

Neil M. Larsen, Esq. (SBN 276490)
neil@abramsonlabor.com
Jennifer S. Rivera, Esq. (SBN 353268)
Jennifer.r@abramsonlabor.com
ABRAMSON LABOR GROUP
1700 W. Burbank Boulevard
Burbank, California 91506
Tel: (213) 493-6300
Fax: (213) 723-2522

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

DONTAY CASTON, on behalf of himself,
the State of California, and all Aggrieved
Employees,

Plaintiff,

vs.

EXEL, INC. dba DHL SUPPLY CHAIN;
and DOES 1 through 100, Inclusive,
Defendants.

Case No. 22CV409265

REPRESENTATIVE ACTION

*[Assigned for all purposes to the Hon.
Theodore C. Zayner, Dept. 19]*

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

Date: June 25, 2025
Time: 1:30 p.m.
Dept.: 19

Complaint Filed: December 29, 2022
Trial date: None Set

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

3 PLEASE TAKE NOTICE that on June 25, 2025 at 1:30 p.m., or as soon thereafter as the
4 matter may be heard in Department 19 of the above-entitled Court, located at 161 North First
5 Street, San Jose, California, 95113. Plaintiff Dontay Caston (“Plaintiff”), individually and on
6 behalf of the State of California and other Aggrieved Employees, will, and hereby does, move
7 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. Appointing Simpluris, Inc. (“Simpluris”) as the Settlement Administrator;
- 14 3. Approving the proposed Explanatory Letter (attached as Exhibit A to the Settlement
15 Agreement), and directing that it be distributed to Aggrieved Employees pursuant to the
16 terms of the Settlement Agreement;
- 17 4. Directing the distribution of the Gross Settlement Amount pursuant to the terms of the
18 Settlement Agreement;
- 19 5. Approving and confirming payment of PAGA penalties to the LWDA in the amount of
20 \$143,149.07 (75% of the penalties) and to Aggrieved Employees in the amount of
21 \$47,716.35 (25% of the penalties) as set forth in the Settlement Agreement.
- 22 6. Approving an award of attorneys’ fees to Plaintiff’s counsel of \$109,166.67 and an award
23 of litigation costs to Plaintiff’s counsel of \$14,967.91;
- 24 7. Approving an enhancement payment to Plaintiff in the amount of \$7,500.00; and
- 25 8. Approving \$5,000.00 in administration costs to Simpluris.

26 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
27 the declaration of Neil M. Larsen and all exhibits attached thereto; the declaration of Denise Islas
28 on behalf of Simpluris and all exhibits attached thereto; the declaration of Plaintiff Dontay Caston;

1 the Settlement Agreement; all other pleadings and papers on file in this action; and on any further
2 oral or documentary evidence or argument presented at the time of hearing.

3 Respectfully submitted,

4 Dated: May 8, 2025

ABRAMSON LABOR GROUP

6 By: Neil Larsen

7 Neil M. Larsen

8 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Dontay Caston (“Plaintiff”) is an “Aggrieved Employee” under the Private
4 Attorneys General Act of 2004 (“PAGA”) and respectfully moves this Court for an Order granting
5 approval of the Settlement Agreement (“Settlement”) with Defendant Exel Inc. dba DHL Supply
6 Chain (“DHL” or “Defendant”).

7 This PAGA representative settlement resolves Plaintiff’s claims for civil penalties
8 predicated on DHL’s alleged failure to incorporate shift differentials, shift premiums, non-
9 discretionary bonuses, and non-discretionary pay into the regular rate of pay when paying meal
10 period premium wages, overtime wages, sick pay, and vacation pay; failure to furnish accurate
11 itemized wage statements; and failure to maintain accurate records from April 1, 2022 through
12 May 1, 2024 (the “PAGA Period”).

13 The proposed Settlement, under which DHL has agreed to pay a Gross Settlement Amount
14 (“GSA”) of **\$327,500**, will resolve Plaintiff’s representative claim for civil penalties filed on
15 behalf of the State of California and all “Aggrieved Employees,” which consists of all non-exempt
16 employees who are or were employed at DHL’s Livermore, California facility located at 1201
17 Voyager Street, Livermore, California 94551 at any time during the PAGA Period.

