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

FERNANDO PULIDO, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

ANDREW LAUREN SURFACES, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NO. 23STCV04800

[Assigned for all purposes to the
Hon. Stephen P. Pfahler, Dept. 68]

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

RESERVATION ID: 772876167670

Date: June 11, 2025
Time: 8:30 a.m.
Dept.: 68

Action Filed: March 3, 2023
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on June 11, 2025, at 8:30 a.m., or as soon thereafter as this
3 matter may be heard, in Department 68 of the Los Angeles County Superior Court, Stanley Mosk
4 Courthouse, located at 111 North Hill Street, Los Angeles, CA 90012, Plaintiff Fernando Pulido
5 (“Plaintiff”) will, and hereby does, move this Court, pursuant to Labor Code § 2699(s)(2), for entry of
6 an order and judgment approving the parties’ PAGA Settlement Agreement under the Labor Code
7 Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.* (“PAGA”).

8 The motion is based on the fact that the proposed settlement of \$343,500.00 is fair, reasonable
9 and adequate, will provide genuine and meaningful relief and will fulfill PAGA’s purpose to benefit
10 the public.

11 The motion is based upon this notice, the attached Memorandum of Points and Authorities,
12 the Declaration of Dalia Khalili and all exhibits thereto, the Declaration of Plaintiff Fernando
13 Pulido, the complete files and records of this case, and any other evidence or oral argument which
14 may be considered by the Court at the time of the hearing.

15
16 DATED: December 18, 2024

Respectfully submitted,

17 MATERN LAW GROUP, PC
18

19 By: _____

20 MATTHEW J. MATERN
21 MATTHEW W. GORDON
22 VANESSA M. RODRIGUEZ
Attorneys for Plaintiff

23 FERNANDO PULIDO, individually and on behalf of
24 all others similarly situated
25
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27
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”),
4 Labor Code § 2698 *et seq.*, Plaintiff Fernando Pulido (“Plaintiff”) seeks court approval of the PAGA
5 Settlement Agreement (“Settlement” or “Agreement”), which, if approved, will resolve this action
6 entirely. Plaintiff alleges that Defendant Andrew Lauren Surfaces, Inc. (“Defendant”) failed to provide
7 Plaintiff and other aggrieved employees with, among other things, lawful meal and rest periods, failed
8 to pay all overtime wages, failed to pay minimum wages, and failed to furnish accurate itemized wage
9 statements. The Settlement resolves all claims for PAGA penalties based on the alleged Labor Code
10 violations on behalf of approximately 99 persons who worked for Defendant as non-exempt
11 employees in California from December 28, 2021 through June 18, 2024 (“Aggrieved Employees”).¹

12 Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount of \$343,500
13 to settle Plaintiff’s PAGA claims against the Released Parties. The civil penalties secured by the
14 Settlement are significant and fulfill PAGA’s underlying purpose to benefit the public and to deter
15 future labor law violations. As such, the Court should approve the Settlement. Plaintiff’s request for
16 attorneys’ fees in the amount of \$114,500 (i.e., one-third of the Gross Settlement Amount),
17 reimbursement of costs in the amount of \$13,149.40 a service payment to Plaintiff in the amount of up
18 to \$10,000, and settlement administration costs in the amount of \$2,850 are also reasonable and should
19 be approved by the Court. Accordingly, Plaintiff respectfully requests that the Court enter an order and
20 judgment granting approval of the Settlement, pursuant to Labor Code § 2699(s)(2).

21 **II. FACTUAL AND PROCEDURAL BACKGROUND**

22 **A. The Parties**

23 Defendant operates a countertop installation company in Southern California specializing in
24 the design, fabrication, and installation of natural stone, engineered stone, and solid surface products.
25 Defendant provides services to a range of customers, including home builders and commercial
26

27 ¹ A copy of the Settlement is attached as Exhibit B to the Declaration of Dalia Khalili (“Khalili
28 Decl.”).

1 contractors. Khalili Decl. ¶ 4. Plaintiff was employed by Defendant as a Laborer in June 2021 and
2 August and September of 2022. Declaration of Plaintiff Fernando Pulido in Support of Plaintiff's
3 Motion for Approval of PAGA Settlement ("Pulido Decl."), ¶ 3. Plaintiff worked for Defendant at
4 various job sites in Los Angeles County and Orange County. *Id.* As a Laborer, Plaintiff's primary job
5 duties included gathering tools for installers, lifting countertops, installing marble and silicon
6 countertops, and installing sinks. *Id.*

7 **B. Procedural History**

8 Pursuant to Labor Code § 2699.3, on December 21, 2022, Plaintiff gave written notice to the
9 California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific
10 provisions of the Labor Code alleged to have been violated, including the facts and theories to
11 support the alleged violations. Khalili Decl. ¶ 5, Ex. A. The LWDA did not provide notice that it
12 intended to investigate the alleged violations. *Id.* Accordingly, on March 3, 2023, Plaintiff filed a
13 complaint against Defendant in Los Angeles Superior Court, alleging a single cause of action for
14 penalties under PAGA. *Id.* at ¶ 6.

