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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

DOLORES CHAVEZ, individually and
on behalf of similarly aggrieved
employees,

Plaintiffs,

v.

WINDSOR FASHIONS, LLC, an active
Delaware Limited Liability Company;
GOTWORX STAFFING, INC., an active
Delaware Corporation; and DOES 1
through 10,

Defendants.

Case No.: 22STCV20119

INDIVIDUAL AND REPRESENTATIVE
ACTION

*[Assigned to Hon. Carolyn B. Kuhl
in Dept. SS-12]*

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PAGA SETTLEMENT, AND PAYMENT
OF ATTORNEYS’ FEES AND COSTS,
ADMINISTRATION COSTS, AND
ENHANCEMENT AWARD**

[CONCURRENTLY SUBMITTED WITH
DECLARATION OF ZORIK
MOORADIAN; DECLARATION OF HAIK
HACOPIAN; AND [PROPOSED] ORDER]

Date: December 3, 2024

Time: 11:00 a.m.

Dept.: SS-12

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1 **PLEASE TAKE NOTICE** that, pursuant to Cal. Lab. Code §2699, on December 3,
2 2024 at 11:00 a.m. or as soon thereafter as the matter may be heard in Department SS-12 of
3 the above-entitled Court located at 312 North Spring Street, Los Angeles, California 90012,
4 Plaintiff, Dolores Chavez ("Plaintiff"), on behalf of similarly-aggrieved employees, will and
5 hereby does move this Court for entry of an Order:

6 1. Approving the settlement entered into between Plaintiff, Defendant Windsor
7 Fashions, LLC ("Windsor"), and Defendant Gotworx Staffing, Inc. ("Gotworx") for
8 representative claims under the Labor Code Private Attorneys General Act of 2004
9 ("PAGA"), as reflected by the Parties' PAGA Settlement Agreement and Release
10 ("Settlement Agreement" or "S.A."); and

11 2. Approving a distribution of the Gross Settlement Payment of \$275,000, in
12 accordance with the Settlement Agreement and on account of disputed and alleged civil
13 penalties, as follows: (a) payment of \$91,666.67 in attorneys' fees to Mooradian Law, APC,
14 ("PAGA Counsel"); (b) payment of \$10,609.41 in attorneys' costs to PAGA Counsel; (c)
15 payment of \$3,000 to Plaintiff as an enhancement award for bringing and prosecuting the
16 action; (d) \$13,000 in administration costs to CPT Group, Inc. (e) payment to the Labor and
17 Workforce Development Agency ("LWDA") totaling \$117,542.94 which amount represents
18 75% of the total Gross Settlement Payment after attorneys' fees, enhancement award,
19 attorneys' costs, and administration costs ("Net Settlement Amount"); and (f) payment of
20 \$39,180.98, which amount represents 25% of the Net Settlement Amount, on a pro-rata basis
21 to all Aggrieved Employees (defined as any non-exempt, hourly temporary GotWorx
22 employees assigned to work at a Windsor location in California during the period from June
23 20, 2021 to October 25, 2024 ("PAGA Period")).

24 This motion is based on this Notice, the attached Memorandum of Points and
25 Authorities, the supporting declarations of Zorik Mooradian and Haik Hacopian and the
26 exhibits attached thereto; the [Proposed] Order Granting Plaintiff's Motion for Approval of
27 PAGA Settlement, and Payment of Attorneys' Fees, Costs, and Enhancement Award; the
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1 Settlement Agreement; all other pleadings and papers on file in this action; and on any further
2 oral or documentary evidence or argument presented at the time of hearing.

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Dated: September 16, 2024

MOORADIAN LAW, APC

By: /s/Haik Hacopian
Zorik Mooradian, Esq.,
Haik Hacopian, Esq.
Attorneys for Plaintiff and aggrieved
employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Dolores Chavez (“Plaintiff”) hereby seeks court approval of a settlement of a
4 pending Private Attorneys General Act (“PAGA”) claim as initiated by Plaintiff Chavez’s
5 notice letter dated June 21, 2022. The scope of the settlement is limited to civil penalties, does
6 not act as a waiver to any employee’s individual claims for individual relief, and releases “all
7 claims under PAGA for PAGA penalties that were alleged, or reasonably could have been
8 alleged, based on the any facts or circumstances occurring during the PAGA Period that were
9 alleged, or could have been alleged, in the Operative Complaint, and the PAGA Notice.” (S.A.
10 at §5.2). The Gross Settlement Amount of \$275,000, and allocation for civil penalties therein,
11 is fair, adequate, and reasonable and sufficient to deter further violations and encourage
12 compliance with the law.

13 The Parties reached their settlement after review and analysis of the PAGA claims’
14 predicates through sufficient informal discovery, i.e. a 25% of time and payroll records for
15 Aggrieved Employees. The settlement was thereafter reached after a mediation session on
16 June 27, 2024 with a well-respected neutral mediator with significant wage and hour
17 experience, Mr. Lou Marlin.

