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Attorneys for Plaintiffs Rosalba Rios, Juan Sosa, and Fenix Valle, on behalf of themselves and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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

ROSALBA RIOS, JUAN SOSA, AND
FENIX VALLE, on behalf of themselves and
all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiffs,

v.

PASCHEN MANAGEMENT
CORPORATION, a California corporation,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 56-2022-00570446-CU-OE-VTA

Assigned to the Hon. Mark S. Borrell, Dept. 40

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

Date: March 13, 2024

Time: 8:30 A.M.

Dept.: 40

Complaint Filed: September 26, 2022

1 **PLEASE TAKE NOTICE THAT** on March 13, 2024 at 8:30 a.m., or as soon thereafter
2 as the matter may be heard, in Department 40 of the above-entitled Court, located at 800 South
3 Victoria Avenue, Ventura, CA 93009, Plaintiffs Rosalba Rios, Juan Sosa, and Fenix Valle will and
4 hereby do move unopposed for an Order: (1) granting approval of the proposed settlement of claims
5 brought pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*)
6 (“PAGA”) set forth in the Parties’ Settlement Agreement and Release of Private Attorneys General
7 Act Claim (the “Settlement Agreement”); (2) appointing Phoenix Settlement Administrators as the
8 Settlement Administrator and approving payment of its fees not to exceed \$10,750 from the Gross
9 Settlement Amount; (3) directing disbursement of the Gross Settlement Amount pursuant to the
10 terms of the Settlement Agreement; (4) directing payment of attorneys’ fees and litigation costs
11 from the Gross Settlement Amount not to exceed \$124,589.40 to Plaintiffs’ counsel; (5) directing
12 Service Award Payments from the Gross Settlement Amount in the amount of \$7,000 to each
13 Plaintiff, Rosalba Rios, Juan Sosa, and Fenix Valle (\$21,000 total); and (6) dismissing this Action
14 with prejudice.

15 This motion will be based on this Notice, the supporting memorandum of points and
16 authorities, the Parties’ Settlement Agreement, the Declarations of Daniel F. Gaines, Plaintiffs
17 Rosalba Rios, Juan Sosa, and Fenix Valle, and Jodey Lawrence, the documents and records on file
18 in this matter, and such additional arguments, authorities, and evidence and other matters as may
19 be presented by the Parties hereafter.

20 Date: February 20, 2024

Respectfully submitted,

GAINES & GAINES, APLC

23 By: 
24 DANIEL F. GAINES
25 ALEX P. KATOFSKY
26 Attorneys for Plaintiffs
27 ROSALBA RIOS, JUAN SOSA, AND
28 FENIX VALLE

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Rosalba Rios, Juan Sosa, and Fenix Valle (“Plaintiffs”) and aggrieved employees
4 under the Labor Code’s Private Attorneys General Act of 2004 (“PAGA”) respectfully move this
5 Court for an Order granting approval of the proposed Settlement of the above-captioned lawsuit
6 against Defendant PASCHEN MANAGEMENT CORPORATION (“Defendant”). The proposed
7 Settlement will dispose of the Released PAGA Claims asserted on behalf of Plaintiffs and
8 approximately 1,177 individuals who were employed by Defendant in California in a non-exempt
9 position at any time from July 13, 2021 through September 30, 2023 (the “PAGA Period”) (the
10 “PAGA Members”). *See* Settlement Agreement, at ¶¶ 8, 15, 16.

11 This case addresses claimed violations of employee protections embodied in the California
12 Labor Code and penalties stemming therefrom for the violation of the PAGA. Plaintiffs alleged
13 that Defendant failed to pay Plaintiffs and PAGA Members all minimum wages and overtime wages
14 earned, in violation of Labor Code §§ 510, 558, and 1194; failed to properly blend bonuses earned
15 by Plaintiffs and PAGA Members into their regular rate for purposes of paying them meal and rest
16 period premiums, overtime wages, and sick pay at the correct rates, in violation of Labor Code §§
17 246, 226.7, 510, 512, 558, and 1194; failed to provide Plaintiffs and PAGA Members with legally
18 compliant rest periods, or compensation in lieu thereof, in violation of Labor Code § 226.7; failed
19 to provide Plaintiffs and PAGA Members with legally compliant meal periods, or compensation in
20 lieu thereof, in violation of Labor Code §§ 226.7, 512, and 558; failed to issue accurately itemized
21 wage statements to Plaintiffs and PAGA Members, in violation of Labor Code §§ 226(a) and 226.3;
22 and failed to timely pay Plaintiffs and PAGA Members all wages due at the separation of their
23 employment, in violation of Labor Code §§ 201-202. As a result of Defendant’s alleged violations
24 of the Labor Code, approximately 1,177 employees are claimed to have suffered Labor Code
25 violations for up to 14,600 aggregate pay periods at the rate of \$100 each based on PAGA’s penalty
26 provisions. *Gaines Decl.*, ¶ 20.

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

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

7 The value achieved by the Settlement may be gleaned from the fact that the Labor and
8 Workforce Development Agency (“LWDA”) and the approximately 1,177 PAGA Members
9 encompassed by the Settlement will receive no less than \$158,660.60 under the terms of the
10 Settlement, which, pursuant to the operative statute, shall be allocated “75 percent to the Labor and
11 Workforce Development Agency . . . and 25 percent to the aggrieved employees.” *See* Cal. Lab.
12 Code § 2699(i). This is a reasonable recovery, not only because further litigation may have resulted
13 in a net-zero recovery based on the defenses available to Defendant, but because the amount secured
14 by Plaintiffs is sizable and in line with similar settlements of these types of claims under PAGA. It
15 is also important to underscore that all penalty amounts paid to PAGA Members will be an
16 unexpected windfall, as employees typically do not bring individual lawsuits asserting only PAGA
17 penalties.

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

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

21 **A. The Parties**

22 Defendant operates McDonalds Corporation restaurant franchises in California, including
23 in Ventura County where it employed Plaintiffs. *Gaines Decl.* at ¶ 8.

24 Defendant employed Plaintiff Rosalba Rios as a non-exempt employee since August 2003,
25 Plaintiff Juan Sosa as a non-exempt employee from 2008 to December 2022, and Plaintiff Fenix
26 Valle as a non-exempt employee from May 2018 through May 2022. The PAGA Members are all
27 individuals who were employed by Defendant in California in a non-exempt position from July 13,
28 2021 through September 30, 2023. *Gaines Decl.* at ¶ 9.