15 On April 17, 2023, Defendant filed its answer to Plaintiff's complaint. *Id.* at ¶ 6.

16 **C. Discovery and Investigation**

17 Prior to reaching the Settlement, Plaintiff and his counsel conducted an investigation into the
18 claims alleged, performed legal research, and engaged in formal and informal discovery. *Id.* at ¶ 8. On
19 May 24, 2023, Plaintiff served written discovery requests on Defendant, including form
20 interrogatories, special interrogatories, requests for admission, and requests for production of
21 documents. *Id.* at ¶ 9. On July 14, 2024, Defendant served responses to Plaintiff's discovery. *Id.* at ¶
22 10. Prior to the mediation, Defendant produced relevant written wage-and-hour policies and
23 procedures and a 20% sampling of time and payroll data for the Aggrieved Employees. *Id.* at ¶ 11.
24 Plaintiff's counsel hired a data expert to analyze the time and payroll data, which consisted of records
25 for 4,250 shifts. *Id.* The expert analysis assisted Plaintiff's counsel in preparing a model of the
26 maximum potential civil penalties prior to the mediation. *Id.* Based on this discovery and
27 investigation, Plaintiff's counsel was able to act intelligently and effectively in negotiating the
28 Settlement. *Id.*

1 **D. Settlement Negotiations**

2 On April 18, 2024, the Parties participated in a private mediation with Hon. Brian Walsh
3 (Ret.). *Id.* at ¶ 12. At the conclusion of the mediation, the case settled and counsel for the Parties
4 executed a Memorandum of Understanding with the material terms of the settlement, subject to
5 entering into a comprehensive long-form agreement. *Id.* On November 7, 2024, the Parties fully
6 executed the PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”). *Id.* at ¶ 13,
7 Ex. B. On December 18, 2024, Plaintiff submitted a copy of the Settlement to the LWDA. *Id.* at ¶
8 60, Ex. D.

9 **III. SUMMARY OF SETTLEMENT**

10 **A. Aggrieved Employees**

11 “Aggrieved Employees” means all current and former non-exempt employees of Defendant in
12 the State of California at any time during the period between December 28, 2021 to June 18, 2024 (the
13 “PAGA Period”). Settlement ¶¶ 1.4, 1.20. Defendant estimates that there are approximately 99
14 Aggrieved Employees who worked a total of 4,157 PAGA Pay Periods. Khalili Decl. ¶ 19.

15 **B. Settlement Terms**

16 Under the terms of the Settlement, the claims of all Aggrieved Employees shall be settled for
17 the Gross Settlement Amount of \$343,500.00, which is inclusive of Individual PAGA Payments, the
18 LWDA PAGA Payment, the Representative Service Payment, the PAGA Counsel Fees Payment, the
19 PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. Settlement ¶
20 1.12. The Gross Settlement Amount shall be allocated as follows:

21 1. PAGA Penalties. The Gross Settlement Amount less the Representative Service
22 Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, and
23 the Administration Expenses Payment constitutes the “PAGA Payment.” Settlement ¶ 1.23. Seventy-
24 five percent (75%) of the PAGA Payment shall be distributed to the LWDA (“LWDA PAGA
25 Payment”), and twenty-five percent (25%) shall be distributed to Aggrieved Employees as Individual
26 PAGA Payments. Settlement ¶¶ 1.13, 1.16. There will be no reversion to Defendant. Settlement ¶ 3.1.
27 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the
28 Aggrieved Employees’ 25% share of PAGA Penalties by the total number of pay periods worked by

1 all Aggrieved Employees during the PAGA Period (“PAGA Pay Periods”) and (b) multiplying the
2 result by each respective Aggrieved Employee’s PAGA Pay Periods. Settlement ¶ 3.2.4.1. The
3 Administrator will report Individual PAGA Payments on IRS 1099 forms. Settlement ¶ 3.2.4.2.

4 2. Representative Service Payment. Subject to Court approval, in exchange for executing
5 a general release of his claims against Defendants and in recognition of his efforts and risks in
6 prosecuting the Action, Plaintiff shall be paid up to \$10,000.00 as a Representative Service Payment
7 for his service as a PAGA representative. Settlement ¶¶ 1.27, 3.2.1.

