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MICHAEL CORBIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

MICHAEL CORBIN, individually, and on
behalf of others aggrieved employees
pursuant to the California Private Attorneys
General Act;

Plaintiff,

vs.

PARIS BAGUETTE AMERICA, INC., a
Delaware corporation; PARIS BAGUETTE -
BON DOUX, INC., a Delaware corporation;
PARIS BAGUETTE U.S.A., INC., a
Delaware corporation; PARIS BAGUETTE
FAMILY, INC., a Delaware corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 22CV014555

*Assigned for All Purposes to: Hon. Sarah
Sanford-Smith, Dept. 19*

**NOTICE OF MOTION AND MOTION FOR
ORDER APPROVING CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT AND
ENTERING JUDGMENT**

Reservation ID: 150446525804

Hearing Date: March 12, 2025
Hearing Time: 3:00 p.m.
Department: 17

Complaint Filed: July 18, 2022
Trial Date: Not Set

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 12, 2025, at 3:00 p.m. in Department 17 of the above-
3 entitled court, located at 1221 Oak Street, 3rd and 4th Floors, Oakland, CA 94612, Plaintiff MICHAEL
4 CORBIN (“Plaintiff”) will and hereby does move the Court for an Order:

5 1. Granting approval of the Joint Stipulation of PAGA Settlement and Release of Claims
6 between Plaintiff and Defendants PARIS BAGUETTE AMERICA, INC., PARIS BAGUETTE – BON
7 DOUX, INC., PARIS BAGUETTE U.S.A., INC., and PARIS BAGUETTE FAMILY, INC. (together,
8 “Defendants”)(“Settlement” or “Settlement Agreement”), attached as **Exhibit 2** to the Declaration of
9 Heather Davis (“Davis Decl.”), including but not limited to, the plan of allocation and distribution of the
10 Gross Settlement Amount;

11 2. Approving the distribution of the Net Settlement Amount, currently estimated to be
12 \$137,925.00, of which seventy-five percent (75%) shall be paid to the California Labor and Workforce
13 Development Agency and twenty-five percent (25%) shall be paid to the PAGA Members on a *pro rata*
14 basis based upon the number of Pay Periods worked during the PAGA Period;

15 3. Appointing Apex Class Action (“Apex” or “Settlement Administrator”) as the Settlement
16 Administrator. Settlement Administration costs shall not exceed \$9,950.00 to Apex in connection with the
17 costs of administering the Settlement;

18 4. Awarding \$7,500.00 to Plaintiff Michael Corbin as a PAGA Representative Payment in
19 return for his services in bringing the Action;

20 5. Awarding Plaintiff’s Counsel, Protection Law Group, LLP, and Lawyers *for* Justice, P.C.
21 (collectively, “Plaintiff’s Counsel”) the Plaintiff’s Counsel Fees Payment of thirty-five percent (35%) the
22 Gross Settlement Amount (\$277,500.00) and Plaintiff’s Counsel Litigation Costs Payment of Ninety-Seven
23 Thousand One Hundred an Twenty-Five Dollars and Zero Cents (\$97,125.00) for reimbursement of actual
24 litigation costs and expenses pursuant to California Labor Code section 2699(g)(1);

25 6. Directing Defendants to deposit the Gross Settlement Amount of Two-Hundred Seventy-
26 Seven Thousand and Five Hundred Dollars and Zero Cents (\$277,500.00) into an account for administration
27 of the Settlement and directing the Settlement Administrator to distribute the Gross Settlement Amount in
28 accordance with the Settlement Agreement; and

7. Directing the mailing of the PAGA Payment Share checks to the PAGA Members under a

1 cover letter providing them notice substantially similar in content and form to the proposed covered attached
2 as “Exhibit A” of the Settlement Agreement.

3 Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well as
4 information regarding the approval hearing on this matter, were submitted to the California Labor and
5 Workforce Development Agency via online filing at [https://www.dir.ca.gov/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
6 [Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) on February 13, 2025, See Davis Dec. ¶ 98, Ex. 6.

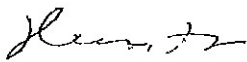
7 This Motion is made on the grounds that the proposed PAGA Settlement is fair, adequate, reasonable,
8 and in the best interest of affected employees and the parties including the State of California. The Motion
9 is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the concurrently
10 filed Declaration of Heather Davis and all exhibits attached thereto, the Declaration of MICHAEL CORBIN,
11 the Declaration of the Declaration of Sean Hartranft on Behalf of Apex Class Action, and all other oral and
12 documentary evidence on file with the Court or that may be presented at the hearing on this Motion.

13
14 Respectfully submitted,

15 DATED: February 13, 2025

PROTECTION LAW GROUP, LLP

16
17 By:



Heather Davis, Esq.
Brendan J. Burton, Esq.
Shadi Sahebghalam, Esq.
Attorney for Plaintiff
MICHAEL CORBIN

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PROCEDURAL HISTORY	2
III.	THE SETTLEMENT TERMS	3
A.	Definition of PAGA Members	3
B.	Gross Settlement Amount and Distribution of Settlement	4
C.	Scope of the Release in the Settlement Agreement	7
IV.	STANDARD OF REVIEW FOR APPROVAL OF A PAGA SETTLEMENT	9
V.	THE SETTLEMENT IS FAIR AND RESONABLE	9
A.	Plaintiff Has Complied with PAGA’s Notice Requirements	9
B.	Arm’s-Length Negotiations.	9
C.	Sufficient Investigation and Discovery by Experienced Counsel. .. Error! Bookmark not defined.	
D.	The Settlement is Reasonable in Light of the Parties’ Legal Positions.	10
1.	<i>Plaintiff’s Counsel’s Analysis of Defendants’ Maximum Potential Liability.</i>	11
2.	<i>Plaintiff’s Counsel’s Risk-Based Analysis and Adjustments</i>	11
3.	<i>The Settlement Fulfills the Fundamental Purpose of PAGA</i>	14
VI.	THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED.	14
A.	A Percentage of the Entire Settlement Fund is Appropriate.	14
B.	The Requested Fee Award Is Reasonable Based on the <i>Dunkel</i> Factors.	16
1.	<i>Time and Labor Required.</i>	16
2.	<i>The Skill Required to Perform Legal Services.</i>	17
3.	<i>The Value, Amount, and Results Achieved.</i>	17
4.	<i>Whether the Fee is Fixed or Contingent.</i>	18
C.	The Requested Fee is Reasonable Under a Lodestar Analysis.	18
1.	<i>Counsel Spent a Reasonable Amount of Time.</i>	19

1	2. <i>Plaintiff's Counsel's Hourly Rate is Reasonable</i>	19
2	D. The Requested Costs Are Fair and Reasonable.....	Error! Bookmark not defined.
3	VII. THE REQUESTED INCENTIVE PAYMENT SHOULD BE APPROVED.....	20
4	VIII. THE PROPOSED SETTLEMENT COVER LETTER TO THE AGGRIEVED	
5	EMPLOYEES SHOULD BE APPROVED.....	21
6	IX. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE.....	21
7	X. CONCLUSION.	22

