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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

TREY ALEXANDER, on behalf of himself,
the State of California, and all Aggrieved
Employees,

Plaintiff,

vs.

IMPOSSIBLE FOODS, INC.; and DOES 1
through 100, inclusive,
Defendants.

Case No. 23-CIV-05278

REPRESENTATIVE ACTION

*[Assigned for all purposes to Hon. Nicole S.
Healy, Dept. 28]*

**PLAINTIFF TREY ALEXANDER'S
NOTICE OF MOTION AND MOTION
FOR APPROVAL OF SETTLEMENT
OF CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT AND REASONABLE
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT PAYMENT**

Date: June 5, 2024
Time: 2:00 p.m.
Dept.: 28

Complaint Filed: November 3, 2023
Trial date: None Set

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 PLEASE TAKE NOTICE that on June 5, 2024 at 2:00 p.m., or as soon thereafter as the
4 matter may be heard in Department 28 of the above-entitled Court, located at the Central
5 Courthouse, 800 North Humboldt Street, San Mateo, California, 94401, Plaintiff Trey Alexander
6 (“Plaintiff”), individually and on behalf of the State of California and other Aggrieved
7 Employees, will, and hereby does, move this Court for entry of an Order as follows:

- 8 1. Granting approval, pursuant to California Labor Code § 2699(l), of the proposed
9 settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal.
10 Labor Code § 2698, *et seq.*) and as set forth in the Parties’ Settlement Agreement, a true
11 and correct copy of which is attached to the Declaration of Neil M. Larsen filed
12 concurrently herewith;
- 13 2. Approving and confirming the releases provided for in the Settlement Agreement. As
14 defined in the Settlement Agreement, the individuals covered by this Settlement and its
15 releases are “**all current and former non-exempt employees who have worked for**
16 **Impossible Foods in California at any time from September 20, 2021 through March**
17 **31, 2024**”.
- 18 3. Finding that Plaintiff has complied with Labor Code section 2699(1)(2) by submitting a
19 copy of the settlement to the Labor and Workforce Development Agency (“LWDA”) on
20 April 24, 2024.
- 21 4. Appointing ILYM Group, Inc. as the Settlement Administrator;
- 22 5. Approving and confirming payment of PAGA penalties to the LWDA in the amount of
23 \$73,701.27 (75% of the penalties) and to Aggrieved Employees in the amount of
24 \$24,567.09 (25% of the penalties) as set forth in the Settlement Agreement.
- 25 6. Directing the parties to effectuate and act in accordance with all terms of the Settlement
26 agreement upon entry of the Court’s order approving the settlement.
- 27 7. Approving an award of attorneys’ fees to Plaintiff’s counsel of \$55,000.00 and an award
28 of litigation costs to Plaintiff’s counsel of \$3,731.64;

1 8. Approving an enhancement payment to Plaintiff in the amount of \$5,000.00;

2 9. Approving \$3,000.00 in administration costs to ILYM Group, Inc.; and

3 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
4 the declaration of Neil M. Larsen and all exhibits attached thereto; the declaration of Kimberly
5 Sutherland of ILYM Group, Inc. and all exhibits attached thereto; the declaration of Plaintiff Trey
6 Alexander; the Settlement Agreement; all other pleadings and papers on file in this action; and on
7 any further oral or documentary evidence or argument presented at the time of hearing.

8 Respectfully submitted,

9 Dated: April 24, 2024

ABRAMSON LABOR GROUP

10
11 By: Neil Larsen

12 Neil M. Larsen
13 Attorneys for Plaintiff
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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND AND SUMMARY OF CLAIMS.....	2
III.	SUMMARY OF THE SETTLEMENT.....	4
	A. “Aggrieved Employees” Defined.....	4
	B. Monetary Terms.....	4
	1. Attorneys’ Fees, Costs, Administration Costs, and Service Award.....	5
	2. Plaintiff’s Counsel Conducted a Thorough Investigation of the Factual And Legal Issues.....	6
IV.	LEGAL ARGUMENT.....	6
	A. Standards for Approval of a PAGA Settlement.....	6
	B. Factors in Evaluating a Representative PAGA Settlement.....	9
	1. The Strength of Plaintiff’s Case.....	9
	i. Regular Rate Claims.....	10
	ii. Meal and Rest Period Claims.....	11
	iii. Unpaid Wages Claim.....	12
	iv. Unreimbursed Expenses Claim.....	12
	2. Risk, Expense, Complexity, and Duration of Further Litigation.....	13
	3. Amount Offered in Settlement Given Realistic Value of Claims.....	13
	4. Discovery Completed and the Status of Proceedings.....	15
	5. The Experience and Views of Counsel.....	15
	C. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the Settlement Fund as Confirmed by a Lodestar Cross-Check.....	15
	D. The Requested Litigation Costs and Settlement Administration Costs Are Fair, Reasonable, and Adequate.....	20
	E. The Court Should Approve Plaintiff’s Requested Enhancement Payment Because It Is Fair, Adequate, and Reasonable in View of Plaintiff’s Efforts and the Risks He Assumed in This Litigation.....	20

V.	CONCLUSION.....	21
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TABLE OF AUTHORITIES

Federal Cases

<i>Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.</i> , 455 F.2d 101 (7th Cir. 1972)	9
<i>Bellinghausen v. Tractor Supply Co.</i> , 306 F.R.D. 245 (N.D. Cal. 2015).....	21
<i>Bernstein v. Virgin America, Inc.</i> , 3 F.4th 1127 (9th Cir. 2021).....	14
<i>Harris v. Marhoefer</i> , 24 F.3d 16 (9th Cir. 1994).....	20
<i>In re Immune Response Sec. Litig.</i> , 497 F.Supp.2d 1166 (S.D. Cal. 2007).....	20
<i>In re Pac. Enter. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995).....	15
<i>In re Rite Aid Corp. Sec. Litig.</i> , 396 F.3d 294 (3d Cir. 2005).....	16
<i>Linney v. Cellular Alaska P'ship</i> , 151 F.3d 1234 (9th Cir. 1998).....	14
<i>Officers for Justice v. Civil Service Com.</i> , 688 F.2d 615, 624 (9th Cir. 1982).....	6
<i>Rawlings v. Prudential-Bache Properties, Inc.</i> , 9 F.3d 513 (6th Cir. 1993).....	16
<i>Rodriguez v. West Publishing Co.</i> , 563 F.3d 948 (9th Cir. 2009).....	21
<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294 (N.D. Cal. 1995).....	21
<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043 (9th Cir. 2002).....	17, 18