18 As part of the Gross Settlement Payment and as authorized by the PAGA statute,
19 Plaintiff’s counsel is seeking recovery of \$91,666.67 in attorneys’ fees, which is one-third of
20 the Gross Settlement Amount. Moreover, this requested amount is fair, adequate, and
21 reasonable, in light of the work performed by counsel and recovery obtained. It reflects a
22 modest 1.43 multiplier on counsel’s collective lodestar, or a lodestar that exceeds the
23 requested fee award to the extent Laffey Matrix rates are applied. Counsel is additionally
24 seeking \$10,609.41 in costs, which were reasonable and necessary to the prosecution of this
25 action. Additionally, Plaintiff is seeking a \$3,000 enhancement award for bringing and
26 prosecuting this action and making this settlement possible. Plaintiff is also requesting that
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1 CPT Group, Inc. be appointed as the settlement administrator and that \$13,000 be paid to CPT
2 for services relating to mailing payments to the Aggrieved Employees.

3 4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

5 **A. Gotworx, Windsor, Plaintiff, and Aggrieved Employees**

6 Defendant Gotworx is a staffing agency based in Freehold, New Jersey and operates
7 nationally. Gotworx specializes in servicing light industrial and clerical industries. One such
8 client was Defendant Windsor Fashions, LLC (“Windsor”). Windsor is a retailer of women’s
9 apparel and accessories at stores and online. Plaintiff was staffed by Gotworx at Windsor’s
10 distribution facility in Santa Fe Springs, California where other aggrieved employees worked.
11 There, product was distributed to Windsor’s retail stores and online orders were fulfilled.
12 Declaration of Zorik Mooradian (hereinafter “ZM Decl.”) ¶6.

13 The number of Aggrieved Employees, i.e. Gotworx employees placed for work at
14 Windsor, around the time of mediation was 1,724 and who worked 12,964 weekly pay periods.
15 The settlement contemplates coverage for 1,874 Aggrieved Employees through the end of the
16 PAGA Period on October 25, 2024, subject to an escalator clause. ZM Decl. ¶7.

17 **B. Plaintiff’s Lawsuit, Discovery, and Mediation**

18 **1. Plaintiff Dolores Chavez’s Lawsuit**

19 Plaintiff Dolores Chavez filed this lawsuit as a wage and hour class action on June 20,
20 2022 and communicated a PAGA notice to Defendants and the LWDA on that date. Upon
21 submission to the LWDA, Plaintiff Chavez’s PAGA claim was assigned Case No. LWDA-
22 CM-890611-22. On November 16, 2022, the First Amended Complaint (“FAC”) was filed in
23 this case which added the representative PAGA claim. On June 17, 2023, the class allegations
24 were dismissed, Plaintiff’s individual claims were ordered to arbitration, and the PAGA cause
25 of action was stayed pending arbitration completion. ZM Decl. ¶8.

26 **2. Collective Labor Code/Wage Order sections at Issue**

27 As mentioned, Plaintiff Chavez filed a notice letter with the California Labor and
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1 Workforce Development Agency (“LWDA”) on June 21, 2022 giving notice of his intent to
2 pursue a PAGA representative action, on behalf of himself and the State of California as well
3 as on behalf of a group of similarly situated aggrieved employees giving notice of their
4 collective intent to seek penalties under Labor Code sections 2698 et. seq. based on alleged
5 violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, and
6 2802 (“PAGA letter”). A true and correct copy of the noted PAGA Letter is attached as
7 **Exhibit “1”** to the Declaration of Zorik Mooradian. ZM Decl. ¶9, Exh. 1.

8 **3. Discovery and Mediation**

9 This lawsuit has involved production of numerous documents and employee data
10 including policies relevant to asserted PAGA claims. Specifically, Defendant provided data
11 regarding the total number of aggrieved employees and total work weeks and a 25% employee
12 sample of time and payroll data, which covered 432 employees. This information has been
13 reviewed and assessed by Plaintiff with expert assistance. The Parties have conducted
14 investigation of the operative facts and applicable law during the litigation. The Parties have
15 also investigated the applicable law as applied to the facts, potential defenses thereto, and
16 damages claimed by Plaintiff on behalf of aggrieved employees. Subsequently, on June 27,
17 2024, Plaintiff and Defendants engaged in mediation before an esteemed mediator with
18 significant wage and hour experience, Mr. Lou Marlin. During the Mediation, and with
19 significant assistance from the mediator, the Parties agreed to a PAGA representative
20 settlement, which was negotiated in light of all known facts and circumstances—including the
21 difficulty of proving some of Plaintiff’s underlying bases for the PAGA penalty claims,
22 potential defenses asserted by Defendants to the PAGA penalty claims, the uncertainty
23 associated with litigation, the risks of significant delay, and numerous potential appellate
24 issues. Thereafter, the settlement was solidified between the Parties during the months that
25 followed. Ultimately, the Settlement Agreement was entered into. ZM Decl. ¶10.

