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5 Attorneys for Plaintiff Nakeitha Kennedy, on behalf of herself and all “aggrieved employees”
6 pursuant to Labor Code § 2698 *et seq.*

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF ALAMEDA**

9
10 NAKEITHA KENNEDY, on behalf of
herself and all “aggrieved employees”
11 pursuant to Labor Code § 2698 *et seq.*,

12 Plaintiff,

13 v.

14 NORTHRIDGE COOPERATIVE HOMES, a
California nonprofit corporation, and DOES
15 1 through 10, inclusive,

16 Defendants.
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CASE NO: 22CV014162

Assigned to Hon. Jenna Whitman, Dept. 25

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

Date: May 22, 2025

Time: 3:00 p.m.

Dept.: 25

Reservation ID: 206886742829

Complaint Filed: July 13, 2022

1 **PLEASE TAKE NOTICE THAT** on May 22, 2025 at 3:00 p.m., or as soon thereafter as
2 the matter may be heard, in Department 25 of the above-entitled Court, located at 1225 Fallon
3 Street, Oakland, CA 94612, Plaintiff Nakeitha Kennedy will and hereby does move unopposed for
4 an Order: (1) granting approval of the proposed settlement of claims brought pursuant to the Private
5 Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”) set forth in the Parties’
6 Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (the “Settlement
7 Agreement”); (2) appointing Phoenix Settlement Administrators as the Settlement Administrator
8 and approving payment of its fees not to exceed \$4,000 (projected to be \$3,250) from the PAGA
9 Gross Settlement Amount; (3) directing disbursement of the PAGA Gross Settlement Amount
10 pursuant to the terms of the Settlement Agreement; (4) directing payment of attorneys’ fees from
11 the PAGA Gross Settlement Amount not to exceed one-third (33-1/3%) of the PAGA Gross
12 Settlement Amount (projected to be \$36,666.67) to Plaintiff’s Counsel; (5) directing attorneys’
13 litigation costs from the PAGA Gross Settlement Amount not to exceed \$7,307.82; and (6)
14 dismissing this action with prejudice.

15 This motion will be based on this Notice, the supporting memorandum of points and
16 authorities, the Parties’ Settlement Agreement, the Declarations of Daniel F. Gaines, Plaintiff
17 Nakeitha Kennedy, and Jarrod Salinas, the documents and records on file in this matter, and such
18 additional arguments, authorities, and evidence and other matters as may be presented by the Parties
19 hereafter.

20 Date: April 30, 2025

Respectfully submitted,

GAINES & GAINES, APLC

23 By: *Daniel Gaines*

24 DANIEL F. GAINES
25 Attorneys for Plaintiff
26 NAKEITHA KENNEDY

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Nakeitha Kennedy (“Plaintiff”), under the Labor Code’s Private Attorneys General
4 Act of 2004 (“PAGA”), respectfully moves this Court for an Order granting approval of the
5 proposed Settlement of the above-captioned lawsuit against Defendants Northridge Cooperative
6 Homes (“Northridge”) and Alton Management Corporation (“Alton”) (Northridge and Alton are
7 collectively referred to as “Defendants”). The proposed Settlement will dispose of the Released
8 Claims asserted by Plaintiff on behalf of the State and approximately 43 individuals who currently
9 and/or formerly worked for Defendants in California as hourly and/or non-exempt employees at
10 any time from May 4, 2021, through March 31, 2025 (the “PAGA Release Period”) (the
11 “Aggrieved Employees”). *See* Settlement Agreement at § 1.01(a).

12 This case addresses claimed violations of employee protections embodied in the California
13 Labor Code and penalties stemming therefrom for the violation of the PAGA. Plaintiff alleged that
14 Defendants failed to pay all minimum and overtime wages earned by Plaintiff and Aggrieved
15 Employees, in violation of Labor Code §§ 510, 558, and 1194; failed to provide Plaintiff and
16 Aggrieved Employees with legally compliant rest periods, or compensation in lieu thereof, in
17 violation of Labor Code § 226.7; failed to provide Plaintiff and Aggrieved Employees with legally
18 compliant meal periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7, 512,
19 558, 1174, 1174.5, and 1198; failed to reimburse Plaintiff and Aggrieved Employees for necessary
20 business expenses incurred, in violation of Labor Code § 2802; failed to issue accurately itemized
21 wage statements to Plaintiff and Aggrieved Employees, in violation of Labor Code §§ 226(a) and
22 226.3; and failed to timely pay Plaintiff and Aggrieved Employees all wages due at the separation
23 of their employment, in violation of Labor Code §§ 201-202. As a result of Defendants’ alleged
24 violations of the Labor Code, approximately 43 employees are claimed to have suffered Labor Code
25 violations for up to 2,150 aggregate pay periods at the rate of \$100 each based on PAGA’s penalty
26 provisions. *Gaines Decl.*, ¶ 23.

27 In deciding whether to grant approval of the proposed Settlement, the primary issue to be
28 decided is whether the Settlement is fair, adequate and reasonable. As set forth herein, the proposed

1 Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is
2 the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and
3 hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative
4 strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on
5 the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and
6 likely duration of further litigation.