18 Notably, the relief provided for under the Settlement, and the claims released thereunder,
19 are solely for the payment of *civil penalties* under the PAGA, and not for any underlying Labor
20 Code violations. The release encompasses PAGA civil penalties based upon the alleged violations
21 mentioned above, and only for such claims arising during the PAGA Period.

22 In deciding whether to grant approval of a PAGA settlement, the primary issue is whether
23 the settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement
24 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the
25 product of arm’s-length negotiations; (2) was negotiated by attorneys experienced in wage-and-
26 hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was
27 negotiated after undertaking sufficient informal discovery and investigation to evaluate the
28 relative strength and value of Plaintiff’s PAGA claim and DHL’s defenses thereto; and (4) reflects

1 a reasoned compromise based on the relative strength and value of the PAGA claim, as well as
2 the risks, expenses, complexity, and likely duration of further litigation.

3 As noted above, the Settlement provides for a PAGA GSA of \$327,500. *See* Settlement
4 §§ I.9, III.2. After deducting amounts for requested attorneys’ fees (\$109,166.67), litigation costs
5 (\$14,967.91), Plaintiff’s Enhancement Payment (\$7,500), and administration costs of \$5,000, the
6 Settlement provides for distribution of a Net Settlement Amount (“NSA”) of approximately
7 \$190,865.42, to be paid to Aggrieved Employees and the California Labor and Workforce
8 Development Agency (“LWDA”). *See* Settlement, §§ I.10, III.4; Declaration of Neil M. Larsen
9 (“Larsen Decl.”), ¶¶ 14, 24, Exhibit 7; Declaration of Denise Islas (“Islas Decl.”), ¶ 9.

10 The NSA shall be distributed 75% (approximately \$143,149.07) to the LWDA, and 25%
11 (approximately \$47,716.35) to Aggrieved Employees, on a *pro rata* basis based on their
12 respective number of pay periods worked for DHL during the PAGA Period, pursuant to the
13 requirements of the PAGA as codified in Lab. Code § 2699(i). *See* Settlement, § III.5. There are
14 approximately 953 Aggrieved Employees, resulting in average payments of approximately
15 \$50.07 to the Aggrieved Employees. Larsen Decl., ¶ 14.

16 This Settlement represents a reasonable recovery for the State of California and Aggrieved
17 Employees, who will receive a monetary benefit in exchange for release of only civil penalties.
18 In addition, the significant monetary recovery on behalf of the LWDA, furthers the PAGA’s
19 purposes to “remediate present labor law violations, deter future ones, and to maximize
20 enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021).
21 Further, the amounts requested for attorneys’ fees, litigation costs, and settlement administration
22 costs are fair, adequate, and reasonable.

23 **II. SUMMARY OF THE LITIGATION**

24 **A. Brief Factual Background and Summary of Claims**

25 DHL is a leading international logistics company, specializing in international shipping,
26 courier services, and delivery services. Larsen Decl., ¶ 8. Plaintiff Caston was employed by DHL
27 as a non-exempt employee from approximately November 2021 until approximately July 2022.
28 *See* Declaration of Dontay Caston (“Caston Decl.”), ¶ 2.

1 In this lawsuit, Plaintiff contends that DHL failed to incorporate shift differentials, shift
2 premiums, non-discretionary bonuses, and non-discretionary pay into the regular rate of pay when
3 paying meal period premium wages, overtime wages, sick pay, and vacation pay; failed to furnish
4 accurate itemized wage statements, and failed to maintain accurate records during the PAGA
5 Period.

6 **B. Procedural History**

7 On October 24, 2022, Plaintiff provided written notice to the LWDA and DHL of his intent
8 to pursue civil penalties under PAGA for alleged violations of California Labor Code Labor Code
9 sections 201-204, 226, 226.7, 227.3, 246, 510, 512, 558, 1194, 1198, and California Industrial
10 Commission Wage Order 9. *See* Larsen Decl., ¶ 9, Exhibits 2-3.

11 On December 29, 2022, Plaintiff filed a Representative PAGA Action Complaint, alleging
12 that DHL failed to incorporate shift differentials, shift premiums, non-discretionary bonuses, and
13 non-discretionary pay into the regular rate of pay when paying meal period premium wages,
14 overtime wages, sick pay, and vacation pay; failed to furnish accurate itemized wage statements,
15 and failed to maintain accurate records during the PAGA Period. Larsen Decl., ¶ 10.

