

1 DANIEL F. GAINES, ESQ. SBN 251488
2 daniel@gaineslawfirm.com
3 ALEX P. KATOFISKY, ESQ. SBN 202754
4 alex@gaineslawfirm.com
5 **GAINES & GAINES, APLC**
6 4550 East Thousand Oaks Boulevard, Suite 100
7 Westlake Village, CA 91362
8 Telephone: (818) 703-8985
9 Facsimile: (818) 703-8984

10 Attorneys for Plaintiff Stephanie Becerra, on behalf of herself and all “aggrieved employees”
11 pursuant to Labor Code § 2698 *et seq.*

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN BERNARDINO**
15

16 STEPHANIE BECERRA, on behalf of
17 herself and all “aggrieved employees”
18 pursuant to Labor Code § 2698 *et seq.*,

19 Plaintiff,

20 v.

21 CITRUS VILLAGE GC, INC., a California
22 corporation, and DOES 1 through 10,
23 inclusive,

24 Defendants.
25
26
27
28

CASE NO: CIV-SB-2308118

*Assigned to the Honorable Jessica Morgan, Dept.
S26*

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS’ FEES, COSTS,
SERVICE AWARD, AND REIMBURSEMENT
OF SETTLEMENT ADMINISTRATION
EXPENSES; AUTHORIZING FILING OF
SECOND AMENDED COMPLAINT; AND
ENTERING JUDGMENT THEREON;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: July 22, 2024

Time: 8:30 A.M.

Dept.: S26

Complaint Filed: May 9, 2023

1 **PLEASE TAKE NOTICE THAT** on July 22, 2024 at 8:30 a.m., or as soon thereafter as
2 the matter may be heard, in Department S26 of the above-entitled Court, located at 247 West Third
3 Street, San Bernardino, California 92415-0210, Plaintiff Stephanie Becerra will and hereby does
4 move unopposed for an Order: (1) granting approval of the proposed settlement of claims brought
5 pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”)
6 set forth in the Parties’ Private Attorneys General Act (Cal. Labor Code § 2698 *et seq.*) Settlement
7 Agreement (the “Settlement Agreement”); (2) appointing Phoenix Settlement Administrators as the
8 Settlement Administrator and approving payment of its fees not to exceed \$7,950 from the Gross
9 Settlement Amount; (3) directing disbursement of the Gross Settlement Amount pursuant to the
10 terms of the Settlement Agreement; (4) directing payment of attorneys’ fees and litigation costs
11 from the Gross Settlement Amount not to exceed \$64,281.11 to Plaintiff’s counsel; (5) directing a
12 service award from the Gross Settlement Amount in the amount of \$5,000 to Plaintiff Stephanie
13 Becerra; (6) authorizing the filing of the second amended complaint; and (7) entering judgment
14 thereon.

15 This motion will be based on this Notice, the supporting memorandum of points and
16 authorities, the Parties’ Settlement Agreement, the Declarations of Daniel F. Gaines, Plaintiff
17 Stephanie Becerra, the documents and records on file in this matter, and such additional arguments,
18 authorities, and evidence and other matters as may be presented by the Parties hereafter.

19 Date: April 5, 2024

Respectfully submitted,

GAINES & GAINES, APLC

22 By: *Daniel F. Gaines*
23 DANIEL F. GAINES
24 ALEX P. KATOFISKY
25 Attorneys for Plaintiff Stephanie Becerra

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. STATEMENT OF THE CASE AND SETTLEMENT	3
A. The Parties.....	3
B. The Claims Asserted	3
C. Procedural Posture	4
D. Plaintiff's Counsel's Investigation.....	4
E. Settlement Negotiations	8
F. The Proposed Settlement.....	9
III. LEGAL ARGUMENT	11
A. Standards for Approval of A PAGA Settlement.....	11
B. The Settlement Meets All the Criteria For Approval.....	13
1. The Factors Giving Rise to a Presumption of Fairness Exist.....	14
2. The Relative Strength Of The PAGA Claim, and the Realistic Range of Outcomes In The Litigation, Strongly Favor Approval of the Settlement.....	14
3. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor of Approval of the Settlement.....	17
4. The Benefits Conferred by the Settlement Balance in Favor of Approval.....	17
5. The Scope of the Release is Narrowly Tailored.....	19
6. The Experience and Views of Plaintiff's Counsel Favor Approval of the Settlement	19
7. The Extent of Discovery Completed And The Stage of The Proceedings Favor Approval of the Settlement	19
8. Additional Factors Weigh In Favor of Finding The Terms of The Proposed Settlement To Be Fair, Adequate, And Reasonable.....	20
IV. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER THEIR REASONABLE FEES AND COSTS.....	20
A. Plaintiff's Counsel Are Entitled To Recover Their Reasonable Fees And Costs As A Matter Of Right.....	21

TABLE OF CONTENTS
(continued)

	<u>Page</u>
B. The Fee Amount Requested Is Reasonable	23
C. The Fee Amount Allocated by The Settlement Agreement Is Within the Zone of Reasonableness Under the “Percentage of the Fund” Method	24
D. While the Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the Common Fund, It is Further Confirmed by a Lodestar Cross-Check	25
E. Plaintiff’s Counsel’s Request for Costs is Reasonable	28
V. THE SERVICE PAYMENT SOUGHT BY PLAINTIFF IS REASONABLE AND SHOULD BE APPROVED	28
VI. PLAINTIFF SHOULD BE PERMITTED TO FILE HER SECOND AMENDED COMPLAINT	30
VII. CONCLUSION	30

TABLE OF AUTHORITIES

Page

FEDERAL CASES

<i>Anderson v. Nextel Retail Stores, LLC</i> 2010 U.S. Dist. LEXIS 43377, 44 (C.D. Cal. Apr. 12, 2010).....	14
<i>Bernstein v. Virgin Am., Inc.</i> 3 F.4th 1127, 1144 (9th Cir. 2021)	15, 16
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472, 478	21
<i>Cardenas v. McLane Foodservice, Inc.</i> 2011 WL 379413, at *4 (C.D. Cal. Jan. 31, 2011).....	10
<i>Casida v. Sears Holdings Corp.</i> 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan. 25, 2012).....	13
<i>City of Detroit v. Grinnell Corp.</i> 495 F.2d 448, 455 & n.2 (2 nd Cir. 1974)	17
<i>Franco v. Ruiz Food Prods.</i> 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012).....	18
<i>Garcia v. Gordon Trucking, Inc.</i> 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal. Oct. 29, 2012).....	18
<i>Gong-Chun v. Aetna Inc.</i> 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11, 2012)	18, 19
<i>In re GNC Shareholder Litigation</i> 668 F. Supp. 450, 452 (W.D. Pa. 1987)	28
<i>In re Rite Aid Corp. Securities Litigation</i> 396 F.3d 294, 300 (3d Cir. 2005)	26
<i>In re Sumitomo Copper Litig.</i> 74 F. Supp. 2d 393, 396-398 (S.D.N.Y. 1999)	21, 23
<i>In re TD Ameritrade Account Holder Litig.</i> 2011 U.S. Dist. LEXIS 103222, 24 (N.D. Cal. Sept. 12, 2011)	12
<i>In re United Energy Corp. Sec. Litig.</i> (C.D. Cal. 1989) 1989 WL 7321	28

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
<i>Kinney v Harvest AL Management Sub LLC</i> 2013 WL 12415482 (E.D. Cal., Sep. 6, 2013)	28
<i>Linney v. Cellular Alaska P'ship</i> 151 F.3d 1234, 1242 (9th Cir., 1998).....	12, 18, 19
<i>Martin v. AmeriPride Servs.</i> 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011)	23, 25
<i>Mendez v. Tween Brands, Inc.</i> 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010).....	13
<i>Mills v. Electric Auto-Lite Co.</i> (1970) 396 U.S. 375, 391-392.....	21
<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> 221 F.R.D. 523 (C.D. Cal. 2004)	13
<i>Ochoa-Hernandez v. CJADER Foods, Inc.</i> 2010 U.S. Dist. LEXIS 32774, 12 (N.D. Cal. Apr. 2, 2010)	13
<i>Officers for Justice v. Civil Service Com.</i> 688 F.2d 615, 624 (9 th Cir., 1982).....	12, 17
<i>Rodriguez v. West Publishing Corp.</i> 563 F.3d 948, 959 (9th Cir. 2009).....	28
<i>Romo v. GMRI, Inc.</i> 2014 WL 11320647, at *7 (C.D. Cal. Feb. 18, 2014).....	15
<i>Sandoval v. Roadlink United States Pac., Inc.</i> 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal. Nov. 9, 2011)	19
<i>Schiller v. David's Bridal, Inc.</i> 2012 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012).....	18, 23
<i>Thomas v. Aetna Health of Cal., Inc.</i> 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2, 2011).....	13
<i>Vasquez v. Coast Valley Roofing, Inc.</i> 266 F.R.D. 482, 492 (E.D. Cal. 2010)	24

TABLE OF AUTHORITIES
(continued)