State Cases

<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.</i> , 46 Cal.4th 993 (2009)	8
<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	13
<i>Arias v. Sup. Ct.</i> , 46 Cal. 4th 969 (2009)	9
<i>Bell v. Farmers Ins. Exch.</i> , 115 Cal.App.4th 715 (2004)	21
<i>Carrington v. Starbucks Corporation</i> , 30 Cal.App.5th 504 (2018)	10
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	17
<i>Consumer Privacy Cases</i> , 175 Cal. App. 4th 545 (2009)	18
<i>Ferra v. Loews Hollywood Hotel, LLC</i> , 11 Cal.5th 858 (2021)	10
<i>Gouskos v. Aptos Village Garage, Inc.</i> , 94 Cal.App.4th 754 (2001)	16
<i>Graciano v. Robinson Ford Sales</i> , 144 Cal.App.4th 140 (2006)	16
<i>Iskanian v. CLS Transp. Los Angeles, LLC</i> , 59 Cal.4th 348 (2014)	2, 8, 9
<i>Ketchum v. Moses</i> , 24 Cal.4th 1122 (2001)	17

1	<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008)	15
2	<i>Laffitte v. Robert Half Int’l, Inc.</i> , 1 Cal.5th 480 (2016)	16, 17
3	<i>Maria P. v. Riles</i> , 43 Cal.3d 1281 (1987)	16
4	<i>Robinson v. Southern Counties Oil Co.</i> , 53 Cal.App.5th 476 (2020)	8
5	<i>Serrano v. Unruh</i> , 32 Cal.3d 621 (1982)	16
6	<i>Serrano v. Priest</i> , 20 Cal.3d 25 (1977)	16, 17
7	<i>Thayer v. Wells Fargo Bank</i> , 92 Cal. App. 4th 819 (2001)	17
8	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i> , 203 Cal.App.4th 1112 (2012)	10
9	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001)	9, 17
10	<i>Westside Cmnty. for Independent Living, Inc. v. Obledo</i> , 33 Cal.3d 348 (1983)	16
11	<i>ZB, N.A. v. Sup. Ct.</i> , 8 Cal.5th 175 (2019).....	8
12	<u>Unpublished Cases</u>	
13	<i>Aguirre v. DSW, Inc.</i>	
14	No. DCV-11-01522-GW (SPx), 2012 WL 11875296 (C.D. Cal. Nov. 29, 2012)	19
15	<i>Ashker v. Sayre</i> ,	
16	No. 05-03759 CW, 2011 WL 825713 (N.D. Cal. Mar. 7, 2011)	20
17	<i>Boyd v. Bank of Am. Corp.</i>	
18	No. SACV-13-0561-DOC (JPRx), 2014 WL 6473804 (C.D. Cal. Nov. 18, 2014)	19
19	<i>Cabrera v. Advantage Sale & Marketing, LLC</i> ,	
20	Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013).....	2
21	<i>Casida v. Sears Holdings Corp.</i>	
22	No. 1:11-cv-01052-AWI-JLT, 2012 WL 253217 (E.D. Cal. Jan. 26, 2012)	7
23	<i>Chavez v. Saticoy Lemon Ass’n</i> ,	
24	No. 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015).....	17
25	<i>Chu v. Wells Fargo Inv., LLC</i>	
26	No. C 05–4526 MHP2011, WL 672645 (N.D. Cal. Feb. 16, 2011)	19
27	<i>Fleming v. Covidien Inc.</i>	
28	No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)	10

1	<i>Franco v. Ruiz Food Prods.</i>	
2	No. 1:10-cv-02354-SKO, 2012 WL 5941801 (E.D. Cal. Nov. 27, 2012)	19
3	<i>Garcia v. Gordon Trucking, Inc.</i>	
4	No. 1:10-cv-0324-AWI-SKO, 2012 WL 5364575 (E.D. Cal. Oct. 31, 2012)	3, 19
5	<i>In re TD Ameritrade Account Holder Litig.</i>	
6	No. 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13, 2011)	6
7	<i>Mendez v. Tween Brands, Inc.</i>	
8	2010 WL 2650571 (E.D. Cal. jul. 1, 2010).....	7, 8
9	<i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i>	
10	No. C-08-2073-MHP, 2010 WL 1340777 (N.D. Cal. Apr. 2, 2010)	7, 8
11	<i>Penaloza v. PPG Industries Inc.</i>	
12	No. BC471369, 2013 WL 2917624 (Super. Ct. L.A. County, May 20, 2013).....	2
13	<i>Trang v. Turbine Engine Components Technologies Corp.</i>	
14	No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012)	14
15	<u>Federal Statutes and Rules</u>	
16	Fed. R. Civ. Proc. Rule 23(e)	8
17		
18	<u>State Statutes and Rules</u>	
19	29 C.F.R. § 778.208.....	11
20	29 C.F.R. § 778.211.....	11
21	Cal. R. Ct. 3.769.....	8
22	Lab. Code § 2699.....	1, 2, 4, 6, 10, 13, 14, 15
23	Lab. Code § 246.....	2, 11
24		
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the Labor Code Private Attorneys General Act of 20014 (Cal. Lab. Code §§
4 2698, et seq., “PAGA”), Plaintiff Trey Alexander (“Plaintiff”), respectfully moves this Court for
5 an Order granting approval of the Settlement Agreement (“Settlement”) of Plaintiff’s Complaint
6 seeking to recover PAGA penalties.

7 The principal terms of the settlement are as follows: The payment of \$98,268.36 to the
8 California Labor and Workforce Development Agency (“LWDA”) and Aggrieved Employees in
9 full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage
10 Orders, regulations, and/or other provisions of law alleged to have been violated in the operative
11 Complaint with respect to aggrieved employees. Seventy-Five Percent, or \$73,701.27, will be
12 paid to the LWDA pursuant to Labor Code section 2699(i); and Twenty-Five Percent, or
13 \$24,567.09, will be paid to all persons who were employed by Defendant Impossible Foods, Inc.
14 (“IF”) or (“Defendant”) as all current and former non-exempt employees who have worked for
15 Impossible Foods in California at any time from September 20, 2021 through March 31, 2024
16 (“Aggrieved Employees”).

17 The settlement was negotiated by the Parties at arm’s length and resolved at mediation.
18 The penalties secured by the settlement represent a fair compromise of Plaintiff’s PAGA claims
19 in view of the risks of continued litigation and the vigorously contested issues of law and fact
20 relating to the PAGA claims and the potential existential threat to the PAGA claim by the pending
21 ballot initiative. In addition, Plaintiff and other Aggrieved Employees signed arbitration
22 agreements. After evaluating the motion to compel arbitration that Defendant would have filed
23 had the Parties not attempted to resolve the PAGA claims, Plaintiff’s counsel determined the risk
24 of losing claims at arbitration on Plaintiff’s individual claims, the risk of exposing the claims
25 could not be tried manageably, and the delay associated with protracted litigation of Plaintiff’s
26 individual claims in arbitration (which likely would not have been held until late 2024) supported
27 early settlement the PAGA claims.