7 The value achieved by the Settlement may be gleaned from the fact that the Labor and
8 Workforce Development Agency (“LWDA”) and the approximately 43 Aggrieved Employees
9 encompassed by the Settlement will receive no less than \$62,775.51 under the terms of the
10 Settlement, which, pursuant to the operative statute, shall be allocated “75 percent to the Labor and
11 Workforce Development Agency . . . and 25 percent to the Aggrieved Employees.” *See* Cal. Lab.
12 Code § 2699(i). This is a reasonable recovery, not only because further litigation may have resulted
13 in a net-zero recovery based on the defenses available to Defendants, but because the amount
14 secured by Plaintiff is sizable and in line with similar settlements of these types of claims under
15 PAGA. It is also important to underscore that all penalty amounts paid to Aggrieved Employees
16 will be an unexpected windfall, as employees typically do not bring individual lawsuits asserting
17 only PAGA penalties.

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

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

21 **A. The Parties**

22 Defendant Alton is a management firm and was the managing entity of Northridge where
23 Plaintiff worked. Gaines Decl. at ¶ 6.

24 Defendants employed Plaintiff as a non-exempt employee from approximately June 2018
25 through July 21, 2021. The Aggrieved Employees are all individuals who currently and/or formerly
26 worked for Defendants in California as hourly and/or non-exempt employees at any time from May
27 4, 2021, through March 31, 2025. Gaines Decl. at ¶ 7.

28 ///

1 **B. The Claims Asserted**

2 Plaintiff asserts claims that Defendants failed to pay all minimum and overtime wages
3 earned by Plaintiff and Aggrieved Employees, failed to provide Plaintiff and Aggrieved Employees
4 with legally compliant meal and rest periods, or compensation in lieu thereof, failed to reimburse
5 Plaintiff and Aggrieved Employees for all business expenses incurred, failed to issue accurately
6 itemized wage statements to Plaintiff and Aggrieved Employees, and failed to timely pay Plaintiff
7 and Aggrieved Employees all wages due at the separation of their employment. Plaintiff asserts
8 these claims under PAGA, on behalf of herself, individually, and on behalf of the State of California
9 and other Aggrieved Employees, seeking civil penalties for the alleged Labor Code violations.
10 Gaines Decl. at ¶ 8.

11 **C. Procedural Posture**

12 On May 4, 2022, pursuant to Labor Code section 2699.3, Plaintiff gave written notice by
13 online filing with the LWDA and by certified mail, return receipt requested, to Defendant
14 Northridge, of the specific provisions of the Labor Code alleged to have been violated, including
15 the facts and theories to support the alleged violation. Gaines Decl., ¶ 9. Thereafter, on July 8,
16 2022, Plaintiff filed a supplemental letter with the LWDA that added Defendant Alton as an
17 additional employer and alleged additional non-derivate wage claims. *Id.*; **Exhibit B** (LWDA
18 Notice Letter). On July 13, 2022, and after the LWDA declined to take action within the statutorily
19 permissible time with respect to Plaintiff's May 4, 2025 letter, Plaintiff filed her representative
20 action complaint in this Court. On September 15, 2022, Plaintiff filed her First Amended
21 Representative Action Complaint which added Defendant Alton as a Defendant and alleged
22 additional claims. Gaines Decl., ¶ 10.

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

24 Counsel for Plaintiff engaged in targeted, informal discovery of Defendants' alleged Labor
25 Code violations, which specifically evaluated the strength and value of the PAGA claims in
26 preparation for a resolution of this Action. Gaines Decl. at ¶ 11.

27 Plaintiff's Counsel obtained and reviewed (i) relevant policy documents relating to the
28 employment of Plaintiff and Aggrieved Employees; and (ii) data relating to the number of alleged

1 violations, including the Aggrieved Employee size and pay period data. Gaines Decl. at ¶ 12.

2 Based on the information received, as well as through discussions with Defendants’
3 Counsel, Plaintiff’s Counsel was able to (i) determine the total number of distinct individuals falling
4 within the definition of “Aggrieved Employee” for the relevant statutory period and (ii) construct
5 a damage model that calculated the maximum amount of PAGA penalties that could be levied
6 against Defendants within the PAGA Release Period based on employee pay period data produced
7 by Defendants. Gaines Decl. at ¶ 13. At all relevant times, Defendants have disputed Plaintiff’s
8 claims and contested both the existence of and extent of liability as alleged by Plaintiff. *Id.*

9 Plaintiff’s Counsel’s experience in litigating similar “representative” wage and hour claims,
10 the degree of investigation that was conducted here, the amount of data that was obtained, and the
11 discussions guided by mediation was sufficient to determine the potential value of the PAGA claim
12 and to evaluate the strength of this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-5, 14.
13 Defendants, however, disputed Plaintiff’s claims and disputed both the existence of and extent of
14 liability as alleged by Plaintiff.

15 **E. Settlement Negotiations**

16 On January 30, 2025, the Parties participated in a mediation session with an experienced
17 and reputable wage and hour and PAGA action mediator, Brandon McKelvey, Esq. During the
18 mediation, the Parties engaged in arm’s-length negotiations and reached a resolution of the PAGA
19 claims asserted in this Action by mutually accepting a mediator’s proposal. Gaines Decl. at ¶ 15.

