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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NAPA**

HERNAN RAI ZARAGOZA LEMUS,
individually, and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

WILLIAM KREYSLER & ASSOCIATES,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. 22CV000774

Honorable Cynthia P. Smith
Courtroom A

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (CAL. LABOR CODE § 2698,
ET SEQ.) SETTLEMENT AGREEMENT
AND AWARD OF ATTORNEYS' FEES
AND COSTS, GENERAL RELEASE
FEE, AND SETTLEMENT
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declaration of Plaintiff's Counsel
(Elizabeth Parker-Fawley); Declaration of
Plaintiff (Hernan Rai Zaragoza Lemus); and
[Proposed] Order and Judgment filed
concurrently herewith]

Date: October 18, 2024
Time: 8:30 AM
Courtroom: A

Complaint Filed: September 20, 2021
FAC: June 4, 2024
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 18, 2024, at 8:30 a.m. or as soon thereafter
2 as the matter may be heard before the Honorable Cynthia P. Smith in Courtroom A of the
3 Superior Court of the State of California, for the County of Napa, located at 825 Brown Street,
4 Napa, CA 94559, Plaintiff Hernan Rai Zaragoza Lemus (“Plaintiff”) will and hereby does move
5 for entry of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(1)(2), of the
7 settlement between Plaintiff and Defendant William Kreysler & Associates, Inc.
8 (“Defendant”) of the claims brought pursuant to the Private Attorneys General Act of
9 2004 (“PAGA”), as set forth in the Private Attorneys General Act Settlement
10 Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”),
11 attached as “**EXHIBIT 1**” to the Declaration of Elizabeth Parker-Fawley, including
12 and not limited to, the plan of allocation and distribution of the Total Settlement
13 Amount for payment of the LWDA Payment to the California Labor and Workforce
14 Development Agency (“LWDA”), Individual Settlement Shares to the Aggrieved
15 Employees, Attorneys’ Fees and Costs to Plaintiff’s Counsel, Settlement
16 Administration Costs to the PAGA Settlement Administrator, and General Release
17 Fee to Plaintiff;
- 18 2. Approving the Net Settlement Amount, estimated to be no less than \$361,902.80
19 which will be distributed to the LWDA and the Aggrieved Employees pursuant to
20 California Labor Code section 2699(i): seventy-five percent (75%) will be paid to the
21 LWDA (“LWDA Payment”) and twenty-five percent (25%) will be paid to the
22 Aggrieved Employees (“Employees’ Portion”);
- 23 3. Appointing Phoenix Settlement Administrators (“Phoenix” or “PAGA Settlement
24 Administrator”) as the PAGA Settlement Administrator;
- 25 4. Directing Defendant to transmit the Total Settlement Amount of \$650,000.00 into a
26 qualified settlement account established by the PAGA Settlement Administrator for
27 administration of the Settlement after approval of the settlement and directing the
28 PAGA Settlement Administrator to distribute the Total Settlement Amount in

accordance with the Settlement Agreement;

5. Directing the mailing of Individual Settlement Share checks to the Aggrieved Employees along with the Cover Letter, which is substantially similar in content and form to that attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys’ Fees and Costs, General Release Fee, and Settlement Administration Costs (“[Proposed] Order and Judgment”) filed concurrently herewith;
6. Awarding \$7,500.00 to Plaintiff Hernan Rai Zaragoza Lemus as a General Release Fee;
7. Awarding up to \$7,000.00 to the PAGA Settlement Administrator as Settlement Administration Costs; and
8. Awarding to Plaintiff’s Counsel, Lawyers for Justice, PC, \$260,000.00 as compensation for reasonable attorneys’ fees and \$13,597.20 for reimbursement of litigation costs and expenses (“Attorneys’ Fees and Costs”), pursuant to California Labor Code section 2699(g)(1).

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

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

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1 This motion will be based upon the following Memorandum of Points and Authorities,
2 the Settlement Agreement, the Declarations of Plaintiff's Counsel (Elizabeth Parker-Fawley) and
3 Plaintiff ("Hernan Rai Zaragoza Lemus") in support thereof, as well as the pleadings and other
4 records on file with the Court in this matter, and such evidence and oral argument as may be
5 presented at the hearing on this motion.

6
7 Dated: September 25, 2024

LAWYERS for JUSTICE, PC

8
9 By: _____


Elizabeth Parker-Fawley
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Hernan Rai Zaragoza Lemus (“Plaintiff”) seeks approval of the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and Defendant William Kreysler & Associates, Inc. (“Defendant”), pursuant to California Labor Code section 2699(1)(2).¹

Subject to approval by the Court, Plaintiff and Defendant (together, the “Parties”) have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Total Settlement Amount of \$650,000.00.²

The Total Settlement Amount is inclusive of: (1) Attorneys’ Fees and Costs to be paid to Lawyers for Justice, PC (“Plaintiff’s Counsel”), (2) General Release Fee to Plaintiff, (3) Settlement Administration Costs to be paid to the PAGA Settlement Administrator, and (4) Net Settlement Amount to be paid to the California Labor and Workforce Development Agency (“LWDA”) and all current and former non-exempt employees of Defendant who worked at any time in the State of California during the PAGA Period (“Aggrieved Employees”).³

The Net Settlement Amount will be the Total Settlement Amount less the Court-approved Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee, and is currently estimated to be no less than \$361,902.80, if the Total Settlement Amount is \$650,000.00.⁴ The Net Settlement Amount will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and twenty-five percent (25%) to the Aggrieved Employees (“Employees’ Portion”).⁵ Each Aggrieved Employee will be entitled to payment of

¹ The Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement”) is attached as “EXHIBIT 1” to the Declaration of Elizabeth Parker-Fawley (“Parker-Fawley Decl.”).

