James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
Mitchell J. Murray (SBN 285691)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
james@jameshawkinsaplc.com
christina@jameshawkinsaplc.com

Attorneys for Plaintiff JASON ODELL WRIGHT, on behalf of himself and all others similarly situated

AIMAN-SMITH & MARCY
PROFESSIONAL CORPORATION
Randall B. Aiman-Smith #124599
Reed W.L. Marcy #191531
Hallie Von Rock #233152
Brent A. Robinson #289373
Lisseth Bayona #338135
7677 Oakport St. Suite 1150
Oakland, CA 94621
T 510.817.2711
F 510.562.6830
hvr@asmlawyers.com

Attorneys for Plaintiff William Dean Raymond, *et al.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

JASON ODELL WRIGHT and WILLIAM DEAN RAYMOND, individually and on behalf of themselves and all others similarly situated, Plaintiff, v. COMPUCOM SYSTEMS, INC., a Delaware Corporation; EXCELL, a division of CompuCom Systems, Inc.; and DOES 1-50, inclusive, Defendants.	Case No. CVRI2205136 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (PAGA) SETTLEMENT** Reservation # 872853979514 Date: June 13, 2024 Time: 8:30 a.m. Dept.: 1 Hon. Harold W. Hopp

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Plaintiffs Jason Odell Wright and William Dean Raymond ("Plaintiffs") respectfully submit the following Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Approval of Private Attorneys General Act (PAGA) Settlement.

I. INTRODUCTION

This action arises from the employment policies and practices of Defendant CompuCom Systems, Inc. ("Defendant"). The present motion seeks approval of the settlement of Plaintiffs' claim for Defendant's alleged violations of the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*. ("PAGA"). The parties' settlement agreement is contained in their PAGA Settlement Agreement ("Settlement Agreement"), a copy of which is attached as Exhibit A to the accompanying Declaration of Hallie Von Rock ("HVR Dec.").[1]

As more specifically described below, Plaintiffs' PAGA claim, which Plaintiffs seek to settle on behalf of approximately 550 Aggrieved Employees, alleges that Defendant failed to pay minimum or overtime wages including due to off-the-clock work, failed to reimburse business expenses, failed to timely pay wages during and upon termination of employment, failed to provide accurate and itemized wage statements, failed to provide meal and rest breaks (or premiums), and failed to properly calculate the regular rate (for all purposes).

Plaintiffs allege that Defendant's conduct violates several provisions of the California Labor Code and Wage Orders, and subjects Defendant to penalties under the PAGA, as well to liability for costs and attorneys' fees. The parties now seek to resolve all violations of the PAGA alleged in this case.

Pursuant to the parties' Settlement Agreement, Defendant will pay a non-reversionary total of Three Hundred Thousand Seventy-Five Dollars ($375,000) (the "Gross PAGA Settlement Amount"). Settlement Agreement at ¶ 1.13. From the Gross PAGA Settlement Amount, Plaintiffs' counsel requests approval of attorneys' fees equal to one-third of the Gross PAGA Settlement Amount, or $125,000, and reimbursement of costs incurred to prosecute this case,

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[1] A copy of the Settlement Agreement and this Motion were served on the Labor Workforce and Development Agency ("LWDA") the same date as this filing, in compliance with Labor Code § 2699(l)(2). HVR Dec., ¶ 4.

currently at $24,115 (Settlement Agreement has costs capped at $30,000). *Id.* at ¶¶ 1.23; 4.2.1. Plaintiffs also request the Court to approve an incentive fee for Plaintiffs, for their release of claims and for their time, effort, and risk in bringing and prosecuting the Action on behalf of the LWDA and Aggrieved Employees in the amount of $5,000 each, for a total of $10,000. *Id.* at ¶ 1.20. Plaintiffs further request the Court to approve ILYM Group, Inc. as the Settlement Administrator with costs capped at $5,250, which could rise depending on the final number of Aggrieved Employees (Settlement Agreement has settlement administration costs capped at $10,000). *Id.* at ¶ 4.2.2. After deducting these amounts from the Gross PAGA Settlement Amount, the remaining $210,635 (the "Net Settlement Amount") will be distributed pursuant to the PAGA.

Per the PAGA, 75% of the $210,635 Net Settlement Amount, or $157,976.25, shall be paid to the LWDA. Lab. Code § 2699(i); Settlement Agreement at ¶¶ 1.18. The remaining 25%, or $52,658.75, shall be distributed among the Aggrieved Employees. *Id.* Defendant has identified approximately 550 Aggrieved Employees who worked during the PAGA Period. HVR Dec., ¶ 16. Defendant's records indicate these Aggrieved Employees worked a total of approximately 13,520 pay periods through November 17, 2023. *Id*.