20 **F. The Proposed Settlement**

21 The Parties jointly prepared and executed a Private Attorneys General Act (Labor Code §
22 2698 *et seq.*) Settlement Agreement (the “Settlement” or “Settlement Agreement”). Gaines Decl.,
23 ¶ 16; **Exhibit C**. The Settlement Agreement sets forth the terms of the Settlement reached by the
24 Parties, including the following key points:

25 1. Defendants agree to settle this matter for the payment of \$110,000 (hereinafter the
26 “PAGA Gross Settlement Amount,” payable jointly and severally by Defendants [*see* Settlement
27 at § 4.02(a)(1)]), which shall be all inclusive, encompassing (i) all payments to the LWDA and
28 Aggrieved Employees, (ii) any and all costs of third-party administration of the settlement, and (iii)

1 Plaintiff's Counsel's attorneys' fees and costs of suit¹. *See* Settlement Agreement, at §§ 4.02(a)(1)-
2 (3).

3 2. The total sum available for payment of PAGA penalties shall be calculated by
4 deducting from the \$110,000 PAGA Gross Settlement Amount, the projected \$36,666.67 for the
5 payment of Plaintiff's Counsel's fees, \$7,307.82 for the payment of Plaintiff's Counsel's costs, and
6 the costs of administration not to exceed \$4,000 (but projected to be \$3,250)², which yields
7 \$62,775.51, and of which seventy-five percent (75%) or \$47,081.63, shall be distributed to the
8 LWDA, and the remaining twenty-five percent (25%) or \$15,693.88, shall be distributed to the
9 Aggrieved Employees. *See* Settlement Agreement, at §§ 4.02(a)(1)-(4).

10 3. All Aggrieved Employees will receive a pro rata share of the \$15,693.88 allocated
11 to them, which shall be distributed based on the number of pay periods each Aggrieved Employee
12 worked for Defendants in California during the PAGA Release Period. *See* Settlement Agreement,
13 at § 4.02(a)(4). Although these calculations will not be made until after approval, a rough
14 estimation of the value to the approximately 43 individuals falling within the definition of
15 "Aggrieved Employee" may be gleaned from the fact that an equal division would provide about
16 \$364.97 to each Aggrieved Employee, net of payments to the LWDA, the Settlement
17 Administrator, and attorney's fees and costs. The LWDA will be paid a substantial \$47,081.63.
18 *See* Gaines Decl., at ¶ 21.

19 _____
20 ¹ By a separate agreement, the Confidential Individual Settlement Agreement and Release of All
21 Claims, the Parties have resolved all of Plaintiff's individual claims through a comprehensive
22 general release in favor of Defendants. In connection with her general release of all claims, Plaintiff
23 will be paid \$10,000. **Exhibit D** to Gaines Decl. Plaintiff's Counsel is not to be paid any attorney's
24 fees or costs from the individual settlement. *Id.* The separate individual settlement agreement
25 provides an amount, separate from the PAGA Gross Settlement Amount, to resolve Plaintiff's
26 individual claims against Defendants. It is not an amount that is part of the PAGA Gross Settlement
27 Amount to be approved.

28 ² The Settlement Agreement has allocated the settlement administration fees up to \$4,000. *See*
Settlement at § 4.02(a)(2). However, Phoenix's not to exceed quote is \$3,250. *See* Salinas Decl. at
¶ 16; **Exhibit B**. In Plaintiff's Counsel's experience, during the disbursement and data gathering
processes, situations arise that may require a settlement administrator to increase its fees (for
example, if an escalator provision is invoked, and there are additional aggrieved employees, the
administrator may need to increase its fees). Accordingly, Plaintiff is requesting the Court to
approve Phoenix's costs to administer the settlement at \$4,000 (as originally allocated in the
Settlement Agreement) in case Phoenix must increase its fees due to the escalator provision being
invoked. Gaines Decl. at ¶ 20.

1 4. In exchange for the above settlement consideration, Defendants and the Released
2 Parties shall be entitled to a limited release as follows³:

3 Upon Court approval of the Settlement, dismissal of the action, and subject to
4 Defendants' funding in full of the PAGA Gross Settlement Amount, Plaintiff and
5 the Aggrieved Employees will fully and finally release and discharge Defendants
6 and their former, present, and future owners, parents, affiliates, and subsidiaries, and
7 all of their current, former, and future officers, directors, members, managers,
8 partners, shareholders, agents, employees, joint ventures, successors, assigns,
9 attorneys, accountants, insurers, or legal representatives (the "Released Parties"),
10 from all claims, rights, demands, liabilities, and causes of action for civil penalties
11 under the PAGA that arose during the PAGA Release Period that were alleged in
12 the Action, including but not limited to the following claims: (a) failure to pay all
13 minimum and overtime wages owed; (b) failure to provide compliant meal periods,
14 or premium pay for non-compliant meal periods; (c) failure to authorize and permit
15 complaint rest periods, or premium pay for non-complaint rest periods; (d) failure
16 to provide accurate, itemized wage statements; (e) failure to timely pay wages upon
17 separation of employment; (f) failure to reimburse all necessary business expenses;
18 (g) failure to keep accurate time and payroll records; (h) all claims for PAGA
19 penalties that could have been premised on the facts, claims, causes of action, or
20 legal theories described above; and (i) all other claims under PAGA that could have
21 been premised on the facts, claims, causes of action, or legal theories described
22 above and in Plaintiff's Complaint, including but not limited to California Labor
23 Code §§ 201, 202, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1198, 2802,
24 2698, 2699, and 2699.3 (the "Released Claims").

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

See Settlement Agreement at § 6.01.

