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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

LUIS ESCOBEDO, an individual, on behalf
of himself and other similarly aggrieved
employees and the State of California,

Plaintiff,

vs.

MILGARD MANUFACTURING, LLC.; a
Delaware limited liability company; and
DOES 1-50,

Defendant.

Case No. 2023CUOE016619

[Assigned for all purposes to Hon. Mark S. Borrell]

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
SETTLEMENT OF CLAIMS BROUGHT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, REASONABLE
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT PAYMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*[Declarations of Jeremy F. Bollinger, Dennis F.
Moss, Sahag Majarian II, Nazo Koulloukian, Luis
Escobedo, Miguel Arias, and Jodey Lawrence;
Request for Judicial Notice; and [Proposed]
Order filed concurrently herewith]*

Hearing Date: October 31, 2024
Time: 8:30 a.m.
Dept.: 40

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

2 PLEASE TAKE NOTICE that on October 31, 2024, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department 43 of the Superior Court for the County of Ventura located at 800
4 South Victoria Ave, Ventura, CA, 93009, Plaintiffs Luis Escobedo and Miguel Arias (“Plaintiffs”),
5 individually, on behalf of other similarly aggrieved employees, and the State of California, will and
6 hereby do move this Court for entry of an Order as follows:

- 7 1. Granting approval, pursuant to California Labor Code § 2698 *et seq.*, and specifically §
8 2699(l), of the proposed Settlement of claims brought pursuant to the Private Attorneys
9 General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) and set forth in the Stipulation of
10 Settlement and Release of PAGA Action (“Settlement Agreement”), a true and correct
11 copy of which is attached as Exhibit 1 to the Declaration of Jeremy F. Bollinger filed
12 concurrently herewith;
- 13 2. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
- 14 3. Approving the proposed Settlement Letter as to form and content, and directing the
15 Settlement Administrator to distribute it along with Settlement shares to the aggrieved
16 employees (“Settlement Group” or “Settlement Group Members”) pursuant to the terms
17 of the Settlement Agreement;
- 18 4. Directing the distribution of the Gross Settlement Amount pursuant to the terms of the
19 Settlement Agreement; and
- 20 5. Approving an award of attorneys’ fees to PAGA Counsel in an amount not to exceed
21 \$347,965.80 (35% of the Gross Settlement Amount), an award of attorneys’ costs to
22 PAGA Counsel for \$24,742.07 and Enhancement Payment awards of \$10,000 per
23 Plaintiff (for a total of \$20,000).

24 Defendant does not oppose this motion. Plaintiff bases this motion on this Notice, the attached
25 Memorandum of Points and Authorities, the declarations of Plaintiffs, their counsel, and the
26 Settlement Administrator, all exhibits attached thereto, the Request for Judicial Notice, the
27
28

1 [Proposed] Order, the Settlement Agreement, all other pleadings and papers on file in this action, and
2 on any further oral or documentary evidence or argument presented at the time of hearing.

3 Plaintiffs have submitted the proposed Settlement and this Motion to the Labor and Workforce
4 Development Agency (“LWDA”), by uploading them on the LWDA’s website concurrently with the
5 filing of this Motion as required by Labor Code § 2699(1)(2). (Declaration of Jeremy F. Bollinger
6 [“Bollinger Decl.”] ¶ 3, Exhs. 2-3.)

7 Defendant does not oppose this Motion, and given the multiplicity of issues addressed in this
8 Motion, Defendant has indicated its approval of Plaintiffs’ need to exceed the 20-page limit set forth
9 in California Rule of Court 3.764(c)(2). Therefore, Plaintiffs respectfully request that the Court
10 consider Plaintiffs’ overlength memorandum of points and authorities.

11
12 Dated: October 7, 2024

13
14 By: 
15 Jeremy F. Bollinger
16 Nazo Koulloukian
17 Sahag Majarian
18 MOSS BOLLINGER LLP
19 KOUL LAW FIRM
20 MAJARIAN LAW GROUP, APC

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28 Attorneys for Plaintiffs, all similarly Aggrieved
Employees, and the State of California

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiffs Luis Escobedo and Miguel Arias (“Plaintiffs”) request that the
4 Court grant approval of the Settlement reached between the parties to resolve claims brought
5 exclusively under the Private Attorneys General Act of 2004, Labor Code section 2698, et seq.
6 (“PAGA”) seeking penalties for various alleged violations of the California Labor Code and
7 Industrial Wage Commission’s Wage Orders. Pursuant to the Settlement, Defendant Milgard
8 Manufacturing, LLC (“Defendant”) will pay \$994,188.00.

