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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

LUISA PEREZ, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

FRESNO POSTACUTE CARE, LLC, a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 22CECG02916

Honorable Kristi Culver Kapetan
Department 502

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 (Tara Zabehi); Declaration of Plaintiff (Luisa Perez); and [Proposed] Order and Judgment filed concurrently herewith]

Date:	October 22, 2024
Time:	3:30 p.m.
Department:	502
Complaint Filed:	September 15, 2022
Trial Date:	None Set

PLEASE TAKE NOTICE that on October 22, 2024 at 3:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Kristi Culver Kapetan in Department 502 of the Superior Court of the State of California, for the County of Fresno, located at 1130 O Street, Fresno, California 93721, Plaintiff Luisa Perez ("Plaintiffs") will and hereby does move for entry of the following orders:

1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the settlement between Plaintiff and Defendant Fresno PostAcute Care, LLC ("Defendant") of the claims brought pursuant to the Private Attorneys General Act of 2004 ("PAGA"), as set forth in the Private Attorneys General Act Settlement Agreement and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Tara Zabehi, including and not limited to, the plan of allocation and distribution of the Total Settlement Amount for payment of the LWDA Payment to the California Labor and Workforce Development Agency ("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;
2. Approving the Net Settlement Amount, estimated to be no less than $62,871.51 which will be distributed to the LWDA and the Aggrieved Employees, pursuant to California Labor Code section 2699(i), of which seventy-five percent (75%) will be paid to the LWDA ("LWDA Payment") and twenty-five percent (25%) will be paid to the Aggrieved Employees ("Employees' Portion");
3. Appointing ILYM Group, Inc. ("ILYM" or "PAGA Settlement Administrator") as the PAGA Settlement Administrator;
4. Directing Defendant to transmit the Total Settlement Amount of $141,128.63 into a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement, and directing the 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

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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 Judgement") filed concurrently herewith;

6. Awarding $7,500.00 to Plaintiff Luisa Perez as a General Release Fee;
7. Awarding up to $6,000.00 to the PAGA Settlement Administrator as Settlement Administration Costs; and
8. Awarding to Plaintiff's Counsel, Lawyers *for* Justice, PC, $49,395.02 as compensation for reasonable attorneys' fees and $15,362.10 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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This motion will be based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Plaintiff's Counsel (Tara Zabehi) and Plaintiffs (Luisa Perez) in support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: August 30, 2024

LAWYERS *for* JUSTICE, PC

By: ______________________
Tara Zabehi
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Luisa Perez ("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 Fresno PostAcute Care, LLC ("Defendant"), pursuant to California Labor Code section 2699(l)(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 $141,128.63.[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 hourly-paid or non-exempt employees who have worked for Defendant in 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 $62,871.51.[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 his or her *pro rata* share of the Employees' Portion, based on the number of pay periods they each worked during the PAGA Period

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[1] The Private Attorneys General Act Settlement Agreement and Release ("Settlement Agreement") is attached as "**EXHIBIT 1**" to the Declaration of Tara Zabehi.
[2] Settlement Agreement, § 3(a).
[3] *Id.*, §§ 3(a)(1)-(5). "PAGA Period" is defined as the period June 29, 2021 to January 15, 2024. *Id.*, § 3(a)(5).
[4] *Id.*, § 3(a)(4).
[5] *Id.*, § 3(a)(5).

("Compensable Pay Periods").[6]

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

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

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

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant is located in Fresno, California and is a skilled nursing facility that provides nursing, medical and other health services. Plaintiff Luisa Perez is a former employee of Defendant.

Prior to commencing this lawsuit, on June 29, 2022, as required by California Labor Code section 2699.3, Plaintiff Luisa Perez provided the LWDA and Defendant with written notice of her intent to assert claims under PAGA and the basis for those claims, to which the

[6] Settlement Agreement, § 7(b).
[7] *Id.*, § 7(b)(1).

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LWDA did not respond ("PAGA Notice").[8] A true and correct copy of Plaintiff's June 29, 2022 PAGA Notice is attached to the Declaration of Tara Zabehi as "EXHIBIT 2."