16 **C. Pre-Mediation Discovery and Mediation**

17 In connection with mediation, the Parties engaged in informal discovery, DHL informally
18 produced relevant policies to my office, a sampling of payroll records, and other relevant
19 information and documents. Larsen Decl., ¶ 11. Plaintiff also retained an expert data analyst
20 (Berger Consulting Group) to assist in assessing potential damages. *Id.*

21 On February 15, 2024, the Parties participated in a full-day mediation with experienced
22 wage and hour mediator Todd Smith, Esq. Larsen Decl., ¶ 12. At the mediation, tthe Parties
23 vigorously debated Plaintiff's ability to proceed on a representative PAGA basis, the legal basis
24 for Plaintiff's representative claims and DHL's defenses, the potential amount of civil penalties
25 that could be recovered, and the data analyses and conclusions based thereon. *Id.* At the
26 conclusion of the mediation, the Parties accepted a mediator's proposal and were able to reach a
27 settlement to resolve Plaintiff's PAGA claim. *Id.*

28 ///

1 **III. SUMMARY OF THE SETTLEMENT**

2 **A. “Aggrieved Employees” Defined**

3 As noted above, the settlement covers all non-exempt employees who are or were
4 employed at DHL’s Livermore, California facility located at 1201 Voyager Street, Livermore,
5 California 94551 at any time during the PAGA Period, i.e., from April 1, 2022 to May 1, 2024.
6 See Settlement, §§ I.2, I.12.

7 **B. Monetary Terms**

8 As noted above, the Settlement provides for DHL’s payment of a non-reversionary GSA
9 of \$327,500. Settlement, §§ I.9, III.2. After deducting amounts for requested attorneys’ fees,
10 litigation costs, and settlement administration costs, the Settlement provides for the remaining
11 Net Settlement Amount (“NSA”) to be distributed 75% to the LWDA and 25% to Aggrieved
12 Employees, pursuant to Lab. Code § 2699(i). *Id.* at § III.5. The 25% portion to Aggrieved
13 Employees shall be distributed based on each Aggrieved Employee’s proportional number of pay
14 periods worked for DHL in California during the PAGA Period. *Id.*

15 **1. *Requested Attorneys’ Fees, Litigation Costs, and Administration Costs***

16 Plaintiff’s counsel requests one-third of the GSA (i.e., \$109,166.67) in attorneys’ fees,
17 and \$14,967.91 in litigation costs. See Settlement, §§ III.4 Larsen Decl., ¶¶ 14, 20, 24 & Exhibit
18 7. As discussed below, one-third of the GSA is fair, adequate, and reasonable as a percentage of
19 the fund and as confirmed by a lodestar cross-check, and is in line with fee awards in other PAGA
20 settlements.

21 The Parties have agreed to engage Simpluris, Inc. (“Simpluris”) as the third-party
22 Settlement Administrator. See Settlement, § I.4, IV.1. Simpluris will update Aggrieved
23 Employees’ addresses using the National Change of Address database, calculate and distribute
24 individual payments, mail payments to all Aggrieved Employees together with the Cover Letter,
25 and perform other duties that are integral to the effectuation of the Settlement. Settlement, §§
26 IV.3-6; Islas Decl., ¶¶ 6-8. Plaintiff requests that the Court approve \$5,000 in Administration
27 Costs to Simpluris, which will cover all costs incurred by Simpluris in connection with the
28 Settlement. Settlement, §§ IV.3-6; *see also* Islas Decl., ¶ 9.

1 **2. Payment to the LWDA and Aggrieved Employees**

2 As noted above, the NSA will be distributed 75% to the LWDA and 25% to Aggrieved
3 Employees, pursuant to Labor Code § 2699(i). Settlement, § III.5. Based on the above requested
4 distributions, the NSA is estimated to be \$190,865.42, with \$143,149.07 paid to the LWDA and
5 \$47,716.35 distributed to Aggrieved Employees. *Id.* at §§ I.10, III.4, III.5.