1 **B. The Claims Asserted**

2 Plaintiffs assert claims that Defendant failed to pay them and PAGA Members all minimum
3 wages and overtime wages earned; failed to properly blend bonuses earned by them and PAGA
4 Members into their regular rate for purposes of paying them meal and rest period premiums,
5 overtime wages, and sick pay at the correct rates; failed to provide them and PAGA Members with
6 legally compliant rest periods, or compensation in lieu thereof; failed to provide them and PAGA
7 Members with legally compliant meal periods, or compensation in lieu thereof; failed to issue
8 accurately itemized wage statements to them and PAGA Members; and failed to timely pay them
9 and PAGA Members all wages due at the separation of their employment. Plaintiffs assert these
10 claims under PAGA, on behalf of themselves, individually, and on behalf of the State of California
11 and other PAGA Members, seeking civil penalties for the alleged Labor Code violations. Gaines
12 Decl. at ¶ 10.

13 **C. Procedural Posture**

14 On July 13, 2022, pursuant to Labor Code section 2699.3, Plaintiffs gave written notice by
15 online filing with the LWDA and by certified mail, return receipt requested, and to Defendant, of
16 the specific provisions of the Labor Code alleged to have been violated, including the facts and
17 theories to support the alleged violations. Gaines Decl., ¶¶ 6-7; **Exhibit B** (LWDA Notice Letter).
18 On September 26, 2022, and after the LWDA declined to take action within the statutorily
19 permissible time with respect to Plaintiffs' July 13, 2022 letter, Plaintiffs filed their representative
20 action complaint in this Court. Gaines Decl., ¶ 6.

21 **D. Plaintiffs' Counsel's Investigation**

22 Counsel for Plaintiffs engaged in targeted, informal discovery of Defendant's alleged Labor
23 Code violations, which specifically evaluated the strength and value of the PAGA claims in
24 preparation for a resolution of this Action. Gaines Decl. at ¶ 12.

25 Plaintiffs' Counsel obtained and reviewed multiple documents, including (i) Plaintiffs'
26 employee files and wage statements, (ii) policy documents relating to the employment of Plaintiffs
27 and PAGA Members, and (iii) data relating to the number of alleged violations and the value of the
28 recoverable penalties, including time and payroll data. Gaines Decl. at ¶ 13.

1 Based on the information received, as well as through discussions with Defendant's
2 Counsel, Plaintiffs' Counsel was able to (i) determine the total number of distinct individuals falling
3 within the definition of "PAGA Member" for the relevant statutory period, (ii) the number of
4 affected pay periods at issue among them, and (iii) construct a damage model that calculated the
5 maximum realistic amount of PAGA penalties that could be levied against Defendant within the
6 PAGA Period based on employee timekeeping and payroll data produced by Defendant. Gaines
7 Decl. at ¶ 14. At all relevant times, Defendant has disputed Plaintiffs' claims and contested both
8 the existence of and extent of liability as alleged by Plaintiffs. *Id.*

9 Plaintiffs' Counsel's experience in litigating similar "representative" wage and hour claims,
10 the degree of investigation that was conducted here, the amount of data that was obtained, and the
11 discussions guided by mediation was sufficient to determine the potential value of the PAGA claim
12 and to evaluate the strength of this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-5, 12-19,
13 22-25, 27-29. Defendant, however, disputed Plaintiffs' claims and disputed both the existence of
14 and extent of liability as alleged by Plaintiffs.

15 On or about December 8, 2020, this Court granted final approval of a class action settlement
16 in the case *Coby Morales vs. Paschen Management Corporation*, Ventura County Superior Court,
17 Case No. 2019-00525405 (the "*Morales* Action"). Since the *Morales* Action, Defendant amended
18 many of its policies and practices with respect to the claims Plaintiffs alleged in this Action.
19 Defendant's Counsel provided Plaintiffs' Counsel with a sampling of time and wage data, along
20 with its applicable written policies. Plaintiffs' Counsel determined that Defendant maintained
21 lawful written policies and made efforts to enforce legally compliant practices. Plaintiffs' Counsel
22 ascertained that the best claim they maintained, exposing Defendant to potential liability, was
23 related to Defendant's failure to set forth on paystubs all applicable hourly rates in effect during
24 the pay period and the corresponding number of hours worked at each hourly rate, in violation of
25 Labor Code §§ 226(a)(9) and 226.3. Plaintiffs alleged that the wage statements issued omitted the
26 overtime, sick pay, and meal and rest period premium rates if they were earned during the pay
27 period. Based on an analysis conducted by Plaintiffs' expert statistician, Bennett Berger of Berger
28 Consulting Group, Plaintiffs' Counsel determined that there were up to 10,552 independent

1 violations of Labor Code § 226(a)(9), which impacted 34.3% of pay periods. Gaines Decl. at ¶ 15.

2 Based on an alleged violation rate of 34.3% among 14,600 total pay periods, Defendant's
3 liability for wage statement claim was up to \$500,700 in theoretical civil PAGA penalties,
4 attributable to 5,007 distinct pay periods. Defendant maintained numerous defenses to this claim,
5 including that it acted in good faith at all times, and that PAGA Members suffered no actionable
6 injury, such that a condition to recovery of penalties under Labor Code § 226 was not satisfied. It
7 also took the position that PAGA penalties could not be stacked, and the Court would likely exercise
8 its discretion to reduce or eliminate them altogether, based on the alleged deficiencies in claims
9 asserted. Gaines Decl. at ¶ 16.

10 Defendant strongly contends that its policies and practices do not violate any laws. It
11 contends that it properly paid all wages and provided for all meal and rest periods and fully
12 compensated its employees for all time worked. It further contends that the wage statements it
13 provided to its employees are fully compliant with California law. Gaines Decl. at ¶ 17.

