

Carolyn Hunt Cottrell (SBN 166977)
Ori Edelstein (SBN 268145)
Eugene Zinovyev (SBN 267245)
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100
Fax: (415) 421-7105
ccottrell@schneiderwallace.com
oedelstein@schneiderwallace.com
ezinovyev@schneiderwallace.com

*Attorneys for Plaintiffs,
on behalf of the State of California
and Aggrieved Employees*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

HA NGUYEN, ALEX BHAGATRAM,
ALICIA TAYLOR, SORAYA LODIN, and
MICHAEL WEBSTER, on behalf of the
State of California and Aggrieved
Employees,

Plaintiffs,

vs.

BLOOMINGDALE'S, LLC and MACY'S,
INC,

Defendants.

Case No. CGC-22-603379

Hon. Andrew Y.S. Cheng
Dept. 613

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

Date: May 8, 2024

Time: 2:00 p.m.

Dept.: 613

Action Filed: December 9, 2022

Trial Date: None Set

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

**04/19/2024
Clerk of the Court**

BY: SANDRA SCHIRO
Deputy Clerk

TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
I. INTRODUCTION	9
II. FACTUAL AND PROCEDURAL BACKGROUND.....	9
III. PROCEDURAL HISTORY.....	10
IV. TERMS OF THE SETTLEMENT.....	10
A. Monetary Terms.	10
B. Settlement Administration and Distribution of Funds.	11
C. Tax Treatment.	12
D. Releases.....	13
V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	13
A. PAGA Settlement Approval Standard.....	13
B. PAGA’S Purpose.....	13
C. The Settlement Enforces the PAGA’s Purpose.....	14
D. The Risks and Expense of Continued Litigation Warrant Approval of the Settlement.	17
VI. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE	19
A. Plaintiffs’ Counsel is Entitled to Recovery Fees of One-Third of the Common Fund.	19
B. The Requested Fee Award is Fair and Reasonable Under the Relevant Factors.	21
C. The Requested Litigation Costs are Fair and Reasonable.	24
VII. THE REQUESTED SERVICE AWARDS ARE REASONABLE	24
VIII. CONCLUSION	25

TABLE OF AUTHORITIES

CASES

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	18
<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	17, 18
<i>Amaraut v. Sprint/United Mgmt. Co.</i> , No. 19-cv-411-WQH-AHG, 2021 U.S. Dist. LEXIS 147176	25
<i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969	13, 14
<i>Bank of America v. Cory</i> (1985) 164 Cal.App.3d 66	20
<i>Baumann v. Chase Inv. Servs. Corp.</i> (9th Cir. 2014) 747 F.3d 1117	14
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 772.....	20
<i>Brewer v. Connell Chevrolet</i> (Super. Ct. Orange Cnty. Jun. 15, 2017) No. 30-2016-00852123-CU-OC-CXC, 2017 Cal. Super. LEXIS 15031	21
<i>Buenrostro-Flores v. Langer Juice Co.</i> (Super. Ct. L.A. Cnty. June 21, 2023) No. 21STCV01133, 2023 Cal. Super. LEXIS 38919	21
<i>Carlson v. Superior Court</i> (1973) 33 Cal.App.3d 640	23
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	18
<i>Castillo v. ADT, LLC</i> (E.D. Cal. 2017) 2017 WL 363108	16
<i>Cellphone Termination Fee Cases</i> (2010) 186 Cal.App.4th 1380	24
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	21

1	<i>Ducote v. HSS, Inc.,</i>	
2	Alameda County Superior Court, Case No. HG19036564.....	15, 25
3	<i>Garcia v. Macy's West Stores, Inc.,</i>	
4	San Bernardino County Superior Court, Case No. CIVDS1516007	21
5	<i>Garcia v. Pep Boys Manny Moe & Jack</i>	
6	(Super Ct. Orange Cnty. Jul. 14, 2016) No. 30-2014-00720574-CU-0E-CJC, 2016 Cal.....	21
7	<i>Gentrup v. Renovo Servs., LLC</i>	
8	(S.D. Ohio June 24, 2011) No. 1:07CV430,	
9	2011 U.S. Dist. LEXIS 67887	23
10	<i>Gonzales v. CoreCivic of Tenn., LLC</i>	
11	(E.D. Cal. Sept. 12, 2018) No. 1:16-cv-01891-DAD-JLT,	
12	2018 U.S. Dist. LEXIS 156549	18
13	<i>Gonzales v. Healthcare Servs. Grp., Inc. et al.,</i>	
14	Case No. CGC-18-570988, San Francisco County Superior Court.....	21
15	<i>Hamilton v. Juul Labs, Inc.</i>	
16	(N.D. Cal. Nov. 16, 2021) No. 20-CV-03710-EMC,	
17	2021 U.S. Dist. LEXIS 221416	16
18	<i>Haralson v U.S. Aviation Servs. Corp.</i>	
19	(N.D. Cal. 2019) 383 F.Supp.3d 959	16
20	<i>Hartley v. On My Own, Inc.</i>	
21	(E.D. Cal. Aug. 25, 2020) No. 2:17-cv-00353-KJM-EFB,	
22	2020 U.S. Dist. LEXIS 154315	15
23	<i>Hernandez v. Towne Park, Ltd.,</i>	
24	No. 12-02972 MMM, 2012 U.S. Dist. LEXIS 86975	
25	(C.D. Cal. Jun. 22, 2012)	16
26	<i>In re Mego Fin. Corp. Sec. Litig.</i>	
27	(9th Cir. 2000) 213 F.3d 454.....	18
28	<i>In re Rite Aid Corp. Sec. Litig.</i>	
	(3d Cir. 2005) 396 F.3d 294	20
	<i>Iskanian v. CLS Transp. L.A., LLC</i>	
	(2014) 59 Cal.4th 348	19

1	<i>Ketchum v. Moses</i>	
2	(2001) 24 Cal.4th 1122	23
3	<i>Laffitte v. Robert Half Int’l. Inc.</i>	
4	(2016) 1 Cal.5th 480	20, 22
5	<i>Linney v. Cellular Alaska P’ship</i>	
6	(9th Cir. 1998) 151 F.3d 1234	18
7	<i>Martin v. Ameripride Servs., Inc.</i>	
8	(S.D. Cal. June 9, 2011) No. 08cv440-MMA (JMA),	
9	2011 U.S. Dist. LEXIS 61796	20
10	<i>Martinez v. Flower Foods</i>	
11	(C.D. Cal. Feb. 1, 2016) No. CV 15-5112 RGK (Ex),	
12	2016 U.S. Dist. LEXIS 188989	23
13	<i>Merante v. Am. Inst. for Foreign Study, Inc.</i>	
14	(N.D. Cal. Jul. 25, 2022) No. 21-cv-03234-EMC,	
15	2022 U.S. Dist. LEXIS 131833	16
16	<i>Moniz v. Adecco USA, Inc.</i>	
17	(2021) 72 Cal.App.5th 56	13
18	<i>O’Connor v. Uber Techs., Inc.</i>	
19	(N.D. Cal. 2016) 201 F.Supp.3d 1110.....	13
20	<i>Patel v. Nike Retail Servs.</i>	
21	(N.D. Cal. May 8, 2019) No. 14-cv-04781-RS,	
22	2019 U.S. Dist. LEXIS 77988	15
23	<i>People ex rel. Strathmann v. Acacia Research Corp.</i>	
24	(2012) 210 Cal.App.4th 487	19
25	<i>Perez v. CVS Health Corp.</i>	
26	(E.D. Cal. Jun. 11, 2021) No. 1:19-cv-00449-DAD-BAM,	
27	2021 U.S. Dist. LEXIS 110216	16
28	<i>Posephny v. AMN Healthcare Inc.</i>	
	(N.D. Cal. Jul. 9, 2020) No. 18-cv-06284-KAW,	
	2020 U.S. Dist. LEXIS 268743	18
	<i>Rosario v. Inter-Con Sec. Sys.</i>	
	(Super. Ct. Alameda Cnty. Jan. 28, 2019) No. RG17849836,	
	2019 Cal. Super. LEXIS 95638	15