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

<i>Aguirre v. Genesis Logistics</i> , 2013 WL 10936035 (C.D.Cal., 2013).....	10
<i>Apple Computer, Inc. v. Super. Ct.</i> , 126 Cal.App.4th 1253 (2005)	11
<i>Arias v. Sup. Ct.</i> , 46 Cal. 4th 980 (2009).	5, 11
<i>Bell v. Famers Ins. Exch.</i> , 115 Cal.App.4th 715 (2004)	17
<i>Carrington v. Starbucks Corp.</i> 30 Cal.App.5th 504, 529 (2018).....	9
<i>Cates v. Chiang</i> , 213 Cal.App.4th 791 (2013)	15
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009).....	6, 17
<i>Donohue v. AMN Services, Inc.</i> 11 Cal.5th 58 (2021)	8
<i>Dunk v. Ford Motor Co.</i> 48 Cal.App.4th 1794 (1996).....	11
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008).	7
<i>Estrada v. FedEx Ground Package Sys. Inc.</i> , 154 Cal.App.4th 1 (2007)	11
<i>Fleming v. Covidien, Inc.</i> , 2011 WL 756304718, at *4 (C.D.Cal. Aug. 12, 2011)	9
<i>Ketchum v. Moses</i> , 24 Cal.4th 1122 (2001)	15, 16
<i>Lealao v. Beneficial Cal., Inc.</i> , 82 Cal.App.4th 19 (2000).....	11, 12
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal.App.4th 399 (2010)	17
<i>Naranjo v. Specturm Security Services, Inc.</i> , 40 Cal.App.5th 444 (2019).....	9
<i>Ochoa-Hernandez v. CJADERS Foods, Inc.</i> , 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010)	5
<i>Serrano v. Priest</i> , 20 Cal.3d 25 (1977)	11
<i>Smith v. Lux Retail North America, Inc.</i> , 2013 WL 2932243 (N.D. Cal. June 13, 2013).....	10
<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112 (2012).....	9, 10
<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d. 1043 (9th Cir. 2002)	15
<i>Vo v. Las Virgenes Municipal Water Dist.</i> , 79 Cal.App.4th 440 (2000).....	15
<i>Wesson v. Staples the Office Superstore, LLC</i> , 68 Cal.App.5th 746 (2021)	8
<i>Williams v. Sup. Ct.</i> , 3 Cal.5th 531, 549 (2017).....	5

Statutes

Code of Civil Procedure section 1021.5.....	11
Labor Code section 2699.....	1, 5, 9, 11

Treatises

<i>Newberg on Class Actions</i> , 4 th Ed. 2002, §14:6.....	12
R. Pearle, <i>California Attorney Fee Awards</i> (CEB, 1993 §7A)	12

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff MICHAEL CORBIN (“Plaintiff”) seeks approval of the Joint Stipulation of PAGA Settlement and Release of Claims (“Settlement” or “Settlement Agreement”) entered into between Plaintiff, on behalf of the State of California, and Defendants PARIS BAGUETTE AMERICA, INC., PARIS BAGUETTE – BON DOUX, INC., PARIS BAGUETTE U.S.A., INC., and PARIS BAGUETTE FAMILY, INC. (together, “Defendants”) (“Defendant”) pursuant to Labor Code §2699(1)(2). The Settlement terms are outlined as follows:

- Number of PAGA Members: approximately 303 individuals;
- Gross Settlement Amount \$277,500.00;
- Attorney’s fees of 1/3 the Gross Settlement Amount (\$97,125.00) and \$19,285.05 in costs;
- Settlement Administration Payment: not to exceed \$9,950.00;
- PAGA Representative Payment: \$7,500.00 to Plaintiff Michael Corbin;
- Net Settlement Amount: \$137,925.00 of which 75%, *i.e.*, \$103,443.75 shall be paid to the California Labor and Workforce Development Agency (LWDA) and 25% *i.e.*, \$34,481.25 shall be paid to the non-exempt employees who worked for Defendants in California from April 22, 2021, to the date the Court approves the settlement, on a *pro rata* basis based upon the number of pay periods worked during the PAGA Period.

The Court should approve this settlement because: (1) it provides a significant monetary recovery to the State; (2) it provides a significant windfall to PAGA Members who benefit from the enforcement of the alleged Labor Code violations despite releasing no individual claims; (3) the Settlement is the product of informed discovery and arms-length negotiations by highly experienced counsel; (4) the Settlement is reasonable in light of the relative strengths of Plaintiff’s claims and the risks of further litigation, and (5) the settlement facilitates the underlying goals associated with PAGA—promoting and ensuring compliance with the Labor Code. Accordingly, Plaintiff requests that the Court approve the proposed Settlement and enter Judgment thereon.

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1 II. PROCEDURAL HISTORY

2 On April 22, 2022, Plaintiff's Counsel, on behalf of Plaintiff and PAGA Members, gave
3 written notice to the LWDA of the Labor Code violations Defendants are alleged to have violated
4 ("PAGA Letter"). Davis Decl. ¶12, Exhibit ("Ex.") 1.

5 On July 18, 2022, Plaintiff filed a putative representative action Complaint against
6 Defendants PARIS BAGUETTE AMERICA, INC., PARIS BAGUETTE – BON DOUX, INC.,
7 PARIS BAGUETTE U.S.A., INC., and PARIS BAGUETTE FAMILY, INC. (collectively,
8 "Defendants"), alleging a single cause of action for violation of California Labor Code §2699 *et*
9 *seq.* Private Attorneys General Act ("PAGA"). ("PAGA Action"). Under PAGA Plaintiff sought to
10 collect civil penalties on behalf of the state for the following Labor Code violations: (i) failure to pay
11 overtime, (ii) failure to provide meal periods, (iii) failure to provide rest periods, (iv) failure to pay
12 minimum wages, (v) failure to timely pay wages upon termination of employment, (vi) failure to
13 timely pay wages during employment, (vii) failure to provide complete and accurate wage statements,
14 (viii) failure to keep complete and accurate payroll records, and (ix) failure to reimburse necessary
15 business-related expenses. Plaintiff seeks to recover civil penalties under PAGA on behalf of himself,
16 other aggrieved employees, and the State of California. According to Defendants and their Handbooks,
17 Defendants are a South Korean multinational chain of bakery-cafés, managing over 4,000 worldwide
18 locations, and over 100 locations in the United States so far, with a goal of over 1,000 locations
19 domestically. Defendants place an emphasis on quality baked goods and "warm and welcoming
20 bakery-café experience." Davis Decl. ¶13.

21 The Parties have engaged in extensive discovery, both formal and informal, and
22 Defendants deposed Plaintiff. In order to provide Plaintiff and his counsel the opportunity to
23 adequately evaluate the alleged claims, Defendants informally produced their written policies,
24 revisions, and sate addendums in place during the PAGA Period including both different versions of
25 its employee handbook, Plaintiff's complete personnel file, and time and payroll data for the aggrieved
26 employees. Defendants also provided Plaintiff with data points necessary for Plaintiff to complete a
27 damages analysis and estimate Defendants' potential exposure, which were reviewed, investigated,
28 and analyzed by Plaintiff's Counsel. Davis Decl. ¶14.

 On July 12, 2024, the Parties participated in a full-day mediation before an experienced
employment and class action mediator, David Rotman (the "Mediation"), where the Parties were

1 able to reach an agreement to resolve this matter. Davis Decl. ¶15. Throughout the Action,
2 Defendants have denied, and continue to deny, any wrongdoing in regard to the alleged violations.
3 Davis Decl. ¶16.

4 The Settlement described in this Settlement Agreement represents a compromise and
5 settlement of highly disputed claims. Nothing in this Settlement is intended or will be construed as
6 an admission by Defendants that Plaintiff's claims in the Action have any merit or that they have
7 any liability to Plaintiff, PAGA Members, or the State on those claims, or as an admission by
8 Plaintiff that Defendants' defenses in Action have any merit. This Settlement is intended to fully,
9 finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to
10 the terms and conditions set forth in this Settlement. Davis Decl. ¶17.

