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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10 **UNLIMITED JURISDICTION**

11 ANDRE TAYOR, an individual,

12 Plaintiff,

13 v.
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15 BARRETT FINANCIAL GROUP, LLC, an
16 Arizona limited liability company; and DOES
17 1-25, inclusive,

18 Defendants.
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Case No. 22STCV32618

Reservation ID: 387267273348

Assigned for all purposes to Hon. Daniel M.
Crowley, Dept. 71

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF
SETTLEMENT OF LABOR CODE §2698,
et seq. PRIVATE ATTORNEYS GENERAL
ACT (“PAGA”) CLAIMS**

Date: June 5, 2025

Time: 8:30 a.m.

Dept.: 71

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1 **MEMORANDUM**

2 Plaintiff Andre Taylor respectfully submits the following Memorandum of Points and
3 Authorities in Support of Plaintiff's Motion for Approval of Settlement of Labor Code Section
4 2698, *et seq.*, Private Attorneys General Act ("PAGA") Claims:

5 **I. INTRODUCTION**

6 This PAGA action involves a number of underlying claims arising from Defendant Barrett
7 Financial Group, LLC's alleged Labor Code violations relating to how it classified and paid its
8 employees. Namely, Plaintiff alleged that Defendant perpetuated an unlawful employment
9 scheme pursuant to which Defendant misclassified its mortgage loan originator employees and
10 paid them commissions only – forcing those employees to work for weeks or months with no pay.
11 Plaintiff alleged that, in connection with that scheme, Defendant misclassified employees as
12 independent contractors, failed to pay employees at least minimum wage or any wages other than
13 commissions, failed to record days and hours worked, failed to provide wage statements, failed to
14 reimburse employees for work-related expenses, and the like. Plaintiff alleged that this conduct
15 violates several provisions of the California Labor Code and subject Defendant to penalties under
16 PAGA, as well as costs and attorney's fees.

17
18 Defendant generally denied the allegations, contending that all employees were classified
19 and paid appropriately and maintains that at all relevant times it complied with all applicable laws.

20 The Parties reached a settlement resolving the PAGA claims at issue in this case. By this
21 motion, Plaintiff requests that the Court grant approval of the Settlement reached between the
22 parties. The Settlement Agreement is submitted concurrently with this motion as Attachment B to
23 the Declaration of John A. Lofton. A copy of the Settlement Agreement and this Motion was also
24 served on the Labor Workforce and Development Agency ("LWDA") on January 30, 2025. See
25 Declaration of John A. Lofton ("Lofton Decl."), ¶ 8. Unless otherwise indicated, all capitalized
26 terms used herein shall have the meanings set forth in the Settlement Agreement.

27 Pursuant to the Settlement and subject to Court approval, Defendant will pay a non-
28 reversionary Gross Settlement Amount of \$605,000.00 ("Gross Settlement Amount"). All

1 settlement payments will be made from the Gross Settlement Amount, including attorneys' fees
2 and costs, the Incentive Award, Settlement Administrator Costs, the LWDA Settlement Proceeds,
3 and the PAGA Employees' Settlement Proceeds, and all other payments associated with the
4 Settlement. From the Gross Settlement Amount, Plaintiff's Counsel requests approval of
5 attorney's fees equal to one-third of the Gross Settlement, or \$201,667.00, and reimbursement of
6 costs incurred to prosecute this case in the amount of \$17,742.43. Plaintiff further requests the
7 Court to approve Atticus Administration, LLC as the settlement administrator, with costs for
8 administration not to exceed \$5,000.00. Atticus Administration has provided an initial quote in
9 the amount of \$4,500.00. See Lofton Decl., ¶ 26. Plaintiff requests that the Court award a PAGA
10 representative Incentive Award in the amount of \$10,000.00 to Plaintiff, in consideration of
11 Plaintiff's efforts herein, including initiating and pursuing this lawsuit. After deducting these
12 amounts from the Gross Settlement Amount, at least \$370,590.57 will be distributed to the LWDA
13 and the PAGA Employees pursuant to PAGA.

14
15 As required by PAGA, 75% of the approximately \$370,590.57 Net Settlement Amount, or
16 \$277,942.93, shall be paid to the LWDA. See Labor Code §2699(i). The remaining 25%, or
17 approximately \$92,647.64, shall be distributed among the PAGA Employees. Defendant
18 employed approximately 304 PAGA Employees from September 6, 2021 to November 13, 2024.

19 Because Defendant did not record days and hours worked by the PAGA Employees, it
20 would be extremely difficult, if not impossible, to determine the specific number of pay periods
21 worked by each PAGA Employee. Consequently, Plaintiff requests that the Court approve an
22 equal distribution of the PAGA Employees' Settlement Proceeds to each PAGA Employee. Using
23 this method, each PAGA Employee should receive approximately \$304.76.