14 If Plaintiffs stacked penalties for all claims alleged, the value of the PAGA claims would
15 be approximately \$1,460,000. However, recovery on these claims was not certain. PAGA claims
16 are discretionary, such that the Court could (and almost certainly would) decline to award their full
17 value. The Court could award far less than the maximum value on these penalty claims, particularly
18 where, as here, they greatly exceed the value of the underlying wage claims. Considering the
19 numerous claims asserted by Plaintiffs and the obstacles to prevailing on many of them, it is
20 possible that they would not prevail on one or more of them, such that their PAGA claims as to
21 some or all of their claims would also fail. The compromised settlement amount takes these risks
22 into account. A discount on the maximum value of PAGA Members' claims was required (and
23 warranted) to resolve the matter at this stage of the litigation. Gaines Decl. at ¶ 18.

24 **E. Settlement Negotiations**

25 On September 25, 2023 and December 8, 2023, the Parties participated in mediation
26 sessions with a respected mediator and retired jurist, Hon. David I. Brown (Sac. Sup. Ct., Ret).
27 During the mediations, the Parties engaged in arm's-length negotiations and reached a resolution
28 of the PAGA claims asserted in this Action. Gaines Decl. at ¶ 19.

1 **F. The Proposed Settlement**

2 The Parties jointly prepared and executed a Settlement Agreement and Release of Private
3 Attorneys General Act Claim (the “Settlement” or “Settlement Agreement”). Gaines Decl., ¶ 19;
4 **Exhibit C.** The Settlement Agreement sets forth the terms of the Settlement reached by the Parties,
5 including the following key points:

6 1. Defendant agrees to settle this matter for the payment of \$315,000 (hereinafter the
7 “Gross Settlement Amount”), which shall be all-inclusive, encompassing (i) all payments to the
8 LWDA and PAGA Members, (ii) any and all costs of third-party administration of the settlement,
9 (iii) Plaintiffs’ Counsel’s attorneys’ fees and costs of suit, and (iv) a modest Service Award
10 Payment to each Plaintiff. *See* Settlement Agreement, at ¶¶ 30(a)-(e).

11 2. The total sum available for payment of PAGA penalties shall be calculated by
12 deducting from the \$315,000 Gross Settlement Amount, \$124,589.40 for the payment of Plaintiffs’
13 Counsel’s fees and costs (\$110,050 in fees and \$14,539.40 in costs), \$7,000 for the payment of each
14 Plaintiffs’ Service Award Payment (\$21,000 total), and the costs of administration not to exceed
15 \$10,750, which yields \$158,660.60, and of which seventy-five percent (75%) or \$118,995.45, shall
16 be distributed to the LWDA, and the remaining twenty-five percent (25%) or \$39,665.15, shall be
17 distributed to the PAGA Members. *See* Settlement Agreement, at ¶¶ 30(a)-(e).

18 3. All PAGA Members will receive a pro rata share of the \$39,665.15 allocated to
19 PAGA Members, which shall be distributed based on the number of pay periods each PAGA
20 Members worked for Defendant in California during the PAGA Period. *See* Settlement Agreement,
21 at ¶ 30(e). Although these calculations will not be made until after approval, a rough estimation of
22 the value to the approximately 1,177 individuals falling within the definition of “PAGA Member”
23 may be gleaned from the fact that an equal division would provide about \$33.70 to each PAGA
24 Member, net of payments to the LWDA, the Settlement Administrator, attorney’s fees and costs,
25 and a Service Award Payment to each Plaintiff. The LWDA will be paid a substantial \$118,995.45.
26 *See* Gaines Decl., at ¶ 20.

27 4. In exchange for the above settlement consideration, Defendant and the Released
28 Parties shall be entitled to a limited release from each and every PAGA Member, including

1 Plaintiffs¹:

2 Upon approval by the Court of this Settlement, and subject to Defendant's payment
3 of the GSA, Plaintiffs, individually and in their representative capacities on behalf
4 the State of California and the PAGA Members will fully and finally release and
5 discharge the Released Parties from all claims, rights, demands, liabilities, costs,
6 attorney's fees, and causes of action for civil penalties under the PAGA, arising
7 during employment by Defendant in California in a non-exempt position during the
8 PAGA Period, based on the factual and legal allegations pled in the operative
9 Representative Action Complaint that support or relate to the following alleged
10 violations of law asserted by Plaintiffs in the Action pursuant to PAGA: (1) failure
11 to pay all minimum and overtime wages earned under Labor Code §§ 510, 558, and
12 1194; (2) failure to pay proper premium wages to employees who were denied
13 proper meal and rest periods under Labor Code §§ 226.7, 512, and 558; (3) failure
14 to issue accurately itemized wage statements under Labor Code §§ 226(a) and 226.3;
15 and (4) failure to timely pay wages upon separation of employment under Labor
16 Code §§ 201-202 (the "Released PAGA Claims").

11 The Released Parties means Defendant, and each of and all of its respective past,
12 present and future agents, employees, officers, directors, partners, trustees,
13 representatives, shareholders, stockholders, members, attorneys, parents,
14 subsidiaries, equity sponsors, related companies/corporations and/or partnerships,
15 divisions, assigns, predecessors, successors, insurers, consultants, joint venturers,
16 joint employers, affiliates, alter-egos, co-employers, dual employers, service
providers, contracting partners, subcontractors, employee benefit plans and
fiduciaries thereof, and all other persons and/or entities acting under, by, through or
in concert with any of them.

17 See Settlement Agreement, at ¶¶ 20, 31.

18 5. Settlement administration, which is to be paid from the Gross Settlement Amount,
19 shall not exceed \$10,750. See Declaration of Jodey Lawrence ("Lawrence Decl."), ¶ 16; **Exhibit B**
20 to Lawrence Decl. Phoenix Settlement Administrators, a reputable settlement administration
21 company, has agreed to administer the settlement for this amount, submitting a competitive bid.
22 *Id.* at ¶¶ 5-15; **Exhibit A**.

23 6. As detailed herein, Plaintiffs' Counsel seeks an award of attorneys' fees and
24 litigation costs totaling \$124,589.40, and each Plaintiff seeks a Service Award Payment of \$7,000
25 each. See Settlement Agreement, at ¶¶ 30(b)-(c).

26 ¹ This comports with settled California Supreme Court authority. See *Arias v. Superior Court*
27 (2009) 46 Cal. 4th 969, 986 (concluding that "with respect to the recovery of civil penalties,
28 nonparty employees as well as the government are bound by the judgment in an action brought
under the act . . .").