² Settlement Agreement, § 3(b) of the Settlement Agreement provides for an escalator clause that if triggered, would increase the Total Settlement Amount.

³ *Id.*, § 3(a)(5). “PAGA Period” is defined as the period May 9, 2021 through the date of Court approval of this Settlement. *Id.*

⁴ *Id.*, § 3(a)

⁵ *Id.*, § 3(a)(5).

1 their *pro rata* share of the Employees’ Portion, based on the number of pay periods in which they
2 each worked for Defendant as non-exempt employees in California during the PAGA Period
3 (“Compensable Pay Periods”).⁶

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

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

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

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

22 Defendant William Kreysler & Associates, Inc. is a manufacturer specializing in
23 fabricating custom composite materials for art, architectural, and industrial applications. Plaintiff
24 Hernan Rai Zaragoza Lemus is a former employee of Defendant.

25 Prior to commencing this lawsuit, on May 9, 2022, as required by California Labor Code
26 section 2699.3, Plaintiff Hernan Rai Zaragoza Lemus provided the LWDA and Defendant with

27 ⁶ *Id.*, § 7(b).

28 ⁷ *Id.*, § 7(b)(1).

1 written notice of his intent to assert claims under PAGA and the basis for those claims, to which
2 the LWDA did not respond (“PAGA Notice”).⁸

3 On July 13, 2022, Plaintiff filed a Complaint for Enforcement Under the Private
4 Attorneys General Act, California Labor Code § 2698, Et Seq. against Defendant, thereby
5 commencing the action entitled *Hernan Rai Zaragoza Lemus v. William Kreysler & Associates,*
6 *Inc.*, Napa County Superior Court (“Court”), Case No. 22CV000774 (the “Action”). Plaintiff’s
7 core allegation is that Defendant has violated the California Labor Code by engaging in a
8 uniform practice and procedure, with respect to Plaintiff and other aggrieved employees, of, *inter*
9 *alia*, failing to pay wages, failing to provide compliant meal and rest periods and associated
10 premiums, failing to pay timely wages during employment and upon termination of employment,
11 failing to provide complete and accurate wage statements, failing to keep complete and accurate
12 payroll records, and failing to reimburse necessary business-related expenses and costs.

13 On September 14, 2023, the Parties participated in a full-day mediation conducted by
14 Steve Rottman, Esq., a well-respected mediator experienced in mediating complex labor and
15 employment matters.⁹ The Parties were ultimately able to reach a settlement with the aid of the
16 mediator’s evaluation.

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

21 **III. SUMMARY OF THE SETTLEMENT TERMS**

22 **A. Aggrieved Employees**

23 The Aggrieved Employees who are covered by the Settlement are: All current and former
24 non-exempt employees of Defendant who worked at any time in the State of California during
25 the PAGA Period.¹⁰ Based on information provided by Defendant, there were approximately 385
26

27 ⁸ *Id.*, § 1(b); Parker-Fawley Decl. ¶ 10, Exh. 2.

⁹ Settlement Agreement, § 1(d); Parker-Fawley Decl. ¶ 14.

28 ¹⁰ Settlement Agreement, § 3(a)(5).

Aggrieved Employees and 8,450 Compensable Pay Periods for the time period from May 9, 2021 to September 22, 2023.¹¹

B. Distribution of the Total Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Amount of \$650,000.00.¹² The Net Settlement Amount will be the Total Settlement Amount less the following amounts: (1) attorneys' fees of \$260,000.00, if the Total Settlement Amount remains \$650,000.00 and reimbursement of litigation costs and expenses of up to \$30,000.00 to Plaintiff's Counsel; (2) General Release Fee of \$7,500.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$7,000.00 to Phoenix Settlement Administrators ("Phoenix" or "PAGA Settlement Administrator").¹³ The Net Settlement Amount will be fully distributed to the Aggrieved Employees and the LWDA.

C. Distribution of the Net Settlement Amount

Within 10 calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) Social Security number; (iv) dates of employment as a non-exempt employee of Defendant who worked at any time during in the State of California during the PAGA Period; and (v) the number of Compensable Pay Periods.¹⁴ Within 14 calendar days of the Court's order granting approval of the Settlement Agreement, Defendant shall transmit the Total Settlement Amount to a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement.¹⁵

Seventy-five percent of the Net Settlement Amount (or approximately \$271,427.10 will be distributed to the LWDA (i.e., LWDA Payment) and 25% of the Net Settlement Amount (or

¹¹ Settlement Agreement, § 3(a)(5).