24 The PAGA Employees will be mailed their checks directly by the Settlement
25 Administrator. PAGA Employees will have 120 days to cash their checks. If any funds remain
26 after the expiration date of the check cashing period, any residual funds will be distributed to the
27 DIR Unclaimed Property Fund.

28 The Settlement was the product of arm's-length negotiations by experienced counsel on

1 both sides. On November 13, 2024, the Parties participated in a mediation conducted by Hon. S.
2 James Otero. In advance of the mediation, the Parties had litigated this case for over two years,
3 with Defendant providing Plaintiff's Counsel with tens of thousands of documents relating to the
4 PAGA Employees' scheduling, pay, wage statements, commissions, classification, job functions,
5 and the like. This information was sufficient to allow Plaintiff's counsel to analyze the case, and
6 determine the value of the claims and likelihood of success on the merits. During the mediation,
7 each side, represented by its respective counsel, recognized the risk of an adverse result in the case
8 and the costs involved litigating it, as well as the Court's substantial discretion in modifying the
9 dollar amount of any award. It was with this understanding that the parties agreed to resolve the
10 claims presented as set forth in the Settlement Agreement. This Settlement is a fair and reasonable
11 resolution on behalf of the LWDA and for the PAGA Employees.

12 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

13
14 Plaintiff submitted his notice of Labor Code violations to the LWDA on September 6,
15 2022 and an amended notice on March 9, 2023. Plaintiff filed his Complaint in Los Angeles
16 County Superior Court on October 5, 2022 and the operative Second Amended Complaint on May
17 15, 2023.

18 As set forth in the Second Amended Complaint, Plaintiff alleged that Defendant violated
19 Labor Code §§201, 202, 204, 226, 226.7, 247.5, 510, 512, 558, 1174, 1197, 2751, 2802, and IWC
20 Wage Order No. 4-2001 (8 C.C.R. §11040). With respect to Plaintiff and the PAGA Employees,
21 who have been injured as a result of these violations, he alleged that they are entitled to civil
22 penalties pursuant to Labor Code §§203, 210, 226, 226.3, 226.7, 558, 1198.5, 2699(a), and
23 2699(f), and to recover costs and attorney's fees pursuant to California law, including Labor Code
24 §2699(k)(1).

25 **A. Factual Allegations and Legal Analysis of Claims in the First Amended** 26 **Complaint**

27 Defendant operates a mortgage loan origination business, employing approximately 304
28 employees during the PAGA Period of September 6, 2021 to November 13, 2024. Plaintiff was

1 employed by Defendant as a mortgage loan originator from approximately March 28, 2022 to
2 August 18, 2022.

3 Plaintiff alleged that Defendant agreed to – and was legally obligated to – pay him and
4 other employees an hourly rate as well as commissions. The hourly rate was characterized as a
5 “Draw Guarantee” that would be deducted from earned commissions. Plaintiff alleged, however,
6 that Defendant failed to pay him and other employees any hourly rate at all, meaning that Plaintiff
7 and other employees often were not paid even minimum wage. Plaintiff alleged that, despite not
8 paying him any hourly wages, Defendant nevertheless deducted wages from his commissions.

9 Plaintiff further alleged that Defendant’s commission agreement with its employees was
10 vague to the point that no reasonable person could calculate how much he or she would earn from
11 a particular transaction. The agreement allowed Defendant to deduct a wide variety of expenses,
12 many of which were undefined and/or had no relation to the transactions at issue. Plaintiff alleged
13 that Defendant used these vague rules to make excessive and unlawful deductions from his and
14 other employees’ earned commissions.
15

16 Plaintiff further alleged that Defendant failed to track or record his and other employees’
17 time worked, or pay them for that time, including overtime work. Plaintiff alleged that Defendant
18 failed to provide accurate, itemized wage statements, or indeed, often failed to provide any wage
19 statements at all.
20

21 Plaintiff alleged that throughout his employment, he and other employees were denied
22 timely and uninterrupted meal and rest periods. Plaintiff further alleged that Defendant failed to
23 provide clear guidance to employees regarding their rights to meal and rest periods or when they
24 could or should be taken, and that Defendant failed to record meal periods for Plaintiff and other
25 employees.
26

27 Plaintiff also alleged that during the relevant time period, Defendant required Plaintiff and
28

1 other employees to work from home and use their own phones, computers, residences, personal
2 vehicles, and the like for work purposes. Plaintiff alleged that Defendant failed to compensate
3 Plaintiff and other employees for these expenses, despite the fact that they were expenses incurred
4 at the instruction of Defendant and for the benefit of Defendant's business.