6 **3. Funding of the Settlement**

7 DHL will fund the settlement within fifteen (15) court days of the Effective Date. *See*
8 Settlement § III.2. Within twenty-one (21) calendar days after the Gross Settlement Amount has
9 been fully funded, and after receiving approval from counsel of the payment calculations,
10 Simpluris will mail the Explanatory Letter and Individual PAGA Payments to Aggrieved
11 Employees via First Class U.S. Mail. Settlement, § IV.3.

12 Funds represented by undeliverable checks, or checks remaining uncashed after 180 days,
13 shall escheat to the California State Controller’s Office for deposit in the Unclaimed Property
14 Fund, in the name of the Aggrieved Employee. *Id.*, § IV.4.

15 **IV. LEGAL ARGUMENT**

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

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

28 Although the PAGA statute does not set forth the criteria by which a PAGA settlement is

1 to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a
2 class action settlement. However, “a PAGA claim asserted on a non-class representative basis...is
3 not considered a class action but a law enforcement action, and therefore does not have to meet
4 the requirements of [a class action].” *Casida v. Sears Holdings Corp.*, 2012 WL 253217 at *3
5 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at *4 (E.D. Cal. Jul.
6 1, 2010) (“PAGA claims are law enforcement actions, not class actions”). A court’s review of a
7 PAGA settlement implicates the following unique features that render the approval process
8 distinct from approval of a class action settlement.

9 First, in evaluating a PAGA settlement, the court is not concerned with amount(s) received
10 by “aggrieved employees,” but rather, must focus on the total settlement amount in achieving
11 PAGA’s objective. “The remedy sought in a PAGA suit consists of civil penalties, not individual
12 or class damages.” *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike class actions, these civil
13 penalties are not meant to compensate unnamed employees because the action is fundamentally
14 a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, No. C-08-2073-MHP, 2010
15 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court confirmed, “PAGA claims
16 are ‘representative’ actions in the sense that they are brought on the state’s behalf. The
17 employee... ‘represents the same legal right and interest as’ those agencies — ‘namely, recovery
18 of civil penalties that otherwise would have been assessed and collected by the [LWDA].” *ZB,*
19 *N.A. v. Superior Court*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian*, 59 Cal.4th at 380).

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

27 ///

28 ///

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

9 Finally, unlike a class action settlement under Fed. R. Civ. Proc. Rule 23(e) or Cal. Rule
10 of Court 3.769, the scope of release in a PAGA settlement is limited to *civil penalties*. While
11 “judgment in [a PAGA] action is binding not only on the named employee Plaintiffs but also on
12 government agencies and any aggrieved employee not a party to the proceeding...the non-party
13 employees, because they were not given notice of the action or afforded any opportunity to be
14 heard, would not be bound by the judgment as to remedies other than civil penalties.” *Arias v.*
15 *Sup. Ct.*, 46 Cal. 4th 969, 986-87 (2009).

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

22 1. ***Factors in Evaluating a Representative PAGA Settlement***

23 In deciding whether to approve a proposed settlement, a trial court has broad powers to
24 determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup.*
25 *Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to

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).

1 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*,
2 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court to
3 consider include, but are not limited to:

4 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration
5 of further litigation, the risk of maintaining class action status through trial, the
6 amount offered in settlement, the extent of discovery completed and the stage of the
proceedings, the experience and views of counsel, the presence of a governmental
participant, and the reaction of the class members to the proposed settlement.

7 *Id.* These factors require balancing, are non-exhaustive, and trial courts should tailor the factors
8 to each case and give due regard to “what is otherwise a private consensual agreement between
9 the parties.” *Id.* In the context of a PAGA settlement, the third and eighth factors (risk of
10 maintaining class action status and reaction of class members to settlement) are inapplicable.

11 Because settlements inherently involve compromise, even settlements providing for
12 substantially narrower relief than likely would be obtained if the suit were successfully litigated
13 can be reasonable because “the public interest may indeed be served by a voluntary settlement in
14 which each side gives ground in the interest of avoiding litigation.” *Wershba v. Apple Computer,*
15 *Inc.*, 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines,*
16 *Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). In addition, courts review the discovery process and
17 information received through it to aid them in assessing whether the parties sufficiently developed
18 the claims and their supporting factual bases before reaching settlement. *Kullar v. Foot Locker*
19 *Retail, Inc.*, 168 Cal.App.4th 116, 129-31 (2008). Information is sufficient where it allows the
20 parties and the court to form “an understanding of the amount that is in controversy and the
21 realistic range of outcomes of the litigation.” *Clark v. Am. Residential Serv. LLC*, 175 Cal.App.4th
22 785, 801 (2009). This requirement exists so that the parties can provide the court with “a
23 meaningful and substantiated explanation of the manner in which the factual and legal issues have
24 been evaluated.” *Kullar, supra*, 168 Cal.App.4th at 132.