The Aggrieved Employees will be mailed their checks directly by the settlement administrator. Settlement Agreement at ¶ 5.3.1. The Aggrieved Employees will have 180 days to cash their checks. *Id.* Thereafter, for any Aggrieved Employee whose Individual PAGA Payment check is not cashed within 180 days (which can be extended for good cause shown) and becomes void, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. *Id.* ¶ 5.3.3.

The Settlement Agreement was the product of extensive arm's-length negotiations, by experienced counsel on both sides, which took into consideration the claims at issue in this case, Defendant's asserted defenses, and is a fair and reasonable resolution for the LWDA and the Aggrieved Employees.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Allegations, PAGA Notices, and Complaints

A PAGA action is commenced by "The aggrieved employee or representative [giving] written notice by certified mail to the LWDA and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." (Labor Code § 2699.3 (c)(1)).

After service of the aggrieved employee's notice, the LWDA has 60 days to notify an aggrieved employee it intends to investigate the alleged PAGA violation. If no notice of cure by the employer or investigation is provided, the aggrieved employee may commence a civil action 65 days after providing notice. (Labor Code § 2699.3(a)(2)(A)).

On August 4, 2021, Plaintiff William Dean Raymond sent notice to Defendant and the LWDA giving notice of his intent to pursue a PAGA action on behalf of the State of California and a proposed group of Aggrieved Employees; on November 23, 2022, Plaintiff Jason Odell Wright sent notice to Defendant and the LWDA giving notice of his intent to pursue a PAGA action on behalf of the State of California and a proposed group of Aggrieved Employees. The LWDA did not respond to Plaintiffs' PAGA Notices or investigate Plaintiffs' allegations. *See*, HVR Dec. ¶ 5.

On November 23, 2022, Plaintiff Jason Wright commenced this Action by filing a putative class action complaint against Defendant alleging violations of the California Labor Code for failure to provide minimum and overtime wages, meal and rest periods, timely payment of wages during and upon separation of employment, reimbursement of necessary expenses, and itemized wage statements, as well as violation of Business and Professions Code § 17200 et seq. On January 30, 2023, Plaintiff Jason Wright filed a first amended complaint, which removed the class action allegations. On March 14, 2023, Plaintiff Wright filed a second amended complaint, which removed his individual claims and asserted a sole cause of action for penalties pursuant to Labor Code § 2699, *et seq*. for the same underlying violations asserted in the original complaint. On June 20, 2023, Plaintiff Wright submitted his underlying Labor Code claims to arbitration before JAMS. On March 20, 2024, the Court granted Plaintiff leave to file a third amended complaint. On April 1, 2024, Plaintiff Jason Wright filed a third amended complaint, adding Plaintiff William Raymond and adding unique allegations that Plaintiff William Raymond had asserted in the complaint that he had filed on October 19, 2021 in *Raymond v. CompuCom Systems, Inc.* (Sacramento County Case No. 34-2021-00309983).

The operative Third Amended Complaint alleged that Defendant's conduct with respect to the Aggrieved Employees violated the California Labor Code, including sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.* The Aggrieved Employees are defined as all non-exempt employees who lived and/or worked for CompuCom in California at any time between November 23, 2021 and November 17, 2023 and all non-exempt employees with "Field Tech" or "Field Service Technician" in their business title who have lived and/or worked for CompuCom in California at any time between August 4, 2020 and November 22, 2021 (the "Aggrieved Employees" or "Aggrieved Group" or "Non-Exempt Employees"). Settlement Agreement ¶ 1.4.

On April 2, 2024, Defendant filed an answer to Plaintiffs' third amended complaint. Defendant denies the allegations in the Action, denies any failure to comply with the laws identified in the Action, and denies any and all liability for the cause of action alleged in the Action. *Id.* ¶ 3.1.

B. <u>Individual Claims and Settlement Agreement</u>

All causes of action subject to arbitration were brought by Plaintiffs in their individual capacity. Those causes of action are not part of this PAGA settlement and are being settled separately between Plaintiffs and Defendant. The individual claims settled for $70,000.00 which, contingent on the Court's Approval Order of the PAGA Settlement, shall require the Parties to enter into separate settlement agreements for Plaintiffs' individual claims in the gross amounts of $50,000 (less applicable withholdings) to Plaintiff Raymond and $20,000 (less applicable withholdings) to Plaintiff Wright in exchange for Plaintiffs' general release of all known and unknown claims against Defendant and any affiliated persons and entities. HVR Dec. ¶ 7; JRH Dec. ¶¶ 34-36.