5 Defendant denies all allegations, does not admit any liability under the Settlement
6 Agreement, or for the causes of action alleged, and denies any failure to comply with the laws
7 identified in this Motion and in the operative complaints of the Action.

8 **B. Mediation and Settlement**

9 On November 13, 2024, the Parties participated in a mediation conducted by Hon. S.
10 James Otero. See id., ¶ 6. In advance of the mediation, the Parties had litigated this case for over
11 two years, with Defendant providing Plaintiff's Counsel with tens of thousands of documents
12 relating to the PAGA Employees' scheduling, pay, wage statements, job functions, and the like.
13 See id. This information was sufficient to allow Plaintiff's counsel to analyze the case, and
14 determine the value of the claims and likelihood of success on the merits. See id. During the
15 mediation, each side, represented by its respective counsel, recognized the risk of an adverse result
16 in the case and the costs involved litigating it, as well as the Court's substantial discretion in
17 modifying the dollar amount of any award. It was with this understanding that the parties agreed
18 to resolve the claims presented as set forth in the Settlement Agreement.

19 **III. THE PROPOSED SETTLEMENT**

20 The proposed Settlement is for a non-reversionary Gross Settlement Amount of
21 \$605,000.00. Per the PAGA, 75% of the Net Settlement Amount shall be paid to the LWDA.
22 Labor Code §2699(i). The remaining 25% of the Net Settlement Amount will be distributed by a
23 direct mailing of checks by the Settlement Administrator to the PAGA Employees.

24 **A. Settlement Payout**

25 Subject to the terms and conditions of the Settlement Agreement, the Gross Settlement
26 Amount that Defendant is obligated to pay in connection with the Settlement is \$605,000.00. This
27 amount will cover (as approved by the Court) (i) the PAGA Employees' Settlement Proceeds; (ii)
28

1 the Plaintiff's Counsel fees and costs; (iii) the Plaintiff's Incentive Award; (iv) the LWDA
2 Settlement Proceeds; and (v) the Settlement Administrator Costs. The Gross Settlement Amount
3 is non-reversionary.

4 **B. Calculation and Distribution of Settlement Payments**

5 Per the PAGA, 75% of the approximately \$370,590.57 Net Settlement Amount, or
6 approximately \$277,942.93, shall be paid to the LWDA. See Labor Code §2699(i). The
7 remaining 25%, or approximately \$92,647.64, shall be distributed among the PAGA Employees.
8 Defendant has identified 304 PAGA Employees who worked during the PAGA Period, from
9 September 6, 2021 to November 13, 2024. Per Defendant's records, reasonable extrapolations
10 thereon, and the best estimates of both parties, PAGA Employees worked a total of approximately
11 7,500 pay periods during the PAGA period. See Lofton Decl., ¶ 10. Each PAGA Employees'
12 share of the \$92,647.64 will be calculated by dividing that amount equally among all 304 PAGA
13 Employees, for a payment of approximately \$304.76 each. See id.

14
15 Each PAGA Employee's share shall be allocated as one hundred percent (100%) penalties,
16 from which there will be no payroll tax withholdings and for which an IRS Form 1099 will be
17 issued by the Settlement Administrator, as needed.

18 The timing of payment is as follows: Within fifteen calendar days after the Effective Date,
19 as defined in the Settlement Agreement, Defendant shall transfer to the Settlement Administrator
20 the entire Gross Settlement Amount of \$605,000.00.

21 Upon receipt of the Gross Settlement Amount, the Settlement Administrator shall release
22 the Court-approved PAGA representative Incentive Award to Plaintiff and the Court-approved
23 Plaintiff's Counsel Attorney's fees and costs to Plaintiff's Counsel, and the LWDA Settlement
24 Proceeds to the LWDA, and pay itself its Court-approved Settlement Administrator Costs.

25 Within fifteen calendar days after receipt of the Gross Settlement Amount, the Settlement
26 Administrator will confirm names and addresses for the PAGA Employees and mail checks for
27 payment to the PAGA Employees. PAGA Employees will have 120 days to cash their checks.
28

1 After the last outstanding check becomes invalid, the Settlement Administrator will transfer any
2 amount remaining to the California DIR Unclaimed Property Fund.

3 **C. PAGA Notice and Release of Claims**

4 Within fifteen calendar days after the Effective Date, Defendant will provide the
5 Settlement Administrator a list setting forth the names, last known addresses, and Social Security
6 numbers of each PAGA Employee during the PAGA Period.

7 Within fifteen calendar days after receipt of the Gross Settlement Amount, the Settlement
8 Administrator shall mail via U.S. First Class mail each PAGA Employee's settlement check to
9 their last known address with directions to the Postmaster to forward the payment checks and
10 return all undeliverable payment checks to the Settlement Administrator. A letter approved by the
11 Parties explaining this Settlement will be included in the mailing of each PAGA Employee's
12 individual settlement check.

13 **D. Incentive Award to PAGA Representative**

14 Plaintiff requests that the Court award him an Incentive Award in the amount of
15 \$10,000.00, in consideration of Plaintiff's efforts herein, which include initiating and pursuing this
16 lawsuit, assisting in formal discovery and participating in the all-day mediation of the matter,
17 undertaking the risk of liability for attorney's fees and expenses in the event he might be
18 unsuccessful in the prosecution of this lawsuit, having his name forever part of a public record of
19 him suing his employer, and agreeing to a general release as part of the Settlement. The
20 Settlement Administrator will pay the PAGA representative Incentive Award approved by the
21 Court of up to \$10,000.00 each out of the Gross Settlement Amount.

22 Awarding an incentive to a PAGA representative follows the same principle that applies in
23 the class action context. "[T]he rationale for making enhancement or incentive awards to named
24 plaintiffs is that they should be compensated for the expense or risk they have incurred in
25 conferring a benefit on other members of the class. An incentive award is appropriate if it is
26 necessary to induce an individual to participate in the suit." Cellphone Termination Fee Cases,
27 186 Cal.App.4th 1380, 1395 (2010) (quoting Clark v. Am. Residential Servs. LLC, 175
28

1 Cal.App.4th 785, 804-806 (2009)). An award of \$10,000 falls well below the average
2 enhancement award according to one study. See, Theodore Eisenberg & Geoffrey P. Miller,
3 INCENTIVE AWARDS TO CLASS ACTION PLAINTIFFS: AN EMPIRICAL STUDY (2006) 53 UCLA L.
4 Rev. 1303, 1308 (concluding the average award per class representative was \$15,992).

5 An incentive award in a PAGA case is especially important where the Plaintiff has filed
6 suit on behalf of the LWDA and, are thus, providing a vital service for the State. As a result of
7 Plaintiff's efforts, the LWDA will receive approximately \$277,942.64.

8 Plaintiff spent a significant amount of time helping Counsel with the prosecution of this
9 action and performing the following tasks: (1) meeting with and communicating with his attorneys
10 on numerous occasions; (2) detailing his experiences and producing copies of documents; (3)
11 identifying and contacting witnesses; (4) providing expert-level experience regarding Defendant's
12 data systems and procedures; (5) assisting in preparing the PAGA claim notices and complaint; (6)
13 providing material support in the preparation, review, and responses to formal and informal
14 discovery; (7) reviewing the mediation documents prepared; (8) reviewing the terms of and
15 signing the Settlement Agreement; and (9) assisting in the preparation of this motion. See, Lofton
16 Decl., ¶¶ 13-15.

17 In light of the work that Plaintiff performed on behalf of the LWDA and PAGA
18 Employees, and the significant penalties recovered for them, the requested PAGA representative
19 Incentive Award of \$10,000.00 is reasonable and appropriate.

20 **E. Settlement Administrator Costs**

21 The Settlement Administrator will pay out of the Gross Settlement Amount to itself its
22 reasonable fees and expenses, not to exceed \$5,000.00, after such payment has been approved by
23 the Court. Atticus Administration has submitted a quote for its costs for administration at
24 \$4,500.00. See Lofton Decl., ¶ 26, Exhibit D. Atticus Administration is a well-known and
25 respected Settlement Administrator. Plaintiff's Counsel has used Atticus Administration in other
26 matters, and knows its rates to be fair and competitive. See id. The parties already used Atticus
27 Administration to conduct two Belaire-West notice procedures in this case, so it already has
28

familiarity with the case and the PAGA Employees which will allow additional efficiencies. See id. Plaintiff requests that Atticus Administration be approved as Settlement Administrator by the Court.

F. Attorneys' Fees and Litigation Costs

In considering the overall fairness of the Settlement, the Court may look to the reasonableness of the Attorneys' Fees and Costs allocated in the Settlement Agreement. Plaintiff's Counsel's litigation costs were all reasonable and necessary expenses in litigating and resolving this action. A copy of the itemized list of out-of-pocket costs, in the amount of \$17,742.43 is attached to the Declaration of John A. Lofton as Exhibit C.

Plaintiff also seeks one-third of the Gross Settlement Amount, or \$201,667.00, in attorney's fees. For the purposes of a lodestar cross-check, Plaintiff's Counsel has spent over 235 hours working on this matter, at an hourly rate of \$825, for a total of more than \$193,875. See id., ¶ 24. The work was necessary and appropriate, and included (1) successfully defeating Defendant's motion to compel arbitration, (2) successfully bringing multiple motions to compel and informal discovery conferences due to Defendant's discovery obstruction, (3) conducting two separate Belaire-West processes, (4) interviewing numerous witnesses, and (5) reviewing and analyzing tens of thousands of employment and independent contractor records to determine the scope of Defendant's wrongdoing. The \$201,667.00 requested compares favorably with the actual work performed by Plaintiff's Counsel.

The attorneys' fees sought will compensate Plaintiff's Counsel for work performed in recovering a significant benefit for the LWDA and PAGA Employees. In reviewing attorneys' fees in the class action context, one court explained: "The fee was negotiated at arm's-length with sophisticated defendants by the attorneys who were intimately familiar with the case, the risks, the amount and value of their time, and the nature of the result obtained for the class." In Re First Capital Holdings Corp. Fin. Prods. Securities Litig. 1992 U.S. Dist. LEXIS 14337, at *4 (C.D. Cal. June 10, 1992) (awarding attorney's fees of \$8 million).

Courts have long recognized the "common fund" or "common benefit" doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their

1 fees and costs to be paid out of the fund. See Laffitte v. Robert Half Internat. Inc., 1 Cal.5th 480,
2 504 (2016); See also, Serrano v. Priest (“Serrano III”), 20 Cal.3d 25, 34 (1977); Glendale City
3 Employees’ Assoc. v. City of Glendale, 15 Cal.3d 328, 341, fn. 19 (1975); In re Consumer Privacy
4 Cases, 175 Cal.App.4th 545, 557 (2009); In re Sumitomo Copper Litig., 74 F.Supp.2d 393, 396-
5 398 (S.D.N.Y. 1999) (describing the overwhelming weight of federal authority in favor of the
6 percentage fee method); Mills v. Electric Auto-Lite Co., 396 U.S. 375, 391-392 (1970) (United
7 States Supreme Court endorsing the common fund approach to class actions.)

8 The California Practice Guide: Civil Trials and Evidence (The Rutter Group) at §7.172.3
9 explains the common fund doctrine as follows:

10 Where the lawsuit results in the recovery of a fund or property benefiting others as
11 well as plaintiff (*e.g.*, a class action), the court has inherent equitable power to order
12 plaintiff’s attorney fees paid out of the common fund or property [citations]. Such
13 fee spreading assures that all of those benefited by the litigation pay their fair share
of obtaining the recovery.

14 Numerous appellate courts have similarly endorsed the “percentage fee” method for determining
15 reasonable attorney’s fees in common benefit cases.¹

16 In the Laffitte decision, the California Supreme Court held that, “when class action
17 litigation establishes a monetary recovery fund for the benefit of the class members, and the trial
18 court in its equitable powers awards class counsel a fee out of that fund, the court may determine
19 the amount of a reasonable fee by choosing an appropriate percentage of the fund created.”
20 Laffitte, supra, 1 Cal.5th at 503. The California Supreme Court also noted that the percentage of
21 the fund method “more accurately reflects the results achieved” than the lodestar method, serves
22

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

1 as a “better approximation of market conditions in a contingency case,” and encourages “counsel
2 to seek an early settlement and avoid unnecessarily prolonging the litigation.” Id. at 503-504.

3 Courts have recognized that a one-third fee is appropriate in common fund cases. See, e.g.,
4 Chavez v. Netflix, Inc., 162 Cal.App.4th 43, 66, fn.11 (2008) (“Empirical studies show that,
5 regardless of whether the percentage method or the lodestar method is used, fee awards in class
6 actions average around one-third of the total recovery.”)

7 The attorney’s fees requested here are in line with other fee awards in California wage and
8 hour cases. For example, in Smiles v. Walgreens Co., Alameda Superior Court Case Number
9 RG17862495, Judge Seligman awarded attorney’s fees of 35% of the \$15,000,000 settlement in a
10 PAGA case, plus costs; in Pearce v. Linens ‘N Things, Inc., Orange County Superior Court Case
11 No. 00CC04830, Judge McDonald awarded attorney’s fees equal to 33 1/3% of the settlement
12 fund, plus costs; in Albrecht v. Rite Aid Corp., San Diego Superior Court Case No. 729129, Judge
13 Haden awarded attorney’s fees equal to 35% of the settlement fund, plus costs; in Crandall v. U-
14 Haul International, L.A. Superior Court Case No. BC 178775, Judge Czuleger awarded plaintiffs’
15 counsel attorney’s fees equal to 40% of the settlement fund; in Graubard v. Goodyear Tire Rubber
16 Company, LA Superior Court Case No. BC 230520, Judge Mohr awarded attorney’s fees equal to
17 32.1% of the settlement fund, plus costs. These cases illustrate that California courts recognize
18 that a one-third fee is appropriate in a wage and hour common fund case.

19 Given the results achieved under the circumstances of this litigation, the requested fee
20 award is reasonable and on par with the fees actually incurred by Plaintiff’s Counsel. As
21 discussed in In re Sumitomo Copper Litigation, supra, 74 F.Supp.2d at 396:

22 No one expects a lawyer whose compensation is contingent on the success of his
23 services to charge, when successful, as little as he would charge a client who in
24 advance of the litigation has agreed to pay for his services, regardless of success.
25 Nor, particularly in complicated cases producing large recoveries, is it just to make
26 a fee depend solely on the reasonable amount of time expended.

26 In that vein, this Court should consider the contingent nature of this case, the uncertainty of
27 the outcome, the quality of the counsel, and the preclusion from other employment.

1 **1. The Contingent Nature**

2 From the outset of the case to the present, prosecution of this action has involved
3 significant financial risk for Plaintiff’s Counsel. Plaintiff’s Counsel undertook this matter solely
4 on a contingent basis, with no guarantee of recovery. Plaintiff’s Counsel have placed their own
5 resources at risk to prosecute this action with no guarantee of success. See, Lofton Decl., ¶¶ 18-
6 19. If Defendant prevailed on any one of the affirmative defenses raised, ***it could substantially***
7 ***reduce, if not wholly defeat, recovery.*** See id. Despite such challenges, Plaintiff’s Counsel was
8 able to secure a favorable settlement resolving the PAGA claims on behalf of Plaintiff, the PAGA
9 Employees, and the LWDA. See id.

10 **2. The Experience, Reputation, and Ability of Counsel, and the Skill**
11 **Displayed in Litigation**

12 Plaintiff’s Counsel has substantial experience in complex and representative action
13 litigation, including many wage and hour cases. See Lofton Decl., ¶ 17.

14 The quality of opposing counsel is also important to evaluating the quality of the work
15 done by Plaintiff’s Counsel. Here, Defendant was jointly represented by Roger Wright of Wright
16 Law Firm, PLC and Andrew Smith of Jackson Lewis, P.C., both experienced employment
17 litigators. Thus, the complexity and potential duration of the case, and that in the face of
18 experienced and resourceful opposition, weigh in favor of awarding the requested attorney’s fees.
19 See id. ¶ 20.

20 **3. The Results Achieved**

21 The results achieved by the Settlement support Plaintiff’s Counsel’s request for attorney’s
22 fees. As noted, the Settlement will result in payment of approximately \$277,942.93 to the LWDA
23 and \$92,647.63 to the PAGA Employees. See id., ¶ 21.

24 The efficiency with which this litigation was conducted and resolved should be rewarded.
25 See id., ¶ 22. Plaintiff and Defendant moved promptly from the initial filing in October 2022 to
26 final settlement in November 2024. Despite the various discovery and other motions, the parties
27 were able to minimize use of the Court’s resources and avoid trial. The LWDA and PAGA
28 Employees will directly benefit from the prompt and fair resolution of their claims. They will be

1 receiving a significant award in a short period of time as opposed to waiting years to recover some
2 undetermined amount if they succeeded at trial, which is an uncertainty in itself. See id.

3 **4. Preclusion of Other Employment**

4 As California law recognizes, Plaintiff's Counsel's commitment to this litigation should
5 not be assessed in a vacuum. See, Serrano, supra, 20 Cal.3d at 49. A relevant factor in
6 determining attorney's fees is whether the litigation required Plaintiff's Counsel to forego other
7 employment. See id. Additional work was available that Plaintiff's Counsel had to forgo to
8 devote the time necessary to pursue this litigation. See Lofton Decl. ¶ 23. Specifically, Plaintiff's
9 Counsel undertakes marketing efforts that generate a steady stream of leads and potential cases,
10 and the firm is only able to take on a portion of those cases and forego the remainder, so it is
11 essential that Plaintiff's Counsel receive its fair compensation for the cases it does accept. See id.

12 Accordingly, attorney's fees in the amount of \$201,667.00, which is one-third of the Gross
13 Settlement Amount is fair and reasonable under the circumstances, and under California
14 precedent, along with \$17,742.43 in litigation costs.

15 **IV. THE STANDARD FOR APPROVAL OF PAGA SETTLEMENTS.**

16 Labor Code §2699(s)(2) provides: "[t]he superior court shall review and approve any
17 settlement of any civil action filed pursuant to this part." However, because PAGA claims are not
18 class actions, the usual rules or various findings required by Rule 23 or CCP §382 do not apply.
19 See, e.g., Navarro v. Ordaz Cultured Marble & Onyx, Inc. 2015 U.S. Dist. LEXIS 21374, at *2
20 (N.D. Cal. Feb. 23, 2015). There is no requirement to provide notice to the PAGA Employees, the
21 PAGA Employees do not have the right to object to or opt out of the Settlement, and there is no
22 need for separate preliminary and final hearings. See Amalgamated Transit Union, Local 1756 v.
23 Superior Court, 46 Cal.4th 993, 1003 (2009); Urbino v. Orkin Services of California 726 F.3d
24 1118, 1122-23 (9th Cir. 2013).

25 The requirements for a settlement under the PAGA are that the settling parties are to
26 submit the proposed settlement to the LWDA at the same time it is filed with the Court, and then,
27 if the settlement is approved, to submit the judgment to the LWDA within 10 days after entry. See
28 Labor Code §2699(s)(3). PAGA does not set forth any standards for evaluating a settlement. Id.

1 The only potential objector is the LWDA itself, whose comments, if any, will be submitted
2 to the Court in advance of the approval hearing. The PAGA does not give absent employees any
3 substantive right to bring their own PAGA claim. See Sakrab v. Luxottica Retail North
4 American, Inc., 803 F.3d 425, 436 (9th Cir. 2015). Rather, “[a]n employee bringing a PAGA
5 action does so ‘as the proxy or agent of the state’s labor law enforcement agencies,’ who are the
6 real parties in interest ... However, by obtaining such penalties, the employee-plaintiff does not
7 vindicate absent employees’ claims, for the PAGA does not give absent employees any
8 substantive right to bring their ‘own’ PAGA claims.” (internal citations omitted). Id. at 435-436.
9 Therefore, the “bulk of any recovery goes to the LWDA, not to the aggrieved employees ... A
10 PAGA action is at heart a civil enforcement action filed on behalf of and for the benefit of the
11 state, not a claim for class relief.” Baumann v. Chase Investment Servs. Corp., 747 F.3d 1117,
12 1123-24 (9th Cir. 2014).

13 Although the PAGA does not provide instruction on how courts are to evaluate a
14 settlement under the Act, California law provides some general guidance concerning judicial
15 approval of any settlement. First, California courts recognize a strong public policy in favor of
16 settlements. See Kaufman v. Goldman, 195 Cal.App.4th 734, 735 (2011) (“We note there is well-
17 established policy in the law to discourage litigation and favor settlement. Pretrial settlements are
18 highly favored because they diminish the expense of litigation.”) Here, the Settlement not only
19 avoids the complexities and legal uncertainties discussed above, but also the delay, expense, and
20 drain on judicial resources that would result from a lengthy trial. Second, in all circumstances, the
21 decision to approve or reject a settlement is committed to the trial court’s sound discretion. See
22 Wershba v. Apple Computer, Inc., 91 Cal.App.4th 224, 234-235 (2001). This basic principle
23 coincides with the discretion the Legislature specifically afforded courts under sections 2699(e)(1)
24 and (2) of the PAGA, granting to the courts the same discretion as that held by the LWDA in
25 assessing civil penalties and specifically authorizing courts the ability to award lesser amounts
26 than the maximum civil penalties set forth in section 2699. Third, although the court possesses
27 discretion in approving a PAGA settlement, it seems logical that the court’s role “must be limited
28 to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud

1 or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as
2 a whole, is fair, reasonable and adequate to all concerned.” In re Microsoft I-V Cases, 135
3 Cal.App.4th 706, 723 (2006) (quoting Officers for Justice v. Civil Service Com., 688 F.2d 615,
4 625 (9th Cir. 1982)). Here, the parties agreed that settlement, on the terms set forth in the
5 Settlement Agreement, is fair, reasonable, and adequate to the LWDA and PAGA Employees.

6 **V. THE PAGA SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.**

7 The Settlement was reached only after arm’s-length and good faith negotiations. See
8 Lofton Decl., ¶ 9. Prior to mediation, the parties engaged in a significant exchange of data,
9 including employment agreements, wage records, commission agreements, commission
10 calculation worksheets, detailed mortgage software records, and the like. See id. Counsel and the
11 parties attended a full-day mediation on November 13, 2024. Both parties provided detailed
12 mediation briefs and Plaintiff’s counsel prepared an extensive analysis of the potential exposure.
13 See id. The risks of continued litigation had to be considered and a compromise of the claims was
14 settled upon.

15 Based on Plaintiff’s analysis, the potential penalties available under PAGA made
16 Defendant’s maximum exposure as high as \$1,872,000.

17 PAGA carries a maximum penalty of \$100 per pay period for initial violations and \$200
18 for subsequent violations. Many courts “stack” violations so that the per-pay-period penalty is
19 combined into one number that is applied to the total of pay periods, regardless of the variety of
20 violations. Here, there were approximately 7,500 pay periods during the PAGA Period. See id., ¶
21 10. At \$100 per each of the 7,500 pay periods, the maximum exposure at trial could be limited to
22 \$750,000. See id.