1 7. Finally, under the terms of the Settlement Agreement, the value of checks
2 uncashed more than 180 days after issuance shall be remitted to the Unclaimed Property Fund of
3 the California State Controller’s Office to be held in the name of the PAGA Member. *See*
4 Settlement Agreement, at ¶¶ 40-41. The Parties agree that it is in the best interest of the PAGA
5 Members for the value of checks uncashed more than 180 days after issuance to be remitted to
6 the Unclaimed Property Fund of the California State Controller’s Office to be held in the name
7 of the PAGA Member. *Id.* Counsel for Plaintiffs attests that their office regularly receives calls
8 from class members or aggrieved employees years after a case has settled to inquire about
9 obtaining their settlement share because they did not cash their check in time, lost their check, or
10 never received their check. Gaines Decl. at ¶ 21. By remitting the unclaimed checks to the State
11 Controller, the PAGA Members have a chance to receive their individual settlement payment
12 after the check cashing deadline. *Id.*

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

21 **III. LEGAL ARGUMENT**

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

23 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
24 statute, which states that the “[t]he superior court shall review and approve any settlement of any
25 civil action filed pursuant to this part.” *See Labor Code* § 2699(1)(2).

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

1 1,177222, 24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding
2 of absolutes and an abandoning of highest hopes” [*Officers for Justice v. Civil Service Com.*, 688
3 F.2d 615, 624 (9th Cir., 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
4 of wasteful and expensive litigation that induce consensual settlements.” *See id.*, at 625. As such,
5 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
6 or “judged against a hypothetical or speculative measure of what might have been achieved by the
7 negotiators.” *See id.*

8 Although the operative PAGA statute does not set forth the criteria on which a PAGA
9 settlement is to be judged, California law does state that some of the factors for review of a class
10 action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. section 382 and Cal. Rules of Court,
11 Rule 3.769, may be “useful in evaluating the fairness of a PAGA settlement” to the reviewing court.
12 *See Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56, 77 (“Thus, while PAGA does not require
13 the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for
14 settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public
15 and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors
16 used to evaluate class action settlements bear on a settlement's fairness—including the strength of
17 the Plaintiffs' case, the risk, the stage of the proceeding, the complexity and likely duration of
18 further litigation, and the settlement amount—these factors can be useful in evaluating the fairness
19 of a PAGA settlement.”) Courts within California have continued to approve settlements of PAGA
20 claims using Rule 23 criteria². However, it is important to underscore that not all Rule 23 factors
21 can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered
22

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

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

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

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

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

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

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

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

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

2 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-
3 length negotiations brokered through a respected third party neutral [Gaines Decl. at ¶ 19], (2) was
4 negotiated by Counsel with significant experience in similar wage and hour litigation [*see id.*, at ¶¶
5 2-5, 27-29 and **Exhibit A**], (3) which occurred after Counsel had conducted sufficient investigation
6 to evaluate the strength and potential value of the PAGA claims, as well as evaluating the risks of
7 litigating this claim through trial. *See id.*, at ¶¶ 12-19, 22-25. Based thereon, the Court should give
8 considerable weight to the competency and integrity of counsel in assuring itself that the Settlement
9 Agreement represents an arms-length transaction entered without self-dealing or other potential
10 misconduct.

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

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

17 This case addresses violations of important employee protections embodied in the
18 California Labor Code – namely, that Defendant failed to pay Plaintiffs and PAGA Members all
19 minimum wages and overtime wages earned, in violation of Labor Code §§ 510, 558, and 1194;
20 failed to properly blend bonuses earned by Plaintiffs and PAGA Members into their regular rate
21 for purposes of paying them meal and rest period premiums, overtime wages, and sick pay at the
22 correct rates, in violation of Labor Code §§ 246, 226.7, 510, 512, 558, and 1194; failed to provide
23 Plaintiffs and PAGA Members with legally compliant rest periods, or compensation in lieu thereof,
24 in violation of Labor Code § 226.7; failed to provide Plaintiffs and PAGA Members with legally
25 compliant meal periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7, 512,
26 and 558; failed to issue accurately itemized wage statements to Plaintiffs and PAGA Members, in
27 violation of Labor Code §§ 226(a) and 226.3; and failed to timely pay Plaintiffs and PAGA
28 Members all wages due at the separation of their employment, in violation of Labor Code §§ 201-

1 202. *See* Gaines Decl. at ¶ 22.

2 Defendant's maximum theoretical exposure in this Action, without stacking penalties, totals
3 approximately \$1,460,000 computed by multiplying 14,600 aggregate pay periods by \$100 each.
4 *See* Gaines Decl. at ¶ 23. There is no California authority that expressly permits the practice of
5 counting multiple violations/penalties that occur within the same pay period, known as "stacking"
6 penalties. Plaintiffs' Counsel is aware of no court that has actually stacked such PAGA penalties
7 for multiple violations (meaning the "market" for PAGA settlements is based on no stacking of
8 penalties) and given the circumstances of this case, it is unlikely that this Court would impose a
9 massive penalty by stacking the PAGA penalty claims against Defendant. *See* Gaines Decl. at ¶ 23.
10 Although stacking penalties is not unlawful, the majority of cases that address awards of PAGA
11 penalties focus on the court's discretion to reduce awards. *See Romo v. GMRI, Inc.*, 2014 WL
12 11320647, at *7 (C.D. Cal. Feb. 18, 2014) ("The court retains discretion over awards under a PAGA
13 claim"); *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413, at *4 (C.D. Cal. Jan. 31,
14 2011) ("The PAGA text also provides the Court with the discretion to limit the amount plaintiffs
15 may recover from the employer."); *Bright v. 99c Only Stores* (2010) 189 Cal. App. 4th 1472, 1480
16 n.8 ("The trial court has discretion to award less than the maximum amount of the civil penalty . .
17 . ."). Based thereon, the non-stacking/one penalty per pay period is an appropriate evaluation for
18 maximum potential exposure in this case.

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

1 cannot be presumed to be aware that its continuing underpayment of employee's is a violation
2 subject to penalties.") (internal quotations omitted). Defendant was not notified by the Labor
3 Commissioner or any court that it was subject to the California Labor Code, and has not been
4 previously cited by the Labor Commissioner for Labor Code violations. Therefore, any violations
5 prior to Plaintiffs' July 13, 2022 LWDA letter are not subject to heightened penalties.

6 Furthermore, Defendant contends it acted within the requirements of California law at all
7 times as to all PAGA Members. In particular, Defendant contends that it paid all employees all
8 minimum and overtime wages due. Defendant also contends that it has compliant meal and rest
9 break and wage statement practices. Defendant further contends that not every pay period at issue
10 involved an alleged Labor Code violation subject to civil penalties. Moreover, Defendant
11 maintained that even if the Court did award penalties, the Court could and would *substantially*
12 reduce the penalties awarded based on the discretionary factors contained in Labor Code §
13 2699(e)(2) ("In any action by an aggrieved employee . . . , a court may award a lesser amount than
14 the maximum civil penalty amount specified by this part if, based on the facts and circumstances
15 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
16 oppressive, or confiscatory."). Defendant also argued that it had valid and enforceable arbitration
17 agreements, which could preclude the litigation of PAGA claims on a representative basis
18 altogether, given the United States Supreme Court's ruling in *Viking River Cruises v. Moriana*, 142
19 S.Ct. 734 (2022). *See* Gaines Decl., ¶ 24.

20 Further, as discussed above, because Plaintiffs' expert found that Plaintiffs' strongest claim,
21 their wage statement claim, only affected 34.3% of pay periods, or approximately 5,007 pay
22 periods, Defendant's actual maximum liability was assessed by Plaintiffs' Counsel to be \$500,700
23 (the "realistic maximum possible liability"). Based on these disputes, which had the potential to
24 potentially eliminate Plaintiffs' recovery, the range of realistic "litigation outcomes" on the
25 Plaintiffs' PAGA claim was defined by a "realistic maximum possible liability" amount of
26 approximately \$500,700 [Gaines Decl., ¶ 25], and a net-zero recovery based on the defenses
27 asserted by Defendant. Notwithstanding the existence of such issues, the Settlement achieves a
28 significant benefit – approximately 62.9% recovery of the realistic maximum possible liability. As

1 such, this factor weighs very heavily in favor of resolution by way of the compromise set forth in
2 the Settlement Agreement. Gaines Decl., ¶ 25.

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

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

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

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

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

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

1 Here, after all deductions are made for administration, a Service Award Payment to each
2 Plaintiff, attorneys' fees and costs, \$158,660.60 will be paid out, of which \$118,995.45 (i.e. 75%)
3 will go to the LWDA, and \$39,665.15 (i.e. 25%) will go to the PAGA Members, as required by
4 Labor Code § 2699(i) ("civil penalties recovered by aggrieved employees shall be distributed as
5 follows: 75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the
6 aggrieved employees."). See Settlement Agreement, at ¶¶ 30(d)-(e).

7 This result is exceptional, as settlements of PAGA claims impacting thousands of
8 individuals have been approved as reasonable for amounts far less than the payment in this case.
9 See e.g., *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27,
10 2012) ("Defendant has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the
11 \$10,000, 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will
12 benefit the class The Court finds that the PAGA payment is set at a reasonable amount, and it
13 shall be approved."); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D.
14 Cal. Oct. 29, 2012) ("GTI agrees to allocate \$10,000 to plaintiff's PAGA claims, and will pay
15 \$7,500 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports
16 with settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
17 allocation of the Settlement to plaintiff's PAGA claim."); *Schiller v. David's Bridal, Inc.*, 2012 U.S.
18 Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) ("Pursuant to the Settlement Agreement, the
19 parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .
20 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
21 be approved."); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
22 2012) ("Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
23 California Labor and Workforce Development Agency The Court finds that the PAGA
24 payment is set at a reasonable amount, and it shall be approved.").³

25
26 ³ Significantly, each of the above-cited actions involved a *higher* number of "aggrieved employees"
27 than at issue here. See *Franco*, 2012 U.S. Dist. LEXIS 169057, 14 ("2,055 Class Members were
28 ultimately identified"); *Garcia*, 2012 U.S. Dist. LEXIS 160052, at 12 (class comprised of
"approximately 1,869 individuals"); *Schiller*, 2012 U.S. Dist. LEXIS 80776, 16 ("3,327 California
Class members were ultimately identified"); *Gong-Chun*, 2012 U.S. Dist. LEXIS 96828, 18 ("2,051
California Class Members were ultimately identified").

1 Thus, notwithstanding the existence of issues having the potential to completely eliminate
2 recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds
3 typical PAGA awards routinely approved by the courts, but it also recovers monies for PAGA
4 Members which they otherwise would not receive. As such, this factor balances strongly in favor
5 of approval of the Settlement.

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

7 As discussed above, the California Supreme Court has concluded that in the context of
8 PAGA “the nonparty employees, because they were not given notice of the action or afforded any
9 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
10 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in
11 exchange for the foregoing consideration is limited to the civil penalties asserted in the Action
12 under Labor Code §§ 2698 *et seq.* *See Settlement Agreement*, at ¶¶ 31-32. As such, the scope of
13 the release in the Settlement Agreement is narrowly tailored and favors approval of the Settlement.

14 **6. The Experience and Views of Plaintiffs’ Counsel Favor Approval of the**
15 **Settlement**

16 Plaintiffs’ Counsel has a significant degree of experience in complex wage and hour
17 litigation. *See Gaines Decl.*, ¶¶ 2-5, 27-29, 33, *Gaines Decl.* at **Exhibit A**. In the view of Plaintiffs’
18 Counsel, the benefit conferred by the proposed Settlement is fair, reasonable, and adequate under
19 the circumstances, as it reflects a reasoned compromise which takes into consideration the risks
20 inherent in this case, which had the potential to completely eliminate recovery. *Gaines Decl.*, ¶¶
21 12-19, 22-25, 30. As such, this factor balances in favor of approval of the Settlement.

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

24 In evaluating this element, the Court should be mindful that “formal discovery is not a
25 necessary ticket to the bargaining table” [*Linney*, 151 F.3d at 1239], as the relevant consideration
26 is “whether ‘the parties have sufficient information to make an informed decision about
27 settlement.’” *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at
28 26 (C.D. Cal. Nov. 9, 2011).

Here, the extent of informal discovery conducted was sufficient to enable Plaintiffs’

1 Counsel to evaluate the strength and value of the claim for purposes of settlement. Gaines Decl.,
2 ¶¶ 12-19. Prior to mediation, Defendant provided Plaintiffs with documents related to the policies
3 and practices at issue in this PAGA action. As discussed above, Plaintiffs' Counsel's investigation
4 was sufficient to, among other things, tabulate with precision the total number of alleged Labor
5 Code violations at issue during the PAGA Period and identify the total number of individuals falling
6 within the definition of "PAGA Member" for the PAGA Period.

7 Based on Plaintiffs' Counsel's experience litigating wage and hour claims, such
8 investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate
9 the strength of this claim for purposes of settlement. *See* Gaines Decl., ¶¶ 2-5; 27-29.

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

12 In addition to the factors presented above, the proposed Settlement does not possess any
13 obvious deficiencies. The Settlement contemplates entry of an Order (submitted concurrently
14 herewith) which approves the Settlement and dismisses the Action with prejudice. Paragraphs 50
15 and 57 of the Settlement Agreement and paragraph 8 of the Proposed Order authorize the Court to
16 retain jurisdiction to enforce the Settlement Agreement. This procedure effectively disposes of the
17 Action in its entirety, documents the Court's approval of the Settlement as required by PAGA, and
18 allows for Court intervention if necessary to enforce the terms of the Settlement Agreement. In
19 sum, under the applicable standards for approval of PAGA settlements in California, the settlement
20 in this case meets the standards for approval.

21 **IV. PLAINTIFFS' COUNSEL ARE ENTITLED TO RECOVER THEIR**
22 **REASONABLE FEES AND COSTS**

23 Pursuant to the terms of the Settlement, Plaintiffs' Counsel seeks attorneys' fees of thirty-
24 five percent of the Gross Settlement Amount (\$110,050) and reimbursement of litigation costs of
25 \$14,539.40, falling within the bounds authorized by the Settlement Agreement. *See* Settlement
26 Agreement, at ¶ 30(b). Plaintiffs' Counsel's entitlement to an award of attorneys' fees and costs is
27 warranted on multiple independent grounds. Further, the amount of fees requested falls well within
28 the range of reasonableness under applicable standards, as the amount requested constitutes a
"percentage of the fund" deemed reasonable in similar wage and hour settlements of this size and

1 approved by California courts, which is not only warranted based on the contingency risk Plaintiffs’
2 Counsel has agreed to incur for the benefit of the State of California and PAGA Members, but also
3 based on the significant results achieved, as the Settlement obtains a recovery substantially above
4 the range approved as reasonable by California state and federal courts. Based thereon, Plaintiffs’
5 Counsel respectfully requests that the Court enter an order approving the fee and cost amounts
6 requested.

7 **A. Plaintiffs’ Counsel Are Entitled To Recover Their Reasonable Fees And**
8 **Costs As A Matter Of Right**

9 Plaintiffs’ Counsel are entitled to recover attorneys’ fees and costs under the “common
10 fund” doctrine as a matter of right. As held by the U.S. Supreme Court, “a lawyer who recovers a
11 common fund for the benefit of persons other than themselves or his client is entitled to a reasonable
12 attorney’s fee from the fund as a whole.” *See Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.

13 Courts have long recognized the “common fund” or “common benefit” doctrine, under
14 which attorneys who create a common fund or benefit for a group of persons may be awarded their
15 fees and costs to be paid out of the fund. *Serrano v. Priest* (“*Serrano III*”) (1977) 20 Cal.3d 25,
16 34, quoting *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees’*
17 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
18 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
Auto-Lite Co. (1970) 396 U.S. 375, 391-392.

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

28 Where the lawsuit results in the recovery of a fund or property

1 benefiting others as well as plaintiffs (e.g., a class action), the court
2 has inherent equitable power to order plaintiffs' attorney fees paid
3 out of the common fund or property [citations]. Such fee spreading
4 assures that all of those benefited by the litigation pay their fair share
5 of obtaining the recovery.

6 The percentage-of-the-fund approach appears to be the preferred method of awarding fees
7 in traditional common fund cases, such as this case. Where the settlement amount is a "certain or
8 easily calculable sum of money," use of the percentage-of-the-fund method is appropriate. *Serrano*
9 *III*, 20 Cal. 3d at 35.

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

13 It is not necessary to find this suit a proper class action in order to
14 uphold the portion of the judgment awarding counsel for plaintiffs
15 25 percent of all retroactive salaries and wages received. That award
16 may be sustained under the rule that a litigant who creates a fund in
17 which others enjoy beneficial rights may require those beneficiaries
18 to pay their fair share of the expense of litigation. (*See Sprague v.*
19 *Ticonic National Bank* (1939) 307 U.S. 161, 159; *Estate of Stauffer*
20 (1959) 53 Cal.2d 124, 132).

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

28 Numerous appellate courts have ruled similarly. *See e.g., Knoff v. City and County of San*
Francisco (1969) 1 Cal.App.3d 184, 203-204 (court upheld a "contingent percentage" award of
attorneys' fees in a representative action as the proper exercise of the court's broad equitable
powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys' fees and
expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
Bank of America v. Cory (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit

1 created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974)
2 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners
3 of residential property in an inverse condemnation action).

4 Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth,
5 Tenth, Eleventh and the D.C. Circuit—have endorsed the “percentage fee” method for determining
6 reasonable attorneys’ fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.* 74 F.
7 Supp. 2d 393, 396-398 (S.D.N.Y. 1999) (describing the overwhelming weight of federal authority
8 in favor of the percentage fee method); *see also, Lealao v. Beneficial California, Inc.* (2000) 82
9 Cal.App.4th 19, 30-31 (describing same).