26 **C. Essential Terms of the Settlement**

27 The Parties’ settlement allocates \$275,000 for settlement of the PAGA claims which
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1 is the total amount to be paid by Defendants under this Settlement. After allocated attorneys'
2 fees of \$91,666.67, requested costs of \$10,609.41, administrative costs of \$13,000, and \$3,000
3 enhancement award to Plaintiff, 75% of the Net Settlement Amount, or \$117,542.94 will be
4 paid as the LWDA's 75% share of PAGA penalties, and \$39,180.98 will be payable to
5 Aggrieved Employees¹. The amount payable to Aggrieved Employees will be allocated on a
6 pro-rata basis determined by the number of pay periods each such Aggrieved Employee
7 worked during the PAGA Period. (S.A. at ¶3.2.4.1). The Gross Settlement Payment is for civil
8 penalties only and does not act as a waiver to any employee's individual claims for individual
9 relief. A true and correct copy of the PAGA Settlement Agreement and Release ("Settlement
10 Agreement" or "S.A."), is attached as **Exhibit 2** to the Declaration of Zorik Mooradian. ZM
11 Decl. ¶11, Exh. 2.

12 The Settlement contemplates inclusion of a "Notice of Settlement of PAGA
13 Representative Action" with payments to Aggrieved Employees which notifies them of the
14 Lawsuit, Settlement, Release, and calculation of their share. A true and correct copy of which
15 is attached as **Exhibit 3** to the Declaration of Zorik Mooradian. ZM Decl. ¶12, Exh. 3.

16 The Settlement contemplates maximum coverage for 13,750 Pay Periods during the
17 PAGA Period which may escalate to the extent the total Pay Periods exceeds 10% of that
18 amount, or 15,125. S.A. at ¶8.

19 The Administrator will issue checks for the Individual PAGA Payments and send them
20 to the Aggrieved Employees via First Class U.S. Mail. The face of each check shall
21 prominently state the date (not less than 180 days after the date of mailing) when the check
22 will be voided. The Administrator will cancel all checks not cashed by the void date. Before
23 mailing any checks, the Settlement Administrator must update the recipients' mailing
24 addresses using the National Change of Address Database. If any checks are not cashed within
25 180 days of mailing, the Administrator shall transmit the funds represented by such checks to

26
27 ¹ In addition to the \$275,000 Gross Settlement Payment, the Parties have agreed to a separate \$20,000
28 settlement for Plaintiff's individual claims.

1 the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.
2 S.A. at ¶4.4.1, 4.4.3.

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4 **III. THIS COURT SHOULD APPROVE THIS PAGA SETTLEMENT**
5 **BECAUSE IT IS A FAIR, ADEQUATE, AND REASONABLE**
6 **COMPROMISE OF HIGHLY DISPUTED CLAIMS**

7 Labor Code section 2699(l)(2) provides that the Court shall review and approve any
8 settlement of any civil action filed pursuant to PAGA. A PAGA settlement is different from
9 one in a class action, however, and a PAGA settlement is not subject to the same level of
10 scrutiny in approving an associated settlement. These distinctions include the fact that a
11 PAGA representative action is fundamentally a law enforcement action designed to protect
12 the public and penalize the employer for past illegal conduct. *Cunningham v. Leslie's*
13 *Poolmart, Inc.* (C.D. Cal. June 25, 2013) 2013 U.S.Dist. LEXIS 90256, 16-17 [internal
14 citation omitted].) The purpose of a PAGA action is not to collect damages on behalf of
15 employees or provide restitution for Labor Code violations. *Id. see also Franco v. Athens*
16 *Disposal Co., Inc.* (2009) 171 Cal.App.4th 1277, 1300 (“Restitution is not the primary
17 objection of a PAGA action, as it is in most class action.”) Also, PAGA does not require notice
18 requirements for unnamed aggrieved employees nor may such employees opt out of a PAGA
19 action. *Baumann v. Chase Ins. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122).

20 Civil Penalties assessed under PAGA are primarily intended to deter violations of the
21 employment laws of the State of California. *Iskanian v. CLS Transportation Los Angeles, LLC*
22 (2015) 59 Cal.4th 348. Whether the total settlement of a PAGA claim achieves the objectives
23 of the statute is a factor that should strongly be considered in evaluating this instant settlement.
24 Significantly, pursuant to Labor Code Section 2699(e)(2), in any action brought by an
25 aggrieved employee under PAGA, a court may award a lesser amount than the maximum civil
26 penalty amount if to do otherwise would result in an award that is unjust, arbitrary and
27 oppressive, or confiscatory. Courts routinely exercise this discretion. See e.g., *Parr v. Golden*
28 *State Overnight* (Alameda S.Ct., 2014, RG12-618103) (93% reduction in PAGA penalties
even after plaintiffs prevailed at trial); *Kileigh Carrington v. Starbucks Corp.* (2018) 30

1 Cal.App.5th 504 (reducing potential PAGA liability to only \$5 per proven violation). As
2 explained below, the weaknesses of the claim would potentially justify significant reduction
3 of maximum available penalties. The terms of the settlement sufficiently act to deter
4 Defendants from further violations alleged in the matter.