8 3. PAGA Counsel’s Attorney Fees and Costs. Subject to Court approval, PAGA Counsel
9 shall receive a PAGA Counsel Fees Payment in an amount not to exceed one-third of the Gross
10 Settlement Amount, which equals \$114,500, plus reimbursement of reasonable costs and expenses
11 (“PAGA Counsel Litigation Expenses Payment”) not to exceed \$25,000. Settlement ¶ 3.2.2. PAGA
12 Counsel’s actual litigation costs total \$13,149.40. Khalili Decl. ¶ 57.

13 4. Administration Expenses Payment. Subject to Court approval, the Administrator,
14 Phoenix Settlement Administrators, shall be paid for the reasonable costs and expenses incurred for
15 administration of the Settlement, not to exceed \$2,850. Settlement ¶ 1.3, 3.2.3.

16 **C. The Release**

17 Effective upon Defendant’s funding of the entire Gross Settlement Amount, the Aggrieved
18 Employees will release the Released Parties from the Released PAGA Claims. Settlement ¶¶ 1.27, 5.2.
19 Plaintiff will release the Released Parties from all known and unknown claims, including a waiver of
20 rights under Civil Code § 1542, with the exception of Plaintiff’s claims in his separate individual
21 action pending in Los Angeles Superior Court, Case No. 23STCV15739. Settlement ¶ 5.1.

22 **D. Settlement Administration**

23 Within 30 days of the court granting Approval of the Settlement, Defendant shall provide the
24 Administrator with a Microsoft Excel spreadsheet containing the Aggrieved Employee Data.
25 Settlement ¶ 4.2. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to
26 the Administrator within sixty (60) days after approval of the Settlement. Settlement ¶ 4.3.

27 Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will
28 mail checks and/or wire payment for all Individual PAGA Payments, the LWDA PAGA Payment, the

1 Representative Service Payment, the Administration Expenses Payment, the PAGA Counsel Fees
2 Payment, and the PAGA Counsel Litigation Expenses Payment. Settlement ¶ 4.4.

3 The Administrator will issue checks for the Individual PAGA Payments and send them to the
4 Aggrieved Employees via First Class U.S. Mail. Settlement ¶ 4.4.1. The face of each check shall
5 prominently state the date (not less than 180 days after the date of mailing) when the check will be
6 voided. *Id.* The Administrator will cancel all checks not cashed by the void date. *Id.*

7 Before mailing any checks, the Administrator will update the recipients' mailing addresses
8 using the National Change of Address Database. Settlement ¶ 4.4.1. For all Aggrieved Employees
9 whose checks are returned undelivered without USPS forwarding address, the Administrator will
10 conduct an Aggrieved Employee Address Search, which entails searching for current mailing
11 addresses using all reasonably available sources, methods, and means including, but not limited to, the
12 National Change of Address database, skip traces, and direct contact by the Administrator with
13 Aggrieved Employees. Settlement ¶¶ 4.4.2, 1.6. Within 7 days of receiving a returned check the
14 Administrator must re-mail checks to the USPS forwarding address provided or to an address
15 ascertained through the Aggrieved Employee Address Search. Settlement ¶ 4.4.2. The Administrator
16 shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or
17 misplaced, requested by the Aggrieved Employee prior to the void date. *Id.*

18 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed after the
19 void date, the Administrator shall transmit the funds represented by such checks to the California
20 Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Settlement ¶ 4.4.3.

21 **IV. THE COURT SHOULD GRANT APPROVAL OF THE PAGA SETTLEMENT**

22 **A. The Standard for Review and Approval of PAGA Settlements**

23 The PAGA statute specifically provides that “[t]he superior court shall review and approve any
24 settlement of any civil action filed pursuant to this part.” Lab. Code § 2699(s)(2). The statute,
25 however, does not require a two-step (preliminary and final approval) process or otherwise mimic the
26 class action approval requirements when the parties reach a settlement only as to PAGA civil
27 penalties. *See Arias v. Superior Court* (2009) 46 Cal.4th 969, 975 (class action requirements “need not
28 be met when an employee’s representative action against an employer is seeking civil penalties” under

1 PAGA). “[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable,
2 and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones,
3 and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App.5th
4 56, 77.

5 A PAGA representative action to recover civil penalties “is fundamentally a law enforcement
6 action designed to protect the public and not to benefit private parties.” *Iskanian v. CLS*
7 *Transportation, Los Angeles* (2014) 59 Cal.4th 348, 381. When evaluating a PAGA settlement, a trial
8 court “must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented
9 the state’s interests, and hence the public interest.” *Moniz*, 72 Cal.App.5th at 89. In addition, a court
10 must independently determine whether a PAGA settlement is fair, adequate, and reasonable using
11 similar factors that apply to the evaluation of the fairness of a class action settlement, “including the
12 strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration
13 of further litigation, and the settlement amount.” *Id.* at 77.