Page

CALIFORNIA CASES

<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157, 1209	16
<i>Arias v. Superior Court</i> (2009) 46 Cal. 4th 969, 986	10, 19
<i>Bank of America v. Cory</i> (1985) 164 Cal.App.3d 66, 89-92	22
<i>Bright v. 99c Only Stores</i> (2010) 189 Cal. App. 4th 1472, 1480 n.8	15
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43, 66	27
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105, 110-111	22
<i>City of Oakland v. Oakland Raiders</i> (1988) 203 Cal.App.3d 78.....	27
<i>Clark v. American Residential Services LLC</i> (2009) 175 Cal.App.4th 785, 804-806	29
<i>Coalition for L. County Planning etc. Interest v. Bd. of Supervisors</i> (1977) 76 Cal.App.3d 241, 251.....	27
<i>Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545, 557	27
<i>Crandall v. U-Haul International, Inc.</i> LASC Case No. BC178775	25
<i>D'Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1	21
<i>Estate of Jackson</i> (1979) 92 Cal.App.3d 486, 489.....	11
<i>Estrada v. FedEx Ground Package System, Inc.</i> (2007) 154 Cal. App. 4th 1, 16-17	23

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
<i>Glendale City Employees' Association v. City of Glendale</i> (1975) 15 Cal.3d 328, 341	21, 22
<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal. 4th 553, 579-580	25
<i>Gunther v. Alaska Airlines, Inc.</i> (2021) 72 Cal.App.5th 334, 340	16
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1132-36	25, 27
<i>Knoff v. City and County of San Francisco</i> (1969) 1 Cal.App.3d 184, 203-204	22
<i>Laffitte v. Robert Half Int'l, Inc.</i> (2016) 1 Cal.5th 480, 506	25, 26, 27
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19, 30-31	23
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal. App. 5th 56, 77	12
<i>Quinn v. State of California</i> (1995) 15 Cal.3d 162, 167	21, 22
<i>Rawlings v. Prudential-Bache Properties, Inc.</i> (6th Cir. 1993) 9 F.3d 513, 516.....	26
<i>Rider v. County of San Diego</i> (1992) 11 Cal.App.4th 1410, 1423	22
<i>Serrano v. Priest ("Serrano III")</i> (1977) 20 Cal.3d 25, 34	21, 22
<i>Serrano v. Unruh</i> (1982) 32 Cal.3d 621, 627	26
<i>Thayer v. Wells Fargo Bank</i> (2001) 92 Cal.App.4th 819, 834	27
STATUTES	
C.C.P. § 382	12, 13

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
Labor Code §§ 201-202	15
Labor Code § 203	8, 22, 27
Labor Code § 226	1, 4, 8, 15
Labor Code § 226.3	8, 16
Labor Code § 226.7	<i>passim</i>
Labor Code § 510	<i>passim</i>
Labor Code § 512	1, 3, 4, 6, 7
Labor Code § 558	<i>passim</i>
Labor Code § 1194	<i>passim</i>
Labor Code § 2698	2, 9, 19
Labor Code § 2699	2, 4, 16, 18, 23, 30

RULES AND REGULATIONS

Cal. R. Ct. 3.769	12, 13
Fed R. Civ. P. 23 (“Rule 23”)	12

OTHER AUTHORITIES

2 Newberg, <i>Attorney Fee Awards</i> , § 2.19 (1987)	28
---	----

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Stephanie Becerra (“Plaintiff”) and aggrieved employees under the Labor Code’s
4 Private Attorneys General Act of 2004 (“PAGA”) respectfully move this Court for an Order
5 granting approval of the proposed Settlement of the above-captioned lawsuit against Defendant
6 Citrus Village GC, Inc. (“Defendant”). The proposed Settlement will dispose of the Released
7 Claims asserted on behalf of Plaintiff and approximately 283 current and former non-exempt
8 employees who worked for Citrus Village in the State of California from January 26, 2022 through
9 December 12, 2023 (the “PAGA Period”) (the “Aggrieved Employees”). *See* Settlement
10 Agreement, at §§ 13, 15.

11 This case addresses claimed violations of employee protections embodied in the California
12 Labor Code and penalties stemming therefrom for the violation of the PAGA. Plaintiff alleged that
13 Defendant failed to: (1) pay all wages due to Plaintiff and other Aggrieved Employees by making
14 unlawful deductions from their wages, in violation of Labor Code §§ 221, 224, 225.5, 510, and
15 1194; (2) properly blend bonuses and other non-base hourly wages, including, but not limited to,
16 travel incentive wages, earned by Plaintiff and other Aggrieved Employees into their regular rate
17 of pay for purposes of paying them meal and rest period premiums, overtime wages, and sick pay
18 wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194; (3)
19 pay Plaintiff and other Aggrieved Employees all overtime wages due during the course of
20 employment, in violation of Labor Code §§ 510, 558, and 1194; (4) pay correct premium wages to
21 Plaintiff and other Aggrieved Employees who were denied off-duty rest periods, in violation of
22 Labor Code § 226.7 and IWC Wage Order No. 2-2001; (5) pay correct premium wages to Plaintiff
23 and other Aggrieved Employees who were denied proper meal periods, in violation of Labor Code
24 §§ 226.7, 512, and 558, and IWC Wage Order No. 2-2001; (6) provide Plaintiff and other Aggrieved
25 Employees with wage statements that fully and accurately itemized the requirements set forth in
26 Labor Code § 226(a); and (7) timely pay Plaintiff and other Aggrieved Employees all wages due at
27
28

1 the separation of their employment based on the time frames required by Labor Code §§ 201 and
2 202.

3 As a result of Defendant's alleged violations of the Labor Code, approximately 283
4 employees are claimed to have suffered Labor Code violations for up to 6,797 aggregate pay
5 periods at the rate of \$100 each based on PAGA's penalty provisions. Gaines Decl., ¶ 30.

6 As discussed throughout the Motion, this Settlement achieves great value for Plaintiff,
7 Aggrieved Employees, and the State of California. While Defendant's potential liability could be
8 up to \$1,528,000, if penalties were stacked [*see* Motion at § II(D)], there is no California authority
9 that expressly permits the practice of stacking penalties [*see* Motion at § III(B)(2)]. Additionally,
10 Courts have held that a defendant may not be subject to heightened penalties if it was not notified
11 by the Labor Commissioner or any court in California that it was subject to the California Labor
12 Code [*see id.*]. Therefore, the more accurate measure of Defendant's potential liability is to multiply
13 the 6,797 aggregate pay periods by \$100 each, which totals approximately \$679,700 in theoretical
14 exposure. *See* Gaines Decl. at ¶ 35.

15 In deciding whether to grant approval of the proposed Settlement, the primary issue to be
16 decided is whether the Settlement is fair, adequate and reasonable. As set forth herein, the proposed
17 Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is
18 the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and
19 hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative
20 strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on
21 the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and
22 likely duration of further litigation.

23 The value achieved by the Settlement may be gleaned from the fact that the Labor and
24 Workforce Development Agency ("LWDA") and the approximately 283 Aggrieved Employees
25 encompassed by the Settlement will receive no less than \$67,768.89 under the terms of the
26 Settlement, which, pursuant to the operative statute, shall be allocated "75 percent to the Labor and
27 Workforce Development Agency . . . and 25 percent to the Aggrieved Employees." *See* Cal. Lab.
28 Code § 2699(i). This is a reasonable recovery, not only because further litigation may have resulted

1 in a net-zero recovery based on the defenses available to Defendant, but because the amount secured
2 by Plaintiff is sizable and in line with similar settlements of these types of claims under PAGA. It
3 is also important to underscore that all penalty amounts paid to Aggrieved Employees will be an
4 unexpected windfall, as employees typically do not bring individual lawsuits asserting only PAGA
5 penalties. Such employees preserve their right to assert claims against Defendant for unpaid wages
6 and statutory penalties.

7 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this
8 Court enter the Order submitted herewith.

9 **II. STATEMENT OF THE CASE AND THE SETTLEMENT**

10 **A. The Parties**

11 Defendant operates Great Clips franchises, which provide hairstyling and related services.
12 Gaines Decl. at ¶ 8.

13 Plaintiff was employed by Defendant from October 2021 through September 2022 as a non-
14 exempt employee in Victorville, California (San Bernardino County). The Aggrieved Employees
15 are all individuals who were employed by Defendant in California as hourly non-exempt employees
16 at any time from January 26, 2022 through December 12, 2023. Gaines Decl. at ¶ 9.

17 **B. The Claims Asserted**

18 Plaintiff asserts claims that Defendant failed to: (1) pay all wages due to Plaintiff and other
19 Aggrieved Employees by making unlawful deductions from their wages, in violation of Labor Code
20 §§ 221, 224, 225.5, 510, and 1194; (2) properly blend bonuses and other non-base hourly wages,
21 including, but not limited to, travel incentive wages, earned by Plaintiff and other Aggrieved
22 Employees into their regular rate of pay for purposes of paying them meal and rest period
23 premiums, overtime wages, and sick pay wages at the correct rates, in violation of Labor Code §§
24 226.7, 246, 510, 512, 558, and 1194; (3) pay Plaintiff and other Aggrieved Employees all overtime
25 wages due during the course of employment, in violation of Labor Code §§ 510, 558, and 1194; (4)
26 pay correct premium wages to Plaintiff and other Aggrieved Employees who were denied off-duty
27 rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 2-2001; (5) pay correct
28 premium wages to Plaintiff and other Aggrieved Employees who were denied proper meal periods,

1 in violation of Labor Code §§ 226.7, 512, and 558, and IWC Wage Order No. 2-2001; (6) provide
2 Plaintiff and other Aggrieved Employees with wage statements that fully and accurately itemized
3 the requirements set forth in Labor Code § 226(a); and (7) timely pay Plaintiff and other Aggrieved
4 Employees all wages due at the separation of their employment based on the time frames required
5 by Labor Code §§ 201 and 202. Plaintiff asserts these claims under PAGA, on behalf of herself,
6 individually, and on behalf of the State of California and other Aggrieved Employees, seeking civil
7 penalties for the alleged Labor Code violations. Gaines Decl. at ¶ 10.