23 However, due to Defendant’s lack of records, there was a substantial question of fact as to
24 the actual number of pay periods. See id. Due to Defendant’s use of a variety of different
25 employment, independent contractor, and commissions agreements, as well as each employee’s
26 differing schedules working from home, there were serious manageability concerns relating to the
27 group. Moreover, the PAGA grants trial courts discretion to reduce the amount of civil penalties
28 to be imposed. See Labor Code §2699(e)(2); See also, Bernstein v. Virgin Am., Inc., 365

1 F.Supp.3d 980, 985, 992 (N.D.Cal. 2019) (judgment reducing PAGA penalties from \$33,300,000
2 to \$24,981,150).

3 Here, the Gross Settlement Amount results in an award of approximately \$12.35 per pay
4 period and \$304.76 total per employee. This compromised amount compares favorably to other
5 PAGA settlements and court awards. For example, in Garrett v. Bank of America, Alameda
6 Superior Court Case Number RG13699027, involving almost one million pay periods, the
7 Alameda Superior Court, on October 28, 2016, approved a \$15 million PAGA settlement, which
8 would be a penalty of \$15 per pay period.

9 In Carrington v. Starbucks Corp., 30 Cal.App.5th 504 (2018), the trial Court reduced the
10 PAGA penalty amount to only \$5 per pay period. In Carrington, the plaintiff requested penalties
11 in excess of \$70 million, which was based on a \$25 to \$75 penalty per violation. The trial court
12 instead awarded a \$5 penalty per pay period and stated this reduction was warranted because
13 imposing the maximum penalty would be unjust, arbitrary, and oppressive based on Starbucks's
14 "good faith attempts" to comply with meal period obligations and because the court found the
15 violations were minimal. Similarly, here, Defendant argued that it had a good faith belief that it
16 was complying with the law and paying its employees and independent contractors correctly.
17 Plaintiff has strong arguments against these defenses, but even if Defendant was held liable for the
18 PAGA violations, it was highly possible that this Court would give deference to their "good faith
19 attempt to comply with the law" argument and reduce the penalty amount.

20 Other courts have also reduced PAGA civil penalties, often dramatically. For example, in
21 Thurman v. Bayshore Transit Mgmt., Inc., 203 Cal.App.4th 1112, 1136 (2012), the Court of
22 Appeal affirmed the trial court's reduction of PAGA civil penalties by 30 percent, finding that
23 awarding the full penalties would have been "unjust" because the "evidence showed...defendants
24 took their obligations...seriously and attempted to comply with the law," and that the defendants'
25 financial condition "rendered them unable to pay penalties from ongoing revenues." Similarly, in
26 Fleming v. Covidien, Inc., 2011 U.S. Dist. LEXIS 154590, at *8-9 (C.D.Cal. Aug. 12, 2011), the
27 court reduced PAGA civil penalties for wage statement violations from \$2,800,000 to \$500,000.
28 Accordingly, while courts cannot deny PAGA civil penalties outright if liability is found, they can

1 and do reduce the awarded penalties based on such considerations as the egregiousness of the
2 violations, the employer's efforts at compliance, and the employer's ability to pay.

3 Finally, the fact that the total amount potentially available, assuming a full recovery on all
4 claims is greater than the value of a settlement, this does not militate against approval of this
5 Settlement. As the court in Shames v. Hertz Corp., 2012 U.S. Dist. LEXIS 158577, at *6
6 (N.D.Cal. Nov. 5, 2012) (citing Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.), 213 F.3d
7 454 (2000) (court approved a settlement constituting one-sixth of the potential recovery) held:
8 "While settlement amounts that are close to the plaintiff's estimate of damages provide strong
9 support for approval of the settlement, settlement offers that constitute only a fraction of the
10 potential recovery do not preclude a court from finding the settlement offer is fair."

11 Here, the Settlement reflects a compromise of the maximum likely potential exposure, but
12 a reasonable return per PAGA Employee. See Lofton Decl., ¶ 11. This result is excellent,
13 representing over 80% of Defendant's maximum likely exposure at trial under a "stacking"
14 reduction, especially given Defendant's defenses, as well as the Court's discretion to discount any
15 penalty awarded down to the proverbial peppercorn.

16 **VI. CONCLUSION**

17 Because the Settlement is fair, reasonable, and adequate, Plaintiff respectfully requests that
18 the Court grant approval of all terms of the Settlement, as set forth in the Settlement Agreement,
19 attached to Lofton Decl., Exhibit B.

20
21 DATED: January 30, 2025

AIMAN-SMITH & MARCY, P.C.

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24 John A. Lofton, Esq.
25 Attorneys for Andre Taylor
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