On September 15, 2022, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint") against Defendant in the Fresno County Superior Court ("Court"), Case No. 22CECG02916 (the "Action"). Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and other aggrieved employees, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide compliant meal and rest periods and associated premiums, failing to pay timely wages during employment and upon termination of employment, failing to provide complete and accurate itemized wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

On December 15, 2022, Defendant filed an Answer to the Operative Complaint. Defendant maintained, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time period at issue. Defendant denies that it ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.

On April 5, 2023, Plaintiff served the following discovery requests on Defendant: Form Interrogatories-General (Set One), Requests for Production of Documents (Set One), Special Interrogatories (Set One), and Special Interrogatories (Set Two), Request for Admission (Set One). (Zabehi Decl., ¶ 14.) On April 5, 2023, Plaintiff also propounded a Person Most Knowledgeable (PMK) deposition notice of Defendant. (*Id.*) Defendant provided responses to the above-mentioned discovery and PMK deposition notice on May 9, 2023. (*Id.*) The PMK deposition did not go forward. However, Plaintiff also subpoenaed the deposition of a few individuals who were Defendant's declarants and conducted depositions. In total, through informal and formal discovery, Defendant produced a vast amount of documents, which

[8] Declaration of Tara Zabehi ("Zabehi Decl."), ¶ 10.

Plaintiff's Counsel analyzed to evaluate the potential PAGA penalties at issue. (*Id.*)

On December 12, 2023, after engaging in extensive formal negotiations, the Parties reached a settlement described hereon.[9] Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(l)(2). The Settlement Agreement and moving and supporting papers for this motion are being submitted to the LWDA in conformity with California Labor Code section 2699(l)(2), concurrently with this filing.[10]

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Aggrieved Employees who are covered by the Settlement are:

> All current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California during the PAGA Period.[11]

Based on information provided by Defendant as of March 24, 2024, there are approximately Two Hundred Ninety-Five (295) Aggrieved Employees.[12]

B. Distribution of the Total Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Amount of $141,128.63.[13] The Net Settlement Amount will be the Total Settlement Amount less the following amounts: (1) Attorneys' Fees and Costs consisting of attorneys' fees of $49,395.02 and reimbursement of litigation costs and expenses of $15,362.10 to Plaintiff's Counsel; (2) General Release Fee of $7,500.00 to Plaintiff; and (3) Settlement Administration Costs of up to $6,000.00 to ILYM Group, Inc. ("ILYM" or "PAGA Settlement Administrator").[14] The Net Settlement Amount will be fully distributed to the Aggrieved Employees and the LWDA, as described in Part III.C, *infra*.

C. Distribution of the Net Settlement Amount

Subject to the Court's order granting approval of the Settlement, payment shall be made

[9] Zabehi Decl., ¶ 13.

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

[11] Settlement Agreement, § 3(a)(5).

[12] Settlement Agreement, § 3(a)(5), and Zabehi Decl., ¶ 9.

[13] Settlement Agreement, § 3(a), and Zabehi Decl., ¶ 11.

[14] Zabehi Decl., ¶ 11.

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by Defendant by transmitting the required sums to a qualified settlement account established by the PAGA Settlement Administrator for administration of this Settlement, in two equal installments, according to the following payment plan: (1) The First Installment Payment is due within 4 months of the Court's order granting approval of this Settlement Agreement ("The First Installment Payment"); and (2) The Second Installment Payment is due within 4 months after the First Installment Payment ("The Second Installment Payment").[15]

No later than seven (7) calendar days after the Court's order granting approval of the Settlement, Defendant will 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) last known telephone number; (iv) social security number; (v) and Compensable Pay Periods worked during the PAGA Period.[16]

Seventy-five percent (75%) of the Net Settlement Amount (or approximately $47,153.63) will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount (or approximately $15,717.88) (i.e., Employees' Portion) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods.[17] To calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator will: (1) for each Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.[18] The payments to Aggrieved Employees for their Individual Settlement Shares are considered one hundred percent (100%) penalties to be reported on IRS Form 1099, if required.[19]

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[15] *Id.*, § 7(a).
[16] *Id.*, § 7(c)(1).
[17] *Id.*, § 3(a)(5).
[18] *Id.*, § 7(b).
[19] *Id.*, §§ 3(c) & 7(b)(1).

