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

JOHN FRANKLIN, individually, and on behalf
of other aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiff,

v.

NATIONAL COMMUNITY RENAISSANCE, a
California corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CIVSB2209612

Honorable Joseph T. Ortiz
Department S-17

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declarations of Plaintiff's Counsel (Charles T. Sweeny and Helene Mayer); Declaration of Plaintiff (John Franklin); and [Proposed] Order and Judgment filed concurrently herewith]

Date: December 16, 2025
Time: 1:30 p.m.
Department: S-17

Complaint Filed: May 10, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 16, 2025, at 1:30 p.m., or as soon thereafter as
2 the matter may be heard before the Honorable Joseph T. Ortiz in Department S-17 of the
3 Superior Court of the State of California, for the County of San Bernardino, located at 247
4 West Third Street, San Bernardino, CA 92415, Plaintiff John Franklin (“Plaintiff”) will and
5 hereby does move for entry of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(1)(2), of the
7 settlement between Plaintiff and Defendant National Community Renaissance
8 (“Defendant”) of the claims brought pursuant to the Private Attorneys General Act of
9 2004 (“PAGA”), as set forth in the Private Attorneys General Act Settlement Agreement
10 and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as
11 “**EXHIBIT 1**” to the Declaration of Charles T. Sweeny, including and not limited to, the
12 plan of allocation and distribution of the Total Settlement Amount for payment of the
13 LWDA Payment to the California Labor and Workforce Development Agency
14 (“LWDA”), Individual Settlement Shares to the Aggrieved Employees, Attorneys’ Fees
15 and Costs to Plaintiff’s Counsel, Settlement Administration Costs to the PAGA
16 Settlement Administrator, and General Release Fee to Plaintiff;
- 17 2. Approving the Net Settlement Amount, estimated to be no less than (\$587,373.96), which
18 will be distributed to the LWDA and the Aggrieved Employees, pursuant to California
19 Labor Code section 2699(i), of which seventy-five percent (75%) will be paid to the
20 LWDA (“LWDA Payment”) and twenty-five percent (25%) will be paid to the Aggrieved
21 Employees (“Employees’ Portion”);
- 22 3. Appointing Phoenix Class Action Administration Solutions (“Phoenix”) as the PAGA
23 Settlement Administrator, to handle the administration of the Settlement;
- 24 4. Directing Defendant to transmit the Total Settlement Amount into a qualified settlement
25 account established by the PAGA Settlement Administrator for administration of the
26 Settlement, and directing the PAGA Settlement Administrator to distribute the Total
27 Settlement Amount in accordance with the Settlement Agreement;
- 28 5. Directing the mailing of Individual Settlement Share checks to the Aggrieved Employees
along with the Cover Letter, which is substantially similar in content and form to that
attached as “**EXHIBIT A**” to the [Proposed] Order and Judgment Granting Approval of

- 1 Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement
2 and Award of Attorneys' Fees and Costs, General Release Fee, and Settlement
3 Administration Costs (“[Proposed] Order and Judgement”) filed concurrently herewith;
4 6. Awarding \$7,500.00 to Plaintiff John Franklin as his General Release Fee;
5 7. Awarding up to \$25,000.00 to the PAGA Settlement Administrator as Settlement
6 Administration Costs; and
7 8. Awarding to Lawyers *for* Justice, PC and Sweeny Law, PC (“Plaintiff’s Counsel”) the
8 amount of \$346,500.00 as compensation for reasonable attorneys’ fees and the amount of
9 \$23,626.04 for reimbursement of litigation costs and expenses (together, “Attorneys’
10 Fees and Costs”), pursuant to California Labor Code section 2699(g)(1).

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

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

18 This motion will be based upon the following Memorandum of Points and Authorities, the
19 Settlement Agreement, the Declarations of Plaintiff’s Counsel (Charles T. Sweeny and Helene
20 Mayer) and Plaintiff John Franklin in support thereof, as well as the pleadings and other records on
21 file with the Court in this matter, and such evidence and oral argument as may be presented at the
22 hearing on this motion.

23 Dated: November 26, 2025

SWEENEY LAW, PC

24
25 By:



Charles T. Sweeny
Counsel for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Plaintiff John Franklin (“Plaintiff”) seeks approval of the Private Attorneys General Act
4 Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”)
5 entered into between Plaintiff, individually and on behalf of the State of California with respect to
6 Aggrieved Employees, and Defendant National Community Renaissance (“Defendant”), pursuant
7 to California Labor Code section 2699(1)(2).¹

8 Subject to approval by the Court, Plaintiff and Defendant (together, the “Parties”) have
9 agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act
10 of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Total Settlement Amount of
11 Nine Hundred Ninety Thousand Dollars and Zero Cents (\$990,000.00), subject to possible increase
12 pursuant to Section 3(a)(5) of the Settlement Agreement.²

13 The Total Settlement Amount is inclusive of: (1) Attorneys’ Fees and Costs to be paid to
14 Lawyers *for* Justice, PC (“Plaintiff’s Counsel”), (2) General Release Fee to Plaintiff, (3) Settlement
15 Administration Costs to be paid to the PAGA Settlement Administrator, and (4) Net Settlement
16 Amount to be paid to the California Labor and Workforce Development Agency (“LWDA”) and all
17 current and former hourly-paid or non-exempt individuals employed by Defendant within the State
18 of California at any time during the PAGA Period (“Aggrieved Employee(s)").³

19 The Net Settlement Amount will be the Total Settlement Amount less the Court-approved
20 Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee; the Net
21 Settlement Amount is currently estimated to be no less than Five Hundred Eighty Seven Thousand
22 Three Hundred Seventy Three Dollars and Ninety Six Cents (\$587,373.96).⁴ The Net Settlement

23 ¹ The Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement”) is attached as
24 “EXHIBIT 1” to the Declaration of Charles T. Sweeny.

25 ² Settlement Agreement, § 3(a)(5) (“The Aggrieved Employees are estimated to consist of approximately 900 individuals
26 who worked approximately 60,000 Compensable Pay Periods as of the date of mediation. If the actual number of
27 Compensable Pay Periods during the PAGA Period is more than ten percent (10%) above 60,000, the Total Settlement
28 Amount will be increased by the percentage that the actual number exceeds 66,000 (which is 10% more than 60,000).”)

³ Settlement Agreement, §§ 3(a)(1)-(5). “PAGA Period” is defined as the period of March 11, 2019 to March 5, 2025. *Id.*, §
3(a)(5).

⁴ Settlement Agreement, § 3(a)(4). Although the Settlement Agreement provides that Settlement Administration Costs of up
to \$25,000.00 shall be paid to the PAGA Settlement Administrator, here, the agreed-upon PAGA Settlement Administrator,
Phoenix, has provided a quote of \$8,000.00, which, barring unforeseen circumstances that might increase those fees, means
that the Net Settlement Amount is actually \$17,000 higher than \$587,373.96, i.e., \$604,373.96. In this Motion, although it
reasonably likely that the \$17,000 difference will flow to the LWDA and the Aggrieved Employees, Plaintiff uses the agreed-

(Footnote continued)

1 Amount will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA
2 Payment”) and twenty-five percent (25%) to the Aggrieved Employees (“Employees’ Portion”).⁵
3 Each Aggrieved Employee will be entitled to payment of his or her *pro rata* share of the Employees’
4 Portion, based upon the number of pay periods they each worked during the period March 11, 2019
5 to March 5, 2025 (“Compensable Pay Periods”).⁶

6 The payments to Aggrieved Employees will be treated and reported for tax purposes as one
7 hundred percent (100%) penalties and the PAGA Settlement Administrator will be responsible for
8 issuing IRS Forms 1099 as required.⁷

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

18 In order to efficiently present the Court with adequate information to determine whether to
19 grant approval of the Settlement in conformity with California Labor Code section 2699(l)(2),
20 Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the
21 page limit established by California Rules of Court, Rule 3.1113(d).

22 **II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY**

23 Defendant owns and operates affordable housing complexes with a portfolio of over 10,000
24 apartment units and over 30,000 residents in five states, including approximately 90 in California.

26 upon \$25,000.00 of Settlement Administration Costs for purposes of calculating the amounts of the Net Settlement Amount,
27 the LWDA Payment, and the Employees’ Portion, as those terms are defined. Relatedly, in the Declaration of Helene Mayer,
the “Net Settlement Amount” is calculated by assuming the full \$25,000.00 in costs’ are awarded to Plaintiff’s counsel, even
though less than that amount are being sought.

28 ⁵ Settlement Agreement, § 3(a)(5).

⁶ Settlement Agreement, § 7(b).

⁷ Settlement Agreement, § 7(b)(1).