8 Defendant has generally and specifically denied Plaintiff's claims and the proposition that
9 any PAGA penalties should be awarded in this action. Nonetheless, following a substantial
10 exchange of information and payroll records, the parties agreed to participate in mediation, before
11 an experienced PAGA mediator, and ultimately reached a mutually acceptable settlement, subject
12 to Court approval, which has been reduced to writing in the Settlement Agreement. Gaines Decl.
13 at ¶ 11.

14 **C. Procedural Posture**

15 On January 26, 2023, March 2, 2023, March 7, 2023, and November 1, 2023, pursuant to
16 Labor Code section 2699.3, Plaintiff gave written notice by online filing with the LWDA and by
17 certified mail, return receipt requested, to Defendant of the specific provisions of the Labor Code
18 alleged to have been violated, including the facts and theories to support the alleged violation.
19 Gaines Decl., ¶ 6; **Exhibit B** (LWDA Notice Letters). On April 6, 2023, and after the LWDA
20 declined to take action within the statutorily permissible time with respect to Plaintiff's January 26,
21 2023 letter, Plaintiff filed her representative action complaint in this Court. Thereafter, Plaintiff
22 filed a first amended complaint on May 18, 2023 to clarify the claims alleged. As part of this
23 motion, Plaintiff seeks to file a Second Amended Complaint to assert all claims to be released in
24 the Settlement. Gaines Decl., ¶ 7.

25 **D. Plaintiff's Counsel's Investigation**

26 Counsel for Plaintiff engaged in targeted, informal discovery of Defendant's alleged Labor
27 Code violations, which specifically evaluated the strength and value of the PAGA claims in
28 preparation for a resolution of this Action. Gaines Decl. at ¶ 13.

1 Plaintiff's Counsel obtained and reviewed multiple documents, including (i) Plaintiff's
2 wage statements, (ii) policy documents relating to the employment of Plaintiff and Aggrieved
3 Employees, and (iii) data relating to the number of alleged violations and the value of the
4 recoverable penalties, including time and payroll data. Gaines Decl. at ¶ 14.

5 The Parties have independently analyzed and investigated the facts and law relevant to this
6 case through informal discovery and substantial pre-mediation disclosures, including, but not
7 limited to, the employment policies, procedures, and practices implicated by the Complaints and/or
8 the LWDA Letters; a 25% sampling of all timekeeping and payroll records for employees on whose
9 behalf the Complaints and/or the LWDA Letters are asserted by Plaintiff; and summaries of data
10 pertaining to the number of employees allegedly affected by the policies, procedures, and practices
11 implicated by the Complaints and/or the LWDA Letters. Gaines Decl. at ¶ 15.

12 Based on the information received, as well as through discussions with Defendant's
13 Counsel, Plaintiff's Counsel was able to (i) determine the total number of distinct individuals falling
14 within the definition of "Aggrieved Employee" for the relevant statutory period, (ii) the number of
15 affected pay periods at issue among them, and (iii) construct a damage model that calculated the
16 maximum realistic amount of PAGA penalties that could be levied against Defendant within the
17 PAGA Period based on employee timekeeping and payroll data produced by Defendant. Gaines
18 Decl. at ¶ 16. At all relevant times, Defendant has disputed Plaintiff's claims and contested both
19 the existence of and extent of liability as alleged by Plaintiff. *Id.*

20 Plaintiff's Counsel's experience in litigating similar "representative" wage and hour claims,
21 the degree of investigation that was conducted here, the amount of data that was obtained, and the
22 discussions guided by mediation was sufficient to determine the potential value of the PAGA claim
23 and to evaluate the strength of this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-5, 17.
24 Defendant, however, disputed Plaintiff's claims and disputed both the existence of and extent of
25 liability as alleged by Plaintiff.

26 Prior to settlement, Plaintiff's Counsel, with the assistance of an expert statistician, Bennett
27 Berger of Berger Consulting Group, created the above comprehensive damage analysis using
28 sampling information obtained through informal discovery. This damage analysis reveals that the

1 negotiated settlement falls within a realistic range of recovery on Aggrieved Employees' claims.
2 Gaines Decl. at ¶ 18.

3 Plaintiff alleges that Defendant failed to properly blend bonuses and other non-base hourly
4 wages, including, but not limited to, travel incentive wages, earned by Plaintiff and other Aggrieved
5 Employees into their regular rate of pay for purposes of paying them meal and rest period
6 premiums, overtime wages, and sick pay wages at the correct rates, in violation of Labor Code §§
7 226.7, 246, 510, 512, 558, and 1194. Defendant paid Plaintiff and other Aggrieved Employees
8 bonuses and other non-base hourly wages, including, but not limited to, travel incentive wages;
9 however, Defendant allegedly failed to properly blend these wages, and instead paid Plaintiff and
10 other Aggrieved Employees meal and rest period premiums, overtime wages, and sick pay wages
11 based only on the base hourly rate of pay, thus depriving Plaintiff and other Aggrieved Employees
12 of all meal and rest period premiums, overtime wages, and sick pay wages earned. Gaines Decl. at
13 ¶ 19.

14 California Labor Code § 510 requires the payment of premium overtime compensation
15 based on employees' regular rate of pay. Labor Code § 207(e) defines the "regular rate" to include
16 all remuneration for employment paid to or on behalf of the employee. Gaines Decl. at ¶ 20.
17 California law mirrors federal law on the issue of computation of the regular rate of pay. *See*
18 *Walling v. Youngerman-Reynolds Hardware Co.* (1945) 324 U.S. 419, 424 (explaining that the
19 "regular rate" is "all payments which the parties have agreed shall be received regularly during the
20 workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is
21 an actual fact.") This includes all forms of non-base hourly wages, including bonus wages.

22 Here, when Plaintiff and Aggrieved Employees worked overtime hours, earned meal or rest
23 period premiums, or used sick wage pay, they were paid their base hourly rate instead of the regular
24 rate of pay. The bonus wages and other non-base hourly wages earned by Plaintiff and Aggrieved
25 Employees were not discretionary within the meaning of the applicable regulation (29 U.S.C. §
26 207(e)), and accordingly, must have been included in their regular rate of pay for purposes of
27 determining their proper compensation. Plaintiff and Aggrieved Employees are entitled to PAGA
28 penalties as a result. Plaintiff calculates the PAGA civil liability for this claim at \$84,200. Gaines

Decl. at ¶ 21.

Defendant allegedly failed to permit or authorize Plaintiff and Aggrieved Employees to take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 2-2001. Labor Code § 512 provides that employers (like Defendant) may not employ an employee for a work period of more than 5 hours without providing a 30-minute meal period starting no later than the end of the fifth hour. Plaintiff and Aggrieved Employees were routinely unable to take a proper meal break when they worked shifts in excess of 5 hours in duration and a second meal break when they worked shifts in excess of 10 hours in duration. When Plaintiff and Aggrieved Employees were able to take a meal period, they were often late or cut short. This violates Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 2-2001. Gaines Decl. at ¶ 22.

Based on an analysis of a sampling of Defendant's time and wage data during the PAGA Period, after subtracting all meal period premiums paid (extrapolated from the sampling, Defendant paid 127 meal period premiums, which represents 5.4% of all meal period violations), Defendant's meal period PAGA liability totals \$171,500 based on 2,395 total extrapolated meal period violations (representing a 4.7% violation rate). More than 27% of all pay periods worked include one or more meal period violations. Gaines Decl. at ¶ 23.

Defendant allegedly failed to provide Plaintiff and Aggrieved Employees with legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by Labor Code § 226.7 and Wage Order 2-2001. When they did take their rest periods, they were not completely free of employer control—rest breaks were not scheduled; employees were only allowed to take them when business was “slow” and only then did that time become their rest period. However, if a customer required assistance, employees would be required to cut their breaks short and respond immediately. Furthermore, unlike meal periods, Plaintiff and Aggrieved Employees were never paid premium wages for missed rest periods. This violates Labor Code § 226.7 and IWC Wage Order No. 2-2001. Plaintiff calculates the PAGA civil liability for this claim at up to \$631,500. Gaines Decl. at ¶ 24.

Defendant allegedly failed to issue Plaintiff and Aggrieved Employees accurately itemized

1 wage statements. Specifically, as Aggrieved Employees were not paid all wages due, as detailed
2 above, their wage statements do not state the correct gross wages earned, in violation of Labor Code
3 §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net
4 wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in
5 effect during the pay period and the corresponding number of hours worked, in violation of Labor
6 Code §§ 226(a)(9) and 226.3. Plaintiff calculates the PAGA civil liability for this claim at
7 \$631,500. Gaines Decl. at ¶ 25.

8 Defendant allegedly failed to pay Plaintiff and Aggrieved Employees all wages due upon
9 separation of employment, in violation of Labor Code §§ 201-203. As Defendant failed to pay
10 Plaintiff and Aggrieved Employees all wages due during the course of employment, as discussed
11 above, these wages remained due and owing upon separation of employment. Plaintiff calculates
12 the PAGA civil liability for this claim at \$9,300 (based on 93 former employees). Gaines Decl. at
13 ¶ 26.

14 If Plaintiff stacked penalties, the maximum value of the PAGA claims would be
15 approximately \$1,528,000. However, recovery on these claims was not certain. PAGA claims are
16 discretionary, such that the Court could (and almost certainly would) decline to award their full
17 value. The Court could award far less than the maximum value on these penalty claims, particularly
18 where, as here, they greatly exceed the value of the underlying wage claims. Considering the
19 numerous claims asserted by Plaintiff and the obstacles to prevailing on many of them, it is possible
20 that she would not prevail on one or more of them, such that her PAGA claims as to some or all of
21 her claims would also fail. The compromised settlement amount takes these risks into account. A
22 discount on the maximum value of Aggrieved Employees' claims was required (and warranted) to
23 resolve the matter at this stage of the litigation. Gaines Decl. at ¶ 27.

24 **E. Settlement Negotiations**

25 On August 23, 2023, the Parties participated in a mediation session with a respected
26 mediator and Steve Pearl, Esq. During the mediation, the Parties engaged in arm's-length
27 negotiations and reached a resolution of the PAGA claims asserted in this Action. Gaines Decl. at
28 ¶ 28.

1 **F. The Proposed Settlement**

2 The Parties jointly prepared and executed a Private Attorneys General Act (Cal. Labor Code
3 § 2698 *et seq.*) Settlement Agreement (the “Settlement” or “Settlement Agreement”). Gaines Decl.,
4 ¶ 29; **Exhibit C**. The Settlement Agreement sets forth the terms of the Settlement reached by the
5 Parties, including the following key points:

6 1. Defendant agrees to settle this matter for the payment of \$145,000 (hereinafter the
7 “Gross Settlement Amount”), which shall be all inclusive, encompassing (i) all payments to the
8 LWDA and Aggrieved Employees, (ii) any and all costs of third-party administration of the
9 settlement, (iii) Plaintiff’s Counsel’s attorneys’ fees and costs of suit, and (iv) a modest service
10 payment to Plaintiff.¹

11 2. The total sum available for payment of PAGA penalties shall be calculated by
12 deducting from the \$145,000 Gross Settlement Amount, \$64,101.11 for the payment of Plaintiff’s
13 Counsel’s fees and costs (\$50,750 in fees and \$13,351.11 in costs), \$5,000 for the payment of
14 Plaintiff’s service payment, and the costs of administration not to exceed \$7,950, which yields
15 \$67,768.89, and of which seventy-five percent (75%) or \$50,826.67, shall be distributed to the
16 LWDA, and the remaining twenty-five percent (25%) or \$16,942.22, shall be distributed to the
17 Aggrieved Employees.

18 3. All Aggrieved Employees will receive a pro rata share of the \$16,942.22 allocated
19 to Aggrieved Employees, which shall be distributed based on the number of pay periods each
20 Aggrieved Employee worked for Defendant in California during the PAGA Period. Although these
21 calculations will not be made until after approval, a rough estimation of the value to the
22 approximately 283 individuals falling within the definition of “Aggrieved Employee” may be
23 gleaned from the fact that an equal division would provide about \$59.87 to each Aggrieved
24 Employee, net of payments to the LWDA, the Settlement Administrator, attorney’s fees and costs,
25 and a service payment to Plaintiff. The LWDA will be paid a substantial \$50,826.67. *See* Gaines
26 Decl., at ¶ 31.

27
28 ¹ The Parties have negotiated a separate general release of Plaintiff’s individual claims, for
additional consideration through a separate agreement.

1 4. In exchange for the above settlement consideration, Defendant and the Released
2 Parties shall be entitled to a limited release from each and every Aggrieved Employee, including
3 Plaintiff²:

4 Upon the Effective Date, Plaintiff, as an individual, and as the representative of the
5 PAGA Settlement Employees, the LWDA and the State of California, hereby
6 forever and completely releases and discharges the Released Parties of and from all
7 of the Released Claims, and thus, Plaintiff, the PAGA Settlement Employees,
8 LWDA and the State of California will be forever barred from pursuing any of the
9 Released Claims defined herein against Released Parties which arose during periods
10 of employment in a non-exempt position in California during the PAGA Period. The
11 Parties understand and agree that this release is limited to the Released Claims and
12 does not otherwise impact the individual rights or claims of the PAGA Settlement
13 Employees. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985,
14 a judgment in “a representative action brought by an aggrieved employee under the
15 Labor Code Private Attorneys General Act of 2004 ... is binding not only on the
16 named employee plaintiff but also on government agencies and any aggrieved
17 employee not a party to the proceeding,” which the Final Order shall so reflect.
18 Pursuant to *Arias and Cardenas v. McLane Foodservice, Inc.*, 796 F.Supp.2d 1246
(2011), the Final Order and judgment in this Action shall be binding on the PAGA
Settlement Employees, LWDA, State of California and its agencies as to the
Released Claims which arose during the PAGA Period, regardless of whether their
settlement checks are cashed or not. The Parties further understand and agree that
the continued effectiveness of this PAGA Release is contingent upon Defendant’s
payment of the Gross Settlement Amount. If Defendant defaults on any of its
payment obligations under this Agreement, the PAGA Release set forth in this
paragraph shall become ineffective until such default is cured in full (the “Released
Claims”).

18 *See* Settlement Agreement, at § III(6).

19 5. Settlement administration, which is to be paid from the Gross Settlement Amount,
20 shall not exceed \$7,950. *See* Declaration of Jodey Lawrence (“Lawrence Decl.”), ¶ 16; **Exhibit B**
21 to Lawrence Decl. Phoenix Settlement Administrators, a reputable settlement administration
22 company, has agreed to administer the settlement for this amount, submitting a competitive bid.
23 *Id.* at ¶¶ 5-15; **Exhibit A**.

24 6. As detailed herein, Plaintiff’s counsel seeks an award of attorneys’ fees and
25

26 ² This comports with settled California Supreme Court authority. *See Arias v. Superior Court*
27 (2009) 46 Cal. 4th 969, 986 (concluding that “with respect to the recovery of civil penalties,
28 nonparty employees as well as the government are bound by the judgment in an action brought
under the act . . .”).

1 litigation costs totaling \$64,281.11, and Plaintiff seeks a service payment of \$5,000. *See* Settlement
2 Agreement, at §§ III(4)(a), (c).

3 7. Finally, under the terms of the Settlement Agreement, the value of checks
4 uncashed more than 180 days after issuance shall be remitted to the Unclaimed Property Fund of
5 the California State Controller’s Office to be held in the name of the Aggrieved Employee. *See*
6 Settlement Agreement, at ¶ § IV(4). The Parties agree that it is in the best interest of the Aggrieved
7 Employees for the value of checks uncashed more than 180 days after issuance to be remitted to
8 the Unclaimed Property Fund of the California State Controller’s Office to be held in the name
9 of the Aggrieved Employee. *Id.* Counsel for Plaintiff attests that their office regularly receives
10 calls from class members or aggrieved employees years after a case has settled to inquire about
11 obtaining their settlement share because they did not cash their check in time, lost their check, or
12 never received their check. Gaines Decl. at ¶ 33. By remitting the unclaimed checks to the State
13 Controller, the Aggrieved Employees have a chance to receive their individual settlement
14 payment after the check cashing deadline. *Id.*

15 *Cy pres*, expanded to its “full implication,” is *cy pres comme possible*, which means “as
16 near as possible.” *Estate of Jackson* (1979) 92 Cal.App.3d 486, 489. *Cy pres* “is the doctrine that
17 equity will, when a charity is originally or later becomes impossible, inexpedient, or
18 impracticable of fulfillment, substitute another charitable object which is believed to approach
19 the original purpose as closely as possible.” *Id.* Here, the nearest possibility for the Aggrieved
20 Employees to obtain their recoveries is to allow the uncashed checks to be remitted to the
21 Unclaimed Property Fund of the California State Controller’s Office to be held in the name of
22 the Aggrieved Employee.

23 **III. LEGAL ARGUMENT**

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

25 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
26 statute, which states that the “[t]he superior court shall review and approve any settlement of any
27 civil action filed pursuant to this part.” *See Labor Code* § 2699(1)(2).

28 As with any settlement, the Court must be mindful in conducting its inquiry that

1 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
2 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222,
3 24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding of
4 absolutes and an abandoning of highest hopes”’ [*Officers for Justice v. Civil Service Com.*, 688
5 F.2d 615, 624 (9th Cir., 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
6 of wasteful and expensive litigation that induce consensual settlements.” *See id.*, at 625. As such,
7 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
8 or “judged against a hypothetical or speculative measure of what might have been achieved by the
9 negotiators.” *See id.*

10 Although the operative PAGA statute does not set forth the criteria on which a PAGA
11 settlement is to be judged, California law does state that some of the factors for review of a class
12 action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. section 382 and Cal. Rules of Court,
13 Rule 3.769, may be “useful in evaluating the fairness of a PAGA settlement” to the reviewing court.
14 *See Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56, 77 (“Thus, while PAGA does not require
15 the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for
16 settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public
17 and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors
18 used to evaluate class action settlements bear on a settlement's fairness—including the strength of
19 the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of
20 further litigation, and the settlement amount—these factors can be useful in evaluating the fairness
21 of a PAGA settlement.”) Courts within California have continued to approve settlements of PAGA
22 claims using Rule 23 criteria³. However, it is important to underscore that not all Rule 23 factors

23
24 ³ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
25 balancing of several factors which may include, among others, some or all of the following: [1] the
26 strength of plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further
27 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
28 in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the
experience and views of counsel; [7] the presence of a governmental participant; and [8] the
reaction of the class members to the proposed settlement.” *See Linney v. Cellular Alaska P'ship*,
151 F.3d 1234, 1242 (9th Cir., 1998). “Not all of these factors will apply to every class action
settlement” and “[u]nder certain circumstances, one factor alone may prove determinative in

1 can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered
2 a class action but a law enforcement action, and therefore does not have to meet the requirements
3 of Rule 23.” *See Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan.
4 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2,
5 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010).
6 Based thereon, a court’s review of a PAGA settlement necessarily implicates the following unique
7 features that render the approval process completely distinct from approval of a class action
8 settlement under Rule 23 or C.C.P. § 382 and Cal. Rules of Court, Rule 3.769.

9 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
10 concerned with the amount which “Aggrieved Employees” are to receive, but rather, must focus on
11 the total settlement amount in achieving PAGA’s objective.

12 While “[a PAGA] action is . . . designed to protect the public and penalize the employer for
13 past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take
14 into account the fact that settlement of a PAGA claim – like any settlement – involves a
15 “compromise” that stops short of rendering findings of liability and damages. Moreover, the Court
16 must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for
17 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties
18 for the government that otherwise may not have been assessed and collected by overburdened state
19 enforcement agencies.” *See Ochoa-Hernandez v. CJADER Foods, Inc.*, 2010 U.S. Dist. LEXIS
20 32774, 12 (N.D. Cal. Apr. 2, 2010).

21 **B. The Settlement Meets All the Criteria For Approval**

22 Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA
23 considerations detailed above – the proposed Settlement embodies all of the key features of a
24 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for
25 approval.

26
27
28 finding sufficient grounds for court approval.” *See Nat’l Rural Telcoms. Coop. v. DIRECTV, Inc.*,
221 F.R.D. 523, 525-526 (C.D. Cal., 2004).

1 **1. The Factors Giving Rise to a Presumption of Fairness Exist**

2 In conducting a review of a settlement, it is generally recognized that an “agreement . . .
3 reached through arms-length negotiation between experienced parties . . . is entitled to a
4 presumption of fairness.” *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS
5 43377, 44 (C.D. Cal. Apr. 12, 2010).

6 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-
7 length negotiations brokered through a respected third party neutral [Gaines Decl. at ¶ 25], (2) was
8 negotiated by Counsel with significant experience in similar wage and hour litigation [*see id.*, at ¶¶
9 2-5, 40-44 and **Exhibit A**], (3) which occurred after Counsel had conducted sufficient investigation
10 to evaluate the strength and potential value of the PAGA claims, as well as evaluating the risks of
11 litigating this claim through trial. *See id.*, at ¶¶ 12-24, 44-47. Based thereon, the Court should give
12 considerable weight to the competency and integrity of counsel in assuring itself that the Settlement
13 Agreement represents an arms-length transaction entered without self-dealing or other potential
14 misconduct.

15 **2. The Relative Strength Of The PAGA Claim, And the Realistic Range of**
16 **Outcomes In The Litigation, Strongly Favor Approval of the Settlement**

17 The relative strength of the PAGA claim brought by Plaintiff weighs in favor of the Court
18 finding that the settlement is fair, adequate, and reasonable, as Defendant maintained numerous
19 defenses to the theories of penalty-liability put forward by Plaintiff that, if successful, had the
20 potential to completely eliminate any recovery.

21 This case addresses violations of important employee protections embodied in the
22 California Labor Code – namely, that Defendant failed to properly compute commission wages and
23 other non-base hourly wages earned by Plaintiff and Aggrieved Employees into their regular rate
24 for purposes of paying them overtime and double time wages at the correct rates, in violation of
25 Labor Code §§ 510, 558, and 1194; failed to pay Plaintiff and Aggrieved Employees all minimum
26 wages and overtime wages earned, in violation of Labor Code §§ 510, 558, and 1194; failed to pay
27 Plaintiff and Aggrieved Employees all overtime and double-time wages due, in violation of Labor
28 Code §§ 510, 558, and 1194; failed to provide Plaintiff and Aggrieved Employees with legally

1 compliant rest periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7, 510,
2 558, and 1194; failed to provide Plaintiff and Aggrieved Employees with legally compliant meal
3 periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7, 510, 558, and 1194;
4 failed to issue accurately itemized wage statements to Plaintiff and Aggrieved Employees, in
5 violation of Labor Code §§ 226(a); failed to pay Plaintiff and Aggrieved Employees all accrued,
6 but unused vacation wages both during and at the separation of employment, in violation of Labor
7 Code §§ 201-202; and failed to timely pay Plaintiff and Aggrieved Employees all wages due at the
8 separation of their employment, in violation of Labor Code §§ 201-202. *See* Gaines Decl. at ¶ 34.

9 As discussed in Section II(D) above, Defendant’s realistic maximum theoretical exposure
10 in this Action, without stacking penalties, totals approximately \$679,700 computed by multiplying
11 6,797 aggregate pay periods by \$100 each. *See* Gaines Decl. at ¶ 35. There is no California
12 authority that expressly permits the practice of counting multiple violations/penalties that occur
13 within the same pay period, known as “stacking” penalties. Plaintiff’s Counsel is aware of no court
14 that has actually stacked such PAGA penalties for multiple violations (meaning the “market” for
15 PAGA settlements is based on no stacking of penalties) and given the circumstances of this case, it
16 is unlikely that this Court would impose a massive penalty by stacking the PAGA penalty claims
17 against Defendant. *Id.* Although stacking penalties is not unlawful, the majority of cases that
18 address awards of PAGA penalties focus on the court’s discretion to reduce awards. *See Romo v.*
19 *GMRI, Inc.*, 2014 WL 11320647, at *7 (C.D. Cal. Feb. 18, 2014) (“The court retains discretion
20 over awards under a PAGA claim”); *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413,
21 at *4 (C.D. Cal. Jan. 31, 2011) (“The PAGA text also provides the Court with the discretion to limit
22 the amount Plaintiffs may recover from the employer.”); *Bright v. 99c Only Stores* (2010) 189 Cal.
23 App. 4th 1472, 1480 n.8 (“The trial court has discretion to award less than the maximum amount
24 of the civil penalty”). Based thereon, the non-stacking/one penalty per pay period is an
25 appropriate evaluation for maximum potential exposure in this case.

26 Additionally, the Ninth Circuit has held that heightened penalties are not appropriate where
27 the defendant was not notified by the Labor Commissioner or any court that it was subject to the
28 California Labor Code. *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021). *See also*

1 *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 340 (reversing heightened penalties
2 awarded by trial court for Labor Code § 226.3 because “the plain language of the statute [Labor
3 Code § 226.3] provides that heightened penalties apply only where the employer fails to provide
4 wage statements or fails to keep required records.”) Further, courts are often hesitant to award a
5 heightened penalty where there is no prior citation by the Labor Commissioner. *See Bernstein* at
6 1144. *See also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (holding that
7 “[u]ntil the employer has been notified that it is violating a Labor Code provision...the employer
8 cannot be presumed to be aware that its continuing underpayment of employee’s is a violation
9 subject to penalties.”) (internal quotations omitted). Defendant was not notified by the Labor
10 Commissioner or any court that it was subject to the California Labor Code, and has not been
11 previously cited by the Labor Commissioner for Labor Code violations. Therefore, any violations
12 prior to Plaintiff’s initial September 11, 2020 LWDA letter are not subject to heightened penalties.
13 *See Gaines Decl.* at ¶ 36.

14 Furthermore, Defendant contends it acted within the requirements of California law at all
15 times as to all Aggrieved Employees. In particular, Defendant contends that it paid all employees
16 all wages due. Defendant also contends that it has compliant meal and rest break practices.
17 Defendant further contends that not every pay period at issue involved an alleged Labor Code
18 violation subject to civil penalties. Moreover, Defendant maintained that even if the Court did
19 award penalties, the Court could and would *substantially* reduce the penalties awarded based on
20 the discretionary factors contained in Labor Code § 2699(e)(2) (“In any action by an aggrieved
21 employee . . . , a court may award a lesser amount than the maximum civil penalty amount specified
22 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
23 result in an award that is unjust, arbitrary and oppressive, or confiscatory.”). *See Gaines Decl.* at ¶
24 37.

25 Based on these disputes, which had the potential to completely eliminate Plaintiff’s
26 recovery, the range of realistic “litigation outcomes” on the Plaintiff’s PAGA claim was defined
27 by a “maximum possible liability” amount of approximately \$1,528,000 [*Gaines Decl.*, ¶ 33], and
28 a net-zero recovery based on the defenses asserted by Defendant. Notwithstanding the existence

1 of such issues, the Settlement achieves a significant benefit – approximately 9.5% recovery of the
2 maximum possible liability. As such, this factor weighs very heavily in favor of resolution by way
3 of the compromise set forth in the Settlement Agreement. Gaines Decl., ¶ 38.

4 **3. The Risk, Expense, and Complexity of Further Litigation Balances**
5 **Strongly in Favor of Approval of the Settlement**

6 Approval of the Settlement Agreement is also appropriate in light of the risk, expense, and
7 complexity of further litigation. As discussed above, the Settlement Agreement takes into
8 consideration the specific factual and legal hurdles faced by Plaintiff in establishing Defendant's
9 penalty-liability in this case, which again, may have resulted in a net-zero recovery. Any recovery
10 on these claims is not certain. And even when liability is found, PAGA claims are discretionary,
11 such that the Court could decline to award their full value. Some of Plaintiff's claims are also
12 derivative, and as such, Plaintiff must prevail on her underlying Labor Code claims in order to
13 prevail on the derivative claims. These risks – when balanced with the fact that the settlement
14 achieved a very significant recovery (as demonstrated below), and that further litigation posed a
15 risk of diminishing such recovery by increasing litigation expenses – weigh strongly in favor of
16 settlement approval.

17 **4. The Benefits Conferred by the Settlement Balance in Favor of Approval**

18 The Settlement Agreement provides a significant monetary benefit that falls well within
19 “the range of an acceptable settlement” under the circumstances, which is the standard on which
20 the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and
21 reasonable even where it only provides a fraction of what could have been obtained at trial:

22 The proposed settlement is not to be judged against a hypothetical or
23 speculative measure of what might have been achieved by the
24 negotiators." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d at
25 625 (emphasis in original). Thus, “the very essence of a settlement is
26 compromise, ‘a yielding of absolutes and an abandoning of highest
27 hopes.’” *Id.* at 624 (citations omitted). As the Second Circuit has
28 pointed out: “The fact that a proposed settlement may only amount
to a fraction of the potential recovery does not, in and of itself, mean
that the proposed settlement is grossly inadequate and should be
disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 &
n.2 (2nd Cir. 1974).

1 *See Linney, supra*, 151 F.3d at 1242.

2 Here, after all deductions are made for administration, a service payment, attorneys' fees
3 and costs, \$67,768.89 will be paid out, of which \$50,826.67 (i.e. 75%) will go to the LWDA, and
4 \$16,942.22 (i.e. 25%) will go to the Aggrieved Employees, as required by Labor Code § 2699(i)
5 ("civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to
6 the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.").
7 *See Settlement Agreement*, at §§ 4.02(a)(1) – (4).

8 This result is exceptional, as settlements of PAGA claims impacting thousands of
9 individuals have been approved as reasonable for amounts far less than the payment in this case.
10 *See e.g., Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27,
11 2012) ("Defendant has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the
12 \$10,000, 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will
13 benefit the class The Court finds that the PAGA payment is set at a reasonable amount, and it
14 shall be approved."); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D.
15 Cal. Oct. 29, 2012) ("GTI agrees to allocate \$10,000 to Plaintiff's PAGA claims, and will pay
16 \$7,500 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports
17 with settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
18 allocation of the Settlement to Plaintiff's PAGA claim."); *Schiller v. David's Bridal, Inc.*, 2012
19 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) ("Pursuant to the Settlement Agreement, the
20 parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .
21 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
22 be approved."); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
23 2012) ("Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
24 California Labor and Workforce Development Agency The Court finds that the PAGA
25 payment is set at a reasonable amount, and it shall be approved.").⁴

26 _____
27 ⁴ Significantly, each of the above-cited actions involved a *higher* number of "aggrieved employees"
28 than at issue here. *See Franco*, 2012 U.S. Dist. LEXIS 169057, 14 ("2,055 Class Members were
ultimately identified"); *Garcia*, 2012 U.S. Dist. LEXIS 160052, at 12 (class comprised of
"approximately 1,869 individuals"); *Schiller*, 2012 U.S. Dist. LEXIS 80776, 16 ("3,327 California

1 Thus, notwithstanding the existence of issues having the potential to completely eliminate
2 recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds
3 typical PAGA awards routinely approved by the courts, but it also recovers monies for Aggrieved
4 Employees which they otherwise would not receive. As such, this factor balances strongly in favor
5 of approval of the Settlement.

6 **5. The Scope of the Release is Narrowly Tailored**

7 As discussed above, the California Supreme Court has concluded that in the context of
8 PAGA “the nonparty employees, because they were not given notice of the action or afforded any
9 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
10 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in
11 exchange for the foregoing consideration is limited to the civil penalties asserted in the Action
12 under Labor Code §§ 2698 *et seq.* *See* Settlement Agreement, at § 6.01. As such, the scope of the
13 release in the Settlement Agreement is narrowly tailored and favors approval of the Settlement.

14 **6. The Experience and Views of Plaintiff’s Counsel Favor Approval of the Settlement**

15 Plaintiff’s Counsel has a significant degree of experience in complex wage and hour
16 litigation. *See* Gaines Decl., ¶¶ 2-5, 44-47, Gaines Decl. at **Exhibit A**. In the view of Plaintiff’s
17 Counsel, the benefit conferred by the proposed Settlement is fair, reasonable, and adequate under
18 the circumstances, as it reflects a reasoned compromise which takes into consideration the risks
19 inherent in this case, which had the potential to completely eliminate recovery. Gaines Decl., ¶¶
20 44-47. As such, this factor balances in favor of approval of the Settlement.

21 **7. The Extent of Discovery Completed And The Stage Of The Proceedings Favor Approval of the Settlement**

22 In evaluating this element, the Court should be mindful that “formal discovery is not a
23 necessary ticket to the bargaining table” [*Linney*, 151 F.3d at 1239], as the relevant consideration
24 is “whether ‘the parties have sufficient information to make an informed decision about
25 settlement.’” *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at
26 26 (C.D. Cal. Nov. 9, 2011).

27
28 Class members were ultimately identified”); *Gong-Chun*, 2012 U.S. Dist. LEXIS 96828, 18 (“2,051
California Class Members were ultimately identified”).

1 Here, the extent of informal discovery conducted was sufficient to enable Plaintiff's
2 Counsel to evaluate the strength and value of the claim for purposes of settlement. Gaines Decl.,
3 ¶¶ 13-18. Prior to mediation, Defendant provided Plaintiff with documents related to the policies
4 and practices at issue in this PAGA action. As discussed above, Plaintiff's Counsel's investigation
5 was sufficient to, among other things, tabulate with precision the total number of alleged Labor
6 Code violations at issue during the PAGA Period and identify the total number of individuals falling
7 within the definition of "Aggrieved Employee" for the PAGA Period.

8 Based on Plaintiff's Counsel's experience litigating wage and hour claims, such
9 investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate
10 the strength of this claim for purposes of settlement. *See* Gaines Decl., ¶¶ 2-5; 41-44.

11 **8. Additional Factors Weigh In Favor Of Finding The Terms Of The Proposed**
12 **Settlement To Be Fair, Adequate, And Reasonable**

13 In addition to the factors presented above, the proposed Settlement does not possess any
14 obvious deficiencies. The Settlement contemplates entry of an Order (submitted concurrently
15 herewith) which approves the Settlement and enters judgment thereon. Section III(8) of the
16 Settlement Agreement authorizes the Court to retain jurisdiction to enforce the Settlement
17 Agreement. This procedure effectively disposes of the Action in its entirety, documents the Court's
18 approval of the Settlement as required by PAGA, and allows for Court intervention if necessary to
19 enforce the terms of the Settlement Agreement. In sum, under the applicable standards for approval
20 of PAGA settlements in California, the settlement in this case meets the standards for approval.

21 **IV. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER THEIR**
22 **REASONABLE FEES AND COSTS**

23 Pursuant to the terms of the Settlement, Plaintiff's Counsel seeks attorneys' fees of 35% of
24 the Gross Settlement Amount (\$50,750) and reimbursement of litigation costs of \$13,531.11,
25 falling within the bounds authorized by the Settlement Agreement. Plaintiff's Counsel's
26 entitlement to an award of attorneys' fees and costs is warranted on multiple independent grounds.
27 Further, the amount of fees requested falls well within the range of reasonableness under applicable
28 standards, as the amount requested constitutes a "percentage of the fund" deemed reasonable in

1 similar wage and hour settlements of this size and approved by California courts, which is not only
2 warranted based on the contingency risk Plaintiff's Counsel has agreed to incur for the benefit of
3 the State of California and Aggrieved Employees, but also based on the significant results achieved,
4 as the Settlement obtains a recovery substantially above the range approved as reasonable by
5 California state and federal courts. Based thereon, Plaintiff's Counsel respectfully requests that the
6 Court enter an order approving the fee and cost amounts requested.

7 **A. Plaintiff's Counsel Are Entitled To Recover Their Reasonable Fees And**
8 **Costs As A Matter Of Right**

9 Plaintiff's Counsel are entitled to recover attorneys' fees and costs under the "common
10 fund" doctrine as a matter of right. As held by the U.S. Supreme Court, "a lawyer who recovers a
11 common fund for the benefit of persons other than herself or his client is entitled to a reasonable
12 attorney's fee from the fund as a whole." *See Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.

13 Courts have long recognized the "common fund" or "common benefit" doctrine, under
14 which attorneys who create a common fund or benefit for a group of persons may be awarded their
15 fees and costs to be paid out of the fund. *Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25,
16 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
17 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
18 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
Auto-Lite Co. (1970) 396 U.S. 375, 391-392.

19 The California Supreme Court has held that, "when a number of persons are entitled in
20 common to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all
21 results in the creation or preservation of that fund, such Plaintiff or Plaintiffs may be awarded
22 attorneys' fees out of the fund." *Serrano III, supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d
23 1; *see also Boeing, supra*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit
24 of persons other than herself or his client is entitled to a reasonable attorney's fee from the fund as
25 a whole."); *Mills, supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common
26 fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter
27 Group) at § 17:172.3 explains the common fund doctrine as follows:

28 Where the lawsuit results in the recovery of a fund or property

1 benefiting others as well as Plaintiffs (e.g., a class action), the court
2 has inherent equitable power to order Plaintiffs' attorney fees paid
3 out of the common fund or property [citations]. Such fee spreading
4 assures that all of those benefited by the litigation pay their fair share
5 of obtaining the recovery.

6 The percentage-of-the-fund approach appears to be the preferred method of awarding fees
7 in traditional common fund cases, such as this case. Where the settlement amount is a "certain or
8 easily calculable sum of money," use of the percentage-of-the-fund method is appropriate. *Serrano*
9 *III*, 20 Cal. 3d at 35.

10 In *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341
11 fn.19, the California Supreme Court upheld an attorney's fee award based on a percentage of the
12 common benefit obtained in a lawsuit by a city employee's association for retroactive wages:

13 It is not necessary to find this suit a proper class action in order to
14 uphold the portion of the judgment awarding counsel for Plaintiffs
15 25 percent of all retroactive salaries and wages received. That award
16 may be sustained under the rule that a litigant who creates a fund in
17 which others enjoy beneficial rights may require those beneficiaries
18 to pay their fair share of the expense of litigation. (*See Sprague v.*
19 *Ticonic National Bank* (1939) 307 U.S. 161, 159; *Estate of Stauffer*
20 (1959) 53 Cal.2d 124, 132).

21 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court
22 stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which
23 others derive benefits may require those passive beneficiaries to bear a fair share of the litigation
24 costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111,
25 the California Supreme Court recognized that the common benefit doctrine has been applied
26 "consistently in California when an action brought by one party creates a fund in which other
27 persons are entitled to share."

28 Numerous appellate courts have ruled similarly. *See e.g., Knoff v. City and County of San*
Francisco (1969) 1 Cal.App.3d 184, 203-204 (court upheld a "contingent percentage" award of
attorneys' fees in a representative action as the proper exercise of the court's broad equitable
powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys' fees and
expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
Bank of America v. Cory (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit

1 created by action compelling state to claim dormant bank accounts).

2 Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth,
3 Tenth, Eleventh and the D.C. Circuit—have endorsed the “percentage fee” method for determining
4 reasonable attorneys’ fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.* 74 F.
5 Supp. 2d 393, 396-398 (S.D.N.Y. 1999) (describing the overwhelming weight of federal authority
6 in favor of the percentage fee method); *see also, Lealao v. Beneficial California, Inc.* (2000) 82
7 Cal.App.4th 19, 30-31 (describing same).

8 Thus, as Plaintiff’s Counsel has expended a significant amount of time and money to secure
9 a \$145,000 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S. Dist.
10 LEXIS 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees have
11 resulted in the preservation or recovery of a certain or easily calculable sum of money-out of which
12 sum or ‘fund’ the fees are to be paid.”)], and in doing so, has exclusively borne the risk of loss for
13 such expenditures of time and expenses (as the LWDA elected not to take the case after receiving
14 the PAGA Notice), Plaintiff’s Counsel is entitled to claim reasonable fees from that fund under
15 applicable precedent.⁵

16 **B. The Fee Amount Requested Is Reasonable**

17 In addition to the forgoing, Plaintiff’s Counsel’s request for attorneys’ fees in the amount
18 of 35% of the \$145,000 Gross Settlement Amount falls well within the “zone of reasonableness.”
19 It is important to highlight at the outset that the fee amount presently sought is not extraordinary,
20 but actually falls at the “average” fee deemed reasonable under California State court authority, as
21 it is recognized that “courts may award attorney’s fees in the 30-40% range in wage and hour class
22 actions that result in recovery of a common fund under \$10 million.” *See e.g., Martin v. AmeriPride*

23 ⁵ Plaintiff’s Counsel is also entitled to recover attorney’s fees and costs as a matter of right under
24 the PAGA statute [*Labor Code* § 2699(g)(1) (“Any employee who prevails in any action shall be
25 entitled to an award of reasonable attorney’s fees and costs.”)], and under *C.C.P.* § 1021.5, as the
26 instant PAGA action was by definition “for the public benefit” and secured monetary awards for
27 approximately 300 aggrieved employees. *See e.g., Estrada v. FedEx Ground Package System, Inc.*
28 (2007) 154 Cal.App.4th 1, 16-17 (2007) (“Estrada’s personal motivation does not diminish the fact
that he pursued this public interest class action not only for himself but on behalf of a class
comprised of FedEx’s past and present drivers and ultimately obtained awards for 209 drivers. []
No more is required to satisfy the ‘significant benefit,’ ‘public interest,’ and ‘large class of persons’
requirements of Code of Civil Procedure section 1021.5.”).

1 *Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). This fee falls directly within
2 that range.

3 Moreover, Plaintiff's Counsel agreed to incur the contingency risk for the benefit of the
4 State of California (which elected not to take the case after receiving the PAGA Notice). Gaines
5 Decl., ¶¶ 44-47. The significant results achieved, and the underlying facts therefrom, justify
6 Plaintiff's Counsel's requested fee as reasonable under all applicable standards.

7 **C. The Fee Amount Allocated by The Settlement Agreement Is Within the**
8 **Zone of Reasonableness Under the "Percentage of the Fund" Method**

9 The amount of fees requested by Plaintiff's Counsel is reasonable based on standards
10 applicable to the "percentage of the fund" method. "When assessing whether the percentage
11 requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of
12 litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the
13 financial burden; and (f) the awards made in similar cases." *See Vasquez v. Coast Valley Roofing,*
14 *Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

15 First, the results achieved by Plaintiff's Counsel are significant as Defendant has agreed to
16 pay \$145,000 under the Settlement. This is a significant recovery given the risks associated with
17 obtaining any recoverable penalties. Gaines Decl., ¶¶ 13-29. Further, the settlement of PAGA
18 claims impacting a comparable number of individuals have been approved as reasonable for
19 between \$7,500.00 and \$15,000.00. *See* Section III.B.4., *supra*.

20 Second, such results were achieved in the face of significant risks. As explained above,
21 Defendant maintained defenses to Plaintiff's PAGA claims that very well could have resulted in a
22 net-zero recovery at trial.

23 Third, notwithstanding this risk of loss, Plaintiff's Counsel undertook representation of the
24 instant PAGA claim for the benefit of the State of California on a contingency basis. *See* Gaines
25 Decl. at ¶¶ 41-44. This required Plaintiff's Counsel to personally assume the risk of nonpayment
26 in securing the substantial financial benefit the State of California stands to receive, and also
27 constitutes a "loan" on Plaintiff's Counsel services – both of which are factors that warrant fee
28 service payment under applicable California Supreme Court authority:

1 One of the most common fee enhancers . . . is for contingency risk.
2 We reaffirmed the propriety of a contingency risk enhancement in
3 Ketchum: “The economic rationale for fee enhancement in
4 contingency cases has been explained as follows: ‘A contingent fee
5 must be higher than a fee for the same legal services paid as they are
6 performed. The contingent fee compensates the lawyer not only for
7 the legal services he renders but for the loan of those services. The
8 implicit interest rate on such a loan is higher because the risk of
9 default (the loss of the case, which cancels the debt of the client to
10 the lawyer) is much higher than that of conventional loans.’ (Posner,
11 Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) ‘A lawyer
12 who both bears the risk of not being paid and provides legal services
13 is not receiving the fair market value of his work if he is paid only
14 for the second of these functions. If he is paid no more, competent
15 counsel will be reluctant to accept fee award cases.”

16 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579-580.

17 Finally, the percentage requested by Plaintiff’s Counsel falls within a typical range,
18 particularly in light of the modest settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796,
19 23 (“[C]ourts may award attorney’s fees in the 30-40% range in wage and hour class actions that
20 result in recovery of a common fund under \$10 million.” *See also Crandall v. U-Haul*
21 *International, Inc.*, LASC Case No. BC178775 (awarding attorneys’ fees of 40% of a common
22 fund).

23 Attorneys’ fee awards in the amount sought here are well-established by California law and
24 practice. Accordingly, Plaintiff’s Counsel’s fee request is fair and reasonable, and is consistent with
25 the awards in California and the Ninth Circuit. It is also reasonable given the history of this action
26 and the results obtained.

27 **D. While the Requested Award of Attorneys’ Fees is Reasonable as a**
28 **Percentage of the Common Fund, It is Further Confirmed by a**
Lodestar Cross-Check

29 The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* (2016) 1
30 Cal.5th 480, 506, that “[t]he percentage of fund method survives in California class action cases.”
31 Specifically, the *Laffitte* Court held:

32 The recognized advantages of the percentage method—including relative
33 ease of calculation, alignment of incentives between counsel and the class, a
34 better approximation of market conditions in a contingency case, and the
35 encouragement it provides counsel to seek an early settlement and avoid
36 unnecessarily prolonging the litigation—convince us the percentage method
37 is a valuable tool that should not be denied our trial courts.