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No later than ten (10) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and The First Installment Payment Amount, the PAGA Settlement Administrator will mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail.[20] For each PAGA Settlement Package that is returned as undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator will 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.[21] The PAGA Settlement Administration shall transmit the General Release Fee to Plaintiff no later than ten (10) after The First Installment Payment Amount has been received.[22]

The Individual Settlement Share checks issued to Aggrieved Employees will remain valid for ninety (90) calendar days, and thereafter, will be canceled.[23] Funds associated with canceled checks will be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual Settlement Share(s).[24]

No later than ten (10) calendar days after the PAGA Settlement Administrator receives The Second Installment Payment, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA.[25]

No later than ten (10) calendar days after the PAGA Settlement Administrator receives The Second Installment Payment, the PAGA Settlement Administrator shall transmit the Attorneys' Fees and Costs to Plaintiff's Counsel, unless instructed otherwise by Plaintiff's Counsel.[26]

No later than ten (10) calendar days after the PAGA Settlement Administrator receives

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[20] Settlement Agreement, § 7(c)(3).
[21] *Ibid.*
[22] *Ibid.*
[23] *Id.*, § 7(c)(4).
[24] *Ibid.*
[25] *Id.*, § 7(d).
[26] *Id.*, § 7(e).

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The Second Installment Payment, the PAGA Settlement Administrator shall transmit the Settlement Administration Costs to itself, only after the PAGA Settlement Packages have been mailed to all Aggrieved Employees.[27]

D. <u>The Scope of the Release in the Settlement Agreement</u>

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 Aggrieved Employees will be deemed to have knowingly and voluntarily released and forever discharged Released Parties from the Released Claims.

The "Released Claims" are any and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, *et seq*. ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint, including but not limited to, 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 during employment, failure to timely pay wages upon termination, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, 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, and 2802 and Industrial Welfare Commission Wage Orders, including inter alia, Wage Orders 4-2001 and 5-2001.[28]

The "Released Parties" are Defendant, including Defendant's parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs.[29]

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[27] *Id.*, § 7(f).
[28] *Id.*, § 8(a).
[29] *Ibid*.

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E. <u>No Right to Object to, or Opt Out of, the Settlement</u>

"[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 whatever personal claims the absent employees might have for relief are not at stake." *Williams, supra,* 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* at 548 (internal references omitted, citing *Arias, supra,* 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, supra,* at 985-86 (citations omitted); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476

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

The settlement of a PAGA action requires court approval. *See* Cal. Lab. Code § 2699(l)(2) ("The superior court shall review and approve any settlement of any civil action filed pursuant to this part."). 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, supra,* 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 analysis of several unique features that render the approval process distinct from, and simpler than, the process for approval of a class action settlement. A court reviewing a PAGA settlement need only "ensur[e] that a negotiated resolution is fair to those affected." *Williams, supra,* 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims. See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David's Bridal*,

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Inc. (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576, 589.

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

A PAGA settlement is a settlement of claims for penalties and other remedies which the LWDA could assess and collect on behalf of employees without their involvement or approval. "[U]nnamed 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, supra,* 2010 WL 1340777, at *5. This renders the approval process of a PAGA settlement distinct from a class action settlement, and the Court need not employ the two-step approval process that applies to a class action settlement, under both state and federal law.

V. <u>THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED</u>

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

A. <u>The Factors Giving Rise to a Presumption of Fairness Exist</u>

The Parties reached the Settlement through arm's-length negotiations.[30] A settlement that is "the product of extensive and hard-fought adversarial negotiations between the parties" is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

The Settlement is presumptively fair because: (1) it is the product of non-collusive, arm's-length negotiations; (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters; 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 of litigating this claim through trial.[31]

After engaging in significant investigations, formal and informal discovery, and the exchange of information, the Parties participated in settlement negotiations to try to resolve the lawsuit.[32] In the course of 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, and wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other things.[33] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[34]

Based on all of the information available to the Parties, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim.[35] Plaintiff and Plaintiff's Counsel believe that the settlement is a fair, adequate, and reasonable resolution of this matter.[36] Plaintiff's Counsel has extensive experience handling representative and class

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[30] Zabehi Decl., ¶ 13.
[31] *Id.*., ¶¶ 3-6, 11-13, & 16-20.
[32] Zabehi Decl., ¶ 13.
[33] *Ibid*.
[34] *Ibid.*
[35] *Id.*, ¶ 19.
[36] *Ibid*.