28 The settlement accomplishes PAGA’s objectives because it augments the state’s

1 enforcement capabilities, encourages compliance with Labor Code provisions, and deters
2 noncompliance with California’s labor law, while also ensuring that the penalties are not “unjust,
3 arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2); *Iskanian v. CLS Transp.*
4 *Los Angeles, LLC*, 59 Cal.4th 348, 384 (2014). The settlement is also in line with a plethora of
5 other cases in this state where courts have approved similar PAGA penalty settlement amounts.
6 Plaintiff also notes that the GSA exceeds other PAGA penalty awards approved as reasonable by
7 California courts, which supports the Settlement’s reasonableness. *See, e.g., Penaloza v. PPG*
8 *Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20,
9 2013) (approving total PAGA set-aside of \$5,000, or \$7.49 per employee); *Cabrera v. Advantage*
10 *Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, Mar.
11 12, 2013) (approving PAGA set-aside of \$10,000, or \$3.33 per employee).

12 Further, the amounts requested for attorneys’ fees and costs, Plaintiff’s enhancement
13 payment, and settlement administration costs are fair, adequate, and reasonable. In light of the
14 foregoing, this Court should enter the [Proposed] Judgment and Order submitted herewith.

15 **II. BACKGROUND AND SUMMARY OF CLAIMS**

16 On September 20, 2022 and January 24, 2023, Plaintiff sent certified written notices to the
17 LWDA and IF alleging violations of California Labor Code Labor Code sections 201-204, 210,
18 223, 226, 226.7, 246, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and
19 2804, and California Industrial Commission Wage Order 1 based on the: (a) failure to pay and/or
20 appropriately calculate minimum wage, overtime, or double time wages, (b) failure to provide
21 compliant meal periods and/or pay compliant meal period premiums; (c) failure to authorize and
22 permit compliant rest breaks and/or to pay compliant rest break premiums; (d) failure to provide
23 accurate wage statements; (e) failure to pay timely wages; (g) failure to pay and/or appropriately
24 calculate sick pay; (h) failure to timely pay all wages due at termination; and (i) failure to
25 reimburse business expenses. *See* Settlement, § II.2; Larsen Decl., ¶ 9 & Exh. 2.

26 The LWDA never notified Plaintiff that it intended to investigate the PAGA claims.
27 Plaintiff also provided a copy of the Settlement Agreement to the LWDA. Plaintiff has no reason
28 to believe this recent notification will prompt the LWDA to investigate or otherwise intervene in

1 the settlement of the PAGA claims in this case. That the LWDA, after timely and adequate notice,
2 has taken no action to pursue the PAGA claims at issue, is persuasive evidence that the PAGA
3 settlement in this case augments the state’s enforcement capabilities, encourages compliance with
4 Labor Code provisions, and deters noncompliance with California’s labor law. *See, e.g.,*
5 *Rodriguez v. Danell Custom Harvesting, LLC*, 293 F. Supp. 3d 1117, 1133 (E.D. Cal. 2018)
6 (approving settlement of PAGA penalties based on LWDA not objecting to terms of settlement);
7 *Chamberlain v. Baker Hughes, a GE Company, LLC*, 2020 WL 4350207, at *5 (E.D. Cal., July
8 29, 2020) (“Because of the concrete risk attendant with the pursuit of further litigation in this
9 action and, most critically, the lack of objection from the LWDA despite being provided timely
10 notice of the terms of this proposed settlement, the court finds that the amount offered in
11 settlement of the PAGA claims here weighs in favor of approval.”) (emphasis added); *Jordan v.*
12 *NCI Group, Inc.*, 2018 WL 1409590, at *3 (C.D. Cal. Jan. 5, 2018); *Echavez v. Abercrombie &*
13 *Fitch Co.*, 2017 WL 3669607, at *3 (C.D. Cal. Mar. 23, 2017) (“The Court infers LWDA’s non-
14 response is tantamount to its consent to the proposed settlement terms, namely the proposed
15 PAGA penalty amount.”) In addition, when the parties have “negotiated a good faith amount” for
16 PAGA penalties, and “there is no indication that this amount was the result of self-interest at the
17 expense of” others, such an amount is generally considered fair and adequate. *See Garcia v.*
18 *Gordon Trucking, Inc.*, 2012 WL 5364575, at *7 (E.D. Cal. Oct. 31, 2012) (approving \$10,000
19 in PAGA penalty settlement); *see also Hopson v. Hanesbrands Inc.*, 2009 WL 928133, at *9
(N.D. Cal. Apr. 3, 2009) (approving \$1,500 PAGA penalty settlement).

20 In connection with LWDA letters and the claims alleged therein, the Parties engaged in
21 multiple substantive discussions about the case, and agreed to attend an early private mediation
22 with experienced mediator Phillip Cha, Esq. Larsen Decl., ¶¶ 10-11. Defendant produced
23 information and documents pertaining to Plaintiff and other Aggrieved Employees, including a
24 sampling of payroll data for the Aggrieved Employees, relevant policy documents, and additional
25 data points including the number of pay periods worked during the putative PAGA period and
26 total number of Aggrieved Employees. Larsen Decl., ¶ 11. Plaintiff retained an expert data analyst
27 to assist in assessing potential damages. *Id.*

28 On May 16, 2023, the Parties participated in a full-day mediation with Mr. Cha. *See* Larsen

Decl., ¶ 12. The Parties vigorously debated manageability of Plaintiff’s claims and his ability to proceed on a representative basis, the legal basis for Plaintiff’s claims and IF’s defenses, the potential impact of arbitration of Plaintiff’s individual claims, and the Parties’ data analyses and conclusions based thereon. *Id.* With Mr. Cha’s assistance, the Parties eventually agreed to fully and finally resolve Plaintiff’s PAGA claim. *Id.*

III. SUMMARY OF THE SETTLEMENT

A. “Aggrieved Employees” Defined

As noted above, the settlement covers all current and former non-exempt employees who worked for IF in California at any time during the PAGA Period, i.e., from September 20, 2021 through March 31, 2024. *See* Settlement, § I.2. On November 3, 2023, as part of the Settlement, Plaintiff filed a Complaint for violations of PAGA.

B. Monetary Terms

Defendant will pay a total of \$98,268.36 to Aggrieved Employees and the LWDA (“PAGA Payment”) in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations and/or other provisions of law alleged or that could have been alleged to have been violated based on the facts alleged in the Complaint with respect to Aggrieved Employees during the PAGA Period. Pursuant to PAGA, Seventy-Five Percent, or \$73,701.27, will be paid to the LWDA pursuant to Labor Code section 2699(i); and Twenty-Five Percent, or \$24,567.09, will be paid the Aggrieved Employees.