14 **B. The Settlement Is Fair, Reasonable, and Adequate**

15 Here, the Settlement is consistent with PAGA’s goal of penalizing Defendant for the alleged
16 violations, deterring future violations, and providing a benefit to the public through enforcement of
17 state labor laws.

18 The Gross Settlement Amount of \$343,500 is significant enough to deter Defendant from
19 future violations, creating an effective disincentive for Defendant to engage in unlawful business
20 practices. Khalili Decl. ¶ 19. The Settlement provides a substantial benefit to the State of California,
21 with the LWDA receiving approximately \$152,250.45, as 75 percent of the PAGA Payment, to assist
22 with the future enforcement of state labor laws. *Id.* The Settlement also provides a substantial benefit
23 to the Aggrieved Employees, who will share approximately \$50,750.15 as 25 percent of the PAGA
24 Payment. *Id.* Accordingly, the Settlement fulfills the underlying purposes of the statute and confers a
25 substantial benefit on the public.

26 In assessing whether the Settlement is fair, reasonable, and adequate, the Court may balance
27 the amount in penalties with the risks of further litigation. Here, Plaintiff obtained a meaningful
28 amount in civil penalties despite facing significant challenges and risks had the litigation continued.

1 *Id.* at ¶ 20. Plaintiff considered several factors in reaching the decision to settle at this point in the
2 litigation, including significant risks in proceeding with litigation. *Id.* ¶¶ 15-18, 20. Plaintiff recognizes
3 that proving liability and PAGA penalties at trial would be an expensive, time-consuming, and
4 extremely uncertain proposition. *Id.* Moreover, continued litigation would very likely reduce and
5 substantially delay any recovery to the state and the Aggrieved Employees. *Id.* Even if Plaintiff were
6 to obtain a favorable judgment at trial, Defendant would likely appeal the judgment, which would
7 further delay any recovery. *Id.* Additionally, this area of the law is constantly evolving, creating
8 uncertainty for employees. *Id.*

9 Plaintiff also considered the reality that courts have discretion to substantially reduce any
10 award of civil penalties on the grounds that “to do otherwise would result in an award that is unjust,
11 arbitrary and oppressive, or confiscatory,” pursuant to Labor Code § 2699(e)(2). *Id.* at ¶ 16.

12 Further, while Plaintiff and MLG remain confident in the merits of the case, a legitimate
13 controversy exists as to each predicate Labor Code claim. *Id.* at ¶ 17. Defendant contends that,
14 throughout the PAGA Period, it complied with applicable California law. *Id.* The Settlement removes
15 all of these risks. *Id.* at ¶ 18.

16 Here, Plaintiff has calculated the maximum potential penalties in an “everything goes right”
17 scenario to be approximately \$2,494,200. *Id.* at ¶ 14. Considering the risks of continued litigation, the
18 burdens of proof necessary to establish liability, the unsettled state of the law, the possibility that the
19 Court would reduce an award of civil penalties, and the probability of appeal of a favorable judgment,
20 it is clear that the non-reversionary settlement amount of \$343,500 is fair, adequate, and reasonable in
21 light of PAGA’s purpose to remediate present labor law violations, to deter future violations, and to
22 maximize enforcement of the Labor Code. *Id.* at ¶ 20.

23 For these reasons, the Court should find that the Settlement is fair, reasonable, and adequate.

24 **V. THE REQUESTED REPRESENTATIVE SERVICE PAYMENT IS REASONABLE**

25 The State of California and the Aggrieved Employees are beneficiaries of a settlement that
26 would not have been made possible but for the effort and commitment of Plaintiff. Khalili Decl. ¶¶
27 21-25; Pulido Decl. ¶¶ 4-11. The Settlement provides that Plaintiff shall be paid a service award in an
28 amount not to exceed \$10,000, in recognition of his efforts and risks in prosecuting the Action.

1 Settlement ¶ 3.2.1. The amount of the requested service payment is reasonable in light of incentive
2 payments approved in other PAGA settlements. *See, e.g., Blanchard v. BJ's Restaurants, Inc.*,
3 Orange County Superior Court Case No. 30-2014-00761961-CU-OE-CXC (Sept. 26, 2016)
4 (approving \$10,000 service award); *Bui v. Vitamin Shoppe Industries Inc.*, Los Angeles County
5 Superior Court Case No. BC518486 (Aug. 31, 2016) (approving \$10,000 service award); *Miranda v.*
6 *HomeDeliveryLink, Inc.*, San Bernardino County Superior Court Case No. CIV DS1505393 (Aug. 9,
7 2016) (approving \$10,000 service award); *Sheldon v. AHMC Monterey Park Hospital LP*, Los
8 Angeles County Superior Court Case No. BC440282 (March 2, 2016) (approving \$10,000 service
9 award).