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action wage-and-hour litigation and used that experience to achieve a great result for Plaintiff, the State of California, and the Aggrieved Employees.[37] 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 plaintiffs' 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. <u>The Relative Strength of the PAGA Claim and the Range of Possible Outcomes in the Litigation Strongly Favor Approval of the Settlement</u>

In order for Plaintiff to prevail on the PAGA claim, she 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 properly pay minimum, regular, overtime wages, failing to provide compliant meal and rest periods and associated premiums, failing to timely pay wages during employment and upon termination of employment, failing to provide complete and accurate wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

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[37] *Id.*, ¶¶ 3-6.

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

Defendant also maintained several defenses to Plaintiff's theory of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time period at issue.[38] Defendant denies that it ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.[39] Defendant further denied, and continues to deny, that the lawsuit is appropriate for representative treatment for any purpose other than settlement.[40]

Defendant also challenged Plaintiff's standing as an aggrieved employee and denied that any of Defendant's other employees whom Plaintiff seeks to represent are aggrieved.[41] Also, at the time that this case commenced, multiple courts had taken an approach requiring a plaintiff to establish standing and face the possibility of bifurcation of discovery and/or trial of the PAGA claim. *See Amalgamated Transit Union, supra*, 46 Cal.4th at 1001 (noting that PAGA "require[s] a plaintiff to have suffered an injury resulting from an unlawful action"); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding that judicial economy supported bifurcation because of the difficulties and inherent uncertainties of being able to establish liability with respect to a large number of potentially aggrieved employees and noted that "PAGA's public purpose would be ill-served if the court finds [the plaintiff] has not been aggrieved by a Labor Code violation"); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of litigation is allowed to avoid wasting time and money on trial when litigation of issues could be rendered moot).

Defendant also argued that an important feature of PAGA is that the Court retains

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[38] Zabehi Decl., ¶ 17.
[39] *Ibid.*
[40] *Ibid.*
[41] Zabehi Decl., ¶ 18.

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discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." *See* Cal. Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors). Defendant maintained, and continues to maintain, that it had and continues to have, legally-compliant employment policies and practices throughout the time period at issue.[42] Defendant denies that it ever violated any provision of the California Labor Code.[43] Even if, *arguendo,* such violations occurred, which Defendant denies, Defendant contended that said violations would only be considered "initial violations" and thus heightened "subsequent violation" penalties were not warranted. *See* Cal. Lab. Code § 2699(f)(2); *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 ("Until the employer has been notified that it is violating a Labor Code provision […], the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties.").

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

There is also uncertainty regarding PAGA claims due to the United States Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940. As a result of that decision, it may be more likely that employer arbitration agreements will impact the viability of adjudication of PAGA claims in the judicial forum, which is relevant to this matter in light of agreements that Defendant obtained from its employees (which included, *inter alia,* waiver and release of claims, covenant not to sue, acknowledgment

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[42] *Id.*, ¶ 17.
[43] *Ibid.*

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of receipt of wages due, and/or binding individual arbitration provisions). *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940.[44]

While Plaintiff disagrees with Defendant's contentions and maintains that her PAGA claim has merit, in reaching the settlement, Plaintiff and her counsel took into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon appeal.[45]

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

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

Prior to reaching the Settlement, the Parties investigate the veracity, strength, and scope of the PAGA claim and allegations.[46] In addition, the Parties exchanged a vast amount of information, documents, and data relevant to Plaintiff's claim and Defendant's defenses. Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant documents and data to evaluate Plaintiff's claim and allegations, including, and not limited to, calculating the potential monetary recovery under PAGA.[47] Other work