C. <u>**Defendant's Asserted Defenses and the Risks of Continued Litigation**</u>

From the beginning of this litigation, Defendant challenged the merits of Plaintiffs' PAGA claim on several bases, including the assertion that Defendant issued company equipment to remote workers, that workers were given cell phones that did not require the use of their own internet, that workers entered their own time and could add extra minutes for time spent during COVID screenings or for booting up their computers, that Defendant provided its employees with the opportunity to take compliant meal and rest breaks and otherwise paid them break premiums as required, and that Defendant maintained policies that all hours must be recorded and paid for all regular and overtime hours recorded. HVR Dec. ¶ 8.

In addition to challenging the merits of Plaintiffs' PAGA claim, Defendant contended that numerous individualized inquiries would be required to determine liability in this case and would render any trial unmanageable, which would deny Defendant its rights to due process and a fair trial and subject the action to dismissal. HVR Dec., ¶ 9; *see, e.g.*, *Estrada v. Royalty Carpet Mills, Inc.* (2024) 15 Cal.5th 582 ("unequivocally endors[ing] th[e] proposition" in *Williams v. Superior Court* that trial participants in PAGA cases should endeavor to ensure that a case is efficiently adjudicated); *Williams v. Superior Court* (2017) 3 Cal. 5th 531, 559 (discussing a PAGA representative plaintiff's need to "render a trial of the action manageable"); *Raphael v. Tesoro Refining and Marketing Co. LLC* (C.D. Cal. Sep. 25, 2015) 2015 WL 5680310, at *3 (granting motion for judgment on the pleadings with prejudice as to PAGA claim because proof of the claim would be unmanageable). Defendant also claimed that even if Plaintiffs could present a manageable trial plan, and carry their burden of proving the merits of his claims, the Court could exercise the discretion granted to it under the PAGA to "award a lesser amount than the maximum civil penalty amount specified . . . if, based on the facts and circumstances of a particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *Id.*; Lab. Code § 2699(e)(2).

In conducting the settlement negotiations described below, the legal arguments detailed above, and the associated risks of continued litigation, were considered extensively by all parties.

D. <u>Discovery</u>

The parties engaged in significant formal and informal discovery that related to Defendant's policies and procedures that affected the Aggrieved Employees. HVR Dec., ¶ 10; Declaration of James R. Hawkins ("JRH Dec."), ¶¶ 11-17. Additionally, Defendant provided data that allowed the parties to conduct a meaningful analysis of the potential PAGA penalties and the exposure that both sides faced. *Id*. In preparing for mediation, Defendant provided updated data which was used to calculate potential PAGA liability for settlement negotiations. *Id.*

E. <u>Settlement Negotiations</u>

The Settlement was reached through extensive, arms-length negotiations with the assistance of well-respected mediator Lisa Klerman, Esq. The parties engaged in a full-day mediation that was facilitated by informal exchanges of documents, information, data, discussions with plaintiffs, an analysis of PAGA penalties, and the expertise of an experienced mediator who set forth the risks for each side in further litigating the matter. HVR Dec., ¶ 11; JRH Dec., ¶¶ 18-23.

The case did not settle the day of the mediation, but the mediator made a settlement proposal that was accepted a week later on November 17, 2023. HVR Dec., ¶ 12.

During the settlement negotiations, each side, represented by its respective counsel, recognized the substantial risk of an adverse result in the case given the claims and defenses asserted. *Id*., ¶ 13; JRH Dec., ¶¶ 18-23. It was by balancing these considerations that the parties came to the agreement set forth in the Settlement Agreement, which represents a compromise and settlement of highly disputed claims. *Id*.

Plaintiffs contend that the result is fair, adequate, reasonable, and satisfies the PAGA's intention of enforcing California's laws protecting employees and collecting civil penalties for the State. *Id*., ¶¶ 14-15; JRH Dec. ¶¶ 24-33. The settlement amount is consistent with Court-approved amounts in other PAGA cases, and the requests for PAGA Counsel's attorneys' fees and costs and Plaintiff's service payment are also fair and reasonable. *Id.*

The superior court "shall review and approve any settlement of any civil action filed pursuant to" Labor Code § 2699(l)(2). Plaintiffs request the Court approve this PAGA Settlement, order it be implemented according to the terms of the Agreement, and enter Final Judgment. Defendant will not be opposing the present Motion. HVR Dec., ¶ 15.

