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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ALAMEDA**

12 **UNLIMITED JURISDICTION**

13 CHARLES JAMES, on behalf of himself and
14 other aggrieved employees,

15 Plaintiffs,

16 v.

17 UBER TECHNOLOGIES, INC. and DOES 1
through 10, inclusive,

18 Defendants.
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Case No. 23CV032350

ASSIGNED TO HON. VICTORIA
KOLAKOWSKI FOR ALL PURPOSES

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION TO APPROVE
PAGA SETTLEMENT**

Date: March 4, 2025
Time: 2:30 p.m.
Dept: 16

Reservation #: 207519825231

TABLE OF CONTENTS

I.	INTRODUCTION	6
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	6
III.	SUMMARY OF SETTLEMENT TERMS.....	7
A.	THE AGGRIEVED EMPLOYEES.....	7
B.	MONETARY TERMS.....	7
C.	SCOPE OF RELEASE	8
D.	DISMISSAL	9
E.	SETTLEMENT ADMINISTRATOR.....	9
F.	SETTLEMENT IMPLEMENTATION	9
G.	UNCASHED CHECKS	10
H.	PLAINTIFF’S INDIVIDUAL SETTLEMENT	10
I.	IMPACT ON OTHER PENDING LITIGATION	11
IV.	ARGUMENT	11
A.	THE PRESUMPTION OF FAIRNESS APPLIES	11
1.	The Settlement Was Reached Through Arm’s-Length Negotiations	12
2.	The Negotiations Were Adequately Informed.....	12
3.	The Settlement Does Not Improperly Grant Preferential Treatment.....	12
4.	Plaintiff’s Counsel Support the Settlement.....	13
B.	THE SETTLEMENT FALLS WITHIN THE RANGE OF APPROVAL	13
1.	The Settlement Is Fair and Reasonable Considering the Strengths and Weaknesses of the Claims and Risks of Continued Litigation	14
2.	The Proposed Award of Attorneys’ Fees and Costs Is Reasonable.....	15
C.	THE NOTICE TO ACCOMPANY THE CHECKS IS ADEQUATE	17
V.	CONCLUSION.....	17

TABLE OF AUTHORITIES

Page(s)

California Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	13
<i>Arias v. Super. Ct.</i> (2009) 46 Cal.4th 969	11
<i>Atempa v. Pedrazzani</i> (2018) 27 Cal.App.5th 809	15
<i>Betancourt v. OS Rest. Servs.</i> (2022) 83 Cal.App.5th 132	15
<i>Concepcion v. Amscan Holdings, Inc.</i> (2014) 223 Cal.App.4th 1309	16
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	11, 13
<i>Folsom v. Butte County Assn. of Governments</i> (1982) 32 Cal.3d 668	15
<i>Harrington v. Payroll Entertainment Services, Inc.</i> (2008) 160 Cal.App.4th 589	15
<i>In re Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545	16
<i>Karton v. Ari Design & Constr.</i> (2021) 61 Cal.App.5th 734	16
<i>Moniz v. Adecco U.S., Inc.</i> (2021) 72 Cal.App.5th 56	6, 11, 17
<i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal.4th 1084	16
<i>Steiny & Co. v. Cal. Elec. Supply Co.</i> (2000) 79 Cal.App.4th 285	16

Federal Cases

<i>Acosta v. Frito-Lay, Inc.</i> (N.D. Cal., May 4, 2018, No.15-cv-02128-JSC) 2018 WL 2088278	13
<i>Aguirre v. Genesis Logistics</i> (C.D. Cal., Dec. 30, 2013) 2013 WL 10936035	14
<i>Bower v. Cycle Gear, Inc.</i> (N.D. Cal., Aug. 23, 2016, No. 14-cv-02712-HSG) 2016 WL 4439875	12
<i>Cabiness v. Educ. Fin. Solutions, LLC</i> (N.D. Cal., Mar. 26, 2019, No. 16-cv-01109-JST) 2019 WL 1369929	13

1	<i>Chun-Hoon v. McKee Foods Corp.</i> (N.D. Cal. 2010)	
2	716 F.Supp.2d 848	17
3	<i>Cicero v. DIRECTV, Inc.</i> (C.D. Cal., July 27, 2010, No. EDCV 07-1182)	
4	2010 WL 2991486	16
5	<i>Covillo v. Specialty's Café</i> (N.D. Cal. Mar. 6, 2014, No. C-11-00594 DMR)	
6	2014 WL 954516	17
7	<i>Craft v. County of San Bernardino</i> (C.D. Cal. 2008)	
8	624 F.Supp.2d 1113	16
9	<i>Ebarle v. Lifelock, Inc.</i> (N.D. Cal. Jan. 20, 2016)	
10	2016 WL 234364	14
11	<i>Fleming v. Covidien, Inc.</i> (C.D. Cal., Aug. 12, 2012)	
12	2011 WL 7563047	14
13	<i>Foster v. Adams and Assocs., Inc.</i> (N.D. Cal., Feb. 11, 2022, No. 18-CV-02723-JSC)	
14	2022 WL 425559	12
15	<i>Gong-Chun v. Aetna Inc.</i> (E.D. Cal., July 12, 2012, No. 1:09-CV-01995-SKO)	
16	2012 WL 2872788	12
17	<i>Hudson v. Libre Tech. Inc.</i> (S.D. Cal., May 13, 2020, No. 3:18-CV-1371-GPC-KSC)	
18	2020 WL 2467060	13
19	<i>Human Rights Defense Center v. County of Napa</i> (N.D. Cal., Mar. 28, 2021, No. 20-CV-01296-JCS)	
20	2021 WL 1176640	16
21	<i>In re Animation Workers Antitrust Litig.</i> (N.D. Cal., Nov. 11, 2016, No. 14-CV-4062-LHK)	
22	2016 WL 6663005	16
23	<i>In re Linkedin User Privacy Litig.</i> (N.D. Cal. 2015)	
24	309 F.R.D. 573.....	14
25	<i>In re Omnivision Techs., Inc.</i> (N.D. Cal. 2008)	
26	559 F.Supp.2d 1036	13
27	<i>In re Portal Software, Inc. Securities Litigation</i> (N.D. Cal., Nov. 26, 2007, No. C-03-5138 VRW)	
28	2007 WL 4171201	17
	<i>In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.</i> (N.D. Cal., Mar. 17, 2017, MDL No. 2672 CRB (JSC))	
	2017 WL 1047834	16
	<i>Kelley v. City of San Diego</i> (S.D. Cal., Feb. 8, 2021, No. 19-CV-622-GPC-BGS)	
	2021 WL 424290	12
	<i>Magadia v. Wal-Mart Assocs.</i> (N.D. Cal. 2019)	
	384 F.Supp.3d 1058	14
	<i>Mejia v. Walgreen Co.</i> (E.D. Cal., Nov. 24, 2020, No. 2:19-CV-00218 WBS AC)	
	2020 WL 6887749	13, 7

1	<i>Moreno v. Sacramento</i> (9th Cir. 2008)	
2	534 F.3d 1106	16
3	<i>National Rural Telecomms. Co-op. v. DIRECTV, Inc.</i> (C.D. Cal. 2004)	
4	221 F.R.D. 523.....	13
5	<i>Sakkab v. Luxottica Retail N. Am., Inc.</i> (9th Cir. 2015)	
6	803 F.3d 425	17
7	<i>Satchel v. Federal Express Corp.</i> (N.D. Cal., Apr. 13, 2007, No. 03-cv-2878-SI)	
8	2007 WL 1114010	12
9	<i>t’Bear v. Forman</i> (N.D. Cal., June 8, 2020, No. 17-cv-00796-JSC)	
10	2020 WL 3050772	16
11	<i>Wakefield v. Mathews</i> (9th Cir. 1988)	
12	852 F.2d 482	15
13	<i>Wynn v. Chanos</i> (N.D. Cal. June 19, 2015, No. 14–cv–04329–WHO)	
14	2015 WL 3832561	16
15	<u>Statutes</u>	
16	Lab. Code, § 2699	11, 15
17	<u>Other Authorities</u>	
18	ALI, Principles of the Law of Aggregate Litigation (2010)	15
19	Manual for Complex Litigation, Second (1985).....	11
20	Newberg on Class Actions (4th ed. 2002)	12, 13
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiff Charles James hereby respectfully requests that the Court approve the proposed
3 \$225,000 settlement of the Private Attorneys General Act (“PAGA”) claims asserted in this case
4 against Defendant Uber Technologies, Inc. (“Uber”). This is a PAGA-only representative action
5 involving alleged violations of Labor Code section 2751’s requirements for commission contracts as
6 well as violations of Labor Code sections 201, 204, 232, 232.5, 432.5, and 1197.5(k). These
7 violations relate to Uber’s alleged prohibition on employees disclosing their wages and working
8 conditions, as well as Uber’s alleged practice of unlawfully forfeiting bonuses and commissions for
9 terminated employees.

10 The Court should grant the motion because the settlement is fair and adequate. (See *Moniz v.*
11 *Adecco U.S., Inc.* (2021) 72 Cal.App.5th 56, 77.) The settlement was reached after arm’s-length
12 negotiations and achieves an excellent result given the risks inherent in the claims and the Court’s
13 discretion to reduce civil penalties. The Court, therefore, should approve the settlement, dismiss the
14 claims with prejudice, and retain jurisdiction to oversee settlement implementation.

15 **II. FACTUAL AND PROCEDURAL BACKGROUND**

16 Plaintiff filed his complaint against Uber alleging PAGA claims that Uber was violating
17 Labor Code sections 201, 204, 232, 232.5, 432.5, and 2751 on May 2, 2023. (Valerian Decl., ¶ 3.)
18 Plaintiff provided the LWDA notice of these purported violations on February 22, 2023, and an
19 amended notice on March 7, 2023. (*Ibid.*) Plaintiff thereafter filed a first amended complaint in this
20 case adding PAGA claims alleging that Uber had also been violating Labor Code section 1197.5,
21 subds. (b) & (k), on or about February 21, 2024. (Valerian Decl., ¶ 5.) Prior to filing the first
22 amended complaint, Plaintiff provided the LWDA notice of the purported violations on December
23 13, 2023. (*Ibid.*)

24 On December 11, 2023, the parties mediated the case with Peter S. Rukin, a member of this
25 Court’s mediation panel. Prior to mediation, the parties conducted an initial round of written
26 discovery (including requests for production of documents, special interrogatories, and requests for
27 admission) and informally exchanged information, including the number of allegedly aggrieved
28 employees and the total number of pay periods worked by the allegedly aggrieved employees.

(Valerian Decl., ¶ 6.) Though the Parties did not reach a settlement at that mediation session, the Parties continued to engage in settlement discussions through the mediator remotely and eventually agreed on August 12, 2024, to a settlement that led to the proposed settlement set forth in the Private Attorneys General Act Settlement Agreement that is attached as Exhibit 1 to the declaration of Xinying Valerian concurrently filed herewith (“SA”).¹ (Valerian Decl., ¶ 8.)

III. SUMMARY OF SETTLEMENT TERMS

A. THE AGGRIEVED EMPLOYEES

The proposed settlement resolves the PAGA claims of approximately 229 Covered Employees who fall into one or more of the following groups:

Sales Employees: all Uber employees employed by Uber in California who are or were subject to an Uber sales incentive plan during the PAGA Period.

U4B Employees: all Sales Employees in the Uber for Business division who were paid at least in part with a sales bonus pursuant to an Uber sales incentive plan during the PAGA Period.

Former Employees: all Sales Employees whose employment with Uber ended during the PAGA Period.

(SA, ¶ 1.6.) “PAGA Period” is defined in the settlement agreement as the period beginning February 22, 2022, through and including May 31, 2024. (SA, ¶ 1.18.)

B. MONETARY TERMS

The proposed settlement creates a PAGA common fund of \$225,000.00 consisting of alleged civil penalties, administration costs, and attorneys’ fees and costs. (SA, ¶¶ 3.1, 3.2.) This fund is provisionally allocated subject to Court’s approval as follows: \$143,964.66 as civil penalties, \$3,000 as the costs of administering the settlement, \$75,000 (33⅓ %) as attorneys’ fees, and \$2,535.34 as litigation expenses. (SA, ¶ 3.2.) Seventy-five percent of the civil penalties will be paid to the LWDA and 25% will be distributed among the Covered Employees as Individual PAGA Payments as follows: 78% to the Sales Employees, 21% to the U4B Employees, and 1% to the Former Employees. (SA, ¶ 3.2.3.) This allocation reflects the amount of civil penalties arising from the

¹ Except as otherwise set forth in this Motion, the capitalized terms in this Motion are defined in the Settlement Agreement.

1 distinct Labor Code violations Plaintiff alleges are experienced by each group after discounting for
2 the litigation risks attendant to each claim, with U4B Employees receiving additional civil penalties
3 for the unique alleged violation of Labor Code section 2751, and Former Employees receiving
4 additional civil penalties for the alleged violations of Labor Code sections 201 and 204 related to
5 final wage payments, above and beyond the civil penalties for the alleged violation of Labor Code
6 sections 232, 232.5, 432.5, and 1197.5(k), to which all Sales Employees may be entitled. (Valerian
7 Decl., ¶ 15.) The Administrator will allocate each share equally among all the individuals in each
8 group.² The Administrator shall combine any Covered Employee's share to the extent that the
9 Covered Employee is member of multiple groups. The Individual PAGA Payment amount paid to
10 each Covered Employee will be reported on an IRS 1099 Form to the extent required by law. (SA,
11 ¶ 3.2.3.) Defendant will fully fund the Gross Settlement Amount no later than 30 days after the
12 settlement's Effective Date. (SA, ¶ 4.2.)

13 C. SCOPE OF RELEASE

14 Under the proposed settlement, Plaintiff, on behalf of the State of California, will release and
15 discharge the Released Parties from any and all Released Claims within the PAGA Period upon the
16 settlement's Effective Date.³ (SA, ¶ 5.1.) The settlement provides that the Covered Employees are
17

18 ² Dividing the settlement payments in equal shares among the members of each group of Covered
19 Employees is appropriate in the present case because the violations at issue are discrete, one-time
20 infractions rather than recurring violations like meal period violations that impact employees in each
21 pay period. The Court would likely limit penalty accrual given the nature of these violations, which
22 are more akin to isolated documentational failures than systematic, ongoing Labor Code infractions.
(See, *infra*, section IV.B.1.)

23 ³ The settlement defines "Released Parties" to mean Defendant and each of its past, present and
24 future direct or indirect parents, subsidiaries, affiliates as well as each of its/their past, present and
25 future officers, directors, employees, partners, members, shareholders, agents, attorneys, insurers,
26 reinsurers, assigns, and any individual or entity which could be jointly liable with Defendant. (SA,
27 ¶ 1.27.) "Released Claims" means (a) any and all PAGA claims, arising during the PAGA Period,
28 for civil penalties predicated on California Labor Code sections 201, 204, 210, 232, 232.5, 432.5,
1197.5(k), and/or 2751, et seq. as to any of the Covered Employees; (b) any and all other PAGA
claims, arising during the PAGA Period, for civil penalties that were asserted or which could have
been asserted based, in whole or in part, on the facts and/or factual allegations pleaded in the
Complaint, the Operative Complaint and/or Plaintiff's PAGA Notices as to any of the Covered
Employees; and (c) any and all claims for attorney's fees, costs or other relief stemming from (a)
and (b) of this Paragraph. The term "Released Claims" does not include PAGA claims predicated on
violation of California Labor Code section 1197.5(b), which is the Seventh Cause of Action in the
Operative Complaint. (SA, ¶ 1.26.)

1 barred from suing the Released Parties under PAGA for civil penalties arising from the Released
2 Claims regardless of whether they cash or otherwise negotiate their settlement checks. (*Ibid.*) The
3 settlement also provides for Plaintiff's individual release, including a Civil Code Section 1542
4 waiver. (SA, ¶ 5.2.)

5 **D. DISMISSAL**

6 The settlement provides that the judgment to be entered by the Court upon approval of the
7 settlement shall (i) dismiss Plaintiff's individual PAGA claims asserted in the Operative Complaint
8 with prejudice; (ii) dismiss the First through Sixth Cause of Action in the Operative Complaint with
9 prejudice as to all the Covered Employees including Plaintiff; and (iii) dismiss the Seventh Cause of
10 Action in the first amended complaint without prejudice as to all the Covered Employees other than
11 Plaintiff. (SA, ¶ 5.3.) Under the proposed settlement, the judgment shall bar Plaintiff from suing the
12 Released Parties under PAGA for civil penalties as to any and all claims released under Section 5.2
13 of the Settlement Agreement and the Judgment shall bar the Covered Employees from suing the
14 Released Parties under PAGA for civil penalties for any of the Released Claims. (*Ibid.*) The parties
15 jointly request that the Court retain jurisdiction over the Parties, the Action, and the settlement
16 pursuant to California Code of Civil Procedure section 664.6 for purposes of (i) enforcing the
17 settlement and/or judgment until performance is complete, (ii) addressing settlement administration
18 matters, and (iii) addressing such post-judgment matters as are permitted by law. (SA, ¶ 8.2.)

19 **E. SETTLEMENT ADMINISTRATOR**

20 Under the proposed settlement, the Parties request that the Court appoint Simpluris as the
21 Administrator. (SA, ¶ 7.1.) Simpluris has extensive experience administering PAGA settlements and
22 submitted one of the lowest of three bids that Plaintiff solicited. (Valerian Decl., ¶ 16.)

23 **F. SETTLEMENT IMPLEMENTATION**

24 The proposed settlement obligates Uber to provide Simpluris the Covered Employee Data
25 (i.e., each Covered Employee's name, last-known mailing address, social security number, and the
26 Covered Employee group(s) the Covered Employee fall within) within 10 days after the Court grants
27 approval of the settlement. (SA, ¶ 4.1.) Under the settlement, Simpluris will thereafter calculate each
28 Covered Employee's Individual PAGA Payment and mail the Covered Employees a check for that

1 amount along with the proposed notice attached to the settlement as Exhibit A within 14 days after
2 Uber funds the Gross Settlement Amount. (SA, ¶ 5.4(a).) Simpluris will update the employee
3 addresses using the National Change of Address database before mailing the checks. (SA, ¶ 4.3.)
4 Checks that are returned as undeliverable with a forwarding address will be re-mailed within three
5 days. (SA, ¶ 4.4.)

6 **G. UNCASHED CHECKS**

7 Under the settlement, none of the Gross Settlement Amount reverts to Defendant. Checks
8 that are not cashed after 180 days after the initial mailing will be voided and will escheat to the
9 California Controller's Unclaimed Property Fund in the name of the Covered Employee who did not
10 cash their check. (SA, ¶ 4.5.) If the Court awards less than the requested amount of attorneys' fees
11 and costs and/or administrator costs, the unawarded difference will be allocated to the PAGA
12 Penalty Amount. (SA, ¶¶ 3.2.1, 3.2.2.)

13 **H. PLAINTIFF'S INDIVIDUAL SETTLEMENT**

14 Plaintiff has separately settled his claims for discrimination and forfeited commissions and
15 agreed to a general release of all other claims he might have against Uber.⁴ (Valerian Decl., ¶ 17.)
16 There is no overlap in the legal issues or damages calculations between those claims and the PAGA
17 claims being released. (*Ibid.*) The individual settlement was negotiated separately from the
18 representative PAGA claims and was discounted from maximum damages in accordance with the
19 variables applicable to the individual claim. (*Ibid.*) Similarly, the representative PAGA claims were
20 separately analyzed in accordance with the different set of variables applicable to the PAGA
21 litigation that were separately accounted for. (*Ibid.*) Plaintiff is paying attorneys' fees on his
22 individual settlement and no attorneys' fees attributable to Plaintiff's individual settlement are being
23 paid from the Gross Settlement Amount. (*Ibid.*)

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25 _____
26 ⁴ Plaintiff, who is African American, has alleged elsewhere that he was underlevelled, paid less than
27 his white coworkers for the same work, denied promotion, and eventually terminated due to his race.
28 (Valerian Decl., ¶ 17.) His termination days before his quarterly commissions would vest resulted in
the forfeiture of nearly \$105,000 in commissions not including interest. (*Ibid.*) Plaintiff has alleged
individual damages claims elsewhere arising from lost commissions, lost earnings post-termination,
and emotional distress. (*Ibid.*)

1 **I. IMPACT ON OTHER PENDING LITIGATION**

2 The parties attest that there are no overlapping class actions or other cases asserting PAGA
3 claims like those asserted in this action. (SA, ¶ 2.6.) Accordingly, Plaintiff does not expect that the
4 proposed settlement will extinguish claims in any other pending case. (Valerian Decl., ¶ 13.)

5 **IV. ARGUMENT**

6 The settlement of a PAGA action requires court approval. (Lab. Code, § 2699, subd. (s)(2).)
7 When considering whether to approve a PAGA settlement, the Court should evaluate the settlement
8 “to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate
9 present labor law violations, deter future ones, and to maximize enforcement of state labor laws.”
10 (*Moniz, supra*, 72 Cal.App.5th at p. 77.) Though PAGA actions do not need to satisfy the
11 requirements of a class action,⁵ the factors courts use to evaluate class action settlements—such as
12 the strength of the plaintiff’s case, the risks involved, the stage of the proceeding, and the complexity
13 and likely duration of further litigation—“can be useful in evaluating the fairness of a PAGA
14 settlement.” (*Ibid.*) In this context, “a presumption of fairness exists where: (1) the settlement is
15 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
16 counsel and the court to act intelligently; [and] (3) counsel is experienced in similar litigation.”
17 (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) “If the proposed settlement appears to
18 be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does
19 not improperly grant preferential treatment to class representatives or segments of the class, and falls
20 within the range of possible approval, then the court should direct that the notice be given to the
21 class members of a formal fairness hearing.” (Manual for Complex Litigation, Second (1985)
22 § 30.44.) This standard is easily met here. Accordingly, the Court should grant the motion.

23 **A. THE PRESUMPTION OF FAIRNESS APPLIES**

24 As noted above, a presumption of fairness exists where a settlement is reached through
25 arm’s-length negotiation that was adequately informed and where there is no evidence of fraud or
26 collusion. Such a presumption applies here.

27
28 ⁵ *Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 984.

1 **1. The Settlement Was Reached Through Arm’s-Length Negotiations**

2 The settlement in this case was reached between experienced counsel through hard-fought
3 negotiations facilitated by Peter Rukin, Esq., a reputable mediator and litigator with deep experience
4 in all types of employment litigation. (Valerian Decl., ¶ 6.) The negotiations spanned nearly a year
5 and ultimately resulted in a mediator’s proposal that all parties accepted. (Valerian Decl., ¶ 8.) The
6 settlement, therefore, is the result of arm’s-length negotiation. (*Gong-Chun v. Aetna Inc.* (E.D. Cal.,
7 July 12, 2012, No. 1:09-CV-01995-SKO) 2012 WL 2872788, at *12 [settlement reached through
8 efforts of counsel with the assistance of a mediator was the result of arm’s-length negotiation];
9 accord *Kelley v. City of San Diego* (S.D. Cal., Feb. 8, 2021, No. 19-CV-622-GPC-BGS) 2021 WL
10 424290, at *7 [settlement resulted from arm’s-length negotiation where the parties conducted several
11 telephonic and in-person settlement conferences with settlement judge]; see also Newberg on Class
12 Actions, *Class Actions in State Courts, Preliminary Approval* (4th ed. 2002) § 13:14.)

13 **2. The Negotiations Were Adequately Informed**

14 Plaintiff propounded five document requests, seven special interrogatories, and seven
15 requests for admission to Uber. (Valerian Decl., ¶ 6.) Plaintiff also reviewed over 400 pages of
16 documents that Uber produced in response to Plaintiff’s written discovery. (*Ibid.*) For purposes of
17 mediation and to facilitate settlement discussions, Uber also produced additional information,
18 including data regarding the Covered Employees and their total pay periods worked. (*Ibid.*) This
19 information allowed Plaintiff to fully vet the strength of the claims, including the risks involved.
20 (*Ibid.*) The negotiations, therefore, were fully informed. (See *Foster v. Adams and Assocs., Inc.*
21 (N.D. Cal., Feb. 11, 2022, No. 18-CV-02723-JSC) 2022 WL 425559, at *6.)

22 **3. The Settlement Does Not Improperly Grant Preferential Treatment**

23 There was no collusion in settling this case. The settlement is non-reversionary. Negotiations
24 were overseen by an experienced mediator, which “confirms that the settlement is non-collusive.”
25 (*Satchel v. Federal Express Corp.* (N.D. Cal., Apr. 13, 2007, No. 03-cv-2878-SI) 2007 WL
26 1114010, at *4; *Bower v. Cycle Gear, Inc.* (N.D. Cal., Aug. 23, 2016, No. 14-cv-02712-HSG) 2016
27 WL 4439875, at *5[“[T]he parties reached their settlement after two full-day mediation sessions
28 before impartial and experienced mediators, which strongly suggests the absence of collusion or bad

1 faith by the parties or counsel.”.) Moreover, the allocation among the different groups of aggrieved
2 employees tracks the proportion attributable to each group from Plaintiff’s overall penalty estimate.
3 Finally, the allocation of the civil penalties within each group of Covered Employees is proportional
4 to the claims asserted. This guarantees fair and equitable treatment between the aggrieved
5 employees. (*Hudson v. Libre Tech. Inc.* (S.D. Cal., May 13, 2020, No. 3:18-CV-1371-GPC-KSC)
6 2020 WL 2467060), at *9 [“the Settlement does not improperly discriminate between any segments
7 of the Settlement Class as the Settlement Class Members are entitled to the same relief from the
8 same formula”]; *Mejia v. Walgreen Co.* (E.D. Cal., Nov. 24, 2020, No. 2:19-CV-00218 WBS AC)
9 2020 WL 6887749, at *11 [no discrimination where relief is proportionately based on compensable
10 workweeks].)

11 **4. Plaintiff’s Counsel Support the Settlement**

12 Plaintiff’s counsel has extensive experience litigating wage and hour class and representative
13 actions and recommend approval. (Valerian Decl., ¶¶ 18–26.) Such a recommendation weighs in
14 favor of approval. (*Cabiness v. Educ. Fin. Solutions, LLC* (N.D. Cal., Mar. 26, 2019, No. 16-cv-
15 01109-JST) 2019 WL 1369929, at *6; *Acosta v. Frito-Lay, Inc.* (N.D. Cal., May 4, 2018, No.15-cv-
16 02128-JSC), at *9; see also *In re Omnivision Techs., Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036,
17 1043 [“The recommendations of plaintiffs’ counsel should be given a presumption of
18 reasonableness.”].)

19 **B. THE SETTLEMENT FALLS WITHIN THE RANGE OF APPROVAL**

20 A settlement is not required to meet a minimum dollar or percentage threshold to be deemed
21 adequate. (See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th
22 1135, 1150.) Rather, the adequacy of a settlement is evaluated considering litigation uncertainties.
23 (See *Dunk, supra*, 48 Cal.App.4th at p. 1801.) “In most situations, unless the settlement is clearly
24 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with
25 uncertain results.” (*National Rural Telecomms. Co-op. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221
26 F.R.D. 523, 526; Newberg on Class Actions, *supra*, § 11:50.)

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28 //

1 **1. The Settlement Is Fair and Reasonable Considering the Strengths and**
2 **Weaknesses of the Claims and Risks of Continued Litigation**

3 Plaintiff estimated before the mediation that the best-case scenario would yield
4 approximately \$1,190,800.00 in civil penalties. (Valerian Decl., ¶ 9.) This valuation, however, was
5 keyed on Plaintiff not only prevailing at trial on the merits but also prevailing on unresolved
6 questions regarding how penalties accrue for the Labor Code violations at issue that occur “once”
7 but with consequences over time until cured. In this connection, there was substantial risk that even
8 if the Court found at trial that Uber violated Labor Code section 2751, subdivision (a), the Court
9 could nonetheless decide that such a violation warrants only a single penalty rather than a penalty
10 accruing in each pay period until the violation is cured. (Valerian Decl., ¶ 11.)

11 There were also factual disputes that presented substantial risks on the merits. For instance,
12 though the aggrieved employees were all subject to a proprietary information agreement that limited
13 their disclosure of wages and working conditions, Uber produced their employee handbook in
14 discovery that purports to exclude the disclosure of wages and working conditions from the
15 requirement to keep proprietary information confidential. (Valerian Decl., ¶ 11.)

16 Notably, even if Plaintiff prevailed at trial on these novel issues, there was also the risk of a
17 costly trial and delayed justice through appeals. (Valerian Decl., ¶ 11.) Significantly, expert costs
18 had not yet been incurred but would have diminished the net recovery of the State and employees,
19 had the case not settled at the time that it did. (*Ibid.*)

20 The settlement, on the other hand, provides approximately 19% of the maximum civil
21 penalties had Plaintiff run the board. (Valerian Decl., ¶ 9.). This compares favorably to other PAGA
22 cases. (See, e.g., *Aguirre v. Genesis Logistics* (C.D. Cal., Dec. 30, 2013) 2013 WL 10936035, at *2–
23 3; *Fleming v. Covidien, Inc.* (C.D. Cal., Aug. 12, 2012) 2011 WL 7563047, at *3-4. See generally
24 *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp.3d 1058.) In this context, “the tangible,
25 immediate benefits of . . . [s]ettlement outweigh continued litigation and the uncertainty of a trial.”
26 (*Ebarle v. Lifelock, Inc.* (N.D. Cal., Jan. 20, 2016) 2016 WL 234364, at *8; *In re LinkedIn User*
27 *Privacy Litig.* (N.D. Cal. 2015) 309 F.R.D. 573, 587 [“Immediate receipt of money through

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1 settlement, even if lower than what could potentially be achieved through ultimate success on the
2 merits, has value to a class, especially when compared to risky and costly continued litigation.”].)

3 **2. The Proposed Award of Attorneys’ Fees and Costs Is Reasonable**

4 PAGA provides that “any employee who prevails in any action shall be entitled to an award
5 of reasonable attorney’s fees and costs.” (Lab. Code, § 2699, subd. (g)(1).) Plaintiff here has
6 prevailed given that he successfully litigated and negotiated a net monetary recovery on behalf of
7 LWDA and the Covered Employees. (See Code Civ. Proc., § 1032, subd. (a)(4).); see also *Folsom v.*
8 *Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 685 fn. 31 [“the appropriate benchmarks
9 in determining which party prevailed are (a) the situation immediately prior to the commencement of
10 suit, and (b) the situation today, and the role, if any, played by the litigation in effecting any changes
11 between the two”]; see also *Betancourt v. OS Rest. Servs.* (2022) 83 Cal.App.5th 132, 141 [plaintiff
12 was “prevailing party” where defendant agreed to a stipulated settlement and judgment in plaintiff’s
13 favor]; accord *Wakefield v. Mathews* (9th Cir. 1988) 852 F.2d 482, 483 [“Prevailing plaintiffs
14 include those who have negotiated successful settlements.”].) An award of attorneys’ fees and costs,
15 therefore, is mandatory. (*Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 829; accord *Harrington*
16 *v. Payroll Entertainment Services, Inc.* (2008) 160 Cal.App.4th 589, 594 [“Because section 2699,
17 subdivision (g), provides that Harrington ‘shall be entitled’ to an award of fees, an award is a matter
18 of right.”].)

19 In the present case, an attorneys’ fee award that is 33 ⅓ % of the Gross Settlement Amount—
20 \$75,000—is reasonable. As an initial matter, “[t]he choice of a fee calculation method is generally
21 one within the discretion of the trial court.” (*Laffitte, supra*, 1 Cal.5th at p. 504.) “[T]he goal . . .
22 being the award of a reasonable fee to compensate counsel for their efforts.” (*Ibid.*) “Although many
23 courts in common-fund cases permit use of either a percentage-of-the-fund approach or a lodestar
24 (number of hours multiplied by a reasonable hourly rate), most courts and commentators now
25 believe that the percentage method is superior.” (ALI, Principles of the Law of Aggregate Litigation
26 (2010) § 3.13, com. b.; accord *Laffitte, supra*, 1 Cal.5th at p. 494.)

27 Empirical studies show that fee awards in class and representative actions in California
28 average around one-third of the recovery. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th

1 545, 558.) This is particularly true in the present case given the size of the settlement fund. (*Cicero*
2 *v. DIRECTV, Inc.* (C.D. Cal., July 27, 2010, No. EDCV 07-1182) 2010 WL 2991486, at *6 [“a
3 review of California cases in other districts reveals that courts usually award attorneys’ fees in the
4 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10
5 million”]; accord *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1127
6 [“Cases of under \$10 Million will often result in result in fees above 25%.”].)

7 A lodestar cross check confirms that the fee requested is substantially less than counsel’s
8 lodestar.⁶ Plaintiff’s billing-adjusted lodestar through December 15, 2024, is over \$131,000, which is
9 significantly higher than the requested fee and excludes the fees incurred for this motion, fees

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13 ⁶ The California Supreme Court has concluded that, in common fund cases, “trial courts have
14 discretion to begin with a percentage approach and then to use the lodestar approach to cross-check
15 the reasonableness of the percentage.” (*Karton v. Ari Design & Constr.* (2021) 61 Cal.App.5th 734,
16 745.) The “lodestar” is simply “the number of hours reasonably expended multiplied by the
17 reasonable hourly rate.” (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) In the present
18 case Plaintiffs’ counsels’ hourly rates are comparable to prevailing rates in the Bay Area for lawyers
19 and legal staff of similar experience, skill, and reputation. (Valerian Decl., ¶¶ 29-35.) These rates are
20 based on counsel’s 2024 rates, which several hourly-paying clients have paid, and which have been
21 approved as reasonable by courts and arbitrators. (Valerian Decl., ¶ 31.) If anything, these rates are
22 likely below current market rates. (E.g., *Human Rights Defense Center v. County of Napa* (N.D.
23 Cal., Mar. 28, 2021, No. 20-CV-01296-JCS) 2021 WL 1176640, at *11 [finding rates of \$950-
24 \$1,100 reasonable for partners]; *In re Animation Workers Antitrust Litig.* (N.D. Cal., Nov. 11, 2016,
25 No. 14-CV-4062-LHK) 2016 WL 6663005, at *6 [finding rates up to \$1,200 and paralegal rates up
26 to \$290 fair and reasonable]; *t’Bear v. Forman* (N.D. Cal., June 8, 2020, No. 17-cv-00796-JSC)
27 2020 WL 3050772, at *9 [up to \$1,425]; *Wynn v. Chanos* (N.D. Cal., June 19, 2015, No. 14-cv-
28 04329-WHO) 2015 WL 3832561, at *2 [approving 2015 rates of up to \$1,085]; *In re Volkswagen*
“Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig. (N.D. Cal., Mar. 17, 2017, MDL No. 2672
CRB (JSC)) 2017 WL 1047834, at *5 [up to \$1,600 for partners, \$790 for associates, and \$490 for
paralegals].) Class Counsel’s declaration attesting to the number of hours worked on a particular
case “is sufficient evidence to support an award of attorney fees, even in the absence of detailed time
records.” (*Steiny & Co. v. Cal. Elec. Supply Co.* (2000) 79 Cal.App.4th 285, 293; *Concepcion v.*
Amscan Holdings, Inc. (2014) 223 Cal.App.4th 1309, 1324 [“It is not necessary to provide detailed
billing timesheets to support an award of attorney fees under the lodestar method.”].) “By and large,
the court should defer to the winning lawyer’s professional judgment as to how much time he was
required to spend on the case; after all, he won, and might not have, had he been more of a slacker.”
(*Moreno v. Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112.) “[L]awyers are not likely to spend
unnecessary time on contingency fee cases in the hope of inflating their fees.” (*Ibid.*) “The payoff is
too uncertain, as to both the result and the amount of the fee.” (*Ibid.*) “It would therefore be the
highly atypical . . . case where plaintiffs [sic] lawyer engages in churning.” (*Ibid.*)

1 incurred in negotiations with Defendant in early 2025, and fees to be incurred in overseeing
2 settlement implementation. (See Valerian Decl., ¶¶ 38-39.)

3 The requested fee of \$75,000 thus builds in a so-called “negative multiplier” that is
4 “presumptively reasonable.” (*Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d
5 848, 854 [multiplier of less than one “suggests that the negotiated fee award is a reasonable and fair
6 valuation of the services rendered to the class by class counsel”]; accord *Covillo v. Specialtys Café*
7 (N.D. Cal. Mar. 6, 2014, No. C-11-00594 DMR) 2014 WL 954516, at *7 [“Plaintiffs’ requested fee
8 award is approximately 65% of the lodestar, which means that the requested fee award results in a
9 so-called negative multiplier, suggesting that the percentage of the fund is reasonable and fair.”]; *In*
10 *re Portal Software, Inc. Securities Litigation* (N.D. Cal., Nov. 26, 2007, No. C-03-5138 VRW) 2007
11 WL 4171201, at *16.)

12 Plaintiff’s request that he also be awarded \$2,535.34 in out-of-pocket costs is also
13 reasonable. These out-of-pocket costs reflect a careful and frugal approach to litigation expenditures
14 and were reasonably necessary for the prosecution of this action. (Valerian Decl., ¶ 41 & Exhibit 3.)
15 Failing to reimburse Plaintiff and his counsel for these outlays would undermine the ability of
16 employees to pursue Labor Code enforcement actions.

17 **C. THE NOTICE TO ACCOMPANY THE CHECKS IS ADEQUATE**

18 There is no need to provide notice to the Covered Employees or an opportunity to opt out of
19 or object to the settlement as there would be with a class action settlement. (*Moniz, supra*, 72
20 Cal.App.5th at p. 79; see also *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir. 2015) 803 F.3d 425,
21 436 [“PAGA has no notice requirements for unnamed aggrieved employees, nor may such
22 employees opt out of a PAGA action.”].) Nonetheless, the proposed settlement provides for a one-
23 page notice to accompany the checks to be sent to the Covered Employees informing them about the
24 case, that they are receiving a check and the deadline to cash their check. This is more than adequate.

25 **V. CONCLUSION**

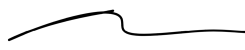
26 For all the foregoing reasons, Plaintiff requests that the Court approve the settlement and
27 enter the accompanying proposed order and judgment while retaining jurisdiction over the
28 settlement.

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Respectfully submitted,

Dated: February 6, 2025

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