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[44] In *Viking River Cruises*, the U.S. Supreme Court determined that PAGA claims can be split into individual claims based on California Labor Code violations suffered by the plaintiff (that can then be subject to arbitration) and non-individual claims (that are representative in nature) and that the "indivisibility rule" recognized by the California Supreme Court in *Iskanian* v. *CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348 is preempted by the Federal Arbitration Act (FAA) to the extent it circumscribes the freedom of parties to agree to such contractual division or splitting of PAGA actions. *Viking River Cruises, Inc.*, 1923-1925. The U.S. Supreme Court also determined that, important structural differences between PAGA actions and class actions preclude any straightforward application of U.S. Supreme Court precedents invalidating prohibitions on class-action waivers, to *Iskanian*'s ban on wholesale PAGA representative action waivers, and thus this aspect of *Iskanian* is not preempted by the FAA. *Id*. at 1919, 1922-1925. The U.S. Supreme Court also expressed its understanding of California state law, and the impact of its ruling on, PAGA's standing requirement, regarding which California courts will have the last word, as noted by a concurring opinion. *Id.* at 1925-1926 (concurring opinion). Taken together, the substantive statutory right to pursue a PAGA claim has not been eviscerated and has been preserved, however, arbitration agreements may be used to select the forum and procedure to be used to resolve PAGA claims to some extent, and the California courts and legislature have yet to weigh in on and articulate where California law stands.

[45] Zabehi Decl., ¶ 12.

[46] *Id*., ¶ 14.

[47] *Ibid*.

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performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding the pleadings, case management, and settlement, among other issues; case strategy and analysis; drafting, reviewing, and revising the pleadings, court filings, settlement agreement, and settlement approval motion papers; and preparing for and appearing for court proceedings, and settlement negotiations.[48]

Had the case not settled, the Parties would have conducted extensive additional formal discovery, including propounding additional written discovery requests as well as 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.[49] 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.[50] Additionally, there is a real possibility that Plaintiff would recover nothing, either for herself 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. <u>The Settlement Is Fair, Adequate, and Reasonable</u>

"[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 $141,128.63, which encompasses the Net Settlement Amount, Attorneys' Fees and Costs, Settlement

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[48] Zabehi Decl., ¶ 14.
[49] *Id*., ¶ 17.
[50] *Id*., ¶¶ 12, 13, 16.

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Administration Costs, and General Release Fee.[51] 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 $49,395.02 and reimbursement of litigation costs and expenses in the amount of $15,362.10 to Plaintiff's Counsel[52]; (2) the Settlement Administration Costs of up to $6,000.00; and (3) General Release Fee of up to $7,500.00 to Plaintiff.[53]

The Net Settlement Amount is currently estimated to be $62,871.51, of which an estimated $15,717.88 is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods and $47,153.63 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 her counsel recognize the expense and length of continued proceedings necessary to litigate the matter through trial and any possible appeals.[54] Plaintiff and her counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.[55] Plaintiff and her counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other Aggrieved Employees.[56] Plaintiff and her counsel have also taken into account Defendant's agreement to enter into a settlement that confers significant relief upon the Aggrieved Employees and the State of California.[57]

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[51] Settlement Agreement, §§ 3(a) & 3(a)(1)-(5).
[52] *Id.*, § 3(a)(1). Although the Settlement Agreement provides that Plaintiff's Counsel can seek up to $25,000.00 for reimbursement of litigation costs and expenses, Plaintiff's Counsel only seeks the amount of $15,362.10 for this payment, which is less than $25,000.00. The difference between the amount sought and the maximum allocated amount available under the settlement (i.e., the difference of $9,637.90), will be a part of the Net Settlement Amount.
[53] *Id.*, §§ 3(a)-3(a)(4).
[54] Zabehi Decl., ¶¶ 12, 13 & 16.
[55] *Id.*, ¶¶ 12, 16 & 19.
[56] *Id.*, ¶¶ 15 & 16.
[57] *Id.*, ¶ 13.