¹² *Id.*, § 3(a).

¹³ *Ibid.*

¹⁴ *Id.*, § 7(c)(1).

¹⁵ *Id.*, § 7(a).

approximately \$90,475.70) (i.e., Employees' Portion) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods.¹⁶ The PAGA Settlement Administrator shall calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), by: (1) dividing the amount of Employees' Portion by the total number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiplying this result by each Aggrieved Employee's individual Compensable Pay Periods to arrive at each Aggrieved Employee's Individual Settlement Share.¹⁷ The payments to Aggrieved Employees for their Individual Settlement Shares are considered 100% penalties to be reported on IRS Form 1099, if required.¹⁸

No later than 14 calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon cover letter ("Cover Letter") and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail.¹⁹ For each PAGA Settlement Package that is returned as undeliverable within 30 calendar days of the initial mailing, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.²⁰

The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for 180 calendar days, and thereafter, shall be canceled.²¹ Funds associated with cancelled checks shall be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of their respective Individual Settlement Share(s).²²

¹⁶ Settlement Agreement, § 7(b).

¹⁷ *Ibid.*

¹⁸ *Id.*, § 7(b)(1).

¹⁹ *Id.*, § 7(c)(3).

²⁰ *Ibid.*

²¹ *Id.*, § 7(c)(4).

²² *Ibid.*

D. The Scope of the Release in the Settlement Agreement

Upon the date the Court has entered an order approving the Settlement Agreement and the full funding of the Total Settlement Amount, Plaintiff and the State of California with respect to the Aggrieved Employees will be deemed to have knowingly and voluntarily released and forever discharged Released Parties from the Released Claims.

The “Plaintiff’s Released Claims” are all claims, transactions, or occurrences that were, or reasonably could have been, alleged, based on the facts contained in the Operative complaint and the PAGA Notice, including but not limited to: any and all claims arising under local, state, and federal law, including, without limitation, statutory, constitutional, contractual, tort, and/or common law claims for wages, damages, restitution, unreimbursed expenses, equitable relief, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, and/or costs including, without limitation, claims under any applicable Industrial Welfare Commission Wage Order, the California Private Attorneys General Act, California Labor Code Section 2698, et seq. and any other provision of the California Labor Code, including California Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5; Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 1981; the Americans With Disabilities Act; Sections 503 and 504 of the Rehabilitation Act of 1973; the Family Medical Leave Act; the Fair Labor Standards Act; the Employee Retirement Income Security Act; the Occupational Safety and Health Act; the Worker Adjustment and Retraining Notification Act, as amended; the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.); the California Fair Employment and Housing Act and all human rights laws and laws against discrimination; any claims for malicious prosecution.²³ Plaintiff’s Released Claims include a waiver of Civil Code section 1542.²⁴

The “PAGA Released Claims” are from all claims for civil penalties under California Labor Code section 2698, *et seq.* (“PAGA”), arising during the PAGA Period, that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and

²³ Settlement Agreement, § 8(a)(1).

²⁴ *Id.*, § 8(a)(3).

the PAGA Notice, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide a day of rest, failure to provide complete and accurate wage statements, failure to keep complete and accurate payroll records, failure to provide notice of wage-theft related information upon hiring (and upon change of said information), and failure to reimburse necessary business-related expenses and costs, in violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, and Industrial Welfare Commission Wage Orders, including Wage Orders 1-2001, 4-2001, and 16-2001.²⁵

The “Released Parties” are Defendant and each of its former and present companies or subsidiaries, directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, affiliates, employees, agents, and any individual or entity that could be liable for any PAGA Released Claims.²⁶

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

“[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546. “Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5. A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are “nonparty aggrieved employees who are not given notice of, and an opportunity to be heard in, a representative action that is not brought as a class action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other potentially aggrieved employees parties” to the action and no “due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and

²⁵ Settlement Agreement, § 8(b).

²⁶ *Ibid.*

whatever personal claims the absent employees might have for relief are not at stake.” *Williams*, 3 Cal.5th at 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

“[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]” *Williams*, 3 Cal.5th at 548 (internal references omitted, citing *Arias*, 46 Cal.4th at 980-981; *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29 Cal, 3d 462, 474.) A “judgment in such an action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding” because “the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies[.]” “collateral estoppel applies [...] against those for whom the party acted as an agent or proxy[.]” and “[w]hen a government agency is authorized to bring an action on behalf of an individual or in the public interest, and a private person lacks an independent right to bring the action, a person who is not a party but who is represented by the agency is bound by the judgment as though the person were a party.” *Arias*, 46 Cal.4th at 985-86 (citations omitted); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (aggrieved employee cannot opt out of a PAGA settlement).

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

IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT

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

1 analysis of several unique features that render the approval process distinct from, and simpler
2 than, the process for approval of a class action settlement.

