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

SHAREEKA NORRIS, an individual; on
behalf of herself and other aggrieved
employees,

Plaintiffs,

vs.

CG HOSPITALITY GROUP, INC., a
California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. 23STCV12946

[Assigned For All Purposes To: Hon.
Alison Mackenzie, Dept. 55]

RESERVATION ID. 182133148224

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT AGREEMENT,
FOR ATTORNEYS' FEES AND COSTS
AND ADMINISTRATIVE FEES;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Declarations of Aaron A. Bartz, Walter
Haines, Shareeka Norris, Jonathan Paul,
and [proposed] Order filed concurrently
herewith]

Date: January 14, 2025

Time: 8:30 a.m.

Dept.: 55

1 PLEASE TAKE NOTICE that on January 14, 2025, at 8:30 a.m., or as soon thereafter as
2 the matter may be heard before the Honorable Alison Mackenzie, Dept. 55 of the Superior Court
3 of the State of California, County of Los Angeles, Stanley Mosk Courthouse, 111 North Hill Street,
4 Los Angeles, California 90012, Plaintiff Shareeka Norris (“Plaintiff”) will and hereby does move
5 for entry of an Order and Judgment to include the following provisions:

6 1. Granting approval, pursuant to California Labor Code section 2699, subd. (1)(2) of
7 the proposed settlement between Plaintiff and Defendant CG Hospitality Group, Inc.
8 (“Defendant”) of the claims brought pursuant to the Private Attorneys General Act of 2004
9 (“PAGA”) as set forth in the PAGA Settlement Agreement (“Settlement Agreement”), attached as
10 Exhibit 1 to the Declaration of Aaron A. Bartz;

11 2. Approving the PAGA Fund payable to the State of California and Aggrieved
12 Employees as authorized by California Labor Code section 2699, subd. (i);

13 3. Appointing Xpand Legal Consulting, LLC as the Settlement Administrator;

14 4. Directing Defendant to transmit settlement funds to the Settlement Administrator
15 in the total amount of \$173,700 pursuant to the Settlement Agreement;

16 5. Directing the Settlement Administrator to distribute the settlement funds to the
17 Aggrieved Employees, and distributing funds to the Labor and Workforce Development Agency
18 (“LWDA”), Plaintiff’s Counsel, and for Settlement Administration Costs, in accordance with the
19 terms of the Settlement Agreement;

20 6. Awarding to Plaintiff’s Counsel the amount of \$57,900 as compensation for
21 reasonable attorneys’ fees, \$16,000 for reimbursement of litigation costs and expenses, \$6,500 for
22 settlement administration costs, and \$5,000 to Plaintiff.

23 This motion is based on this Notice of Motion and Motion, the Memorandum of Points and
24 Authorities, the Settlement Agreement, the Declarations of Aaron A. Bartz, Walter Haines,
25 Shareeka Norris, and Jonathan Paul, the pleadings and other records on file with the Court in this
26 matter, and such evidence and oral argument as may be presented at the hearing on this Motion.
27
28

1 Dated: October 22, 2024

2 BARTZ LAW GROUP, APC

3
4 By: /s/Aaron A. Bartz/s/
5 Aaron A. Bartz
6 Attorneys for Plaintiff SHAREEKA
7 NORRIS
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I.

INTRODUCTION AND SUMMARY OF MOTION

This is an action brought by Plaintiff Shareeka Norris (“Plaintiff”), pursuant to the Private Attorneys General Act of 2004 (“PAGA”), to recover civil penalties for herself and other aggrieved employees and the State of California. Plaintiff and the other aggrieved employees are non-exempt employees who worked for Defendant CG Hospitality Group, Inc. (“Defendant”), and allege California wage and hour violations including failure to pay wages, failure to authorize and permit meal and rest periods, and related violations.

Plaintiff has agreed to settle the PAGA penalties for the Gross Settlement Amount of **\$173,700**. (See Declaration of Aaron A. Bartz (“Bartz Decl.”), Ex. 1). The Gross Settlement Amount includes all attorneys’ fees and costs, settlement administration expenses, and penalties payments to the aggrieved employees and the Labor and Workforce Development Agency (LWDA). The PAGA Fund to be distributed to the aggrieved employees and the LWDA is approximately \$88,300. The PAGA Fund will be distributed 75% to the LWDA (\$66,225), and 25% to the aggrieved employees (\$22,075).

This settlement is fair, reasonable and adequate, and therefore should be approved by this Court.

II.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a franchisee of Round Table restaurants in California. Plaintiff and other aggrieved employees worked for Defendant as non-exempt employees in California.

Plaintiff filed and served her PAGA letter on the Labor and Workforce Development Agency (LWDA) on March 30, 2023. (Declaration of Aaron Bartz (“Bartz Decl.”), ¶ 9, and Ex. 2). Plaintiff filed her Complaint on June 7, 2023. (Bartz Decl., ¶ 9, and Ex. 3 thereto). Plaintiff served an initial set of formal discovery, and Defendant thereafter responded to that discovery. Thereafter, the parties attended Mediation before experienced wage and hour mediator Michael D. Young. Prior to attending Mediation, Defendant provided Plaintiff with a representative sampling

of time and payroll records for the aggrieved employees, employment policies and procedures affecting Plaintiff and the aggrieved employees, and related employment data. (Bartz Decl., ¶ 10).

After a full day Mediation on September 5, 2024, the parties were able to conclude a settlement of the PAGA claims. (Bartz Decl., ¶ 10).

III.

SUMMARY OF SETTLEMENT

A. Aggrieved Employees

The Settlement covers the following aggrieved employees:

All persons employed by Defendant as non-exempt employees in California between March 30, 2022 to the Effective Date (i.e. date of Judgment). Based upon Defendant's records, there are approximately 888 aggrieved employees between March 30, 2022 and September 5, 2024. (Bartz Decl., ¶ 7).

B. Settlement Fund

Defendant will pay into a common fund the total amount of \$173,700 within 10 days of the Effective Date. (Bartz Decl., ¶ 3.) Prior to distributing the settlement checks to aggrieved employees, the Settlement Administrator shall review the addresses provided using the National Change of Address database. Should any of the settlement checks be returned undeliverable, the Settlement Administrator will use the best available technology (via a skip trace or other reasonable method) to locate Settlement Members and to re-mail the settlement checks to any alternative or updated address obtained by the Settlement Administrator. (Bartz Decl., ¶ 4). The PAGA Fund shall be calculated by deducting the Plaintiff's Counsel Payment and Settlement Administration Costs from the Gross Settlement Amount.

A breakdown of the Gross Settlement Amount of **\$173,700** is provided below:

1. Individual Settlement Payments to Settlement Members: \$22,075;
2. PAGA Payment to the LWDA: \$66,225;
3. Plaintiff's Counsel Fees Payment: \$57,900;
4. Plaintiff's Counsel Expenses Payment: \$16,000;
5. Settlement Administration Costs: \$6,500;

1 review of a PAGA settlement involves analysis of several unique features that render the approval
2 process distinct from approval of a class action settlement. A court reviewing a PAGA settlement
3 need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams v. Superior*
4 *Court*, 3 Cal.5th 531, 549 (2017).

5 In a PAGA case, the Court’s focus is not the monetary amount which aggrieved employees
6 or the State are to receive, but instead, whether the total settlement amount achieves the PAGA’s
7 objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties
8 for the government that otherwise may not have been assessed and collected by overburdened state
9 enforcement agencies.” *See Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *4
10 (N.D. Cal. Apr. 2, 2010) (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the
11 PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for
12 education of employers and employees about their rights and responsibilities under this code, to
13 be continuously appropriated to supplement and not supplant the finding to the agency for those
14 purposes.” *See Labor Code § 2699(j)*. The recovery of penalties on behalf of the state, by way of
15 a PAGA claim, is essentially a law enforcement action. *See Amalgamated Transit Union, Local*
16 *1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009) (stating that the PAGA is mechanism for
17 “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise
18 would be sought by state labor law enforcement agencies”).

19 V.

20 **THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE**

21 This Settlement resulted from Plaintiff’s thorough and extensive review of informal
22 discovery, and aggressive negotiating stance to obtain a reasonable recovery. This PAGA
23 settlement should therefore be approved.

24 **A. The Settlement Is Presumed Fair**

25 A representative settlement is presumed fair where: (1) the settlement is reached through
26 arm’s length bargaining, (2) investigation and discovery are sufficient to allow counsel and the
27 court to act intelligently, (3) [and] counsel is experienced in similar litigation. *See Dunk v. Ford*
28 *Motor Company*, 48 Cal. App. 4th 1794, 1802 (1996). Similar to class actions, PAGA settlements

are subject to a court's approval under a fair, adequate and reasonable standard. *See Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 76-77 (2021). A court may also consider relevant factors such as the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, [and] the presence of a governmental participant. . . . *See Officers of Justice v. Civil Service Com'n of City and County of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1995). "This list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." (*Dunk, supra*, 48 Cal. App. 4th at 1801.) Moreover, the trial court has broad powers to determine whether a proposed [representative action] settlement is fair. (*See Mallick v. Superior Court*, 89 Cal. App. 3d 434 (1979).

B. The Settlement Is The Product of Arm's Length Negotiations

In this action, Defendant produced personnel and policy documents, detailed data regarding the aggrieved employees' pay and time records, and related employment information for aggrieved employees. (Bartz Decl., ¶ 10). After a thorough review of those records, Plaintiff retained a damages expert to compile a damages summary reflecting the total exposure to PAGA penalties in this case. (Bartz Decl., ¶ 11).

The negotiations in this case were hard fought and lengthy, and the parties attended an all-day Mediation. At all times, the settlement negotiations were non-collusive, and involved considerable disputes over payment terms. Plaintiff did not settle this case until she had conducted sufficient investigation into the claims, and reviewed sufficient data to make a settlement determination. (Bartz Decl., ¶ 11). Plaintiff believes that this is a good settlement of the PAGA claims, which will not affect any aggrieved employee's right to pursue underlying Labor Code violations against Defendant if he or she chooses to do so. (*Ibid*).

C. Plaintiff's Counsel Is Experienced In Similar Litigation And Endorse The Settlement

The view of attorneys in representative litigation is "entitled to significant weight." *Fisher Bros. v. Cambridge-Lee Industries, Inc.*, 630 F.Supp. 482, 488 (E.D. Pa. 1985); *see also Ellis v.*

1 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). Plaintiff's counsel have significant
2 experience in complex representative and class action wage and hour litigation. (Bartz Decl., ¶¶
3 12-16; Declaration of Walter Haines ("Haines Decl."), ¶ 3). As such, they are experienced and
4 qualified to evaluate the claims and defenses in this case, and unequivocally support the settlement
5 reached herein.

6 **D. The Strength of Plaintiff's Case, The Amount Offered In Settlement, and**
7 **The Risk, Expense, Complexity, and Duration of Further Litigation Favors Settlement**

8 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon*
9 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Moreover, "[t]he expense and possible
10 duration of the litigation should be considered in evaluating the reasonableness of [a] settlement."
11 *In re Mega Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000).

12 In this case, Plaintiff seeks PAGA penalties only. The sole PAGA claim that is at issue
13 in this settlement concerns Defendant's failure to: (1) pay all wages owed; (2) provide duty-free
14 meal periods; (3) authorize and permit duty-free rest periods; (4) pay all wages due upon
15 termination; and (5) properly maintain and submit accurate itemized wage statements. (Bartz
16 Decl., ¶ 17).

17 1. **Unpaid wages**

18 California Labor Code § 510(a) and the applicable Wage Orders regulating payment of
19 wages in the State of California, provide that eight (8) hours of labor constitutes a day's work
20 and any work in excess of eight (8) hours in one (1) workday and any work in excess of forty
21 (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half
22 times the regular rate of pay for each employee and any work in excess of twelve (12) hours in
23 any one workday shall be compensated at the rate of no less than twice the regular rate of pay for
24 each employee.

25 Plaintiff contends that Defendant violated wage laws based on the theory that Plaintiff
26 and other aggrieved employees worked off-the-clock, including prior to and after their shifts.
27 Plaintiff alleges that she would need to perform work for the manager, including but not limited
28 to accepting and logging delivery orders, without payment. Plaintiff further alleges that

1 regardless of whether such time spent off-the-clock only adds up to a few minutes per day,
2 California does not recognize the *de minimis* doctrine, and such time must be compensated. *See*
3 *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018).

4 Defendant contends that it has numerous defenses to Plaintiff's unpaid wage claims,
5 including that it paid for all hours worked, and had policies prohibiting working off-the-clock.

6 Pursuant to Labor Code § 558, penalties for regular rate violations are \$50 per pay
7 period. Thus, the maximum potential PAGA penalties for the unpaid wage claim is \$346,650,
8 which is calculated as follows: \$50 [penalty per pay period] x 17370 [number of pay periods] =
9 \$868,500.¹ Because of the difficulty of proving off-the-clock claims with objective evidence,
10 and the fact that Plaintiff was unable to verify such off-the-clock claims on a representative
11 basis, Plaintiff believes she had a 10% chance of success on the unpaid wage theory.
12 Nevertheless, Labor Code section 2699(e)(2) also gives a trial court broad discretion to reduce
13 PAGA penalties: "[A] court may award a lesser amount than the maximum civil penalty amount
14 specified by this part if, based on the facts and circumstances of the particular case, to do
15 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."
16 Case law supports a trial court's discretion in downgrading penalties based on these factors. *See*
17 *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no
18 abuse of discretion by reducing penalty by 30 percent). Thus, Plaintiff believes that the real
19 value of the unpaid wage penalties is approximately **\$60,795**. (\$868,500 x .1 [chances of
20 success] x .7 [court discretion] = \$60,795). (Bartz Decl., ¶ 17.a).

21 2. Meal period violations

22 Plaintiff contends that Defendant failed to provide Plaintiff and other aggrieved
23 employees thirty-minute duty-free meal periods for every five hours of work as is required by
24

25
26 ¹ Plaintiff calculates only the first penalty amount, because the subsequent penalty amounts do
27 not apply because there is no evidence that Defendant has been the subject of any prior violations
28 of the Labor Code by the Labor Commissioner. *See Amaral v. Cintas Corp. No. 2*, 163
Cal.App.4th 1157, 1208-1209 (2008) ("Until the employer has been notified that it is violating a
Labor Code provision. . . , the employer cannot be presumed to be aware that its continuing
underpayment of employees is a 'violation' subject to penalties").

1 Labor Code § 512, the applicable wage orders, and in violation of *Brinker Restaurant Corp. v.*
2 *Superior Court*, 53 Cal.4th 1004 (2012). In *Brinker*, the California Supreme Court held that
3 “under ... Labor Code § 512, subdivision (a), an employer must relieve the employee of all duty
4 for the designated period.” *Id.* at 1034.

5 Plaintiff alleges that meal periods were short, late and missed because of the work
6 demands on Plaintiff and other aggrieved employees, whereby Plaintiff alleges that Defendant’s
7 stores were understaffed, such that Plaintiff and other aggrieved employees were unable to take
8 their meal periods timely, and they were uninterrupted with work inquires because of the staffing
9 issues. After extensively analyzing the meal period violations, Plaintiff found that for the most
10 part, Defendant was in substantial compliance with California’s meal period laws in terms of
11 timing, pursuant to *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021). As such, Plaintiff
12 does not value that part of the meal period claim highly.

13 Defendant contends that it permits all aggrieved employees more than 30-minute meal
14 periods, and whenever meal periods were late, short or missed, Defendant paid meal period
15 premiums. Defendant further argues that individual issues will predominate because of the various
16 scenarios affecting different classes of employees working for Defendant. As such, Defendant
17 claims that PAGA claims must meet a manageability requirement. *See Wesson v. Staples The*
18 *Office Superstore, LLC*, 68 Cal.App.5th 746 (2021) (holding that courts have inherent authority to
19 ensure the manageability of PAGA claims).

20 The maximum potential PAGA penalties recoverable for meal period violation are
21 \$780,543 as calculated by Plaintiff’s expert, who analyzed the meal period time data, and found
22 2,741 pay periods with violations pursuant to *Donohue*. Based on the various issues raised above
23 regarding proving meal period violations, Plaintiff believes that she has a 10% chance of proving
24 all of those penalties. Thus, Plaintiff believes that the real value of the meal period penalties is
25 **\$54,638**. ($\$780,543 \times .1$ [chances of success] $\times .7$ [court discretion] = \$54,638). (Bartz Decl., ¶
26 17.b).

27 3. Rest period claims

28 Section 12(A) of the IWC Wage Order(s) states: “Every employer shall authorize and

1 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
2 each work period. The authorized rest period time shall be based on the total hours worked daily
3 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
4 a rest period need not be authorized for employees whose total daily work time is less than three
5 and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
6 there shall be no deduction from wages.”

7 Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide an
8 employee a rest period in accordance with the applicable provisions of this order, the employer
9 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for
10 each workday that the rest period is not provided.”

11 Under *Brinker, supra*, the California Supreme Court found that employers have a “duty
12 to make a good faith effort to authorize and permit rest breaks in the middle of each work period.
13 . . .” *Brinker, supra*, 53 Cal.4th at 1031. Plaintiff alleges that rest periods were not authorized or
14 permitted because Plaintiff and other aggrieved employees were unable to take duty-free rest
15 periods based on the staffing issues identified above, and in any event, when they took their meal
16 periods, they were always interrupted.

17 Defendant contends that it complied with California’s rest period requirements, and
18 produced a rest period policy that facially complies with California law.

19 Plaintiff calculates total penalties on the rest period claim of \$868,500. Given that PAGA
20 allows penalties of \$50 per pay period, the amount is calculated as follows: 17,370 [total number
21 of pay periods] x \$50 [pay period penalty amount] = \$868,500. Given Defendant’s facially valid
22 rest period policy, and potential individual issues relating to proving rest break violations,
23 Plaintiff believes she had a 10% chance of recovering all of the above penalties on the rest period
24 claim, in the absence of other mitigating factors. Given that a court has discretion regarding the
25 amount of penalties to be assessed, Plaintiff therefore believes the real exposure of PAGA
26 penalties on the rest period claim is approximately **\$60,795**. (\$868,500 x .1 [chances of success]
27 x .7 [court discretion] = \$60,795.) (Bartz Decl., ¶ 17.c).

1 4. Failure to pay all wages on termination

2 Plaintiff further alleges that pursuant to Labor Code §203, aggrieved employees terminated
3 from Defendant's employment are entitled to a penalty pursuant to Labor Code §256, because
4 Defendant did not pay them all wages due upon separation. Such a claim is derivative, and for the
5 same reasons as stated above, Defendant contends no wages are due, and thus no penalties owed under
6 PAGA. Defendant further argues that its failure to pay wages upon separation was not "willful," in
7 that the law is uncertain as to claims asserted in this case or whether the failure to pay is due to a good
8 faith dispute. *See Barnhill v. Robert Saunders & Co.*, 125 Cal.App.3d 1, 8 (1981) (employer's failure
9 to pay is not willful if its failure is due to uncertainty in the law); *Road Sprinkler Fitters Local Union*
10 *No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal.App.4th 765, 782 (2002) (willfulness not met if
11 defendant's failure to pay a result of a "good faith mistaken belief that wages are not owed").
12 Defendant further argues that Labor Code § 256 only applies to seasonal laborers and therefore is
13 inapposite to the aggrieved employees in this case. *See Culley v. Lincare, Inc.*, 236 F.Supp.3d 1184
14 (E.D. Cal. 2017).

15 Plaintiff calculates PAGA penalties on this claim of \$65,800. This was calculated by
16 multiplying 658 [former employees] by \$100 [waiting time penalty]. Based on the heightened
17 willfulness standard, Plaintiff estimates that the real exposure of this claim is 10% of those total
18 penalties. Moreover, Plaintiff applies the same discounts as set forth above in the above analysis
19 as to the court's discretion to reduce penalties. As such, Plaintiff believes the real exposure on this
20 claim to be **\$4,606**. ($\$65,800 \times .1$ [chances of success] $\times .70$ [court discretion] = \$4,606). (Bartz
21 Decl., ¶ 17.d).

22 5. Improper pay stubs

23 Plaintiff further alleges that Defendant failed to provide proper pay statements that
24 complied with Labor Code § 226.

25 Plaintiff alleges similar theories of liability as above with respect to the paystub claim, i.e.
26 that the wage statements are defective because they do not reflect all wages owed, and fail to show
27 premium payments for missed meal and rest periods. *See Naranjo v. Spectrum Security Servs.,*
28 *Inc.*, 13 Cal.5th 93 (2022). Plaintiff further alleges that to obtain PAGA penalties for pay stub

violations, a plaintiff need not satisfy the “injury” or “knowing and intentional” requirements of Labor Code section 226(e)(1). *See Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667 (2018).

On the other hand, Defendant argues derivative violations of Labor Code § 226 do not give rise to pay stub violations upon which PAGA penalties arise. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308 (2018); *see also Culley v. Lincare Inc.*, 236 F.Supp.3d 1184, 1195-1196 (E.D. Cal. 2017). Defendant further argues that any such violations were inadvertent, and therefore not actionable. *See Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement*, 192 Cal.App.4th 75 (2011).

Plaintiff calculates pay stub penalties to be approximately \$1,737,000. Given that PAGA allows penalties of \$100 per pay period, the amount is calculated as follows: 17,370 [number of total pay periods] x \$100 [pay period penalty amount] = \$1,737,000. Plaintiff believes she had a 10% chance of recovering all of the potentially recoverable civil penalties. Moreover, Plaintiff applies the same discounts as set forth above in the analysis as to the court’s discretion to reduce penalties. As such, Plaintiff believes the real exposure on this claim to be **\$121,590**. (\$1,737,000 x .1 [chances of success] x .7 [court discretion] = \$121,590). (Bartz Decl., ¶ 17.e).

7. Total exposure to PAGA penalties

Based upon the alleged Labor Code violations, Plaintiff’s believe the total actual PAGA exposure is approximately \$297,818. Based on a settlement value of \$173,700, this amounts to approximately 58% of the total exposure to PAGA penalties. Plaintiff believes this to be a good result, given that Defendant has valid defenses to Plaintiff’s claims, and there is a substantial question as to whether a trial court will even award cumulative penalties sought by Plaintiff for alleged multiple Labor Code violations because there is no established precedent for such an award.² (Bartz Decl., ¶ 17.f).

² While there are cases allowing for the “stacking” of penalties when it comes to evaluating the “amount in controversy” where a case has been removed to federal court (*see Schiller v. David’s Bridal, Inc.*, 2010 WL 2793650 (E.D. Cal. July 14, 2010)), it appears to be an open question whether such “stacked” penalties may be awarded when they potentially overlap and “double count” remedies for similar violations.

1 The purpose of the PAGA is to “achieve maximum compliance with [California’s] labor
2 laws.” *See Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). The penalties
3 recovered here on behalf of the State and aggrieved employees achieve that purpose.

4 VI.

5 NOTICE OF THE SETTLEMENT

6 “[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” and
7 as such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior*
8 *Court*, 3 Cal.5th 531, 546 (2017). “Unnamed employees need not be given notice of the PAGA
9 claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-*
10 *Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *5 (N.D. Cal. Apr. 2, 2010). A
11 representative PAGA action need not satisfy class action requirements, and no due process concern
12 arises from the fact that there are “nonparty aggrieved employees who are not given notice if, and
13 an opportunity to be heard in, a representative action that is not brought a class action.” *Arias v.*
14 *Sup. Ct.*, 46 Cal.4th 969, 984 (2009). “PAGA does not make other potentially aggrieved employees
15 parties” to the action and no “due process concerns arise under PAGA because absent employees
16 do not own a personal claim for PAGA civil penalties and whatever personal claims the absent
17 employees might have for a relief are not at stake.” *Williams, supra*, 3 Cal. 5th at 546-547 (internal
18 references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46th
19 Cal.4th 993, 1003 (2009) and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348,
20 381 (2014).)

21 Notwithstanding the above, the Settlement Administrator will provide notice to the
22 aggrieved employees, along with a check for their penalties, of the nature of the claims and release
23 at issue in this case. (Bartz Decl., ¶ 20).

24 VII.

25 ATTORNEYS’ FEES AND COSTS

26 A. Fees Can Be Awarded As A Percentage of the Common Fund

27 When a common fund is created, attorneys who secured the fund are entitled to a
28 percentage of the fund. (*See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 [“the

1 court may determine the amount of a reasonable fee by choosing an appropriate percentage of
2 the fund created]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 [“percentage fees
3 have traditionally been allowed in . . . common fund cases”]). Plaintiff’s request for one-third of
4 the common fund is reasonable, falls within the Ninth Circuit’s historical benchmark for
5 attorneys fees of 25% to 50% of a common fund, and is fair compensation for undertaking
6 complex litigation on a contingent basis. (*See, e.g.,* Rubinstein, Conte and Newberg, Newberg
7 on Class Actions at § 14:6 [surveying cases, and finding that 30-50% of fees awarded in cases in
8 which the common fund is relatively small]; *see also In re Ampicillin Antitrust Litigation*
9 (D.D.C. 1981) 526 F.Supp. 494 [court approved attorney fee award equal to 45% of the
10 settlement fund].)

11 Under the common fund doctrine, “a litigant or a lawyer who recovers a common fund
12 for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee
13 from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S.Ct. 745, 750, 62
14 L.Ed.2d 676 (1980). The Supreme Court explained:

15 The doctrine rests on the perception that persons who obtain the benefit of a
16 lawsuit without contributing to its cost are unjustly enriched at the successful
17 litigant’s expense. Jurisdiction over the fund involved in litigation allows a court
18 to prevent this inequity by assessing attorney’s fees against the entire fund, thus
19 spreading fees proportionately among those benefitted by the suit.” (Citations
20 omitted.)

21 (*Id.*; *see also Laffitte, supra*, 1 Cal.5th at 503 [“the percentage method is a valuable tool that
22 should not be denied our trial courts”]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [“one who
23 expends attorneys’ fees in winning a suit which creates a fund from which other derive benefits,
24 may require those passive beneficiaries to bear a fair share of the litigation costs”].)

25 Thus, the common fund doctrine ensures that each member of the class contributes
26 proportionately to the payment of attorney’s fees recovered from monetary payments that the
27 prevailing party recovered in the lawsuit. “Put another way, in common fund cases, a variant of
28 the usual rule applies and the winning party pays his or her own attorneys fees. . .” *Stanton v.*
Boeing, 327 F.3d 938, 967 (9th Cir. 2003), citing *Wininger v. SI Mgmt L.P.*, 301 F.3d 1115 (9th
Cir. 2002).

1 Because Plaintiff's attorneys secured a fund for Plaintiff and the other aggrieved
2 employees, they are entitled to a reasonable percentage of that fund.

3 **B. Plaintiff's Attorneys Fees Are Also Recoverable Under The Lodestar**
4 **Adjustment Approach**

5 Fees in representative cases are also appropriate under the lodestar method, whereby the
6 number of hours reasonably expended is multiplied by a reasonable hourly rate. *See Lealao,*
7 *supra*, 82 Cal.App.4th at 26. Under PAGA, moreover, attorneys' fees and costs are statutorily
8 recoverable. *See* Cal. Labor Code § 2699, subd. (g)(1). Once a lodestar has been established, it
9 may "be adjusted, based on consideration of factors specific to the case, in order to fix the fee at
10 the fair market value for the legal services provided." *PLCM Group, Inc. v. Drexler*, 22 Cal.4th
11 1084, 1095 (2000). In evaluating the lodestar, and whether an upward adjustment is appropriate,
12 courts look to the qualifications of counsel, the reasonableness of the rates charged, the novelty
13 and difficulty of the case, the contingent nature of the case, the results achieved, and related
14 matters. *See, e.g., Serrano, supra*, 20 Cal.3d 25, 49; *see also Press v. Lucky Stores, Inc.*, 34
15 Cal.3d 311, 321-322 (1983). All such factors support the fee award here.

16 **1. Plaintiff's Counsel Are Well-Qualified To Represent The Aggrieved**
17 **Employees And Their Rates Are Reasonable**

18 Counsel for Plaintiff are experienced employment lawyers, and have extensive
19 experience in the specific subcategory of wage and hour claims. (Bartz Decl. ¶¶ 12-16; Haines
20 Decl., ¶ 3). Moreover, counsel for Plaintiff have hourly rates that are reasonable in the relevant
21 market, and below that found with other class action employment lawyers with similar expertise.
22 (Bartz Decl., ¶ 19).

23 **2. Plaintiff's Counsel's Lodestar Is Well Documented**

24 A properly supported motion for attorney's fees is prima facie evidence that the expenses
25 and services were necessarily incurred. *Hadley v. Krepel*, 167 Cal.App.3d 677, 682 (1985).
26 Here, counsel provide appropriately detailed declarations and detailed, contemporaneous billing
27 statements in support of the lodestar amounts. (Bartz Decl., ¶ 19, and Ex. 4). The lodestar here
28 of more than \$66,295 is reasonable, and all hours were reasonably incurred to generate the

1 result for the State of California and the aggrieved employees. Based upon the above lodestar,
2 Plaintiff requests a negative multiplier of .87.

3 **3. Novelty And Difficulty Of The Case**

4 Plaintiff and her counsel were able to secure a favorable settlement only after
5 investigating the claims and researching the theories of potential liability in this case.

6 **4. Plaintiff's Counsel Worked Efficiently And Skillfully**

7 Plaintiff obtained significant informal discovery, and researched all available claims in
8 investigating the alleged wage and hour violations. Plaintiff and her counsel resolved the case
9 only after intense settlement negotiations that nearly broke down several times. Plaintiff's
10 counsel's tenacity produced the highest and best settlement possible from Defendant.

11 **5. Plaintiff's Counsel Worked Entirely On A Contingency Basis**

12 Plaintiff's counsel worked on a complete contingency and advanced all expenses and
13 costs. The contingent risk included liability issues, damage issues, and evolving changes under
14 PAGA. According to the California Supreme Court:

15 A contingent fee must be higher than a fee for the same legal services paid as they
16 are performed. The contingent fee compensates the lawyer not only for the legal
17 services he renders but for the loan of those services. The implicit interest rate on
18 such a loan is higher because the risk of default (the loss of the case, which
19 cancels the debt of the client to the lawyer) is much higher than that of
20 conventional loans.

21 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, *Economic Analysis of*
22 *Law* (4th ed. 1992) pp. 534, 567.)

23 **6. Plaintiff's Counsel Achieved A Good Result**

24 Plaintiff's counsel obtained a \$173,700 settlement, which would not have been achieved
25 but for Plaintiff and her attorneys' ability to efficiently prosecute the case to a successful
26 conclusion.

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Dated: October 22, 2024

By: /s/Aaron A. Bartz/s/
 Aaron A. Bartz
 Attorneys for Plaintiff SHAREEKA
 NORRIS