1	<i>Sanchez v. RK Logistics Grp.</i>	
2	(Super. Ct. Alameda Cnty. Feb. 25, 2020) No. RG16826234,	
3	2020 Cal. Super. LEXIS 49330	25
4	<i>Schneider v. Catholic Healthcare W.</i>	
5	(Super. Ct. S.F. Cnty. Jan. 13, 2017) No. CGC-10-506243,	
6	2017 Cal. Super. LEXIS 2077	25
7	<i>Serrano v. Priest</i>	
8	(1977) 20 Cal.3d 25	24
9	<i>Smith v. Lux Retail N. Am., Inc.</i>	
10	(N.D. Cal. June 13, 2013) 2013 WL 2932243	16
11	<i>Smith v. Rae Venter Law Group</i>	
12	(2002) 29 Cal.4th 345	17
13	<i>Staton v. Boeing Co.</i>	
14	(9th Cir. 2003) 327 F.3d 938	20
15	<i>Steiner v. Am. Broad. Co., Inc.</i>	
16	(9th Cir. 2007) 248 F. App'x 780	24
17	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
18	(2012) 203 Cal.App.4th 1112	18
19	<i>Villalpando v. Exel Direct, Inc.</i>	
20	(N.D. Cal. Dec. 9, 2016) No. 3:12-cv-04137-JCS,	
21	2016 WL 7785852	25
22	<i>Vizcaino v. Microsoft Corp.</i>	
23	(9th Cir. 2002) 290 F.3d 1043	21, 24
24	<i>Vorise v. 24 Hour Fitness USA, Inc.,</i>	
25	Contra Costa County Superior Court, Case No. C15-02051	21
26	<i>Wheeler v. Baldwin & Sons LLC</i>	
27	(Super. Ct. San Diego Cnty. Aug. 11, 2023) No. 37-2023-00016392-CU-WT-CTL,	
28	2023 Cal. Super. LEXIS 60684	23
	<i>Whitworth v. Solarcity Corp.</i>	
	(N.D. Cal. May 1, 2023) No. 16-cv-01540-JSC,	
	2023 U.S. Dist. LEXIS 75564	15

STATUTES

Cal. Lab. Code § 1174	13
Cal. Lab. Code § 1174.5	13
Cal. Lab. Code § 1182.12	10, 13
Cal. Lab. Code § 1194	10, 13, 16
Cal. Lab. Code § 1197	13
Cal. Lab. Code § 1197.1	13
Cal. Lab. Code § 1198	13
Cal. Lab. Code § 200	13
Cal. Lab. Code § 203	17
Cal. Lab. Code § 204	10, 13
Cal. Lab. Code § 210	13
Cal. Lab. Code § 218.6	13
Cal. Lab. Code § 226	10, 13
Cal. Lab. Code § 226.3	13
Cal. Lab. Code § 226.7	10, 13
Cal. Lab. Code § 2699	13, 14
Cal. Lab. Code § 2699(g)(1)	19, 24
Cal. Lab. Code § 2699(i)	15, 19
Cal. Lab. Code § 2699(l)(2)	9, 13
Cal. Lab. Code § 2699.3	13
Cal. Lab. Code § 2699.5	13
Cal. Lab. Code § 2802	10, 13
Cal. Lab. Code § 510	10, 13, 16

1	Cal. Lab. Code § 512	10, 13
2	Cal. Lab. Code § 558	13, 16
3	Cal. Lab. Code § 90.5(a)	14
4	Cal. Lab. Code §§ 201–203	10, 13
5	Cal. Lab. Code §§ 2698, <i>et seq.</i>	9, 13
6	Stats. 2003 ch. 906, § 1	14
7		

TREATISES

9	Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study</i> , J. of Empirical Legal Studies, Vol. 1, Issue 1, March 2004	21
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

I. INTRODUCTION

Plaintiffs Ha Nguyen, Alex Bhagatram, Alicia Taylor, Soraya Lodin, and Michael Webster (“Plaintiffs”) have reached a settlement of their claims for civil penalties under the Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698, *et seq.*, against Defendants Bloomingdale’s, LLC (“Bloomingdale’s”) and Macy’s, Inc. (“Macy’s”) (collectively, “Defendants”). The parties have memorialized the terms of their settlement in the PAGA Settlement and Release Agreement (“Settlement”) attached as **Exhibit 1** to the Declaration of Carolyn H. Cottrell (“Cottrell Decl.”), filed concurrently herewith. In accordance with Cal. Lab. Code § 2699(1)(2), Plaintiffs now respectfully request that the Court review and approve the Settlement. Approval is warranted in view of PAGA’s purposes to remediate and deter violations and maximize enforcement of the Labor Code.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants operate luxury department stores offering high-end designer fashion and cosmetic products and accessories. (*See* Second Amended Complaint (“SAC”), ¶ 3).¹ To ensure retention of selective clientele, Defendants place certain customer-service expectations on their employees which, Plaintiffs contend, result in violations of the Labor Code. (*See id.* at ¶¶ 38, 43). Specifically, Plaintiffs assert in this Action² that Defendants pressure them to skip their meal and rest periods, take their meal and rest periods late, or end their meal and rest periods prematurely in order to engage with customers. (*Id.* at ¶¶ 6, 7). Plaintiffs assert that Defendants call and text Plaintiffs while they are on break to summon them back to the sales floor and require Plaintiffs to contact potential customers from their personal cell phones while off the clock. (*Id.* at ¶¶ 7, 38, 40, 43, 74). Plaintiffs further assert that Defendants require them to attend meetings and online conferences and trainings off the clock in order to stay informed about luxury trends. (SAC, ¶¶ 8, 9, 43). Finally, Plaintiffs assert that Defendants require them to use their personal cell phones and personal computers to contact potential customers and attend conferences and trainings but do not reimburse Plaintiffs for the use of these devices. (*Id.* at ¶ 13). Defendants denied Plaintiffs’ assertions and denied any liability based on Plaintiffs’ allegations, including any alleged joint employer liability.

¹ The SAC is the operative complaint.

² “Action” means *Nguyen, et al. v. Bloomingdale’s, LLC, et al.*, California Superior Court for the County of San Francisco, Case No. CGC-22-603379. (Settlement, ¶ A.1).