5 PAGA was passed because the Legislature believed it necessary “to achieve maximum
6 compliance with state labor laws” and “to ensure an effective disincentive for employers to
7 engage in unlawful and anticompetitive business practices.” 2003 Cal. Legis. Serv. Ch. 906 §
8 1(a). The Legislature further found that, while self-policing efforts have had some success,
9 “in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment
10 and collection of civil penalties as provided in the Labor Code.” *Id.* at § 1(b). Through PAGA,
11 the Legislature thus: (1) sought to “enlist[] willing citizens in the task of private enforcement,”
12 *Iskanian*, 59 Cal.4th at 390; (2) “deputized” aggrieved employees to sue on behalf of the State
13 to enforce state labor laws; and (3) authorized them to recover civil penalties, attorneys’ fees,
14 and costs. 2003 Cal. Legis Serv. Ch. 906 (Legislative Counsel’s Digest). In bringing a PAGA
15 action, “[t]he employee-plaintiff acts as the proxy or agent of the state labor enforcement
16 agencies, representing the same legal right and interest as those agencies” *Id.* at 394.

17 As for the interests of the LWDA (in whose shoes Plaintiff stands), its top enforcement
18 priorities are “to vigorously enforce minimum labor standards in order to ensure employers
19 are not required or permitted to work under substandard unlawful conditions . . .” and to
20 “protect employers who comply with the law from those who attempt to gain a competitive
21 advantage at the expense of their workers by failing to comply with minimum labor
22 standards.” Labor Code §90.5(a). Moreover, in addition to the collection of civil penalties,
23 Labor Code § 1194.5 (which is specifically referenced in Labor Code § 90.5) authorizes the
24 LWDA to seek injunctive relief.

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1 **A. Analysis of Plaintiff’s PAGA Claim**

2 1. Payment of Wages

3 Employees tracked their time, including meal breaks, by filling out their own
4 timesheets. Employees signed off on each weekly timesheet to confirm that it was “an accurate
5 record of [their] hours worked ...” Employees were instructed to record time in “0.25
6 increments.” Plaintiff contended that employees essentially mirrored scheduled shifts such
7 that the timesheets did not capture all time worked. Defendants countered that there were no
8 restrictions or limitations on time entries and employees would be paid for the time they
9 presented. Moreover, that due to a warehouse environment, there was a certain regularity to
10 shifts and meal breaks such that there was little to no risk that there would be any work off-
11 the-clock. Plaintiff’s review of the sample time and payroll records did not reveal any
12 rounding or regular rate issues. Based on the foregoing, it will be extremely difficult to
13 establish that employees are owed any amount of additional wages for work off-the-clock.
14 ZM Decl. ¶14.

15 2. Meal and Rest Breaks

16 Review of the sample records revealed that 99.4% of shifts more than 5 hours had a
17 recorded first meal break. Of those recorded meal breaks, only 8.9% were recorded after the
18 fifth hour of work, 40.9% were exactly 30 minutes in duration, and 58.3% were more than 30
19 minutes long. Defendants represented that their analysis revealed a 92% compliance rate.
20 Plaintiff contended that such a high degree of compliance is reflective of some degree of
21 manipulation, mainly that employees were expected to log meal breaks as scheduled
22 regardless of when and if they were taken. Defendants countered that meal breaks were
23 properly scheduled and taken. That the warehouse work environment was conducive to timely
24 and proper meal breaks and the records affirm as such. Per the records, Plaintiff calculates
25 2,615 pay periods with unique meal break violations (late, short, and/or no meal break) such
26 that this may be deemed the theoretical maximum for coverage of this claim. Ultimately,
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1 varying circumstances would potentially force determination on a myriad of individual issues
2 which would present issues of proof at trial. ZM Decl. ¶15.

3 Notices were posted for two 10-minute rest breaks which were scheduled by
4 department. Employees were advised to indicate on their timesheets if any rest period was
5 “not taken.” ZM Decl. ¶16.

6 3. Failure to Reimburse Expenses

7 Plaintiff contended that he had to provide supplies on occasion but there was no
8 indication that such was a systematic issue or that Defendants refused to reimburse for
9 expenses of which they were aware. ZM Decl. ¶17.

