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10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF ALAMEDA**

12 **UNLIMITED JURISDICTION**

13 MELISSA MORRIS and STEPHANIE
14 DOUGAL, individually and on behalf of
aggrieved employees and the State of California,

15
16 Plaintiffs,

17 v.

18 THE REALREAL, INC. and DOES 1 through
19 10, inclusive,

20 Defendant.

Case No.: 23CV025851

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Keith Fong
Department 517

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION TO APPROVE
PAGA SETTLEMENT**

Date: August 13, 2024
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1 **I. INTRODUCTION**

2 Plaintiffs Melissa Morris and Stephanie Dougal hereby respectfully request that the Court
3 approve the proposed \$500,000 settlement of the Private Attorneys General Act (“PAGA”) claims
4 asserted in this case against Defendant The RealReal, Inc. (“TRR”). This is a PAGA-only
5 representative action involving violations of Labor Code section 2751’s requirements for
6 commission contracts.¹ The proposed settlement was reached only after the completion of
7 substantial discovery and as trial neared.

8 The Court should grant the motion because the settlement is fair and adequate. (See *Moniz*
9 *v. Adecco U.S., Inc.* (2021) 72 Cal.App.5th 56, 77.) The settlement was reached after arm’s-length
10 negotiations and achieves an excellent result given the risks inherent in the claims and the Court’s
11 discretion to reduce civil penalties. The Court, therefore, should approve the settlement and enter
12 judgment thereon.

13 **II. FACTUAL AND PROCEDURAL BACKGROUND**

14 Plaintiff Stephanie Dougal filed a class and representative PAGA action against TRR on
15 June 24, 2022, in the San Francisco County Superior Court. She alleged claims for failure to pay
16 overtime wages, failure to provide meal periods, failure to provide rest periods, failure to provide
17 accurate wage statements, waiting time penalties, and unfair competition. (Valerian Decl., ¶ 3.)
18 Prior to filing the complaint, Ms. Dougal provided the Labor and Workforce Development
19 Agency (“LWDA”) notice of these violations and violations of Labor Code section 2751 on May
20 10, 2022. TRR filed a motion to compel arbitration and dismiss the class claims. (*Ibid.*) The court
21 granted the motion, dismissed the class claims, and stayed the representative PAGA claims
22 pending arbitration of Dougal’s individual claims. (*Ibid.*)
23
24

25 ¹ Labor Code section 2751 provides that “[w]henver an employer enters into a contract of
26 employment with an employee for services to be rendered within this state and the contemplated
27 method of payment of the employee involves commissions, the contract shall be in writing and
28 shall set forth the method by which the commissions shall be computed and paid.” (Lab. Code,
§ 2751, subd. (a).) Section 2751 further provides that “[t]he employer shall give a signed copy of
the contract to every employee who is a party thereto and shall obtain a signed receipt for the
contract from each employee.” (Lab. Code, § 2751, subd. (b).)

1 Plaintiff Melissa Morris filed a representative PAGA action against TRR on January 17,
2 2023, in the Alameda County Superior Court, alleging a single cause of action pursuant to PAGA
3 for violations of Labor Code section 2751. (Valerian Decl., ¶ 4.) Ms. Morris provided LWDA
4 with notice of these violations on October 28, 2022. (*Ibid.*)

5 The parties mediated the Dougal and Morris actions on April 18, 2023, without reaching
6 any resolution. (Valerian Decl., ¶ 5.) Plaintiff Dougal and TRR thereafter agreed to dismiss her
7 PAGA claims other than those based on Labor Code section 2751 because the other PAGA claims
8 had been resolved by a court-approved settlement in another PAGA action in Los Angeles
9 County. (*Ibid.*) After that partial dismissal, the only claims that remained pending in court were
10 Dougal's and Morris' claims under PAGA for violations of Labor Code section 2751. (*Ibid.*)

11 After the parties exchanged further discovery, the parties once again mediated the
12 remaining claims limited to Labor Code section 2751 violations on May 28, 2024, this time with
13 experienced mediator Kevin T. Barnes, Esq. (Valerian Decl., ¶ 6.) Though the parties did not
14 reach a settlement at the mediation, the parties continued their discussions and eventually agreed
15 to a mediator's proposal that the parties reduced to the agreement attached as Exhibit 1 to the
16 Valerian Declaration ("SA"). (*Ibid.*)

17 **III. SUMMARY OF SETTLEMENT TERMS**

18 **A. CONSOLIDATION OF THE TWO ACTIONS**

19 To facilitate settlement, the Parties have agreed that Ms. Dougal will dismiss her case in
20 San Francisco County Superior Court without prejudice and that she be added as a named plaintiff
21 to the present case through an amended complaint. (SA, ¶ 3.1.) Plaintiffs filed a stipulation for
22 leave to file the consolidated complaint on July 17, 2024, which the Court approved. Plaintiffs
23 filed the consolidated amended complaint on July 30, 2024. (Valerian Decl., ¶ 10.)

24 **B. MONETARY TERMS**

25 The proposed settlement of this case consists of a common fund of \$500,000.00 consisting
26 of civil penalties, administration costs, representative service awards to the two Plaintiffs, and
27 attorneys' fees and costs. (SA, ¶¶ 4.1, 4.2.) This fund is provisionally allocated subject to Court
28

1 approval as follows: \$309,339.18 as civil penalties, \$166,666 (33½ %) as attorneys’ fees and
2 \$9,044.82 as litigation expenses, representative services awards of \$5,000 for each plaintiff, and
3 administration costs up to \$4,950. (SA, ¶ 4.4.) Seventy-five percent of the civil penalties will be
4 paid to the LWDA and 25% to the set of aggrieved employees defined as all persons who were
5 employed by TRR in sales commission eligible roles in California between May 10, 2021, and
6 July 27, 2024, in proportion to the number of PAGA pay periods each aggrieved employee
7 worked. (SA, ¶ 4.4(a); see also SA, ¶ 1.18.) There are approximately 449 aggrieved employees.
8 (Valerian Decl., ¶ 10.) The civil penalties paid to each aggrieved employee will be reported on an
9 IRS 1099 Form. (SA, ¶ 4.4(a).)

10 The settlement fund is based on 11,948 pay periods between May 10, 2021 (the earliest
11 start of the liability period based on the Dougal PAGA notice) and May 28, 2024, the mediation
12 date. (SA ¶ 4.3.) An escalator clause protects the interests of the State and the aggrieved
13 employees if the number of pay periods exceeds 110% of the settlement pay periods. (*Ibid.*)

14 **C. SCOPE OF RELEASE**

15 The settlement provides that Plaintiffs will release Defendant on behalf of the LWDA
16 from the claims that are pleaded in the Consolidated Action during the period covered by this
17 settlement upon court approval that are alleged in the consolidated complaint. (SA, ¶ 6.1.)

18 **D. SETTLEMENT ADMINISTRATOR**

19 The Settlement appoints Phoenix Settlement Administrators (“Phoenix”) as the settlement
20 administrator. (SA, ¶ 8.1.) Phoenix previously administered the Belaire privacy notices in this
21 case and maintains the most current contact information for aggrieved employees. (Valerian
22 Decl., ¶ 12.) Phoenix also submitted the lowest of three bids that Plaintiffs received. (*Ibid.*)

23 **E. SETTLEMENT IMPLEMENTATION**

24 The Settlement obligates TRR to provide Phoenix the name, last-known mailing address,
25 social security number, and number of pay periods worked for each aggrieved employee within
26 15 days after approval. (SA, ¶ 5.1.) Phoenix will thereafter calculate each aggrieved employee’s
27 pro-rata share of the civil penalties and mail the aggrieved employees a check for that amount
28

1 along with the proposed notice attached to the settlement as Exhibit A within 14 days after TRR
2 funds the settlement.² (SA, ¶ 5.4(a).) Phoenix will update the employee addresses using the
3 National Change of Address database before mailing the checks. (SA, ¶ 5.4(a).) Checks that are
4 returned as undeliverable with a forwarding address will be re-mailed within three business days.
5 (SA, ¶ 5.4(b).)

6 **F. UNCASHED CHECKS**

7 None of the gross settlement fund reverts to Defendants. (SA, ¶ 5.4(c).) Checks that are
8 not cashed after 90 days will escheat to the California Controller's Unclaimed Property Fund in
9 the name of the aggrieved employee who did not cash their check. (*Ibid.*)

10 **G. PLAINTIFFS' INDIVIDUAL SETTLEMENTS**

11 Plaintiffs Dougal and Morris have individual wage and hour claims pending in JAMS and
12 Signature Resolution arbitrations arising from alleged misclassification. (Valerian Decl. ¶ 13.)
13 Each has settled their arbitration claims and agreed to general releases. (*Ibid.*) There is no overlap
14 in the legal issues or damages calculations between those claims and the PAGA claims pending in
15 court. (*Ibid.*) The individual settlements were negotiated separately from the representative PAGA
16 claims and were discounted from maximum damages in accordance with the variables applicable
17 to the claims in arbitration. (*Ibid.*) Similarly, the representative PAGA claims were separately
18 analyzed in accordance with the different set of variables applicable to the PAGA litigation that
19 were separately accounted for. (*Ibid.*)

20 **H. IMPACT ON OTHER PENDING LITIGATION**

21 Having performed due diligence investigation, Plaintiffs are unaware of any overlapping
22 class actions or other cases asserting claims like those asserted in the consolidated complaint.
23 (Valerian Decl., ¶ 9.) Thus, Plaintiffs do not expect that the proposed settlement will extinguish
24 claims in any other pending case. (*Ibid.*)

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26
27
28 ² TRR will fully fund the Gross Settlement Amount no later than 60 days after the Effective Date.

1 **IV. ARGUMENT**

2 The settlement of a PAGA action requires court approval. (Lab. Code, § 2699, subd.
3 (I)(2).) When considering whether to approve a proposed PAGA settlement, the Court should
4 evaluate the settlement “to determine whether it is fair, reasonable, and adequate in view of
5 PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize
6 enforcement of state labor laws.” (*Moniz, supra*, 72 Cal.App.5th at p. 77.) Though PAGA actions
7 do not need to satisfy the requirements of a class action, the factors courts use to evaluate class
8 action settlements—such as the strength of the plaintiff’s case, the risks involved, the stage of the
9 proceeding, and the complexity and likely duration of further litigation—“can be useful in
10 evaluating the fairness of a PAGA settlement.” (*Ibid.*) In this context, “a presumption of fairness
11 exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and
12 discovery are sufficient to allow counsel and the court to act intelligently; [and] (3) counsel is
13 experienced in similar litigation.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)
14 “If the proposed settlement appears to be the product of serious, informed, non-collusive
15 negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to
16 class representatives or segments of the class, and falls within the range of possible approval, then
17 the court should direct that the notice be given to the class members of a formal fairness hearing.”
18 (Manual for Complex Litigation, Second (1985) § 30.44.) This standard is easily met in the
19 present case. The Court, therefore, should grant the motion.

20 **A. THE PRESUMPTION OF FAIRNESS APPLIES**

21 As noted above, a presumption of fairness exists where a settlement is reached through
22 arm’s-length negotiation that was adequately informed and where there is no evidence of fraud or
23 collusion. Such a presumption applies here.

24 **1. The Settlement Was Reached Through Arm’s-Length Negotiations**

25 The settlement in this case was reached between experienced counsel through hard-fought
26 negotiations initially facilitated by Marisa Ratinoff, Esq., and subsequently overseen by Kevin
27 Barnes, Esq., a reputable mediator and wage-and-hour litigator. The negotiations spanned two
28

1 mediation sessions a year apart that ultimately resulted in a mediator’s proposal that all parties
2 accepted. The parties agreed on a term sheet only after a month of further negotiation (Valerian
3 Decl., ¶¶ 5–6.) The settlement, therefore, is the result of arm’s-length negotiation. (*Gong-Chun v.*
4 *Aetna Inc.* (E.D. Cal., July 12, 2012, No. 1:09-CV-01995-SKO) 2012 WL 2872788, at *12
5 [settlement reached through efforts of counsel with the assistance of a mediator was the result of
6 arm’s-length negotiation]; accord *Kelley v. City of San Diego* (S.D. Cal., Feb. 8, 2021, No. 19-
7 CV-622-GPC-BGS) 2021 WL 424290, at *7 [settlement resulted from arm’s-length negotiation
8 where the parties conducted several telephonic and in-person settlement conferences with
9 settlement judge]; see also Newberg on Class Actions, *Class Actions in State Courts, Preliminary*
10 *Approval* (4th ed. 2002) § 13:14.)

11 **2. The Negotiations Were Adequately Informed**

12 Plaintiffs obtained and reviewed each of the aggrieved employees commission plans ahead
13 of the second mediation. Plaintiffs also interviewed over a dozen aggrieved employees. Plaintiffs’
14 review determined the extent of the violations, the penalties that would arise under different
15 accrual scenarios, and the likely outcomes after the anticipated trial evidence is considered by the
16 court in a bench trial. As a result of this analysis, Plaintiffs were fully informed at mediation. In
17 fact, Plaintiffs were prepared to seek summary adjudication of various issues should the
18 mediation fail. The negotiations, therefore, were fully informed. (See *Foster v. Adams and*
19 *Assocs., Inc.* (N.D. Cal., Feb. 11, 2022, No. 18-CV-02723-JSC) 2022 WL 425559, at *6.)

20 **3. The Settlement Does Not Improperly Grant Preferential Treatment**

21 There was no collusion in settling this case. The settlement is non-reversionary. (SA,
22 ¶ 3.4.) Negotiations were overseen by an experienced mediator, which “confirms that the
23 settlement is non-collusive.” (*Satchel v. Federal Express Corp.* (N.D. Cal., Apr. 13, 2007, No. 03-
24 cv-2878-SI) 2007 WL 1114010, at *4; *Bower v. Cycle Gear, Inc.* (N.D. Cal., Aug. 23, 2016, No.
25 14-cv-02712-HSG) 2016 WL 4439875, at *5[“[T]he parties reached their settlement after two
26 full-day mediation sessions before impartial and experienced mediators, which strongly suggests
27 the absence of collusion or bad faith by the parties or counsel.”].) Moreover, the proportional
28

1 allocation of the civil penalties in proportion to the number of pay periods worked guarantees fair
2 and equitable treatment between the aggrieved employees. (*Hudson v. Libre Tech. Inc.* (S.D. Cal.,
3 May 13, 2020, No. 3:18-CV-1371-GPC-KSC) 2020 WL 2467060), at *9 [“the Settlement does
4 not improperly discriminate between any segments of the Settlement Class as the Settlement
5 Class Members are entitled to the same relief from the same formula”]; *Mejia v. Walgreen Co.*
6 (E.D. Cal., Nov. 24, 2020, No. 2:19-CV-00218 WBS AC) 2020 WL 6887749, at *11 [no
7 discrimination where relief is proportionately based on compensable workweeks].)

8 **4. Plaintiffs’ Counsel Support the Settlement**

9 Plaintiffs’ Counsel has extensive experience litigating wage and hour class and
10 representative actions and recommend approval. (Valerian Decl., ¶¶ 14–23.) Such a
11 recommendation weighs in favor of approval. (*Cabiness v. Educ. Fin. Solutions, LLC* (N.D. Cal.,
12 Mar. 26, 2019, No. 16-cv-01109-JST) 2019 WL 1369929, at *6; *Acosta v. Frito-Lay, Inc.* (N.D.
13 Cal., May 4, 2018, No.15-cv-02128-JSC), at *9; see also *In re Omnivision Techs., Inc.* (N.D. Cal.
14 2008) 559 F.Supp.2d 1036, 1043 [“The recommendations of plaintiffs’ counsel should be given a
15 presumption of reasonableness.”].)

16 **B. THE SETTLEMENT FALLS WITHIN THE RANGE OF APPROVAL**

17 A settlement is not required to meet a minimum dollar or percentage threshold to be
18 deemed adequate. (See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
19 Cal.App.4th 1135, 1150.) Rather, the adequacy of a settlement is evaluated considering litigation
20 uncertainties. (See *Dunk, supra*, 48 Cal.App.4th at p. 1801.) “In most situations, unless the
21 settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and
22 expensive litigation with uncertain results.” (*National Rural Telecomms. Co-op. v. DIRECTV, Inc.*
23 (C.D. Cal. 2004) 221 F.R.D. 523, 526; Newberg on Class Actions, *supra*, § 11:50.)

24 **1. The Settlement Is Fair and Reasonable Considering the Strengths and Weaknesses of the Claims and Risks of Continued Litigation**

25 Plaintiffs estimated before the second mediation that the best-case scenario would yield
26 \$2,422,523 in civil penalties. (Valerian Decl., ¶ 6.) This valuation, however, was keyed on
27 Plaintiffs not only prevailing at trial on the merits, but also prevailing on unresolved questions
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1 regarding how penalties accrue for the Labor Code violations at issue that occur “once” but with
2 consequences over time until cured. In this connection, there was substantial risk that even if the
3 Court found at trial that TRR violated Labor Code section 2751, subdivision (b), by failing to
4 provide employees signed copies of their commission plan, the Court could nonetheless decide
5 that such a violation warrants only a single penalty rather than a penalty accruing in each pay
6 period until the violation is cured, in this case, the provision of a signed commission plan. The
7 same concern applied to the claim for violation of Labor Code section 2751, subdivision (a).
8 (*Ibid.*) Notably, even if Plaintiffs prevailed at trial on these novel issues, there was also the risk of
9 a costly trial and delayed justice through appeals. (*Id.* ¶ 17) Significantly, expert costs had not yet
10 been incurred, but would have diminished the net recovery of the State and employees, had the
11 case not settled at the time that it did. Trial was set to start on October 14, 2024. (*Ibid.*)

12 The settlement, on the other hand, provides approximately 13% of the maximum civil
13 penalties had Plaintiffs run the board. (Valerian Decl., ¶ 6.) This compares favorably to other
14 judgments in PAGA cases. (See, e.g., *Aguirre v. Genesis Logistics* (C.D. Cal., Dec. 30, 2013)
15 2013 WL 10936035, at *2–3; *Fleming v. Covidien, Inc.* (C.D. Cal., Aug. 12, 2012) 2011 WL
16 7563047, at *3–4. See generally *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp.3d
17 1058.) In this context, “the tangible, immediate benefits of . . . [s]ettlement outweigh continued
18 litigation and the uncertainty of a trial.” (*Ebarle v. Lifelock, Inc.* (N.D. Cal., Jan. 20, 2016) 2016
19 WL 234364, at *8; *In re LinkedIn User Privacy Litig.* (N.D. Cal. 2015) 309 F.R.D. 573, 587
20 [“Immediate receipt of money through settlement, even if lower than what could potentially be
21 achieved through ultimate success on the merits, has value to a class, especially when compared
22 to risky and costly continued litigation.”].)

23 **2. The Proposed Award of Attorneys’ Fees and Costs Is Reasonable**

24 PAGA provides that “any employee who prevails in any action shall be entitled to an
25 award of reasonable attorney’s fees and costs.” (Lab. Code, § 2699, subd. (g)(1).) Plaintiffs, who
26 successfully litigated and negotiated a net monetary recovery on behalf of LWDA and the
27 aggrieved employees, have prevailed. (See Code Civ. Proc., § 1032, subd. (a)(4).); see also
28

1 *Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 685 fn. 31 [“the appropriate
2 benchmarks in determining which party prevailed are (a) the situation immediately prior to the
3 commencement of suit, and (b) the situation today, and the role, if any, played by the litigation in
4 effecting any changes between the two”]; see also *Betancourt v. OS Rest. Servs.* (2022) 83
5 Cal.App.5th 132, 141 [plaintiff was “prevailing party” where defendant agreed to a stipulated
6 settlement and judgment in plaintiff’s favor]; accord *Wakefield v. Mathews* (9th Cir. 1988) 852
7 F.2d 482, 483 [“Prevailing plaintiffs include those who have negotiated successful settlements.”].)
8 An award of attorneys’ fees and costs, therefore, is mandatory. (*Atempa v. Pedrazzani* (2018) 27
9 Cal.App.5th 809, 829; accord *Harrington v. Payroll Entertainment Services, Inc.* (2008) 160
10 Cal.App.4th 589, 594 [“Because section 2699, subdivision (g), provides that Harrington ‘shall be
11 entitled’ to an award of fees, an award is a matter of right.”].)

12 In the present case, Plaintiffs’ request that they be awarded 33 ⅓ % of the gross settlement
13 fund is reasonable. As an initial matter, “[t]he choice of a fee calculation method is generally one
14 within the discretion of the trial court.” (*Laffitte, supra*, 1 Cal.5th at p. 504.) “[T]he goal . . . being
15 the award of a reasonable fee to compensate counsel for their efforts.” (*Ibid.*) “Although many
16 courts in common-fund cases permit use of either a percentage-of-the-fund approach or a lodestar
17 (number of hours multiplied by a reasonable hourly rate), most courts and commentators now
18 believe that the percentage method is superior.” (ALI, Principles of the Law of Aggregate
19 Litigation (2010) § 3.13, com. b.; accord *Laffitte, supra*, 1 Cal.5th at p. 494.)

20 Empirical studies show that fee awards in class and representative actions in California
21 average around one-third of the recovery. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th
22 545, 558.) This is particularly true in the present case given the size of the settlement fund.
23 (*Cicero v. DIRECTV, Inc.* (C.D. Cal., July 27, 2010, No. EDCV 07-1182) 2010 WL 2991486, at
24 *6 [“a review of California cases in other districts reveals that courts usually award attorneys’
25 fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund
26 under \$10 million”]; accord *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d
27 1113, 1127 [“Cases of under \$10 Million will often result in result in fees above 25%.”].)

1 A lodestar cross check in the present case confirms that the fee request is reasonable.³
2 Plaintiffs' lodestar across their two cases exceeds \$360,000,⁴ resulting in a so-called "negative
3 multiplier" that is "presumptively reasonable." *Wong v. Arlo Techs.* (N.D. Cal., Apr. 19, 2021,
4 No. 5:19-cv-00372-BLF) 2021 WL 1531171, at *11; accord *Covillo v. Specialtys Café* (N.D. Cal.
5 Mar. 6, 2014, No. C-11-00594 DMR) 2014 WL 954516, at *7 ["Plaintiffs' requested fee award is
6 approximately 65% of the lodestar, which means that the requested fee award results in a so-
7 called negative multiplier, suggesting that the percentage of the fund is reasonable and fair."].)

8 Plaintiffs' request that they also be awarded \$9,044.82 in out-of-pocket costs is also
9 reasonable. These out-of-pocket costs reflect a careful and frugal approach to litigation expenditures
10 and were reasonably necessary for the prosecution of this action. (Valerian Decl., ¶ 41, Exhibit 2.)
11

12
13 ³ The California Supreme Court has concluded that, in common fund cases, "trial courts have
14 discretion to begin with a percentage approach and then to use the lodestar approach to cross-
check the reasonableness of the percentage." (*Karton v. Ari Design & Constr.* (2021) 61
Cal.App.5th 734, 745.)

15 ⁴ The "lodestar" is simply "the number of hours reasonably expended multiplied by the
16 reasonable hourly rate." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) In the
17 present case Plaintiffs' counsels' hourly rates are comparable to prevailing rates in the Bay Area
18 for lawyers and legal staff of similar experience, skill, and reputation. (Valerian Decl., ¶¶ 27-33.)
19 These rates are based on counsel's 2024 rates, which several hourly-paying clients have paid, and
20 which have been approved as reasonable by courts and arbitrators. (Valerian Decl., ¶ 29.) If
21 anything, these rates are likely below current market rates. (E.g., *Human Rights Defense Center v.*
22 *County of Napa* (N.D. Cal., Mar. 28, 2021, No. 20-CV-01296-JCS) 2021 WL 1176640, at *11
23 [finding rates of \$950-\$1,100 reasonable for partners]; *In re Animation Workers Antitrust Litig.*
24 (N.D. Cal., Nov. 11, 2016, No. 14-CV-4062-LHK) 2016 WL 6663005, at *6 [finding rates up to
25 \$1,200 and paralegal rates up to \$290 fair and reasonable]; *t'Bear v. Forman* (N.D. Cal., June 8,
26 2020, No. 17-cv-00796-JSC) 2020 WL 3050772, at *9 [up to \$1,425]; *Wynn v. Chanos* (N.D.
27 Cal., June 19, 2015, No. 14-cv-04329-WHO) 2015 WL 3832561, at *2 [approving 2015 rates of
28 up to \$1,085]; *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.* (N.D.
Cal., Mar. 17, 2017, MDL No. 2672 CRB (JSC)) 2017 WL 1047834, at *5 [up to \$1,600 for
partners, \$790 for associates, and \$490 for paralegals].) Class Counsel's declaration attesting to
the number of hours worked on a particular case "is sufficient evidence to support an award of
attorney fees, even in the absence of detailed time records." (*Steiny & Co. v. Cal. Elec. Supply Co.*
(2000) 79 Cal.App.4th 285, 293; *Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th
1309, 1324 ["It is not necessary to provide detailed billing timesheets to support an award of
attorney fees under the lodestar method."].) "By and large, the court should defer to the winning
lawyer's professional judgment as to how much time he was required to spend on the case; after
all, he won, and might not have, had he been more of a slacker." (*Moreno v. Sacramento* (9th Cir.
2008) 534 F.3d 1106, 1112.) "[L]awyers are not likely to spend unnecessary time on contingency
fee cases in the hope of inflating their fees." (*Ibid.*) "The payoff is too uncertain, as to both the
result and the amount of the fee." (*Ibid.*) "It would therefore be the highly atypical . . . case where
plaintiffs [sic] lawyer engages in churning." (*Ibid.*)

1 Failing to reimburse Plaintiffs and their counsel for these outlays would undermine the ability of
2 employees to pursue Labor Code enforcement actions.

3 **3. The Proposed Representative Service Awards Are Fair**

4 Service awards in the class action context “are intended to compensate class
5 representatives for work done on behalf of the class, to make up for financial or reputational risk
6 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a
7 private attorney general.” (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948,
8 958–959.) “[A] class representative is entitled to some compensation for the expense he or she
9 incurred on behalf of the class lest individuals find insufficient inducement to lend their names
10 and services to the class action.” (*Oracle Securities Litigation* (N.D. Cal., June 18, 1994, No. C-
11 90-0931) 1994 WL 502054, at *1.) The same rationale applies for PAGA plaintiffs.

12 In the present case, \$5,000 to each Plaintiff is reasonable given Plaintiffs’ efforts in each
13 of their cases and the risks they undertook on behalf of the LWDA and the aggrieved employees.
14 Plaintiffs advanced the interests of the LWDA and the aggrieved employees by regularly meeting
15 with counsel in person and over the telephone, gathering documents, assisting counsel in
16 identifying potential claims and in preparing for two mediations, and communicating with other
17 aggrieved employees. (Valerian Decl. ¶ 8.) Plaintiffs also took the risk of facing intrusive
18 discovery and disclosure to future employers that they sued their former employer. (*De La Torre*
19 *v. CashCall, Inc.* (N.D. Cal., Nov. 17, 2017, No. 08-CV-03174-MEJ) 2017 WL 5524718, at *14
20 [“\$10,000 service award falls within the range of service awards”].)

21 **C. THE NOTICE TO ACCOMPANY THE CHECKS IS ADEQUATE**

22 There is no need to provide notice to the aggrieved employees or an opportunity to opt out
23 of or object to the settlement as there would be with a class action settlement. (*Moniz, supra*, 72
24 Cal.App.5th at p. 79; see also *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir. 2015) 803 F.3d
25 425, 436 [“PAGA has no notice requirements for unnamed aggrieved employees, nor may such
26 employees opt out of a PAGA action.”].) Nonetheless, the proposed settlement provides for a one-
27 page notice to accompany the checks to be sent to the aggrieved employees informing them about
28

1 the case and why they are receiving a check and referring them to a website to obtain more
2 information. This is more than adequate.

3 **V. CONCLUSION**

4 For all the foregoing reasons, Plaintiffs request that the Court approve the settlement and
5 enter the accompanying proposed order and judgment, retaining jurisdiction over the settlement.

6 Respectfully submitted,

8 Dated: August 19, 2024

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