25 **a. The Strength of Plaintiff’s Case**

26 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff
27 acknowledges that his position includes real risks and uncertainty. Larsen Decl., ¶¶ 15-18.
28 Plaintiff alleges that DHL failed to incorporate shift differentials, shift premiums, non-

discretionary bonuses, and non-discretionary pay into the “regular rate” of pay when paying meal period premium wages, overtime wages, sick pay, and vacation pay. Larsen Decl., ¶¶ 15. DHL 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. *Id.*; see also 29 C.F.R. §§ 778.208, 778.211 (excluding “discretionary” bonuses from regular rate). DHL also contends that any under-payments were *de minimis* and not recoverable. *Id.*

DHL further maintains that even if the Court awarded PAGA penalties for any of the alleged violations, in the event that Plaintiff was successful in a judgement based upon the merits, the Court would substantially reduce the penalties based on the discretionary factors in Labor Code § 2699(e)(2) (authorizing reduction in PAGA penalties “if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”). See Larsen Decl., ¶ 16. Indeed, many courts have reduced PAGA penalties where, as here, the employer presented good-faith defenses and attempted to comply with the law. Larsen Decl., ¶ 16; see, e.g., *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because “defendants took their obligations...seriously and attempted to comply with the law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%, in part because employer was “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law). Larsen Decl., ¶ 16.

b. Risk, Expense, Complexity, and Duration of Further Litigation

Although the Parties had engaged in significant informal discovery, the Parties still had much written and deposition discovery to conduct if the case did not settle. Substantive motion work and trial preparation also remained for the Parties, as well as potential appeals. As a result, the Parties would likely incur considerably more attorneys’ fees and costs through trial and possible appeal. The Settlement avoids those risks and the accompanying expense.

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1 **c. Amount Offered in Settlement Given Realistic Value of Claims**

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

5 Based on Plaintiff's review of the payroll records produced by DHL, and after applying
6 reasonable discounts for the possibility of losing on the merits and of the Court reducing penalties,
7 the realistic PAGA exposure for DHL's alleged underpayment of overtime wages, meal period
8 premiums, sick pay, and vacation wages was approximately \$434,677. Larsen Decl., ¶¶ 15-19.
9 The PAGA GSA of \$327,500 therefore represents approximately 75.3% of the realistic exposure,
10 a favorable result for the State of California and Aggrieved Employees. *Id.*

11 Approval of the Settlement is appropriate, as the Settlement will provide a tangible
12 monetary benefit to Aggrieved Employees and the State of California, while avoiding the risks
13 and costs of continued litigation and trial. In addition, approval of the Settlement is appropriate
14 because it furthers the purpose of PAGA. First, it requires DHL to pay a significant, six-figure
15 amount for alleged labor code violations. Second, it acts as a deterrent to DHL and/or other
16 employers from violating the Labor Code in the future. Finally, it rectifies the alleged violations
17 by providing a monetary recovery for both the State of California and the Aggrieved Employees.

18 **d. Discovery Completed and the Status of Proceedings**

19 Only after the completion of informal discovery and following significant debate and
20 discussion with a third-party mediator regarding the merits and defenses of this case, did the
21 Parties reach the proposed Settlement. Thus, this factor supports settlement approval.

22 **e. The Experience and Views of Counsel**

23 "Parties represented by competent counsel are better positioned than courts to produce a
24 settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter. Sec.*
25 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel with
26 extensive experience in this field of law, who believe this Settlement to be fair and adequate for
27 all involved. Larsen Decl., ¶¶ 2-7. This factor strongly supports settlement approval. *Kullar*, 168
28 Cal.App.4th at 130 ("The court undoubtedly should give considerable weight to the competency

1 and integrity of counsel and the involvement of a neutral mediator in assuring itself that a
2 settlement agreement represents an arm's length transaction entered without self-dealing or other
3 potential misconduct.”).