9 Given the amount Defendant will pay to effectuate the Settlement and the formula for
10 distribution of the Settlement funds, Plaintiffs and their counsel believe that the Settlement is fair,
11 reasonable and in the best interests of the State and the aggrieved employees. Accordingly, Plaintiffs
12 request that the Court “review and approve” the Settlement pursuant to Labor Code §2699(1)(2). If
13 the Court deems the Settlement fair and acceptable, Plaintiffs request that Court enter an order
14 approving the Settlement in the form lodged herewith and ordering the Parties to carry out the terms
15 of the Settlement Agreement; and enter a Final Judgment thereon.¹

16 **II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY**

17 **A. Litigation Overview and Procedural History**

18 Pursuant to Labor Code section 2699.3, on May 30, 2023 and as amended on August 9, 2024,
19 Plaintiff Escobedo notified Defendant and the Labor and Workforce Development Agency
20 (“LWDA”) of the alleged violations with his PAGA letter. On June 25, 2024, Plaintiff Arias notified
21 Defendant and the LWDA of the alleged violations with his PAGA letter. On November 13, 2023,
22 Plaintiff Escobedo filed a PAGA action entitled *Luis Escobedo v. Milgard Manufacturing, LLC, et*
23 *al.*, Ventura County Superior Court Case No. 2023CUOE016619, alleging claims for civil penalties

24 _____
25 ¹ Plaintiff Escobedo has submitted this Motion to the LWDA, by uploading it on the LWDA’s website
26 concurrently with the filing of this Motion as required by Labor Code § 2699(1)(2). (Declaration of
27 Jeremy F. Bollinger [“Bollinger Decl.”] ¶¶ 3, 4, Exs. 2-3.) Proof of submission of the proposed
28 Settlement Agreement and Plaintiffs’ Motion, and a copy of the email from the LWDA confirming
receipt is attached to the Bollinger Declaration as Exhs. 2-3.

1 based on failure to pay minimum and overtime wages, failure to provide legally compliant meal and
2 rest periods, failure to obtain Plaintiff's and other similarly aggrieved employees' consent or
3 authorization for payment of final wages through a payroll card program; failure to provide an
4 alternative payment method other than through a payroll card; failure to compensate Plaintiff and
5 other aggrieved employees in a form that may be cashed, without delay, and without a fee or discount;
6 failure to provide legally compliant wage statements, and failure to timely pay all wages. (Bollinger
7 Decl. ¶ 20.) On June 25, 2024, Plaintiff Arias submitted his PAGA letter to the LWDA and
8 Defendant.² On August 16, 2024, Plaintiff Escobedo amended his complaint to include Plaintiff Arias
9 and Arias' claims in this PAGA action, which is the Operative Complaint. (Bollinger Decl. ¶ 20.)

10 Defendant denies each and all of Plaintiffs' allegations in their entirety (Settlement ¶ 4.1.)
11 The Agreement reached between the Parties does not constitute, is not intended to constitute, and will
12 not be deemed to constitute, an admission of liability by Defendant as to the merits, validity, or
13 accuracy of any of the allegations or claims made against Defendant in the Action. (*Id.*)

14 **B. The Discovery Process, Mediation and Settlement**

15 Prior to mediation, Plaintiffs requested data to adequately assess Defendant's liability and
16 potential exposure. (Bollinger Decl. ¶ 21; Ex. 1 at ¶ 2.2.) Defendant voluntarily provided substantial
17 data concerning PAGA Members, including policies related to meal and rest breaks and timekeeping,
18 and PAGA Members' time and pay records during the PAGA Period. (Bollinger Decl. ¶ 21; Ex. 1 ¶
19 2.2.) The information and data exchanged by Plaintiffs and Defendant (collectively, the "Parties")
20 prior to and during mediation and settlement negotiations were sufficient to reliably assess the merits
21 of the Parties' respective positions and to compromise the issues on a fair and equitable basis. (*Id.* ¶
22 21; Ex. 1 ¶ 3.1.)