3 A court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is
4 fair to those affected.” *Williams*, 3 Cal.5th 549 (citing Cal. Lab. Code § 2699(l)(2)). In a PAGA
5 case, the court’s focus is not the monetary amount which aggrieved employees or the State stand
6 to receive, but instead, whether the total settlement amount achieves the PAGA’s objectives. The
7 purpose of the PAGA is “to incentivize private parties to recover civil penalties for the
8 government that otherwise may not have been assessed and collected by overburdened state
9 enforcement agencies.” See *Ochoa-Hernandez*, 2010 WL 1340777, at *4 (citing *Arias*, 46
10 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to “be distributed to the
11 [LWDA] for enforcement of labor laws . . . and for education of employers and employees about
12 their rights and responsibilities under this code, to be continuously appropriated to supplement
13 and not supplant the funding to the agency for those purposes.” Cal. Lab. Code § 2699(j). The
14 recovery of penalties on behalf of the State, by way of a PAGA claim, is essentially a law
15 enforcement action. *Amalgamated*, 46 Cal.4th at 1003 (stating that the PAGA is a mechanism for
16 “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise
17 would be sought by state labor law enforcement agencies”); see also *Iskanian*, 58 Cal.4th at 381.

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

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

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

23 A settlement that is “the product of extensive and hard-fought adversarial negotiations
24 between the parties” is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.*
25 (2001) 91 Cal.App.4th 224, 245. The Settlement is presumptively fair because: (1) it is the
26 product of non-collusive, arm’s-length negotiations with the assistance of an independent
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mediator knowledgeable in complex labor and employment matters;²⁷ (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters;²⁸ and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claim, and the risks associated with continued litigation.²⁹

After engaging in significant investigations and engaging in extensive informal discovery and exchange of information, documents, and data, the Parties participated in settlement negotiations to try to resolve the lawsuit.³⁰ These efforts included participating in formal mediation conducted by Steve Rottman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³¹ In the course of mediation and settlement negotiations, the Parties discussed all aspects of the case, including the risks and delays of further litigation and proceeding with trial, as well as the law relating to representative PAGA actions, off-the-clock theory, meal and rest periods, arbitration agreements/clauses, wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other things.³² During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³³

Based on all of the information available to the Parties and with the assistance of the mediator, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim.³⁴ Plaintiff and Plaintiff's Counsel believe that the settlement is a fair, adequate, and reasonable resolution of this matter.³⁵ Plaintiff's Counsel has extensive experience handling representative and class action wage-and-hour litigation and used that experience to achieve a great result for Plaintiff, the State of California, and the Aggrieved

²⁷ Parker-Fawley Decl., ¶¶ 13 & 14

²⁸ *Id.*, ¶¶ 2-7.

²⁹ *Id.*, ¶¶ 14-21.

³⁰ *Id.*, ¶¶ 13-14.

³¹ *Id.*, ¶ 14.

³² *Id.*, ¶ 13

³³ *Ibid.*

³⁴ *Id.*, ¶ 21.

³⁵ *Id.*, ¶ 25.

Employees.³⁶ Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of Plaintiff's Counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

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

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

Plaintiff's core allegation is that Defendant has systematically violated the California Labor Code, with respect to Plaintiff and the Aggrieved Employees, by, *inter alia*, failing to pay all wages due, failing to provide compliant meal periods and failure to provide proper meal premiums, failing to provide compliant rest breaks and proper rest break premiums, failing to timely pay wages during employment, failing to timely pay wages upon termination, failing to provide complete and accurate wage statements, failing to maintain complete and accurate payroll records, failing to provide adequate days of rest, failing to provide notice of wage-theft related information upon hiring and/or upon change, and failing to reimburse necessary business-related expenses and costs.

³⁶ Parker-Fawley Decl., ¶¶ 2-7.

1 Although wage-and-hour actions are amenable to resolution as to a group of employees,
2 some courts have also found that, for various reasons, the issues raised by Plaintiff raise
3 individualized issues and/or are unmanageable and thus not suitable for adjudication as to a
4 group of employees. Defendant maintained several defenses to Plaintiff's theory of liability,
5 which, if successfully argued and proven, had the potential to eliminate or substantially reduce
6 recovery. Defendant denies that it ever violated any provision of the California Labor Code,
7 including, but not limited to, those sections for which Plaintiff seeks penalties under the
8 PAGA.³⁷

9 Defendant also argued that an important feature of PAGA is that the Court retains
10 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to
11 do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory."
12 See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.*
13 (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA
14 penalties awarded to an employee based upon discretionary factors). Defendant maintained, and
15 continues to maintain, that it had and continues to have, legally-compliant employment policies
16 and practices throughout the time period at issue.³⁸ Defendant denies that it ever violated any
17 provision of the California Labor Code.³⁹ Even assuming, *arguendo*, such violations occurred,
18 Defendant contended that said violations would only be considered "initial violations" and thus
19 heightened "subsequent violation" penalties were not warranted. See Cal. Lab. Code §
20 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 ("Until
21 the employer has been notified that it is violating a Labor Code provision [...], the employer
22 cannot be presumed to be aware that its continuing underpayment of employees is a 'violation'
23 subject to penalties.").

24 Defendant also contended that the Court was unlikely to assess cumulative penalties for
25 the maximum number of possible, separate California Labor Code violations, because it would
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27 ³⁷ Parker-Fawley Decl., ¶ 20.