11 Based on their own thorough, independent investigation and evaluation of this case,
12 Plaintiff's Counsel is of the opinion that the Settlement of the Action with Defendants for the
13 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the
14 best interest of PAGA Members in light of all known facts and circumstances, including the risk of
15 significant costs and delay, the defenses asserted by Defendants including the risks of adverse
16 determinations on the merits, and numerous potential appellate issues. Although Defendants
17 contend that they have no liability in the Action, Defense Counsel shares Plaintiff's Counsel's belief
18 that the Settlement represents a fair and adequate settlement given the respective risks associated
19 with the case. Davis Decl. ¶18.

20 On or about February 13, 2025 at the same time this Agreement was submitted to the Court,
21 Plaintiff submitted the Settlement Agreement to the LWDA. Davis Decl. ¶19.

22 **III. THE SETTLEMENT TERMS**

23 **A. Definition of PAGA Members**

24 Plaintiff seeks approval of a proposed PAGA Settlement Agreement attached as **Exhibit 2**
25 to this declaration. Davis Decl. ¶20. The proposed settlement provides for distributions to the
26 LWDA and to PAGA Members defined as "all current and former hourly-paid, non-exempt
27 employees who were employed by Defendants in the State of California at any time during the
28 PAGA Period." The "PAGA Period" means the period of time from April 22, 2021, and ending on
the date the Court approves the Settlement. Davis Decl. ¶ 21; Settlement Agreement ¶6. There are

1 approximately 303 PAGA Members. Davis Decl. ¶23; Settlement Agreement ¶16.

2 **B. Definition of Effective Date**

3 The “Effective Date” means the later of the following: (a) if no timely objections are filed
4 or if all objections are withdrawn, the date upon which the Court enters approval of the
5 settlement; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such
6 appeal being filed; or (c) if any timely appeals are filed, the date of the resolution (or withdrawal)
7 of any such appeal in a way that does not alter the terms of the settlement.” Davis Decl. ¶¶24, 31;
8 Settlement Agreement ¶22.

9 **C. Potential Increase to the Gross Settlement Amount**

10 Defendants represent that as of June 9, 2024, the number of Pay Periods worked by the
11 303 PAGA Members is 4,966. Should the qualifying Pay Periods worked by the PAGA
12 Members during the PAGA Period ultimately increases by more than 10% (i.e., by more than 496
13 Pay Periods), Defendants shall have the option to either: 1) increase the Gross Settlement Amount
14 on a *pro rata* basis equal to the percentage increase in the number of Pay Periods worked by
15 the PAGA Members above 10% (for example, if the number of Pay Periods increases by 11% to
16 546 Pay Periods, the Gross Settlement Amount will increase by 1%); or, 2) shorten the PAGA
17 Period such that it ends on the date that the number of Pay Periods reaches 5,462 in which case
18 Defendants will not be required to pay any additional amounts. Davis Decl. ¶23; Settlement
19 Agreement ¶16.

20 **D. Gross Settlement Amount and Distribution of Settlement**

21 The Parties have agreed to settle the PAGA claims at issue for a Gross Settlement Amount of
22 \$277,500.00. The Settlement is a common fund and therefore includes all requested costs, fees, and
23 other allocations. As stated above, subject to Court approval, the Gross Settlement Amount is inclusive
24 of: (1) Plaintiff’s Counsel Award in the amount of thirty-five percent (35%) of the Gross Settlement
25 Amount or \$97,125.00; (2) Settlement Administration Costs not to exceed \$9,950.00; and (3)
26 Plaintiff’s Incentive Payment of \$7,500. Davis Decl. ¶¶ 25-26; Settlement Agreement ¶¶8-12, 15, 17-
27 20, 47.

28 After the foregoing amounts are deducted, the remaining Net Settlement Amount to be paid
to the LWDA and PAGA Members. Seventy-five percent (75%) of the Net Settlement Amount

1 (\$137,925.00), will be paid to the LWDA, and the remaining 25% (\$34,481.25) will be paid to all
2 PAGA Members on a *pro rata* basis based upon the number of pay periods worked by each employee
3 during the PAGA Period. Davis Decl. ¶¶27-29; Settlement Agreement ¶¶18-19, 47. Each PAGA
4 Payment share will be treated as 100% civil penalties and will be reported as miscellaneous income
5 for which a 1099 will be issued. Davis Decl. ¶30; Settlement Agreement ¶45.

6 The “Effective Date” means the date by which both of the following have occurred: (a) if no
7 timely objections are filed or if all objections are withdrawn, the date upon which the Court
8 enters approval of the settlement; (b) if an objection is filed and not withdrawn, the date for filing
9 an appeal and no such appeal being filed; or (c) if any timely appeals are filed, the date of the
10 resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the
11 settlement.” Davis Decl. ¶31; Settlement Agreement ¶22. Within fourteen (14) calendar days after
12 the Effective Date, Defendants will deposit the Gross Settlement Amount into a Qualified
13 Settlement Fund (“QSF”) to be established by the Settlement Administrator. Davis Decl. ¶32;
14 Settlement Agreement ¶40.

15 Within thirty (30) calendar days after approval of the Settlement, Defendants will provide to
16 the Settlement Administrator the “Aggrieved Employee List” containing the following
17 information for each PAGA Member: (1) full name; (2) last known home address; (3) last known
18 telephone number; (4) social security number; (5) start and end dates of active employment as a non-
19 exempt employee of Defendants in the State of California; (6) total pay periods during the PAGA
20 Period; and (8) any other information required by the Settlement Administrator in order to effectuate
21 the terms of the Settlement. This is a material term of the Settlement, and if Defendants fail to
22 comply, Plaintiff shall have the right to void the Settlement. Davis Decl. ¶33; Settlement Agreement
23 ¶39(a).

24 If a PAGA Notice is returned by the U.S. Postal Service because of an incorrect address,
25 the Settlement Administrator will promptly, and not later than five (5) calendar days from receipt
26 of the returned packet, search for a more current address for the PAGA Member and re-mail the
27 PAGA Notice to the PAGA Member. The Settlement Administrator will use the Aggrieved
28 Employee List and otherwise work with Defense Counsel or utilize its own resources such as skip
traces to find a more current address. The Settlement Administrator will be responsible for taking

1 reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the
2 mailing address of any PAGA Member for whom a PAGA Notice is returned by the U.S. Postal
3 Service. These reasonable steps shall include the tracking of all undelivered mail; performing address
4 searches for all mail returned without a forwarding address; and promptly re-mailing to PAGA
5 Members for whom new addresses are found. Davis Decl. ¶34; Settlement Agreement ¶39(b).

6 Within fourteen (14) calendar days of receipt of the Gross Settlement Amount from
7 Defendants, Settlement Administrator shall pay to each PAGA Member his or her PAGA Payment
8 Share by sending a check in the appropriate amount to the PAGA Member at the address indicated in
9 the Aggrieved Employee List. Davis Decl. ¶35; Settlement Agreement ¶41.