23 On August 12, 2024, Plaintiffs and Defendant attended a mediation with mediator Tripper
24 Ortman, Esq. The mediation resulted in a mediator's proposal which all parties accepted, resulting in
25

26 ² Pursuant to Labor Code §2699.3(a)(2)(A), Plaintiff did not receive notice from the LWDA
27 evidencing its intention to investigate within sixty-five (65) calendar days of the respective PAGA
28 letters. (Bollinger Decl. ¶ 20.)

1 the Settlement, the terms of which are set forth herein. (*Id.* ¶ 22; Settlement ¶ 2.2.)

2 The Parties believe and agree that the Settlement provides for a fair, adequate, and reasonable
3 resolution of the Action and have arrived at the Settlement in extensive, arm’s length negotiations,
4 considering all relevant factors, present and potential. (Bollinger Decl. ¶ 23; Declaration of Dennis
5 F. Moss [“Moss Decl.”] ¶ 3; Declaration of Sahag Majarian [“Majarian Decl.”] ¶¶ 6,7; Declaration
6 of Nazo Koulloukian [“Koulloukian Decl.”] ¶ 4). The Settlement presented to this Court reflects the
7 agreement the Parties reached to settle the lawsuit.

8 As part of the Settlement, the Parties agreed that Plaintiff Escobedo would file a First
9 Amended Complaint (the “Operative Complaint”) to add Plaintiff Arias and his claims. The First
10 Amended Complaint was filed August 16, 2024.

11 The Parties recognize and acknowledge the expense and delay of continued lengthy
12 proceedings necessary to prosecute the Action against Defendant through trial and through appeals.
13 (Settlement at ¶ 3.2.) As private attorneys general and the proxies or agents of the state’s labor law
14 enforcement agencies, Plaintiffs believe that the Settlement is fair and reasonable and, therefore, ask
15 the Court to approve this settlement. (Declaration of Luis Escobedo [“Escobedo Decl.”] *passim*;
16 Declaration of Miguel Arias [“Arias Decl.”] *passim*.) PAGA Counsel believes that the Settlement
17 confers substantial benefits upon Plaintiffs and the Settlement Group Members and that an
18 independent review of the Settlement by the Court in the approval process will confirm this
19 conclusion. (Bollinger Decl. ¶ 23, Ex 1. at ¶ 3.2; Moss Decl. ¶ 3; Koulloukian Decl. ¶ 4; Majarian
20 Decl. ¶ 6,7.)

21 **III. PAGA ACTIONS AND THE REQUIREMENTS**

22 **A. The PAGA Statutory Scheme**

23 PAGA creates a means of “deputizing” citizens as private attorneys general to enforce the
24 Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal. App. 4th 489,
25 501, *review den.* (Oct. 19, 2011, No. S195850), *cert. denied* 132 S.Ct. 1910 (Apr. 16, 2012). A
26 plaintiff may not — and Plaintiffs here do not — bring a PAGA claim simply on his or her own behalf
27 as an individual claim, but “as the proxy or agent of the state’s labor law enforcement agencies.” *Id.*,

1 at 986; *see also* *Reyes v. Macy's, Inc.* (2011) 202 Cal. App. 4th 1119, 1123-1124; *Iskanian v. CLS*
2 *Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. When an aggrieved employee brings a PAGA
3 claim, “the government is always the real party in interest.” *Securitas Sec. Servs. USA, Inc. v. Sup.*
4 *Ct. of San Diego Cnty.* (2015) 234 Cal. App. 4th 1109, 1119; *Montano v. The Wet Seal Retail, Inc.*
5 (2015) 232 Cal. App. 4th 1214, 1222 (“[A] PAGA action is a dispute between an employer and the
6 State agency.”). Accordingly, a plaintiff that brings a PAGA claim represents “the same legal right
7 and interest as state labor law enforcement agencies,” in that the plaintiff seeks to recover those civil
8 penalties that the LWDA otherwise would assess and collect. *Arias v. Super. Ct.* (2009) 46 Cal.4th
9 969, 986; Lab. Code § 2699 (a) & (f); *Securitas, supra*, 234 Cal. App. 4th at 1119; *see also* *Medina*
10 *v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding “PAGA plaintiffs do not have property
11 rights in their cases.”), and *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court*
12 (2009) 46 Cal.4th 993, 1003.

13 Therefore, when a plaintiff brings a PAGA claim, he or she is properly viewed as a private
14 attorney general prosecuting violations of California’s labor laws on behalf of the state.