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

6 Plaintiff is entitled to attorneys' fees in this PAGA action under Labor Code § 2699(g)(1),
7 which provides that “[a]ny employee who prevails in any [PAGA] action shall be entitled to an
8 award of reasonable attorneys' fees and costs.” *See also Gouskos v. Aptos Village Garage, Inc.*,
9 94 Cal.App.4th 754, 765 (2001) (holding that attorneys' fees to prevailing party are mandatory
10 when the statute uses the word “shall”); *see also Graciano v. Robinson Ford Sales*, 144
11 Cal.App.4th 140, 153 (2006) (“[P]laintiffs may be considered ‘prevailing parties’ for attorney’s
12 fee purposes if they succeed on any significant issue in the litigation that achieves some of the
13 benefit the parties sought in bringing suit.”).

14 A fee award is justified where the legal action has produced its benefits by way of
15 settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Comty. for*
16 *Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d
17 25, 34 (1977) (“when a number of persons are entitled in common to a specific fund, and an action
18 brought by a plaintiff...for the benefit of all results in the creation or preservation of that fund,
19 such plaintiff...may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d
20 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties,
21 the trial court acts within its equitable power to prevent the other parties’ unjust enrichment);
22 *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage
23 of the fund method for calculating attorneys’ fees more accurately reflects the results achieved
24 for the putative class than the lodestar method and “establishes reasonable expectations on the
25 part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement,
26 which avoids protracted litigation.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir.
27 2005) (“The percentage-of-recovery method is generally favored in common fund cases because
28 it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and

1 penalizes it for failure.”).

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

6 Specifically, the *Laffitte* Court held:

7 The recognized advantages of the percentage method—including relative ease of
8 calculation, alignment of incentives between counsel and the class, a better
9 approximation of market conditions in a contingency case, and the
10 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.

11 *Id.*, at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-
12 third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also*,
13 *e.g.*, *Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)
14 (approving attorneys’ fees of one-third of settlement fund in PAGA settlement). This is consistent
15 with Plaintiff’s counsel’s experience in similar wage-and hour matters. Larsen Decl., ¶ 20.

16 Here, Plaintiff’s fee request of one-third of the Gross Settlement Amount (estimated to be
17 \$109,166.67), which is the same percentage approved by the California Supreme Court in *Laffitte*,
18 is fair and reasonable based on the percentage of the recovery method, as confirmed by a lodestar
19 cross-check.

20 In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the
21 reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court
22 calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring
23 the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06.
24 While a trial court may utilize the lodestar cross-check, it need not do so. *Id.*, at 506 (“[w]e hold
25 further that the trial courts have discretion to conduct a lodestar cross-check on a percentage fee,
26 as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other
27 means to evaluate the reasonableness of a requested percentage fee.”). Under California law,
28 lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*, 162 Cal.App.4th at

49-50 (approving multiplier of approximately 2.5); *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of approximately 12.8). In class and representative actions, where the value of the benefit conferred “can be monetized with a reasonable degree of certainty,” a 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 \$83,647.50, resulting in a modest multiplier of 1.16 compared to the \$109,166.67 fee request. Larsen Decl., ¶ 22, Exhibit 5. A general summary showing the number of hours of work performed by each attorney is set forth below. The billing rates used are reasonable in view of the evidence submitted herewith. *Id.*, ¶ 23 & Exhibit 6 (2024-2025 *Laffey* Matrix).

Name	Rate	Hours	Pre-Multiplier Lodestar
Tuvia Korobkin (16th Year Attorney)	\$675	42.1	\$28,417.50
Neil M. Larsen (14th Year Attorney)	\$650	75.4	\$49,010.00
Jennifer S. Rivera (2nd Year Attorney)	\$375	10.4	\$3,900.00
Paralegals	\$200	11.6	\$2,320.00
Total Lodestar			\$83,647.50

The requested fee award is also justified because Plaintiff’s counsel achieved a significant monetary recovery in an uncertain and risky case, while bearing the substantial burden of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys’ fees). Here, counsel expended significant time and resources in litigating this case, which resulted in a favorable result for Plaintiff, the State of California, and Aggrieved Employees in the face of significant defenses. Counsel also bore the contingency risk of this litigation for the benefit of the Aggrieved Employees, as well as the State

of California (which declined taking the case). Larsen Decl., ¶¶ 21-22.