10 4. Wage Statement and Waiting Time Violations

11 The weekly wage statements issued to Plaintiff identified “Windsor Store” and did not
12 identify “Gotworx” or any employer address. This would readily support a violation across
13 each of the 12,964 pay periods assuming all the wage statements are similarly flawed. As to
14 waiting time penalties, Plaintiff identified 488 former employees with at least one of the 2,615
15 unique meal period violations to support a derivative claim. ZM Decl. ¶18.

16 5. Potentially Available PAGA Penalties/Realistic Exposure

17 The lawsuit implicates an estimated 13,750 weekly pay periods during the PAGA
18 Period. The only realistic route to recovery of penalties will be for some portion of the 2,615
19 pay periods with unique meal break violations and wage statement claims. Maximum
20 penalties, assuming a violation for each and every pay period, assessed at the \$100 violation
21 rate, for each of the 13,750 pay periods results in maximum potential exposure of \$1,375,000.
22 To the extent Plaintiff is able to trigger predicate violations beyond the meal and wage
23 statement issues and is able to stack PAGA penalties, the potential maximum could be higher.
24 ZM Decl. ¶23. Although no California appellate decision has addressed whether a plaintiff
25 can stack penalties for different predicate violations, the California Supreme Court’s decision
26 in *ZB, N.A. v. Superior Court*, (2019) 8 Cal.5th 175, rejected an employee’s attempt to recover
27 default civil penalties in addition to civil penalties assessed with respect to unpaid wages under
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1 Cal. Labor Code 558. The Court highlighted that civil penalties “are intended ‘to punish the
2 employer’ for wrongdoing, often ‘without reference to the actual damage sustained’”
3 (*citing Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104). Plaintiff
4 ultimately does not anticipate being able to stack PAGA penalties as he deems it highly likely
5 that a court will potentially be persuaded that assessment of a single penalty per pay period
6 per employee will be sufficient to punish past violations and deter future ones.

7 Furthermore, discretionary reductions are anticipated in addition to general litigation
8 risk and delay. Taking the \$1,375,000 sum as the maximum potential figure and applying a
9 discretionary reduction of 85% (consistent with reported cases) results in \$206,250 in
10 available penalties. The penalties to be distributed (\$156,723.92) captures 76% of this sum.
11 The Parties’ settlement substantially captures this realistic valuation, provides for significant
12 recovery of civil penalties by the state, and is expected to deter future Labor Code violations
13 by Gotworx and Windsor. Accordingly, Plaintiff’s counsel believes that this PAGA settlement
14 is fair, reasonable, and in the best interests of the aggrieved employees and the State of
15 California. ZM Decl. ¶20.

16 17 **IV. AN AWARD OF ATTORNEYS’ FEES SHOULD BE APPROVED**

18 California Labor Code § 2699(g) states that an employee whose action results in the
19 payment of civil penalties “shall be entitled to an award of reasonable attorneys’ fees and
20 costs.” Here, Plaintiff’s counsel is seeking recovery of \$91,666.67 in attorneys’ fees, or one-
21 third of the Gross Settlement Amount. The incurred fees are necessary and reasonable.
22 Significantly, these fees are contingent in nature for counsel. ZM Decl. ¶21.

23 In Counsel’s experience, a gross PAGA settlement of \$275,000 is a fair, reasonable,
24 and adequate settlement in light of the strength of the claim, Defendants’ defenses, and the
25 strong possibility there would be no recovery without this settlement. Even if Plaintiff was to
26 prevail on the underlying claim, he would face the potential of significant discretionary
27 reduction of maximum penalties by the Court. ZM Decl. ¶5. Counsel’s efforts have resulted
28 in over a one hundred-thousand-dollar recovery by the State of California.

1 **A. PAGA Counsel’s Fees Should be Approved as a Percentage of the**
2 **Total Common Fund Created**

3 PAGA Counsel seeks a fee award calculated as a percentage of the total value of the
4 settlement for successful prosecution and resolution of all existing claims. Both California
5 State and Federal Courts have recognized that an appropriate method in determining an
6 attorney fee award may be based on the percentage on the total value of the benefits conferred
7 by the settlement. *Serrano v. Priest* (1997) 20 Cal. 3d 25-34 [*Serrano III*]; *Boeing Company*
8 *v. Van Gemert* (1980) 344 U.S. 472, 478; *Vincent v. Hughes Airwest, Inc.* (9th Cir. 1977) 557
9 F.2d 759, 769. The purpose of this equitable doctrine is to avoid unjust enrichment and to
10 “spread litigation costs proportionately among all the beneficiaries so that the active
11 beneficiary does not bear the entire burden alone.” *Id.* at 768. The monetary benefits will then
12 be paid from a common fund.

13 The California Supreme Court endorsed a fee award as a percentage of the common
14 fund; the Court clarified “that when an attorney fee is awarded out of a common fund
15 preserved or recovered by means of litigation (internal citation omitted), the award is not per
16 se unreasonable merely because it is calculated as a percentage of the common fund.” *Laffitte*
17 *v. Robert Half Int’l. Inc.* (2016) 1 Cal. 5th 480, 486. Also “[t]hat the recognized advantages
18 of the percentage method...convince us that the percentage method is a valuable tool that
should not be denied in our trial courts.” *Id.* at 503.

19 The Common Fund Doctrine is predicated on the principle of preventing unjust
20 enrichment. When a litigant’s efforts create or preserves, or generates a fund from which
21 others derive benefits, he may require the passive beneficiaries to compensate those who
22 created the fund. Both California State and Federal Courts have embraced this Doctrine.
23 *Serrano III, supra*, at 35; *Vincent, supra*, at 769.

24 Since *Serrano III, supra*, there has been a ground swell of support for mandating the
25 percentage of the fund approach in common fund cases. Both State and Federal Court have
26 found the percentage approach preferable to the Lodestar because; (1) it aligns the interest of
27 counsel and absent parties (PAGA Counsel and the LWDA here); (2) it encourages efficient
28

1 resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and
2 (3) it reduces the demand on judicial resources. *In re Activision Sec. Litig.* (N.D. Cal. 1989)
3 723 F Supp. at 1378-79. The Ninth Circuit now routinely uses the percentage of the common
4 fund approach to determine the award of attorney fees. *Lealao v. Beneficial Calif., Inc.* (2000)
5 82 Cal.App.4th 19, 30-31.

6 Collectively, PAGA counsel seeks \$91,666.67 which is one-third of the \$275,000
7 Settlement Amount. Class Counsel's request for one-third of the monetary fund recovered is
8 well within the range customarily approved by California courts in class actions as well as
9 with contingency contracts negotiated by Plaintiff and his counsel. "Empirical studies show
10 that regardless of whether or not the percentage method or Lodestar method is used, fee
11 awards in class actions average around one-third of the recovery." See e.g., *Chavez v. Netflix,*
12 *Inc.* (2008) 162 Cal.App.4th 66, fn. 11; *In re California Indirect Purchases* (October 22, 1998)
13 WL1031494 at *9 (citing *In re Milk Antitrust Litigation* (L.A. Sup. Ct. 1998) Civ. Case No.
14 BC070061 (33 1/3% award); *In re Facsimile Paper Antitrust Litigation* (San Francisco Sup.
15 Ct. 1997) Civ. Case No. BC 0070061 (33 1/3% award); *In re Liquid Carbon Dioxide Cases*
16 (San Diego Sup. Ct. 1996) J.C.C.P. 3012 (33 1/3% award); *Romero v. Producers Dairy Foods,*
17 *Inc.* (E.D. Cal. November 14, 2007) WL 3492841 at *4 ("fee awards in class actions average
18 around one-third of the recovery." (Quoting Newberg on Class Actions § 14.6 (4th ed. 2007).

19 In *Lealao, supra*, at 46-47, the Court indicated that in defining a "reasonable" fee in
20 representative actions, the law should "mimic the market." The Court went on to state:

21 "Given the unique reliance of our legal system on private litigants to enforce
22 substantive provisions of law through class and derivative actions, attorneys
23 providing the essential enforcement services must be provided incentives roughly
24 comparable to those negotiated in the private bargaining that takes place in the
25 legal marketplace as it will otherwise be economic for Defendant's to increase
26 injurious behavior. *Lealao, supra*, 82 Cal.App.4th at 46-47, and *Graciano v.*
27 *Robinson Ford Sales, Inc.* (2006) 144 Cal. App.4th 140, 163.

28 For the following reasons, awarding one-third of the gross settlement for attorney fees
is fair, reasonable and appropriate.

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1 **B. Factors Supporting the Fee Award**

2 1. The Amount of the Settlement

3 In Counsel's experience, a PAGA settlement for \$275,000 is a fair, reasonable, and
4 adequate settlement in light of the asserted claims, Defendants' defenses, and the strong
5 possibility that there would be no recovery without this settlement. ZM Decl., ¶5. Declaration
6 of Haik Hacopian (hereinafter "HH Decl." ¶5). The LWDA will be recovering a significant
7 penalty award and aggrieved employees will be receiving noteworthy payments as well. The
8 average amount expected to be paid amongst 1,874 Aggrieved Employees is \$20.91.
9 (\$39,180.98 ÷ 1,874). ZM Decl., ¶11.

10 2. The Named Plaintiff Signed a Retainer Agreement

11 Plaintiff Chavez signed a single retainer with Mooradian Law, APC. The Retainer
12 Agreement had language providing for a contingency recovery in attorneys' fees in excess of
13 one-third, of course, subject to a court approval of class wide issues. The Retainer Agreement
14 also had a provision for recovery of costs in relation to the representation. ZM Decl. ¶22.

15 In *Lealao, supra*, 82 Cal.App.4th at 46-47, the court indicated that in defining a
16 "reasonable" fee in representative actions, the law should "mimic the market." Here, as for
17 the representation of the individual rights of Mr. Chavez, a proposed retainer agreement for
18 recovery of fees could be one-third of the gross recovery. That would be consistent with the
19 market rate, and there is no reason to believe that if counsel had signed a retainer agreement
20 with the LWDA to prosecute claims on the LWDA's behalf, it would be any different. ZM
21 Decl. ¶23.

22 In, *In re Cont'l Ill. Secs. Litig.*, Judge Posner endorsed a market-based approach to
23 evaluating fee requests, stating that the function of judges in fee litigation "is to determine
24 what the lawyer would receive if he were selling his services in the market rather than being
25 paid by court order." (7th Cir. 1992) 962 F.2d 566, 568. In a law review article (Silver) entitled
26 "A Restitutionary Theory of Attorneys' Fees in Class Actions (1991) 76 Cornell L.Rev. 656,
27 702-703 (it stated that the goal "is to pay attorneys on terms they would probably accept in an
28 ex ante bargain, before the outcome of litigation is known").

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1 3. Defendants Do Not Object to the Attorney Fee Agreement

2 In almost all the mediations that Mr. Mooradian has attended, a one-third to 35%
3 attorney fee percentage is generally agreed upon by the defendant and the plaintiff subject to
4 court approval. In this matter, the Parties agreed that PAGA Counsel may request up to one-
5 third and Defendants would not oppose the same. ZM Decl. ¶24.

6 Here, it is beyond any reasonable dispute that, if PAGA counsel had been able to
7 negotiate directly with the LWDA, the LWDA would have found that a one-third fee
8 arrangement was eminently reasonable. ZM Decl. ¶25.

9 4. The Contingent Risk Factor

10 For PAGA Counsel, the fees in this case are entirely contingent in nature. As the 9th
11 Circuit noted, class counsel who take a case on a contingency basis bears a “double
12 contingency: first they must prevail on the class claims, and then they must find some way to
13 collect what they win.” *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1377.
14 The fees received from one case are often used to finance and move forward other cases that
15 have failed and bring in revenue for counsel. ZM Decl. ¶21.

16 C. **The Lodestar/Multiplier Cross-Check**

17 Even though class counsel is requesting fees with the percentage of the benefit
18 approach, some courts nevertheless use a Lodestar/Multiplier cross check to confirm the fees’
19 reasonableness. *Lealao v. Beneficial California, Inc., supra*, 82 Cal.App.4th 19-45; *Vizcaino*
20 *v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051. The Lodestar Analysis (Lodestar-
21 Multiplied Method) begins with a calculation of time spent in reasonable hourly compensation
22 of each attorney and paralegal who worked on the case and then to compensation counsel for
23 risk, quality and result, courts commonly apply a “multiplier” to the Lodestar in awarding
24 attorney fees.

25 The first step is to determine the Lodestar individually for each attorney and/or
26 paralegal that has worked on the case and is claiming fees. The Lodestar analysis for each
27 attorney appears in their own Declaration(s) and fee and cost ledger attachments, which is
28 summarized below:

Attorney(s)	Billable Rate(s)	Hours	Lodestar	Laffey Rate	
Zorik Mooradian ZM Decl., ¶26	\$650.00	63.7	\$41,405.00	\$1,057.00	\$67,330.90
Haik Hacopian HH Decl., ¶6	\$450.00	50	\$22,500.00	\$878.00	\$43,900.00
Total Lodestar		113.7	\$63,905.00		\$111,230.90

In this matter, the total present and anticipated lodestar tallies to \$63,905.00 and results in the requested \$91,666.67 fee award after the application of a 1.43 multiplier. To the extent Laffey Matrix rates are applied, the lodestar calculates to \$111,230.90, which exceeds the requested fee award. ZM Decl., ¶30.

D. A Lodestar Multiplier of 1.43 is Reasonable

“It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases.” *Fischell v. Equitable Life Assur. Society of U.S.* (9th Cir. 2002) 307 F.3d 997, 1008. In the Ninth Circuit, a lodestar amount is “routinely enhanced...to reflect the risk of non-payment in common fund cases.” *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125 (awarding multiplier of 5.2 and collecting cases with cross-check multipliers ranging from 4.5 to 19.6); *Morgret v. Applus Tech., Inc.* (E.D. Cal. Jun. 1, 2015) Case No. 1:13-cv-01801-JLT, 2015 WL 3466389 at *17 (awarding multiplier of 3.9, “which is within the range typically awarded in the Ninth Circuit.”); *Torchia v. W.W. Grainger, Inc.* (C.D. Cal. Dec. 29, 2014) 304 F.R.D. 256, 277 (Thurston, J.) (awarding multiplier of about 3.6).