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Considering all of the facts in this case, Plaintiff and her counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the Aggrieved Employees and the State of California.[58]

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*, *supra*, 2012 WL 5364575, at *3 (approving the amount of $10,000 out of $3.7 million toward settlement of PAGA claims); *Schiller*, *supra*, 2012 WL 2117001, at *14 (approving the amount of $10,000 out of $518,245 toward settlement of PAGA claims); *Chu*, *supra*, 2011 WL 672645, at *1 (approving the amount of $10,000 out of $6.9 million toward settlement of PAGA claims); *Franco*, *supra*, 2012 WL 5941801, at *14 (approving the amount of $10,000 out of $2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case*, *supra*, at 589 (finding no abuse of discretion by the trial court in approving a settlement that allocates $0 toward the settlement of PAGA claims that were at issue in the lawsuit). Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

E. <u>The Experience and Views of Plaintiff's Counsel Favor Approval of the Settlement</u>

Plaintiff's Counsel is highly experienced in complex representative and class action wage-and-hour litigation.[59] 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.[60] Furthermore, courts have

[58] *Id.*, ¶ 23.
[59] Zabehi Decl., ¶¶ 3-6.
[60] *Id.*, ¶ 23.

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acknowledged that "the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]" *Williams, supra,* 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

VI. THE 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 $141,128.63.[61] The Settlement provides for attorneys' fees in an amount of up to thirty-five percent (35%) of the Total Settlement Amount, which is $49,395.02, subject to approval and award by the Court.[62] The requested attorneys' fees award is commensurate with: (1) the risk that Plaintiff's Counsel took in bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that Plaintiff's Counsel has shown, (4) the results that Plaintiff's Counsel has achieved throughout the litigation, (5) the value that Plaintiff's Counsel has achieved in the case, and (6) the other cases that Plaintiff's Counsel has turned down in order to devote its time and effort to this case.

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

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[61] Settlement Agreement, § 3(a).
[62] *Id.*, § 3(a)(1).

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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).

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

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*, *supra*, 1 Cal.5th 480 at 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 percentage method is particularly appropriate where a monetary settlement has been recovered and "the benefit [recovered can be] easily quantified." *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, section 14:145; *Dunk*, *supra*, 48 Cal. App. 4th at 1808.

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

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

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Plaintiff's Counsel has litigated this case since it was commenced, with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.[63] Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant information, documents, and data to evaluate the claims, including, and not limited to, calculating the potential monetary recovery under PAGA.[64] Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding the pleadings, case management, negotiating, and reaching a settlement, among other issues; case strategy and analysis; drafting, reviewing, and revising the pleadings, court filings, settlement agreement, and settlement approval motion papers; and preparing for and appearing for court proceedings, and settlement negotiations.[65]

In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[66] Plaintiff's Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the Aggrieved Employees and the State of California.[67] Considering the amount of fees requested, work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees are reasonable and should be awarded.

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;

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[63] Zabehi Decl., ¶ 16.
[64] *Id.*, § 14.
[65] *Ibid*.
[66] *Id.*, ¶ 16.
[67] *Id.*, ¶¶ 3-6.

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(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 case, 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 in the amount of thirty-five percent (35%) 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.[68] During the litigation of the Action, Plaintiff's Counsel interviewed and obtained information from Plaintiff, Defendant, and other sources, conducted legal research, reviewed and analyzed a large amount of documents and data, evaluated the PAGA claim, and calculated the potential monetary recovery under PAGA.[69] Plaintiff's Counsel also met and conferred with Defendant's counsel regarding the pleadings, case management, and settlement, among other issues.[70] Plaintiff's Counsel performed other work including, *inter alia*, case strategy and analysis; and engaging in extensive settlement negotiations.[71]

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[68] Zabehi Decl., ¶ 14.
[69] *Ibid.*
[70] *Ibid.*
[71] *Ibid.*

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2. The Skill Required to Perform Legal Services Properly

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

Plaintiff's Counsel's effort and skill were used to, among other things, investigate the allegations and gather facts, research the legal issues, analyze data and information obtained from Defendant, Plaintiff, and through other sources, evaluate the PAGA claim, and negotiate the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used its extensive experience and skill in the handling of complex wage-and-hour matters to advocate for and obtain Aggrieved Employees and the State of California a recovery now, with maximum efficiency, as opposed to the possibility of recovery in the future, after significant expense and time.[72]

3. The Value of the Settlement

The Settlement represents an excellent resolution of this lawsuit, given the uncertainty and risks of further litigation.[73] Had the case not settled, Defendant would have vigorously challenged manageability and liability, and sought a reduction in the amount assessed as penalties. Defendant, however, faced risks too, including and not limited to, the risk of having the Court assess penalties. Additionally, preparing the case for trial would have been extraordinarily expensive for the Parties.