1 Plaintiff John Franklin is one of Defendant's former employees.⁸

2 Prior to commencing this lawsuit, on March 4, 2022, as required by California Labor Code
3 section 2699.3, Plaintiff John Franklin provided the LWDA and Defendant with written notice of
4 his intent to assert a claim for civil penalties under PAGA and the basis for the claim, to which the
5 LWDA did not respond (the "PAGA Notice").⁹ On April 19, 2022, Plaintiff submitted an additional
6 letter to the LWDA and Defendant ("Amended PAGA Notice") (together with the PAGA Notice,
7 the "PAGA Notices").¹⁰ The PAGA Notices were sent by U.S. Certified Mail to the employer and
8 submitted to the LWDA by way of online submission on the LWDA's website.¹¹ Aside from
9 confirmation of receipt of the PAGA Notices, the LWDA did not respond to the PAGA Notices.¹²
10 A true and correct copy of the PAGA Notice and Amended PAGA Notice are attached to the
11 Declaration of Helene Mayer as "EXHIBIT 1" and "EXHIBIT 2," respectively.¹³

12 On May 10, 2022, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys
13 General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint") against Defendant in
14 the San Bernardino County Superior Court ("Court"), Case No. CIVSB2209612 (the "Action").¹⁴
15 Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in
16 a uniform practice and procedure, with respect to Plaintiff and other Aggrieved Employees, of, *inter*
17 *alia*, failing to pay overtime and minimum wages, failing to provide compliant meal and rest periods
18 and associated premiums, failing to pay timely wages during employment and upon termination of
19 employment, failing to provide complete and accurate itemized wage statements, failing to keep
20 complete and accurate payroll records, and failing to reimburse necessary business-related expenses
21 and costs.¹⁵

22 On January 9, 2023, following a hearing on Defendant's Motion to Compel Arbitration, the
23 Court compelled Plaintiff's "individual" PAGA claims to arbitration and stayed the "non-
24 individual" PAGA claims pending completion of Plaintiff's individual arbitration (the "Arbitration
25

26 ⁸ Declaration of Helene Mayer, Plaintiff's Counsel, filed herewith ("Mayer Decl."), ¶ 7.

27 ⁹ Mayer Decl., ¶ 8.

28 ¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*, Exs. 1 and 2.

¹⁴ Mayer Decl., ¶ 9.

¹⁵ *Ibid.*

Order”).¹⁶

Following the Arbitration Order, the Parties initiated arbitration of Plaintiff’s “individual” PAGA claims.

Defendant maintains, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time period at issue. Defendant denies that it ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.¹⁷

Meanwhile, after the Parties initiated arbitration of Plaintiff’s “individual” PAGA claims, the Parties took different positions regarding whether there was a legal basis for Plaintiff to bring his “individual” PAGA claims back to litigation, or, alternatively, lift the stay on the “non-individual” PAGA claims notwithstanding the arbitration.¹⁸ Ultimately, pursuant to these discussions, the Parties agreed to pause any further arbitration or litigate any motion to lift the stay in favor of pursuing mediation.¹⁹

On May 5, 2025, the Parties participated in a full-day mediation conducted by the Honorable Peter J. Wilson (Ret.), a well-respected former Orange County Superior Court, Complex Division trial judge and highly regarded mediator experienced in mediating and adjudicating complex labor and employment matters.²⁰ The Parties were unable to resolve the Action during that session.²¹

On April 2, 2025, the Parties appeared for a Case Management Conference and reported that a settlement not reached at mediation, but that the Parties were continuing to engage in settlement dialogue.²² Moreover, with respect to the arbitration, Plaintiff’s Counsel reported that Plaintiff viewed the departure of Justice Zebrowski from the arbitration, the closing of the case file, and Plaintiff’s proposals for alternative arbitrators, combined with Defendant never agreeing to those alternatives arbitrators, as the same type of procedural limbo that motivated the California legislature to enact new statutes rendering late payment of arbitration fees a material breach of the agreement giving Plaintiff the right to withdraw from arbitration and/or lift the stay on non-individual PAGA

¹⁶ Mayer Decl., ¶ 11.

¹⁷ Mayer Decl., ¶ 10.

¹⁸ Declaration of Charles T. Sweeny, Plaintiff’s Counsel, filed herewith (“Sweeny Decl.”), ¶ 12 and 16; Mayer Decl., ¶ 16.

¹⁹ Sweeny Decl., ¶ 14.

²⁰ Sweeny Decl., ¶ 14; Mayer Decl., ¶ 15.

²¹ *Ibid.*

²² Sweeny Decl., ¶ 16; Mayer Decl., ¶ 16

claims. (*See*, Code Civ. Proc. §§ 1281.97 and 1281.98).²³ Plaintiff's Counsel explained that Plaintiff viewed the delays as a waiver of the right to arbitration under the more relaxed waiver standards (e.g., those articulated by the United States Supreme Court in *Morgan v. Sundance, Inc.* (2022) 596 U.S. 411 and the California Supreme Court in *Quach v. Cal. Commerce Club* (2024) 16 Cal.5th 562), and that should a settlement not be reached, Plaintiff would be filing his contemplated motion.²⁴

However, with the aid of the mediator's continued evaluation, efforts, and after his ultimate mediator's proposal, the Parties reached the Settlement described herein to resolve the Action in its entirety.²⁵

Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(1)(2). The Settlement Agreement and moving and supporting papers for this motion are being submitted to the LWDA in conformity with California Labor Code section 2699(1)(2), concurrently with this filing.²⁶

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Settlement pertains to the following allegedly aggrieved employees:

All current and former hourly-paid or non-exempt individuals employed by Defendant within the State of California at any time during the PAGA Period.²⁷

Based on information provided by Defendant, during the period from March 11, 2019 through March 5, 2025, there were approximately Nine Hundred (900) Aggrieved Employees who have worked approximately Sixty Thousand (60,000) Compensable Pay Periods.²⁸

B. Funding and Distribution of the Total Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Amount of Nine Hundred Ninety Thousand Dollars and Zero Cents (\$990,000.00), subject to possible increase pursuant to Section 3(a)(5) of the Settlement Agreement, in two equal installments

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Sweeny Decl., ¶ 17. Mayer Decl., ¶ 17.

²⁶ The Court is referred to the concurrently-filed Proof of Service, which confirms submission of the papers to the LWDA.

²⁷ Settlement Agreement, § 3(a)(5).

²⁸ Settlement Agreement, § 3(a)(5).

of \$495,000.00.²⁹ The first installment of \$495,000.00 shall be remitted to the PAGA Settlement Administrator within 30 days from the date that the Court enters an order approving the Settlement Agreement.³⁰ The second installment of \$495,000.00 shall be remitted to the PAGA Settlement Administrator within the first quarter of 2027 (i.e., between January 1, 2027 and March 31, 2027).³¹

C. Distribution of the Net Settlement Amount

The Net Settlement Amount will be the Total Settlement Amount less the following amounts: (1) Attorneys' Fees and Costs consisting of attorneys' fees of \$346,500.00 and reimbursement of litigation costs and expenses of \$23,626.04 to Plaintiff's Counsel; (2) General Release Fee of \$7,500.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$25,000.00 to Phoenix Class Action Administration Solutions ("Phoenix" or "PAGA Settlement Administrator").³² The Net Settlement Amount will be fully distributed to the Aggrieved Employees and the LWDA.

No later than fourteen (14) calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) Social Security number; and (v) the number of Compensable Pay Periods worked by each Aggrieved Employee during the PAGA Period.³³

Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$440,530.47) will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount (or approximately \$146,843.49) (i.e., Employees' Portion) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods.³⁴ To calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator will: (i) for each Aggrieved Employee, divide the

²⁹ Settlement Agreement, § 3(a) and 5(a).

³⁰ Settlement Agreement, § 5(a).

³¹ Settlement Agreement, § 5(a).

³² Settlement Agreement, § 3(a)(4); Sweeny Decl., ¶ 22 (Note that the Settlement Agreement does not specifically name Phoenix in § 3(a)(3), but the Parties have agreed to use Phoenix as the PAGA Settlement Administrator).

³³ Settlement Agreement § 7(c)(1).

³⁴ Settlement Agreement § 3(a)(5). *See*, fn. 4, *supra*, for discussion of the difference between the maximum allowed Settlement Administration Costs versus the quoted Settlement Administration Costs, and the impact on the Net Settlement Amount.

number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.³⁵ The payments to Aggrieved Employees for their Individual Settlement Share are considered one hundred percent (100%) penalties to be reported on IRS Form 1099, if required.³⁶

No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.³⁷

The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for ninety (90) calendar days, and thereafter, shall be canceled. Funds associated with canceled checks shall be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual Settlement Share(s).³⁸

D. The Scope of the Release in the Settlement Agreement

Upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff and the State of California with respect to Aggrieved Employees, will be deemed to have knowingly and voluntarily released and forever discharged Released Parties, to the full extent permitted by law, of and from the Action and Released Claims.

The "Released Claims" are any and all claims, arising during the PAGA Period, for civil penalties under the California Labor Code, Wage Orders, and/or regulations, pursuant to California Labor Code section 2698, *et seq.* ("PAGA") as well as any

³⁵ Settlement Agreement, § 7(b).

³⁶ Settlement Agreement, § 7(b)(1).

³⁷ Settlement Agreement, § 7(c)(3).

³⁸ Settlement Agreement, § 7(c)(4).

1 interest, fees, and costs available under PAGA, including but not limited to, for failure
2 to pay minimum, regular, and overtime, failure to provide compliant meal periods and
3 associated premiums, failure to provide compliant rest periods and associated
4 premiums, failure to timely pay wages during employment, failure to timely pay wages
5 upon termination, failure to provide compliant and accurate wage statements, failure to
6 maintain complete and accurate payroll records, failure to reimburse necessary
business-related expenses and costs, and for violations of California Labor Code
sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194,
1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders,
including *inter alia*, Wage Orders 4-2001, 5-2001, and 16-2001.³⁹

7 The “Released Parties” are Defendant, including Defendant’s parent corporation,
8 franchisees, affiliates, subsidiaries, divisions, predecessors, insurers, successors and
9 assigns, and their current and former employees, attorneys, officers, directors and
10 benefit plans and programs and the trustees, administrators, fiduciaries and insurers of
such plans and programs.⁴⁰

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

12 “[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as
13 such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior*
14 *Court* (2017) 3 Cal.5th 531, 546. “Unnamed employees need not be given notice of the PAGA
15 claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*
16 *v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5. A representative
17 PAGA action need not satisfy class action requirements, and no due process concern arises from the
18 fact that there are “nonparty aggrieved employees who are not given notice of, and an opportunity
19 to be heard in, a representative action that is not brought as a class action.” *Arias v. Superior Court*
20 (2009) 46 Cal.4th 969, 984. “PAGA does not make other potentially aggrieved employees parties”
21 to the action and no “due process concerns arise under PAGA because absent employees do not own
22 a personal claim for PAGA civil penalties and whatever personal claims the absent employees might
23 have for relief are not at stake.” *Williams, supra*, 546-547 (internal references omitted, citing
24 *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003
and *Iskanian v. CLS Transportation Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

25 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
26 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v. Superior*
27

28 ³⁹ Settlement Agreement, § 8(a).

⁴⁰ Settlement Agreement, § 8(a).

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

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

14 **IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENTS**

15 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or
16 herself and on behalf of other aggrieved employees and the State of California to recover civil
17 penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer
18 (Cal. Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must comply
19 with California Labor Code section 2699.3. *See* Cal. Lab. Code § 2699(a). Plaintiff has complied.

20 The settlement of a PAGA action requires court approval. *See* Cal. Lab. Code § 2699(l)(2)
21 (“The superior court shall review and approve any settlement of any civil action filed pursuant to
22 this part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
23 considered a class action but a law enforcement action” and therefore does not have to meet the
24 requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL
25 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at
26 *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not
27 satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal.
28 Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves

1 analysis of several unique features that render the approval process distinct from, and simpler than,
2 the process for approval of a class action settlement. A court reviewing a PAGA settlement need
3 only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing
4 Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth
5 the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA
6 claims. See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court,
7 Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court,
8 Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL
9 5364575, at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14;
10 *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz*
11 *Food Prods.* (E.D. Cal Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case*
12 (2010) 186 Cal.App.4th 576, 589.

13 In a PAGA case, the court’s focus is not the monetary amount which aggrieved employees
14 or the State stand to receive, but instead, whether the total settlement amount achieves the PAGA’s
15 objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties for
16 the government that otherwise may not have been assessed and collected by overburdened state
17 enforcement agencies.” See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *4 (citing *Arias,*
18 *supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to “be distributed to the
19 [LWDA] for enforcement of labor laws . . . and for education of employers and employees about
20 their rights and responsibilities under this code, to be continuously appropriated to supplement and
21 not supplant the funding to the agency for those purposes.” See Cal. Lab. Code § 2699(j). The
22 recovery of penalties on behalf of the State, by way of a PAGA claim, is essentially a law
23 enforcement action. See *Amalgamated, supra*, 46 Cal.4th at 1003 (stating that the PAGA is a
24 mechanism for “an aggrieved employee to recover civil penalties—for Labor Code violations—that
25 otherwise would be sought by state labor law enforcement agencies”); see also *Iskanian, supra*, at
26 381.

27 A PAGA settlement is a settlement of claims for penalties and other remedies which the
28 LWDA could assess and collect on behalf of employees without their involvement or approval.

1 “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
2 to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *5.
3 This renders the approval process of a PAGA settlement distinct from a class action settlement, and
4 the Court need not employ the two-step approval process that applies to a class action settlement,
5 under both state and federal law.

6 **V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

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

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

11 The Parties reached the Settlement after conducting extensive, arm’s-length settlement
12 negotiations and the involvement of a neutral mediator Hon. Peter J. Wilson (Ret.).⁴¹ A settlement
13 that is “the product of extensive and hard-fought adversarial negotiations between the parties” is
14 entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
15 245.

16 The Settlement is presumptively fair because: (1) it is the product of adversarial non-
17 collusive, and arm’s-length negotiations with the assistance of an independent mediator who is a
18 well-respected former Orange County Superior Court, Complex Division trial judge and highly
19 regarded mediator experienced in mediating and adjudicating complex labor and employment
20 matters; (2) it was negotiated by counsel with significant experience in similar complex labor and
21 employment matters; and (3) it occurred after counsel for the Parties engaged in significant
22 investigation to evaluate the strength and potential value of the PAGA claim, and risks and expenses
23 of litigating this claim through trial.⁴²

24 In the course of mediation and settlement negotiations, the Parties discussed all aspects of
25 the case, including the risks and delays of further litigation, including post-arbitration motions based
26 on rapidly changing case law, as well as risks proceeding with trial and the ever-evolving law
27 relating to representative PAGA actions, off-the-clock theory, meal and rest periods, meal break
28

⁴¹ Mayer Decl., ¶¶ 15, 17, 22, & 36, Sweeny Decl., ¶¶ 14 and 17.

⁴² Mayer Decl., ¶¶ 15, 17, 22, & 36.

1 waivers, arbitration agreements, and wage-and-hour enforcement, the evidence produced and
2 analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other
3 things.⁴³ During all settlement discussions, the Parties conducted their negotiations at arm's length
4 in an adversarial position.⁴⁴

5 Based on all of the information available to the Parties, the Parties agree that this matter is
6 well-suited for settlement given the strengths and weaknesses of the PAGA claim and the facts and
7 circumstances of the case.⁴⁵ Plaintiff and Plaintiff's Counsel believe that the settlement is a fair,
8 adequate, and reasonable resolution of this matter.⁴⁶ Plaintiff's Counsel has extensive experience
9 handling representative and class action wage-and-hour litigation and used that experience to
10 achieve a settlement recovery for Plaintiff, the State of California, and the Aggrieved Employees.⁴⁷
11 Therefore, the Court should give considerable weight to the competency, experience, and opinion
12 of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of
13 arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion
14 of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979)
15 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a
16 presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007)
17 2007 WL 1114010, at *4 (stating that the "assistance of an experienced mediator in the settlement
18 process confirms that the settlement is non-collusive").

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

21 In order for Plaintiff to prevail on the PAGA claim, he would have to prove that Defendant
22 engaged in the alleged California Labor Code violations and demonstrate that Defendant's conduct
23 warrants the imposition of penalties. See, e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008)
24 572 F.Supp.2d 1169, 1181-82 ("Plaintiff's claim under [PAGA] is wholly dependent upon her other
25 claims. Because all of plaintiff's other claims fail as a matter of law, so does her PAGA claim.").
26

27 ⁴³ Mayer Decl., ¶¶ 22-25, & 26-36.

28 ⁴⁴ Mayer Decl., ¶¶ 22-25, & 26-36.

⁴⁵ Mayer Decl., ¶¶ 22-25, & 26-36

⁴⁶ Mayer Decl., ¶ 42, Sweeny Decl., ¶ 23.

⁴⁷ Mayer Decl., ¶ 2-6, Sweeny Decl., ¶ 2-6.

1 Plaintiff's core allegation is that Defendant has systematically violated the California Labor
2 Code, with respect to Plaintiff and the Aggrieved Employee, by, *inter alia*, failing to properly pay
3 wages, failing to provide compliant meal and rest periods and associated premiums, failing to timely
4 pay wages during employment and upon termination of employment, failing to provide complete
5 and accurate wage statements, failing to keep complete and accurate payroll records, and failing to
6 reimburse necessary business-related expenses and costs.

7 Although wage-and-hour actions are amenable to resolution as to a group of employees, some
8 courts have also found that, for various reasons, the issues raised by Plaintiff raises individualized
9 issues and/or are not suitable for adjudication as to a group of employees.

10 Defendant maintained several defenses to Plaintiff's theory of liability, which, if
11 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.⁴⁸
12 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and
13 continues to have, legally-compliant employment policies and practices throughout the time period
14 at issue.⁴⁹ Defendant denies that it ever violated any provision of the California Labor Code,
15 including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.⁵⁰
16 Defendant further denied, and continues to deny, that the lawsuit is appropriate for representative
17 treatment for any purpose other than settlement.⁵¹

18 Defendant also challenged Plaintiff's standing as an aggrieved employee and denied that
19 any of its other employees whom Plaintiff seeks to represent are aggrieved.⁵² In addition, Defendant
20 maintained that following arbitration, Defendant would be entitled to assert further defenses against
21 representative litigation and could seek dismissal.⁵³ Also, multiple courts have taken an approach
22 requiring a plaintiff to establish standing and face the possibility of bifurcation of discovery and/or
23 trial of the PAGA claim. *See Amalgamated Transit Union, supra*, 46 Cal.4th at 1001 (noting that
24 PAGA "require[s] a plaintiff to have suffered an injury resulting from an unlawful action"); *Stafford*
25 *v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding that judicial
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27 ⁴⁸ Mayer Decl., ¶ 27.

⁴⁹ Mayer Decl., ¶ 27.

⁵⁰ Mayer Decl., ¶ 27.

⁵¹ Mayer Decl., ¶ 28.

⁵² Mayer Decl., ¶ 28.

⁵³ Sweeny Decl., ¶ 13.

1 economy supported bifurcation because of the difficulties and inherent uncertainties of being able
2 to establish liability with respect to a large number of potentially aggrieved employees and noted
3 that “PAGA’s public purpose would be ill-served if the court finds [the plaintiff] has not been
4 aggrieved by a Labor Code violation”); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955 (stating that
5 bifurcation and sequencing of litigation is allowed to avoid wasting time and money on trial when
6 litigation of issues could be rendered moot).

7 Defendant also argued that an important feature of PAGA is that the Court retains discretion
8 to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise
9 would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” *See* Cal. Lab.
10 Code § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203
11 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties awarded
12 to an employee based upon discretionary factors). Defendant maintained, and continues to maintain,
13 that it had and continues to have, legally-compliant employment policies and practices throughout
14 the time period at issue.⁵⁴ Defendant denies that it ever violated any provision of the California
15 Labor Code.⁵⁵ Even if, *arguendo*, such violations occurred, which Defendant denies, Defendant
16 contended that said violations would only be considered “initial violations” and thus heightened
17 “subsequent violation” penalties were not warranted. *See* Cal. Lab. Code § 2699(f)(2); *see also*
18 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 (“Until the employer has been
19 notified that it is violating a Labor Code provision [...], the employer cannot be presumed to be
20 aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”).

21 Defendant also contended that, with respect to PAGA claims, trial courts are unlikely to
22 assess cumulative penalties for the maximum number of possible, separate California Labor Code
23 violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where
24 certain conduct may be regulated by multiple provisions of the California Labor Code that are
25 interrelated and work in tandem. As such, Defendant contended that cumulative penalties and
26 heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.

27 Importantly, Defendant also contended that it would be able to similarly enforce arbitration

28 ⁵⁴ Mayer Decl., ¶ 31.

⁵⁵ Mayer Decl., ¶ 31.

1 agreements against the “non-individual” PAGA claims of other Aggrieved Employees. Defendant
2 contended that, taken together, these agreements and the agreement that it enforced against
3 Plaintiff’s “individual” PAGA claim would have claim preclusive impact, or otherwise, could
4 effectively be used to require Aggrieved Employees to engage in individual arbitration of their
5 individual claims on which the PAGA claim is predicated. After all, Defendant already sought to
6 enforce its arbitration agreement with Plaintiff and obtained an order compelling Plaintiff to
7 arbitration on an individual basis.

8 There remains uncertainty regarding PAGA claims due to decisions of the high courts and
9 recent amendment of the PAGA statute. For example, there is uncertainty and tension between, on
10 the one hand, the United States Supreme Court’s 2022 decision in *Viking River Cruises, Inc. v.*
11 *Moriana* (2022) 142 S. Ct. 1906, which allowed trial courts to divide a PAGA claim into
12 “individual” and “non-individual” components, and to compel the “individual” components to
13 arbitration, and, on the other hand, the California Supreme Court’s 2023 decision in *Adolph v. Uber*
14 *Technologies, Inc.* (2023) 14 Cal.5th 1104, 532 P.3d 682, which held that even when a PAGA
15 plaintiff’s “individual” PAGA claims are compelled to arbitration, that plaintiff still maintains
16 statutory standing to pursue “non-individual” PAGA claims arising out of events involving other
17 employees. Indeed, this Court ultimately recognized the dual-viability of those two decisions by
18 compelling Plaintiff’s “individual” PAGA claims to arbitration and staying the “non-individual”
19 PAGA claims pending the outcome of the arbitration. Still, there continues to be substantial
20 uncertainty in the relevant case authorities about whether an arbitrator’s finding that a PAGA
21 plaintiff is not an “aggrieved employee” for PAGA purposes, may be used exclusively, if reduced
22 to a final judgment, such that the plaintiff may lose standing to pursue non-individual PAGA claims,
23 and the California Supreme Court is currently reviewing a split of appellate authorities on the
24 question of whether a PAGA plaintiff even needs to bring individual claims at all, or whether he or
25 she can proceed only as to the non-individual PAGA claims on behalf of other Aggrieved
26 Employees, known as a “headless” PAGA action. (*See, Leeper v. Shipt* (2025) 566 P.3d 234, Case
27 No, S289305, granting review of *Leeper v. Shipt* (2024) 107 Cal.App.5th 1001, 1005 [holding that
28 if a former employee who entered into an enforceable agreement to arbitrate PAGA claims with

1 his/her employer attempts to bring a headless PAGA action against that employer, the trial court
2 may still compel individual arbitration because “every PAGA action necessarily includes and
3 individual PAGA claim”]; *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533
4 [holding that PAGA standing does not “depend on the viability or strength of a plaintiff’s individual
5 PAGA claim,” which means that PAGA plaintiffs do not necessarily need to assert an individual,
6 arguably arbitrable, PAGA claim, in order to bring PAGA actions on behalf of other Aggrieved
7 Employees], and *CRST Expedited, Inc. v. Superior Ct.* (2025) 112 Cal. App. 5th 872 (same, and
8 review granted but stayed pending review of *Leeper v. Shipt*).

9 While Plaintiff disagrees with Defendant’s contentions and maintains that his PAGA claim
10 has merit, in reaching the settlement, Plaintiff and his counsel took into account the strengths and
11 weaknesses of each side’s position and the uncertainty of how the case might have concluded as
12 litigation continued, through arbitration and post-arbitration motions, and at trial, and/or upon
13 appeal.⁵⁶

14 Furthermore, the recent amendment of the PAGA statute enacted on July 1, 2024, adopting,
15 *inter alia*, modified standing requirements, codifying a manageability requirement, capping civil
16 penalties that can be assessed against an employer if an employer meets certain conditions, and
17 allowing an employer to cure violations to avoid the assessment of civil penalties if an employer
18 meets certain conditions, has created uncertainty regarding the future of claims for civil penalties
19 under PAGA.

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

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

26 Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope of
27 the PAGA claim and allegations.⁵⁷ In addition, the Parties exchanged thousands of pages of
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⁵⁶ Mayer Decl., ¶ 35, Sweeny Decl., ¶ 13.

⁵⁷ Mayer Decl., ¶ 23.

1 information, documents, and data relevant to Plaintiff's claim and Defendant's defenses thereto,
2 including, and not limited to, Plaintiff's employment records, a representative time and pay data
3 sampling for Aggrieved Employees, Defendant's operations and employment practices, policies,
4 and procedures, among other documents.⁵⁸ Counsel for the Parties undertook significant
5 investigation, and also invested time reviewing and analyzing relevant information, documents, and
6 data to evaluate the PAGA claim and related allegations, including, and not limited to, calculating
7 the potential monetary recovery under PAGA.⁵⁹ Other work performed by Plaintiff's Counsel
8 included, but was not limited to: meeting and conferring with Defendant's counsel regarding the
9 pleadings, case management, informal discovery, arbitration, mediation, and settlement
10 negotiations, among other issues; case strategy and analysis; researching, drafting, reviewing, and
11 revising pleadings, court filings, motion-related papers (e.g., with respect to settlement approval
12 motion papers and an initial, unfiled draft of a motion to withdraw from arbitration), briefs for
13 settlement negotiations and mediation, and the settlement agreement; claims evaluation and
14 analysis; preparing for and participating in settlement negotiations and the mediation; and appearing
15 for court proceedings.⁶⁰

16 Had the case not settled, the Parties would have engaged in substantial additional motion
17 practice, depending on the outcome, would have conducted extensive additional formal discovery,
18 including propounding additional written discovery requests as well as multiple depositions of party
19 and percipient witnesses all over the State of California, to prepare the case for trial. From the
20 inception of this litigation, Defendant indicated that it would aggressively litigate this case.⁶¹ Even
21 if Defendant failed on its defenses, litigating a complex PAGA action is inherently expensive, and
22 the litigation could continue beyond entry of judgment if either party were to appeal adverse
23 rulings.⁶² Additionally, there is a real possibility that Plaintiff could recover nothing, either for
24 himself or on behalf of the State of California or other Aggrieved Employees after years of costly
25 and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious
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27 ⁵⁸ Mayer Decl., ¶ 23, Sweeny Decl., ¶ 14.

28 ⁵⁹ Mayer Decl., ¶ 23, Sweeny Decl., ¶ 19, Ex. 2.

⁶⁰ *Ibid.*

⁶¹ Mayer Decl., ¶ 27, Sweeny Decl., ¶ 14 and 19, Ex. 2.

⁶² Mayer Decl., ¶ 35, Sweeny Decl., ¶ 14 and 19, Ex. 2.

litigation, which would involve significant costs, favors settlement.

D. The Settlement Is Fair, Adequate, and Reasonable

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

The Settlement provides significant benefits to the State of California and the Aggrieved Employees and falls well-within the range of acceptable settlements under the circumstances. Under the Agreement, Defendant has agreed to pay a Total Settlement Amount of Nine Hundred Ninety Thousand Dollars and Zero Cents (\$990,000.00), subject to possible increase pursuant to Section 3(a)(5) of the Settlement Agreement, which encompasses the Net Settlement Amount, Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee.⁶³ Subject to approval by the Court, the following amounts will be subtracted from the Total Settlement Amount to yield the Net Settlement Amount: (1) Attorneys’ Fees and Costs consisting of attorneys’ fees in the amount of \$346,500.00 and reimbursement of litigation costs and expenses in the amount of \$23,626.04 to Plaintiff’s Counsel⁶⁴; (2) the Settlement Administration Costs of up to \$25,000.00; and (3) General Release Fee of up to \$7,500.00 to Plaintiff.⁶⁵

The Net Settlement Amount is currently estimated to be no less than Five Hundred Eighty Seven Thousand Three Hundred Seventy Three Dollars and Ninety Six Cents (\$587,373.96)⁶⁶, of which an estimated One Hundred Forty Six Thousand Eight Hundred Forty Three Dollars and Forty Nine Cents (\$146,843.49) is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods and Four Hundred Forty Thousand Five Hundred Thirty Dollars and Forty Seven Cents (\$440,530.047) is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies

⁶³ Settlement Agreement, §§ 3(a) & 3(a)(1)-(5).

⁶⁴ Settlement Agreement, § 3(a)(1). Although the Settlement Agreement provides that Plaintiff’s Counsel can seek up to \$25,000.00 for reimbursement of litigation costs and expenses, Plaintiff’s Counsel only seeks the amount of \$23,626.04 for this payment, which is less than \$25,000.00. The difference between the amount sought and the maximum allocated amount available under the settlement (i.e., the difference of -\$1,373.96), will be a part of the Net Settlement Amount.

⁶⁵ Settlement Agreement, §§ 3(a)-3(a)(4).

⁶⁶ See, fn. 4, *supra*, for discussion of the difference between the maximum allowed Settlement Administration Costs versus the quoted Settlement Administration Costs, and the impact on the Net Settlement Amount.

1 with California Labor Code section 2699(i).

2 The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel
3 recognize the expense and length of continued proceedings necessary to pursue the matter through
4 post-arbitration motions, trial, and any possible appeals.⁶⁷ Plaintiff and his counsel have also taken
5 into account the uncertainty and risk of the outcome of further litigation, and the difficulties and
6 delays inherent in such litigation.⁶⁸ Plaintiff and his counsel are also aware of the burdens of proof
7 necessary to establish liability, both generally and in response to Defendant's defenses thereto, and
8 the difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf
9 of Plaintiff, the State of California, and other Aggrieved Employees. Plaintiff and his counsel have
10 also taken into account Defendant's agreement to enter into a settlement that confers significant
11 relief upon the Aggrieved Employees and the State of California.

12 Considering all of the facts in this case, Plaintiff and his counsel have determined that the
13 Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is
14 in the best interests of the Aggrieved Employees and the State of California.⁶⁹

15 The result achieved in this case, and the monetary recovery provided by this settlement, are
16 well-within the range of an acceptable settlement under the circumstances, especially when
17 compared to trial court penalties assessments in contested cases⁷⁰ and the settlement of PAGA

19 ⁶⁷ Sweeny Decl., ¶¶ 12, 13, and 16

20 ⁶⁸ Mayer Decl., ¶ 25.

21 ⁶⁹ Mayer Decl., ¶ 42.

22 ⁷⁰ *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp. 3d 1058, 1100-1101, 1103-1104, 1111 (finding that, under
23 Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA penalties as the Court sees fit" and reducing the
24 PAGA penalty award significantly from the maximum penalties possible); *Morales v. Bridgestone Retail Operations LLC*
25 (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244 (of \$7 million PAGA penalties requested, the court
26 awarded \$425,000); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (of \$75 million in penalties sought,
27 the court affirmed the trial court's \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty
28 rate to \$5 per violation); *Arnold v. San Diego Second Chance Program* (Dec. 18, 2017) San Diego County Superior Court
No. 37-2016-00018375 (no PAGA penalties awarded); *Felczer v. Apple Inc.* (Sept. 13, 2017) San Diego County Superior
Court No. 37-2011-00102593 (no PAGA penalties awarded); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8,
2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557 at *41 (the court declined to award PAGA penalties after
trial); *Allen v. American Multi-Cinema* (July 24, 2016) Alameda County Superior Court No. RG11585502 (no PAGA
penalties awarded); *Atempa v. Pama* (July 31, 2015) San Diego County Superior Court (of PAGA penalties of \$456,133
sought, the court awarded \$197,434.00); *Driscoll v. Granite Rock* (Sept. 20, 2011) Santa Clara County Superior Court No.
1-08-cv-103426 (the court declined to award PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED CV10-01487 RGK (OPx),
2011 U.S. Dist. LEXIS 154590 at **8-9 (of \$2,800,000 PAGA penalties requested, the court awarded \$500,000); *Aguirre*
v. Genesis Logistics (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820 at **6-7
(of \$1,800,000 PAGA penalties requested, the court awarded \$500,000); *Halevi v. Aroma Bakery Café, Inc.*, Los Angeles
County Superior Court No. 468146 (Aug. 30, 2013) (the court declined to award PAGA penalties after trial awarding wages
to class on the basis that, *inter alia*, the lawsuit was not prompted by availability of PAGA penalties, penalties were not
necessary to remedy ongoing or future violations, corporate defendants corrected violations and were no longer in business,
and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory).

claims in other cases.⁷¹ Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

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

Plaintiff's Counsel is highly experienced in complex representative and class action wage-and-hour litigation.⁷² In the view of Plaintiff's Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁷³ Furthermore, courts have acknowledged that "the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]" *Williams, supra*, 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

VI. THE REQUESTED ATTORNEYS' FEES AWARD IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

A. A Fee Award of a Percentage of the Entire Fund Is Appropriate

The Settlement provides for a Total Settlement Amount of Nine Hundred Ninety Thousand Dollars and Zero Cents (\$990,000.00), subject to possible increase pursuant to Section 3(a)(5) of the Settlement Agreement.⁷⁴ The Settlement provides for attorneys' fees in an amount of up to thirty-five percent (35%) of the Total Settlement Amount (assuming the Total Settlement Amount remains \$990,000.00),⁷⁵ subject to approval and award by the Court.⁷⁶ The requested attorneys' fees award is commensurate with: (1) the risk that Plaintiff's Counsel took in bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that Plaintiff's

⁷¹ See, e.g., *DCH Auto Wage and Hour Cases* (May 2017) Los Angeles Superior Court, Case No. JCCP4833 (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit).

⁷² Sweeny Decl., ¶¶ 2-6, Mayer Decl., ¶¶ 2-6.

⁷³ Sweeny Decl., ¶ 23, Mayer Decl., ¶ 42.

⁷⁴ Settlement Agreement, § 3(a).

⁷⁵ Settlement Agreement, § 3(a)(5).

⁷⁶ *Ibid.*

1 Counsel have shown, (4) the results that Plaintiff's Counsel have achieved in the case, (5) the value
2 that Plaintiff's Counsel has achieved in the case, and (6) the other cases that Plaintiff's Counsel have
3 turned down in order to devote their time and effort to this case.

4 Plaintiff's Counsel is entitled to recover reasonable attorneys' fees and costs as a matter of
5 right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) ("Any employee who prevails in any [PAGA]
6 action shall be entitled to an award of reasonable attorney's fees and costs"). Plaintiff's Counsel is
7 also entitled to fees and costs under California Code of Civil Procedure section 1021.5, as the instant
8 PAGA action is by definition "for the benefit" of others and secures monetary recovery for a large
9 number of allegedly aggrieved employees, as well as the State of California. *See Estrada v. FedEx*
10 *Ground Package Sys. Inc.* (2007) 154 Cal.App4th 1, 16-17 (recognizing that recovery obtained on
11 behalf of 209 individuals satisfies the "significant benefit," "public interest," and "large class of
12 persons" requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff's personal
13 motivation). The settlement will also provide significant funds to the state labor agency, to enhance
14 enforcement of labor laws and education of "employers and employees about their rights and
15 responsibilities under [the California Labor Code]." Cal. Lab. Code § 2699(i).

16 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary fund
17 that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by
18 the California Supreme Court. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480 at 486 & 506.
19 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
20 method, the California Supreme Court has taken the position that trial courts also "retain the
21 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
22 requested percentage fee" and "[t]he percentage of fund method survives in California." *Id.* (internal
23 quotes omitted); *see also Wershba, supra*, 91 Cal.App.4th at 253.

24 Courts award fees to serve as an economic incentive for lawyers to undertake litigation and
25 thereby enhance and facilitate access to the judicial system for adjudication of meritorious claims,
26 and to deter wrongdoing. This is especially true in situations where multiple similar alleged wrongs
27 would not be economically feasible to pursue individually, such as here. *See A. Conte, Attorney*
28 *Fee Awards* (2d ed. 1993) 104, at 6.

1 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions
2 will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal.,*
3 *Inc.* (2000) 82 Cal.App.4th 19, 41; *see also Laffitte, supra*, 1 Cal.5th 480 at 506 (holding that “trial
4 court did not abuse its discretion in using [the percentage of fund method], in part to approve the fee
5 request”). Indeed, it is long settled that the “experienced trial judge is the best judge of the value of
6 professional services rendered in his court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.

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

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

28 Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and circumstances

1 surrounding the case is well-within the range of reasonableness. Historically, courts have awarded
2 fees as high as fifty percent (50%) of the settlement in complex actions, depending on the
3 circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
4 (awarding attorneys' fees in the amount of 45% of the \$7.3 million total settlement amount); *Beech*
5 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding
6 approximately 53% of the settlement as attorneys' fees). California courts routinely approve
7 attorneys' fees awards "average[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.*
8 (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency fees in marketplace
9 to be 20 to 40 percent and determined such a percentage fee was appropriate).

10 Plaintiff's Counsel has litigated this case since it was commenced, with the very real
11 possibility of an unsuccessful outcome and no fee recovery of any kind.⁷⁷ Counsel for the Parties
12 undertook significant investigation, and also invested time reviewing and analyzing relevant
13 information, documents, and data to evaluate the allegations, including, and not limited to,
14 calculating the potential monetary recovery under PAGA.⁷⁸ Other work performed by Plaintiff's
15 Counsel included, but was not limited to: meeting and conferring with
16 Defendant's counsel regarding the pleadings, case management, informal discovery, arbitration,
17 mediation, and settlement negotiations, among other issues; case strategy and analysis; researching,
18 drafting, reviewing, and revising pleadings, court filings, motion-related papers (e.g., with respect
19 to settlement approval motion papers and an initial, unfiled draft of a motion to withdraw from
20 arbitration), briefs for settlement negotiations and mediation, and the settlement agreement; claims
21 evaluation and analysis; preparing for and participating in settlement negotiations and the mediation;
22 and appearing for court proceedings.⁷⁹

23 In the present case, Plaintiff's Counsel have borne all of the risks and costs of litigation and
24 will not receive any compensation until recovery is obtained.⁸⁰ Plaintiff's Counsel are experienced
25 in complex wage-and-hour litigation and used that experience to obtain a significant settlement
26

27 ⁷⁷ Mayer Decl., ¶¶ 9-17, 22-25, and 26-36, Sweeny Decl., ¶ 18 and 19, Ex. 2.

28 ⁷⁸ Mayer Decl., ¶¶ 22-25, and 26-36, Sweeny Decl., ¶ 18 and 19, Ex. 2.

⁷⁹ *Ibid.*

⁸⁰ Mayer Decl., ¶ 37, Sweeny Decl., ¶ 18.

1 recovery for Plaintiff, the Aggrieved Employees, and the State of California.⁸¹ Considering the
2 amount of fees requested, work performed, risks incurred, results obtained, and experience of
3 Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees
4 are reasonable and should be awarded.

5 **B. The Requested Fee Award is Reasonable Based on the Factors Considered in**
6 **Determination of Fee Awards**

7 The factors which courts consider in determining whether fee awards are reasonable, all of
8 which support the fee award requested by Plaintiff's Counsel, are: (1) the time and labor required;
9 (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal
10 services properly; (4) the preclusion of other employment by the attorney due to the acceptance of
11 the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitation
12 imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the
13 experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature
14 and length of the professional relationship with the client; and (12) awards in similar cases. *Camden*
15 *I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772. Some of the most
16 relevant factors to this Court's fee determination will be addressed below.

17 It should be highlighted that the percentage award sought is commensurate with the time,
18 effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel's
19 representation and the risks taken in commencing the case, the skill and determination required, the
20 results that Plaintiff's Counsel have achieved, and the value of the settlement that Plaintiff's Counsel
21 have obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California. For the
22 reasons discussed herein, an award of attorneys' fees in the amount of thirty-five percent (35%) of
23 the Total Settlement Amount is reasonable.

24 ***1. Time & Labor***

25 Plaintiff's Counsel have used their experience and skills in litigating complex wage-and-
26 hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit,
27 Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal issues,
28

⁸¹ Sweeny Decl., ¶¶ 2-6, Mayer Decl., ¶¶ 2-6.

1 Defendant's business, and its operations and employment policies, practices, and procedures.
2 During the litigation of the case, Plaintiff's Counsel interviewed and obtained information from
3 Plaintiff, Defendant, and other sources, conducted legal research, reviewed and analyzed thousands
4 of pages of documents and data, prepared for and participated in mediation and robust settlement
5 discussions, evaluated the PAGA claim, and calculated the potential monetary recovery under
6 PAGA. Plaintiff's Counsel also met and conferred with Defendant's counsel regarding the
7 pleadings, case management, discovery, arbitration, mediation, and settlement negotiations, among
8 other issues. Plaintiff's Counsel performed other work including, *inter alia*, case strategy and
9 analysis; and engaging in extensive settlement negotiations.

10 Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary to
11 prosecute the case with maximum efficiency and has fully and actively participated in the litigation
12 process. The Attorney Task and Time Charts, which are attached as "EXHIBIT 4" to the
13 accompanying Declaration of Helene Mayer, and "EXHIBIT 2" to the accompanying Declaration
14 of Charles T. Sweeny, accordingly, set forth in detail the hours that Plaintiff's Counsel have spent
15 performing tasks in this matter as described above.⁸² Attorneys at Lawyers *for* Justice, PC have
16 spent **221.2 hours**, and Sweeny Law, PC has spent **130.2 hours**, to obtain a recovery on behalf of
17 Plaintiff, the Aggrieved Employees, and the State of California. These hours were required to bring
18 the case to its successful conclusion.

19 In light of the value of time expended and the carrying of costs involved in this litigation,
20 the requested attorneys' fees award is fair, adequate, and reasonable.

21 ***2. The Skill Required to Perform Legal Services Properly***

22 The skill required to properly litigate this case is evident not only in the results achieved, but
23 in the steps necessary to reach the same. Defendant retained highly-respected counsel to represent
24 its defenses. Defendant and its counsel felt very strongly about Defendant's ability to prevail on the
25 merits and avoid representative adjudication of the PAGA claim. Plaintiff and Plaintiff's Counsel
26 believe that the PAGA claim has merit, that Plaintiff will prevail in arbitration on the individual
27 component of his PAGA claim, that the non-individual component of the PAGA claim will proceed
28

⁸² Mayer Decl., ¶ 38, Ex. 4, Sweeny Decl., ¶ 19, Ex. 2.

1 in Court and will prevail at trial regardless of the outcome of arbitration. Plaintiff's Counsel
2 undertook extensive investigation, analysis, and research prior to filing the lawsuit, during the
3 litigation, and with respect to arbitration and post-arbitration motions. Plaintiff's Counsel took steps
4 to prepare the case for trial and had every intention of pursuing trial (either in tandem with the
5 arbitration or outside of arbitration should the Court have granted a motion to withdraw from
6 arbitration, or other post-arbitration motions) if Defendant did not offer an appropriate settlement.

7 Plaintiff's Counsel's effort and skill were used to, among other things, investigate the
8 allegations and gather facts, research the legal issues, analyze data, documents, and information
9 obtained from Defendant, Plaintiff, and through other sources, evaluate the PAGA claim, and
10 negotiate the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel
11 used their extensive experience and skill in the handling of complex wage-and-hour matters to
12 advocate for and obtain Aggrieved Employees and the State of California a recovery now, with
13 maximum efficiency, as opposed to the possibility of recovery in the future, after significant expense
14 and time.

15 ***3. The Value of the Settlement***

16 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty and
17 risks of further litigation. Had the case not settled, Defendant would have vigorously defended the
18 case, and would have challenged manageability and liability, and also sought a reduction in the
19 amount assessed as civil penalties. Defendant, however, faced risks too, including and not limited
20 to, the risk of being forced to withdraw from arbitration, the risk of losing in arbitration, the risk of
21 post-arbitration motions, as well as the risk of trial and the risk of having the Court assess civil
22 penalties. Additionally, preparing for trial would have been extraordinarily expensive for the
23 Parties.

24 At this stage, the settlement is preferred over continued litigation because such resolution
25 saves time and money that would otherwise go to litigation. The risks and expenses of further
26 litigation outweighed any benefit that might have been gained otherwise. The Settlement provides
27 an immediate recovery, as opposed to an uncertain result in the future post-arbitration motions after
28 prolonged expert discovery, trial preparation, and appellate review of those proceedings. The

1 Settlement offers present monetary relief to Plaintiff, the Aggrieved Employees, and the State of
2 California while avoiding additional expense, risk, and delay in obtaining possible further recovery.

3 ***4. Whether the Fee Is Fixed or Contingent***

4 The representation provided by Plaintiff's Counsel has been wholly contingent and
5 Plaintiff's Counsel took on this matter without knowing whether any recovery would be obtained.
6 Plaintiff's Counsel have invested a combined **351.4 hours** of time to obtain relief on behalf of
7 Plaintiff, the Aggrieved Employees, and the State of California. Plaintiff's Counsel are also
8 requesting reimbursement of litigation costs and expenses in the amount of \$23,626.04.⁸³

9 In this case, Plaintiff's Counsel have borne all of the risks and costs of litigation and will not
10 receive any compensation until recovery is obtained.⁸⁴ If Plaintiff's Counsel had not been
11 successful, the time that they have devoted to litigating the case would have been for naught and
12 would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel
13 are well-experienced in complex wage-and-hour litigation and used that experience to obtain a great
14 result for Plaintiff, the Aggrieved Employees, and the State of California.⁸⁵ The skill and
15 determination that Plaintiff's Counsel have shown throughout the prosecution of the case justifies
16 the requested attorneys' fees and costs. Considering the amounts requested, work performed, and
17 risks incurred, the requested fees and costs are reasonable and should be awarded.

18 ***5. The Amount Involved and the Results Achieved***

19 The results achieved, in light of the difficulties inherent in similar cases and the specific
20 difficulties faced in this case, are considerable. Here, the results achieved, and the recovery obtained
21 on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent a fair and
22 reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a settlement that
23 provides for a Total Settlement Amount of Nine Hundred Ninety Thousand Dollars and Zero Cents
24 (\$990,000.00), subject to possible increase pursuant to Section 3(a)(5) of the Settlement Agreement,
25 and it is currently estimated that the Net Settlement Amount available for distribution to the
26 Aggrieved Employees and the State of California, is approximately One Hundred Forty Six
27

28 ⁸³ Mayer Decl., ¶ 40, Ex. 5.

⁸⁴ Mayer Decl., ¶ 37.

⁸⁵ Sweeny Decl., ¶¶ 2-6, Mayer Decl., ¶¶ 2-6.

Thousand Eight Hundred Forty Three Dollars and Forty Nine Cents (\$146,843.49).⁸⁶

6. The Reputation and Ability of the Attorneys

Plaintiff's Counsel are a pair of recognized class action and complex litigation law firms, whose attorneys employed their knowledge, skill, and experience to bring the case to a successful conclusion. Plaintiff's Counsel have years of wage-and-hour class action and complex litigation experience, have recovered millions of dollars on behalf of thousands of individuals in California, and have successfully handled numerous significant wage-and-hour class action and representative action cases.⁸⁷

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

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. *See Laffitte, supra*, 1 Cal.5th at 505 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination"); *see also, e.g., Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award."). Importantly, "the lodestar calculation . . . does not override the trial court's primary determination of the fee as a percentage" and "does not impose an absolute maximum or minimum on the potential fee award." *Laffitte, supra*, 1 Cal.5th at 505.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

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

The reasonableness of hours is assessed by "the entire course of the litigation, including

⁸⁶ Settlement Agreement, § 3(a). *See, also*, fn. 4, *supra*, for discussion of the difference between the maximum allowed Settlement Administration Costs versus the quoted Settlement Administration Costs, and the impact on the Net Settlement Amount.

⁸⁷ Sweeny Decl., ¶¶ 2-6, Mayer Decl., ¶¶ 2-6.

1 pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las*
2 *Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

3 As discussed above, this case was highly contested and required a significant amount of time
4 and labor. Defendant made it clear very early on that it disputed all of Plaintiff’s allegations and
5 disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*, that it
6 had facially-compliant employment policies and practices throughout the time period at issue.
7 Defendant raised affirmative defenses and denied liability, and the pursuit of this case involved
8 gathering and analyzing data from Defendant as well as other sources. The handling of this litigation
9 involved a great amount of effort, and also required and involved the exercise of a high level of skill,
10 which Plaintiff’s Counsel have, as a result of their extensive experience in complex wage-and-hour
11 litigation. Long and difficult battles would have followed as the case moved toward trial, including
12 a motion to withdraw from arbitration, various post-arbitration motions, taking and defending
13 declarant and expert depositions, depositions of person most knowledgeable designees, conducting
14 statewide formal discovery, and engaging in additional extensive motion practice and anticipated
15 appeals thereof. As Plaintiff’s Counsel geared up for these battles, Plaintiff’s Counsel undertook
16 intense preparation in an attempt to resolve the entire matter through settlement negotiations.

17 Plaintiff’s Counsel had to bring together a volume of information, data, and documents that
18 were obtained from Plaintiff, Defendant, and other sources. Plaintiff’s Counsel conducted extensive
19 review and analysis of the information, documents, and data to strategize and evaluate the case and
20 engage in settlement discussions.

21 As set forth above in Part VI.B.1 *infra*, attached to the Declarations of Helene Mayer and
22 Charles T. Sweeny are the Attorney Task and Time Charts that sets forth in detail the numerous
23 tasks that Plaintiff’s Counsel performed in this case, and the time required for completing those
24 tasks.⁸⁸ The chart demonstrates that Plaintiff’s Counsel have spent a combined total of **351.4 hours**
25 on this matter. In light of the facts and circumstances of this case, as well as the results Plaintiff’s
26 Counsel have achieved on behalf of Plaintiff, the Aggrieved Employees, and the State of California,
27 Plaintiff’s Counsel have spent a reasonable number of hours on this matter.

28
⁸⁸ Sweeny Decl., ¶ 19, Ex. 2, Mayer Decl., ¶ 38, Ex. 4

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

3 Both California and federal courts recognize that attorneys should be compensated for
4 providing representation on a contingency basis and for taking on the risks associated with said
5 representation, as well as being provided with financial incentives to enforce important rights and
6 protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In awarding
7 attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding
8 attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly
9 rates for winning contingency cases." *See id.*

10 Plaintiff's Counsel have been actively involved in the prosecution of this case, prior to the
11 commencement of the Action and all the way up to approval of the settlement, and their dedication
12 to the representation of Plaintiff, the Aggrieved Employees, and the State of California has precluded
13 other employment. Here, Plaintiff's Counsel bore the risk that, despite all of their efforts and skills
14 employed, there may be no recovery. Ultimately, Plaintiff's Counsel were successful in reaching a
15 settlement of \$990,000.00, subject to possible increase pursuant to Section 3(a)(5) of the Settlement
16 Agreement.

17 As set forth in the Declarations of Helene Mayer and Charles T. Sweeny, the professional
18 backgrounds and experience of Plaintiff's Counsel support a reasonable blended hourly rate of
19 compensation of at least \$850 per hour for services provided by Lawyers *for* Justice, PC, and a
20 reasonable hourly rate of compensation of at least \$750 per hour for services provided by Sweeny
21 Law, PC.⁸⁹ Lawyers *for* Justice, PC has been awarded attorneys' fees, compensating the firm at the
22 rate of at least \$850 for legal services performed, by courts of this state.⁹⁰ While the circumstance
23 of every case is unique, the fact remains that the work performed and efforts undertaken by
24 Plaintiff's Counsel in this matter justify the requested attorneys' fees award.

25 **3. The Risks Involved, Skill Required, Complexity of the Matter, and Results**
26 **Obtained Warrant Upward Enhancement of the Lodestar.**

27 Even when courts have opted to award fees in settlement fund cases based on time reasonably
28

⁸⁹ Sweeny Decl., ¶ 20, Mayer Decl., ¶ 39.