15 An employee may commence a PAGA action by fulfilling the requirements of California
16 Labor Code section 2699.3 (a)(1), which simply states:

17 The aggrieved employee or representative shall give written notice by certified mail
18 to the Labor and Workforce Development Agency and the employer of the specific
19 provisions of this code alleged to have been violated, including the facts and
theories to support the alleged violation.

20 Lab. Code § 2699.3 (a)(1)

21 As explained above, Plaintiffs complied with the notice requirements and properly pled a
22 PAGA cause of action. (Bollinger Decl. ¶ 20; Kalloukian ¶ 3.)

23 **B. The Court Has Discretion When Awarding The Amount Of Penalties.**

24 PAGA provides for penalties in the amount of \$100 for each violation per aggrieved employee
25 per pay period for the initial violation and \$200 for each violation per aggrieved employee per pay
26 period for each subsequent violation. Lab. Code § 2699(f)(2).

27 “PAGA penalties...are mandatory, not discretionary” and must be awarded upon a showing

1 that Defendant violated the Labor Code.³ *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157,
2 1213; *Moreno v. Autozone, Inc.* (N.D. Cal. Jun. 5, 2007) No. C05-04432 MJJ, 2007 WL 1650942, at
3 *3. However, PAGA provides the Court with discretion when it finds liability and awards these
4 penalties as part of a judgment. Labor Code section 2699(e)(2) states that “a court may award a lesser
5 amount than the maximum civil penalty amount specified by this part if, based on the facts and
6 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
7 and oppressive, or confiscatory.” Here, Defendant denies each and all of Plaintiffs’ allegations in
8 their entirety. (Settlement ¶ 4.1.)

9 The Parties agree that the Court, in assessing the Settlement, should consider Defendant’s
10 attempts to ameliorate any potential liability, along with the risk assessment, and the post-judgment
11 prerogative the Court possesses to lower penalties had Plaintiffs prevailed at trial. The Parties believe
12 that, based on these factors, the Court will find that this settlement is fair, reasonable.

13 **C. PAGA Authorizes The Payment Of Fees And Costs To The Prevailing**
14 **Party/Private Attorney General.**

15 PAGA provides for the recovery of reasonable attorneys’ fees and costs. Lab. Code §
16 2699(g)(1) (“Any employee who prevails in any action shall be entitled to an award of reasonable
17 attorney’s fees and costs, including any filing fee paid...”). The monetary settlement and
18 programmatic relief make Plaintiff a “prevailing party.” *Folsom v. Butte County Ass’n of Gov’ts*
19 (1982) 32 Cal. 3d 668,671; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 621. Even if Labor Code §
20 2699(g)(1) did not authorize fees, Plaintiffs would be entitled to fees as a Private Attorneys General
21 under Code of Civil Procedure § 1021.5 because Plaintiffs brought this action to, and the action does,
22 benefit the public. *Arias*, 46 Cal.4th at 985–986. PAGA Counsel seeks 35% of the monetary relief
23 provided, or \$347,965.80 in fees, and up to \$25,000 for litigation costs.

24 Pursuant to PAGA, Labor Code § 2699(l)(2), Plaintiff provided the LWDA notice of the
25

26
27 ³ See also *Willner v. Manpower Inc.* (N.D. Cal. 2014) 35 F. Supp. 3d 1116; *McKenzie v. Federal Exp.*
28 *Corp.* (C.D. Cal. 2011) 765 F. Supp. 2d 1222, 1232.

Settlement and this Motion. The LWDA therefore has the opportunity to object or otherwise comment on the terms of the Settlement, including the fee allocation. (Bollinger Decl. ¶¶ 3, 4, Exs. 2-3.)

IV. THE SETTLEMENT

Pursuant to the Settlement Agreement, Defendant will pay a Gross Settlement Amount of **\$994,188** in full and final settlement of the PAGA claim alleged. (Settlement at ¶ 1.10.) In no event shall Defendant be required to pay more than the Gross Settlement Amount. Per the Settlement Agreement, the amount is allocated as follows:

<u>Gross Settlement Amount (GSA):</u>	\$994,188.00
Settlement Payments to the State (LWDA):	\$242,014.33
Settlement Payments to Aggrieved Employees per L.C.:	\$347,965.80
(Combined Payment to State and Employees:	\$589,980.13 [59% of GSA])
Plaintiff's Counsel's fees (up to 35% of GSA):	\$347,965.80
Requested Litigation Costs:	\$24,742.07
Service Awards to Plaintiffs (total):	\$20,000.00
Settlement Administrator Costs	\$11,500.00 (capped)

(Bollinger Decl. ¶ 11, Ex. 1 at ¶¶ 1.10, 1.13, 5.1 et seq.)