10 Plaintiff has actively participated in this action, including meeting with his attorneys, searching
11 for and producing relevant documents, preparing for and responding to questions from his attorneys in
12 preparation for mediation, and making the ultimate decision to settle the case. Pulido Decl. ¶ 5.
13 Plaintiff also faced the real risk that future employers may not hire him because he brought a
14 representative action against his employer, as well as the real risk that he could have been liable for
15 Defendant's litigation costs if the action went to trial and he lost. Khalili Decl. ¶ 22; Pl Dec. ¶ 6. In
16 addition, Plaintiff has entered into a much broader release than the other Aggrieved Employees.
17 Khalili Decl. ¶ 24; Pulido Decl. ¶ 9; Settlement ¶¶ 5.1, 5.1.1.

18 As part of the Settlement, the LWDA will receive approximately \$152,250.45 as 75 percent of
19 the PAGA Payment which is a substantial amount to assist with the enforcement of state labor laws.
20 Khalili Decl. ¶ 22. In addition, without Plaintiff's efforts in bringing a PAGA action, those Aggrieved
21 Employees who worked for Defendant at any time from December 28, 2021 to June 18, 2024 likely
22 would not have received any payment for civil penalties. *Id.* Accordingly, Plaintiff respectfully request
23 that the Court approve an enhancement award in the amount of \$10,000.00.

24 **VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

25 The Settlement provides for attorneys' fees to PAGA Counsel in an amount up to one-third of
26 the Gross Settlement Amount, for a maximum fee award of \$114,500, plus reasonable litigation costs
27 not to exceed \$25,000. Settlement ¶ 3.2.2. Plaintiff requests attorneys' fees pursuant to the "common
28 fund theory" with a lodestar cross-check. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal. 5th 480,

1 504 (“[t]he lodestar method better accounts for the amount of work done, while the percentage of the
2 fund method more accurately reflects the results achieved”).

3 **A. Plaintiff’s Counsel Are Entitled to Attorneys’ Fees and Costs under PAGA**

4 Labor Code § 2699(k)(1) provides that “[a]ny employee who prevails in any [PAGA] action
5 shall be entitled to an award of reasonable attorney’s fees and costs.” Lab. Code § 2699(k)(1). It is
6 undisputed that Plaintiff is the prevailing party with a net monetary recovery. *See DeSaulles v. Cmty*
7 *Hosp. of Monterey Peninsula* (2016) 62 Cal.4th 1140, 1157 (“the rule is that a partial recovery, as long
8 as it is a net monetary recovery, entitles a plaintiff to costs.”). Accordingly, Plaintiff is entitled to
9 recover reasonable attorneys’ fees and costs.

10 **B. The Requested Fees Are Reasonable Under the Common Fund Method**

11 A request for attorneys’ fees as a percentage of the gross settlement amount is supported by the
12 “common fund theory,” where “one who expends attorney fees in winning a suit which creates a fund
13 from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
14 litigation costs.” *Serrano v. Priest* (1977) 20 Cal.3d 25, 35 (citing *Quinn v. State of California* (1975)
15 15 Cal.3d 162); *Laffitte*, 1 Cal.5th at 503 (trial court “may determine the amount of a reasonable fee by
16 choosing an appropriate percentage of the fund created”). The percentage is properly based upon the
17 maximum settlement amount, rather than upon the amount of funds distributed to class members.
18 *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026. In *City and County of*
19 *San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the
20 common fund doctrine has been applied “consistently in California when an action brought by one
21 party creates a fund in which other persons are entitled to share.” *Id.* at 110, fn. omitted.

22 The lodestar analysis may be used to cross-check a percentage-of-recovery award. *In re*
23 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556-558. However, the Supreme Court of
24 California clarified that:

25 [W]hen an attorney fee is awarded out of the common fund preserved or recovered by
26 means of litigation [citation], the award is not per se unreasonable merely because it
is calculated as a percentage of the common fund.

27 *Laffitte*, 1 Cal.5th at 486. The *Laffitte* court further held that “trial courts have discretion to conduct a
28 lodestar cross-check on a percentage fee . . . [and] also retain the discretion to forego a lodestar cross-

1 check and use other means to evaluate the reasonableness of a requested percentage fee.” *Id.* at 506.