III. THE PROPOSED SETTLEMENT

A. Overview of the Settlement

The proposed settlement provides for a non-reversionary Gross PAGA Settlement Amount of $375,000. Settlement Agreement at ¶ 1.13. Per the PAGA, 75% of the Net Settlement Amount shall be paid to the LWDA. Lab. Code § 2699(i); Settlement Agreement at ¶ 1.18. The remaining 25% of the Net Settlement Amount will be distributed by a direct mailing of checks by the Settlement Administrator to the Aggrieved Employees. *Id.* at ¶¶ 4.2.4; 5.3.1.

1. Settlement Payout

Subject to the terms and conditions of the Settlement Agreement, the Gross PAGA Settlement Amount that Defendant is obligated to pay in connection with the settlement is $375,000. Settlement Agreement at ¶ 1.13. This amount will cover (as approved by the Court): (1) all PAGA settlement shares ("Individual PAGA Payments") paid to the Aggrieved Employees; (2) the Named Plaintiffs' Enhancement Payments ($10,000 total; $5,000 to each Named Plaintiff); (3) Plaintiffs' counsel's attorneys' fees ($125,000); (4) litigation costs ($24,115); (5) payment to the LWDA; and (6) the Settlement Administrator's fees and expenses ($5,250). *Id*. at ¶¶ 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5. The Gross PAGA Settlement Amount is non-reversionary. *Id*. at ¶¶ 2, 4.5. The Net Settlement Amount, if the Court awards the requested fees and costs, is $210,635.

2. Calculation and Distribution of Settlement Payments

Per the PAGA, 75% of the $210,635 Net Settlement Amount, or $157,976.25, shall be paid to the LWDA. Lab. Code § 2699(i); Settlement Agreement at ¶¶ 1.18. The remaining 25%, or $52,658.75, shall be distributed among the Aggrieved Employees. *Id.* Defendant has identified approximately 550 Aggrieved Employees who worked during the PAGA Period. HVR Dec., ¶¶ 16. Defendant's records indicate these Aggrieved Employees worked a total of approximately 13,520 pay periods through November 17, 2023. *Id*.

The Aggrieved Employees' share of $52,658.75 will be divided by the total number of pay periods for a per-pay period amount of approximately $3.89, which will be multiplied by the number of pay periods each Aggrieved Employee worked during the PAGA Period to determine the amount he or she will receive. *Id*., ¶ 17; Settlement Agreement at ¶ 1.15. For example, an Aggrieved Employee who worked 40 pay periods during the PAGA Period would receive approximately $155.80 (40 x $3.89). *Id.*

Each Individual PAGA Payment shall be allocated as one hundred percent (100%) penalties, from which there will be no tax withholdings and for which an IRS Form 1099 will be issued, as needed. Settlement Agreement at ¶ 4.2.4.

Within thirty (30) calendar days of the Effective Date, Defendant shall provide the Settlement Administrator with the name, last known mailing address of each Aggrieved Employee, and the total PAGA pay periods for each Aggrieved Employee. The Settlement Administrator shall mail the Individual Settlement Payments to the PAGA Members via first-class regular U.S. mail. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct for any known or identifiable address changes. For each notice packet returned as undeliverable, without a forwarding address, the Settlement Administrator will perform a single computer and/or "skiptrace" search to obtain an updated address. *Id.* at ¶ 5.1; 5.3.2.

The Settlement Administrator shall issue the payments as set forth above within fourteen (14) calendar days of receiving payment. *Id.* at ¶ 5.3.

3. Release of Claims

Effective on the date when Defendant fully funds the entire Gross PAGA Settlement Amount, Plaintiffs, on their own behalf, on behalf of all Aggrieved Employees, and on behalf of the State of California, release all Released Parties as follows:

Named Plaintiffs' Release. Plaintiffs for themselves, their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from any and all Released PAGA claims that arise during the PAGA Period out of, or directly relate to, the facts alleged in the Action and that involve the same primary rights as those placed at issue in the Action or Plaintiffs' PAGA Notices to the LWDA, including but not limited to PAGA claims premised on the alleged failure to pay minimum or overtime wages including due to off-the-clock work, failure to reimburse business expenses, failure to timely pay wages during and upon termination of employment, failure to provide accurate and itemized wage statements, failure to provide meal and rest breaks (or premiums), and failure to properly calculate the regular rate (for all purposes).

Release by Aggrieved Employees: For and in consideration of the mutual promises and consideration set forth in this Agreement, the Aggrieved Employees shall be bound by the release as to any Released PAGA claims that arise during the PAGA Period out of, or directly relate to, the facts alleged in the Complaints and that involve the same primary rights as those placed at issue by the Complaints or Plaintiffs' PAGA Notices to the LWDA, including but not limited to PAGA claims premised on the alleged failure to pay minimum or overtime wages including due to off-the-clock work, failure to reimburse business expenses, failure to timely pay wages during and upon termination of employment, failure to provide accurate and itemized wage statements, failure to provide meal and rest breaks (or premiums), and failure to properly calculate the regular rate (for all purposes).