Within 15 calendar days of approval of the Settlement and enters Order and Judgment pursuant to this Motion (“Effective Date”), Defendant shall transmit to the third-party Administrator the following information for Aggrieved Employees: full name, employee ID number, last known mailing address and telephone number, number of pay periods worked for IF in California during the PAGA Period, and Social Security number. *See* Settlement, §IV. 2(a). Within 30 calendar days of the Effective Date, Defendant will transmit the Maximum Settlement Amount to the third-party Administrator. *See* Settlement, §§ I.10, III.2. No later than fourteen (14) calendar days after receipt of the Maximum Settlement Amount from Defendant, the Settlement Administrator will: (i) calculate each Aggrieved Employee’s payment, (ii) send its

1 payment calculations to Plaintiff’s Counsel and Defense Counsel, and (iii) obtain approval from
2 counsel of the calculations, and mail the Employee Payments to each of the Aggrieved
3 Employees, along with an explanatory letter which has been mutually approved by the Parties,
4 and a check to the LWDA for its share of the PAGA Payment. *See* Settlement, § IV. 2(b).

5 Any checks returned as non-deliverable on or before the check cashing deadline will be
6 sent promptly via regular mail to the forwarding address obtained by the Administrator. *Id.*
7 Checks will remain negotiable for 180 days. *Id.* at IV. 3(c). Funds represented by settlement
8 checks returned as undeliverable and those settlement checks remaining uncashed for more than
9 180 days after issuance will be tendered to the Controller of the State of California to be held
10 pursuant to the Unclaimed Property Law for the benefit of those Aggrieved Employees who did
11 not cash their checks. *Id.*

12 As required by the PAGA statute, concurrently with this filing, the Parties have submitted
13 the PAGA Settlement Agreement and this Memorandum to the LWDA. Larsen Decl., ¶ 34.

14 Upon entry of the Order and Judgment, the LWDA and Aggrieved employees full release
15 and forever discharge the Releasees from any and all PAGA Released Claims during the PAGA
16 Period, as those terms are defined in the Settlement Agreement. *See* Settlement, § I.14.

17 **1. Attorneys’ Fees, Costs, Administration Costs, and Service Award**

18 Plaintiff’s counsel requests one-third of the GSA (i.e., \$55,000) in attorneys’ fees, and
19 \$3,731.64 in litigation costs. *See* Settlement, §§ III.2, III.5; Larsen Decl., ¶ 14 & Exh. 4. As
20 discussed below, one-third of the GSA is fair, adequate, and reasonable as a percentage of the
21 fund and as confirmed by a lodestar cross-check, and is in line with fee awards in other PAGA
22 settlements. Notably, Plaintiff is not requesting reimbursement of his portion of the mediation fee
23 from the GSA, as that is being paid separately by IF. *See* Settlement, §§ III.2, III.5. This results
24 in an additional \$4,500.00 distributed to the State of California and Aggrieved Employees.

25 The Parties have agreed to engage ILYM Group, Inc. (“ILYM”) as the third-party
26 Settlement Administrator. *See* Settlement, § IV.1. ILYM will update Aggrieved Employees’
27 addresses using the National Change of Address database, calculate and distribute individual
28 payments, mail payments to all Aggrieved Employees together with the Cover Letter, and perform

1 other duties that are integral to the effectuation of the Settlement. *Id.*, §§ IV.2-3. Plaintiff requests
2 that the Court approve \$3,000 in Administration Costs to ILYM, which will cover all costs
3 incurred by ILYM in connection with the Settlement. *Id.* at § III.6; *see also* Declaration of
4 Kimberly Sutherland (“Sutherland Decl.”), ¶ 8 & Exh. C. Finally, Plaintiff requests an
5 enhancement payment of \$5,000, in exchange for his general release and in recognition of his
6 contributions to this case and his efforts in bringing this case to successful resolution. *See*
7 Settlement, §§ III.5, III.8; Alexander Decl., ¶¶ 4-6.

8 **C. Plaintiff’s Counsel Conducted a Thorough Investigation of the Factual And**
9 **Legal Issues**

10 In connection with the May 16, 2023 mediation, the Parties engaged in substantial
11 informal discovery to evaluate the factual and legal issues underlying Plaintiff’s PAGA claim.
12 Larsen Decl., ¶ 11. IF provided Plaintiff with a sampling of Aggrieved Employees’ payroll
13 records; several relevant data points including the number of Aggrieved Employees and total pay
14 periods worked; policy documents; and other documents and information, in order for Plaintiff’s
15 counsel to investigate Plaintiff’s allegations and value the claims prior to mediation. *Id.* Plaintiff
16 also retained an expert data analyst to assist in calculating potential damages. *Id.* Only after the
17 completion of this comprehensive discovery process, and significant discussions about the
18 likelihood of prevailing on the merits, did the Parties agree to the proposed Settlement.

19 **IV. LEGAL ARGUMENT**

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

21 The PAGA statute provides that the “court shall review and approve any settlement of any
22 civil action filed pursuant to this part.” Labor Code § 2699(l). Of course, “[s]ettlement is a
23 compromise, which balances the possible recovery against the risks inherent in litigating further.”
24 *See In re TD Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13,
25 2011). “[T]he very essence of a settlement is...‘a yielding of absolutes and an abandoning of
26 highest hopes,’” as “it is the very uncertainty of outcome in litigation and avoidance of wasteful
27 and expensive litigation that induce consensual settlements.” *Officers for Justice v. Civil Service*
28 *Com.*, 688 F.2d 615, 624 (9th Cir. 1982). As such, “the settlement or fairness hearing is not to be

turned into a trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.*

The Court is **not** called upon to apply the level of scrutiny typically required in a class action as none of the findings required by Rule 23 are necessary. *Baumann v. Chase Inv. Servis. Cop.*, 747 F.3d 1117, 1123 (9th Cir. 2014). “A PAGA claim asserted on a non-class representative basis...is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of [a class action].” *Casida v. Sears Holdings Corp.*, 2012 WL 253217 at *3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at *4 (E.D. Cal. Jul. 1, 2010) (“PAGA claims are law enforcement actions, not class actions”). In considering approval, the Court should consider whether the proposed “PAGA settlement is fair and adequate in view of the purposes and policies of the statute.” *O’Conner v. Uber Techs, Inc.*, 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016). These purposes and policies include “benefit[ing] the public by augmenting the state’s enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance.” *Id.* at 1132-33. However, “neither the California legislature, nor the California Supreme Court, nor the California Courts of Appeal, nor the [LWDA] has provided any definitive answer” as to what the appropriate standard is for approval of a PAGA settlement. *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 2017 WL 2224265, at *1 (C.D. Cal. May 2017). Thus, a PAGA settlement is fair and adequate based on a determination that it augments the state’s enforcement capabilities, encourages compliance with Labor Code provisions, and deters noncompliance with California’s labor law. *See Baumann, supra*, 747 F3d at 1123; *O’Conner, supra*, 201 F. Supp. at 1132-33. In the end, PAGA cases are not about total potential recovery. Instead, they are about what courts deem fair and adequate in light of PAGA’s labor law compliance goals.

