaintiff and other
8 Aggrieved Employees all wages due at the separation of their employment based on the time frames
9 required by Labor Code §§ 201 and 202, in violation of Labor Code §§ 201 and 202. Defendant's
10 maximum theoretical exposure in this Action, without stacking penalties, totals approximately
11 \$758,100 computed by multiplying 7,581 aggregate pay periods by \$100 each. *See* Gaines Decl.
12 at ¶ 21. While the PAGA does provide the potential for a heightened penalty for subsequent
13 violations, courts are often hesitant to award a heightened penalty where there is no prior citation
14 by the Labor Commissioner. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021)
15 (holding no heightened penalty where defendant was not notified by Labor Commissioner or any
16 court that it was subject to the California Labor Code). The Ninth Circuit's holding in *Bernstein*
17 also supports that a settlement valuation that does not "stack" penalties. *Id.*

18 Defendant, however, contends it acted within the requirements of California law at all times
19 as to all Aggrieved Employees. Defendant contends that it paid all employees all minimum and
20 overtime wages due. Defendant also contends that the company has compliant meal and rest break
21 practices. Defendant further contends that not every pay period at issue involved an alleged Labor
22 Code violation subject to civil penalties. Moreover, it maintained that even if the Court did award
23 penalties, the Court could and would *substantially* reduce the penalties awarded based on the
24 discretionary factors contained in Labor Code § 2699(e)(2) ("In action by an aggrieved employee .
25 . . . , a court may award a lesser amount than the maximum civil penalty amount specified by this
26 part if, based on the facts and circumstances of the particular case, to do otherwise would result in
27 an award that is unjust, arbitrary and oppressive, or confiscatory."). *See* Gaines Decl., ¶ 22.

1 Based on these disputes, which had the potential to completely eliminate Plaintiff's
2 recovery, the range of realistic "litigation outcomes" on the Plaintiff's PAGA claim was defined
3 by a "maximum possible liability" amount of approximately \$758,100 [Gaines Decl., ¶ 24], and a
4 net-zero recovery based on the defenses asserted by Defendant. Notwithstanding the existence of
5 such issues, the Settlement achieves a significant benefit – approximately 20% recovery of the
6 maximum possible liability. As such, this factor weighs very heavily in favor of resolution by way
7 of the compromise set forth in the Settlement. Gaines Decl., ¶ 24.

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

10 Approval of the Settlement Agreement is also appropriate in light of the risk, expense, and
11 complexity of further litigation. As discussed above, the Settlement Agreement takes into
12 consideration the specific factual and legal hurdles faced by the Plaintiff in establishing
13 Defendant's penalty-liability in this case, which again, may have resulted in a net-zero recovery.
14 Any recovery on these claims is not certain. And even when liability is found, PAGA claims are
15 discretionary, such that the Court could decline to award their full value. Some of Plaintiff's claims
16 are also derivative, and as such, Plaintiff must prevail on his underlying Labor Code claims in order
17 to prevail on the derivative claims. These risks – when balanced with the fact that the settlement
18 achieved a very significant recovery (as demonstrated below), and that further litigation posed a
19 risk of diminishing such recovery by increasing litigation expenses – weigh strongly in favor of
20 settlement approval.

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

22 The Settlement Agreement provides a significant monetary benefit that falls well within
23 "the range of an acceptable settlement" under the circumstances, which is the standard on which
24 the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and
25 reasonable even where it only provides a fraction of what could have been obtained at trial:

26 The proposed settlement is not to be judged against a hypothetical or
27 speculative measure of what might have been achieved by the
28 negotiators." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d at

1 625 (emphasis in original). Thus, “the very essence of a settlement is
2 compromise, ‘a yielding of absolutes and an abandoning of highest
3 hopes.’” *Id.* at 624 (citations omitted). As the Second Circuit has
4 pointed out: “The fact that a proposed settlement may only amount
5 to a fraction of the potential recovery does not, in and of itself, mean
6 that the proposed settlement is grossly inadequate and should be
7 disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 &
8 n.2 (2nd Cir. 1974).

9 *See Linney, supra*, 151 F.3d at 1242.

10 Here, after all deductions are made for administration, an enhancement award payment,
11 attorneys’ fees and costs, \$80,837.70 will be paid out, of which \$60,628.28 (i.e. 75%) will go to
12 the LWDA, and \$20,209.43 (i.e. 25%) will go to the Aggrieved Employees, as required by Labor
13 Code § 2699(i) (“civil penalties recovered by aggrieved employees shall be distributed as follows:
14 75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved
15 employees.”). *See Settlement Agreement*, at § 4.02(a)(3).

16 This result is exceptional, as settlements of PAGA claims impacting thousands of
17 individuals have been approved as reasonable for amounts far less than the payment in this case.
18 *See Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012)
19 (“Defendant has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the \$10,000,
20 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will benefit
21 the class The Court finds that the PAGA payment is set at a reasonable amount, and it shall be
22 approved.”); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal.
23 Oct. 29, 2012) (“GTI agrees to allocate \$10,000 to Plaintiff’s PAGA claims, and will pay \$7,500
24 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports with
25 settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
26 allocation of the Settlement to Plaintiff’s PAGA claim.”); *Schiller v. David’s Bridal, Inc.*, 2012
27 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) (“Pursuant to the Settlement Agreement, the
28 parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .
29 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
30 be approved.”); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,

1 2012) (“Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
2 California Labor and Workforce Development Agency The Court finds that the PAGA
3 payment is set at a reasonable amount, and it shall be approved.”).⁵

4 Thus, notwithstanding the existence of issues having the potential to completely eliminate
5 recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds
6 typical PAGA awards routinely approved by the courts, but it also recovers monies for Aggrieved
7 Employees which they otherwise would not receive. As such, this factor balances strongly in favor
8 of approval of the Settlement.

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

10 As discussed above, the California Supreme Court has concluded that in the context of
11 PAGA “the nonparty employees, because they were not given notice of the action or afforded any
12 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
13 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in
14 exchange for the foregoing consideration is limited to the civil penalties asserted in the Action
15 under Labor Code §§ 2698 *et seq.* *See Settlement Agreement*, at § 6.01.

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

17 **6. The Experience and Views of Plaintiff’s Counsel Favor Approval of the Settlement**

18 Plaintiff’s Counsel has a significant degree of experience in complex wage and hour
19 litigation. *See Gaines Decl.*, ¶¶ 2-5, 23-25, *Gaines Decl.* at **Exhibit A**. In the view of Plaintiff’s
20 Counsel, the benefit conferred by the proposed Settlement is fair, reasonable, and adequate under
21 the circumstances, as it reflects a reasoned compromise which takes into consideration the risks
22 inherent in this case which had the potential to completely eliminate recovery. *Gaines Decl.*, ¶¶

23
24
25 ⁵ Significantly, each of the above-cited actions involved a comparable number of “aggrieved
26 employees” as at issue here. *See Franco*, 2012 U.S. Dist. LEXIS 169057, 14 (“2,055 Class
27 Members were ultimately identified”); *Garcia*, 2012 U.S. Dist. LEXIS 160052, at 12 (class
28 comprised of “approximately 1,869 individuals”); *Schiller*, 2012 U.S. Dist. LEXIS 80776, 16
29 (“3,327 California Class members were ultimately identified”); *Gong-Chun*, 2012 U.S. Dist.
30 LEXIS 96828, 18 (“2,051 California Class Members were ultimately identified”).

20-21, 28. As such, this factor balances in favor of approval of the Settlement.

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

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

Here, the extent of informal discovery conducted was sufficient to enable Plaintiff’s Counsel to evaluate the strength and value of the claim for purposes of settlement. *Gaines Decl.*, ¶¶ 12-15. Prior to mediation, Defendant provided Plaintiff with documents related to the policies and practices at issue in this PAGA action, as well as plaintiff’s personnel file and timekeeping and payroll data and wage statements. As discussed above, Plaintiff’s Counsel’s investigation was sufficient to, among other things, tabulate with precision the total number of alleged Labor Code violations at issue during the PAGA Release Period and identify the total number of individuals falling within the definition of “Aggrieved Employee” for the PAGA Release Period.

Based on Plaintiff’s Counsel’s experience litigating wage and hour claims, such investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of this claim for purposes of settlement. *See Gaines Decl.*, ¶¶ 2-5; 23-25.

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

In addition to the factors presented above, the proposed Settlement does not possess any obvious deficiencies. The Settlement contemplates entry of an order (submitted concurrently herewith) which approves the Settlement and dismisses the action with prejudice. Section 7.14 of the Settlement Agreement and paragraph 9 of the proposed order authorize the Court to retain jurisdiction over the Parties, the Action, and the Settlement. This procedure effectively disposes of the Action in its entirety, documents the Court’s approval of the Settlement as required by PAGA, and allows for Court intervention if necessary to enforce the terms of the Settlement

1 Agreement. In sum, under the applicable standards for approval of PAGA settlements in California,
2 the settlement in this case meets the standards for approval.

3 **IV. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER THEIR**
4 **REASONABLE FEES AND COSTS**

5 Pursuant to the terms of the Settlement, Plaintiff's Counsel seeks attorneys' fees of one-
6 third of the PAGA Gross Settlement Amount (\$50,666.67) and reimbursement of litigation costs
7 of \$9,745.63, falling within the bounds authorized by the Settlement Agreement. *See* Settlement
8 Agreement, at § 4.02(a)(2). Plaintiff's Counsel's entitlement to an award of attorneys' fees and
9 costs is warranted on multiple independent grounds. Further, the amount of fees requested falls well
10 within the range of reasonableness under applicable standards, as the amount requested constitutes
11 a "percentage of the fund" deemed reasonable in similar wage and hour settlements of this size and
12 approved by California courts, which is not only warranted based on the contingency risk Plaintiff's
13 Counsel has agreed to incur for the benefit of the State of California and Aggrieved Employees,
14 but also based on the significant results achieved, as the Settlement obtains a recovery substantially
15 above the range approved as reasonable by California state and federal courts. Based thereon,
16 Plaintiff's Counsel respectfully requests that the Court enter an order approving the fee and cost
17 amounts requested.

18 **A. Plaintiff's Counsel Are Entitled To Recover Their Reasonable Fees And**
19 **Costs As A Matter Of Right**

20 Plaintiff's Counsel are entitled to recover attorneys' fees and costs under the "common
21 fund" doctrine as a matter of right. As held by the U.S. Supreme Court, "a lawyer who recovers a
22 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
23 attorney's fee from the fund as a whole." *See Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.

24 Courts have long recognized the "common fund" or "common benefit" doctrine, under
25 which attorneys who create a common fund or benefit for a group of persons may be awarded their
26 fees and costs to be paid out of the fund. *Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25,
27 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
Association v. City of Glendale (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)

1 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
2 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

3 The California Supreme Court has held that, “when a number of persons are entitled in
4 common to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all
5 results in the creation or preservation of that fund, such Plaintiff or Plaintiffs may be awarded
6 attorneys’ fees out of the fund.” *Serrano III, supra*, 20 Cal.3d at 34, quoting *D’Amico*, 11 Cal.3d
7 1; *see also Boeing, supra*, 444 U.S. at 478 (“[A] lawyer who recovers a common fund for the benefit
8 of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as
9 a whole.”); *Mills, supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common
10 fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter
11 Group) at § 17:172.3 explains the common fund doctrine as follows:

12 Where the lawsuit results in the recovery of a fund or property
13 benefiting others as well as Plaintiffs (e.g., a class action), the court
14 has inherent equitable power to order Plaintiffs’ attorney fees paid
15 out of the common fund or property [citations]. Such fee spreading
16 assures that all of those benefited by the litigation pay their fair share
17 of obtaining the recovery.

18 The percentage-of-the-fund approach appears to be the preferred method of awarding fees
19 in traditional common fund cases, such as this case. Where the settlement amount is a “certain or
20 easily calculable sum of money,” use of the percentage-of-the-fund method is appropriate. *Serrano*
21 *III*, 20 Cal. 3d at 35.

22 In *Glendale City Employees’ Association v. City of Glendale* (1975) 15 Cal.3d 328, 341
23 fn.19, the California Supreme Court upheld an attorney’s fee award based on a percentage of the
24 common benefit obtained in a lawsuit by a city employee’s association for retroactive wages:

25 It is not necessary to find this suit a proper class action in order to
26 uphold the portion of the judgment awarding counsel for Plaintiffs
27 25 percent of all retroactive salaries and wages received. That award
28 may be sustained under the rule that a litigant who creates a fund in
which others enjoy beneficial rights may require those beneficiaries
to pay their fair share of the expense of litigation. (*See Sprague v.*
Ticonic National Bank (1939) 307 U.S. 161, 159; *Estate of Stauffer*
(1959) 53 Cal.2d 124, 132).

1 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court
2 stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which
3 others derive benefits may require those passive beneficiaries to bear a fair share of the litigation
4 costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111,
5 the California Supreme Court recognized that the common benefit doctrine has been applied
6 “consistently in California when an action brought by one party creates a fund in which other
7 persons are entitled to share.”

8 Numerous appellate courts have similarly found. See e.g., *Knoff v. City and County of San*
9 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
10 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable
11 powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and
12 expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
13 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit
14 created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974)
15 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners
16 of residential property in an inverse condemnation action).

17 Moreover, at least eight federal courts of appeal-the First, Third, Sixth, Seventh, Ninth,
18 Tenth, Eleventh and the D.C. Circuit-have endorsed the “percentage fee” method for determining
19 reasonable attorneys’ fees in common benefit cases. See e.g., *In re Sumitomo Copper Litig.* 74 F.
20 Supp. 2d 393, 396-398 (S.D.N.Y. 1999) (describing the overwhelming weight of federal authority
21 in favor of the percentage fee method); see also, *Lealao v. Beneficial California, Inc.* (2000) 82
22 Cal.App.4th 19, 30-31 (describing same).

23 Thus, as Plaintiff’s Counsel has expended a significant amount of time and money to secure
24 a \$152,000 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S. Dist.
25 LEXIS 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees have
26 resulted in the preservation or recovery of a certain or easily calculable sum of money-out of which
27 sum or ‘fund’ the fees are to be paid.”)], and in doing so, has exclusively bore the risk of loss for

1 such expenditures of time and expenses (as the LWDA elected not to take the case after receiving
2 the PAGA Notice), Plaintiff's Counsel is entitled to claim reasonable fees from that fund under
3 applicable precedent.⁶

4 **B. The Fee Amount Requested Is Reasonable**

5 In addition to the forgoing, Plaintiff's Counsel's request for attorneys' fees in the amount
6 of one-third of the \$152,000 PAGA Gross Settlement Amount, falls well within the "zone of
7 reasonableness."

8 It is important to highlight at the outset that the fee amount presently sought is not
9 extraordinary, but actually falls at the "average" fee deemed reasonable under California State court
10 authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in wage
11 and hour class actions that result in recovery of a common fund under \$10 million." *See e.g. Martin*
12 *v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). This fee falls
13 directly within that range.

14 Moreover, Plaintiff's Counsel agreed to incur the contingency risk for the benefit of the
15 State of California (which elected not to take the case after receiving the PAGA Notice). Gaines
16 Decl., ¶ 31. The significant results achieved, and the underlying facts therefrom, justify Plaintiff's
17 Counsel's requested fee as reasonable under all applicable standards.

18 **C. The Fee Amount Allocated by The Settlement Agreement Is Within the**
19 **Zone of Reasonableness Under the "Percentage of the Fund" Method**

20 The amount of fees requested by Plaintiff's Counsel is reasonable based on standards
21 applicable to the "percentage of the fund" method. "When assessing whether the percentage

22 ⁶ Plaintiff's Counsel is also entitled to recover attorney's fees and costs as a matter of right under
23 the PAGA statute [*Labor Code* § 2699(g)(1) ("Any employee who prevails in any action shall be
24 entitled to an award of reasonable attorney's fees and costs.")], and under *C.C.P.* § 1021.5, as the
25 instant PAGA action was by definition "for the public benefit" and secured monetary awards for
26 approximately 110 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.*
27 (2007) 154 Cal. App. 4th 1, 16-17 (2007) ("Estrada's personal motivation does not diminish the
28 fact that he pursued this public interest class action not only for himself but on behalf of a class
comprised of FedEx's past and present drivers and ultimately obtained awards for 209 drivers. []
No more is required to satisfy the 'significant benefit,' 'public interest,' and 'large class of persons'
requirements of Code of Civil Procedure section 1021.5.").

1 requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of
2 litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the
3 financial burden; and (f) the awards made in similar cases.” *See Vasquez v. Coast Valley Roofing,*
4 *Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

5 First, the results achieved by Plaintiff’s Counsel are significant, as Defendant has agreed to
6 pay \$152,000 under the Settlement. This is a significant recovery given the risk of success in
7 obtaining any recoverable penalties [Gaines Decl., ¶¶ 20-21, 28], and further, as the settlement of
8 PAGA claims impacting a comparable number of individuals have been approved as reasonable for
9 between \$7,500 and \$15,000. *See* Section III.B.4., *supra*.

10 Second, such results were achieved in the face of significant risks. As explained above,
11 Defendant maintained defenses to Plaintiff’s PAGA claims that very well could have resulted in a
12 net-zero recovery at trial.

13 Third, notwithstanding this risk of loss, Plaintiff’s Counsel undertook representation of the
14 instant PAGA claim for the benefit of the State of California on a contingency basis. *See* Gaines
15 Decl. at ¶¶ 26-31. This required Plaintiff’s Counsel to personally assume the risk of nonpayment in
16 securing the very substantial financial benefit the State of California stands to receive, and also
17 constitutes a “loan” on Plaintiff’s Counsel services – both of which are factors that warrant fee
18 enhancement under applicable California Supreme Court authority:

19 One of the most common fee enhancers . . . is for contingency risk.
20 We reaffirmed the propriety of a contingency risk enhancement in
21 Ketchum: “The economic rationale for fee enhancement in
22 contingency cases has been explained as follows: ‘A contingent fee
23 must be higher than a fee for the same legal services paid as they are
24 performed. The contingent fee compensates the lawyer not only for
25 the legal services he renders but for the loan of those services. The
26 implicit interest rate on such a loan is higher because the risk of
27 default (the loss of the case, which cancels the debt of the client to
28 the lawyer) is much higher than that of conventional loans.’ (Posner,
Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) ‘A lawyer
who both bears the risk of not being paid and provides legal services
is not receiving the fair market value of his work if he is paid only
for the second of these functions. If he is paid no more, competent

counsel will be reluctant to accept fee award cases.”
Graham v. DaimlerChrysler Corp. (2004) 34 Cal. 4th 553, 579-580.

Finally, the percentage requested by Plaintiff’s Counsel falls within a typical range, particularly in light of the modest settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796, 23 (“[C]ourts may award attorney’s fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million.” *See also Crandall v. U-Haul International, Inc.*, LASC Case No. BC178775 (awarding attorneys’ fees of 40% of a common fund).

Attorneys’ fee awards in the amount sought here are well-established by California law and practice. Accordingly, Plaintiff’s Counsel’s fee request is fair and reasonable and is consistent with the awards in California and the Ninth Circuit. It is also reasonable given the history of this action and the results obtained.

D. While the Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the Common Fund, It is Further Confirmed by a Lodestar Cross-Check

The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506, that “[t]he percentage of fund method survives in California class action cases.” Specifically, the *Laffitte* Court held:

The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Id. at 503 (internal citation omitted); *see also e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v.*

1 *Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
2 method for calculating attorneys’ fees more accurately reflects the results achieved for the putative
3 class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’
4 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
5 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
6 percentage-of-recovery method is generally favored in common fund cases because it allows courts
7 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
8 failure.”).

9 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with
10 tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar
11 (hours worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed
12 to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-
13 06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold
14 further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the
15 court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to
16 evaluate the reasonableness of a requested percentage fee.”)

17 Here, Plaintiff’s Counsel’s fee request of one-third of the PAGA Gross Settlement Amount
18 is fair and reasonable based on a percentage of the recovery, and as well as when confirmed with a
19 lodestar cross-check. First, “regardless whether the percentage method or the lodestar method is
20 used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*
21 (2008) 162 Cal.App.4th 43, 66, fn. 11. This is also consistent with Plaintiff’s Counsel’s experience
22 in similar wage and hour class action matters. *Gaines Decl.*, ¶¶ 2-5; 23-25. Thus, the percentage
23 sought by Plaintiff’s Counsel here is reasonable.

24 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
25 multiplying the number of hours reasonably expended by each attorney or legal staff member by
26 their reasonable hourly rates. *See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 48. The court then
27 enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty

1 and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49;
2 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92
3 Cal.App.4th 819, 834 (“There is no hard-and-fast rule limiting the factors that may justify an
4 exercise of judicial discretion to increase or decrease a lodestar calculation”).

5 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
6 *Chavez, supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of*
7 *Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (approving multiplier of ~2.34); *Coalition*
8 *for L. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving
9 multiplier of ~2.04). In representative actions such as this one, where the value of the benefit
10 conferred to the class “can be monetized with a reasonable degree of certainty,” a court may “adjust
11 the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
12 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
13 litigation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557. In doing so, “the court
14 determines, retrospectively, whether the litigation involved a contingent risk or required
15 extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate
16 the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at 503-05.

17 In this case, Plaintiff’s Counsel is submitting an attorney fee request equaling \$50,666.67.
18 Based on a projected final lodestar of \$53,230, this yields a “negative multiplier” of approximately
19 0.95 under the \$50,666.67 fee request. Gaines Decl., ¶ 25; **Exhibit D** to Gaines Decl. The billing
20 rates used to compute the lodestar are reasonable in view of the evidence submitted herewith.
21 Gaines Decl., ¶¶ 2-5; 25; **Exhibit D**.

22 Based thereon, and for the reasons discussed above (the significant risk in continuing to
23 litigate this matter and in seeking to obtain penalties based on the claims asserted; the risks and
24 burden involved in representation on a contingency basis; the knowledge and experience of
25 Plaintiff’s Counsel; and the value obtained by Plaintiff’s Counsel for the Aggrieved Employees), it
26 is fair and reasonable to account for these risks and compensate Plaintiff’s Counsel with a fee award
27 of \$50,666.67 (one-third of the PAGA Gross Settlement Amount).

1 **E. Plaintiff's Counsel's Request for Costs is Reasonable**

2 In the course of this litigation, Plaintiff's Counsel incurred out-of-pocket costs of \$9,745.63.
3 *See* Gaines Decl. at ¶ 37, **Exhibit E**. As demonstrated in the Gaines Declaration submitted herewith,
4 the incurred costs included filing fees, expert analysis fees, mediation fees, service of process fees,
5 and other charges typical of litigation of this nature. *Id.* Such costs are appropriate for cost
6 reimbursement in these types of cases. *See e.g., In re United Energy Corp. Sec. Litig.* (C.D. Cal.
7 1989) 1989 WL 7321 1, *6 (C.D. Cal. 1989) (quoting *Newberg*, Attorney Fee Awards, § 2.19
8 (1987)); *see also, In re GNC Shareholder Litigation* 668 F. Supp. 450, 452 (W.D. Pa. 1987).

9 The costs incurred by Plaintiff's Counsel in this litigation benefited Plaintiff, Aggrieved
10 Employees, and the State. Plaintiff's cost request is reasonable and represents the costs that
11 Plaintiff's Counsel was required to incur to prosecute this action and should therefore be granted.

12 **V. THE ENHANCEMENT AWARD PAYMENT AND GENERAL RELEASE**
13 **PAYMENT SOUGHT BY PLAINTIFF IS REASONABLE AND SHOULD BE**
14 **APPROVED**

15 The Parties have agreed that Plaintiff Jose Ramon Perez Vaca will be paid an enhancement
16 award payment and general release payment in the amount of \$7,500. This payment is intended to
17 recognize the time and effort that Mr. Vaca spent on behalf of other Aggrieved Employees and the
18 State.⁷ *See* Settlement Agreement at § 4.02(a)(3). *See* Declaration of Jose Ramon Perez Vaca,
19 submitted herewith. *See* Gaines Decl., ¶ 35. It also compensates Plaintiff for a full general release
20 of his individual claims. *See* Gaines Decl., ¶ 35, **Exhibit F**.

21 As to an incentive award, case law supports the award of incentive payments in private
22 attorney general actions. The Ninth Circuit has recognized that a named Plaintiff's "willingness to
23 act as a private attorney general" may justify the award of an incentive payment. *Rodriguez v. West*
24 *Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub*
25 *LLC*, 2013 WL 12415482 (E.D. Cal., Sep. 6, 2013), the United States District Court for the Eastern

26 _____
27 ⁷ Plaintiff Vaca is also providing a full general release of all claims against Defendant. *See*
28 Settlement Agreement at § 6.02.

1 District of California approved a similar PAGA-only settlement and awarded a service payment to
2 the representative Plaintiff in recognition of his efforts.

3 The traditional bases for awarding incentive awards in class settlements support the award
4 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
5 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive
6 awards and held that “the rationale for making enhancement or incentive awards to named Plaintiffs
7 is that he or she should be compensated for the expense or risk he has incurred in conferring a
8 benefit” on others. *Id.* at 806. That rationale applies synonymously in this Action.

9 Without Plaintiff’s efforts, there would be no recovery at all. The requested award is
10 appropriate to compensate Plaintiff for the risk and expense he incurred in conferring a benefit on
11 other of Defendant’s employees and the State of California. As a result of the named Plaintiff’s
12 efforts, Aggrieved Employees will receive monetary settlement payments, and the State of
13 California will receive \$60,628.28 to be put toward education about and enforcement of
14 California’s labor laws. *See* Gaines Decl., ¶ 37.

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

23 The award of such payment to Plaintiff is especially warranted in a case like this one. It is
24 necessary to ensure that employees continue to bring forth claims that enforce their rights.
25 Individuals like the named Plaintiff (and most Aggrieved Employees) would have little, if any,
26 recourse without the representative action device. Most Aggrieved Employees – like the named
27 Plaintiff – would be fearful of retaliation in response to filing any lawsuit, much less a

1 representative action suit. Plaintiff must be commended for pursuing his claims; the modest
2 payment sought here is an appropriate means of doing so.

3 Plaintiff is also entering into a full general release against Defendant and its Released
4 Parties, which is far broader than the release by other Aggrieved Employees. Specifically,
5 Aggrieved Employees are releasing only limited PAGA civil penalty claims, while Plaintiff is
6 releasing all claims which he asserts or could assert against Defendant. The value of his individual
7 wage and hour claims is substantial. Gaines Decl. at ¶ 35; **Exhibit F**. No other Aggrieved
8 Employee is subject to this broad form of release. *Id.*

9 This broad release by Plaintiff was negotiated (and necessary) to resolve the Action.
10 Plaintiff threatened to assert his individual claims and Defendant required that they be resolved in
11 connection with the resolution of the Action. Without the resolution and release of Plaintiff's
12 individual claims, litigation would continue in a piecemeal fashion. Defendant is buying peace with
13 this settlement, such that its objectives would not be achieved absent the general release. Gaines
14 Decl. at ¶ 37.

15 **VI. CONCLUSION**

16 As shown herein, the Settlement Agreement is fair, adequate and reasonable, as it represents
17 a reasoned compromise obtained through arms-length negotiations. For all the reasons set forth
18 above, Plaintiff respectfully requests that this Court, as set forth in the proposed Order Approving
19 Settlement, do the following:

- 20 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
21 2699, subpart 1;
- 22 2. Appoint Phoenix Settlement Administrators as the Settlement Administrator and
23 approve its administration fees up to \$3,250 for payment out of the PAGA Gross Settlement
24 Amount;
- 25 3. Approve the award of attorneys' fees of \$50,666.67, and costs of \$9,745.63, to
26 Plaintiff's Counsel, payment of which shall come from the PAGA Gross Settlement Amount;
- 27 4. Approve the enhancement and general release payment to Plaintiff Jose Ramon

1 Perez Vaca in the amount of \$7,500 from the PAGA Gross Settlement Amount;

2 5. Direct disbursement of the Net Settlement Amount to the LWDA and all Aggrieved
3 Employees as provided for in the Settlement Agreement; and

4 6. Dismiss the Action with prejudice.

5
6 Date: December 19, 2023

Respectfully submitted,

7 GAINES & GAINES, APLC

8
9 By: *Daniel F. Gaines*

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