Release by Plaintiffs on Behalf of the LWDA (and State of California): In their capacity as private attorneys general "aggrieved employees" acting on behalf of themselves and as proxies or agents of the LWDA and State of California, Plaintiffs agree to release Defendant and the Released Parties, from any and all Released PAGA Claims against the Released Parties during the PAGA Period. Upon approval of this Agreement, Plaintiffs, the LWDA, the State of California, and any other individual or entity acting on behalf of or purporting to act on behalf of the LWDA and/or the State shall be barred from asserting any of the Released PAGA Claims in any future litigation, arbitration, or other legal forum. Any party to this Agreement may use the Agreement to assert that this Agreement and the Judgment to be entered by the Court following approval of this Agreement bars or limits any pending or later-filed action asserting any of the Released PAGA Claims against any of the Released Parties. The provisions of this paragraph apply regardless of whether Plaintiffs and/or the Aggrieved Employees cash their Individual PAGA Payment checks. *See,* Settlement Agreement ¶¶ 6, 6.1, 6.2, 6.3

4. Named Plaintiffs' Enhancement Payments

Plaintiffs request, and Defendant does not oppose, that the Court award a Named Plaintiffs' Enhancement Payment in the amount of $5,000 each to Plaintiff Wright and Plaintiff Raymond, in consideration of their initiating and pursuing this lawsuit, including by participating in discovery, undertaking the risk of liability for attorney's fees and expenses in the event he was unsuccessful in the prosecution of this lawsuit, and agreeing to the general release as part of the Settlement Agreement. *See, id.* at ¶ 1.20.

Awarding an incentive to a PAGA representative follows the same principle that applies in the class action context. "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit." *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1395 (quoting *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 804-806). An award of $5,000 falls well below the average enhancement award according to one study. *See*, Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1308 (concluding the average award per class representative was $15,992).

An incentive award in a PAGA case is especially important where the plaintiff has filed suit on behalf of the LWDA, and is thus providing a vital service for the State. As a result of Plaintiffs' efforts here, the LWDA will receive $157,976.25.

Plaintiffs spent a significant amount of time helping counsel with the prosecution of this action and performed the following tasks: (1) communicating extensively with counsel on numerous occasions; (2) detailing their experiences and producing copies of documents; (3) assisting in preparing the complaint and amended complaints; (4) engaging in discovery; (5) preparing for mediation; and (7) reviewing the terms of and signing the Settlement Agreement. HVR Dec., ¶ 18; *see also,* Declarations of Plaintiffs Wright and Raymond, submitted herewith.. Plaintiffs also undertook personal and financial risks as PAGA representatives. *Id*.

In light of the work that Plaintiffs performed on behalf of the LWDA and the Aggrieved Employees, the requested Named Plaintiffs' Enhancement Payment of $5,000 for each Plaintiff is reasonable and appropriate. *Id.*

5. Administration Costs

The Settlement Administrator will pay out of the Gross PAGA Settlement Amount to itself its reasonable fees and expenses after such payment has been approved by the Court. Settlement Agreement ¶ 4.2.2. Plaintiff sought multiple bids and ILYM Group, Inc. submitted the lowest quote for its administration costs. The current costs are estimated to be $5,250. (Settlement Agreement has settlement administration costs capped at $10,000). *Id.* at ¶ 4.2.2..

6. Attorneys' Fees and Litigation Costs

In considering the overall fairness of the settlement, the Court may consider the reasonableness of the amounts allocated for attorneys' fees and costs in the Settlement Agreement. Plaintiff's' counsel's litigation costs were all reasonable and necessary expenses in litigating and resolving this action. An itemized list of Plaintiffs' counsel's out-of-pocket costs, in the total amount of $24,115, is attached as Exhibit C to the accompanying HVR Dec. and Exhibit A to the JRH Dec. Defendant does not object to Plaintiffs' counsel's request for these costs. Settlement Agreement ¶ 4.2.1. Plaintiffs also seek one-third of the Gross PAGA Settlement Amount, or $125,000, in attorneys' fees.

The attorneys' fees sought by Plaintiffs will compensate Plaintiffs' counsel for work performed in recovering a significant benefit for the LWDA and the Aggrieved Employees. As one court explained in approving the payment of attorneys' fees in the class action context: "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*. (C.D. Cal. June 10, 1992) 1992 WL 226321, at *4 (awarding attorney's fees of $8 million). The same is true here.