First, in evaluating a PAGA settlement, the court is not concerned with amount(s) received by “aggrieved employees,” but rather, must focus on the total settlement amount in achieving PAGA’s objective. “The remedy sought in a PAGA suit consists of civil penalties, not individual or class damages.” *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally

1 a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, No. C-08-2073-MHP, 2010
2 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court confirmed, “PAGA claims
3 are ‘representative’ actions in the sense that they are brought on the state’s behalf. The
4 employee... ‘represents the same legal right and interest as’ those agencies — ‘namely, recovery
5 of civil penalties that otherwise would have been assessed and collected by the [LWDA].” *ZB,*
6 *N.A. v. Superior Court*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian*, 59 Cal.4th at 380).

7 Moreover, while “[a PAGA] action is ... designed to protect the public and penalize the
8 employer for past illegal conduct” (*Mendez*, 2010 WL 2650571 at *4), a PAGA settlement – like
9 any settlement – involves a compromise that stops short of rendering findings of liability and
10 damages. “Unlike a class action seeking damages or injunctive relief for injured employees, the
11 purpose of PAGA is to incentivize private parties to recover civil penalties for the government
12 that otherwise may not have been assessed and collected by overburdened state enforcement
13 agencies.” *Ochoa-Hernandez*, 2010 WL 1340777 at *4.

14 Second, consistent with the fact that unnamed employees have no property interest in a
15 PAGA claim¹, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
16 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010
17 WL 1340777 at *5; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482
18 (2020) (recognizing that “there is no mechanism for opting out of the judgment entered on the
19 PAGA claim.”). This renders the approval process of a PAGA settlement distinct from a class
20 action settlement, as the Court need not employ the “two-step approval process” required for class
21 action settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

22 Finally, unlike a class action settlement under Fed. R. Civ. Proc. Rule 23(e) or Cal. Rule
23 of Court 3.769, the scope of release in a PAGA settlement is limited to *civil penalties*. While
24 “judgment in [a PAGA] action is binding not only on the named employee Plaintiffs but also on
25 government agencies and any aggrieved employee not a party to the proceeding...the non-party
26

27 ¹ “The [PAGA] does not create property rights or any other substantive rights” as “[i]t is simply
28 a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code
violations—that otherwise would be sought by state labor law enforcement agencies.”
Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct., 46 Cal.4th 993, 1003 (2009).

employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.” *Arias v. Sup. Ct.*, 46 Cal. 4th 969, 986-87 (2009).

The Settlement is fair and adequate because settlements inherently involve compromise, even a settlement providing for substantially narrower relief than might be obtained if the suit were successfully litigated can be reasonable because “the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)).

1. The Strength of Plaintiff’s Case

While Plaintiff is confident in the merits of his claims, Plaintiff acknowledges there are substantial risks and uncertainty in proceeding to trial, including the potential existential threat to the PAGA claim by the pending ballot initiative. Larsen Decl., ¶ 16. First and foremost, at the time of mediation, there was the risk that the United States Supreme Court opinion in *Viking River* could cause the outright dismissal of Plaintiff’s representative PAGA claim. *Id.* Plaintiff entered into an arbitration agreement with IF and, as noted above, *Viking River* overturned the California Supreme Court’s holding in *Iskanian v. CLS Transportation Los Angeles, LLC* that held a representative PAGA claim could not be compelled to arbitration. *Id.* This may have resulted in Plaintiff’s PAGA claim being compelled to individual arbitration and the dismissal of the representative PAGA claims (i.e., the PAGA claims of other Aggrieved Employees). *Id.* As a result, absent this settlement, it is possible that no representative PAGA recovery would be possible at all. *Id.*

IF also argues that Plaintiff’s PAGA claim is unmanageable since it would require individualized inquiries into, *inter alia*, which employees received shift differentials or bonuses, whether the type of bonus an individual employee received was discretionary, why employees did not take meal or rest breaks, and the amount of damages for each employee. Larsen Decl., ¶ 17; *see also Wesson v. Staples, LLC*, 68 Cal.App.5th 746, 770-771 (2021) (representative claims cannot proceed where an employee group’s claims are unmanageable at trial); *Fenley v. Rite Aid*

1 *Corporation*, 2015 WL 8240387 at *2 (Santa Clara Sup. Ct. Sept. 15, 2015) (“While it is true that
2 a PAGA action is not subject to the same requirements as a class action, when numerous
3 individualized determinations would be necessary to determine whether any class member has
4 been injured by [a defendant’s] conduct, then allowing a representative action to proceed is
5 inappropriate.”); *Raphael v. Tesoro Refining & Marketing Co. LLC*, No. 2:15-cv-02862-ODW,
6 2015 WL 5680310 at *3 (C.D. Cal. Sept. 25, 2015) (striking PAGA claim as unmanageable where
7 court “would have to engage in a multitude of individualized inquiries” to assess alleged
8 violations as to thousands of employees). Here, the data and information produced by Defendant
9 suggests there may be significant “manageability” concerns that would prevent this case from
10 proceeding on a representative basis. *See Wesson, supra*, 68 Cal.App.5th at 851 (holding that trial
11 courts have inherent authority to strike PAGA claims if they are not manageable at trial); *Williams*
12 *v. Sup.Ct.*, 3 Cal.5th 531, 559 (2017) (a proof of employer’s unlawful uniform policy applicable
13 to all employees is one way to show PAGA trial is manageable, here Plaintiff is likely unable to
14 make such a showing). Thus, this Settlement is fair and adequate and should be approved.

15 Moreover, IF argues that given its strong defenses and its good-faith attempts to comply
16 with the law, even if liability were established for some aggrieved employees, this Court would
17 utilize its discretion under Labor Code § 2699(e)(2) to substantially reduce the amount of
18 penalties awarded. Larsen Decl., ¶ 18; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in
19 PAGA penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th
20 1112, 1135 (2012) (affirming reduction of PAGA penalties because “defendants took their
21 obligations...seriously and attempted to comply with the law”); *Fleming v. Covidien, Inc.*, No.
22 ED-CV-10-1487, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties
23 by over 82%, in part because employer “not aware” of violations); *Carrington v. Starbucks Corp.*,
24 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period where
25 employer made “good faith attempts” to comply with the law).