1 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when
2 a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff
3 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or
4 plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d
5 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties, the trial
6 court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v.*
7 *Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
8 method for calculating attorneys’ fees more accurately reflects the results achieved for the putative
9 class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’
10 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
11 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
12 percentage-of-recovery method is generally favored in common fund cases because it allows courts
13 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
14 failure.’”).

15 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with
16 tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar
17 (hours worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed
18 to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-
19 06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold
20 further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the
21 court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to
22 evaluate the reasonableness of a requested percentage fee.”)

23 Here, Plaintiff’s Counsel’s fee request of 35% of the Gross Settlement Amount is fair and
24 reasonable based on a percentage of the recovery, and as well as when confirmed with a lodestar
25 cross-check. This is also consistent with Plaintiff’s Counsel’s experience in similar wage and hour
26 class action matters. *Gaines Decl.*, ¶¶ 2-5; 44-47. Thus, the percentage sought by Plaintiff’s
27 Counsel here is reasonable.

28 Next, as stated, under the lodestar method the court computes the “lodestar” amount by

1 multiplying the number of hours reasonably expended by each attorney or legal staff member by
2 their reasonable hourly rates. *See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 48. The court then
3 enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty
4 and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49;
5 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92
6 Cal.App.4th 819, 834 (“There is no hard-and-fast rule limiting the factors that may justify an
7 exercise of judicial discretion to increase or decrease a lodestar calculation”).

8 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
9 *Chavez, supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of*
10 *Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (approving multiplier of ~2.34); *Coalition*
11 *for L. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving
12 multiplier of ~2.04). In representative actions such as this one, where the value of the benefit
13 conferred to the class “can be monetized with a reasonable degree of certainty,” a court may “adjust
14 the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
15 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
16 litigation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557. In doing so, “the court
17 determines, retrospectively, whether the litigation involved a contingent risk or required
18 extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate
19 the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at 503-05.

20 In this case, Plaintiff’s Counsel is submitting an attorney fee request equaling \$50,750.
21 Based on a projected final lodestar of \$47,815, this yields a multiplier” of approximately 1.06 over
22 the \$50,750 fee request. Gaines Decl., ¶ 39; **Exhibit D** to Gaines Decl. The billing rates used to
23 compute the lodestar are reasonable in view of the evidence submitted herewith. Gaines Decl., ¶¶
24 2-5; 39; **Exhibit D**.

25 Based thereon, and for the reasons discussed above (the significant risk in continuing to
26 litigate this matter and in seeking to obtain penalties based on the claims asserted; the risks and
27 burden involved in representation on a contingency basis; the knowledge and experience of
28 Plaintiff’s Counsel; and the value obtained by Plaintiff’s Counsel for the Aggrieved Employees), it

1 is fair and reasonable to account for these risks and compensate Plaintiff's Counsel with a fee award
2 of \$50,750 (35% of the Gross Settlement Amount).

3 **E. Plaintiff's Counsel's Request for Costs is Reasonable**

4 In the course of this litigation, Plaintiff's Counsel incurred out-of-pocket costs of
5 \$13,531.11.⁶ See Gaines Decl. at ¶ 50, **Exhibit E**. As demonstrated in the Gaines Declaration
6 submitted herewith, the incurred costs included filing fees, postage, expert analysis fees, and
7 mediation fees. *Id.* Such costs are appropriate for cost reimbursement in these types of cases. See
8 *e.g., In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (C.D. Cal. 1989)
9 (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); see also, *In re GNC Shareholder*
10 *Litigation* 668 F.Supp. 450, 452 (W.D. Pa. 1987).

11 The costs incurred by Plaintiff's Counsel in this litigation benefited Plaintiff, Aggrieved
12 Employees, and the State. Plaintiff's cost request is reasonable and represents the costs that
13 Plaintiff's Counsel was required to incur to prosecute this action and should therefore be granted.

14 **V. THE SERVICE PAYMENT SOUGHT BY PLAINTIFF IS REASONABLE AND**
15 **SHOULD BE APPROVED**

16 The Parties have agreed that Plaintiff will be paid a service payment in the amount of
17 \$5,000. This payment is intended to recognize the time and effort that Plaintiff spent on behalf of
18 other Aggrieved Employees and the State. See Declaration of Becerra, submitted herewith. See
19 Gaines Decl., ¶ 51.

20 Case law supports the award of incentive payments in private attorney general actions. The
21 Ninth Circuit has recognized that a named plaintiff's "willingness to act as a private attorney
22 general" may justify the award of an incentive payment. *Rodriguez v. West Publishing Corp.*, 563
23 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub LLC*, 2013 WL 12415482
24 (E.D. Cal., Sep. 6, 2013), the United States District Court for the Eastern District of California
25 approved a similar PAGA-only settlement and awarded a service payment to the representative
26 plaintiff in recognition of his efforts.

27
28 ⁶ Plaintiff's Counsel incurred out-of-pocket costs lower than what is allocated for in the Settlement Agreement.

1 The traditional bases for awarding incentive awards in class settlements support the award
2 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
3 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive
4 awards and held that “the rationale for making enhancement or incentive awards to named Plaintiffs
5 is that he or she should be compensated for the expense or risk he has incurred in conferring a
6 benefit” on others. *Id.* at 806. That rationale applies synonymously in this Action.

7 Without Plaintiff’s efforts, there would be no recovery at all. The requested award is
8 appropriate to compensate Plaintiff for the risk and expense she incurred in conferring a benefit on
9 the Aggrieved Employees and the State of California. As a result of the named Plaintiff’s efforts,
10 the Aggrieved Employees will receive monetary settlement payments, and the State of California
11 will receive \$50,826.67 to be put toward education about and enforcement of California’s labor
12 laws. *See* Gaines Decl., ¶ 51.

13 In this case, Plaintiff performed the following tasks, among others: (1) assisted Counsel in
14 investigating and substantiating the claims alleged in this action, including multiple interviews with
15 counsel to review facts, documents, and Defendant’s policies; (2) assisted in the preparation of the
16 Complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the
17 settlement of this litigation. *See generally*, Becerra Declaration. Moreover, as with any plaintiff
18 who files a civil action, the named Plaintiff undertook the financial risk that, in the event of a
19 judgment for Defendant in this action, she could have been personally responsible for any
20 attorneys’ fees and costs awarded in Defendant’s favor. The award of such payment to Plaintiff is
21 especially warranted in a case like this one. It is necessary to ensure that employees continue to
22 bring forth claims that enforce their rights. Individuals like the named Plaintiff (and most aggrieved
23 employees) would have little, if any, recourse without the representative action device. Most
24 aggrieved employees – like the named Plaintiff – would be fearful of retaliation in response to filing
25 any lawsuit, much less a representative action suit. Plaintiff must be commended for pursuing her
26 claims; the modest payment sought here is an appropriate means of doing so.

1 **VI. PLAINTIFF SHOULD BE PERMITTED TO FILE HER SECOND AMENDED**
2 **COMPLAINT**

3 In connection with the Settlement, Plaintiff shall file a Second Amended Complaint,
4 attached to the Settlement as **Exhibit B**, which conforms to all claims to be released in the
5 Settlement. The Parties agreed that, as part of this motion, Plaintiff would concurrently seek leave
6 to file the Second Amended Complaint, the filing of which is a condition of the Stipulation.

7 To effectuate the class settlement of the Action, Defendant does not oppose the filing of the
8 Second Amended Complaint for settlement purposes only. As part of its order approving the
9 settlement, Plaintiff requests that the Court approve the filing of the Second Amended Complaint,
10 and consents that Defendant not be required to file a responsive pleading thereto. Gaines Decl. ¶

11 7.

12 **VII. CONCLUSION**

13 As shown herein, the Settlement Agreement is fair, adequate and reasonable, as it represents
14 a reasoned compromise obtained through arms-length negotiations. For all the reasons set forth
15 above, Plaintiff respectfully requests that this Court, as set forth in the proposed Order Approving
16 Settlement, do the following:

- 17 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
18 2699, subpart 1;
- 19 2. Appoint Phoenix Settlement Administrators as the Settlement Administrator and
20 approve its administration fees up to \$7,950 for payment out of the Gross Settlement Amount;
- 21 3. Approve the award of attorneys' fees of \$50,750, and costs of \$13,531.11, to
22 Plaintiff's Counsel, payment of which shall come from the Gross Settlement Amount;
- 23 4. Approve the service payment to Plaintiff Stephanie Becerra in the amount of \$5,000
24 from the Gross Settlement Amount;
- 25 5. Direct disbursement of the Net Settlement Fund to the LWDA and all Aggrieved
26 Employees as provided for in the Settlement Agreement;
- 27 6. Deem the Second Amended Complaint filed; and
- 28 7. Enter judgment thereon.

1 Date: April 5, 2024

2 Respectfully submitted,

3 GAINES & GAINES, APLC

4
5 By: *Daniel F. Gaines*
6 DANIEL F. GAINES
7 ALEX P. KATOFSKY
8 Attorneys for Plaintiff
9 Stephanie Becerra
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28