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

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

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

Numerous appellate courts have similarly endorsed the "percentage fee" method for determining reasonable attorneys' fees in common benefit cases.[2]

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

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

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

The attorneys' fees requested here are in line with other fee awards in California wage and hour cases. For example, in *Smiles v. Walgreens Co.*, Alameda Superior Court Case Number RG17862495, the court awarded attorneys' fees of 35% of the settlement amount in a PAGA case, plus costs; in *Pearce v. Linens 'N Things. Inc.,* Orange County Superior Court Case No. 00CC04830, the court awarded attorneys' fees equal to 33.33 % of the settlement fund, plus costs; in *Albrecht v. Rite Aid Corp.,* San Diego Superior Court Case No. 729129, Judge Haden awarded attorneys' fees equal to 35% of the settlement fund, plus costs; in *Crandall v. U-Haul International,* L.A. Superior Court Case No. BC 178775, the court awarded plaintiff's counsel attorneys' fees equal to 40% of the settlement fund; and in *Graubard v. Goodyear Tire Rubber Company,* LA Superior Court Case No. BC 230520, the court awarded attorneys' fees equal to 32.1% of the settlement fund, plus costs. These cases illustrate that California courts recognize that the 33.33% fee requested here is appropriate in a wage and hour common fund case.

Given the results achieved in this litigation, the requested fee award is reasonable. As discussed in *Sumitomo Copper Litigation, supra*, 74 F.Supp.2d at 396:

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

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

a. The Contingent Nature of this Case

Plaintiffs' counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. HVR Dec., ¶ 23, JRH Dec., ¶¶ 46-49. With no guarantee of success, Plaintiffs' counsel placed their own resources at risk, including over 698.3 hours of their time, to prosecute this action. *Id*. If Plaintiffs' counsel were unsuccessful in the prosecution of this case, they would receive nothing in return for this time, or for their out-of-pocket costs. Despite these risks, Plaintiffs' counsel took their duty to represent the LWDA and the Aggrieved Employees seriously, and expended all of the time and resources necessary to vigorously prosecute this case. As a result, Plaintiffs' counsel were able to demonstrate to Defendant that it faced exposure sufficient to engage in serious settlement negotiations and to settle Plaintiff's claim on behalf of the LWDA.

b. The Experience, Reputation, and Ability of Counsel, and the Skill Displayed in Litigation

Plaintiffs' counsel has substantial experience in complex and representative action litigation, including many wage and hour cases. *See,* HVR Dec., Ex. D, JRH Dec., ¶¶ 37-46. The quality of opposing counsel is also important in evaluating the quality of the work done by Plaintiffs' counsel. The complexity and potential duration of this case, in the face of experienced and resourceful opposition, weigh in favor of awarding the requested attorneys' fees.

c. The Results Achieved

The results achieved by the settlement also support Plaintiffs' counsel's request for attorneys' fees. As noted, the settlement will result in a total PAGA payment of $375,000. This is a significant sum of money in light of Defendant's affirmative defenses and the risks of continued litigation.

Further, the efficiency with which this litigation was conducted and resolved should be rewarded. The LWDA and the Aggrieved Employees will directly benefit from the prompt and fair resolution of their claims. They will receive a significant award in a reasonable period of time, as opposed to waiting years to recover an undetermined amount.

d. Preclusion of Other Employment

As California law recognizes, Plaintiffs' counsel's commitment to this litigation should not be assessed in a vacuum. *See, Serrano,* 20 Cal.3d at 49. A relevant factor in determining attorneys' fees is whether the litigation required Plaintiff's counsel to forego other employment. *Id*. Additional work was available that Plaintiffs' counsel had to forgo to devote the time necessary for this litigation. HVR Dec., ¶ 24, JRH Dec., ¶ 50.

e. Lodestar Comparison

Plaintiffs' counsel seeks approval of attorneys' fees based on a percentage of the recovery, not a lodestar. While a percentage fee may be compared against a lodestar, courts are not required to engage in this exercise, and many California courts decline to do so. *See, e.g., Glass v. UBS Financial Services, Inc.*, (N.D. Cal. Jan. 26, 2007) No. 06-4066-MMC, 2007 WL 221862 (finding "no need to conduct a lodestar cross-check [as] [c]lass counsel's prompt action in negotiating a settlement while the state of the law remained uncertain should be fully rewarded"); *Lopez v. Youngblood* (E.D. Cal. Sept. 2, 2011) No. 07-0474-DLB, 2011 WL 10483569 ("A lodestar cross-check is not required in this circuit, and in a case such as this, is not a useful reference.")