Each PAGA Member (or "Settlement Group Member") shall receive a share of the \$347,965.80, pursuant to the methodology in subsections 1.11 and 5.2 of the Settlement Agreement (Settlement at ¶ 1.11, 5.2.) For settlement purposes, the aggrieved employees referred to as PAGA Members or Settlement Group Members are defined as: "all current and former non-exempt employees of Defendant in California during the PAGA Period." (*Id.* at ¶ 1.18.) The PAGA Period is defined as: May 30, 2022 through the date of approval of the settlement (*Id.* at ¶ 1.19.) Defendant estimates that there are approximately 2,124 PAGA Members. (Bollinger Decl. ¶ 28.) PAGA Members will receive an average of approximately \$163.83 per person (\$347,965.80 divided by 2,124 PAGA Members) as their share of 35% of the civil penalties recovered. (Bollinger Decl. ¶ 29.)

Settlement checks shall remain valid for one hundred eighty (180) calendar days from date of

issuance. Any funds associated with uncashed checks after one hundred eighty (180) calendar days will be distributed pursuant to California to Code of Civil Procedure section 384 to the California State Controller for deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. (Bollinger Decl., Ex. 1 at ¶ 7.3.)

V. ARGUMENT

A. The Court Should Approve the Settlement Agreement.

Pursuant to Labor Code section 2699(*I*), the Parties must obtain Court approval of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Ct.* (2009) 46 Cal.4th 969, the Parties need not follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Nonetheless, to comply with the requirements of Labor Code section 2699, Plaintiffs submitted this Motion and the Settlement Agreement (Exhibit “1” to the Bollinger Declaration) for Court approval. (Bollinger Decl., Exs. 2-3.)

B. The Risks of Moving Forward with Plaintiffs’ PAGA Claim

To help the Court evaluate the fairness of the Settlement, below is a discussion of the risk evaluation made by Plaintiffs and their Counsel. They considered the arguments and defenses asserted by Defense Counsel at mediation, assessed the risks of moving forward to trial and what this Court could do in awarding penalties even if Plaintiffs prevailed at trial.

Defendant’s exposure was calculated based upon the data provided to Plaintiffs prior to mediation. Plaintiffs’ analysis determined there are approximately 2,124 aggrieved employees of which 153 are drivers and driver assistants as of the date of mediation. There are approximately 3,503 pay periods at issue for all drivers and driver assistants and 69,036 pay periods at issue for all other aggrieved employees as of the date of mediation. (Bollinger Decl. ¶ 30.)

1) Off the Clock Claims

i. Facts Relevant to Unpaid Minimum Wage And Overtime Claims

Throughout Plaintiff Escobedo’s employment, Plaintiff Escobedo and other similarly situated aggrieved plant employees were required to don Personal Protection Equipment (“PPE”), including

1 a helmet, gloves, eyewear, and a heavy-duty jacket before clocking in to begin their shift. (Operative
2 Complaint ¶ 12.) Some of the PPE (e.g., the heavy-duty gloves) was dispensed using a machine
3 similar to a vending machine. (*Id.*) As a result, Plaintiff Escobedo alleges that he and other similarly
4 aggrieved employees arrived at least 5-10 minutes before their scheduled shift to collect the required
5 PPE from the vending machines and don it. (*Id.*) Because there were only approximately 3 machines
6 available to Defendant's entire production workforce at Plaintiff Escobedo's location, Plaintiff
7 Escobedo alleges that he and other similarly aggrieved employees (not including drivers and driver
8 assistants) had to line up to use the machines. (*Id.*) However, Defendant did not compensate Plaintiff
9 Escobedo and other similarly aggrieved employees for the 5-10 minutes of this pre-shift work and
10 only compensated them according to their scheduled start time. (*Id.*) Defendant denies the allegations
11 and contends that employees used the vending machines after they clocked in and donned any PPE on
12 the clock. (Bollinger Decl., ¶ 31.)