1 Based on these alleged practices, Plaintiffs assert eight causes of action in the SAC, seeking
2 civil penalties under PAGA: (1) meal period violations (Cal. Lab. Code §§ 226.7 and 512); (2) rest
3 period violations (Cal. Lab. Code § 226.7); (3) failure to pay for all hours worked (Cal. Lab. Code §§
4 204, 1194 and 1198); (4) failure to pay minimum wage (Cal. Lab. Code §§ 1182.12, 1194 and 1197);
5 (5) failure to pay overtime wages (Cal. Lab. Code §§ 510 and 1194); (6) inaccurate wage statements
6 (Cal. Lab. Code § 226); (7) waiting time penalties (Cal. Lab. Code §§ 201–203); and (8) failure to
7 reimburse necessary business expenses (Cal. Lab. Code § 2802) (collectively, the “Operative
8 Claims”). (Settlement, ¶ B.20).

9 III. PROCEDURAL HISTORY

10 Plaintiff Ha Nguyen filed her initial PAGA complaint on December 9, 2022, alleging the eight
11 causes of action described above. (Settlement, ¶ B.20). On June 9, 2023, Plaintiff Nguyen filed a first
12 amended complaint (“FAC”) naming the additional Plaintiffs and alleging the same PAGA violations
13 based on the same allegations as in the initial complaint. (*Id.*; Cottrell Decl., ¶ 9). On September 15,
14 2023, Plaintiffs filed the SAC adding Macy’s and alleging additional joint employer allegations
15 regarding Macy’s. (Settlement, ¶ B.20; Cottrell Decl., ¶ 9).

16 On December 12, 2023, the parties attended a full-day mediation session before experienced
17 wage-and-hour mediator, David A. Rotman. (Settlement, ¶ B.22). Before the mediation, the parties
18 conducted written discovery, exchanged data and documents relating to the entire Covered Period,
19 engaged in motion practice, and exchanged and reviewed sample data relating to the Operative Claims.
20 (*Id.*; Cottrell Decl., ¶ 10).

21 The parties agreed on terms to resolve the Action as a result of the mediator’s proposal.
22 (Settlement, ¶ B.22; Cottrell Decl., ¶ 11). The parties then spent weeks negotiating and finalizing the
23 Settlement, which the parties fully executed on April 16, 2024. (Cottrell Decl., ¶ 11). Defendants do
24 not oppose this motion, and the parties and their counsel agree that the Settlement is fair, reasonable,
25 and adequate. (Settlement, ¶¶ B.22; C.24(b), (d); E.28).

26 IV. TERMS OF THE SETTLEMENT

27 A. Monetary Terms.

28 The Settlement provides for a non-reversionary total Settlement Amount of \$5,820,000.00.

(Settlement, ¶ A.19; C.24(a)). From this amount, Plaintiffs’ counsel seeks fees not to exceed \$1,939,999.80, or approximately one third of the Settlement Amount, and actual costs in the amount of \$22,987.78. (Settlement, ¶ C.24(d), Cottrell Decl., ¶ 23)³. The Settlement also provides for settlement administration costs to the settlement administrator of \$31,500.00 and a \$10,000.00 service award to each Plaintiff for their efforts on behalf of the Covered Employees. (Settlement, ¶ C.24(b)).

The remainder of the total Settlement Amount after these deductions will form the Net Settlement Amount,⁴ which will be paid to the Covered Employees⁵ and the Labor and Workforce Development Agency (“LWDA”) as follows. Twenty-five percent (25%) of the Net Settlement Amount (approximately \$943,878.10) will be paid to the Covered Employees. The Sales Employee Subgroup and Non-Exempt Employee Subgroup will each share *pro rata* by percentage of Eligible Pay Periods⁶ of the Covered Employees’ Settlement Proceeds. (Settlement, ¶ C.24(e)(1)). Seventy-five percent (75%) of the Net Settlement Amount (approximately \$2,831,534.31) will be paid by the Settlement Administrator to the LWDA. (*Id.* at ¶ C.24(e)(2)).

B. Settlement Administration and Distribution of Funds.

The parties have agreed to retain Phoenix Class Action Administration Solutions (“Phoenix”) as the settlement administrator. (Settlement, ¶ A.17). Plaintiffs’ counsel has used Phoenix to administer dozens of settlements. (Cottrell Decl., ¶ 12).

Within 15 days after the Effective Date,⁷ Defendants will provide Phoenix with a confidential list setting forth the name, last known addresses, social security number, and number of Eligible Pay

³ While the Settlement Agreement indicates that costs are to be capped at \$20,000.00, Plaintiffs’ counsel had to incur unexpected translation expenses in communicating with Plaintiffs concerning settlement.

⁴ The Net Settlement Amount of \$3,775,512.42 consists of the Settlement Amount of \$5,820,000.00 minus deductions for Plaintiffs’ counsel’s attorneys’ fees and costs (\$1,939,999.80 and \$22,987.78, respectively); settlement administration costs (\$31,500.00); and Plaintiffs’ service awards (\$10,000.00 each).

⁵ “Covered Employees” includes two subgroups: (a) all persons employed by Defendants in California as a non-exempt employee in one of their California department stores during the period of October 5, 2021 through March 2, 2024 (“Non-Exempt Employee Subgroup”) and (b) all persons employed by Defendants as a non-exempt sales employee from May 16, 2016 through October 4, 2021 (“Sales Employee Subgroup”), except for Shahla Bamossy who is represented by counsel in individual arbitration. (Settlement, ¶ A.2). Plaintiffs Ha Nguyen, Alex Bhagatram, Alicia Taylor, and Soraya Lodin fall within both subgroups. (*Id.*).

⁶ Undefined capitalized terms have the meanings ascribed to them in the Settlement.

⁷ “Effective Date” means the date on which the Court enters its Final Order approving the Settlement. (Settlement, ¶ A.8).

1 Periods for each Covered Employee. (Settlement, ¶ E.30). Phoenix will perform a National Change of
2 Address search on all Covered Employees to update their addresses as needed. (*Id.*). Within 20 days
3 after the Effective Date, Defendants will transfer the Settlement Amount to Phoenix, who will deposit
4 the funds into the bank account of the Qualified Settlement Fund established by Phoenix for purposes
5 of the Settlement. (Settlement, ¶ E.31). All amounts to be paid to Plaintiffs, the Covered Employees,
6 Plaintiffs' Counsel, Phoenix, and LWDA will be paid from this Qualified Settlement Fund. (*Id.*).

7 Within 21 days after receiving the Settlement Amount from Defendants, Phoenix will: (1) mail
8 the settlement checks to the Covered Employees; (2) mail a check for the LWDA Settlement Proceeds
9 to the LWDA; (3) mail checks for any approved service awards to Plaintiffs; and (4) pay Plaintiffs'
10 Counsel's approved attorneys' fee and costs award. (Settlement, ¶ E.33). The settlement checks mailed
11 to each Covered Employee will be accompanied by a notice (similar in form and content to the sample
12 attached as **Exhibit A** to the Settlement) explaining each Covered Employee's payment and the
13 deadline to cash his or her settlement check. (Settlement, ¶ E.33).