Where the cross-check is used, the "calculation need entail neither mathematical precision nor bean-counting" and is not intended to be a "full-blown lodestar inquiry." "Where the use of the lodestar method is used as a cross-check, it can be performed with a less exhaustive cataloguing and review of counsel's hours." *Barbosa v. Cargill Meat Solutions Corp*. (E.D. Cal. July 2, 2013) 297 F.R.D. 431, 451.

A comparison of the lodestar of Plaintiffs' counsel with the attorneys' fees sought here supports the propriety of the fees requested. Plaintiffs' counsel spent a total of 698.3 hours prosecuting this action and the resulting lodestar fee on those hours is $492,620. HVR Dec., ¶ 25. Thus, the fees sought are much less than the lodestar.

Accordingly, attorneys' fees in the amount of $125,000 (one-third of the Gross PAGA Settlement Amount) are fair and reasonable under the circumstances, and in line with California precedent, along with $24,115 in litigation costs. HVR Dec., Ex. C (Costs Index), JRH Dec., Ex. A. (Costs Index).

IV. THE STANDARD FOR APPROVAL OF PAGA SETTLEMENTS

Labor Code § 2699(l)(2) requires court approval of PAGA actions. However, because PAGA claims are not class actions, the rules and findings required by Rule 23 and CCP § 382 do not apply. *See, Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519 ("statutory class action requirements are not applicable to PAGA claims"); *see also, Williams,* 3 Cal.5th at 546-

547 and n. 4; *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir. 2015) 803 F.3d 425, 436. "An employee bringing a PAGA action does so 'as the proxy or agent of the state's labor law enforcement agencies,' who are the real parties in interest." *Sakkab,* 803 F.3d at 435 (quoting *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380).[3] Accordingly, the "bulk of any recovery goes to the LWDA, not to the aggrieved employees … A PAGA action is at heart a civil enforcement action filed on behalf of and for the benefit of the state, not a claim for class relief." *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123-1124.

In a PAGA action, there is no requirement to provide notice to the aggrieved employees; aggrieved employees do not have the right to object to or opt out of the settlement; and there is no need for separate preliminary and final hearings. *See*, *Sakkab*, 803 F.3d 425 at 435-36; *Baumann,* 747 F.3d at 1122; *Harvey v. Morgan Stanley Smith Barney LLC* (N.D.Cal. Sep. 5, 2019) 2019 U.S.Dist.LEXIS 159258, at *20-2; *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D.Cal. Apr. 2, 2010) 2010 U.S.Dist.LEXIS 32774, at *13.[4]

Although the PAGA itself does not provide instruction on how courts are to evaluate a settlement under the Act, California law provides some general guidance concerning judicial approval of any settlement. First, California courts recognize a strong public policy in favor of settlements. *See, Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 735 ("there is well-established policy in the law to discourage litigation and favor settlement. Pretrial settlements are highly favored because they diminish the expense of litigation"). Here, the settlement proposed by the parties not only avoids the complexities and legal uncertainties of continued litigation, but also the delay, expense, and drain on judicial resources that would result from a lengthy trial. Second, in all circumstances, the decision to approve or reject a settlement is committed to the trial court's sound discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-

[4] The only potential objector to a PAGA action is the LWDA itself, whose comments, if any, will be submitted to the court in advance of the approval hearing. The PAGA requires the parties to a PAGA suit to submit any proposed settlement to the LWDA at the same time it is filed with the court, and then, if the settlement is approved, to submit the judgment to the LWDA within 10 days after entry. Lab. Code § 2699(l)(3).

235. This basic principle coincides with the discretion the Legislature specifically afforded courts under sections 2699(e)(1) and (2) of the PAGA, granting to the courts the same discretion as that held by the LWDA in assessing civil penalties and specifically authorizing courts the ability to award lesser amounts than the maximum civil penalties set forth in section 2699. Third, although the court possesses discretion in approving a PAGA settlement, it seems logical that the court's role "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723 (quoting *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 625). Here, the parties agree that settlement is fair, reasonable, and adequate to the LWDA and Aggrieved Employees.

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

The settlement proposed by the parties was reached only after extensive, arm's-length negotiations. HVR Dec., ¶ 31. The parties engaged in discovery and exchanged documents supporting their claims and defenses, exchanged letters and conducted meet-and-confer conferences in which the parties' claims and defenses and supporting legal authorities and documentary evidence were discussed at length, and conducted additional informal discovery for mediation. *Id.* As a result of these activities, the parties had sufficient information to evaluate the strengths and weaknesses of their claims and defenses, the risks involved, and the appropriate settlement value of Plaintiffs' PAGA claim. Despite zealous advocacy on both sides, the parties determined that the risks of continued litigation favored the compromise contained in the Settlement Agreement.