10 Payments to the PAGA Members will be accompanied by a cover letter, substantially similar
11 in content and form to the proposed cover letter attached “**Exhibit A**” to the Settlement Agreement
12 (“PAGA Notice”) containing (i) the PAGA Member’s first and last name, (ii) last known address, (iii)
13 the PAGA’s Member’s individual Pay Periods; and (iv) the PAGA Member’s PAGA Payment Share.
14 Davis Decl. ¶ 36; *See* Settlement Agreement **Ex. A**. Any checks paid to PAGA Members shall be
15 negotiable for one hundred eighty (180) calendar days from the date of their issuance. A PAGA
16 Member must cash his or her PAGA Payment Share check within one hundred eighty (180) calendar
17 days after it is mailed to him or her. If a check remains uncashed after one hundred eighty (180)
18 calendar days from the initial mailing, or if a check is returned to the Settlement
19 Administrator as undeliverable during the one hundred eighty-day period, the Settlement
20 Administrator shall take all reasonable efforts to identify the PAGA Member’s correct address,
21 including the performance of a “skip-trace.” If an updated address can be identified, the Settlement
22 Administrator shall issue another check to the PAGA Member and mail it to the PAGA Member at
23 his or her updated address. If an updated address for the PAGA Member cannot be identified, if a
24 reissued check is once again returned to the Settlement Administrator as undeliverable, or if the
25 reissued check remains uncashed after one hundred eighty (180) calendar days, the Settlement
26 Administrator will keep an accounting of such funds and shall give notice to the Parties of the total
27 balance of uncashed PAGA Payment Shares. A PAGA Member who fails to negotiate or receive
28 their PAGA Payment Share check despite the procedures described above shall nevertheless remain

1 bound by the Settlement and the releases contained herein. Davis Decl. ¶ 37; Settlement Agreement
2 ¶42.

3 The funds represented by PAGA Payment Share checks remaining uncashed for more
4 than one hundred eighty (180) calendar days after issuance shall be voided and then shall be
5 transmitted to Legal Aid at Work, formerly known as Legal Aid Society – Employment Law
6 Center. Any interest that has accrued on any funds that are not claimed by PAGA Members shall be
7 distributed in accordance with California Civil Procedure Code § 384, and Counsel for the Parties
8 shall provide the necessary declarations, if any, pursuant to California Civil Procedure Code § 382.4.
9 After the expiration of the 180-calendar day check cashing period, as outlined above, the Settlement
10 Administrator shall begin the process of transferring the funds in accordance with California Code
11 of Civil Procedure §§ 1500-1582 and the timing requirements set forth by the Office of the State
12 Controller. The Parties agree that this disposition results in no “unpaid residue” under California
13 Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to the LWDA and
14 PAGA Members, whether or not all PAGA Members cash their settlement checks. Davis Decl. ¶ 38;
15 Settlement Agreement ¶43.

16 **E. Scope of the Release in the Settlement Agreement**

17 Upon the Effective Date, PAGA Members, without the need to manually sign a release
18 document, in exchange for the consideration recited in this Settlement Agreement, on behalf of
19 himself or herself, shall and does hereby fully and finally release Defendants as named by
20 Plaintiff in the April 22, 2022, PAGA Letter, and the Released Parties, from any and all claims for the
21 recovery for civil penalties, attorneys’ fees and costs permissible under PAGA which Plaintiff
22 and/or the PAGA Members had, or may claim to have, against Defendants and the Released Parties,
23 arising out of the violations alleged in the Action, including unpaid straight and overtime wages
24 (including any work off-the-clock), failure to pay employees all minimum wages and overtime
25 wages owed including by failing to pay all overtime and double time at the correct regular rate of
26 pay, failure to provide compliant meal and rest breaks, failure to pay them all premium wages
27 owed for short, late or missed meal and rest periods, failure to pay all wages owed at discharge or
28 resignation; failure to timely pay wages within the times permissible under Labor Code section
204; failure to provide complete and accurate wage statements; failure to reimburse necessary

1 business-related expenses and internet service; violations of Labor Code Sections 201, 202, 203,
2 204, 226(a), 226.2, 226.3, 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800,
3 and 2802 (the “Released Claims”). Davis Decl. ¶39; Settlement Agreement ¶49. Following the
4 funding of the Gross Settlement Amount, all PAGA Members will release the Released Parties
5 from the Released Claims that accrued during the PAGA Period. PAGA Members cannot opt out
6 of or object to the Release. The State of California and the LWDA will also release Released Parties
7 from the Released Claims that accrued during the PAGA Period. Davis Decl. ¶39; Settlement
8 Agreement ¶49. The Released Claims expressly exclude all claims made by PAGA Members for
9 individual wage claims, vested benefits, wrongful termination, unemployment insurance, disability,
10 social security, workers’ compensation, claims while classified as exempt, and claims outside of the
11 PAGA Period. Davis Decl. ¶50; Settlement Agreement ¶50.

12 Plaintiff’s General Release of Claims means that “[u]pon the Effective Date, in exchange for
13 the consideration set forth in this Settlement Agreement, Plaintiff will agree to the additional
14 following release: In consideration of Defendants’ promises and agreement as set forth herein,
15 Plaintiff hereby releases all claims related to his employment or alleged employment with the
16 Defendants or the Released Parties including all claims alleged in the Action, and all claims known
17 and unknown, without exception, except as may be prohibited by law. Davis Decl. ¶41; Settlement
18 Agreement ¶ 51.

19 Plaintiff’s Waiver of California Civil Code § 1542 means that, [u]pon the funding of the
20 Gross Settlement Amount, in exchange for the consideration set forth in this Settlement Agreement,
21 plaintiff also agrees to expressly waive the provisions of California Civil Code § 1542. Plaintiff’s
22 general release and waiver of California Civil Code § 1542 shall cover the time period from the start
23 of his employment with defendants up to the Effective Date. This release general release and waiver
24 of California Civil Code § 1542 by Plaintiff is not intended to release any claims that cannot be
25 waived or released as a matter of law, including specifically without limitation, any claim under the
26 California worker’s compensation statute. Davis Decl. ¶42; Settlement Agreement ¶52.

27 Upon the Effective Date, Plaintiff, all other PAGA Members, the State of California, and the
28 LWDA shall be deemed to have released their respective Released Claims against the Released

1 Parties. Plaintiff's Additional Released Claims shall also be deemed released upon the Effective
2 Date. Davis Decl. ¶43; Settlement Agreement ¶49.

3 **IV. STANDARD OF REVIEW FOR APPROVAL OF A PAGA SETTLEMENT**

4 The settlement of a PAGA action requires court approval. *See* Cal. Labor Code § 2699(1)(2).
5 In reviewing a PAGA settlement, the Court need only ensure that “a negotiated resolution is fair to
6 those affected.” *Williams v. Sup. Ct.*, 3 Cal.5th 531, 549 (2017). In making this assessment, the court
7 should consider that PAGA’s primary objective “is to incentive private parties to recover civil
8 penalties for the government that otherwise may not have been assessed and collective by
9 overburdened state enforcement agencies.” *See Ochoa-Hernandez v. CJADERS Foods, Inc.*, 2010 WL
10 1340777 at *4 (N.D. Cal. Apr. 2, 2010) (*citing Arias v. Sup. Ct.*, 46 Cal.4th 969, 986 (2009)).

11 “Unlike class actions, these civil penalties are not meant to compensate unnamed employees
12 because the action is fundamentally a law enforcement action.” *Id.* (emphasis added). Moreover,
13 because a PAGA claim is considered a law enforcement action “there is no need to protect absent
14 employees’ due process rights” and the Court need not employ the two-step approval process that
applies to class settlements. *Williams*, 3 Cal.5th at 546.

15 **V. THE SETTLEMENT IS FAIR AND RESONABLE**

16 As set forth below, the Settlement before the Court is the result of adversarial, arms-length
17 negotiations, extensive investigation, and fulfills the objectives of PAGA. Plaintiff has followed the
18 protocols for the State, PAGA, directives from this Court and other Courts throughout California, to
19 ensure that the Settlement and this Motion, meet these objectives. The Settlement is fair and reasonable
20 in light of the relative strengths of the PAGA Claims and risks associated with protracted litigation.
21 Accordingly, the Settlement should be approved by the Court.

22 **A. Plaintiff Has Complied with PAGA’s Notice Requirements**

23 Before bringing a civil action under PAGA, an employee must comply with the notice
24 requirements set forth in Labor Code section 2699.3. Plaintiff complied with this requirement. In
25 addition, the Settlement Agreement and this Motion and supporting papers are being submitted to the
26 California Labor and Workforce Development Agency, as required by California Labor Code section
2699 (1)(2). Davis Decl. ¶44.

27 **B. Discovery and Arm’s-Length Negotiations.**

28 Although PAGA settlements are not subject to the same, heightened requirements as a class

1 action settlement, the underlying guidelines utilized in class action settlements are useful in evaluating
2 the fairness of a PAGA settlement. California courts recognize that “a presumption of fairness exists
3 where . . . [a] settlement is reached through arm’s-length bargaining.” *Wershba v. Apple Computer*,
4 91 Cal.App.4th 224, 245 (2001)(disapproved on other grounds).

5 Here, the Parties engaged in arms-length, non-collusive negotiations at all times including
6 attending a private mediation with experienced employment class action Mediator David Rottman.
7 Davis Decl. ¶45. At all times, Plaintiff was willing and prepared to litigate this matter through trial
8 and possible appeals if the Parties had been unable to reach a favorable resolution. The proposed
9 Settlement was reached at the end of a process that was neither fraudulent nor collusive. To the
10 contrary, counsel for the Parties advanced their respective positions throughout the negotiations. Davis
11 Decl. ¶45.

12 The settlement is based upon substantial investigation by experienced Counsel and based on
13 this discovery Plaintiff’s Counsel believe the settlement is fair, adequate and reasonable. Davis Decl.
14 ¶46. Prior to the mediation, Defendants informally produced their written policies in place during the
15 PAGA Period including its employee handbook, revisions, and state addendums, plaintiff’s complete
16 personnel file, and time and payroll data for the aggrieved employees. Defendants also provided
17 Plaintiff with data points necessary for Plaintiff to complete a damages analysis and estimate
18 Defendants’ potential exposure. Davis Decl. ¶47.

19 This discovery, in conjunction with Plaintiff’s extensive prior investigation, allowed Plaintiff’s
20 Counsel to conduct an informed assessment and analysis of Defendants’ potential exposure. The
21 Parties briefed their positions regarding the strengths and weaknesses of their claims, provided their
22 analyses to Mediator Rottman, and debated the merits of their respective positions at the mediation.
23 Davis Decl. ¶48. Furthermore, negotiations were conducted by highly capable and respected counsel
24 with strong records of vigorous and effective advocacy handling complex wage and hour litigation.
25 Davis Decl. ¶49.

26 **C. The Settlement is Reasonable in Light of the Parties’ Legal Positions.**

27 The Gross Settlement Amount of \$277,500.00 is a reasonable settlement in light of the strength
28 of Plaintiff’s claims and Defendants’ defenses, the risks of further litigation, and the unique risks
associated with litigation of PAGA claims.

1 1. Plaintiff's Counsel's Analysis of Defendants' Maximum Potential Liability.

2 Prior to mediation based on the discovery provided, Plaintiff estimated there were
3 approximately 1,395 employees and approximately 4,966 pay periods at issue prior to the mediation.
4 Plaintiff's Counsel reviewed and analyzed an extensive sampling of time records and other relevant
5 documents and data and, based on this discovery, estimated with all claims adjudicated in favor of
6 Plaintiff, Defendants' potential liability exceeded \$3,100,050.00 in potential minimum penalties and
7 a maximum of \$6,555,250.00. Davis Decl. ¶¶50-51. At the time of Mediation, Plaintiff's counsel
8 also clarified and adjusted calculations it had mistakenly made as to the total number of PAGA
9 eligible employees represented by the data and concluded that the PAGA members were adjusted
10 to 303 employees. *Id.*

11 2. Plaintiff's Counsel's Risk-Based Analysis and Adjustments

12 Despite this potentially large liability, substantial barriers to recovery of such penalties exist.
13 First, in order to prevail at trial on his PAGA claim, Plaintiff would have to prove the underlying Labor
14 Code violations. *See Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal.
15 2008). Plaintiff's core allegations in the lawsuit are that Defendants systematically violated the
16 California Labor Code by failing to pay its non-exempt employees for all time worked including
17 minimum and overtime wages, failing to provide compliant meal and rest periods, failing to timely
18 pay wages during and upon termination of employment, failing to provide accurate payroll records,
19 and failing to reimburse necessary business expenditures. Davis Decl. ¶55; *see also* Complaint.

20 Specifically, Plaintiff argued that, for at least a portion of the PAGA Period, Defendants had
21 implemented a systematic course of wage and hour violations committed by Defendants that resulted
22 in missed, late, and short meal periods. Plaintiff argued that in practice, Defendants failed to provide
23 a designated employee break area, did not allow employees to return to their vehicles for breaks, were
24 forced to park very far away more than a 10-minute walk away, were not allowed to sit in customer
25 designated areas, and were required to remain on the work premises all of which resulted in meal and
26 rest periods violations. *See Donohue v. AMN Services, Inc.*, 11 Cal.5th 58 (2021) (holding that record
27 of missed, short, or late meal period creates rebuttable presumption of meal period violation). Despite
28 this evidence, Defendants' pay records did not show any meal or rest premiums ever being paid. Davis
Decl. ¶56.

1 However, Defendants maintained several defenses to Plaintiff's theory of liability which, if
2 successfully proven, had the potential to eliminate or substantially reduce Plaintiff's estimated
3 recovery. Defendants argued that their policies and practices at all times were lawful and complied
4 with California law. Defendants also pointed out that even if Plaintiff argued its prior policies were
5 unlawful, it had implemented updated policies shortly after Plaintiff provided Notice to the LWDA
6 and informed all employees of their rights. Finally, Defendants pointed out that despite being a large
7 corporation, there was only one location left in California. Davis Decl. ¶57.

8 Defendants also contended that when determining whether or not to assess a penalty, the court
9 exercises the same discretion as the Labor Commissioner and may reduce the penalties to be assessed
10 against the employer pursuant to California Labor Code section 2699(e)(1)-(2). As such, Defendants
11 contended that, with respect to a PAGA claim, the Court was unlikely to assess cumulative penalties
12 for the maximum number of possible, separate California Labor Code violations, because it would be
13 unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be governed
14 by multiple provisions of the California Labor Code that are interrelated and work in tandem. Davis
15 Decl. ¶58. This discretion was particularly important here, and in light of the recent changes to PAGA.
16 For instance, Defendants' liability under PAGA here is much greater here because Defendants utilized
17 weekly pay periods. Accordingly, Defendants' liability doubled by this practice over another company
18 that utilized bi-weekly pay periods. The legislature recently recognized this distinction and instructed
19 that penalties be discounted where an organization utilizes weekly pay periods. *See* Labor Code §2699
(o). Davis Decl. ¶59.