2 California courts routinely award attorneys’ fees equaling one-third or more of the common
3 fund. *See, e.g., Laffitte*, 1 Cal.5th at 506 (affirming fee award representing one-third of a non-
4 reversionary fund); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 (“fee awards in class
5 actions average around one-third of the recovery”); Eisenberg & Miller, *Attorney Fees in Class Action*
6 *Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at
7 35 (independent studies of class action litigation nationwide conclude that fees representing one-third
8 of the total recovery is consistent with market rates). In addition, a fee award in the amount of one-
9 third of the common fund is reasonable because it best reflects the market rate for contingency fees.
10 *See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 47 (“[A]ttorneys providing the
11 essential enforcement services must be provided incentives roughly comparable to those negotiated in
12 the private bargaining that takes place in the legal marketplace.”).

13 Here, Plaintiff’s request for attorneys’ fees in the amount of one-third of the Gross Settlement
14 Amount is reasonable given the significant result achieved on behalf of the State of California and
15 Aggrieved Employees. Plaintiff’s counsel has litigated the Action for almost two years on a purely
16 contingent basis, incurring over \$13,000.00 in costs with no guarantee of recovery. Khalili Decl. ¶¶
17 55, 57. Plaintiff’s counsel invested over 140 hours of attorney and support staff time into the Action,
18 with payment deferred to the end and entirely contingent on the outcome. *Id.* at ¶¶ 30-31. In addition,
19 the requested fee percentage is less than that charged by Plaintiff’s counsel for other employment
20 cases. *Id.* at ¶ 28.

21 Accordingly, Plaintiff’s request for attorneys’ fees in the amount of \$114,500, or one-third of
22 the Gross Settlement Amount, is reasonable under California law.

23 **C. The Requested Fees Are Reasonable Under the Lodestar Cross-Check**

24 Plaintiff’s request for attorneys’ fees is reasonable based upon a crosscheck of PAGA
25 Counsel’s lodestar with the application of a multiplier. Under the lodestar method, the court considers
26 a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the
27 reasonableness of the fee requested. *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th
28 615, 622. The moving party meets its burden in this regard by submitting “declarations evidencing the

1 reasonable hourly rate for their services and establishing the number of hours spent working on the
2 case” as “California case law permits fee awards in the absence of detailed time sheets.” *Wershba v.*
3 *Apple Computer* (2001) 91 Cal.App.4th 224, 254-55; *Dunk v. Ford Motor Company* (1996) 48
4 Cal.App.4th 1794, 1810; *Nightengale v. Hyundai Motors America* (1994) 31 Cal.App.4th 99, 103.
5 The hours spent and the reasonable hourly compensation are computed to arrive at a “lodestar” figure
6 which may then be augmented or diminished by the court taking into account various “multiplier”
7 factors. *See Ramos*, 82 Cal.App.4th at 622 (citing *Serrano*, 20 Cal.3d at 48-49).

8 Here, the lodestar of Plaintiff’s counsel is **\$90,022.50** which is based on 97.5 hours of attorney
9 time and 43.4 hours of support staff time at customary hourly rates. Khalili Decl. ¶ 30. Plaintiff is
10 requesting attorneys’ fees in the amount of \$114,500, with the application of a 1.28 multiplier. *Id.*

11 **1. Plaintiff’s Counsel’s Hours Are Reasonable**

12 In determining whether the number of hours expended on the litigation was reasonable, the
13 court must determine that “the time spent was reasonably necessary and that [] counsel made ‘a good
14 faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise
15 unnecessary.’” *Jordan v. Multnomah County* (9th Cir. 1987) 815 F.2d 1258, 1263 n.8. The court
16 “should defer to the winning lawyer’s professional judgment as to how much time he was required to
17 spend on the case.” *Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 (noting that
18 “[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating
19 their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”). It is well
20 established that reasonable fees for support staff services may be included as part of a fee award. *See*
21 *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 951 (“necessary
22 support services for attorneys, e.g. secretarial and paralegal services, are includable within an award of
23 attorney fees”); *Guinn v. Dotson* (1994) 23 Cal.App.4th 262, 268-270 (“[a]n award of attorney’s fees
24 which does not compensate for paralegal service time would not fully compensate the attorney”);
25 *Missouri v. Jenkins* (1989) 491 U.S. 274, 285 (fee award must account for work of non-attorneys
26 “whose labor contributes to the work product for which an attorney bills her client”).

27 Here, Plaintiff’s counsel expended a significant amount of time litigating the Action to achieve
28 the excellent result on behalf of the State of California and Aggrieved Employees. Khalili Decl. ¶¶ 29-

31. The efforts expended by Plaintiff's counsel thus far include, but are not limited to, the following: interviewing Plaintiff and reviewing documents provided by Plaintiff; drafting a PAGA notice letter on behalf of Plaintiff; drafting the complaint; preparing for and attending court hearings and status conferences; propounding discovery on behalf of Plaintiff; reviewing Defendant's discovery responses, meeting and conferring with Defendant's counsel to obtain relevant documents and information; reviewing time and payroll records and other employment records produced by Defendant; retaining a data expert to analyze a sample of time records and corresponding payroll data; performing legal research regarding Plaintiff's claims; drafting a mediation brief and preparing a damages analysis; attending a private mediation session; negotiating, drafting, and revising the MOU and Settlement; and drafting the Motion for Approval of PAGA Settlement and accompanying documents. *Id.* at ¶ 30.

To date, PAGA Counsel has spent over 97 hours of attorney time and over 43 hours of support staff time litigating the Action. *Id.* at ¶ 30. These hours were necessary and reasonable to achieve the excellent result on behalf of the State and the Aggrieved Employees.

2. Plaintiff's Counsel's Hourly Rates Are Reasonable

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. "[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys' skill as reflected in the quality of work, as well as the attorneys' reputation and status." *MBNA Am. Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3. The trial court may also "find hourly rates reasonable based on evidence of other courts approving similar rates." *Parkinson v. Hyundai Motor Am.* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172. "Affidavits of the plaintiff's attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiff's attorney, are satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407; *Bouman v. Block* (9th Cir. 1991) 940 F.2d 1211, 1235 (9th Cir. 1991) (the submission of "declarations stating that the rate was the prevailing market rate in the relevant community [was]... sufficient to establish the appropriate rate for lodestar purposes").

PAGA Counsel's rates are in line with the prevailing market rates of other Southern California

1 employment law attorneys with comparable experience and qualifications. Khalili Decl. ¶¶ 44, 49-50,
2 Exh. D; *see also Roberti v. OSI Sys., Inc.* (C.D. Cal. Dec. 8, 2015) No. CV1309174MWFMRW, 2015
3 WL 8329916, at *7 (finding rates between \$525 and \$975 per hour reasonable); *Rodriguez v. County*
4 *of Los Angeles* (C.D. Cal. 2014) 96 F.Supp.3d 1012, 1023 (approving attorney rates in 2014 from \$500
5 to \$975); *Perfect 10, Inc. v. Giganews, Inc.* (C.D. Cal. Mar. 24, 2015) No. CV 11-07098-AB SHX,
6 2015 WL 1746484, at *15-18, *aff'd*, 847 F.3d 657 (9th Cir. 2017) (finding hourly rates of \$825-\$930
7 for a senior partner, \$350-\$690 for associates, and \$290 and \$240 for support staff—for work
8 performed in 2011 and 2014—to be reasonable and prevailing market rates at that time); *In re*
9 *LinkedIn User Priv. Litig.* (N.D. Cal. 2015) 309 F.R.D. 573, 591 (reasonable rate for litigation support
10 staff from \$150 to \$240). Plaintiff’s attorneys are experienced litigators who specialize in employment
11 law, with a substantial wage and hour class action and PAGA practice. Khalili Decl. ¶¶ 32-46.
12 Numerous courts have approved Plaintiff’s Counsel’s hourly rates. *Id.* at ¶ 51. Given PAGA Counsel’s
13 skill and experience, PAGA Counsel’s hourly rates are reasonable.

14 **3. Application of a Multiplier Is Appropriate.**

15 The lodestar amount may be increased by applying a multiplier. *Serrano v. Priest* (1977) 20
16 Cal.3d 25, 49. In California, “[m]ultipliers can range from two to four or even higher” and are
17 routinely applied in the range requested by Plaintiffs’ Counsel. *Wershba v. Apple Computer, Inc.*
18 (2001) 91 Cal.App.4th 224, 254; *see also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66
19 (upholding 2.5 multiplier); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051
20 (approving 3.65 multiplier). Some of the factors courts consider when determining whether to apply a
21 multiplier are: “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in
22 presenting them, (3) the extent to which the nature of the litigation precluded other employment by
23 the attorneys, (4) the contingent nature of the fee award.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
24 1132 (citations omitted).

25 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases is
26 necessary to (1) fully compensate counsel for the “loan” of legal services in light of the inherent high
27 risk of “default” posed by losing the case, and (2) encourage competent counsel to take on fee award
28 cases. *Id.* at 1132-33. The court noted, “[a] lawyer who both bears the risk of not being paid and

1 provides legal services is not receiving the fair market value of his work if he is paid only for the
2 second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee
3 award cases.” *Id.* at 1133 (citations omitted); *see also Greene v. Dillingham Construction N.A., Inc.*
4 (2002) 101 Cal.App.4th 418, 426 (trial court erred by refusing to consider contingent risk as a factor
5 in the decision to apply a multiplier).

6 Here, Plaintiff requests application of a 1.28 multiplier. Khalili Decl. ¶ 30. This action has been
7 pending for almost two years and Plaintiff’s Counsel has not received any compensation while
8 expending time and resources, which could have been directed towards other cases. Khalili Decl. ¶ 29-
9 30. In agreeing to litigate the action on a contingency fee basis, Plaintiff’s Counsel assumed
10 considerable risk given the uncertain outcome of PAGA actions. *Id.* The proof of Plaintiff’s Counsel’s
11 extraordinary skill in this area of the law lies in the size of the \$343,500 total fund recovered on behalf
12 of Aggrieved Employees, who will receive an average payment of \$512.63. Khalili Decl. ¶ 19.

13 The California Supreme Court recognized that, if a multiplier is not awarded to Plaintiff’s
14 counsel on the cases that are successfully settled, counsel’s fees are essentially being cut because the
15 lodestar in and of itself does not account for the contingent risk of non-payment. *Ketchum*, 24 Cal.4th
16 at 1132-1133. Thus, adjusting the lodestar here with a 1.28 multiplier is reasonable given the
17 contingent risk incurred by Plaintiff’s Counsel, the substantial benefit conferred on Aggrieved
18 Employees as a result of the Settlement, the delay in payment, the high level of skill displayed by
19 Plaintiff’s Counsel, the quality of Plaintiff’s Counsel’s representation, and the preclusion of other
20 work. Without Plaintiff’s Counsel’s tenacious efforts, this exceptional outcome would not have been
21 achieved.

22 Plaintiff’s Counsel also bears the risk of taking whatever actions are necessary if Defendant
23 fails to pay. Khalili Decl. ¶ 54. Plaintiff therefore requests that the Court award Plaintiff’s Counsel the
24 requested fees of \$114,500 under the common fund theory with a lodestar cross-check and the
25 application of a 1.28 multiplier. Khalili Decl. ¶ 30.

26 **D. Plaintiffs’ Counsel’s Costs Are Reasonable**

27 PAGA Counsel is entitled to reimbursement of reasonable litigation costs under PAGA. *See*
28 Lab. Code § 2699(k)(l). The Settlement provides for reimbursement of costs not to exceed \$25,000.

1 Settlement ¶ 3.2.2. To date, Plaintiff's counsel has incurred actual costs in the amount of **\$13,089.40**
2 Khalili Decl. ¶ 57. PAGA Counsel will incur approximately \$60.00 in future costs for motion filing
3 fees, for a total of **\$13,149.40** in costs. *Id.* Because these costs were reasonably incurred in prosecuting
4 the Action on behalf of the State of California and Aggrieved Employees, the costs should be
5 approved by the Court. *Id.* Accordingly, Plaintiff's counsel respectfully requests the Court approve the
6 reimbursement of costs in the amount of **\$13,149.40**.

7 **VII. THE REQUESTED ADMINISTRATION COSTS ARE REASONABLE**

8 The Settlement provides for an Administration Expenses Payment up to \$2,850 to be paid from
9 the Gross Settlement Amount to Phoenix Settlement Administrators. Settlement ¶ 3.2.3. Given the
10 number of Aggrieved Employees and the scope of the duties to be performed by the Administrator, the
11 Court should approve the Administration Expenses Payment as reasonable. Settlement ¶ 4.

12 **VIII. CONCLUSION**

13 Based on the foregoing, Plaintiff respectfully requests that the Court grant approval of the
14 Settlement and enter the proposed judgment.

15
16 DATED: December 18, 2024

Respectfully submitted,

17 MATERN LAW GROUP, PC

18
19 By: Vanessa M. Rodriguez

MATTHEW J. MATERN

MATTHEW W. GORDON

VANESSA M. RODRIGUEZ

Attorneys for Plaintiff

22 FERNANDO PULIDO, individually and on behalf of
23 all others similarly situated



Make a Reservation

FERNANDO PULIDO vs ANDREW LAUREN SURFACES, INC.

Case Number: 23STCV04800 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2023-03-03 Location: Stanley Mosk Courthouse - Department 68

Reservation

Case Name:

FERNANDO PULIDO vs ANDREW LAUREN SURFACES, INC.

Case Number:

23STCV04800

Type:

Motion for Order (MOTION FOR APPROVAL OF PAGA SETTLEMENT)

Status:

RESERVED

Filing Party:

FERNANDO PULIDO (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 68

Date/Time:

06/11/2025 8:30 AM

Number of Motions:

1

Reservation ID:

772876167670

Confirmation Code:

CR-3XYX5E34UFKYDZC4F

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

Print Receipt

[Reserve Another Hearing](#)