26 **i. Regular Rate Claims**

27 Plaintiff alleges IF failed to incorporate shift differential pay, bonuses, and other payments
28 in employees’ “regular rate,” and that this failure resulted in underpaid overtime, meal period

premiums, and sick pay wages. Larsen Decl., ¶ 19; *see also Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858, 862 (2021) (holding “regular rate of compensation” under § 226.7(c), like “regular rate of pay” under § 510(a), “encompasses all nondiscretionary payments, not just hourly wages.”); Labor Code § 246(l)(1) (requiring that “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.”).

IF contends that many of the payments in question were discretionary, and/or were not tied to the quantity or quality of work performed, and were therefore excludable from the regular rate. Larsen Decl., ¶ 19; *see also* 29 C.F.R. §§ 778.208, 778.211 (excluding “discretionary” bonuses from regular rate). IF also contends that any overtime under-payments were *de minimis* and not recoverable. Larsen Decl., ¶ 19. IF further argues that it did, in fact, incorporate the value of any non-discretionary payments in the “regular rate” and in fact paid additional overtime to employees when it did so, and that the amount of additional overtime paid outweighs any alleged underpayment. *Id.* IF also maintains that employees received different types of remuneration throughout the Class Period, thus creating substantive differences among the employees with respect to the payments received as well as the expectations regarding those payments, making this claim unmanageable under *Wesson*. *Id.*

ii. Meal and Rest Period Claims

Plaintiff alleges that he and other employees were often forced to take late, short, and/or missed meal periods, and sometimes were not able to take all rest periods to which they were entitled, as a result of the workload imposed on them by IF and work-related interruptions. Larsen Decl., ¶¶ 20-21.

IF argues that it has maintained legally-compliant meal and rest period policies and practices throughout the relevant time period, and that under *Brinker* it is only required to “provide” the opportunity to take meal periods and “authorize and permit” rest periods, not to “ensure” that breaks are taken. Larsen Decl., ¶¶ 20-21; *see also Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (rejecting “ensure” standard). Further, IF argues that it has always

1 informed employees of their right to take meal and rest periods, and that any failure to take a
2 compliant meal or rest period was the result of employee choice, and not any IF policy or practice.
3 *Id.* IF also argues that it has automatically paid meal period premiums whenever an employee
4 records a late, short, or missed meal period, and it produced evidence to this effect in the form of
5 a sworn declaration from an IF manager. *Id.* IF further argues that individualized inquiries would
6 be required to determine whether individual employees received a non-compliant meal period
7 and/or rest period in each individual pay period, and why any meal or rest period was late, short,
8 or missed, thereby rendering the claims unmanageable. *Id.* These manageability concerns are
9 particularly present with respect to rest periods, which are not – and need not be – recorded. *Id.*

10 **iii. Unpaid Wages Claim**

11 Plaintiff alleges that he and other employees were required to undergo COVID testing on
12 a weekly basis and were sometimes required to take the COVID tests before clocking in, resulting
13 in off-the-clock time where employees were subject to IF's control. Larsen Decl., ¶ 22.

14 IF contends that it has always paid employees for all time worked, including the time
15 worked by employees to undergo COVID testing. *Id.* IF also argues that its COVID testing policy
16 expressly provides that these tests should be taken while on-the-clock, and any failure of an
17 employee to take them on-the-clock would have been the choice of an individual employee and
18 IF would not have been aware of same. *Id.* IF further argues that individualized inquiries would
19 be required to determine whether individual employees were paid for their time undergoing
20 COVID testing, why they did not clock in before undergoing the testing, and whether IF knew
21 about any individual employee who underwent COVID testing before clocking in, rendering this
22 claim unmanageable. *Id.*

23 **iv. Unreimbursed Expenses Claim**

24 Plaintiff alleges that IF failed to indemnify him and other employees for the use of their
25 personal cell phones for work purposes, including to communicate with supervisors and/or other
26 employees. Larsen Decl., ¶ 23. IF counters that if employees need to use their personal cell phones
27 in connection with their job duties, there are procedures in place for employees to request
28 reimbursement of work-related expenses. *Id.* IF further contends that employees who used their

1 personal cell phones for work purposes received reimbursement. *Id.* Indeed, Plaintiff's data
2 analyst's review of employee payroll records revealed that IF paid cell phone reimbursement to
3 its employees in approximately 91% of all employee pay periods. Thus, Plaintiff did not anticipate
4 a realistic recovery on this claim.

5 Accordingly, while Plaintiff maintains that his claims have merit, Plaintiff acknowledges
6 that he faced substantial challenges in litigating these claims through eventual trial on the merits,
7 and that there is a significant chance he would not have obtained a better result than that which
8 will be provided through the Settlement. Larsen Decl., ¶ 25. Thus, this factor supports approval.

9 **2. Risk, Expense, Complexity, and Duration of Further Litigation**

10 As discussed above, *Viking River* and *Wesson* posed a threat to this case, that may have
11 resulted in the outright dismissal of Plaintiff's representative PAGA claim if not for the
12 Settlement. Moreover, as discussed in detail above, IF presented several defenses to Plaintiff's
13 PAGA claim, making recovery far from guaranteed. This factor therefore supports approval of
14 the Settlement. Moreover, Plaintiff would likely have had to litigate this case for a prolonged
15 period of time before reaching a judgment, and would have had to engage in significant written
16 discovery, deposition discovery, and law and motion work in order to bring this case to judgment.
17 The Settlement provides relief to Aggrieved Employees and the State of California and obviates
18 the need for protracted litigation and its inherent risks.

19 **3. Amount Offered in Settlement Given Realistic Value of Claims**

20 The proposed Settlement provides a fair and reasonable monetary recovery for the State
21 of California and Aggrieved Employees in the face of vigorously disputed claims, when compared
22 with the potential realistic exposure.

23 Based on data provided by IF, there were approximately 10,074 pay periods worked by
24 Aggrieved Employees during the PAGA Period. *See* Settlement, § III.14; Larsen Decl., ¶ 26.
25 Labor Code § 2699(f)(2) provides for PAGA civil penalties in the amount of \$100 for each
26 aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee
27 per pay period for each subsequent violation. However, courts have interpreted section 2699(f)(2)
28 to only impose the \$200 subsequent penalty after an employer has been notified by a court or by

1 the Labor Commissioner that its conduct violates the Labor Code. *See Amaral v. Cintas Corp.*
2 *No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until employer
3 is notified that it is violating the Labor Code); *Bernstein v. Virgin America, Inc.*, 3 F.4th 1127,
4 1144 (9th Cir. 2021) (citing *Amaral* and holding employer should not have been subject to
5 “subsequent violation” penalties because it “was not notified by the Labor Commissioner or any
6 court that it was subject to the California Labor Code until the district court partially granted
7 Plaintiffs’ motion for summary judgment”); *Trang v. Turbine Engine Components Technologies*
8 *Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854, at *5 (C.D. Cal. Dec. 19, 2012)
9 (“courts have held that employers are not subject to heightened penalties for subsequent violations
10 unless and until a court or commissioner notifies the employer that it is in violation of the Labor
11 Code”).