Given these factors, the parties agreed that the Gross PAGA Settlement Amount set forth in the Settlement Agreement, i.e., $375,000, was a fair and reasonable sum for the resolution of Plaintiffs' PAGA claim. Given the dearth of trials of PAGA claims where penalties are actually awarded, Plaintiffs' counsel's experience is that in mediations for PAGA claims, the Defendant and Mediator look at the total amount of pay periods involved with a maximum per pay period penalty of $100. *Id.* Here, with approximately 13,520 pay periods, that is a maximum of approximately $1,352,200. *Id.* Accordingly, a settlement of $375,000 results in a per pay period penalty of approximately $27.74 per pay period, which is a fair and reasonable result given the defenses raised. *Id.;* JRH Dec ¶¶ 25-33.

The PAGA grants trial courts discretion to reduce the amount of civil penalties imposed, thus injecting further uncertainty into the outcome of any trial of Plaintiff's PAGA claim. *See,* Labor Code § 2699(e)(2). All of these factors were considered and/or discussed extensively during the parties' settlement negotiations.

The reasonableness of the Gross PAGA Settlement Amount set forth in the Settlement Agreement is also demonstrated by other cases in which plaintiffs have resolved PAGA claims for amounts less than the maximum penalty amount available. In *Carrington,* 30 Cal.App.5th at 517, 529, for example, the trial Court reduced the PAGA penalty amount to only $150,000 ($5 per violation) from a maximum penalty amount of $50,000,000 to $70,000,000. The trial court stated that this reduction was warranted because imposing the maximum penalty would be unjust, arbitrary, and oppressive based on Starbucks's "good faith attempts" to comply with meal period obligations and because the court found the violations were minimal. *Id.*

Similarly, here, Defendant argued that it implemented lawful policies that foreclosed the violations alleged by Plaintiffs, and made every effort to comply with minimum wage, overtime, and meal period requirements by implementing time keeping policies that assured payment for all hours worked and for any missed meal periods. HVR Dec., ¶ 32. Plaintiffs have strong arguments against these defenses, but even if Plaintiffs proved Defendant's liability, the possibility of a penalty reduction due to Defendant's asserted good faith attempt to comply with the law would remain. *Id.*

Other courts have also reduced PAGA penalties, often substantially. *See, Singh v. Roadrunner Intermodal Servs., LLC* (E.D.Cal. Jan. 24, 2019) 2019 U.S.Dist.LEXIS 11724, at *16-19 (approving settlement of PAGA claim for $100,000 where penalties were estimated at $14,224,000); *Fleming v. Covidien, Inc.* (C.D.Cal. Aug. 12, 2011) 2011 U.S.Dist.LEXIS 154590, at *8-9 (reducing PAGA penalties for wage statement violations from $2,800,000 to $500,000); *Viceral v. Mistras Grp., Inc.* (N.D.Cal. Oct. 11, 2016) 2016 U.S.Dist.LEXIS 140759, at *25-30) (approving settlement of PAGA claim for $20,000 where penalties were estimated at $12,952,000); *see also, Shames v. Hertz Corp.* (S.D.Cal. Nov. 5, 2012) 2012 U.S.Dist.LEXIS 158577, at *20 (noting, in the class action context, that "settlements for substantially less than the plaintiff's claimed damages may be fair and reasonable, especially when taking into account the uncertainties involved with litigation").

Here, the Gross PAGA Settlement Amount reflects a fair and reasonable compromise of Plaintiffs' PAGA claim, especially given Defendant's defenses, the uncertainty of continued litigation, and the Court's discretion to discount any penalties awarded at trial.

VI. CONCLUSION

Because the proposed settlement is fair, reasonable, and adequate, Plaintiffs respectfully requests that the Court grant approval of all terms of the settlement, as set forth in the Settlement Agreement attached to as Exhibit A to the accompanying declaration of Hallie Von Rock.

Respectfully submitted,

Dated May 17, 2024

JAMES HAWKINS, APLC
Mitchell J. Murray, Esq.

Attorneys for JASON ODELL WRIGHT, on behalf of himself and all others similarly situated

Dated May 17, 2024 /s/ Hallie Von Rock (With Permission)

AIMAN-SMITH & MARCY
Hallie Von Rock, Esq.

Attorneys for WILLIAM DEAN RAYMOND, on behalf of himself and all others similarly situated