14 The Covered Employees will have 180 days after mailing to cash their settlement checks.
15 (Settlement, ¶ E.34). If any Covered Employee's check is not cashed within that period, the check will
16 be void, and a stop-payment will be issued. (*Id.*). In such event, the funds will be deposited and held
17 with the California Department of Industrial Relations ("DIR") Unclaimed Property Fund for the
18 Covered Employee. (*Id.*). Any such Covered Employee nevertheless will be bound by the release as
19 set forth in the Settlement. (*Id.*).

20 21 **C. Tax Treatment.**

22 The Covered Employees' share of the Net Settlement Amount will be treated as payments in
23 settlement of non-wage (civil penalty) claims and, to the extent necessary, will be reported on IRS
24 1099 forms. (Settlement, ¶ E.35). Plaintiffs' Counsel will be issued an IRS Form 1099 in connection
25 with the payment of the Fee and Cost Award. (Settlement, ¶ C.24(b)). Plaintiffs' Counsel shall be
26 solely responsible for paying any and all applicable taxes on this payment. (*Id.*). Plaintiffs will be
27 issued IRS Form 1099s in connection with the payment of their Court-approved service awards.
28 (Settlement, ¶ C.24(b)). Plaintiffs shall be solely responsible for paying any and all applicable taxes

1 on their service awards. (*Id.*).

2 **D. Releases.**

3 Upon the Effective Date, the Covered Employees will release Defendants from all claims and
4 causes of action against them for civil penalties arising out of or reasonably related to the factual
5 allegations in the operative complaint and/or Plaintiffs’ letters to the California Labor and Workforce
6 Development Agency dated April 29, 2022, December 5, 2022, and February 12, 2023 for the entirety
7 of the Covered Period. Such released claims and causes of action include, but are not limited to:
8 Defendants’ alleged failure to comply with Cal. Lab. Code §§ 200–204, 210, 218.6, 226, 226.3, 226.7,
9 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2698, 2699, 2699.3, and 2699.5,
10 and/or Wage Order 7-2001 of the California Industrial Welfare Commission, as well as all claims and
11 causes of action for interest, costs, expenses, and attorneys’ fees. (Settlement, ¶ D.25).

12 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

13 **A. PAGA Settlement Approval Standard.**

14 The Labor Code provides that “[t]he superior court shall review and approve any settlement of
15 any civil action pursuant to [PAGA].” Cal. Lab. Code § 2699(1)(2). In seeking approval of a PAGA
16 settlement, parties are not obligated to “satisfy class action requirements” such as commonality and
17 typicality or abide by class action procedures such as notice and opt-out rights. *Arias v. Superior Court*
18 (2009) 46 Cal.4th 969 at 975; *O’Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110,
19 1133. Instead, the Court’s role in reviewing the settlement of a PAGA claim is to “determine whether
20 it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
21 violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA,*
22 *Inc.* (2021) 72 Cal.App.5th 56, 77. The Settlement satisfies this standard.

23 **B. PAGA’S Purpose.**

24 PAGA provides a mechanism to enforce the Labor Code by enlisting individual plaintiffs as
25 private attorneys general to recover civil penalties for the State, with a share also going to the plaintiffs
26 and other aggrieved employees. Prior to PAGA, civil penalties for Labor Code violations could only
27 be recovered by the California Department of Labor. *See Arias, supra*, at 980–81.

28 The Labor Code’s primary purpose is to “ensure employees are not required or permitted to

1 work under substandard unlawful conditions ... and to protect employers who comply with the law
2 from those who attempt to gain a competitive advantage at the expense of their workers by failing to
3 comply with minimum labor standards.” Cal. Lab. Code § 90.5(a). In enacting PAGA, the Legislature
4 expressly stated that “the only meaningful deterrent to unlawful conduct is the vigorous assessment
5 and collection of civil penalties as provided in the Labor Code.” Stats. 2003 ch. 906, § 1. The
6 Legislature determined that it was “in the public interest to allow aggrieved employees, acting as
7 private attorneys general, to recover civil penalties for Labor Code violations, with the understanding
8 that labor law enforcement agencies were to retain primacy over private enforcement efforts.” *Arias*,
9 46 Cal.4th at 980.

10 Within this framework, Plaintiffs, acting as private attorneys general and proxies for the State,
11 filed this Action seeking civil penalties for Defendants’ alleged violations of the Labor Code. Because
12 the Settlement provides meaningful recovery to the Covered Employees and the State and furthers the
13 above legislative goals, it should be approved.

14 **C. The Settlement Enforces the PAGA’s Purpose**

15 The \$5,820,000.00 penalty in this case serves as a warning to Defendants and to employers
16 throughout California that failing to ensure strict compliance with the California Labor Code will lead
17 to expensive repercussions. PAGA is not a restitution statute, and a PAGA action does not seek
18 damages. “A PAGA action is at heart a civil enforcement action filed on behalf of and for the benefit
19 of the state.” *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1124. The Court’s
20 focus in evaluating a PAGA settlement, therefore, is not the amount aggrieved employees ultimately
21 receive as a result of a settlement, but whether the total settlement achieves PAGA’s objectives, even
22 if it represents only a portion of Defendants’ total exposure. *See* Cal. Lab. Code §§ 2699(i)–(j),(l);
23 *Rosario v. Inter-Con Sec. Sys.* (Super. Ct. Alameda Cnty. Jan. 28, 2019) No. RG17849836, 2019 Cal.
24 Super. LEXIS 95638, at *7.

25 If approved by the Court, the \$5,820,000.00 penalty will achieve PAGA’s objectives by (1)
26 holding Defendants accountable for their violations of the Labor Code; (2) deterring future violations
27 of the Labor Code by Defendants and other employers; (3) collecting penalties from Defendants and
28 recovering 75% of the penalties (*i.e.*, \$2,833,875.15) on behalf of the State of California for purposes

1 of enforcement and education; and (4) distributing 25% of the penalties (*i.e.*, \$944,625.05) to the
2 Covered Employees pursuant to Cal. Lab. Code § 2699(i).

3 This large penalty shows Defendants and other employers that having compliant policies is
4 insufficient if those policies are not strictly enforced. The Settlement encourages employers to expend
5 additional resources to ensure that they pay employees for all hours worked and authorize and permit
6 meal and rest breaks and deter other violations of the Cal. Lab. Code.