20 Defendants further contended that adjudication of claims arising under PAGA would not be
21 manageable and that the individualized inquiries Defendants argued would defeat certification of the
22 alleged claims would also impose significant hurdles during the trial of these claims. Although the
23 Supreme Court has explicitly stated that Court may not dismiss PAGA claims based on manageability
24 concerns, there are still significant practical considerations associated with the manageability of these
25 claims. Davis Decl. ¶60. Defendants maintained that, in addition to their strong arguments against the
26 underlying claims, taking the current unsettled state of law, it would be unjust to award the maximum
27 potential PAGA penalties. There was a dearth of law and guidance regarding trials and/or assessment
28 of penalties under the PAGA statute, and there is no clearly established methodology for the valuation

1 and/or assessment of PAGA penalties. However, the legislature has recently expressed that it no longer
2 intended for employees to recover on a number of derivative penalties absent evidence that these
3 penalties were willful or intentional and imposed heightened requirements for employees to obtain a
4 heightened \$200 penalty. Davis Decl. ¶61.

5 Moreover, in addition to Defendants' anticipated defenses to the alleged Labor Code
6 violations, Plaintiff's Counsel remained mindful of the fact that PAGA gives the Court discretion to
7 lower the penalties assessed if, based on the facts and circumstances of the particular case, to do
8 otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." See Cal.
9 Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112,
10 1136 (2012) (holding that a court may reduce the amount of PAGA penalties awarded to an employee
11 based upon discretionary factors)(disapproved on other grounds); *Fleming v. Covidien, Inc.*, 2011 WL
12 756304718, at *4 (C.D.Cal. Aug. 12, 2011)(reducing PAGA penalties by 80%); *Carrington v.*
13 *Starbucks Corp.* 30 Cal.App.5th 504, 529 (2018)(approving reduction in penalties from \$50 per pay
14 period to \$5 per pay period based on good faith attempts to comply with obligations and minimal
violations). Davis Decl. ¶62.

15 Plaintiff's Counsel recognized that protracted litigation of the alleged claims would be
16 expensive, time-consuming, and uncertain. To prove liability and damages, Plaintiff will be required
17 to conduct additional extensive discovery, conduct numerous depositions, request and analyze
18 thousands of pages of documents, obtain the PAGA Members' contact information, contact these
19 employees, and obtain numerous declarations at great expense. Obtaining the cooperation of current
20 employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a
21 current employer. On the other hand, Defendants would likely be able to obtain the cooperation of
22 their employees. Moreover, even if Plaintiff prevailed at trial, possible appeals could delay recovery.
23 Accordingly, there is a significant risk that Plaintiff could ultimately recover nothing despite
24 protracted litigation. Davis Decl. ¶63.

25 Thus, while Plaintiff maintains that his PAGA claims are meritorious, Plaintiff's Counsel
26 considered the strengths and weaknesses of each side's respective positions in evaluating Defendant's
27 likely potential exposure. Based on the violations alleged above, my office estimated the PAGA-
28 penalties in this matter would amount to \$2,147,620.00. This calculation was based on the weekly pay

1 periods in the PAGA Period. Accordingly, my office applied a 50% discount as now called for under
2 Labor Code Section 2699 (o) to account for these weekly pay periods. Davis Decl. ¶64. First, because
3 the total number of aggrieved employees was far lower than initially calculated, my office readjusted
4 the calculations for a total of 303, approximately 20% of the number estimated prior to mediation.
5 Next my office applied a discount of 50% to account for risks and practical considerations of managing
6 these claims at trial and a discount of 50% was applied to account for the risks associated with
7 succeeding on the merits, establishing liability, and proving the extent of penalties that are warranted.
8 Finally, my office discounted the remaining penalties an additional 50% in light of the discretionary
9 nature of these penalties by the Court given the circumstances of the Action and the interrelated nature
10 of the alleged claims. This brought the relative value of the PAGA claim to approximately
11 \$268,452.50. Davis Decl. ¶65. In light of the Parties' respective legal positions and the risks to
12 potential recovery, it is clear that the Gross Settlement Amount is fair, adequate, and reasonable. Davis
Decl. ¶66.

13 3. *The Settlement Fulfills the Fundamental Purpose of PAGA*

14 Finally, Plaintiff's counsel was mindful of the fact that PAGA is fundamentally *not* intended
15 to be compensatory in nature but is instead intended to facilitate enforcement of California's labor
16 laws by financing state activities and educating and deterring non-compliance. Davis Decl. ¶67; *see*
17 Cal. Labor Code § 2699(m), (n); *Arias v. Sup. Ct.*, 46 Cal. 4th 969 (2009);, 201 F.Supp.3d 1110, *Kim*
18 *v. Reins International California, Inc.*, 9 Cal.5th 73, 86-87 (2020). After considering this multitude of
19 factors, Plaintiff and Plaintiff's Counsel concluded that it was in the best interest of the State of
20 California and the PAGA Members to enter the Settlement. The overall relief obtained by the
21 Settlement is significant, not only from a monetary perspective, but also because it fulfills the public
22 policy objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the
23 state, and deter future non-compliance by Defendants. Davis Decl. ¶68.

24 **VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED.**

25 **A. A Percentage of the Entire Settlement Fund is Appropriate.**

26 Plaintiff's Counsel is entitled to recover reasonable attorneys' fees as a matter of right under
27 PAGA. *See* Cal. Labor Code § 2699 (k)(1). Plaintiff's Counsel is also entitled to fees and costs under
28 Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for the benefit"
of others and secures substantial monetary recovery of State and the PAGA Members. *See Estrada*

1 v. *FedEx Ground Package Sys. Inc.*, 154 Cal.App.4th 1, 16-17 (2007) (recovery obtained on behalf
2 of 209 individuals satisfies C.C.P. § 1021.5).

3 Where the amount of a settlement is a “certain easily calculable sum of money,” California
4 courts may calculate attorneys’ fees as a reasonable percentage of the settlement created. *See Dunk*
5 *v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1808 (1996). The California Supreme Court has confirmed
6 the propriety of awarding attorneys’ fees based on a percentage of the total value made available by
7 the settlement. *See Serrano v. Priest*, 20 Cal.3d 25, 34 (1977).

8 The ultimate goal is the award of a “reasonable” fee to compensate counsel for their efforts,
9 irrespective of the method of calculation. *See Apple Computer, Inc. v. Super. Ct.*, 126 Cal.App.4th
10 1253, 1270 (2005). Trial courts have “wide latitude” in assessing the value of attorneys’ fees and
11 their decisions “will not be disturbed on appeal absent a manifest abuse of discretion.” *See Lealao*
12 *v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). Moreover, Courts have consistently
13 recognized that class and representative litigation is necessary to protect the rights of individuals
14 whose injuries and/or damages are too small to economically justify individual representation.