28 ³⁸ *Id.*, ¶ 18.

³⁹ *Ibid.*

1 be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be
2 regulated by multiple provisions of the California Labor Code that are interrelated and work in
3 tandem. As such, Defendant contended that cumulative penalties and heightened penalties would
4 be unjust, arbitrary, oppressive, and confiscatory.

5 There is also uncertainty regarding PAGA claims due to the United States Supreme
6 Court's decision in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639. As a result of that
7 decision, it may be more likely that employer agreements containing arbitration terms will
8 impact the viability of adjudication of PAGA claims in the judicial forum, which is relevant to
9 this matter in light of agreements that Defendant obtained from its employees (which include,
10 *inter alia*, delegation clauses, class and collective action waivers, and binding individual
11 arbitration provisions).⁴⁰ However, the California Supreme Court has confirmed that an
12 aggrieved employee who has been compelled to arbitrate claims under PAGA that are premised
13 on California Labor Code violations actually sustained by the plaintiff still maintains statutory
14 standing to pursue PAGA claims arising out of events involving other employees through PAGA
15 representative claims. *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1121.
16 Nevertheless, while the arbitrable and non-arbitrable components of an action are not severed
17 from one another, it is still possible that trial courts will stay the representative/non-individual
18 PAGA claims pending arbitration of a plaintiff's individual PAGA claims and if a plaintiff is
19 determined to not be an "aggrieved employee" for PAGA purposes, issue preclusion would apply
20 and, once reduced to a final judgment, trial courts are bound by the arbitrator's determination
21 and the plaintiff may lose standing to pursue non-individual PAGA claims. *Id.* at 1124.

22 While Plaintiff disagrees with Defendant's contentions and maintains that his PAGA
23 claim has merit, in reaching the settlement, Plaintiff and his counsel took into account the
24 strengths and weaknesses of each side's position and the uncertainty of how the case might have
25 concluded as litigation continued, at trial, in arbitration proceedings, and/or appeals.⁴¹

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27 ⁴⁰ Parker-Fawley Decl., ¶ 19.

28 ⁴¹ *Id.*, ¶ 21.

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

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

7 Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope
8 of the PAGA claim and allegations.⁴² In addition, the Parties exchanged a large volume of
9 information, documents, and data relevant to the PAGA claim and Defendant’s defenses thereto,
10 including, and not limited to, the employment records of Plaintiff, a sampling of time and pay
11 data for the Aggrieved Employees, Defendant’s employment practices, forms (such as the Meal
12 Period Waiver Agreement, Meal Premium Form, Acknowledgment of Receipt of Kreysler &
13 Associates California Meal Period and Rest Break Policy, and Meal Attestation Correction
14 Form), policies (such as the Kreysler & Associates California Meal Period and Rest Break
15 Policy, Policy on Recording Time / Meal Period and Rest Break Policy Memorandum, and
16 William Kreysler & Associates Inc. Employee Handbooks), and procedures, among other
17 documents.⁴³ Counsel for the Parties undertook significant investigation, and also invested time
18 reviewing and analyzing relevant information, documents, and data to evaluate Plaintiff’s claims,
19 including, and not limited to, calculating the potential monetary recovery under PAGA.⁴⁴ Other
20 work performed by Plaintiff’s Counsel included, but was not limited to: meeting and conferring
21 with Defendant’s counsel regarding the pleadings, motions, case management, arbitration,
22 mediation, and settlement negotiations, among other issues; case strategy and analysis; drafting,
23 reviewing, and revising the pleadings, motion-related papers, the mediation brief, and settlement
24 agreement; preparing for and engaging in the mediation and settlement negotiations; and
25 preparing for and appearing for court proceedings.

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27 ⁴² Parker-Fawley Decl., ¶ 15.

28 ⁴³ Ibid.

⁴⁴ Ibid.

Had the case not settled, the Parties would have conducted extensive formal discovery, including propounding additional written discovery requests and conducting multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendant indicated that it would aggressively litigate this case.⁴⁵ Even if Defendant failed on its defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.⁴⁶ Additionally, there is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State of California or other Aggrieved Employees after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

D. The Settlement Is Fair, Adequate, and Reasonable

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

The Settlement provides significant benefits to the State of California and the Aggrieved Employees and falls well-within the range of acceptable settlements under the circumstances. Under the Agreement, Defendant has agreed to pay a Total Settlement Amount of \$650,000.00, which encompasses the Net Settlement Amount, Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee.⁴⁷ Subject to approval by the Court, the following amounts will be subtracted from the Total Settlement Amount to yield the Net Settlement Amount: (1) Attorneys’ Fees and Costs consisting of attorneys’ fees in the amount of \$260,000.00 and reimbursement of litigation costs and expenses in the amount of \$13,597.20 to Plaintiff’s Counsel; (2) the Settlement Administration Costs of up to \$7,000.00; and (3) General Release Fee of up to \$7,500.00 to the Plaintiff.⁴⁸

⁴⁵ Parker-Fawley Decl., ¶ 18.