7 In addition, the Settlement will result in a large payment to the LWDA to use for furthering its
8 mission of protecting workers, as well as reasonable payments to the Covered Employees which do
9 not require them to release their individual claims. Covered Employees will receive an estimated
10 average net recovery of \$89 each (25% of the Net Settlement Amount of \$944,625.05 divided by
11 10,673 Covered Employees), which is within the range of recoveries provided by other PAGA
12 settlements approved by courts in California.⁸

13 Plaintiffs' exposure analysis further supports the reasonableness of the Settlement. Based on
14 Plaintiffs' counsel's investigation of available time and pay records and interviews with Aggrieved
15 Employees, Plaintiffs' estimated the rate for Plaintiffs' claimed violations to be approximately 50%.
16 Accordingly, Plaintiffs estimated recovery at a 50% violation rate for one substantive and one
17 derivative violation. (Cottrell Decl., ¶ 14). This approach is realistic given doubts regarding whether
18 stacking of penalties is permitted and courts' broad discretion to reduce PAGA penalties, as discussed
19 further below.⁹ (*See infra*, § V.D; Cottrell Decl., ¶ 15). The Settlement Amount of \$5,820,000.00 is
20 approximately 20.6% of Plaintiffs' total estimated exposure of approximately \$28,217,000 for
21 Plaintiffs' claims for failure to pay for all hours worked. (Cottrell Decl., ¶ 14). This percentage is also
22 within the range of settlements approved by courts in California. *See Haralson v U.S. Aviation Servs.*

23
24 ⁸ *See Hartley v. On My Own, Inc.* (E.D. Cal. Aug. 25, 2020) No. 2:17-cv-00353-KJM-EFB, 2020 U.S.
25 Dist. LEXIS 154315, at *11 (approving settlement of PAGA claims resulting in \$61.18 per PAGA
26 settlement group member); *Whitworth v. Solarcity Corp.* (N.D. Cal. May 1, 2023) No. 16-cv-01540-
27 JSC, 2023 U.S. Dist. LEXIS 75564, at *12–13 (approving PAGA settlement resulting in approximately
28 \$35.00 per aggrieved employee); *Patel v. Nike Retail Servs.* (N.D. Cal. May 8, 2019) No. 14-cv-04781-
RS, 2019 U.S. Dist. LEXIS 77988 (approving settlement award amounting to an average of
approximately \$30 per aggrieved employee); *Ducote v. HSS, Inc.*, Alameda County Superior Court,
Case No. HG19036564, February 13, 2024 Order (approving PAGA settlement resulting in
approximately \$60 per aggrieved employee).

⁹ Furthermore, Plaintiffs' exposure analysis presumes full success and high violation rates.

1 *Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959 at 972–74 (citing cases reflecting approval of settlements
2 at 0.2% to 1.1% of verdict value of PAGA penalty); *Merante v. Am. Inst. for Foreign Study, Inc.* (N.D.
3 Cal. Jul. 25, 2022) No. 21-cv-03234-EMC, 2022 U.S. Dist. LEXIS 131833, at *18–19 (approving
4 PAGA allocation amounting to “between .27% and 2% of the maximum PAGA liability”); *Hamilton*
5 *v. Juul Labs, Inc.* (N.D. Cal. Nov. 16, 2021) No. 20-CV-03710-EMC, 2021 U.S. Dist. LEXIS 221416,
6 at *27 (approving settlement of PAGA claims resulting in 1.3–2.2% of the maximum value); *Perez v.*
7 *CVS Health Corp.* (E.D. Cal. Jun. 11, 2021) No. 1:19-cv-00449-DAD-BAM, 2021 U.S. Dist. LEXIS
8 110216, at *18–19 (approving settlement representing 2.5% of the maximum potential recovery).

9 Plaintiffs’ estimated recovery for one substantive and one derivative violation is realistic given
10 doubts regarding whether stacking of penalties is permitted and courts’ broad discretion to reduce
11 PAGA penalties, as discussed further below.¹⁰ (*see infra*, § V.D). (Cottrell Decl., ¶ 15). Although some
12 courts have allowed stacking, others have rejected doing so. For example, in *Smith v. Lux Retail N.*
13 *Am., Inc.* (N.D. Cal. June 13, 2013) 2013 WL 2932243 at *3, the court held:

14 For the single mistake of failing to include commissions in the overtime base, plaintiff
15 has asserted five (count them, five) separate labor code violations that could lead to
16 statutory penalties. One is a penalty for failure to pay overtime at the appropriate rate
17 (§§ 510, 558). Another is for denying employees minimum wage and overtime (§
18 1194). But is it plausible that we would really pile one penalty on another for a single
19 substantive wrong? It is true that one district judge has assumed in dicta that “stacking”
20 would be appropriate. *Hernandez v. Towne Park, Ltd.*, No. 12-02972 MMM, 2012 U.S.
21 Dist. LEXIS 86975, 2012 WL 2373372, at *17 n.77 (C.D. Cal. Jun. 22, 2012). **But no**
22 **actual holding in any judicial decision has ever blessed such stacking.**” (emphasis
23 added).

24 This holding was given further support in *Castillo v. ADT, LLC* (E.D. Cal. 2017) 2017 WL
25 363108, at *4 (“Even if plaintiff succeeded on the merits of his claims, he may have faced difficulty
26 recovering statutory damages and civil penalties from defendant in light of recent cases from courts in
27 this circuit holding that such damages and penalties cannot be ‘stack[ed]’ on top of each other.”).

28 Accordingly, Plaintiffs had to consider the risks of the Court denying stacking of penalties, or
simply exercising its discretion to reduce those penalties, when evaluating the value of the Settlement.

¹⁰ Furthermore, Plaintiffs’ exposure analysis presumes full success and high violation rates.

1 **D. The Risks and Expense of Continued Litigation Warrant Approval of the**
2 **Settlement.**

3 Not only does the Settlement assess a significant penalty on Defendants, but the result achieved
4 is fair and reasonable in light of the risks Plaintiffs would face in proving their claims. Plaintiffs were
5 confronted with considerable uncertainty in proceeding to litigate their PAGA claims. Trials are
6 inherently risky for all parties. Although Plaintiffs believe that they could have succeeded in proving
7 their claims, and that Defendants' evidence would not have been as persuasive, a trial on Plaintiffs'
8 meal and rest period and off-the-clock violations would have carried a high degree of risk.¹¹ While
9 Plaintiffs are confident in the strength of their case, a successful result would have required Plaintiffs
10 to prove off-the-clock and meal and rest break violations pertaining to work performed in a number of
11 different locations under different supervisors. (Cottrell Decl., ¶ 16). Furthermore, to the extent
12 Defendants' meal and rest period policies are facially compliant, success would have depended on
13 Plaintiffs' ability to prove that the policies were not followed, which presents similar difficulties. (*Id.*).
14 In addition, proving off-the-clock claims is difficult because off-the-clock work is not recorded, and
15 Plaintiffs would have had to rely solely on employee testimony. (*Id.*). Establishing liability for
16 Plaintiffs' reimbursement claims would also be difficult, given the requirement that Plaintiffs establish
17 both that the cellular phone use was required and not optional and that Defendants knew or should
18 have known that such expenditures were being made. (*Id.*).

19 There is also the risk that, even if Plaintiffs prevailed in proving liability as to all of their
20 claims, the Court would award penalties less than the amount of Defendants' total exposure. "A trial
21 court's discretion to reduce PAGA penalties might be a reason to ultimately discount the value of
22 PAGA claims, perhaps even significantly, in reaching a settlement." *Gonzales v. CoreCivic of Tenn.,*
23 *LLC* (E.D. Cal. Sept. 12, 2018) No. 1:16-cv-01891-DAD-JLT, 2018 U.S. Dist. LEXIS 156549, at *26.