5. Settlement administration, which is to be paid from the PAGA Gross Settlement
Amount, is projected to be \$3,250, which is less than the \$4,000 allocated in the Settlement. *See*
Declaration of Jarrod Salinas ("Salinas Decl."), ¶ 16; **Exhibit B** to Salinas Decl. Phoenix Settlement
Administrators, a reputable settlement administration company, has agreed to administer the

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

1 settlement for this amount, submitting a competitive bid. *Id.* at ¶¶ 5-15; **Exhibit A**.

2 6. As detailed herein, Plaintiff’s counsel seeks an award of attorneys’ fees and
3 litigation costs projected to be \$43,974.49. *See* Settlement Agreement at § 4.02(a)(2).

4 7. Finally, under the terms of the Settlement Agreement, the value of checks
5 uncashed more than 180 days after issuance shall be remitted to the Unclaimed Property Fund of
6 the California State Controller’s Office to be held in the name of the Aggrieved Employee. *See*
7 Settlement Agreement at § 4.02(a)(8). Counsel for Plaintiff attests that their office regularly
8 receives calls from class members or aggrieved employees years after a case has settled to inquire
9 about obtaining their settlement share because they did not cash their check in time, lost their
10 check, or never received their check. Gaines Decl. at ¶ 22. By remitting the unclaimed checks to
11 the State Controller, the Aggrieved Employees have a chance to receive their individual
12 settlement payment after the check cashing deadline. *Id.*

13 *Cy pres*, expanded to its “full implication,” is *cy pres comme possible*, which means “as
14 near as possible.” *Estate of Jackson* (1979) 92 Cal.App.3d 486, 489. *Cy pres* “is the doctrine that
15 equity will, when a charity is originally or later becomes impossible, inexpedient, or
16 impracticable of fulfillment, substitute another charitable object which is believed to approach
17 the original purpose as closely as possible.” *Id.* Here, the nearest possibility for the Aggrieved
18 Employees to obtain their recoveries is to allow the uncashed checks to be remitted to the
19 Unclaimed Property Fund of the California State Controller’s Office to be held in the name of
20 the Aggrieved Employee.

21 **III. LEGAL ARGUMENT**

22 **A. Standards for Approval of a PAGA Settlement**

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

26 As with any settlement, the Court must be mindful in conducting its inquiry that
27 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
28 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222,

1 24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding of
2 absolutes and an abandoning of highest hopes” [*Officers for Justice v. Civil Service Com.*, 688
3 F.2d 615, 624 (9th Cir., 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
4 of wasteful and expensive litigation that induce consensual settlements.” *See id.*, at 625. As such,
5 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
6 or “judged against a hypothetical or speculative measure of what might have been achieved by the
7 negotiators.” *See id.*

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

23 ⁴ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
24 balancing of several factors which may include, among others, some or all of the following: [1] the
25 strength of plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further
26 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
27 in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the
28 experience and views of counsel; [7] the presence of a governmental participant; and [8] the
reaction of the class members to the proposed settlement.” *See Linney v. Cellular Alaska P'ship*,
151 F.3d 1234, 1242 (9th Cir., 1998). “Not all of these factors will apply to every class action
settlement” and “[u]nder certain circumstances, one factor alone may prove determinative in
finding sufficient grounds for court approval.” *See Nat'l Rural Telcoms. Coop. v. DIRECTV, Inc.*,
221 F.R.D. 523, 525-526 (C.D. Cal., 2004).

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

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

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

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

21 Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA
22 considerations detailed above – the proposed Settlement embodies all of the key features of a
23 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for
24 approval.

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

26 In conducting a review of a settlement, it is generally recognized that an “agreement . . .
27 reached through arms-length negotiation between experienced parties . . . is entitled to a
28 presumption of fairness.” *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS

1 43377, 44 (C.D. Cal. Apr. 12, 2010).

2 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-
3 length negotiations brokered through a respected third party neutral [Gaines Decl. at ¶ 15], (2) was
4 negotiated by Counsel with significant experience in similar wage and hour litigation [*see id.*, at ¶¶
5 2-5, 29-32 and **Exhibit A**], (3) occurred after Counsel had conducted sufficient investigation to
6 evaluate the strength and potential value of the PAGA claim, as well as evaluating the risks of
7 litigating this claim through trial. *See id.*, at ¶¶ 11-15, 23-27. Based thereon, the Court should give
8 considerable weight to the competency and integrity of counsel in assuring itself that the Settlement
9 Agreement represents an arms-length transaction entered without self-dealing or other potential
10 misconduct.

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

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

17 This case addresses violations of important employee protections embodied in the
18 California Labor Code – namely, that Defendants failed to pay all minimum and overtime wages
19 earned by Plaintiff and Aggrieved Employees, in violation of Labor Code §§ 510, 558, and 1194;
20 failed to provide Plaintiff and Aggrieved Employees with legally compliant rest periods, or
21 compensation in lieu thereof, in violation of Labor Code § 226.7; failed to provide Plaintiff and
22 Aggrieved Employees with legally compliant meal periods, or compensation in lieu thereof, in
23 violation of Labor Code §§ 226.7, 512, 558, 1174, 1174.5, and 1198; failed to reimburse Plaintiff
24 and Aggrieved Employees for necessary business expenses incurred, in violation of Labor Code §
25 2802; failed to issue accurately itemized wage statements to Plaintiff and Aggrieved Employees, in
26 violation of Labor Code §§ 226(a) and 226.3; and failed to timely pay Plaintiff and Aggrieved
27 Employees all wages due at the separation of their employment, in violation of Labor Code §§ 201-
28 202. *See* Gaines Decl. at ¶ 23.

1 Defendants’ realistic maximum theoretical exposure in this Action, without stacking
2 penalties, totals approximately \$215,000 computed by multiplying 2,150 aggregate pay periods by
3 \$100 each. *See* Gaines Decl. at ¶ 24. There is no California authority that expressly permits the
4 practice of counting multiple violations/penalties that occur within the same pay period, known as
5 “stacking” penalties. Plaintiff’s Counsel is aware of no court that has actually stacked such PAGA
6 penalties for multiple violations (meaning the “market” for PAGA settlements is based on no
7 stacking of penalties) and given the circumstances of this case, it is unlikely that this Court would
8 impose a massive penalty by stacking the PAGA penalty claims against Defendants. *See* Gaines
9 Decl. at ¶ 24. Although stacking penalties is not unlawful, the majority of cases that address awards
10 of PAGA penalties focus on the court’s discretion to reduce awards. *See Romo v. GMRI, Inc.*, 2014
11 WL 11320647, at *7 (C.D. Cal. Feb. 18, 2014) (“The court retains discretion over awards under a
12 PAGA claim”); *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413, at *4 (C.D. Cal.
13 Jan. 31, 2011) (“The PAGA text also provides the Court with the discretion to limit the amount
14 Plaintiffs may recover from the employer.”); *Bright v. 99c Only Stores* (2010) 189 Cal. App. 4th
15 1472, 1480 n.8 (“The trial court has discretion to award less than the maximum amount of the civil
16 penalty”). Based thereon, the non-stacking/one penalty per pay period is an appropriate
17 evaluation for maximum potential exposure in this case.

18 Additionally, the Ninth Circuit has held that heightened penalties are not appropriate where
19 the Defendants were not notified by the Labor Commissioner or any court that it was subject to the
20 California Labor Code. *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021). *See also*
21 *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 340 (reversing heightened penalties
22 awarded by trial court for Labor Code § 226.3 because “the plain language of the statute [Labor
23 Code § 226.3] provides that heightened penalties apply only where the employer fails to provide
24 wage statements or fails to keep required records.”) Further, courts are often hesitant to award a
25 heightened penalty where there is no prior citation by the Labor Commissioner. *See Bernstein* at
26 1144. *See also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (holding that
27 “[u]ntil the employer has been notified that it is violating a Labor Code provision...the employer
28 cannot be presumed to be aware that its continuing underpayment of employee’s is a violation

1 subject to penalties.”) (internal quotations omitted). Defendants were not notified by the Labor
2 Commissioner or any court that it was subject to the California Labor Code, and have not been
3 previously cited by the Labor Commissioner for Labor Code violations. Therefore, any violations
4 prior to Plaintiff’s May 4, 2022 and July 8, 2022 LWDA letters are not subject to heightened
5 penalties. Gaines Decl. at ¶ 25. *See also Naranja v. Spectrum Security Services* (2024) 15 Cal.5th
6 1056 (holding that (1) an employer’s good faith, but mistaken, belief that it provided adequate wage
7 statements precluded an award of civil penalties for a knowing an intentional failure to provide
8 accurate wage statements; and (2) an employer’s reasonable, good faith basis for believing it was
9 complying with California wage and hour law precluded the employer from being held liable for
10 civil penalties).

11 Furthermore, Defendants contend they acted within the requirements of California law at
12 all times as to all Aggrieved Employees. In particular, Defendants contend that they paid all
13 employees all wages due and all expense reimbursement due. Defendants also contend that they
14 maintain compliant meal and rest break practices. Defendants further contend that not every pay
15 period at issue involved an alleged Labor Code violation subject to civil penalties. Moreover,
16 Defendants maintained that even if the Court did award penalties, the Court could and would
17 *substantially* reduce the penalties awarded based on the discretionary factors contained in Labor
18 Code § 2699(e)(2) (“In any action by an aggrieved employee . . . , a court may award a lesser
19 amount than the maximum civil penalty amount specified by this part if, based on the facts and
20 circumstances of the particular case, to do otherwise would result in an award that is unjust,
21 arbitrary and oppressive, or confiscatory.”). *See* Gaines Decl., ¶ 26.

22 Based on these disputes, which had the potential to completely eliminate Plaintiff’s
23 recovery, the range of realistic “litigation outcomes” on the Plaintiff’s PAGA claim was defined
24 by a “maximum possible liability” amount of approximately \$215,000 [Gaines Decl., ¶ 27], and a
25 net-zero recovery based on the defenses asserted by Defendants. Notwithstanding the existence of
26 such issues, the Settlement achieves a significant benefit – approximately 51.2% recovery of the
27 maximum possible liability. As such, this factor weighs very heavily in favor of resolution by way
28 of the compromise set forth in the Settlement Agreement. Gaines Decl., ¶ 27.

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

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

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

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

19 The proposed settlement is not to be judged against a hypothetical or
20 speculative measure of what might have been achieved by the
21 negotiators.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d at
22 625 (emphasis in original). Thus, “the very essence of a settlement is
23 compromise, ‘a yielding of absolutes and an abandoning of highest
24 hopes.’” *Id.* at 624 (citations omitted). As the Second Circuit has
25 pointed out: “The fact that a proposed settlement may only amount
26 to a fraction of the potential recovery does not, in and of itself, mean
27 that the proposed settlement is grossly inadequate and should be
28 disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 &
n.2 (2nd Cir. 1974).

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

 Here, after all deductions are made for administration and attorneys’ fees and costs,
\$62,775.51 will be paid out, of which \$47,081.63 (i.e. 75%) will go to the LWDA, and \$15,693.88
(i.e. 25%) will go to the Aggrieved Employees, as required by Labor Code § 2699(i) (“civil

1 penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor
2 and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”). *See*
3 Settlement Agreement, at §§ 4.02(a)(1)-(4).

4 This result is exceptional, as settlements of PAGA claims impacting thousands of
5 individuals have been approved as reasonable for amounts far less than the payment in this case.
6 *See e.g., Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27,
7 2012) (“Defendants has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the
8 \$10,000, 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will
9 benefit the class The Court finds that the PAGA payment is set at a reasonable amount, and it
10 shall be approved.”); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D.
11 Cal. Oct. 29, 2012) (“GTI agrees to allocate \$10,000 to Plaintiff’s PAGA claims, and will pay
12 \$7,500 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports
13 with settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
14 allocation of the Settlement to Plaintiff’s PAGA claim.”); *Schiller v. David’s Bridal, Inc.*, 2012
15 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) (“Pursuant to the Settlement Agreement, the
16 parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .
17 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
18 be approved.”); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
19 2012) (“Pursuant to the Settlement Agreement, Defendants has agreed to pay \$15,000 to the
20 California Labor and Workforce Development Agency The Court finds that the PAGA
21 payment is set at a reasonable amount, and it shall be approved.”).⁵

22 Thus, notwithstanding the existence of issues having the potential to completely eliminate
23 recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds
24 typical PAGA awards routinely approved by the courts, but it also recovers monies for Aggrieved
25

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

1 Employees which they otherwise would not receive. As such, this factor balances strongly in favor
2 of approval of the Settlement.

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

4 As discussed above, the California Supreme Court has concluded that in the context of
5 PAGA “the nonparty employees, because they were not given notice of the action or afforded any
6 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
7 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in
8 exchange for the foregoing consideration is limited to the civil penalties asserted in the Action
9 under Labor Code §§ 2698 *et seq.* *See* Settlement Agreement at § 6.02.

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

12 Plaintiff’s Counsel has a significant degree of experience in complex wage and hour
13 litigation. *See* Gaines Decl., ¶¶ 2-5, 29-32, Gaines Decl. at **Exhibit A**. In the view of Plaintiff’s
14 Counsel, the benefit conferred by the proposed Settlement is fair, reasonable, and adequate under
15 the circumstances, as it reflects a reasoned compromise which takes into consideration the risks
16 inherent in this case, which had the potential to completely eliminate recovery. Gaines Decl., ¶¶
17 11-15, 23-27, 34-39. As such, this factor balances in favor of approval of the Settlement.

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

20 In evaluating this element, the Court should be mindful that “formal discovery is not a
21 necessary ticket to the bargaining table” [*Linney*, 151 F.3d at 1239], as the relevant consideration
22 is “whether ‘the parties have sufficient information to make an informed decision about
23 settlement.’” *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at
24 26 (C.D. Cal. Nov. 9, 2011).

25 Here, the extent of discovery conducted was sufficient to enable Plaintiff’s Counsel to
26 evaluate the strength and value of the claim for purposes of settlement. Gaines Decl. at ¶¶ 11-15.
27 As discussed above, Plaintiff’s Counsel’s investigation was sufficient to, among other things,
28 tabulate with precision the maximum number of alleged PAGA penalty violations at issue during
the PAGA Release Period and identify the total number of individuals falling within the definition

1 of “Aggrieved Employee” for the PAGA Release Period.

2 Based on Plaintiff’s Counsel’s experience litigating wage and hour claims, such
3 investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate
4 the strength of this claim for purposes of settlement. *See* Gaines Decl., ¶¶ 2-5; 11-15, 29-32, 37.

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

7 In addition to the factors presented above, the proposed Settlement does not possess any
8 obvious deficiencies. The Settlement contemplates entry of an Order (submitted concurrently
9 herewith) which approves the Settlement and dismisses the Action with prejudice. Section 7.14 of
10 the Settlement Agreement and paragraph 8 of the Proposed Order authorize the Court to retain
11 jurisdiction to enforce the Settlement Agreement. This procedure effectively disposes of the Action
12 in its entirety, documents the Court’s approval of the Settlement as required by PAGA, and allows
13 for Court intervention if necessary to enforce the terms of the Settlement Agreement. In sum, under
14 the applicable standards for approval of PAGA settlements in California, the settlement in this case
15 meets the standards for approval.

16 **IV. PLAINTIFF’S COUNSEL ARE ENTITLED TO RECOVER THEIR**
17 **REASONABLE FEES AND COSTS**

18 Pursuant to the terms of the Settlement, Plaintiff’s Counsel seeks attorneys’ fees of one-
19 third (33-1/3%) of the PAGA Gross Settlement Amount (projected to be \$36,666.67) and
20 reimbursement of litigation costs in the amount of \$7,307.82, falling within the bounds authorized
21 by the Settlement Agreement. *See* Settlement Agreement at § 4.02(a)(2). Plaintiff’s Counsel’s
22 entitlement to an award of attorneys’ fees and costs is warranted on multiple independent grounds.
23 Further, the amount of fees requested falls well within the range of reasonableness under applicable
24 standards, as the amount requested constitutes a “percentage of the fund” deemed reasonable in
25 similar wage and hour settlements of this size and approved by California courts, which is not only
26 warranted based on the contingency risk Plaintiff’s Counsel has agreed to incur for the benefit of
27 the State of California and Aggrieved Employees, but also based on the significant results achieved,
28 as the Settlement obtains a recovery substantially above the range approved as reasonable by
California state and federal courts. Based thereon, Plaintiff’s Counsel respectfully requests that the

1 Court enter an order approving the fee and cost amounts requested.

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

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

8 Courts have long recognized the "common fund" or "common benefit" doctrine, under
9 which attorneys who create a common fund or benefit for a group of persons may be awarded their
10 fees and costs to be paid out of the fund. *Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25,
11 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
12 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
13 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
14 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

15 The California Supreme Court has held that, "when a number of persons are entitled in
16 common to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all
17 results in the creation or preservation of that fund, such Plaintiff or Plaintiffs may be awarded
18 attorneys' fees out of the fund." *Serrano III, supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d
19 1; *see also Boeing, supra*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit
20 of persons other than herself or his client is entitled to a reasonable attorney's fee from the fund as
21 a whole."); *Mills, supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common
22 fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter
23 Group) at § 17:172.3 explains the common fund doctrine as follows:

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

The percentage-of-the-fund approach appears to be the preferred method of awarding fees
in traditional common fund cases, such as this case. Where the settlement amount is a "certain or

1 easily calculable sum of money,” use of the percentage-of-the-fund method is appropriate. *Serrano*
2 *III*, 20 Cal. 3d at 35.

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

6 It is not necessary to find this suit a proper class action in order to
7 uphold the portion of the judgment awarding counsel for Plaintiffs
8 25 percent of all retroactive salaries and wages received. That award
9 may be sustained under the rule that a litigant who creates a fund in
10 which others enjoy beneficial rights may require those beneficiaries
11 to pay their fair share of the expense of litigation. (*See Sprague v.*
12 *Ticonic National Bank* (1939) 307 U.S. 161, 159; *Estate of Stauffer*
13 (1959) 53 Cal.2d 124, 132).

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

21 Numerous appellate courts have ruled similarly. *See e.g., Knoff v. City and County of San*
22 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
23 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable
24 powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and
25 expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
26 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit
27 created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974)
28 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners
of residential property in an inverse condemnation action).

Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth,
Tenth, Eleventh and the D.C. Circuit—have endorsed the “percentage fee” method for determining
reasonable attorneys’ fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.* 74 F.

1 Supp. 2d 393, 396-398 (S.D.N.Y. 1999) (describing the overwhelming weight of federal authority
2 in favor of the percentage fee method); *see also*, *Lealao v. Beneficial California, Inc.* (2000) 82
3 Cal.App.4th 19, 30-31 (describing same).

4 Thus, as Plaintiff's Counsel has expended a significant amount of time and money to secure
5 a \$110,000 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S. Dist.
6 LEXIS 80776, at 43 ("A common fund results when 'the activities of the party awarded fees have
7 resulted in the preservation or recovery of a certain or easily calculable sum of money-out of which
8 sum or 'fund' the fees are to be paid.'")], and in doing so, has exclusively borne the risk of loss for
9 such expenditures of time and expenses (as the LWDA elected not to take the case after receiving
10 the PAGA Notice), Plaintiff's Counsel is entitled to claim reasonable fees from that fund under
11 applicable precedent.⁶

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

13 In addition to the forgoing, Plaintiff's Counsel's request for attorneys' fees in the amount
14 of one-third (33-1/3%) of the \$110,000 PAGA Gross Settlement Amount falls well within the "zone
15 of reasonableness." It is important to highlight at the outset that the fee amount presently sought is
16 not extraordinary, but actually falls at the "average" fee deemed reasonable under California State
17 court authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in
18 wage and hour class actions that result in recovery of a common fund under \$10 million." *See e.g.*,
19 *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). This fee
20 falls directly within that range.

21 Moreover, Plaintiff's Counsel agreed to incur the contingency risk for the benefit of the
22 State of California (which elected not to take the case after receiving the PAGA Notice). Gaines

23 ⁶ Plaintiff's Counsel is also entitled to recover attorney's fees and costs as a matter of right under
24 the PAGA statute [*Labor Code* § 2699(g)(1) ("Any employee who prevails in any action shall be
25 entitled to an award of reasonable attorney's fees and costs.")], and under *C.C.P.* § 1021.5, as the
26 instant PAGA action was by definition "for the public benefit" and secured monetary awards for
27 approximately 300 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.*
28 (2007) 154 Cal.App.4th 1, 16-17 (2007) ("Estrada's personal motivation does not diminish the fact
that he pursued this public interest class action not only for himself but on behalf of a class
comprised of FedEx's past and present drivers and ultimately obtained awards for 209 drivers. []
No more is required to satisfy the 'significant benefit,' 'public interest,' and 'large class of persons'
requirements of Code of Civil Procedure section 1021.5.").

Decl., ¶¶ 34-39. The significant results achieved, and the underlying facts therefrom, justify Plaintiff's Counsel's requested fee as reasonable under all applicable standards.

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

The amount of fees requested by Plaintiff's Counsel is reasonable based on standards applicable to the "percentage of the fund" method. "When assessing whether the percentage requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in similar cases." *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

First, the results achieved by Plaintiff's Counsel are significant as Defendants have agreed to pay \$110,000 under the Settlement. This is a significant recovery given the risks associated with obtaining any recoverable penalties. Gaines Decl., ¶¶ 11-15, 23-27, 34-39. Further, the settlement of PAGA claims impacting a comparable number of individuals have been approved as reasonable for between \$7,500.00 and \$15,000.00. *See* Section III.B.4., *supra*.

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

Third, notwithstanding this risk of loss, Plaintiff's Counsel undertook representation of the instant PAGA claim for the benefit of the State of California on a contingency basis. *See* Gaines Decl. at ¶¶ 34-39. This required Plaintiff's Counsel to personally assume the risk of nonpayment in securing the substantial financial benefit the State of California stands to receive, and also constitutes a "loan" on Plaintiff's Counsel services – both of which are factors that warrant fee enhancement under applicable California Supreme Court authority:

One of the most common fee enhancers . . . is for contingency risk. We reaffirmed the propriety of a contingency risk enhancement in *Ketchum*: "The economic rationale for fee enhancement in contingency cases has been explained as follows: 'A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The

1 implicit interest rate on such a loan is higher because the risk of
2 default (the loss of the case, which cancels the debt of the client to
3 the lawyer) is much higher than that of conventional loans.’ (Posner,
4 Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) ‘A lawyer
5 who both bears the risk of not being paid and provides legal services
6 is not receiving the fair market value of his work if he is paid only
7 for the second of these functions. If he is paid no more, competent
8 counsel will be reluctant to accept fee award cases.”

9 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579-580.

10 Finally, the percentage requested by Plaintiff’s Counsel falls within a typical range,
11 particularly in light of the modest settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796,
12 23 (“[C]ourts may award attorney’s fees in the 30-40% range in wage and hour class actions that
13 result in recovery of a common fund under \$10 million.” *See also Crandall v. U-Haul*
14 *International, Inc.*, LASC Case No. BC178775 (awarding attorneys’ fees of 40% of a common
15 fund).

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

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

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

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

Id. at 503 (internal citation omitted); *see also e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when
a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff
or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or

1 plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d
2 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties, the trial
3 court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v.*
4 *Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
5 method for calculating attorneys’ fees more accurately reflects the results achieved for the putative
6 class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’
7 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
8 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
9 percentage-of-recovery method is generally favored in common fund cases because it allows courts
10 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
11 failure.’”).

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

20 Here, Plaintiff’s Counsel’s fee request of one-third (33-1/3%) of the PAGA Gross
21 Settlement Amount is fair and reasonable based on a percentage of the recovery, and as well as
22 when confirmed with a lodestar cross-check. First, “regardless whether the percentage method or
23 the lodestar method is used, fee awards in class actions average around one-third of the recovery.”
24 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11. This is also consistent with Plaintiff’s
25 Counsel’s experience in similar wage and hour class action matters. *Gaines Decl.*, ¶¶ 2-5; 28-39.
26 Thus, the percentage sought by Plaintiff’s Counsel here is reasonable.

27 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
28 multiplying the number of hours reasonably expended by each attorney or legal staff member by

1 their reasonable hourly rates. *See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 48. The court then
2 enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty
3 and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49;
4 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92
5 Cal.App.4th 819, 834 (“There is no hard-and-fast rule limiting the factors that may justify an
6 exercise of judicial discretion to increase or decrease a lodestar calculation”).

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

19 In this case, Plaintiff’s Counsel is submitting an attorney fee request equaling \$36,666.67.
20 Based on a projected final lodestar of \$52,695, this yields a “negative multiplier” of approximately
21 0.70 under the \$36,666.67 fee request. Gaines Decl., ¶ 28; **Exhibit E** to Gaines Decl. The billing
22 rates used to compute the lodestar are reasonable in view of the evidence submitted herewith.
23 Gaines Decl., ¶¶ 2-5; 28-39; **Exhibit E**.

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

of one-third of the PAGA Gross Settlement Amount, projected to be \$36,666.67.

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

In the course of this litigation, Plaintiff's Counsel incurred out-of-pocket costs of \$7,307.82. See Gaines Decl. at ¶ 40, **Exhibit F**. As demonstrated in the Gaines Declaration submitted herewith, the incurred costs included filing fees, future costs, postage, and mediation fees. *Id.* Such costs are appropriate for cost reimbursement in these types of cases. See e.g., *In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (C.D. Cal. 1989) (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); see also, *In re GNC Shareholder Litigation* 668 F.Supp. 450, 452 (W.D. Pa. 1987).

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

V. CONCLUSION

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

1. Grant approval of the Settlement Agreement, pursuant to California Labor Code § 2699, subpart s;
2. Appoint Phoenix Settlement Administrators as the Settlement Administrator and approve its administration fees up to \$4,000 for payment out of the PAGA Gross Settlement Amount;
3. Approve the award of attorneys' fees of one-third of the PAGA Gross Settlement Amount (projected to be \$36,666.67), and costs of \$7,307.82, to Plaintiff's Counsel, payment of which shall come from the PAGA Gross Settlement Amount;
4. Direct disbursement of the Net Settlement Fund to the LWDA and all Aggrieved Employees as provided for in the Settlement Agreement; and
5. Dismiss the Action with prejudice, subject to the Court's retention of jurisdiction

1 pursuant to California Labor Code, including section 664.6.

2
3 Date: April 30, 2025

Respectfully submitted,

4 GAINES & GAINES, APLC

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