⁴⁶ *Id.*, ¶¶ 12 & 21.

⁴⁷ Settlement Agreement § 3(a).

⁴⁸ *Id.*, § 3(a).

The Net Settlement Amount is currently estimated to be \$361,902.80, of which an estimated \$271,427.10 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods and \$90,475.70 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel have taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.⁴⁹ Considering all of the facts in this case, Plaintiff and his counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim.⁵⁰

The result achieved in this case, and the monetary recovery provided by this settlement, are well-within the range of an acceptable settlement under the circumstances, especially when compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576, 589 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit). Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the

⁴⁹ Parker-Fawley Decl., ¶¶ 17 & 21.

⁵⁰ *Id.*, ¶ 21.

objectives of the PAGA statute.

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

Plaintiff’s Counsel is highly experienced in complex representative and class action wage-and-hour litigation.⁵¹ In the view of Plaintiff’s Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁵² Furthermore, courts have acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]” *Williams*, 3 Cal.5th at 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

VI. THE PROPOSED ATTORNEYS’ FEES PAYMENT IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

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

The Settlement provides for a Total Settlement Amount of \$650,000.00.⁵³ The Settlement provides for attorneys’ fees and reimbursement of litigation costs and expenses in the sum total of \$273,597.20, subject to approval and award by the Court.⁵⁴ The requested attorneys’ fees award is commensurate with: (1) the risk that Plaintiff’s Counsel took in bringing and litigating the matter, (2) the time, effort, and expense dedicated to the matter, (3) the skill and determination that Plaintiff’s Counsel has shown, (4) the results that Plaintiff’s Counsel has achieved throughout the litigation, (5) the value that Plaintiff’s Counsel has achieved, and (6) the other cases that Plaintiff’s Counsel has turned down in order to devote its time and effort to this matter.

Plaintiff’s Counsel is entitled to recover reasonable attorneys’ fees and costs as a matter

⁵¹ Parker-Fawley Decl., ¶¶ 2-7.

⁵² *Id.*, ¶ 21.

⁵³ Settlement Agreement, § 3(a).

⁵⁴ *Ibid.*; Parker-Fawley Decl., ¶ 11.

of right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) (“Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney’s fees and costs”). Plaintiff’s Counsel is also entitled to fees and costs under California Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition “for the benefit” of others and secures monetary recovery for a large number of Aggrieved Employees, as well as the State of California. *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17 (recognizing that recovery obtained on behalf of 209 individuals satisfies the “significant benefit,” “public interest,” and “large class of persons” requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff’s personal motivation). The settlement will also benefit the state labor agency in enforcing labor laws and educating “employers and employees about their rights and responsibilities under [the California Labor Code].” Cal. Lab. Code § 2699(i).

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

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *see also Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (holding that “trial court did not abuse its discretion in using [the percentage of fund method], in part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.

The propriety of calculating and awarding attorneys’ fees as a percentage of a monetary fund that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 486 & 506. While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund method, the California Supreme Court has taken the position that trial

1 courts also “retain the discretion to forgo a lodestar cross-check and use other means to evaluate
2 the reasonableness of a requested percentage fee” and “[t]he percentage of fund method survives
3 in California.” *Id.* (internal quotes omitted); see also *Wershba*, 91 Cal.App.4th at 253.

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

10 The percentage fee method is preferred in representative actions because “it better
11 approximates the workings of the marketplace than the lodestar approach.” *Lealao*, 82
12 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be
13 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
14 based on the result achieved and risk incurred. See *Lealao*, 82 Cal.App.4th at 47-50; *Laffitte*, 1
15 Cal.5th 480 at 503. In cases where the settlement agreement provides that the defendant will pay
16 the plaintiff’s attorneys a percentage of the fund created by the settlement, use of that percentage
17 method is appropriate. *Lealao*, 82 Cal.App.4th at 32. Fee awards that are too small will “chill the
18 private enforcement essential to the vindication of many legal rights and obstruct the
19 representative actions that often relieve the courts of the need to separately adjudicate numerous
20 claims.” *Id.* at 53. Therefore, fees in representative actions should approximate the probable
21 terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable
22 litigation. *Id.* at 48. “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate
23 counsel for their efforts, irrespective of the method of calculation.” *Consumer Privacy Cases*
24 (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court*, 126
25 Cal.App.4th 1253, 1270).

26 Plaintiff’s Counsel’s application for attorneys’ fees is well-within the range of
27 reasonableness in light of the facts and circumstances surrounding the case. Historically, courts
28 have awarded fees as high as 50% of the settlement in complex actions, depending on the

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

9 Counsel for Plaintiff undertook significant investigation, and also invested time
10 reviewing and analyzing relevant documents and data to evaluate the allegations, including, and
11 not limited to, calculating the potential monetary recovery under PAGA.⁵⁵ Other work performed
12 by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's
13 counsel regarding case management, motions, arbitration, mediation, and settlement
14 negotiations, among other issues; case strategy and analysis; drafting, reviewing, and revising the
15 pleadings, motion-related papers, the mediation brief, and settlement agreement; preparing for
16 and engaging in the mediation and settlement negotiations; and preparing for and appearing for
17 court proceedings.⁵⁶

18 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation
19 and will not receive any compensation until recovery is obtained.⁵⁷ Plaintiff's Counsel is
20 experienced in complex wage-and-hour litigation and used that experience to obtain a great
21 result for Plaintiff, the Aggrieved Employees, and the State of California.⁵⁸ Considering the
22 amount of fees requested, work performed, risks incurred, results obtained, and experience of
23 Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys'
24 fees are reasonable and should be awarded.