24 ¹¹ In addition, on Plaintiffs' derivative claims, Defendants would have likely argued that no penalties
25 for waiting-time violations should be awarded because their failure to pay was not "willful," an
26 element that Plaintiffs acknowledge would have been difficult to prove. See Cal. Lab. Code § 203; 8
27 C.C.R. 13520 ("A willful failure to pay wages within the meaning of Labor Code section 203 occurs
28 when an employer intentionally fails to pay wages to an employee when those wages were due.");
Smith v. Rae Venter Law Group (2002) 29 Cal.4th 345, 354 n.2 (holding that a good faith dispute that
any wages are due will preclude an award of waiting time penalties). Defendants may also have argued
that an employer's failure to pay wages is not willful unless it reaches the standard of "gross negligence
or recklessness." See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.

1 Given the difficulty in proving off-the-clock claims and the “uncertainty as to whether stacking is
2 permitted,” the Court could have exercised its discretion pursuant to Labor Code section 2699(e)(2)
3 to award an amount less than the maximum civil penalty amount. *See Posephny v. AMN Healthcare*
4 *Inc.* (N.D. Cal. Jul. 9, 2020) No. 18-cv-06284-KAW, 2020 U.S. Dist. LEXIS 268743, at *10. Indeed,
5 courts exercise broad discretion when discounting PAGA civil penalties.¹²

6 The Settlement provides a reasonable overall sum given these and other risks faced by
7 Plaintiffs in proving their claims. It is well-settled that a proposed settlement is not to be measured
8 against a hypothetical ideal result that might have been achieved. *See, e.g., 7-Eleven Owners for Fair*
9 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 (quoting *Linney v. Cellular Alaska*
10 *P’ship* (9th Cir. 1998) 151 F.3d 1234, 1242 with approval: “This court has aptly held that ‘it is the very
11 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
12 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
13 speculative measure of what might have been achieved by the negotiators.”). A settlement that
14 represents only a fraction of the potential recovery is still reasonable. *See, e.g., In re Mego Fin. Corp.*
15 *Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 (“It is well-settled law that a cash settlement amounting
16 to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.”)
17 (internal quotation marks omitted). Given the risks associated with proceeding with litigation,
18 including Plaintiffs ultimately not succeeding on the merits, the Settlement is reasonable.

19 Further, if the Action were to go to trial, Plaintiffs’ counsel estimates that fees and costs would
20 increase significantly. (Cottrell Decl., ¶ 18). Plaintiffs’ claims would require substantial additional
21 preparation and discovery. (*Id.*). They would require depositions of experts, the presentation of
22 percipient and expert witnesses at trial, as well as the consideration, preparation, and presentation of
23 voluminous documentary evidence and the preparation and analysis of expert reports. (*Id.*). In contrast
24 to litigating this suit, resolving this case by means of the Settlement will yield a prompt, certain, and

25
26 ¹² *See Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (\$75 million in penalties sought, yet
27 court awarded PAGA penalties of only \$150,000 based on 30,000 violations and reduced the penalty
28 rate to \$5 per violation, equating to a 95% discount of the initial penalty rate of \$100 per violation;
affirmed on appeal); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112
(requested \$512,000, awarded \$358,588, reflecting a 25% discount; *Amaral*, 163 Cal.App.4th at 1214
(requested \$500,000, awarded \$258,900, reflecting a 48% discount).

1 substantial recovery for the Covered Employees and the State. (*Id.*). Such a result will benefit the
2 parties and the court system and will bring finality to a year and a half of litigation. (*Id.*).

3 Accordingly, in light of the risk and expense of continued litigation, the Settlement is fair,
4 reasonable, and adequate.

5 **VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

6 For their efforts and the substantial risk they undertook in obtaining a common fund settlement
7 to benefit the LWDA and the aggrieved PAGA employees, the Parties allocated one-third of the Gross
8 Settlement Amount to Plaintiff's counsel for reasonable attorneys' fees, plus actual litigation costs.
9 These fees and costs are warranted under the law and within the range commonly awarded in similar
10 cases.

11 PAGA provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses, and
12 costs. Cal. Lab. Code § 2699(g)(1) provides that "[a]ny employee who prevails in any action shall be
13 entitled to an award of reasonable attorney's fees and costs." As discussed below, in a *qui tam* action
14 (which PAGA actions have been compared to), reasonable attorneys' fees and costs are typically
15 awarded under the common fund doctrine where, as here, the litigation creates a common fund of
16 money in a specific amount for the benefit of others.

17 **A. Plaintiffs' Counsel is Entitled to Recover Fees of One-Third of the Common Fund.**

18 The California Supreme Court in *Iskanian* held that "[a] PAGA representative action is
19 therefore a type of *qui tam* action." *Iskanian v. CLS Transp. L.A., LLC* (2014) 59 Cal.4th 348, 382. A
20 *qui tam* action allows a private person to sue to recover damages or penalties, all or part of which will
21 be paid to the government. *People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210
22 Cal.App.4th 487, 501. A PAGA action is like a *qui tam* action because the statute allows a plaintiff,
23 acting as the proxy of the State's labor law enforcement agency, to sue his employer for Labor Code
24 violations and recover civil penalties that otherwise would have been assessed and collected by the
25 LWDA. *See Iskanian, supra*, at 382. Indeed, a majority of the civil penalties recovered in a PAGA
26 action are paid to the State, with a smaller portion paid to the employees. *See* Cal Lab. Code § 2699(i).

27 Where a common fund is created in a *qui tam* action by the successful litigation of a plaintiff,
28 the plaintiff's attorneys are entitled to recover their fees from the common fund:

1 Those benefiting from the recovery of the fund, in this case some depositors and
2 eventually the People of the State of California, must bear their share of the cost of
3 litigation. Fees for taxpayers' attorneys will be deducted from the judgment, and each
4 claimant's share reduced proportionately. To the extent the judgment relies upon section
5 1021.5 for recovery of attorney fees, it must be modified to confine the award of fees
6 to the common fund theory.
7 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 91 (authorizing common fund fees in a *qui tam*
8 taxpayer suit against certain banks).

9 Likewise, in this case, through the successful efforts of Plaintiffs and their attorneys, a common
10 fund was created in the amount of \$5,820,000.00 for the benefit of the Covered Employees and the
11 State. Thus, these beneficiaries must bear their share of the costs and attorneys' fees, to be deducted
12 from the Settlement Amount under the common fund theory. *See id.* Such fees are deducted as a
13 percentage of the settlement amount. *See, e.g., Boeing Co. v. Van Gemert* (1980) 444 U.S. 772, 478–
14 82; *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 967.

15 The California Supreme Court upheld the use of the common fund theory of recovery for
16 attorneys' fees in *Laffitte v. Robert Half Int'l. Inc.* (2016) 1 Cal.5th 480, 506 (Cal. 2016). In *Laffitte*,
17 the settlement created a common fund of \$19,000,000.00. The Court approved attorneys' fees in the
18 amount of one-third of the gross settlement (*i.e.*, \$6,333,333.33) under the common fund theory. *Id.*
19 By awarding counsel a percentage of the total recovery, rather than fees based on hours worked, the
20 common fund method encourages attorneys to efficiently litigate to achieve the best results possible
21 for the class. *See Laffitte, supra*, at 492–94. Indeed, the “percentage-of-recovery method is generally
22 favored in common fund cases because it allows courts to award fees from the fund ‘in a manner that
23 rewards counsel for success and penalizes it for failure.’” *Id.* at 493 (quoting *In re Rite Aid Corp. Sec.*
24 *Litig.* (3d Cir. 2005) 396 F.3d 294, 300).