13 In addition, from approximately May 2020 to sometime towards the end of 2022, Plaintiff
14 Escobedo alleges that he and other similarly aggrieved employees were required to undergo a Covid-
15 19 health screening prior to entering Defendant's facilities. (Operative Complaint ¶ 13.) During the
16 screening, Plaintiff Escobedo was required to fill out a questionnaire and submit to a temperature
17 check. (*Id.*) The entire process lasted between 2-5 minutes. (*Id.*) However, Defendant did not
18 compensate Plaintiff Escobedo and other similarly aggrieved employees for this pre-shift time spent
19 on Covid-19 health screening activity and only compensated them according to their scheduled start
20 time. (*Id.*) Defendant denies the allegations and contends that Covid-19 screenings ended early in
21 2022, prior to the beginning of the PAGA period. (Bollinger Decl., ¶ 32.)

22 Arias further alleges that drivers and driver assistants were similarly required to work off the
23 clock. Drivers and assistants came on shift at the same time as other Milgard employees and were
24 required to wait in long lines to clock in. (Arias Decl. ¶ 5.) According to Arias, they were also required
25 to work off the clock during unpaid 45-minute first meal periods due to the number of deliveries
26 required in the insufficient amount of time provided. (*Id.*) Additionally, when they reach the 10-hour
27 mark of their shifts, if they have not yet completed their day's work, they have no choice but to clock
28

1 out and continue working. (Arias Decl. ¶4.) Plaintiffs allege that if the aggrieved employees did not
2 clock out after the 10th hour, Defendant automatically deducted a second 45-minute meal period from
3 their wages. (Arias Decl. ¶ 5.) Defendant denies the allegations and contends that drivers were
4 provided sufficient time to complete their tasks on the clock and take their required meal breaks.

5 *ii. Exposure re Unpaid Minimum Wage And Overtime Claims*

6 The subject off the clock work, given Defendant's knowledge if not requirement of the work,
7 gives rise to minimum wage and overtime claims under Labor Code sections 510, 1197 and related
8 Wage Order provisions. Minimum wage and overtime claims provide independent grounds for PAGA
9 remedies. Only one instance of off the clock work violation per pay period is necessary to generate a
10 PAGA penalty for the pay period. Plaintiffs calculated Defendant's exposure as follows:

11 ➤ Non-Driver Unpaid Minimum Wages and Unpaid Overtime Violations:

12 \$100 x 69,036 affected pay periods from May 30, 2022-present = \$6,903,600.

13 (Bollinger Decl. ¶ 33.)

14 ➤ Driver Unpaid Minimum Wages and Unpaid Overtime Violations:

15 \$100 x 3,503 affected pay periods from May 30, 2022-present = \$350,300. (Bollinger

16 Decl. ¶ 33.)

17 2) Meal Break Claims

18 *i. Facts Relevant To Meal Break Violation Claims*

19 For plant employees time records indicate that there were 43,760 pay periods with one or
20 more of the following: short first meal breaks, no first meal breaks in shifts over 6 hours, no first meal
21 breaks in shifts between 5 and 6 hours, late first meal breaks, no second meal breaks in shifts that
22 lasted between 10 and 12 hours, and no second meal breaks in shifts over 12 hours. (Bollinger Decl.
23 ¶ 34.)

24 For driver and driver assistant employees the time records show 2,959 such pay periods.
25 (Bollinger Decl. ¶ 34.)

26 However, Plaintiffs allege violations beyond those evident in the time records as Plaintiffs
27 and other aggrieved employees were required to clock out for meal periods but were often required
28

1 to work off the clock during unpaid meal periods to complete their assigned tasks. (Bollinger Decl. ¶
2 34.) Defendant denies these allegations and contends that employees were given the opportunity to
3 timely take complaint meal periods and were paid meal period premiums when they were not.

4 *ii. Exposure re Meal Break Violations*

5 Under Labor Code §§ 226.7 and 512, and the applicable Wage Orders, including Wage Order
6 1-2001(11), Plaintiffs and other similarly aggrieved employees were entitled to an uninterrupted meal
7 period of at least 30 minutes for each workday they worked more than 5 hours in any workday.
8 Defendant was required to allow Plaintiffs and other similarly aggrieved employees to take their meal
9 break before the 5th hour of work. As with the off the clock work, it only takes one rest break violation
10 per pay period to generate a PAGA meal break penalty for the pay period.

11 Wage Order 7-2001(11) provides: “If an employer fails to provide an employee a meal period
12 in accordance with the applicable provisions of this order, the employer shall pay the employee one
13 (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period
14 is not provided.” Wage Order 7-2001(11)(B), (12)(B) (same re rest periods) (emphasis added); see
15 also Labor Code § 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery
16 period in accordance with a state law, ..., the employer shall pay the employee one additional hour
17 of pay at the employee’s regular rate of compensation for each work day that the meal or rest period
18 is not provided.” Plaintiffs calculated Defendant’s exposure as follows:

19 ➤ Non-Driver Unpaid Minimum Wages and Unpaid Overtime Violations:

20 \$100 x 69,036 affected pay periods from May 30, 2022-present = \$6,903,600.

21 (Bollinger Decl. ¶ 35.)

22 ➤ Driver Unpaid Minimum Wages and Unpaid Overtime Violations:

23 \$100 x 3,503 affected pay periods from May 30, 2022-present = \$350,300. (Bollinger

24 Decl. ¶ 35.)

25 3) Rest Break Claims

26 *i. Facts Relevant To Rest Break Violation Claims*

27 Plaintiff Escobedo alleges that he and other similarly aggrieved plant employees regularly

1 worked between 10 to 11-hour shifts, entitling them to a third 10-minute rest period. (Operative
2 Complaint at ¶ 21.) However, Defendant failed to provide the third rest period to Plaintiff and other
3 similarly aggrieved plant employees to avoid interruption in the flow of work and maintain
4 continuous operations. (Id.) When this occurred, Defendant did not provide time later in the shift for
5 the employees to make up the missed rest period and did not compensate the employees for the missed
6 10 minutes of break time. (Operative Complaint ¶ 21; Bollinger Decl. ¶ 36.) Defendant denies these
7 allegations and contends that employees were authorized and permitted to take complaint rest breaks.

8 Plaintiffs allege drivers and their assistants were unable to complete assigned tasks and
9 deliveries within the time required, giving them no choice but to work through rest breaks. (Arias
10 Decl. ¶5.) Moreover, there were no rest break facilities provided and restrooms were not readily
11 available, resulting in noncompliant breaks. (Id.)

12 *ii. Exposure re Rest Break Violations*

13 Labor Code Section 226.7 and the applicable Wage Orders, including Wage Order 1, further
14 entitle Plaintiff and other similarly aggrieved employees to rest periods of at least 10 minutes for each
15 four-hour period of work, or major fraction thereof. Additionally, “If an employer fails to provide an
16 employee a meal...period in accordance with state law, ..., the employer shall the employee one
17 additional hour of pay at the employee’s regular rate of compensation for each workday that the meal
18 period... is not provided.” Wage Order 1-2001(11), (12) (same re rest periods); see also Labor Code
19 section 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery period in
20 accordance with state law, ..., the employer shall pay the employee one additional hour of pay at the
21 employee’s regular rate of compensation for each work day that the meal or rest period is not
22 provided.” Plaintiffs calculate Defendant’s exposure as follows:

23 ➤ Non-Driver Rest Break Violations:

24 \$100 x 62,449 affected pay periods in which employees worked over 10 hours from
25 May 30, 2022-present = \$6,244,900. (Bollinger Decl. ¶ 38.)

26 ➤ Driver Rest Break Violations:

27 \$100 x 3,332 affected pay periods in which employees worked over 10 hours from
28

May 30, 2022-present = \$333,200. (Bollinger Decl. ¶ 38.)

4) Labor Code §§ 212 and 213 Claims

i. Facts Relevant To Labor Code §§ 212 and 213 Claims

While Plaintiffs and other aggrieved employees consented and authorized the payment of their wages through automatic deposit, neither Plaintiffs nor any other aggrieved employee ever authorized or consented to the payment of their final paycheck through a paycard program (“Debit Card”). (Operative Complaint ¶ 28; Escobedo Decl., at ¶ 5.) Thus, the transfer of Plaintiffs’ and aggrieved employee’s wages to a third-party financial institution constitutes a method of direct deposit for which Defendant failed to obtain the required voluntary authorization. (Bollinger Decl. ¶ 39.) Defendant denies these allegations.

ii. Exposure re Labor Code §§ 212 and 213 Claims

California Labor Code § 212 requires employers to compensate employees in a form that may be cashed, without delay, and without a fee or discount. Labor Code § 213 requires that an employer first obtain an employee’s voluntary authorization before paying his or her wages through automatic deposit.