[72] Zabehi Decl., ¶¶ 16-20.
[73] *Id*., ¶¶ 15, 16, 19, & 23.

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

4. Whether the Fee Is Fixed or Contingent

The representation provided by Plaintiff's Counsel has been wholly contingent and Plaintiff's Counsel took on this matter without knowing whether any recovery would be obtained. Plaintiff's Counsel has also incurred and is requesting reimbursement of litigation costs and expenses in the amount of $15,362.10.[74]

In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[75] If Plaintiff's Counsel had not been successful, the time that they have devoted to litigating the case would have been for naught and would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel is well-experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the Aggrieved Employees, and the State of California.[76] The skill and determination that Plaintiff's Counsel has shown throughout the Action justify the requested attorneys' fees and costs. Considering the amounts requested, work performed, and risks incurred, the requested fees and costs are reasonable and should be awarded.

5. The Amount Involved and the Results Achieved

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this case, are considerable. Here, the results achieved, and the recovery

[74] *Id.*, ¶ 21, and Exh. 3.
[75] *Id.*, ¶ 21.
[76] *See* Zabehi Decl., ¶¶ 3-6.

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obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent a fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a settlement that provides for a Total Settlement Amount of $141,128.63, and it is currently estimated that the Net Settlement Amount available for distribution to the Aggrieved Employees and the State of California, as set forth in Part III.C *infra*, is approximately $62,871.51.[77]

6. The Reputation and Ability of the Attorneys

Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its attorneys employed their knowledge, skill, and experience to bring the case to a successful conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and representative action cases.[78]

VII. <u>COSTS TO BE REIMBURSED TO PLAINTIFF'S COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED</u>

The Settlement provides for reimbursement of litigation costs and expenses of up to $25,000.00. As set forth in the Declaration of Tara Zabehi, Plaintiff's Counsel seeks reimbursement of $15,362.10 in litigation costs and expenses.[79] These expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement, and the amount sought for reimbursement is less than the maximum amount allocated under the Settlement Agreement for reimbursement of litigation costs and expenses.[80] The cost savings of $9,637.90 will be part of the Net Settlement Amount.[81] Accordingly, Plaintiff's Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of $15,362.10 to Plaintiff's Counsel.

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[77] Settlement Agreement, § 3(a).
[78] Zabehi Decl., ¶¶ 3-6.
[79] Zabehi Decl., ¶ 21.
[80] *Ibid*.
[81] *Ibid*.

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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 REASONABLE, AND SHOULD BE APPROVED

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, ILYM Group, Inc. to handle the administration of the Settlement. The fees and expenses of the PAGA Settlement Administrator are estimated not to exceed $6,000.00. 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 $6,000.00 to ILYM, 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 in recognition of her efforts and work in spearheading the litigation of this matter, as well as for his broader individual waiver and release of claims with a California Civil Code

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Section 1542 waiver (set forth in Section 8(b) of the Settlement Agreement).[82] 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, supra*, Los Angeles County Superior Court, Case No. BC59689 (approving $10,000 enhancement award in a PAGA action).

Here, Plaintiff contributed considerable time and effort to the litigation of this case 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 her employment with her counsel, gathered and produced relevant documents and information, and provided the facts and evidence necessary to attempt to prove the allegations.[83] Plaintiff was available whenever her counsel needed her and tried to obtain and provide documents and information that would aid in the litigation of the PAGA claims and pursuit of recovery on behalf of the State of California and Aggrieved Employees.[84]

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

XI. CONCLUSION

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise

[82] Settlement Agreement, § 3(a)(2).
[83] Zabehi Decl., ¶ 22; Declaration of Luisa Perez ("Perez Decl."), ¶¶ 3 & 4.
[84] Zabehi Decl., ¶ 22; Perez Decl., ¶¶ 3 & 4.

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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: August 30, 2024

LAWYERS *for* JUSTICE, PC

By: ______________________________
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Attorneys for Plaintiff

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