Critically, Plaintiff's recovery for the State of California and Aggrieved Employees of approximately \$190,865.42 (the Net Settlement Amount) significantly exceeds other PAGA awards approved by California courts. *See, e.g., Aguirre v. DSW, Inc.*, 2012 WL 11875296, *3 (C.D. Cal. Nov. 29, 2012) (\$10,000 PAGA payment); *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$10,000 PAGA payment, finding it "comports with settlement approval of PAGA awards in other cases. [Citations.]"); *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, *8 (C.D. Cal. Nov. 18, 2014) (\$18,750 PAGA payment); *Franco v. Ruiz Food Prods.*, 2012 WL 5941801, *14 (E.D. Cal. Nov. 27, 2012) (\$10,000 PAGA payment); *Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645, *1 (N.D. Cal. Feb. 16, 2011) (\$10,000 PAGA payment).

Plaintiff's counsel's previous experience in litigating wage and hour representative actions also supports the reasonableness of the fee request. Plaintiff's counsel is well-versed in wage and hour class and PAGA action litigation. Larsen Decl., ¶¶ 2-6. Plaintiff's counsel's experience in similar matters was integral in evaluating the strengths and weaknesses of this case and the reasonableness of the Settlement. Because it is reasonable to compensate counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable. Based on all of the above, Plaintiff respectfully submits that the requested fee award is fair, reasonable and adequate and should be approved.

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

Plaintiff's request for reimbursement of litigation costs of \$14,967.91 is also fair and reasonable. All of Plaintiff's litigation costs were reasonably incurred. *See* Larsen Decl., ¶ 24 & Exhibit 7. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, 2011 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *In re Immune*

1 *Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses,
2 consultant and expert fees, postage, filing fees, messenger and overnight delivery costs, and other
3 costs are reimbursable).

4 Likewise, the request for administration costs of \$5,000 is also fair and reasonable.
5 Simpluris was selected because it is an experienced settlement administrator and returned a
6 reasonable bid. *See* Declaration of Denise Islas & Exhibits. Moreover, Simpluris will perform
7 several important functions that are integral to the implementation of the Settlement. *Id.* Its
8 requested fee is therefore reasonable.

9 **D. The Court Should Approve Plaintiff’s Requested Enhancement Payment**
10 **Because It Is Fair, Adequate, and Reasonable in View of Plaintiff’s Efforts**
11 **and the Risks He Assumed in This Litigation**

12 Courts routinely approve enhancement awards to compensate named plaintiffs for the
13 services they provide and the risks they incur during representative litigation. *See, e.g., Bell v.*
14 *Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named
15 plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
16 \$50,000 incentive payment); *Rodriguez v. West Publishing Co.*, 563 F.3d 948, 958-59 (9th Cir.
17 2009) (observing incentive awards are “fairly typical” and are awarded to named plaintiffs “...to
18 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, **to**
19 **recognize their willingness to act as a private attorney general**”) (emphasis added); *see also*
20 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (awarding \$10,000
21 incentive award in wage-and-hour class/PAGA action, in addition to a \$5,000 payment for the
22 plaintiff’s individual general release). Here, Plaintiff seeks an enhancement payment of \$7,500.
23 *See* Settlement, § III.4(b). This request is reasonable given Plaintiff’s efforts in this case and the
24 risks he undertook on behalf of Aggrieved Employees. *See* Caston Decl., ¶¶ 4-5. Plaintiff
25 provided substantial factual information to Counsel, participated in numerous discussions with
26 Counsel regarding the case and the settlement, reviewed the settlement agreement and other
27 documents in connection with this case, took on significant reputational risk in being the named
28 plaintiff in a representative action against a former employer, and agreed to place his name on a

lawsuit that benefitted not just himself, but also the State of California and dozens of Aggrieved Employees. *Id.* Accordingly, Plaintiff's requested enhancement payment is appropriate and justified as part of the Settlement.

V. CONCLUSION

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.

Dated: May 8, 2025

Respectfully submitted,
ABRAMSON LABOR GROUP

By: Neil Larsen
Neil M. Larsen
Attorneys for Plaintiff