25 California state and federal courts routinely award attorneys' fees equaling approximately one
26 third of the common fund. *See, e.g., Laffitte, supra*, at 506 (“33 1/3 percent of the common fund is
27 consistent with, and in the range of, awards in other class action lawsuits”); *Martin v. Ameripride*
28 *Servs., Inc.* (S.D. Cal. June 9, 2011) No. 08cv440-MMA (JMA), 2011 U.S. Dist. LEXIS 61796, at *23
29 (“[C]ourts may award attorneys' fees in the 30–40% range in wage and hour ... actions that result in
30 recovery of a common fund under \$10 million.”); *Buenrostro-Flores v. Langer Juice Co.* (Super. Ct.
31 L.A. Cnty. June 21, 2023) No. 21STCV01133, 2023 Cal. Super. LEXIS 38919, at *3–5 (approving

attorneys' fee award amounting to one third of the common fund); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66; Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27–78, March 2004, at 35 (independent studies of class action litigation nationwide concluded that fees representing one third of the total recovery are consistent with market rates).

A one-third common fund attorneys' fee award is also consistent with superior court awards in PAGA-only settlements. *See, e.g., Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Superior Court, Case No. C15-02051, January 4, 2019 Order (approving 33.33% fee award in a \$11,000,000.00 settlement of PAGA-only claims); *Gonzales v. Healthcare Servs. Grp., Inc. et al.*, Case No. CGC-18-570988, San Francisco County Superior Court, Cheng, J., Order dated Mar. 21, 2022, ¶ 9 (approving one-third fee award); (*Garcia v. Macy's West Stores, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1516007, September 13, 2017 Order (approving 33.33% fee award in \$12,500,000.00 settlement of PAGA-only claims); *Garcia v. Pep Boys Manny Moe & Jack* (Super Ct. Orange Cnty. Jul. 14, 2016) No. 30-2014-00720574-CU-0E-CJC, 2016 Cal. (approving 33.33% fee award in a \$1,030,000.00 settlement of PAGA-only claims); *Brewer v. Connell Chevrolet* (Super. Ct. Orange Cnty. Jun. 15, 2017) No. 30-2016-00852123-CU-OC-CXC, 2017 Cal. Super. LEXIS 15031 (approving 33.33% fee award in a PAGA-only settlement).

B. The Requested Fee Award is Fair and Reasonable Under the Relevant Factors.

Among the factors considered in determining whether a requested fee percentage is reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of counsel and the quality of the work performed; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048–50. For the reasons below, all these factors support an award here of one third of the common fund.

Here, Plaintiffs' counsel's efforts resulted in a total Settlement Amount of \$5,820,000.00. (Settlement, ¶ A.19). This is a fair and reasonable settlement and an especially favorable result in light of the number of Covered Employees and the challenges Plaintiffs may have faced at trial. (Cottrell Decl., ¶ 19). This result was achieved by the work and success of Plaintiffs' counsel, who negotiated

1 the Settlement after extensive preparation. (*Id.*). Second, Plaintiffs faced risks going forward with this
2 litigation, as described above. (*See supra*, § V.D).

3 Third, Plaintiffs’ counsel are experienced representative action litigators. (Cottrell Decl., ¶¶ 6–
4 8, 20). This experience and expertise, combined with the high quality of work performed in this case
5 by Plaintiffs’ counsel, resulted in the Settlement. (*Id.* at ¶ 20).

6 Fourth, Plaintiffs’ counsel has been representing Plaintiffs and the State in this matter on
7 strictly contingency-fee basis. (Cottrell Decl., ¶ 21). Plaintiffs’ counsel has exposed themselves to the
8 risk of zero recovery after a substantial investment of time, money, and resources, and have done so
9 since the inception of the case without any payment or compensation. (*Id.*).

10 Fifth, as discussed and cited above, the request for attorneys’ fees in the amount of one third
11 of the Settlement Amount falls within the range found acceptable by state and federal courts in
12 California in comparable wage-and-hour actions. The award of a one-third fee recovery under the
13 common fund doctrine was approved by the California Supreme Court in *Laffitte*, 1 Cal.5th at 503.

14 For the above reasons, a fee award in the amount of one third of the Settlement Amount (or
15 \$1,939,999.80) is fair and reasonable.

16 The lodestar¹³ for Plaintiffs’ counsel in this Action is 594.7 hours, corresponding to
17 \$454,662.50 in fees. (Cottrell Decl., ¶ 23). Although the attorneys’ fees requested represent a lodestar
18 multiplier of approximately 4.2, such a multiplier is warranted in this case. (*Id.* at ¶ 24). Factors that a
19 court may consider in fixing a multiplier include the novelty and difficulty of the questions involved;
20 the skill displayed in presenting them; the extent to which the nature of the litigation precluded other
21 employment by the attorneys; and the contingent nature of the fee award. *Ketchum v. Moses* (2001) 24
22 Cal.4th 1122, 1132.

23 Class actions are complex. *See, e.g., Martinez v. Flower Foods* (C.D. Cal. Feb. 1, 2016) No.

24
25 ¹³ The Court may use an abbreviated lodestar cross-check for common fund awards if the Court
26 considers it useful. *Laffitte*, 1 Cal. 5th at 504–05. However, under *Laffitte*, this is not meant to displace
27 the percentage analysis, but rather to act as a backstop. Indeed, the Supreme Court expressly instructed
28 that “the lodestar calculation, when used in this manner, does not override the trial court’s primary
determination of the fee as a percentage of the common fund and thus does not impose an absolute
maximum or minimum on the fee award.” *Id.* at 505. Furthermore, in conducting a lodestar cross-
check, courts are not “required to closely scrutinize each claimed attorney-hour.” *Id.* An evaluation
may be done by reviewing “counsel declarations summarizing overall time spent.” *Id.*

CV 15-5112 RGK (Ex), 2016 U.S. Dist. LEXIS 188989, *21 (recognizing the “inherent complexity” of class actions); *Carlson v. Superior Court* (1973) 33 Cal.App.3d 640, 652 (Allport, J., dissenting) (same). In particular, employment disputes, especially wage-and-hour collective actions, are among the types of cases recognized by courts as complex and worthy of attorney fee awards. *Gentrup v. Renovo Servs., LLC* (S.D. Ohio June 24, 2011) No. 1:07CV430, 2011 U.S. Dist. LEXIS 67887, *14 (“[S]ociety has a stake in rewarding the efforts of the attorneys who bring wage and hour cases, as these are frequently complex matters.”); *Wheeler v. Baldwin & Sons LLC* (Super. Ct. San Diego Cnty. Aug. 11, 2023) No. 37-2023-00016392-CU-WT-CTL, 2023 Cal. Super. LEXIS 60684, *7 (citing the “inherent complexity of employment disputes”) (internal quotation marks omitted).

As noted above, Plaintiffs’ counsel are experienced and skilled class-action litigators who used their skill and experience to achieve a substantial penalty, which will have a meaningful deterrent effect on California employers, provide meaningful funds to the State for continued enforcement of the Labor Code, and provide real remediation to the Covered Employees, thereby directly furthering PAGA’s purposes. (Cottrell Decl., ¶ 24). This \$5,820,000.00 result would not have been achieved but for the skill and hard work of Plaintiffs’ counsel. (*Id.*).

In addition, Plaintiffs’ counsel contingent representation exposed them to the risk of recovering nothing. (Cottrell Decl., ¶ 21). Attorneys who litigate on a contingent basis expect to receive significantly higher effective hourly rates in cases where compensation is contingent on success, particularly in hard-fought cases where, like in this case, the result is uncertain. (Cottrell Decl., ¶ 22). This does not result in any windfall or undue bonus. (*Id.*). In the legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client rightfully expects that his or her compensation will be significantly greater than if no risk was involved (i.e., if the client paid the bill monthly), and that the greater the risk, the greater the “enhancement.” (*Id.*) Adjusting fees upward in contingent-fee cases to reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply makes those fee awards consistent with the legal marketplace, and in so doing, helps to ensure that meritorious cases will be brought to enforce important public interest policies and that clients who have meritorious claims will be better able to obtain qualified counsel. (*Id.*). Indeed, courts commonly approve fee awards reflecting positive multipliers where risk, contingent representation, and other

1 factors exist. *See, e.g., Vizcaino*, 290 F.3d at 1052 n.6, appx. (collecting cases and finding the risk
2 multiplier fell between 1.0 and 4.0 in 83% of cases, with a range of 0.6–19.6); *Steiner v. Am. Broad.*
3 *Co., Inc.* (9th Cir. 2007) 248 F. App’x 780, 783 (approving multiplier of 6.85).

4 Although the requested fees represent a high multiplier, they also represent an excellent result
5 in furtherance of PAGA’s purposes, achieved at significant risk to Plaintiffs’ counsel, and an
6 appropriate, routinely awarded percentage of the common fund achieved through Plaintiffs’ counsel’s
7 efforts. Accordingly, the request is reasonable and should be approved.

8 **C. The Requested Litigation Costs are Fair and Reasonable.**

9 Plaintiffs’ counsel also seeks to recover their expenses incurred in the prosecution of this
10 Action, in the amount of \$22,987.78.¹⁴ Reasonable litigation expenses are ordinarily included with an
11 award of attorneys’ fees pursuant to California wage-and-hour law. (Cottrell Decl., ¶ 25); *see Serrano*
12 *v. Priest* (1977) 20 Cal.3d 25, 35; *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424.
13 Attorneys are also permitted to recover their litigation costs under PAGA. *See* Cal. Lab. Code §
14 2699(g)(1). Here, Plaintiffs’ counsel’s expenses were reasonable, necessary to the prosecution, and of
15 the type customarily billed to fee-paying clients. (Cottrell Decl., ¶ 25). Accordingly, the requested
16 attorneys’ fees and costs are reasonable compensation for the significant recovery achieved and should
17 be approved.

18 **VII. THE REQUESTED SERVICE AWARDS ARE REASONABLE**

19 Service awards “are intended to compensate class representatives for work done on behalf of
20 the class, to make up for financial or reputational risk undertaken in bringing the action, and,
21 sometimes, to recognize their willingness to act as a private attorney general.” *Cellphone Termination*
22 *Fee Cases* (2010) 186 Cal.App.4th 1380, 1393–94.

23 Here, Plaintiffs have substantially contributed their time and efforts over a period of nearly two
24 years in pursuing claims on behalf of the Covered Employees and the State, and Plaintiffs’ role was
25 crucial in this case. Further, in agreeing to serve as Class and Collective representative, Plaintiff
26 formally agreed to accept the responsibilities of representing the interests of all Class Members and

27 ¹⁴ While the Settlement Agreement indicates that costs are to be capped at \$20,000.00, Plaintiffs’
28 counsel had to incur unexpected translation expenses in communicating with Plaintiffs concerning
settlement (Cottrell Decl., ¶ 25).

1 the risks of having her name associated with a wage and hour class action. (Cottrell Decl., ¶ 26). For
2 example, some of the claims involved in this case were largely not based on documentary evidence,
3 as alleged time worked off the clock was not formally logged or tracked. (*Id.*). Plaintiffs' counsel
4 therefore required significant participation and assistance by Plaintiffs to build this case. (*Id.*).

5 Plaintiffs had discussions with Plaintiffs' counsel, worked with Plaintiffs' counsel to review
6 facts and answer questions, assisted Plaintiffs' counsel in their mediation efforts, and have generally
7 remained apprised of the case. (Cottrell Decl., ¶ 27). Plaintiffs took the significant risk of coming
8 forward to represent the interests of their fellow employees. (*Id.*). Plaintiffs' requested service awards
9 in the amount of \$10,000.00 each are reasonable considering the efforts they made and the risks they
10 took and are consistent with service awards approved by this and other courts. *See, e.g., Amaraut v.*
11 *Sprint/United Mgmt. Co.*, No. 19-cv-411-WQH-AHG, 2021 U.S. Dist. LEXIS 147176, at *16–22
12 (S.D. Cal. Aug. 5, 2021) (approving \$15,000 and \$10,000 service awards); *Villalpando v. Exel Direct,*
13 *Inc.* (N.D. Cal. Dec. 9, 2016) No. 3:12-cv-04137-JCS, 2016 WL 7785852, at *2 (approving \$15,000
14 service awards to each of three class representatives); *Schneider v. Catholic Healthcare W.* (Super. Ct.
15 S.F. Cnty. Jan. 13, 2017) No. CGC-10-506243, 2017 Cal. Super. LEXIS 2077, at *2 (approving
16 \$15,000 service awards to two plaintiffs); *Sanchez v. RK Logistics Grp.* (Super. Ct. Alameda Cnty.
17 Feb. 25, 2020) No. RG16826234, 2020 Cal. Super. LEXIS 49330, at *8 (approving “the service award
18 of \$10,000 [a]s reasonable); *Ducote v. HSS, Inc.*, Alameda County Superior Court, Case No.
19 HG19036564, February 13, 2024 Order (approving \$10,000 service award).

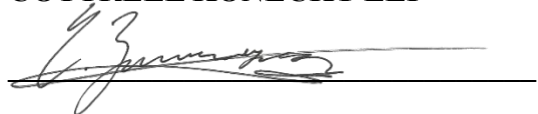
20 Accordingly, in light of these comparable awards and the efforts and risk undertaken by
21 Plaintiffs, the Court should approve the requested service awards.

22 **VIII. CONCLUSION**

23 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion and
24 enter an order consistent with the proposed order submitted herewith.

25 Dated: April 18, 2024

26 Respectfully Submitted,
27 **SCHNEIDER WALLACE**
28 **COTTRELL KONECKY LLP**



Carolyn Hunt Cottrell
Ori Edelstein
Eugene Zinovyev

*Attorneys for Plaintiffs, on behalf of the State of
California and Aggrieved Employees*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

On April 19, 2024 I served the following document(s):

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF PAGA SETTLEMENT**

on the following person(s) listed below, as follows:

Email: philip.smith@jacksonlewis.com
Email: chelsea.whelan@jacksonlewis.com

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.


Eugene Huffman