⁹⁰ Mayer Decl., ¶ 39.

1 expended on the action, courts have generally awarded these fees based on the actual time expended
2 (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v. Screen Extras Guild, Inc.*
3 (9th Cir. 1975) 526 F.2d 67. Such a multiplier is warranted in this matter.

4 Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved, the
5 complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051; *Graham v.*
6 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of the most common fee enhancers [...]”
7 is for contingency risk.”). Such an enhancement “mirrors the established practice in the private legal
8 market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over
9 their normal hourly rates for winning contingency cases.” *Vizcaino*, 290 F.3d at 1051; *accord*
10 *Ketchum*, 24 Cal.4th at 1132-33. A risk multiplier also serves to bring the financial incentives for
11 enforcing important rights “into line with incentives [attorneys] have to undertake claims for which
12 they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal. 4th at 1132.

13 In determining whether or not to enhance the lodestar, California courts take into account
14 multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See, *Cates*
15 at 822-23. Multiple factors warrant enhancement in this case, including the following:

- 16 • The time and labor required
- 17 • The skill requisite to perform the legal services properly
- 18 • The preclusion of other employment by the attorney due to the acceptance of the case
- 19 • The contingent nature of the fee
- 20 • The amount involved and results obtained
- 21 • The experience, reputation, and ability of the attorney
- 22 • Awards in similar cases

23 *Ketchum* at 1134.

24 Adjustment of the base lodestar figure to compute an award of attorneys’ fees for a claim
25 under the California Labor Code is appropriate. See *Id.*, at 1135-36; *Serrano v. Priest* (1977) 20
26 Cal.3d 25, 48-49. “The lodestar is calculated by multiplying the reasonable hours expended by a
27 reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate.”
28 *Wershba, supra*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment method, the trial

1 court determines the reasonable hourly rate of compensation for counsel, which it then multiplies by
2 the number of hours the court finds were reasonably spent preparing the case, to obtain the lodestar
3 figure. *Ketchum, supra*, 24 Cal.4th at 1131-32. The lodestar figure is the “basic fee for comparable
4 legal services in the community” based upon the “hourly amount to which attorneys of like skill in
5 the area would typically be entitled.” *Id.*, at 1132-33 (quotation marks and citation omitted).

6 As discussed above, this was a highly-contested matter which required an extensive amount
7 of time and labor. Defendant raised defenses and denied liability, and the case involved gathering
8 and analyzing documents and data from Defendant and obtained through other sources. The
9 handling of this matter involved a great amount of effort, and required the exercise of high-level of
10 skill, which Plaintiff’s Counsel have as a result of extensive experience in employment wage-and-
11 hour litigation. Plaintiff’s Counsel have been actively involved in the prosecution of this matter,
12 prior to its commencement and Plaintiff’s Counsel’s work has continued all the way up to the
13 present. Plaintiff’s Counsel’s dedication to the representation of Plaintiff, the Aggrieved Employees,
14 and the State of California has precluded other employment.

15 Most importantly, all services were performed by Plaintiff’s Counsel on a contingent basis.
16 Both California and federal courts recognize that attorneys should be compensated for taking on
17 such contingent risks and provided with financial incentives to enforce important rights and
18 protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*,
19 24 Cal. 4th at 1132-33. Here, Plaintiff’s Counsel bore the risk that, despite all of their efforts and
20 the skill employed, there may be no recovery. Therefore, at a minimum, Plaintiff’s Counsel is
21 entitled to a risk multiplier. The results obtained by way of Plaintiff’s Counsel’s efforts are
22 significant here. Plaintiff’s Counsel was successful in achieving substantial results in the form of a
23 settlement of \$990,000.00 Also, Plaintiff’s Counsel’s efforts throughout the matter demonstrate
24 dedication to the interests of both the Aggrieved Employees and the State of California.

25 Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and circumstances
26 surrounding the matter is well within the range of reasonableness. While handling this matter,
27 Plaintiff’s Counsel devoted the hours in legal time summarized above and detailed in the Attorney
28 Task and Time Charts which are attached as exhibits to the Declarations of Helene Mayer and

Charles T. Sweeny.⁹¹ As these declarations indicate, Plaintiff's Counsel have worked 351.4 hours in the pursuit of this matter. Applying a reasonable blended rate of \$850 per hour to 221.20 hours of work performed by Lawyers *for* Justice, PC would place a base lodestar value of \$188,020.00 for services performed by Lawyers *for* Justice, PC. Applying an hourly rate of \$750 per hour to 130.2 hours of work performed by Sweeny Law, PC would place a base lodestar value of \$97,650.00 for services performed by Sweeny Law, PC. Applying a modest multiplier of 1.5 to the total base lodestar of \$285,670.00, the total *enhanced* lodestar fees are \$428,505.00 for Plaintiff's Counsel's services. However, Plaintiff's Counsel seek an attorneys' fee award of \$346,500.00 (equal to 35% of the Total Settlement Amount based on the Settlement Agreement). Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Plaintiff's Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even higher.**" *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with cross-check **multipliers ranging from 4.5 to 19.6**).

Therefore, application of a modest multiplier of 1.21 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award. Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$346,500.00 to Plaintiff's Counsel.

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

The Settlement provides for reimbursement of litigation costs and expenses in the amount of up to Twenty Five Thousand Dollars and Zero Cents (\$25,000.00). As set forth in the Declaration of Helene Mayer, Plaintiff's Counsel seeks reimbursement of \$23,626.04 in litigation costs and expenses.⁹² These expenses were reasonable and necessary in the prosecution of this matter and to

⁹¹ Sweeny Decl., ¶ 19, Ex. 2, Mayer Decl., ¶ 38, Ex. 4.

⁹² Mayer Decl., ¶ 40, Ex. 5.

1 obtain the Settlement.⁹³ Accordingly, the Court is requested to award reimbursement of litigation
2 costs and expenses to Plaintiff's Counsel in the amount of \$23,626.04.

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

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

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

15 The Parties have agreed to retain, subject to approval by the Court, Phoenix Class Action
16 Administration Solutions (the "PAGA Settlement Administrator") to handle the administration of
17 the Settlement. The fees and expenses of the PAGA Settlement Administrator are estimated not to
18 exceed \$8,000.00.⁹⁴ These costs include, but are not limited to, expenses for preparing, printing,
19 and mailing the Cover Letter and Individual Settlement Shares checks to the Aggrieved Employees
20 (i.e., PAGA Settlement Packages); performing skip-trace searches; re-mailing the returned PAGA
21 Settlement Packages; and handling inquiries from Aggrieved Employees regarding the Settlement,
22 among other things.⁹⁵ Accordingly, the Court should grant approval of the Settlement
23 Administration Costs in the amount of up to \$8,000.00 to Phoenix Class Action Administration
24 Solutions, a necessary third-party for handling the settlement process.

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28 ⁹³ *Ibid.*

⁹⁴ Sweeny Decl., ¶ 22, Ex. 3.

⁹⁵ *Ibid.*

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

3 The Settlement provides for a General Release Fee to be paid to Plaintiff in the amount of
4 \$7,500.00 for his broader individual waiver and release of claims with a California Civil Code
5 Section 1542 waiver (set forth in Section 8(b) of the Settlement Agreement).⁹⁶

6 It is also worth noting that, Plaintiff contributed considerable time and effort to the litigation
7 of this case in order to enforce the California Labor Code on behalf of the State of California and
8 for the benefit of other Aggrieved Employees. Plaintiff discussed his employment with his counsel,
9 gathered and produced relevant documents and information, and provided the facts and evidence
10 necessary to attempt to prove the allegations.⁹⁷ Plaintiff was available whenever his counsel needed
11 him and tried to obtain and provide documents and information that would aid in the litigation of
12 the PAGA claim and pursuit of recovery on behalf of the State of California and Aggrieved
13 Employees.⁹⁸

14 Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the
15 amount of \$7,500.00, in addition to the Individual Settlement Share he will receive as an Aggrieved
16 Employee.

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26 ⁹⁶ Settlement Agreement, §§ 3(a)(2) & 8(b). The PAGA statute recognizes that a plaintiff employee may pursue or recover
27 other remedies and relief available to the plaintiff employee under state or federal law through an action under PAGA. *See*,
28 Cal. Lab. Code § 2699(k)(1) (formerly Cal. Lab. Code § 2699(g)(1). As such, it is appropriate for Plaintiff to receive a
 payment for her broader individual release of claims.

⁹⁷ Sweeny Decl., ¶ 21; Mayer Decl., ¶ 41; Declaration of John Franklin (“Franklin Decl.”), *generally*.

⁹⁸ *Ibid*.

1 **XI. CONCLUSION**

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

10 Dated: November 26, 2025

SWEENEY LAW, PC

11
12 By: 
13 Charles T. Sweeney
14 *Counsel for Plaintiff*