10 Thus, as Plaintiffs’ Counsel has expended a significant amount of time and money to secure
11 a \$315,000 settlement fund for the LWDA and PAGA Members [*Schiller*, 2012 U.S. Dist. LEXIS
12 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees have resulted
13 in the preservation or recovery of a certain or easily calculable sum of money-out of which sum or
14 ‘fund’ the fees are to be paid.”)], and in doing so, has exclusively borne the risk of loss for such
15 expenditures of time and expenses (as the LWDA elected not to take the case after receiving the
16 PAGA Notice), Plaintiffs’ Counsel is entitled to claim reasonable fees from that fund under
17 applicable precedent.⁴

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

19 In addition to the forgoing, Plaintiffs’ Counsel’s request for attorneys’ fees in the amount
20 of thirty-five percent of the \$315,000 Gross Settlement Amount falls well within the “zone of
21 reasonableness.” It is important to highlight at the outset that the fee amount presently sought is
22 not extraordinary, but actually falls at the “average” fee deemed reasonable under California State

23 ⁴ Plaintiffs’ Counsel is also entitled to recover attorney’s fees and costs as a matter of right under
24 the PAGA statute [*Labor Code* § 2699(g)(1) (“Any employee who prevails in any action shall be
25 entitled to an award of reasonable attorney’s fees and costs.”)], and under *C.C.P.* § 1021.5, as the
26 instant PAGA action was by definition “for the public benefit” and secured monetary awards for
27 approximately 1,177 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 16-17 (2007) (“Estrada’s personal motivation does not diminish the
28 fact that he pursued this public interest class action not only for himself but on behalf of a class
comprised of FedEx’s past and present drivers and ultimately obtained awards for 209 drivers. []
No more is required to satisfy the ‘significant benefit,’ ‘public interest,’ and ‘large class of persons’
requirements of Code of Civil Procedure section 1021.5.”).

1 court authority, as it is recognized that “courts may award attorney’s fees in the 30-40% range in
2 wage and hour class actions that result in recovery of a common fund under \$10 million.” *See e.g.,*
3 *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). This fee
4 falls directly within that range.

5 Moreover, Plaintiffs’ Counsel agreed to incur the contingency risk for the benefit of the
6 State of California (which elected not to take the case after receiving the PAGA Notice). Gaines
7 Decl., ¶¶ 30-35. The significant results achieved, and the underlying facts therefrom, justify
8 Plaintiffs’ Counsel’s requested fee as reasonable under all applicable standards.

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

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

17 First, the results achieved by Plaintiffs’ Counsel are significant as Defendant has agreed to
18 pay \$315,000 under the Settlement. This is a significant recovery given the risks associated with
19 obtaining any recoverable penalties. Gaines Decl., ¶¶ 12-18, 22-25 Further, the settlement of
20 PAGA claims impacting a comparable number of individuals have been approved as reasonable for
21 between \$7,500.00 and \$15,000.00. *See* Section III.B.4., *supra*.

22 Second, such results were achieved in the face of significant risks. As explained above,
23 Defendant maintained defenses to Plaintiffs’ PAGA claims that very well could have resulted in a
24 net-zero recovery at trial.

25 Third, notwithstanding this risk of loss, Plaintiffs’ Counsel undertook representation of the
26 instant PAGA claim for the benefit of the State of California on a contingency basis. *See* Gaines
27 Decl. at ¶¶ 30-35. This required Plaintiffs’ Counsel to personally assume the risk of nonpayment
28 in securing the very substantial financial benefit the State of California stands to receive, and also

1 constitutes a “loan” on Plaintiffs’ Counsel services – both of which are factors that warrant fee
2 enhancement under applicable California Supreme Court authority:

3 One of the most common fee enhancers . . . is for contingency risk.
4 We reaffirmed the propriety of a contingency risk enhancement in
5 Ketchum: “The economic rationale for fee enhancement in
6 contingency cases has been explained as follows: ‘A contingent fee
7 must be higher than a fee for the same legal services paid as they are
8 performed. The contingent fee compensates the lawyer not only for
9 the legal services he renders but for the loan of those services. The
10 implicit interest rate on such a loan is higher because the risk of
11 default (the loss of the case, which cancels the debt of the client to
12 the lawyer) is much higher than that of conventional loans.’ (Posner,
13 *Economic Analysis of Law* (4th ed. 1992) pp. 534, 567.) ‘A lawyer
14 who both bears the risk of not being paid and provides legal services
15 is not receiving the fair market value of his work if he is paid only
16 for the second of these functions. If he is paid no more, competent
17 counsel will be reluctant to accept fee award cases.”

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

19 Finally, the percentage requested by Plaintiffs’ Counsel falls within a typical range,
20 particularly in light of the modest settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796,
21 23 (“[C]ourts may award attorney’s fees in the 30-40% range in wage and hour class actions that
22 result in recovery of a common fund under \$10 million.” *See also Crandall v. U-Haul*
23 *International, Inc.*, LASC Case No. BC178775 (awarding attorneys’ fees of 40% of a common
24 fund).

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

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

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

35 The recognized advantages of the percentage method—including relative
36 ease of calculation, alignment of incentives between counsel and the class, a

1 better approximation of market conditions in a contingency case, and the
2 encouragement it provides counsel to seek an early settlement and avoid
unnecessarily prolonging the litigation—convince us the percentage method
3 is a valuable tool that should not be denied our trial courts.

4 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when
5 a number of persons are entitled in common to a specific fund, and an action brought by a Plaintiff
6 or Plaintiffs for the benefit of all results in the creation or preservation of that fund, such Plaintiff
7 or Plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d
8 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties, the trial
9 court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v.*
10 *Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
11 method for calculating attorneys’ fees more accurately reflects the results achieved for the putative
12 class than the lodestar method and “establishes reasonable expectations on the part of Plaintiffs’
13 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
14 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
15 percentage-of-recovery method is generally favored in common fund cases because it allows courts
16 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
17 failure.’”).

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

26 Here, Plaintiffs’ Counsel’s fee request of thirty-five percent of the Gross Settlement Amount
27 is fair and reasonable based on a percentage of the recovery, and as well as when confirmed with a
28 lodestar cross-check. First, “regardless whether the percentage method or the lodestar method is
used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*

1 (2008) 162 Cal.App.4th 43, 66, fn. 11. This is also consistent with Plaintiffs’ Counsel’s experience
2 in similar wage and hour class action matters. Gaines Decl., ¶¶ 2-5; 27-29. Thus, the percentage
3 sought by Plaintiffs’ Counsel here is reasonable.