12 Therefore, based on the data provided by IF, and assuming Plaintiff would be able to
13 demonstrate a Labor Code violation in each pay period and assuming the “initial” violation
14 penalty of \$100 per pay period under Labor Code § 2699(f)(2), Plaintiff calculated IF’s potential
15 PAGA exposure as \$1,007,400.00 (i.e., \$100 “initial” violation rate x 10,074 pay periods). Larsen
16 Decl., ¶ 26. However, as discussed above, IF raised numerous defenses to Plaintiff’s claims, both
17 on the merits and with respect to the amount of penalties that might be awarded. Additionally, at
18 the time of mediation, there was a looming threat that *Viking River* and/or *Wesson* could preclude
19 any representative PAGA recovery at all. *Id.*

20 In the face of IF’s numerous defenses and the other hurdles mentioned above, Plaintiff
21 discounted the potential exposure by 60% for the risk of failing to prevail on the merits, the risk
22 of having his representative PAGA claim dismissed in whole or in part, and the risk of not being
23 able to prove a violation in each pay period; and by an additional 50% for the risk of the Court
24 reducing penalties, resulting in a realistic potential exposure of approximately \$201,480. Larsen
25 Decl., ¶ 26. Thus, the negotiated settlement of \$165,000 equals about 81.9% of the realistic
26 potential PAGA exposure. Plaintiff submits that the settlement is in the best interests of the
27 LWDA and Aggrieved Employees and well within the range of reasonableness. Larsen Decl., ¶
28 26; *see also Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“The

fact that a proposed settlement may only amount 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.”) (internal quotations omitted). Approval of the Settlement is appropriate, as the Settlement will provide tangible monetary benefit to Aggrieved Employees and the State of California, while avoiding the risks and costs of continued litigation and trial.

4. *Discovery Completed and the Status of Proceedings*

As noted above, the Parties engaged in substantial informal discovery to evaluate the PAGA claim. Larsen Decl., ¶ 11. IF provided Plaintiff with a sampling of Aggrieved Employees’ payroll records; several relevant data points including the number of Aggrieved Employees and total pay periods worked; policy documents; and other documents and information, in order for Plaintiff’s counsel to investigate Plaintiff’s allegations and value the claims prior to mediation. *Id.* Plaintiff also retained an expert data analyst to assist in calculating potential. *Id.* Only after the completion of this comprehensive discovery process, and significant discussions about the likelihood of prevailing on the merits, did the Parties agree to the proposed Settlement. Thus, this factor supports settlement approval.

5. *The Experience and Views of Counsel*

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel with extensive experience, who believe this Settlement to be fair and adequate for all involved. Larsen Decl., ¶¶ 2-6. This factor strongly supports settlement approval. *Kullar*, 168 Cal.App.4th at 130 (“The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s length transaction entered without self-dealing or other potential misconduct.”).

B. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the Settlement Fund as Confirmed by a Lodestar Cross-Check

Plaintiff is entitled to attorneys’ fees in this PAGA action under Labor Code § 2699(g)(1),

1 which provides that “[a]ny employee who prevails in any [PAGA] action shall be entitled to an
2 award of reasonable attorneys’ fees and costs.” *See also Gouskos v. Aptos Village Garage, Inc.*,
3 94 Cal.App.4th 754, 765 (2001) (holding that attorneys’ fees to prevailing party are mandatory
4 when the statute uses the word “shall”); *see also Graciano v. Robinson Ford Sales*, 144
5 Cal.App.4th 140, 153 (2006) (“[P]laintiffs may be considered ‘prevailing parties’ for attorney’s
6 fee purposes if they succeed on any significant issue in the litigation that achieves some of the
7 benefit the parties sought in bringing suit.”).

8 A fee award is justified where the legal action has produced its benefits by way of
9 settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Comty. for*
10 *Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d
11 25, 34 (1977) (“when a number of persons are entitled in common to a specific fund, and an action
12 brought by a plaintiff...for the benefit of all results in the creation or preservation of that fund,
13 such plaintiff...may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d
14 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties,
15 the trial court acts within its equitable power to prevent the other parties’ unjust enrichment);
16 *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage
17 of the fund method for calculating attorneys’ fees more accurately reflects the results achieved
18 for the putative class than the lodestar method and “establishes reasonable expectations on the
19 part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement,
20 which avoids protracted litigation.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir.
21 2005) (“The percentage-of-recovery method is generally favored in common fund cases because
22 it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and
23 penalizes it for failure.”).

24 Fee awards of one-third of the settlement fund are routinely awarded in California courts
25 in class and representative PAGA actions. The California Supreme Court confirmed its approval
26 of the use of the “percentage of fund” method. *See Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th
27 480, 506 (2016) (“the percentage of fund method survives in California class action cases...”)

28 ///

Specifically, the *Laffitte* Court held:

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

Id., at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also*, *e.g.*, *Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015) (approving attorneys’ fees of one-third of settlement fund in PAGA settlement). This is consistent with Plaintiff’s counsel’s experience in similar wage-and hour matters. Larsen Decl., ¶ 27.

Here, Plaintiff’s fee request of one-third of the GSA (estimated to be \$55,000), which is the same percentage approved by the California Supreme Court in *Laffitte*, is fair and reasonable based on the percentage of the recovery method, as confirmed by a lodestar cross-check.

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

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

“Multipliers can range from 2 to 4 or even higher.” *Wershba*, 91 Cal.App.4th at 255; *see also, e.g., Chavez*, 162 Cal.App.4th at 49-50, 66 (approving multiplier of over 2.5); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (upholding multiplier of 3.65). In representative actions such as this one, where Plaintiff’s counsel efficiently and effectively protected the rights of the Aggrieved Employees and where the value of the benefit conferred to the group “can be monetized with a reasonable degree of certainty,” the Court may “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557 (2009).

In this case, and as represented in the table below, Plaintiff’s counsel has a lodestar of approximately \$61,790, compared to the \$55,000 fee request. Larsen Decl., ¶ 29. The billing rates used are reasonable in view of the evidence submitted herewith. *Id.*, ¶¶ 30-31 & Exh. 3 (2023-2024 *Laffey Matrix*).