15 Accordingly, in determining a reasonable common fund fee award, courts award fees to serve
16 as an economic incentive for lawyers to engage in representative litigation that will permit increased
17 access to the judicial system for meritorious claims and deter wrongdoing. *See, R. Pearle, California*
18 *Attorney Fee Awards* (CEB, 1993) §7A, p. 5-7. Fee awards that are too small will “chill the private
19 enforcement essential to the vindication of many legal rights and obstruct the representative actions
20 that often relieve the courts of the need to separately adjudicate numerous claims.” *Lealao*, 82
21 Cal.App.4th at 53. Therefore, fee awards in representative actions should approximate the terms of
22 a contingent-fee negotiated in comparable litigation based on the result achieved and risk incurred.
23 *Id.* at 47. The percentage-of-the-benefit approach is preferred because “it better approximates the
24 workings of the marketplace than the lodestar approach.” *Id.*

25 Historically, courts have awarded percentage fees in the range of 20% to 50% in complex
26 actions, depending on the circumstances of the case. *Newberg on Class Actions*, 4th Ed. 2002, §14:6.
27 According to *Newberg*, “. . . no general rule could be articulated as to what is a reasonable percentage
28 of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award in order to
assure that fees do not consume a disproportionate part of the recovery obtained for the class, though

1 somewhat larger percentages are not unprecedented.” *Id.* Newberg further notes that achievement of
2 a substantial recovery with modest time spent should not be penalized but should be rewarded for
3 considerations of time saved by superior services performed. *Id.*

4 Here, the Settlement provides for Attorney’s Fees to Plaintiff’s Counsel of \$97,125.00, *i.e.*
5 thirty-five percent (35%) of the Gross Settlement Amount. Davis Decl. ¶71; Settlement Agreement
6 ¶¶9, 47(b). The requested fee award is reasonable as it is: (1) consistent with the private marketplace;
7 (2) aligns the interests of Plaintiff’s counsel, the State and PAGA Members in achieving the maximum
8 possible settlement; (3) encourages efficient resolution by incentivizing an early, yet reasonable
9 settlement; and (4) reflects the work performed, risks incurred, results obtained. Plaintiff’s Counsel
10 has obtained a fair recovery in this matter which justifies a fee award of thirty-five percent of the
11 common fund. Davis Decl. ¶¶72-74.

12 **B. The Requested Fee Award Is Reasonable Based on the *Dunkel* Factors.**

13 In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir. 1991), the
14 court identified twelve factors to be considered in determining whether fee awards are reasonable in a
15 common fund case. The court also noted that, “the analysis in a common fund case focuses not on the
16 Plaintiff’s position as ‘prevailing parties,’ but on a showing that the fund conferring a benefit on the class
17 resulted from their efforts” and thus in common fund cases “the monetary results achieved predominate
18 over all other criteria.” *Id.* at 774. Evaluation of several of these key factors demonstrates that the fees
19 award requested here is reasonable and should be approved.

20 **1. Time and Labor Required.**

21 Plaintiff’s Counsel have extensive experience in the handling of complex employment class
22 actions and PAGA Actions and have aggressively litigated this case from the initial pleading to the
23 settlement of this action. As a result of Plaintiff’s Counsel’s efforts, Defendants agreed to attend early
24 mediation rather than proceeding with litigation. The ongoing work performed by Plaintiff’s Counsel
25 has been extensive, complex, and ultimately successful in achieving a fair settlement for the PAGA
26 Members and the State. Plaintiff’s Counsel actively participated in this litigation, attending client
27 meetings, conducting legal research on unanticipated and remote legal defenses, negotiating and
28 selecting a mediator and mediation date, drafting the stipulations necessary to attend mediation,
drafting discovery including a potential *Belaire-West* Notice to send to the PAGA Members,

1 participating in case strategy and analysis, and drafting, reviewing, and revising pleadings. Plaintiff's
2 Counsel conducted extensive informal discovery, researched defenses raised by Defendant, and
3 investigated Defendants' policies, practices, and procedures before attending the mediation. Plaintiff's
4 Counsel also spent significant time drafting and revising the Settlement before the Court. A settlement
5 was finally achieved despite all of the obstacles as a result of Plaintiff's Counsel's efforts. *See Davis*
6 *Decl.* ¶¶74-76.

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

The skill required to properly litigate this case is evident not only in the results achieved, but
in the steps necessary to reach this result. Defendants retained well-respected counsel and vigorously
denied liability. Indeed, Defendants and its Counsel felt strongly about Defendants' ability to prevail
and mounted several defenses that posed significant threats to Plaintiff's claims, challenged the
theories of Plaintiff's Counsel, and promised a strong defense moving forward. For instance,
Defendants felt strongly that its policies and practices throughout the PAGA Period were lawful and
that its actions taken following receipt of the PAGA letter demonstrated their good faith attempts to
comply with California law and would prevent the imposition of substantial penalties. While these
barriers may have discouraged other less experienced counsel, Plaintiff's Counsel were able to use
their experience gained litigating similar matters in order to demonstrate why there was still potential
liability and negotiate a substantial settlement on behalf of the State. *Davis Decl.* ¶77.

Plaintiff's Counsel were also required to review and analyze complex data to determine
Defendants' underlying practices and assess Defendants' potential damages, a difficult process that
took considerable time. This complicated analysis required substantial skill, but Plaintiff's Counsel
were able to successfully navigate these challenges because of their extensive experience in complex
wage and hour litigation. This settlement, against experienced defense counsel, and despite the
existence of several strong defenses, was made possible through Plaintiff's Counsel's skill and
reputation in complex employment matters. Moreover, the process of ensuring that the terms of the
Settlement were fair took unique skills by counsel well-versed in the state of the law regarding PAGA
settlements, defense counsel, and the appropriateness of the terms for this settlement. *Davis Decl.* ¶77.

3. *The Value, Amount, and Results Achieved.*

The Settlement represents a fair resolution of this case given the risks inherent in litigating it
through trial and possible appeals. As discussed at length above, although I believe that Plaintiff would

1 prevail at trial, a number of risks reduced value of the case. Had the case not settled, Defendants would
2 have vigorously challenged manageability and liability, and sought drastic reduction in the amount of
3 any penalties assessed. Preparing the case for trial would have been extraordinarily expensive and
4 risky proposition. In contrast, settlement at this stage guarantees immediate recovery for the State of
5 California and the PAGA Members. Indeed, despite these challenges Plaintiff faced moving forward,
6 Plaintiff was able to negotiate and reach a non-reversionary Gross Settlement Amount of \$277,500.00,
7 which is an outstanding result for a settlement limited to penalties arising under PAGA and which does
8 not affect the PAGA Members' individual wage claims. Davis Decl. ¶78.

4. Whether the Fee is Fixed or Contingent.

9 Whether the representation was provided on a contingency basis, as it was in this case, is an
10 important factor:

11 **A contingent fee must be higher than a fee for the same legal services paid as they**
12 **are performed.** The contingent fee compensates the lawyer not only for the legal
13 services he renders but for the loan of those services. A lawyer who both bears the
14 risk of not being paid and provides legal services is not receiving the fair market value
15 of his work if he is paid only for the second of these functions.

16 *Cates v. Chiang*, 213 Cal.App.4th 791, 823 (2013).

17 This case was litigated on a contingent basis. If Plaintiff's Counsel had been unsuccessful, they
18 would not receive any fee or recover any portion of the expenses spent litigating this matter. Plaintiff's
19 Counsel has borne all risks and costs associated with the litigation and will not receive any
20 compensation until recovery is obtained. If the Covid-19 crisis has made one thing clear, it is that
21 economic uncertainty can arise swiftly and for reasons beyond any parties' control. These are the types
22 of risks Plaintiff's Counsel took in deciding to litigate this matter on a contingent basis and this risk is
23 a relevant factor in considering the reasonableness of the requested fee. Davis Decl. ¶¶79-81.

24 **C. The Requested Fee is Reasonable Under a Lodestar Analysis.**

25 While the percentage-of-the-benefit approach is endorsed as the better approximation of the
26 workings of the marketplace than the lodestar approach, courts may also use the lodestar method to
27 "cross-check" the results of the other. This said, Courts have cautioned that the primary basis of the
28 fee award in common fund cases remains the percentage of the fund method and have cautioned that
29 plaintiff's counsel should not necessarily receive a lesser fee achieving a speedy and timely result for
30 individuals in need of immediate relief. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d. 1043, 1050
31 fn.1 (9th Cir. 2002). Indeed, courts have noted that "it is widely recognized that the lodestar method

1 creates incentives for counsel to expend more hours than may be necessary on litigating a case so as
2 to recover a reasonable fee, since the lodestar method does not reward early settlement.” *Id.* (quoting
3 *Camden I Condominium Ass’n*, 946 F.2d at 773-74.)

4 Here, the lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates
5 for the attorneys who worked on this matter. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-32 (2001).
6 Counsel are entitled to compensation for every hour reasonably spent. *See Id.* at 1133.

7 *1. Counsel Spent a Reasonable Amount of Time.*

8 Reasonableness of hours is assessed by “the entire course of the litigation, including pretrial
9 matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las Virgenes*
10 *Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed above, this case was highly
11 contested, as Defendants raised significant defenses and denied liability. Plaintiff’s Counsel invested
12 significant time and labor into this matter. The services provided include, but were not limited to
13 attending client meetings, conducting legal research on unanticipated and remote legal defenses,
14 drafting discovery, conducting extensive informal discovery, investigating Defendants’ policies,
15 practices, and procedures, reviewing hundreds of documents, analyzing time and payroll data,
16 participating in case strategy and analysis, drafting, reviewing, and revising pleadings, preparing for
17 and attending the mediation, participating in settlement negotiations and negotiating, reviewing,
18 revising, and finalizing the final version of the Settlement Agreement. Plaintiff’s Counsel
19 conservatively expended a total of 288.50 hours on this matter. The time spent on this matter was time
20 Plaintiff’s Counsel could not spend on other cases or performing other tasks. Moreover, Plaintiff’s
21 Counsel bore the significant risk that, despite all their efforts, there might ultimately be no recovery.
22 Accordingly, Plaintiff’s Counsel has spent a reasonable number of hours working on this matter. Davis
23 Decl. ¶¶87-89, Ex. 3; *see also* Declaration of Joanna Ghosh in Support of Approval Motion (“Ghosh
24 Decl.”), ¶¶1-21.

25 *2. Plaintiff’s Counsel’s Hourly Rate is Reasonable.*

26 Both California and federal courts recognize that attorneys should be compensated for
27 providing representation on a contingency basis and for taking on the risks associated with said
28 representation, as well as being provided with financial incentives to enforce important rights and
protections like those at issue in this Action. *See Ketchum*, 24 Cal.4th at 1132-33. In awarding

1 attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding
2 attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates
3 for winning contingency cases." *See Id.*

4 Here, the professional background, experience, and work performed support the use of a
5 blended rate, resulting in an approximate lodestar value of \$217,765.00. The lodestar is based on the
6 billable hours worked by each attorney since our association in the matter. This amount exceeds the
7 attorneys fees of \$97,125.00 requested by Plaintiff's Counsel, resulting in a negative multiplier of
8 0.55. Davis Decl. ¶89. In light of the work performed and the benefit conferred to the State and PAGA
9 Members, the request for fees in the amount of thirty-five percent (35%) of the Gross Settlement
10 Amount (\$97,125.00) is reasonable. Davis Decl. ¶91.

11 **VII. THE REQUESTED INCENTIVE PAYMENT SHOULD BE APPROVED.**

12 The Settlement provides for a Plaintiff's Incentive Payment to be paid to Plaintiff in the
13 amount of \$7,500.00. The payment serves as an incentive award to encourage aggrieved employee
14 to serve as the LWDA's proxy in undertaking the responsibilities associating with initiating a PAGA
15 lawsuit and serving in a representative capacity. *See Bell v. Famers Ins. Exch.*, 115 Cal.App.4th 715,
16 726 (2004) ("service payments" compensate named plaintiff "for [her] efforts in bringing the
17 action"); *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010) (noting that
18 incentive payments compensate plaintiffs for the expense and risk the incur in conferring benefits
19 on others).

20 Here, Plaintiff initiated this litigation and invested considerable time and effort to enforce
21 the Labor Code on behalf of the State of California and the PAGA Members, who will now receive
22 monetary payment as a result. Plaintiff provided Plaintiff's Counsel with relevant documents and
23 information, provided the facts and evidence necessary to attempt to prove his allegations, and had
24 numerous discussions with Plaintiff's Counsel about the case. Plaintiff made himself available for
25 and provided testimony at a full day of deposition, actively monitored the status of the case, assisted
26 in preparation for the mediation, and reviewed the Settlement and discussed its terms with Counsel.
27 In short, Plaintiff played an instrumental role in the successful litigation to this case. Davis Decl.
28 ¶¶92-95; Declaration of Michael Corbin in Support of Approval Motion ("Corbin Decl.") ¶¶2-14.

The requested Incentive Payment also recognizes the fact that, as part of the Settlement,

1 Plaintiff is agreeing to a general release of any and all claims he may have against Defendant, which
2 is far broader than the narrow release applicable to the LWDA or affecting the PAGA Members.
3 The payment also serves to recognize the actual risk Plaintiff assumed by putting himself on the
4 public record in a representative employment lawsuit. Accordingly, it is reasonable and just for
5 Plaintiff to receive a modest incentive payment of \$7,500.00 in recognition of his contributions in
6 obtaining the settlement. Davis Decl. ¶¶92-95; Corbin Decl. ¶¶2-14.

7 **VIII. THE PROPOSED NOTICE TO PAGA MEMEBERS (Exhibit A) SHOULD BE**
8 **APPROVED.**

9 Although PAGA does not require notice to unnamed aggrieved employees of a settlement,
10 the Parties prepared, and now present for the Court’s consideration and approval, a proposed cover
11 letter (PAGA Notice) to be sent to the PAGA Members along with their settlement shares. The cover
12 letter, which shall be sent to the PAGA Members in both English and Spanish, informs the PAGA
13 Members regarding this Action, the Settlement, the PAGA Member’s settlement share and the scope
14 of the Released Claims. Plaintiff respectfully requests that the Court approve the cover letter and
15 that this letter be sent to the PAGA Members. Davis Decl. ¶96; Settlement Agreement, Ex. A.

16 **IX. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE.**

17 Subject to Court approval, the Parties have agreed to utilize Apex Class Action (“Apex”) to
18 administer this Settlement. The total fees and expenses of the Settlement Administrator shall not
19 exceed \$9,950.00. These costs include, but are not limited to, expenses for translating the Notice
20 from English to Spanish, preparing, printing and mailing the PAGA Notice and checks to the PAGA
21 Members, performing skip-traces, remailing returned payments, and handling inquiries from PAGA
22 Members regarding the Settlement. Prior to selecting Apex as the Settlement Administrator, the
23 Parties solicited bids from Phoenix, Apex Class Action Administration, and ILYM Group, Inc., and
24 chose Apex as a result of its lower bid. Accordingly, Plaintiff respectfully requests that the Court
25 approve payment of administration costs in the amount of \$9,950.00 to Apex. Davis Decl. ¶97;
26 Declaration of Sean Hartranft on behalf of Apex Class Action Administration (“Apex Decl.”) ¶¶1-
27 7.

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Respectfully submitted,

PROTECTION LAW GROUP, LLP

MEMORANDUM OF POINTS AND AUTHORITIES – Page 22