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

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

24 In this case, Plaintiffs’ Counsel is submitting an attorney fee request equaling \$110,050.
25 Based on a projected final lodestar of \$70,830, this yields a “multiplier” of approximately 1.55 over
26 the \$110,050 fee request. Gaines Decl., ¶ 26; **Exhibit D** to Gaines Decl. The billing rates used to
27 compute the lodestar are reasonable in view of the evidence submitted herewith. Gaines Decl., ¶¶
28 2-5; 27-29; **Exhibit D**.

1 Based thereon, and for the reasons discussed above (the significant risk in continuing to
2 litigate this matter and in seeking to obtain penalties based on the claims asserted; the risks and
3 burden involved in representation on a contingency basis; the knowledge and experience of
4 Plaintiffs' Counsel; and the value obtained by Plaintiffs' Counsel for the PAGA Members), it is fair
5 and reasonable to account for these risks and compensate Plaintiffs' Counsel with a fee award of
6 \$110,050 (thirty-five percent of the Gross Settlement Amount).

7 **E. Plaintiffs' Counsel's Request for Costs is Reasonable**

8 In the course of this litigation, Plaintiffs' Counsel incurred out-of-pocket costs of
9 \$14,539.40.⁵ See Gaines Decl. at ¶ 36, **Exhibit E**. As demonstrated in the Gaines Declaration
10 submitted herewith, the incurred costs included postage, filing fees, expert analysis fees, and
11 mediation fees. *Id.* Such costs are appropriate for cost reimbursement in these types of cases. See
12 e.g., *In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (C.D. Cal. 1989)
13 (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); see also, *In re GNC Shareholder*
14 *Litigation* 668 F.Supp. 450, 452 (W.D. Pa. 1987).

15 The costs incurred by Plaintiffs' Counsel in this litigation benefited Plaintiffs, PAGA
16 Members, and the State. Plaintiffs' cost request is reasonable and represents the costs that
17 Plaintiffs' Counsel was required to incur to prosecute this action and should therefore be granted.

18 **V. THE SERVICE AWARD PAYMENTS SOUGHT BY PLAINTIFFS ARE**
19 **REASONABLE AND SHOULD BE APPROVED**

20 The Parties have agreed that each Plaintiff will be paid a Service Award Payment in the
21 amount of \$7,000 each. This payment is intended to recognize the time and effort that each Plaintiff
22 spent on behalf of other PAGA Members and the State and for each Plaintiff's full general release
23 of claims against Defendant. See Settlement Agreement at ¶¶ 19 and 30(c). See Declarations of
24 Rosalba Rios, Juan Sosa, and Fenix Valle, submitted herewith. See Gaines Decl., ¶ 37.

25 As to an incentive award, case law supports the award of incentive payments in private
26 attorney general actions. The Ninth Circuit has recognized that a named plaintiff's "willingness to
27

28 ⁵ Plaintiffs' Counsel incurred out-of-pocket costs lower than what is allocated for in the Settlement Agreement.

1 act as a private attorney general” may justify the award of an incentive payment. *Rodriguez v. West*
2 *Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub*
3 *LLC*, 2013 WL 12415482 (E.D. Cal., Sep. 6, 2013), the United States District Court for the Eastern
4 District of California approved a similar PAGA-only settlement and awarded a service payment to
5 the representative plaintiff in recognition of his efforts.

6 The traditional bases for awarding incentive awards in class settlements support the award
7 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
8 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive
9 awards and held that “the rationale for making enhancement or incentive awards to named plaintiff
10 is that he or she should be compensated for the expense or risk he has incurred in conferring a
11 benefit” on others. *Id.* at 806. That rationale applies synonymously in this Action.

12 Without Plaintiffs’ efforts, there would be no recovery at all. The requested award is
13 appropriate to compensate Plaintiffs for the risk and expense they incurred in conferring a benefit
14 on the PAGA Members and the State of California, as well as for their full general release of all
15 claims against Defendant. As a result of the named Plaintiffs’ efforts, the PAGA Members will
16 receive monetary settlement payments, and the State of California will receive \$118,995.45 to be
17 put toward education about and enforcement of California’s labor laws. *See* Gaines Decl., ¶ 38.
18 Further, the value of Plaintiffs’ individual wage and hour claims are substantial. Gaines Decl. at ¶
19 39; **Exhibit F**.

20 In this case, Plaintiffs performed the following tasks, among others: (1) assisted Counsel in
21 investigating and substantiating the claims alleged in this action, including multiple interviews with
22 counsel to review facts, documents, and Defendant’s policies; (2) assisted in the preparation of the
23 Complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the
24 settlement of this litigation. *See generally*, Rios, Sosa, and Valle Declarations. Moreover, as with
25 any plaintiff who files a civil action, the named Plaintiffs undertook the financial risk that, in the
26 event of a judgment for Defendant in this action, they could have been personally responsible for
27 any attorneys’ fees and costs awarded in Defendant’s favor. The award of such payments to
28 Plaintiffs is especially warranted in a case like this one. It is necessary to ensure that employees

1 continue to bring forth claims that enforce their rights. Individuals like the named Plaintiffs (and
2 most aggrieved employees) would have little, if any, recourse without the representative action
3 device. Most aggrieved employees – like the named Plaintiffs – would be fearful of retaliation in
4 response to filing any lawsuit, much less a representative action suit. Plaintiffs must be commended
5 for pursuing their claims; the modest payment sought here is an appropriate means of doing so.

6 **VI. CONCLUSION**

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

- 11 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
12 2699, subpart 1;
 - 13 2. Appoint Phoenix Settlement Administrators as the Settlement Administrator and
14 approve its administration fees up to \$10,750 for payment out of the Gross Settlement Amount;
 - 15 3. Approve the award of attorneys' fees of \$110,050, and costs of \$14,539.40, to
16 Plaintiffs' Counsel, payment of which shall come from the Gross Settlement Amount;
 - 17 4. Approve the Service Award Payments to Plaintiffs Rosalba Rios, Juan Sosa, and
18 Fenix Valle in the amount of \$7,000 each from the Gross Settlement Amount;
 - 19 5. Direct disbursement of the Net Settlement Amount to the LWDA and all PAGA
20 Members as provided for in the Settlement Agreement; and
 - 21 6. Dismiss the Action with prejudice.
- 22
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25
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1 Date: February 20, 2024

Respectfully submitted,

GAINES & GAINES, APLC

4 By: 
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