Name	Rate	Hours	Pre-Multiplier Lodestar
Tuvia Korobkin (15th Year Attorney)	\$675	62	\$41,850.00
Neil M. Larsen (13th Year Attorney)	\$650	8.7	\$5,655.00
Rijenea Appling (2nd Year Attorney)	\$375	32.6	\$12,225.00
Paralegals	\$200	10.3	\$2,060.00
Total Lodestar			\$61,790.00

As discussed above, this case presented significant risks, including the risk of the *Viking River* and *Wesson* decisions that could have effectively concluded or severely curtailed the case, in addition to the defenses IF presented on the merits. It is fair and reasonable to account for these risks in compensating Plaintiff’s counsel, as well as the risks involved in undertaking this litigation and expending considerable effort while working on a pure contingency basis. Since undertaking representation of Plaintiff, Plaintiff’s counsel dedicated substantial resources to this litigation, including expending \$3,731.64 in litigation costs, without receiving any compensation to date. Larsen Decl., ¶ 32 & Exh. 4.

1 Plaintiff's counsel conducted significant pre-filing research regarding the merits of
2 Plaintiff's claims, his ability to recover PAGA civil penalties, and IF's potential defenses.
3 Plaintiff's counsel also conducted extensive informal discovery, and analyzed the data and
4 information produced by IF, retained a data analyst to assist with calculating potential damages,
5 and drafted a comprehensive mediation brief. Larsen Decl., ¶ 28. Plaintiff's counsel also attended
6 a full-day private mediation, and spent considerable time and effort negotiating and preparing the
7 settlement and related documents, as well as this Motion and supporting documents. *Id.* Plaintiff's
8 counsel will also expend additional time attending the hearing on this Motion and overseeing the
9 settlement administration process. *Id.* Given the significant potential for adverse outcomes in this
10 case, the contingent risk borne by Plaintiff's counsel was great. *Id.* The quality of Plaintiff's
11 counsel's work, and the efficacy and dedication with which it was performed, should be
12 compensated.

13 Here, as noted above, Plaintiff's counsel expended significant time and resources in
14 litigating this case, which resulted in a positive result for Plaintiff, the State of California, and
15 Aggrieved Employees in the face of significant defenses. Counsel also bore the contingency risk
16 of this litigation for the benefit of the Aggrieved Employees, as well as the State of California
17 (which elected not to take the case after receiving Plaintiff's notification letters).

18 Critically, Plaintiff's recovery for the State of California and Aggrieved Employees of
19 approximately \$98,268.36 (the Net Settlement Amount) significantly exceeds other PAGA
20 awards approved by California courts. *See, e.g., Aguirre v. DSW, Inc.*, 2012 WL 11875296, *3
21 (C.D. Cal. Nov. 29, 2012) (\$10,000 PAGA payment); *Garcia, supra*, 2012 WL 5364575 at *7
22 (approving \$10,000 PAGA payment, finding it "comports with settlement approval of PAGA
23 awards in other cases. [Citations.]"); *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, *8 (C.D.
24 Cal. Nov. 18, 2014) (\$18,750 PAGA payment); *Franco v. Ruiz Food Prods.*, 2012 WL 5941801,
25 *14 (E.D. Cal. Nov. 27, 2012) (\$10,000 PAGA payment); *Chu v. Wells Fargo Inv., LLC*, 2011
26 WL 672645, *1 (N.D. Cal. Feb. 16, 2011) (\$10,000 PAGA payment).

27 Plaintiff's counsel's previous experience in litigating wage and hour representative
28 actions also supports the reasonableness of the fee request. Plaintiff's counsel is well-versed in

1 wage and hour class and PAGA action litigation. *See* Larsen Decl., ¶¶ 2-6. Plaintiff’s counsel has
2 also been certified as class counsel in multiple class action cases alleging wage and hour claims.
3 *Id.* Plaintiff’s counsel’s experience in similar matters was integral in evaluating the strengths
4 and weaknesses of this case and the reasonableness of the Settlement. Because it is reasonable
5 to compensate Plaintiff’s counsel commensurate with their skill, reputation, and experience, the
6 requested fee award is fair, reasonable and adequate, and should therefore be approved. Based
7 on all of the above, Plaintiff respectfully submits that the requested fee award is fair, reasonable
8 and adequate and should be approved.

9 **C. The Requested Litigation Costs and Settlement Administration Costs Are**
10 **Fair, Reasonable, and Adequate**

11 Plaintiff’s request for reimbursement of litigation costs of \$3,731.64 is also fair and
12 reasonable. All of Plaintiff’s litigation costs were reasonably incurred. *See* Larsen Decl., ¶ 32 &
13 Exh. 4. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts.
14 *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover “those out-
15 of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*, 2011
16 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) (“costs of reproducing pleadings, motions and exhibits
17 are typically billed by attorneys to their fee-paying clients” and are reimbursable); *In re Immune*
18 *Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses,
19 consultant and expert fees, postage, filing fees, messenger and overnight delivery costs, and other
20 costs are reimbursable). And as noted above, IF is reimbursing Plaintiff’s \$4,500.00 portion of
21 the mediation fee separately from the settlement, and thus that amount will not be deducted from
22 the settlement. Likewise, the request for administration costs of \$3,000 is also fair and reasonable.
23 ILYM was selected because it is an experienced settlement administrator and returned a
24 reasonable bid. *See* Declaration of Kimberly Sutherland & Exhibits. Moreover, ILYM will
25 perform several important functions that are integral to the implementation of the Settlement. *Id.*
26 Its requested fee is therefore reasonable.

Courts routinely approve enhancement awards to compensate named plaintiffs for the services they provide and the risks they incur during representative litigation. *See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000 incentive payment); *Rodriguez v. West Publishing Co.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (observing incentive awards are “fairly typical” and are awarded to named plaintiffs “...to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, **to recognize their willingness to act as a private attorney general**”) (emphasis added); *see also Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (awarding \$10,000 incentive award in wage-and-hour class/PAGA action). Here, Plaintiff seeks an enhancement payment of \$5,000. *See* Settlement, § III.5. This request is reasonable given Plaintiff’s efforts in this case and the risks he undertook on behalf of Aggrieved Employees. *See* Alexander Decl., ¶¶ 5-7. Plaintiff provided substantial factual information and documents to Counsel, assisted in identifying potential witnesses, and participated in numerous discussions with Counsel regarding the case and the settlement. *Id.*; *see also* Larsen Decl., ¶ 35. Accordingly, Plaintiff’s requested enhancement payment is appropriate and justified as part of the Settlement.

For the reasons stated herein, Plaintiff respectfully requests that this Court grant Plaintiff's Motion and adopt the [Proposed] Judgment and Order Granting Settlement Approval.

Respectfully submitted,
ABRAMSON LABOR GROUP

PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT