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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KENNETH AGNER, individually, and on behalf
of other aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiff,

vs.

ELWOOD STAFFING SERVICES, INC., an
Indiana corporation; JOHN ELWOOD,
individually; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 25TRCV02965

*Assigned for all purposes to the Honorable Alan
B. Honeycutt, Dept. E*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: October 27, 2026

Time: 8:30 a.m.

Dept.: E

Reservation ID: 400670975015

Complaint Filed: August 29, 2025

Trial Date: Not Set

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

3 **PLEASE TAKE NOTICE** that on October 27, 2026, at 8:30 a.m. or as soon thereafter as may
4 be heard in Department E of the above-entitled court, located at 825 Maple Avenue, Torrance,
5 California 90503, Plaintiff Kenneth Agner (“Plaintiff”) will, and hereby does, move this Court for
6 entry of an order approving settlement of his claims brought pursuant to the Labor Code Private
7 Attorneys General Act of 2004, Cal. Lab. Code sections 2698 *et seq.* (“PAGA”). Specifically, by way
8 of this motion, Plaintiff requests that the Court enter an order:

9 1. Granting approval of the Joint Stipulation of PAGA Settlement (“Settlement” or
10 “Agreement”) attached as Exhibit 1 to the Declaration of S. Emi Minne in Support of Plaintiff’s
11 Motion for Approval of PAGA Settlement (“Minne Decl.”), including the plan of allocation and
12 distribution of the Gross Settlement Amount;

13 2. Directing the funding and distribution of the Gross Settlement Amount of Three
14 Hundred Thousand Dollars and Zero cents (\$300,000.00) in accordance with the terms of the
15 Settlement;

16 3. Approving Net Settlement Amount of \$163,181.32 as payment of penalties pursuant to
17 PAGA, of which sixty-five (65%), or \$106,067.86, will be paid to the California Labor and Workforce
18 Development Agency (“LWDA”), and thirty-five percent (35%), or \$57,113.46, will be distributed to
19 Aggrieved Employees;

20 4. Awarding attorneys’ fees in the amount of \$105,000.00 (35% of the Gross Settlement
21 Amount) to Parker & Minne, LLP and Lawyers *for* Justice, PC (“Plaintiff’s Counsel”);

22 5. Awarding payment in the amount of \$14,028.68 to Plaintiff’s Counsel for
23 reimbursement of their litigation costs and expenses;

24 6. Approving payment in the amount of \$10,000.00 to Plaintiff as a Service Award;

25 7. Appointing Apex Class Action, LLC as the Settlement Administrator; and

26 8. Approving payment in the amount of \$7,790.00 to the Settlement Administrator, Apex
27 Class Action, LLC, for reimbursement of the costs of settlement administration; and

28 8. Setting a post-approval final accounting hearing for July 27, 2026, or a date thereafter

1 that is convenient for the Court.

2 This Motion is brought pursuant to California Labor Code § 2699(1)(2) and is made on the
3 grounds that the proposed Settlement is fair, adequate, reasonable, fulfills the purposes and objections
4 of PAGA, and in the best interest of the Aggrieved Employees and the LWDA.

5 Pursuant to California Labor Code § 2699(s)(2), a copy of the proposed Settlement, as well as
6 information regarding the approval hearing on this matter, were submitted to the LWDA via online
7 filing at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>
8 on August 6, 2026. (Minne Decl., ¶ 81, Exh. 6.)

9 Under the terms of the Settlement, Defendant has agreed not to oppose this motion. As the
10 motion is unopposed, Plaintiff respectfully requests that the Court extend the page limit for the
11 supporting memorandum of points and authorities pursuant to Rule 3.1113(e) of the California Rules
12 of Court so that Plaintiff can provide the Court with adequate information to determine whether to
13 grant approval of the Settlement and award the requested Attorneys' fees and Costs, Service Award,
14 and Settlement Administration Costs.

15 The motion is based upon this notice, the attached memorandum of points and authorities; the
16 Declaration of S. Emi Minne and exhibits thereto; the Declaration of Ryan Slinger; the Declaration of
17 Kenneth Agner; the Declaration of Kimberly Sutherland of Apex Class Action, LLC; the pleadings
18 and other records on file with the Court in this matter; and any other further evidence or argument that
19 the Court may properly receive at or before the hearing.

20
21
22 Dated: August 7, 2026

Respectfully submitted,

PARKER & MINNE, LLP

23
24 By:



S. Emi Minne

Attorneys for Plaintiff KENNETH AGNER

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a representative action brought by Plaintiff Kenneth Agner (“Plaintiff”) against Defendant Elwood Staffing Services, Inc. (“Defendant”) pursuant to the Labor Code Private Attorneys General Act, California Labor Code sections 2698, et seq. (“PAGA”). By way of this Motion, Plaintiff seeks approval of a non-reversionary Joint Stipulation of PAGA Settlement (“Settlement” or “Agreement”)¹ which, if approved by the Court, will resolve the Action in its entirety. The key terms of the Agreement are as follows:

- Number of Aggrieved Employees: approximately 1,677 individuals.
- Gross Settlement Amount: \$300,000.00.
- Settlement Administration Costs: \$7,790.00.
- Requested Service Award: \$10,000.00.
- Requested Attorney’s Fees and Costs: \$105,000.00, plus actual costs and expenses in the amount of 14,028.68.
- Net Settlement Amount: \$163,181.32, 65% of which will be paid to the LWDA, with the remaining 35% paid to Aggrieved Employees.

As set forth herein, the Settlement is the product of informed discovery and arms-length negotiations by highly experienced counsel, and is fair, reasonable, and adequate in light of the relative strengths of Plaintiff’s PAGA claims, the risk, expense, and uncertainty of further litigation, the benefit conferred by the Settlement, and the underlying goals of PAGA. Plaintiff therefore respectfully requests that the Court grant approval of the proposed Settlement and enter judgment thereon.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a staffing services company with branches in Newport Beach and Torrance. (Minne Decl., ¶ 3.) Plaintiff was employed by Defendant during the PAGA Period as a non-exempt, hourly-paid employee. (Minne Decl., ¶ 4; Declaration of Kenneth Agner [“Agner Decl.”], ¶ 3.)

¹ A copy of the fully-executed Joint Stipulation of PAGA Settlement is attached as Exhibit 1 to the Declaration of S. Emi Minne in Support of Plaintiff’s Motion for Approval of PAGA Settlement (“Minne Decl.”).

1 On June 25, 2025, Plaintiff provided written notice to Defendant and the California Labor &
2 Workforce Development Agency (“LWDA”) of his intent to seek civil penalties pursuant to the Labor
3 Code Private Attorneys General Act of 2004, Cal. Labor Code sections 2698, et seq. (“PAGA”).
4 (Minne Decl., ¶ 5, Exh. 2.) The LWDA did not respond to Plaintiff’s PAGA Notice. (*Id.*)

5 On August 29, 2025, after fully exhausting PAGA’s 65-day notice period, Plaintiff filed a
6 representative PAGA action complaint against Defendants Elwood Staffing Services, Inc. and John
7 Elwood² entitled *Kenneth Agner v. Elwood Staffing Services, et al.* (Los Angeles County Superior
8 Court Case No. 25TRCV02965, hereinafter “Action”), which alleged a single cause of action seeking
9 the recovery of civil penalties pursuant to PAGA predicated on Defendant’s alleged violations of
10 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 558, 1174(d), 1194,
11 1197, 1197.1, 1198, 2800 and 2802, and the Industrial Welfare Commission Wage Orders. (Minne
12 Decl., ¶ 6.) Defendant filed its Answer to the Complaint on November 19, 2025. (*Id.*, ¶ 7.)

13 On December 2, 2025, Plaintiff propounded initial written discovery requests on Defendant
14 consisting of Special Interrogatories, Requests for Production of Documents, and Form
15 Interrogatories. (*Id.*, ¶ 8.) Plaintiff also served a notice to depose Defendant’s person most qualified.
16 (*Id.*) Shortly after Plaintiff propounded formal written discovery, Plaintiff’s Counsel met and
17 conferred with Defendant’s counsel regarding the potential for resolution of the Action. (*Id.*, ¶ 9.)
18 Pursuant to these discussions, the Parties agreed to exchange informal discovery, engage in private
19 mediation. (*Id.*) Per the Parties’ agreement, Defendant provided Plaintiff’s Counsel with extensive
20 informal discovery prior to mediation, which included a sampling of Aggrieved Employees’ time and
21 payroll records. (*Id.*, ¶ 10.) The sampling was randomly selected and included employees across the
22 PAGA Period. (*Id.*) Defendant also provided Plaintiff’s Counsel with all versions of Defendant’s
23 employee handbooks in use during the PAGA Period and other documents evidencing its relevant
24 wage and hour policies and procedures. (*Id.*) Finally, Defendant provided Plaintiff’s Counsel with key
25

26
27 ² On December 11, 2025, the Parties filed a Joint Stipulation to Dismiss Defendant John Elwood Without Prejudice. The
28 Court entered an order dismissing John Elwood from the Action without prejudice on December 19, 2026. (Minne Decl.,
¶ 6, fn. 1.)

1 data points, such as the number of Aggrieved Employees (including the number of current versus
2 former employees) and the total number of pay periods worked by Aggrieved Employees. (*Id.*)

3 Prior to mediation, Plaintiff's Counsel thoroughly reviewed the informal discovery produced
4 by Defendant, which included consulting with a data analyst to analyze Aggrieved Employees' time
5 and payroll records. (*Id.*, ¶ 11.) Plaintiff's Counsel also engaged in further independent investigation,
6 and conducted further legal research regarding the merits of Plaintiff's claims and Defendant's
7 potential defenses thereto. (*Id.*) Based on this investigation and informal discovery, Plaintiff's Counsel
8 prepared a detailed and informed assessment of Defendant's potential liability in advance of
9 mediation. (*Id.*) Plaintiff's Counsel also prepared a detailed brief addressing Plaintiff's claims and
10 Defendant's anticipated defenses, and provided their analysis to the mediator for his consideration.
11 (*Id.*)

12 After completing a thorough investigation and analysis of Plaintiff's claims, on April 17, 2025,
13 the Parties attended a private mediation with Chad Anderton, Esq., a neutral and respected mediator
14 with extensive experience in complex wage and hour matters. (*Id.*, ¶ 12.) The Parties engaged in a full
15 day of settlement discussions, during which they debated their respective positions and exchanged
16 views regarding the strengths and weaknesses of their claims and defenses. (*Id.*) The settlement
17 discussions were at all times at arm's length and, although conducted with appropriate professional
18 decorum, were adversarial. (*Id.*) Plaintiff and Plaintiff's Counsel went into mediation willing to
19 explore the potential for a settlement of the Action, but were also prepared to litigate Plaintiff's claims
20 through trial and appeals if a settlement was not reached. (*Id.*) After a full day of negotiations, the
21 mediation culminated in the issuance of a mediator's proposal that was accepted by the Parties on or
22 about April 21, 2025. (*Id.*) A memorandum of understanding reflecting the terms of the mediator's
23 proposal was executed on or about April 30, 2025. (*Id.*)

24 On or about June 18, 2026, after further negotiations, the Parties fully executed a long form
25 Joint Stipulation of PAGA Settlement. (*Id.*, ¶ 13.)

26 On August 6, 2026, Plaintiff's Counsel submitted a copy of the Agreement and other
27 information pertaining to this motion to the LWDA, as required under Labor Code § 2699(s)(2). (*Id.*,
28 ¶ 81, Exh. 6.)

1 **III. SUMMARY OF THE SETTLEMENT TERMS, ADMINISTRATION PROCESS, AND**
2 **PLAN OF DISTRIUBTION**

3 **A. Definition of the Aggrieved Employees.**

4 For purposes of settlement only, the Parties have agreed that the “Aggrieved Employees” shall
5 be defined as the following individuals: “[A]ll current and former non-exempt and/or hourly-paid
6 employees who were employed by Defendant in the State of California at any time during the PAGA
7 Period.” (Minne Decl., ¶ 15; Agreement, ¶ 3.) The PAGA Period runs from June 25, 2024, to June 16,
8 2026. (Minne Decl., ¶ 15; Agreement, ¶ 19.) It is estimated that there are a total of 1,677 Aggrieved
9 Employees, who worked a collective total of approximately 26,954 weekly Pay Periods during the
10 PAGA Period. (Minne Decl., ¶ 16.)

11 **B. The Gross Settlement Amount.**

12 The Settlement requires Defendant to pay a Gross Settlement Amount of \$300,000.00.³ (Minne
13 Decl., ¶ 17; Agreement, ¶¶ 12, 40.) The Gross Settlement Amount is non-reversionary. (*Id.*)

14 **C. Allocation and Funding of the Gross Settlement Amount.**

15 The Gross Settlement Amount is a common fund and therefore, includes all requested costs,
16 fees, and other allocations. More specifically, subject to approval by the Court, the Gross Settlement
17 Amount includes: (1) Plaintiff’s Counsel’s attorneys’ fees in the amount of \$105,000.00 (i.e., 35% of
18 the Gross Settlement Amount); (2) reimbursement of Plaintiff’s actual costs and expenses in the
19 amount of \$14,028.68⁴; (3) Service Award in the amount of \$10,000.00 to Plaintiff; and (4) Settlement
20 Administration Costs in the amount of \$7,790.00. (Minne Decl., ¶ 18; Agreement, ¶¶ 6, 15, 16, 27,
21 31, 40.) After the foregoing amounts are deducted from the Gross Settlement Amount, the Net
22 Settlement Amount will be approximately \$163,181.32. (Minne Decl., ¶ 19; Agreement, ¶ 16.) Sixty-
23

24 ³ The Gross Settlement Amount is based on Defendant’s representation that Aggrieved Employees worked a total of 26,954
25 pay periods during the PAGA Period (“Certified Pay Period Count”). (Agreement, ¶ 41.) Should the final number of Pay
26 Periods worked by Aggrieved Employees during the PAGA Period exceed the Certified Pay Period Count by more than
27 10%, Defendant shall have the option of either: (i) increasing the Gross Settlement Amount on a pro-rata basis equal to
28 the percentage increase in the number of Pay Periods worked by the Aggrieved Employees above the 10% threshold, or
(ii) shorten the PAGA Period to end on the last date before the total Pay Periods worked by Aggrieved Employees exceeds
the 10% threshold. (*Id.*)

⁴ Although the Agreement allows for reimbursement of up to \$20,000.00 in costs, Plaintiff’s Counsel are only seeking
reimbursement of their actual and reasonable expenses in the amount of \$14,028.68, meaning an additional \$5,971.32 will
be included in the Net Settlement Amount. (Minne Decl., ¶¶ 72-75.)

1 five percent (65%) of the Net Settlement Amount (i.e., \$106,067.86) will be paid to the LWDA. Thirty-
2 five percent (35%) of the Net Settlement Amount (i.e., \$57,113.46) will be distributed and paid to
3 Aggrieved Employees on a pro-rata basis based on the number of Pay Periods worked during the
4 PAGA Period. (Minne Decl., ¶ 18(e); Agreement, ¶¶ 4, 15, 16, 40(d)-(e), 46.)

5 The range of Individual PAGA Payments will vary based on the number of Eligible Pay
6 Periods worked by each Aggrieved Employee. However, it is estimated that the average Individual
7 PAGA Payment to Aggrieved Employees will be approximately \$34.06. (Minne Decl., ¶ 21.)
8 Individual PAGA Payments to Aggrieved Employees shall be allocated as 100% penalties. (Minne
9 Decl., ¶ 22, Agreement, ¶ 47(c).)

10 Subject to the Court's approval of the Agreement, Defendant shall fully fund the Gross
11 Settlement Amount by depositing the funds into a Qualified Settlement Fund established by the
12 Settlement Administrator within 14 calendar days of the Effective Date⁵. (Agreement, ¶ 46.) Within
13 14 calendar days of the Effective Date, Defendant shall also provide the Settlement Administrator with
14 the Aggrieved Employee List consisting of each Aggrieved Employee's: (i) full name; (ii) last known
15 home address; (iii) last known telephone number; (iv) social security number; (v) total Eligible Pay
16 Periods during the PAGA Period; and (vi) any other information reasonably required by the Settlement
17 Administrator to effectuate the terms of the Settlement. (Agreement, ¶¶ 2, 48.) No later than 14
18 calendar days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will
19 issue payments for all Individual PAGA Payments, the LWDA PAGA Payment, Settlement
20 Administration Costs, Service Award, and Attorneys' Fees and Costs. (Agreement, ¶¶ 49-50.) All
21 Individual PAGA Payments to Aggrieved Employees will be accompanied by a Settlement Cover
22
23

24 ⁵ The "Effective Date" means the date upon which all of the following have occurred: (a) the Court has entered a Judgment
25 on its Order Approving the PAGA Settlement; and (b) the Judgment has become final. For purposes of this paragraph, the
26 Judgment shall be deemed final as follows:

- 26 a. No Objection Filed: If no objection or intervention is filed by the State of California (including the LWDA or any
27 other state agency or official) or by any third party, the Judgment becomes final upon the Court's entry of the
28 Order Approving the PAGA Settlement and Judgment.
- 27 b. Objection Filed: If an objection or intervention is filed by the State of California (including the LWDA or any
28 other state agency or official) or by any third party, the Judgment becomes final only after the time to appeal has
expired without the filing of a notice of appeal, or, if a notice of appeal is filed, upon final resolution of that
appeal, writ petition, or other appellate proceeding challenging the Order Approving the PAGA Settlement and
Judgment. (Agreement, ¶ 10.)

1 Letter, substantially similar in content and form to the proposed notice attached as “Exhibit A” to the
2 Agreement. (Agreement, ¶¶ 30, 49, Exh. A.)

3 All checks issued to Aggrieved Employees shall remain valid and negotiable for 180 days from
4 their date of issuance (Agreement, ¶ 49(b).) If any checks issued to Aggrieved Employees are not
5 cashed within 180 days of mailing, those funds shall be sent to the State of California Unclaimed
6 Property Fund in the name of the Aggrieved Employees to whom the checks were issued. (*Id.*)

7 **D. Scope of Release**

8 Upon the complete funding of the Gross Settlement Amount, Plaintiff, the Aggrieved
9 Employees, and the LWDA will be to have knowingly and voluntarily released and forever discharged
10 the Released Parties from any and all claims under PAGA arising during the PAGA Period for the
11 recovery of civil penalties, attorneys’ fees and costs, that arise out of the violations alleged in the
12 Complaint and the PAGA Notice. (Minne Decl., ¶ 28; Agreement, ¶ 24, 52.)

13 In addition to the Release of PAGA Claims provided in the Agreement, Plaintiff has agreed to
14 a broader general release of any individual claims he may have against Defendant and a waiver of
15 California Civil Code § 14542. (Minne Decl., ¶ 28; Agreement ¶ 54.)

16 **E. Related Actions**

17 Plaintiff’s Counsel is not aware of any other pending matter or action asserting claims that will
18 be extinguished or adversely affected by the proposed Settlement. (Minne Decl., ¶ 55; Declaration of
19 Ryan Slinger [“Slinger Decl.”], ¶ 24.)

20 **IV. STANDARD OF REVIEW FOR APPROVAL OF PAGA SETTLEMENTS.**

21 The California legislature enacted PAGA to “augment the limited enforcement capability of
22 the [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency.”
23 *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348, 383 (2014). PAGA authorizes an employee to
24 bring an action for “civil penalties on behalf of the state against his or her employer for Labor Code
25 violations committed against the employee and fellow employees.” *Id.* at 360. Before an employee
26 may file an action seeking to recover civil penalties for violations of the Labor Code under PAGA, he
27 or she must comply with PAGA’s administrative procedures as set forth in Labor Code section
28 2699.3(a) which include providing notice to the LWDA and waiting a prescribed period of time to

1 permit the LWDA to investigate and to decide whether to cite the employer for the alleged violations.
2 *Caliber Bodyworks*, supra, 134 Cal.App.4th at 370; see also, *Dunlap v. Superior Court*, 142
3 Cal.App.4th 330 (2006). If the LWDA fails to pursue the penalties, the employee may initiate a civil
4 action in Court.

5 The settlement of a PAGA action requires court review approval. See Cal. Labor Code §
6 2699(s)(2). In reviewing a PAGA settlement, the Court need only ensure that “a negotiated resolution
7 is fair to those affected.” *Williams v. Sup. Ct.*, 3 Cal.5th 531, 549 (2017). The court’s focus is not the
8 monetary amount which aggrieved employees or the State stand to receive, but on whether the total
9 amount achieves PAGA’s fundamental objective - “to incentive private parties to recover civil
10 penalties for the government that otherwise may not have been assessed and collective by
11 overburdened state enforcement agencies.” See *Ochoa-Hernandez v. CJADERS Foods, Inc.*, 2010 U.S.
12 Dist. LEXIS 32774 at *12 (N.D. Cal. Apr. 2, 2010) (citing *Arias v. Sup. Ct.*, 46 Cal. At 986).

13 Because a PAGA claim is considered a law enforcement action, it does not have to meet the
14 requirements of a class action. See *Arias v. Sup. Ct.*, 46 Cal.4th at 986; *Iskanian v. CLS Transportation*
15 *Los Angeles, LLC*, 59 Cal.4th 348. Indeed, “[PAGA] does not create property rights or any other
16 substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employees to recover
17 civil penalties – for Labor Code violations – that otherwise would be sought by state labor law
18 enforcement agencies.” *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th
19 993, 1003 (2009). Consistent with the fact that unnamed employees have no property interest in a
20 PAGA claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have
21 the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS
22 32774 at *13. A “judgment in such an action is binding not only on the named employee plaintiff but
23 also on government agencies and any aggrieved employee not a party to the proceeding” because “the
24 employee plaintiff represents the same legal right and interest as state labor law enforcement
25 agencies”. *Arias*, 46 Cal.4th at 98. This renders approval of a PAGA settlement distinct from a class
26 action settlement and, under both federal and state law, the two-step approval process applicable to
27 class action settlement does not apply to PAGA cases. Rather, approval of a PAGA settlement is a
28 one-step approval process.

1 **V. THE COURT SHOULD GRANT APPROVAL OF THE SETTLEMENT.**

2 As set forth below, the Agreement before the Court is the result of adversarial, arms-length
3 negotiations, extensive investigation, and fulfills the fundamental objections of PAGA. Moreover, the
4 Agreement is fair and reasonable considering the relative strengths of the PAGA claims and the risks
5 associated with protracted litigation. Accordingly, the Agreement should be approved by the Court.

6 **A. Plaintiff Has Complied With the Notice Requirements of Labor Code Section 2699.**

7 Before bringing a civil action under PAGA, an employee must comply with the notice
8 requirements set for in Labor Code section 2699.3. Plaintiff complied with these requirements. (Minne
9 Decl., ¶ 5, Exh. 2.) Additionally, the Agreement and information regarding this motion have been
10 submitted to the LWDA, as required by Labor Code section 2699(s)(2). (*Id.*, ¶ 81, Exh. 6.)

11 **B. The Settlement Was Reached Through Arm-Length Negotiations**

12 Although PAGA settlements are not subject to the same, heightened requirements as a class
13 action settlement, the underlying guidelines utilized in class action settlements may be useful in
14 evaluating the fairness of a PAGA settlement. California courts recognize that “a presumption of
15 fairness exists where . . . [a] settlement is reached through arm’s-length bargaining.” *Wershba v. Apple*
16 *Computer*, 91 Cal.App.4th 224, 245 (2001) (disapproved on other grounds). Here, the Parties engaged
17 in arms-length, non-collusive negotiations at all times, including attending a full day mediation with
18 Chad Anderton, Esq., a neutral mediator with extensive experience in complex wage and hour
19 litigation. At all times, Plaintiff and his counsel were willing and prepared to litigate this matter
20 through trial and possible appeals if the Parties had been unable to reach a favorable resolution. The
21 proposed Settlement was reached at the end of a process that was neither fraudulent nor collusive. To
22 the contrary, counsel for the Parties advanced their respective positions throughout the settlement
23 negotiations. (Minne Decl., ¶¶ 9-14.)

24 **C. The Settlement Was Based Upon Sufficient Investigation and Discovery**

25 Plaintiff’s Counsel conducted significant investigation into the claims alleged by Plaintiff
26 before reaching a settlement in this matter. Both prior to the filing of the original complaint and
27 throughout the course of the litigation, Plaintiff’s Counsel had numerous discussions with Plaintiff
28 regarding Defendant’s employment policies and practices, and conducted extensive independent

1 investigation and research regarding the veracity, scope, and strength of the claims alleged by Plaintiff
2 as well as Defendant's potential defenses thereto. (Minne Decl., ¶¶ 9-11, 57; Slinger Decl., ¶¶ 7-9.)
3 Plaintiff's Counsel also obtained extensive information, data, and documents through informal
4 discovery prior to mediation, which included: a representative sampling of Aggrieved Employees'
5 time and payroll documents; all versions of Defendant's employee handbooks utilized during the
6 PAGA Period; other documents reflecting Defendant's applicable wage and hour policies during the
7 PAGA Period; and key data points regarding the number of Aggrieved Employees (including the
8 number of current versus former employees) and the total number of pay periods worked by Aggrieved
9 Employees. (Minne Decl., ¶ 10.) Plaintiff's Counsel thoroughly reviewed this informal discovery prior
10 to mediation, which included consulting with a data analysis expert to fully analyze Aggrieved
11 Employees' time and payroll records for potential wage and hour violations. (*Id.*, ¶ 11.)

12 Based on this investigation and exchange of informal discovery, prior to mediation Plaintiff's
13 Counsel prepared a detailed assessment of Defendant's maximum potential liability for civil penalties
14 under PAGA. (*Id.*) Plaintiff's Counsel also extensively briefed the Plaintiff's claims and Defendant's
15 anticipated defenses. (*Id.*) These efforts allowed Plaintiff's Counsel to intelligently and effectively
16 analyze the strengths and weaknesses of Plaintiff's claims throughout the course of settlement
17 negotiations. (*Id.*) With the assistance of the mediator, the Parties were eventually able to reach an
18 agreement to resolve this matter based on their analysis and understanding of the legal and factual
19 issues pertaining to Plaintiff's claims, as well as the costs and risks associated with further litigation.
20 (*Id.*, ¶¶ 12, 29-45.)

21 **D. The Settlement is Reasonable in Light of the Parties' Legal Positions, the Risks of**
22 **Continued Litigation, and the Underlying Purpose of the PAGA.**

23 In deciding whether to approve a proposed settlement, a trial court has broad powers to
24 determine if it is fair given the circumstances of the case. *Mallick v. Sup. Ct.*, 89 Cal.App.3d 434, 438
25 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is
26 "fair, adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). A
27 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor
28 does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba v.*

1 *Apple Computer, Inc.*, 91 Cal.App.4th 224, 246, 250 (2001). In evaluating the reasonableness of a
2 settlement, a trial court must consider “the strength of plaintiffs’ case, the risk, expense, complexity
3 and likely duration of further litigation, the risk of maintaining class action status through trial, the
4 amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the
5 experience and views of counsel, the presence of a governmental participant, and the reaction of the
6 class members to the proposed settlement.”⁶ *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116,
7 128 (2008). These factors require balancing and are non-exhaustive. Trial courts should therefore
8 tailor the factors to each case and give due regard to “what is otherwise a private consensual agreement
9 between the parties.” *Id.*

10 Here, Plaintiff’s counsel has carefully considered Plaintiff’s claims and analyzed violation
11 rates based on a sampling of the Aggrieved Employees’ time and payroll records. Based on
12 information gathered by Plaintiff’s counsel, including calculations of Defendant’s maximum potential
13 liability and the risks associated with continued litigation, Plaintiff’s Counsel has determined that the
14 proposed Settlement is fair, adequate, and reasonable. (Minne Decl., ¶¶ 29-45.)

15 **1. Plaintiff’s Counsel’s Analysis of Defendant’s Maximum Potential Exposure.**

16 As noted above, the Action encompasses approximately 1,677 Aggrieved Employees, who
17 worked a collective total of approximately 26,954 Pay Periods. (Minne Decl., ¶ 16; Agreement, ¶ 41.)
18 Utilizing these figures and additional information gathered through informal discovery and
19 independent investigation, Plaintiff’s Counsel estimated that Defendant faced a maximum potential
20 liability of approximately \$9,073,333.90 which can be broken down by violation as follows:
21 \$673,850.00 for failure to pay overtime compensation; \$1,347,700.00 for failure to pay minimum
22 wages; \$683,283.90 for failure to provide meal periods; \$1,347,700.00 for failure to provide rest
23 periods; \$1,347,700.00 for failure to reimburse business expenses; \$1,347,700.00 for failure to timely
24 pay wages during employment; \$139,200.00 for failure to pay all wages due upon termination of
25 employment; \$1,347,700.00 for failure to provide accurate wage statements; and \$838,500.00 for
26 failure to maintain required payroll records. (*Id.*, ¶¶ 29-38.)

27 _____
28 ⁶ As this is not a class action, the *Kullar* factors pertaining to the risk of maintaining class action status through trial and the reaction of class members to the proposed settlement are inapplicable.

1 2. Strengths and Weaknesses of Plaintiff's Claims and Risks of Continued
2 Litigation.

3 Although Defendant's "soaking wet" liability in this Action is substantial, such calculations
4 assume that Plaintiff fully prevails at every stage of litigation through trial and appeals, and is awarded
5 the maximum amount of civil penalties allowed under PAGA. While Plaintiff and Plaintiff's Counsel
6 believed that Plaintiff's claims are meritorious, they recognized that there is significant risk and
7 uncertainty associated with protracted litigation of this Action. Consideration of these risks factored
8 into the decision to enter into the Settlement at this point of litigation. (Minne Decl., ¶¶ 39-45.)

9 First, in order to prevail at trial in the Action, Plaintiff would have to prove each of the
10 underlying Labor Code violations and demonstrate that *every* Aggrieved Employee suffered these
11 violations *every* pay period with requisite certainty. *See Green v. Lawrence Service Co.*, 2013 U.S.
12 Dist. LEXIS 109270, at *5, fn. 5 (C.D. Cal. 2013) ("whether each PAGA claims succeeds or fails is
13 determined by the merits of the substantive claims on which each is based.") While Plaintiff's Counsel
14 were confident in the merits of Plaintiff's claims, legitimate controversies exist as to each of the Labor
15 Code violations underlying the Action. (Minne Decl., ¶ 40.)

16 For example, Plaintiff's minimum wage and overtime claims were based on Plaintiff's
17 allegations that Defendant implemented policies and practices that placed substantial pressure on
18 Aggrieved Employees to work off-the-clock without compensation. Defendant denied that employees
19 were required to do any work off-the-clock, and maintained that if employees performed such work it
20 was done without Defendant's knowledge. Moreover, given that these claims were based on off-the-
21 clock work not reflected in Defendant's time records, Defendant argued that Plaintiff would be unable
22 to prove liability at trial with requisite certainty. While Plaintiff's Counsel strongly disagreed with
23 Defendant's contentions, they also recognized that off-the-clock claims are particularly challenging to
24 prove due to potential for individualized issues and lack of records. (Minne Decl., ¶ 40(a).)

25 Plaintiff also faces challenges with his meal and rest period claims. Plaintiff contends
26 Aggrieved Employees were often required to skip, shorten, and delay their meal periods, and were not
27 paid meal period premiums for such violations. At mediation, Defendant asserted that its written meal
28 period policies substantially complied with California law. Defendant also maintained that Aggrieved

1 Employees were provided ample opportunity to take meal periods, and that if Aggrieved Employees
2 did not take compliant meal breaks, it is because they voluntarily chose not to do so. While Plaintiff's
3 Counsel strongly disagreed with Defendant's arguments and contentions, they recognized that
4 Defendants could potentially prevail on a defense that Aggrieved Employees voluntarily waived meal
5 periods, significantly reducing Defendant's potential liability for this claim. (Minne Decl., ¶ 40(b).)

6 Plaintiff's Counsel was also cognizant of the challenges associated with Plaintiff's rest period
7 claims. As with meal periods, Plaintiff contends Aggrieved Employees were often required to skip or
8 shorten their rest periods, and were not paid rest period premiums for such violations. As with meal
9 periods, Defendant asserted that its written policies substantially complied with California law, that
10 Aggrieved Employees were allowed to take rest periods, and that Aggrieved Employees who worked
11 through their rest periods did so voluntarily. While Plaintiff's Counsel disagreed with Defendant's
12 positions, they also recognized that rest period claims are inherently difficult to prove, given that an
13 employer has no obligation to maintain records of rest periods. (Minne Decl., ¶ 40(c).)

14 Plaintiff further contends that Defendant failed to reimburse Aggrieved Employees for
15 expenses stemming from the use of their personal cell phones. Defendant asserted that Aggrieved
16 Employee were not required to use their personal cells phones for work. Again, while Plaintiff's
17 Counsel believe that Plaintiff can prevail on this claim, Plaintiff's Counsel were cognizant of the
18 difficulty of proving liability for reimbursement claims absent records of such expenses actually being
19 incurred. (Minne Decl., ¶ 40(d).)

20 There are also substantial risks attached to Plaintiff's claims for civil penalties associated with
21 Defendant's alleged failure to timely pay final wages, failure to timely pay wages during employment,
22 failure to keep accurate payroll records, and failure to provide accurate wage statements, which
23 constitute over 40% of Defendant's potential exposure. Such claims are derivative of Plaintiff's
24 primary claims for meal period, rest period, minimum wage, overtime, and reimbursement violations.
25 In 2024, PAGA was amended to expressly prohibit collection of civil penalties arising from derivative
26 violations absent a showing that such violations were will or intentional. *See* Cal. Labor Code §
27 2699(i). Given this amendment, even if Plaintiff successfully establishes Defendant's liability for his
28

primary minimum wage, overtime, meal period and rest period theories, it is highly unlikely that the Court would assess any civil penalties that were purely derivative in nature. (Minne Decl., ¶ 40(e).)

In addition to the merits-based risks set forth above, Defendants further asserted that Plaintiff's claims raised highly individualized claims that could not be manageably tried. In 2024, PAGA was amended to explicitly grant trial courts discretion to limit the scope of PAGA claims and evidence presented at trial so that claims can be effectively tried. See Cal. Lab. Code § 2699(p). In light of this amendment, there was a possibility Defendants could ultimately move to strike several of Plaintiff's PAGA claims based on manageability concerns. (Minne Decl., ¶ 41.)

Plaintiff's Counsel also anticipates that there would be significant disputes regarding the calculation of penalties owed by Defendant. There is very little published law and guidance regarding the assessment of penalties under PAGA, and no clearly established methodology. Plaintiff's Counsel believe that the statute is clear that an aggrieved employee is entitled to seek all civil penalties available under the statute. However, the law is clear that courts have discretion to greatly limit the penalties awarded under PAGA. Cal. Lab. Code § 26999(e)(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1135 (2012). *See also, Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing penalties by 97.5%); *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590, *8-9 (C.D. Cal. 2011) (reducing potential PAGA penalties by over 80 percent); *Magadia v. Wal-Mart Assocs. et al.*, 384 F. Supp. 3d 1058, 1069 (N.D. Cal. 2019)(applying 67% and 80% reductions to PAGA Penalties). Here, Defendant would likely argue that it made a good faith effort to comply with its legal obligations and that any violations that occurred were not "willful", rendering the imposition of any heightened penalties inappropriate. Thus, even if Plaintiff successfully established liability, there was a significant likelihood that the Court could find that the imposition of the maximum potential civil penalties could be considered unjust, arbitrary, oppressive, or confiscatory, and would exercise its discretion to significantly reduce any penalties under PAGA. (Minne Decl., ¶ 42.)

Plaintiff's Counsel further recognized the significant expense and time that would be expended in continued litigation, trial, and possible appeals, all of which would substantially delay and reduce any recovery by the LWDA and Aggrieved Employees. Moreover, even if Plaintiff prevails at trial,

possible appeals would further increase costs and delay any recovery by the LWDA and Aggrieved Employees receive timely relief and avoid the risk of an unfavorable judgment. (Minne Decl., ¶ 43.)

Finally, Plaintiff and his counsel were mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature, but is instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance. *See* Cal. Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3 Cal.5th at 546. Here, the overall relief obtain by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state, and deter future non-compliance by Defendants. (Minne Decl., ¶ 44.)

Therefore, after considering the strengths and weaknesses of each claim, and the unique risks associated with PAGA claims, the significant costs, expenses, and delay that would result from continued litigation, and the underlying objectives of PAGA, it is clear that the Settlement is fair, reasonable, and adequate. (Minne Decl., ¶ 45.)

3. The Amount Offered in Settlement.

The Net Settlement Amount is estimated to be \$163,181.32, of which an estimated \$57,113.46 is to be distributed to Aggrieved Employees on a pro rata basis, based on their number of Pay Periods during the PAGA Period, and \$106,067.86 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel recognize the expense and length of continued proceedings necessary to litigate the matter through trial and any possible appeals. Plaintiff and his counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and his counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other Aggrieved Employees. Plaintiff and his counsel have also taken into account Defendant's agreement to enter into a settlement that confers significant relief upon the Aggrieved Employees and the State of California. Considering all of the facts in this case, Plaintiff and his counsel have determined that

1 the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claims, and that it
2 is in the best interests of the Aggrieved Employees and the State of California.

3 The result achieved in this case, and the monetary recovery provided by this settlement, are
4 well within the range of an acceptable settlement under the circumstances, especially when compared
5 to the settlement of PAGA claims approved by other courts within the State of California. *See, e.g.,*
6 *Davis v. Brown Shoe Co.*, 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015) (PAGA Payment of \$5,000
7 in a \$1.5 million class settlement); *Zamora v. Ryder Integrated Logistics, Inc.*, 2014 U.S. Dist. LEXIS
8 184096 (S.D. Cal. 2014) (\$7,500 payment to LWDA on a \$1.5 million class settlement); *Lusby v.*
9 *Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015) (\$5,000 in a \$500,000 class
10 settlement); *Cruz v. Sky Chefs, Inc.*, 2014 U.S. Dist. Lexis 17693 (N.D. Cal. 2014) (\$10,000 to the
11 LWDA out of \$1,750,000 class settlement); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645,
12 *1 (N.D. Cal. 2011) (PAGA payment of \$7,500 out of \$6.9 million common-fund settlement); *Martino*
13 *v. Ecolab Inc.*, No. 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted as PAGA penalties out of
14 \$21,000,000 settlement amount); and *Franco v. Ruiz Foods, Inc.*, 2012 WL 5941801 at *14 (E.D. Cal.
15 2013) (\$10,000.00 allotted as PAGA penalties out of \$2.5 million settlement).

16 4. Discovery and the Stage of Proceedings.

17 As discussed above, the parties engaged in extensive informal discovery prior to reaching a
18 settlement at the mediation. In preparation for mediation, Defendant produced a random sampling of
19 Aggrieved Employees' time and pay records, all versions of Defendant's employee handbook and
20 relevant wage and hour policies and procedures, and key data points regarding the Aggrieved
21 Employees. Plaintiff's Counsel formulated a damages analysis based on the records provided by
22 Defendant. (Minne Decl., ¶¶ 10-11.)

23 5. The Experience and View of Counsel.

24 Plaintiff's Counsel is experienced in complex representative and class action wage-and-hour
25 litigation. (Minne Decl., ¶¶ 46-53; Slinger Decl., ¶¶ 15-19). In the view of Plaintiff's Counsel, the
26 benefits conferred by the Settlement are eminently fair and reasonable, and are in the best interests of
27 the State and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued
28 litigation and the substantial monetary benefits provided for by the Settlement. (Minne Decl., ¶¶ 39-

44; Slinger Decl., ¶ 22.) Furthermore, courts have acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]” *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 548 (2017) (citing Cal. Lab. Code § 2699(g)(l)(i)).

VI. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE AND SHOULD BE APPROVED.

Plaintiff, as the prevailing party in settlement, is entitled to recover reasonable attorneys’ fees and costs for bringing his PAGA claim. *See* Cal. Labor Code § 2699(k)(1)(“Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”) Plaintiff’s Counsel is also entitled to fees and costs under Code of Civil Procedure section 1021.5, as the instant PAGA action has resulted in the enforcement of important rights benefitting the public and secures monetary recovery for the State as well as the Aggrieved Employees. Cal. Code Civ. Proc. § 1021.5. A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983).

A. A Fee Award Based on a Percentage of the Gross Settlement Amount is Appropriate.

Plaintiff’s request for attorneys’ fees is reasonable and appropriate under the “common fund theory,” which California courts apply in cases where a suit or a settlement establishes “a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs.” *Serrano v. Priest* (“*Serrano III*”), 20 Cal. 3d 25, 35 (1977); *see also Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 489, 503 (2016); *City & County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995) (“The [common fund] doctrine has been recognized and applied consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.”). The purpose of this equitable doctrine is “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The many advantages of the common-fund method include providing predictability to counsel; incentivizing early settlement; and reducing the demands on

1 judicial resources in evaluating fee requests. *In re Activision Secs. Litig.*, 723 F. Supp. 1373, 1378-79
2 (N.D. Cal. 1989); *Laffitte*, 1 Cal. 5th at 503.

3 California law further provides that attorneys' fees awards should be equivalent to fees freely
4 negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and
5 risk incurred. *Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 47, 50 (2000). The ultimate goal is
6 the award of a "reasonable" fee to compensate counsel for their efforts, irrespective of the method of
7 calculation. *Apple Computer, Inc. v. Super. Ct.*, 126 Cal.App.4th 1253, 1270 (2005). Fee awards that
8 are too small will "chill the private enforcement essential to the vindication of many legal rights and
9 obstruct the representative actions that often relieve the courts of the need to separately adjudicate
10 numerous claims." *Lealao*, 82 Cal.App.4th at 53. Therefore, fees in class and representative actions
11 should approximate the probable terms of a contingent-fee contract negotiated by a sophisticated
12 attorney and client in comparable litigation. *Id.* at 47.

13 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
14 method, the percentage-of-the-benefit approach is preferred in complex actions because "it better
15 approximates the workings of the marketplace than the lodestar approach." *Id.* at 48-49; *Laffitte*, 1
16 Cal.5th at 503. Indeed, California courts have long recognized that where the amount of a settlement
17 is a "certain easily calculable sum of money," trial courts may calculate attorneys' fees as a reasonable
18 percentage of the settlement created. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1808 (1996). The
19 California Supreme Court has confirmed the propriety of awarding attorneys' fees based on a
20 percentage of the **total** value of the settlement. *See Serrano v. Priest*, 20 Cal.3d at 34.

21 Historically, courts have awarded percentage fees in the range of 20% to 50% in complex
22 actions, depending on the circumstances of the case. *Newberg on Class Actions*, 4th Ed. 2002, §14:6.
23 According to *Newberg*, ". . . no general rule could be articulated as to what is a reasonable percentage
24 of a common fund. Typically, 50 percent of the fund is the upper limit on a reasonable fee award in
25 order to assure that fees do not consume a disproportionate part of the recovery obtained for the class,
26 though somewhat larger percentages are not unprecedented." *Id.*; *see, e.g., In re Ampicillin Antitrust*
27 *Litig.*, 526 F.Supp. 494 (D.D.C. 1981) (awarding attorneys' fees in the amount of 45% of the \$7.3
28 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*, 480 F.Supp. 1195

(S.D.N.Y. 1979) (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve attorneys' fee awards in complex actions averaging around one-third of the recovery. *Chavez*, 162 Cal.App.4th at 66 n.11 (20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also Laffitte*, 1 Cal.5th 480 (approving fee award of one-third of the common fund of \$19 million.)

Here, the amount of attorneys' fees requested by Plaintiff's Counsel – 35% of the Gross Settlement Amount (\$105,000.00) - is reasonable in light of the facts and circumstances surrounding this case. Plaintiff's Counsel risked substantial economic loss when they took this case on a purely contingent basis, knowing that there would likely be a long battle against a well-funded defendant represented by an aggressive defense firm with no guarantee of success. As a result of Plaintiff's Counsel assuming these risks and their efforts in prosecuting the case, the State of California and Aggrieved Employees will receive a substantial recovery for violations that would otherwise have gone unaddressed. Accordingly, the requested fee award is appropriate because: (1) it is consistent with the private marketplace where contingent-fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of Plaintiff's Counsel, the State of California, and the Aggrieved Employees Members in achieving the maximum possible resolution of the case; (3) it encourages the most efficient resolution of the litigation by providing an incentive for early, yet fair and reasonable settlement; and (4) it reflects the work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar matters.

B. The Requested Fee Award is Reasonable Based on the *Dunkel* Factors.

In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir. 1991), the court identified twelve factors to be considered in determining whether fee awards are reasonable in a common fund case: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill required to perform the legal services properly, (4) the preclusion of other employment by the attorney due to the acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitation imposed by the client or the circumstances, (8) the amount involved and results obtained, (9) the experience, reputation and ability of the attorney, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client,

1 and (12) awards in similar cases. The court also noted that, “the analysis in a common fund case
2 focuses not on the Plaintiffs’ position as ‘prevailing parties,’ but on a showing that the fund conferring
3 a benefit . . . resulted from their efforts” and thus in common fund cases “the monetary results achieved
4 predominate over all other criteria.” *Id.* at 774.

5 Here, each of the *Dunkel* factors favors approval of attorneys’ fees requested herein. However,
6 this memorandum will address the factors that are particularly relevant to this Action.

7 ***1. Time and Labor Required***

8 Plaintiff’s Counsel aggressively pursued the claims alleged in the Action on behalf of the State
9 of California and Aggrieved Employees, commencing from the initial, pre-litigation investigation
10 through the initiation of litigation and the ultimate settlement of the Action. (Minne Decl., ¶¶ 5-13,
11 56-58, Exh. 4; Slinger, ¶¶ 6-9, Exh. A.) The ongoing work performed by Plaintiff’s Counsel has been
12 extensive and complex, and secured a substantial settlement that fulfills the objectives of PAGA.

13 Specifically, to date, Plaintiff’s Counsel has expended no less than 150 hours litigating the
14 Action. The work performed by Plaintiff’s Counsel includes, but is not limited to, the following:
15 performing extensive independent investigation and research regarding Plaintiff’s claims, Defendant’s
16 potential defenses, and Defendant’s business, operations, and employment policies, practices and
17 procedures; multiple meetings and discussions with Plaintiff and review of documents provided by
18 Plaintiff; analyzing Plaintiff’s potential claims and developing a case strategy for trial; drafting the
19 Complaint; drafting the PAGA notice letter to the LWDA; meeting and conferring with Defendant’s
20 counsel on numerous occasions over issues related to the pleadings, case management, and formal and
21 informal discovery; propounding formal discovery consisting of Special Interrogatories, Form
22 Interrogatories, and Requests for Production of Documents; drafting the format of a proposed *Belaire-*
23 *West* notice; preparing for and attending court proceedings; reviewing and analyzing a representative
24 sampling of time records and payroll records for the Aggrieved Employees with the assistance of a
25 data analyst in advance of mediation; reviewing numerous policy documents produced as part of
26 informal discovery; preparing a comprehensive damages analysis and mediation brief; attending
27 private mediation and engaging in settlement negotiations thereat; drafting, negotiating, and revising
28 the Memorandum of Understanding of the Parties’ initial agreement to settle the Action; drafting,

1 negotiating, and revising the Joint Stipulation of PAGA Settlement and the Settlement Cover Letter;
2 and preparing the Motion for Approval and supporting documents. (Minne Decl., ¶¶ 57, 66-67, Exh.
3 4; Slinger, ¶¶ 6-9, 13, Exh. A.) The time expended on these tasks was required to bring this matter to
4 a successful conclusion on behalf of the State of California and Aggrieved Employees. (Minne Decl.,
5 ¶ 57.) Plaintiff's Counsel also anticipates that they will spend an additional 10 hours following
6 approval of the Settlement performing tasks necessary to ensure the terms of the Settlement are fully
7 effectuated. (Minne Decl., ¶ 66.) In light of the time and labor expended on litigating the case, the
8 requested attorneys' fees are fair and reasonable and should be approved.

9 **2. The Skill Required to Perform Legal Services**

10 The skill required to successfully litigate the Action is evident not only in the results achieved
11 for the State of California and the Aggrieved Employees, but in the steps necessary to reach the same.
12 Plaintiff's Counsel were required to overcome numerous barriers in order to reach the Settlement
13 before the Court. Defendant is a well-funded entity that retained respected counsel to defend itself
14 against Plaintiff's claims. Defendant and its counsel denied liability, felt very strongly about their
15 ability to prevail, challenged the theories of Plaintiff's Counsel, and mounted several potential
16 defenses that posed significant problems moving forward. (Minne Decl., ¶ 58.)

17 Plaintiff's Counsel strongly believed that Plaintiff's claims were meritorious. Plaintiff's
18 Counsel engaged in significant investigation, research, and analysis of Plaintiff's claims, developed
19 numerous strategies to defeat Defendant's potential defenses, and were prepared to litigate this case
20 through trial and appeals if Defendant did not offer an adequate settlement. As a result of these efforts,
21 Defendant ultimately agreed to enter into the proposed Settlement rather than proceed with litigation.
22 This Settlement, against experienced defense counsel and strong potential defenses, was possible
23 because Plaintiff's Counsel used their extensive experience in handling complex wage and hour
24 matters in order to obtain a favorable result for the State of California and the Aggrieved Employees.

25 **3. The Value, Amount, and Results Achieved for the State of California** 26 **and Aggrieved Employees**

27 The Settlement represents a fair resolution of this case given the risks inherent in litigating it
28 through trial and likely appeals. There were substantial risks attendant to prosecution of Plaintiff's

claims. Despite these challenges, Plaintiff's Counsel obtained a non-reversionary Gross Settlement Amount of \$300,000.00. After deducting the amounts requested for the Plaintiff's Counsel's Fees and Costs, Plaintiff's Service Award, and Settlement Administration Costs, it is estimated that the Net Settlement Amount will be at least \$163,181.32. (Minne Decl., ¶ 19.) Out of this amount, the LWDA will receive payment in the amount of \$106,067.86, and Aggrieved Employees will share an Aggrieved Employee Fund of \$57,113.46. The average Individual PAGA Payment is estimated to be \$34.06. (Minne Decl., ¶ 21.) This is an excellent outcome that provides significant and timely monetary recovery to the State of California and Aggrieved Employees, as opposed to an uncertain result in the future after prolonged litigation involving expert discovery, trial preparation, and appellate proceedings. More importantly, the Settlement achieved PAGA's fundamental purpose – to promote enforcement of California's labor laws, provide funds to the state, and deter future non-compliance by the employer.

4. *Whether the Fee is Fixed or Contingent*

California courts have recognized that whether representation was provided on a contingent basis is an important factor in determining the reasonableness of a fee award in class action settlements:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions.

Cates v. Chiang, 213 Cal.App.4th 791, 823 (2013) (emphasis added).

Plaintiff's Counsel agreed to litigate this case on a purely contingent basis, assuming the significant risks attendant with such an undertaking. If Plaintiff's Counsel had been unsuccessful in prosecuting Plaintiff's claims, they would not receive any compensation for the extensive time devoted to this Action, nor recuperate any portion of the significant expenses incurred in litigating this matter. (Minne Decl., ¶¶ 56, 57, 59.) The fact that this case was litigated on a purely contingent basis also strongly supports the award of attorneys' fees requested by Plaintiff's Counsel.

C. The Requested Fee Award Is Reasonable Under a Lodestar Analysis

1 While the percentage-of-the-benefit approach is endorsed as the better approximation of the
2 workings of the marketplace than the lodestar approach, courts may also use the lodestar method to
3 “cross-check” the results of the other. That said, courts have cautioned that the primary basis of the
4 fee award in common fund cases remains the percentage of the fund method, and have further
5 explained that plaintiff’s counsel should not necessarily receive a lesser fee for achieving a speedy and
6 timely result. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F. 3d. 1043, 1050 fn.1 (2002). Indeed, courts
7 have noted that “it is widely recognized that the lodestar method creates incentives for counsel to
8 expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since
9 the lodestar method does not reward early settlement.” *Id.* (quoting *Camden I Condominium Ass’n*,
10 946 F.2d at 773–74.) Thus, “the lodestar calculation . . . does not override the trial court’s primary
11 determination of the fee as a percentage” of the settlement amount, and “does not impose an absolute
12 maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal.5th at 404.

13 Under the lodestar method, a base fee amount is calculated based on a compilation of the time
14 reasonably spent on the case and the reasonable hourly rate of the attorney, which may be augmented
15 by application of a “multiplier” based on various factors. *Ramos v. Countrywide Home Loans, Inc.*, 82
16 Cal.App.4th 615, 622-623 (2000). Here, Plaintiff’s Counsel’s lodestar, exclusive of anticipated post-
17 approval work on the case, is \$108,020.00, which is based on 150.4 attorney hours at reasonable
18 prevailing hourly rates for the attorneys who worked on this matter. (Minne Decl., ¶¶ 63-69, Exh. 4;
19 Slinger, ¶¶ 13-14, Exh. A.) Under California law, Plaintiff’s Counsel are entitled to compensation for
20 every hour reasonably spent on the matter. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001).
21 Moreover, Plaintiff’s Counsel’s lodestar for the Action *exceeds* the requested fee award, meaning
22 application of a multiplier is not required. Accordingly, Plaintiff’s request for 105,000.00 in attorneys’
23 fees is reasonable under the lodestar cross-check.

24 **6. The Number of Hours Spent on the Action Was Reasonable**

25 Reasonableness of hours is assessed by “the entire course of the litigation, including pretrial
26 matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las Virgenes*
27 *Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed at length above, this case was
28 highly contested, and Defendant made it clear that it disputed Plaintiff’s allegations and raised

1 numerous potential defenses. Plaintiff's Counsel has expended 50.4 hours litigating this case and
2 finalizing the Settlement. (Minne Decl., ¶¶ 66-68, Exh. 4; Slinger, ¶ 13, Exh. A.) In addition, Plaintiff's
3 Counsel anticipates that they will spend an additional 10 hours following the date of final approval
4 performing tasks that are necessary to ensure that terms of the Settlement are fully effectuated. (Minne
5 Decl., ¶ 66.) The work performed by Plaintiff's Counsel was necessary to ensure that the Action was
6 successfully prosecuted and that performance of the Settlement is completed. In light of the facts and
7 circumstances of this Action, as well as the result achieved, it is clear that Plaintiff's Counsel has spent
8 a reasonable number of hours on this matter.

9 **7. Plaintiff's Counsel's Hourly Rates are Reasonable**

10 "The reasonable hourly rate is that prevailing in the community for similar work." *PLCM*
11 *Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (2000). In determining a reasonable hourly rate, courts
12 may consider factors such as the attorney's skill and experience, the nature of the work performed, the
13 relevant area of expertise, and the attorney's customary billing rates. *Flannery v. California Highway*
14 *Patrol*, 61 Cal.App.4th 629, 632-633 (1998). The trial court may also "find hourly rates reasonable
15 based on evidence of other courts approving similar rates." *Parkinson v. Hyundai Motor America*, 796
16 F.Supp.2d 1160, 1172 (C.D. Cal. 2010). "Affidavits of the plaintiff's attorney and other attorneys
17 regarding prevailing fees in the community, and rate determinations in other cases, particularly those
18 setting a rate for the plaintiff's attorney, are satisfactory evidence of the prevailing market rate." *United*
19 *Steelworkers of America v. Phelps Dodge Corp.*, 896 F.2d 403, 407(9th Cir. 1990); *Bouman v. Block*,
20 940 F.2d 1211, 1235 (9th Cir. 1991) ("declarations stating that the rate was the prevailing market rate
21 in the relevant community [was]... sufficient to establish the appropriate rate for lodestar purposes").

22 Plaintiff's Counsel are skilled litigators with extensive experience prosecuting complex wage
23 and hour class actions and representative PAGA Action. The professional background and experience
24 of Plaintiff's Counsel support the use of hourly rates of \$850.00 for the founding partners and \$350.00
25 for associate attorneys at Parker & Minne, LLP and a blended hourly rate of \$850.00 for the attorneys
26 at Lawyers for Justice, PC, yielding a total lodestar value of \$108,020.00. (Minne Decl., ¶¶ 46-53, 64
27 - 69; Slinger, ¶¶ 14-19.) Plaintiff's Counsel's hourly rates are in line with the rates approved by courts
28 for attorneys in California with comparable experience and qualifications. (Minne Decl., ¶ 65; Slinger,

¶ 14.) *See also Roberti v. OSI Sys.*, 2015 U.S. Dist. LEXIS 164312, at *19-20 (C.D. Cal. 2015) (finding rates between \$525 and \$975 per hour reasonable); *Rodrigues v. County of Los Angeles*, 96 F.Supp.3d 1012, 1022-1023 (C.D. Cal. 2014) (approving attorney rates in 2014 from \$500 to \$975); *Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-07098-AB SHX, 2015 WL 1746484, *15-18 (C.D. Cal. 2015), *aff'd*, 847 F.3d 657 (9th Cir. 2017) (finding hourly rates of \$825-\$930 for a senior partner, \$350-\$690 for associates, and \$290 and \$240 for support staff—for work performed in 2011 and 2014—to be reasonable and prevailing market rates at that time); *Zest IP Holdings, LLC v. Implant Direct MFG, LLC*, 2014 U.S. Dist. LEXIS 167563, *14-15 (S.D. Cal. 2014) (finding that plaintiff’s counsel’s average hourly rate of \$775 was reasonable when compared to 21 other law firms practicing in the Southern District of California); *Gutierrez v. Wells Fargo Bank, N.A.*, 2015 U.S. Dist. LEXIS 67296, *5 (N.D. Cal. 2015) (finding rates between \$474 to \$975 for partners to be reasonable).