Here, the lodestar multiplier of approximately 1.43 is well within the range of reasonableness, as has been held by numerous courts, especially in light of the significant work performed in this case, the results obtained, and the efficiency with which it was done.

Class Counsel’s requested hourly rates could also be assessed pursuant to the Laffey Matrix, which has been utilized in California district courts as “a widely recognized

1 compilation of attorney and paralegal rate data.” *Fernández v. Victoria Secret Stores, LLC*
2 (C.D. Cal. Jul. 21, 2008) 2008 WL 8150856 at *14 (citing *In re Chiron Corp. Sec. Litig.* (N.D.
3 Cal. Nov. 30, 2007) 2007 WL 4249902 at *6); see also *Theme Promotions, Inc. v. News*
4 *America Mktg. FSI, Inc.* (N.D. Cal. 2010) 731 F.Supp.2d 937, 948. As the court noted in
5 *Theme Promotions*, “[t]he rates posted in the Laffey matrix are tailored for the District of
6 Columbia, which has a different cost of living index” from the Los Angeles area. Therefore,
7 “to adjust the rates for the relevant legal market, the court will use the federal locality pay
8 differentials based on federally compiled cost of living data.” *Id.* (citing *In re HPL Tech., Inc.*
9 *Sec. Litig.* (N.D. Cal. 2005) 366 F.Supp.2d 912, 921); see also *Fernandez, supra*, at *14
10 (recognizing “where use of the Laffey matrix has been disapproved [in the Central District],
11 it has been because it produced a rate that the court determined was too low.”)

12 The Laffey Matrix demonstrates PAGA Counsel’s requested rates are reasonable. The
13 current Laffey Matrix lists hourly rates of \$878 for attorneys in their 11th to 19th years out of
14 law school such as Mr. Hacopian, and \$1,057 for attorneys 20 plus years out of law school
15 such as Mr. Mooradian. PAGA Counsel’s requested rates fall well below these rates. To the
16 extent Mooradian Law APC’s lodestar is calculated at Laffey hourly rates, the total present
17 lodestar would amount to \$111,230.90 (and which would result in a negative multiplier). ZM
18 Decl., ¶¶29, 30, **Exhibit 4** (“Laffey Matrix”).

19 **E. Attorneys Fees v. Benefits Conferred**

20 While it’s generally true that the greater the attorney fees, the less funds there will be
21 for distribution as damages, nevertheless, a balance must be achieved. In the instant matter,
22 the LWDA and Aggrieved Employees got a very balanced and fair settlement. Given the
23 strengths and weaknesses of the case, they will be receiving a fair sum of money. The results
24 and the case law support that the settlement was fair, reasonable and adequate. In light of the
25 favorable settlement, giving more money to the LWDA and Aggrieved Employees after an
26 excellent settlement had been achieved punishes the attorneys without whom such a settlement
27 would not have been attained but for the efforts of good lawyering. Punishing lawyers when
28

1 they do well is potentially sending the wrong message and serves as a disincentive and unjustly
2 enriches the LWDA and Aggrieved Employees who will be receiving a fair and adequate
3 amount of benefits. ZM Decl. ¶31.

4
5 **V. PAYMENT OF COSTS TO COUNSEL SHOULD BE APPROVED**

6 Counsel has incurred \$10,609.41 in total costs in prosecuting this matter, which is far
7 less than the \$20,000 maximum contemplated by the settlement, and is the amount that
8 Plaintiff is requesting that the Court approve. S.A. ¶3.2.2. All costs are necessary and
9 reasonable, as reflected by the itemized cost ledgers of counsel. ZM Decl. ¶28; (\$10,100.37);
10 HH Decl. ¶6 (\$509.04).

11
12 **VI. PAYMENT FOR ADMINISTRATION EXPENSES SHOULD BE APPROVED**

13 Counsel has secured a not to exceed bid from CPT Group, Inc., the Parties' selected
14 administrator, in the amount of \$13,000 in relation to dissemination of payments to the various
15 parties as contemplated by the settlement including to all Aggrieved Employees. CPT will
16 also translate the notice to Aggrieved Employees into Spanish and will be responsible for the
17 escheatment of uncashed checks. A true and correct copy of the not to exceed quote secured
18 from CPT is attached to the Declaration of Zorik Mooradian as **Exhibit "5"**. ZM Decl., ¶35,
19 Exh. 5.

20 **VII. CONCLUSION**

21 For the reasons stated herein, this Court should grant Plaintiff's Motion in its entirety
22 and adopt the [Proposed] Order submitted concurrently herewith.

23
24 Dated: Sept. 16, 2024

MOORADIAN LAW, APC

By: /s/ Haik Hacopian

Zorik Mooradian, Esq.,
Haik Hacopian, Esq.,

Attorneys for Plaintiff and Aggrieved
Employees