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26 ⁵⁵ Parker-Fawley Decl, ¶ 15.

27 ⁵⁶ Ibid.

28 ⁵⁷ *Id.*, ¶ 23.

⁵⁸ *Id.*, ¶¶ 2-7.

B. The Fee Award Requested by Plaintiff's Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards

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

It should be highlighted that the percentage award sought is commensurate with the time, effort, and expense dedicated to the matter, the contingent nature of Plaintiff's Counsel's representation and the risks taken in commencing the Action, the skill and determination required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that Plaintiff's Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California. For the reasons discussed herein, an award of attorneys' fees equal to 40% of the Total Settlement Amount is reasonable.

1. *Time & Labor*

Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁵⁹ During the litigation of the Action, Plaintiff's Counsel interviewed and obtained

⁵⁹ Parker-Fawley Decl., ¶ 15.

1 information from Plaintiff and Aggrieved Employees, conducted legal research, reviewed and
2 analyzed a large amount of information, documents, and data, prepared for and attended
3 mediation, evaluated the PAGA claim, and calculated the potential monetary recovery under
4 PAGA.⁶⁰ Plaintiff's Counsel also met and conferred with Defendant's counsel regarding case
5 management, motions, arbitration, mediation, and settlement negotiations, among other issues.⁶¹
6 Plaintiff's Counsel performed other work including, *inter alia*, case strategy and analysis;
7 drafting, reviewing, and revising the pleadings, motion-related papers, the mediation brief, and
8 settlement agreement; and preparing for and appearing for court proceedings.⁶²

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

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

12 The skill required to properly litigate this case is evident not only in the results achieved,
13 but in the steps necessary to reach the same. Defendant retained highly-respected counsel to
14 represent its defenses. Defendant and its counsel felt very strongly about Defendant's ability to
15 prevail on the merits and avoid representative adjudication of the PAGA claim in a court of law.
16 Plaintiff and Plaintiff's Counsel believe that the PAGA claim has merit and that Plaintiff will
17 prevail at trial. Plaintiff's Counsel undertook extensive investigation, analysis, and research prior
18 to filing the lawsuit and during the litigation of the matter. Plaintiff's Counsel took steps to
19 prepare the case for trial and had every intention of taking the case to trial if Defendant did not
20 offer an appropriate settlement.

21 Plaintiff's Counsel's efforts and skill were used to, among other things, investigate the
22 allegations and gather facts, research the legal issues, analyze data and information obtained
23 from Plaintiff, Defendant, and other sources, evaluate the PAGA claim, and negotiate the
24 settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used its
25 extensive experience and skill in the handling of complex wage-and-hour matters to advocate for
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27 ⁶⁰ Parker-Fawley Decl., ¶ 15.

28 ⁶¹ Ibid.

⁶² Ibid.

1 and obtain Aggrieved Employees and the State of California a recovery now, with maximum
2 efficiency, as opposed to the possibility of recovery in the future, after significant expense and
3 time.⁶³

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

5 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty
6 and risks of further litigation.⁶⁴ Had the case not settled, Defendant would have vigorously
7 continued its efforts to enforce its arbitration agreements, challenge manageability and liability,
8 and sought a reduction in the amount assessed as penalties. Defendant, however, faced risks too,
9 including and not limited to, the risk of a jury trial and having the Court assess penalties.
10 Additionally, preparing the case for trial would have been extraordinarily expensive for the
11 Parties.

12 At this stage, the settlement is preferred over continued litigation because such resolution
13 saves time and money that would otherwise go to litigation. The risks and expenses of further
14 litigation outweighed any benefit that might have been gained otherwise. The Settlement
15 provides an immediate recovery, as opposed to an uncertain result in the future after prolonged
16 litigation involving expert discovery, trial preparation, and appellate review of those
17 proceedings. The Settlement offers present and considerable monetary relief to Plaintiff, the
18 Aggrieved Employees, and the State of California while avoiding additional expense, risk, and
19 delay in obtaining possible further recovery.

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

21 The representation provided by Plaintiff's Counsel has been wholly contingent and
22 Plaintiff's Counsel took on this matter without knowing whether any recovery would be
23 obtained. Plaintiff's Counsel is also requesting reimbursement of litigation costs and expenses in
24 the amount of \$13,597.20.⁶⁵

27 ⁶³ Parker-Fawley Decl., ¶ 12.

28 ⁶⁴ Ibid.

⁶⁵ *Id.*, ¶ 23 and Exh. 3.

1 In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will
2 not receive any compensation until recovery is obtained.⁶⁶ If Plaintiff's Counsel had not been
3 successful, the time that they have devoted to litigating the case would have been for naught and
4 would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel
5 is well-experienced in complex wage-and-hour litigation and used that experience to obtain a
6 great result for Plaintiff, the Aggrieved Employees, and the State of California.⁶⁷ The skill and
7 determination that Plaintiff's Counsel has shown throughout the Action justify the requested
8 attorneys' fees and costs. Considering the amounts requested, work performed, and risks
9 incurred, the requested fees and costs are reasonable and should be awarded.

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

11 The results achieved, in light of the difficulties inherent in similar cases and the specific
12 difficulties faced in this matter, are considerable. Ultimately, despite the fate of the individual
13 and class damages claims asserted in the putative class action, the Action seeking civil penalties
14 under PAGA has continued and reached a resolution that provides for a significant monetary
15 payment of civil penalties to the State of California and Aggrieved Employees. Here, the results
16 achieved, and the recovery obtained on behalf of Plaintiff, the Aggrieved Employees, and the
17 State of California represent a fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's
18 efforts have resulted in a settlement that provides for a Total Settlement Amount of \$650,000.00,
19 and it is currently estimated that the Net Settlement Amount available for distribution to the
20 Aggrieved Employees and the State of California is approximately \$361,902.80.⁶⁸

21 **6. The Reputation and Ability of the Attorneys**

22 Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its
23 attorneys employed their knowledge, skill, and experience to bring the case to a successful
24 conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation
25 experience, has recovered millions of dollars on behalf of thousands of individuals in California,
26

27 ⁶⁶ Parker-Fawley Decl., ¶ 23 and Exh. 3.

28 ⁶⁷ *Id.*, ¶¶ 2-7.

⁶⁸ *Id.*, ¶ 11.

and has successfully handled numerous significant wage-and-hour class action and representative action cases.⁶⁹

VII. COSTS TO BE REIMBURSED TO PLAINTIFF’S COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for reimbursement of all actual litigation costs and expenses up to \$30,000.00. As set forth in the Declaration of Elizabeth Parker-Fawley, Plaintiff’s Counsel seeks reimbursement of \$13,597.20 in litigation costs and expenses.⁷⁰ These expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement.⁷¹ The remaining amount allocated for litigation costs and expenses will remain with the Net Settlement Amount to be distributed to the LWDA and Aggrieved Employees. Accordingly, Plaintiff’s Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$13,597.20.

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

Although PAGA does not require notice to unnamed aggrieved employees of a settlement, the Parties prepared, and now present for the Court’s consideration and approval, the Cover Letter for transmission to the Aggrieved Employees along with their Individual Settlement Share check (together, PAGA Settlement Package), substantially in the form attached as “EXHIBIT 1” to the [Proposed] Order and Judgment and as “EXHIBIT A” to the Settlement Agreement. The Cover Letter informs the Aggrieved Employees about the Action and the Settlement. Accordingly, Plaintiff respectfully requests that the Court approve the Cover Letter for transmission to the Aggrieved Employees at the time of disbursing their Individual Settlement Shares.

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND

⁶⁹ Parker-Fawley Decl., ¶¶ 2-7.

⁷⁰ *Id.*, ¶ 11.

⁷¹ *Ibid.*

REASONABLE, AND SHOULD BE APPROVED

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Phoenix Settlement Administrators to handle the administration of the Settlement. The fees and expenses of the PAGA Settlement Administrator are estimated not to exceed \$7,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual Settlement Shares checks to the Aggrieved Employees (i.e., PAGA Settlement Package); performing skip-trace searches; re-mailing the returned PAGA Settlement Packages to any updated addresses located; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to \$7,000.00 to Phoenix Settlement Administrators, a necessary third-party for handling the settlement process.

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

The Settlement provides for a General Release Fee to be paid to Plaintiff in the amount of \$7,500.00.⁷² The purpose of such an award is to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce an individual to participate in the suit’”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) (“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the [...] litigation.”); *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016) (approving \$10,000 enhancement award in a

⁷² Settlement Agreement, § 3(a)(3).

PAGA action).

Here, Plaintiff contributed considerable time and effort to the litigation of this matter in order to enforce the California Labor Code on behalf of the State of California and for the benefit of other Aggrieved Employees. Plaintiff discussed his employment with his counsel, gathered and produced relevant documents and information, and provided the facts and evidence necessary to attempt to prove the allegations.⁷³ Plaintiff was available whenever his counsel needed him and tried to obtain and provide documents and information that would aid in the litigation of the PAGA claim and pursuit of recovery on behalf of the State of California and Aggrieved Employees.⁷⁴

Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the amount of \$7,500.00.

XI. CONCLUSION

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

Dated: September 25, 2024

LAWYERS for JUSTICE, PC

By: _____


Elizabeth Parker-Fawley
Attorneys for Plaintiff

⁷³ Parker-Fawley Decl., ¶ 24; Declaration of Hernan Rai Zaragoza Lemus ("Lemus Decl."), ¶¶ 3-5.

⁷⁴ Parker-Fawley Decl., ¶ 24; Lemus Decl., ¶¶ 3-6.