VII. THE REQUESTED COSTS TO BE REIMBURSED TO PLAINTIFF’S COUNSEL ARE FAIR AND REASONABLE.

Plaintiff’s Counsel requests the reimbursement of their actual costs incurred in litigating this case in the amount of \$14,028.68 (Minne Decl., ¶ 72; Slinger, ¶ 20, Exh. B.) These costs include items such as filing fees, mediation fees, expert fees, as well as \$150.00 in future costs associated with: (1) filing the instant motion for approval; (2) the monitoring distribution of the Gross Settlement Amount; and (3) filing a final accounting declaration. These costs are significantly less than the \$20,000.00 allocated to costs under the Settlement, meaning an additional \$5,971.32 will be included in the Net Settlement Amount and distributed to the LWDA and Aggrieved Employees. (Minne Decl., ¶ 75; Agreement, ¶ 40(a).) These costs were both reasonable and necessary for the successful resolution of this Action and should be approved by the Court.

VIII. THE REQUESTED SERVICE AWARD IS FAIR AND REASONABLE.

The purpose of a service award is to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. See, e.g., *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the action); *Clark v. Am.*

1 *Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) (“an incentive award is appropriate ‘if it is
2 necessary to induce an individual to participate in the suit’”).

3 The requested PAGA Representative Service Award in the amount of \$10,000.00 to Plaintiff
4 is fair and appropriate based on the substantial amount of effort Plaintiff invested into bringing this
5 suit and assisting Plaintiff’s Counsel on this case. Throughout the course of the litigation, Plaintiff
6 spent a substantial amount of time and effort searching for relevant documents and providing the facts
7 and evidence necessary to help establish the claims alleged against Defendant. Plaintiff was available
8 whenever he was needed by Plaintiff’s Counsel, and actively provided information to support pursuit
9 of the Action. Prior to signing the Settlement Agreement, Plaintiff reviewed the Settlement
10 Agreement, asked questions, and extensively discussed the terms of the Settlement with Plaintiff’s
11 Counsel. The information and documentation provided by Plaintiff was instrumental in establishing
12 the wage and hour violations alleged in this action, and the recovery provided for in the Settlement
13 Agreement would have been impossible to obtain without his active participation. (Minne Decl., ¶ 76;
14 Slinger, ¶ 21; Agner Decl., ¶¶ 4-7, 10.)

15 At the same time, Plaintiff faced many risks in serving as the PAGA representative in this
16 matter. Plaintiff faces actual risks with his future employment, as putting himself on public record in
17 an employment lawsuit could also very well affect his likelihood for future employment. Plaintiff also
18 placed himself at substantial risk because if Defendant had prevailed in this action, he could have been
19 found liable for Defendant’s costs. Despite these risks, Plaintiff still chose to bring this litigation on
20 behalf of the State of California and the Aggrieved Employees and has placed the interests of the State
21 of California and the Aggrieved Employees ahead of his own. (Minne Decl., ¶ 79; Agner Decl., ¶¶ 9-
22 10.) Plaintiff has also agreed to enter into a general release of his individual claims against Defendant
23 which is far broader than the limited release applicable to other Aggrieved Employees. (Agreement, ¶
24 54; Minne Decl., ¶ 80; Agner Decl., ¶ 10.)

25 In the final analysis, the Settlement would not have been possible without the aid of Plaintiff,
26 who put his own time and effort into this litigation, sacrificed the value of his own individual claims,
27 and placed himself at risk for the sake of the LWDA and the Aggrieved Employees. A Service Award
28 of \$10,000.00 to recognize Plaintiff’s active participation in this lawsuit is well deserved and should

1 be approved by the Court. See *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal.
2 1995) (approving \$50,000.00 enhancement); *Alcantar v. Hobart Serv.*, 2018 U.S. Dist. LEXIS 221900
3 at * 28 (C.D. Cal. 2018) (approving incentive award of \$25,000.00); *Flo & Eddie, Inc. v. Sirius XM*
4 *Radio, Inc.*, 2017 U.S. Dist. LEXIS 199172 at *31 (C.D. Cal. May 8, 2017)(approving incentive
5 awards of \$25,000.00 to each named plaintiff); *Friedman v. Guthy-Renker, LLC*, 2016 U.S. Dist.
6 LEXIS 149900 at *27 (C.D. Oc. 28, 2016) (holding that incentive awards totaling \$57,500.00 were
7 “well within the range. . . approved by the Ninth Circuit”); *Gaudin v. Saxon Mortgage Servs., Inc.*,
8 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and
9 reasonable”); *Miller v. CEVA Logistics USA, Inc.*, 2015 WL 4730176, at * 9 (E.D. Cal. Aug. 10, 2015)
10 (approving service award of \$15,000 to each plaintiff).

11 **IX. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE.**

12 Subject to the Court’s approval, the Parties have agreed to utilize Apex Class Action, LLC to
13 administer the Settlement. (Agreement, ¶ 28.) The fees and expenses of the PAGA Settlement
14 Administrator are estimated to amount to \$7,790.00. (Minne Decl., Exh. 3; Declaration of Kimberly
15 Sutherland on Behalf of Apex Class Action, LLC, ¶ 7.) These costs include, but are not limited to,
16 expenses for preparing, printing, and mailing the Settlement Cover Letter and Individual PAGA
17 Payment checks (i.e., “PAGA Settlement Package”) to the Aggrieved Employees, re-mailing the
18 returned PAGA Settlement Packages to any new addresses obtained, and handling inquiries from
19 Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should
20 grant approval of Settlement Administration Costs in the amount of \$7,790.00 to Apex Class Action,
21 LLC, a necessary third-party for handling the settlement process.

22 **X. NOTICE TO THE AGGRIEVED EMPLOYEES**

23 Although PAGA does not require that unnamed aggrieved employees be provided notice of a
24 PAGA settlement, the parties have jointly drafted a Settlement Cover Letter for the Court’s approval
25 which will be delivered to the Aggrieved Employees along with their Individual PAGA Payment
26 checks. (Settlement Agreement, Exhibit A). The Notice includes information regarding the nature of
27 the lawsuit and a summary of the terms of the Settlement.
28

1 No later than fourteen (14) calendar days after the Court grants approval of the Settlement,
2 Defendant will provide a list to the Settlement Administrator containing the following information for
3 each Aggrieved Employee: (i) full name; (ii) last known home address; (iii) last known telephone
4 number; (iv) social security number; (v) total Eligible Pay Periods during the PAGA Period; and (vi)
5 any other information reasonably required by the Settlement Administrator to effectuate the terms of
6 the Settlement (the "Aggrieved Employees List"). (Settlement Agreement, ¶¶ 2, 48.) The Settlement
7 Administrator shall perform any searches necessary to confirm the Aggrieved Employees' addresses,
8 and shall mail the Settlement Cover Letter and Individual PAGA Payment checks to all Aggrieved
9 Employees via first class mail no later than fourteen (14) calendar days after the Settlement
10 Administrator's receipt of the Gross Settlement Amount by Defendant. (Settlement Agreement, ¶ 49.)

11 **XI. CONCLUSION**

12 For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion and issue
13 an order approving the Parties' Joint Stipulation of PAGA Settlement and enter judgment thereon.

14 Respectfully submitted,

15 Dated: August 7, 2026

PARKER & MINNE, LLP



17 By: _____

18 S. Emi Minne
19 Attorneys for Plaintiff
20 KENNETH AGNER
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Make a Reservation

KENNETH AGNER vs ELWOOD STAFFING SERVICES, INC., AN INDIANA CORPORATION, et al.

Case Number: 25TRCV02965 Case Type: Civil Unlimited Category: Other Employment Complaint Case

Date Filed: 2025-08-29 Location: Torrance Courthouse - Department E

Reservation

Case Name:

KENNETH AGNER vs ELWOOD STAFFING SERVICES, INC., AN INDIANA CORPORATION, et al.

Case Number:

25TRCV02965

Type:

Motion for Order (Motion for Approval of PAGA Settlement)

Status:

RESERVED

Filing Party:

KENNETH AGNER (Plaintiff)

Location:

Torrance Courthouse - Department E

Date/Time:

10/27/2026 8:30 AM

Number of Motions:

1

Reservation ID:

400670975015

Confirmation Code:

CR-Y3JKTTKJFUYEQ7P3M

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount:

\$0.00

Type:

NOFEE

Account Number:

n/a

Authorization:

n/a

Payment Date:

n/a

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