Defendant has estimated that it paid final wages to approximately 25 terminated employees per month during the PAGA period. Plaintiffs calculated Defendant’s exposure as follows:

➤ Labor Code §§ 212 and 213 Violations: \$100 x 25 persons per month x 27 months = \$69,000.

(Bollinger Decl. ¶ 39.)

5) Derivative Claims

i. Facts Relevant To Derivative Claims

Plaintiffs’ remaining claims for Failure to Provide Legally Compliant Wage Statements (Labor Code § 226), and Unpaid Final Wages (Labor Code § 201 et seq.) derive from the off the clock and meal and rest break claims. As a result of Defendant’s failure to fully and correctly pay Plaintiffs and other aggrieved employees’ overtime, and meal and rest break premiums owed for meal and rest break violations, Plaintiffs allege that Defendant is also liable for violations of Labor Code

Sections 201-203. Defendant denies these allegations.

ii. Exposure re Derivative Claims

➤ Non-Driver Unpaid Final Wage Violations:

$\$100 \times 783 = \$78,300.$

➤ Driver Rest Unpaid Final Wage Break Violations:

$\$100 \times 148 = \$14,800.$

➤ Non-Driver Wage Statement Violations:

$\$100 \times 69,030$ affected pay periods from May 30, 2022-present = \$6,903,600.

➤ Driver Rest Break Violations:

$\$100 \times 3,503$ affected pay periods from May 30, 2022-present = \$350,300.

(Bollinger Decl. ¶ 40.)

6) Total Exposure

In advance of mediation, Plaintiffs estimated at least \$30 million in potential civil penalties that Defendant would face for the non-driver and driver assistant employees and at least \$1.8 million in for the driver and driver assistant employees. (Bollinger Dec. ¶ 41.) Plaintiffs note the exposure estimate was based on stacking of multiple PAGA violations. Given the hesitancy to accept stacking claims at full value and the Court's discretion to reduce penalties, Plaintiffs submit it is more appropriate to assess the reasonableness of the Settlement amount under the totality of the circumstances rather than as a percentage of some astronomical potential liability/penalty exposure. (Bollinger Dec. ¶ 41.) In addition to Defendant's arguments on the merits of the claims (as mentioned above), those circumstances and Plaintiffs' assessment of their totality is addressed below, and establish the sound reasonableness of the Settlement now before the Court for approval.

C. Trial of Plaintiffs' PAGA Claims Presented Many Hurdles.

Before Defendant would have to pay substantial penalty for each pay period an employee worked, Defendant could have insisted that Plaintiffs prove as to each pay period for each employee that the employee was delayed more than a *de minimus* amount of time during the pay period, at least once, if delayed at all, during the pay period. Assume the court found that in a pay period, an employee

1 was delayed for three minutes once, and the employee lost more than the additional minute per shift
2 provided for during that pay period. That would raise the question as to whether the minute paid for
3 each other shift during the pay period compensated for the underpayment for one day. It would also
4 justify a finding by the court that the penalties should be reduced because a \$100 penalty for a loss
5 of perhaps a dollar or less in pay may be regarded as completely unfair. In considering the fairness
6 of the Settlement, Plaintiffs considered the results of other PAGA trials. There have been very few
7 PAGA trials. One of the latest occurred on March 20, 2020, when the Los Angeles County Superior
8 Court issued a Statement of Decision in *Laface v. Ralphs Grocery Company et al.*, Case No.
9 BC632679. (Bollinger Decl. ¶ 43, Ex. 5; *see also* Bollinger Decl. ¶ 44 [discussing other cases].)

10 In light of *Laface* and the other defense verdicts, the settlement achieved in this case achieves
11 a fair result and benefit for the aggrieved employees and the State. (Bollinger Decl. ¶ 45.) Despite the
12 real possibility that Plaintiffs could have faced a defense verdict at trial as in *Laface*, Plaintiffs
13 successfully negotiated a Settlement where the Court could very well have reached a defense verdict.

14 As such, in light of the risks posed by Defendant’s arguments, the potential for a defense
15 verdict as in *Laface*, as well as the Court’s discretion to reduce the amount of penalties awarded at
16 trial (see discussion in next section), Plaintiff’s Counsel determined that the Settlement is fair and
17 reasonable. (Bollinger Decl. ¶ 23; Moss Decl. ¶ 3; Koulloukian Decl. ¶ 4; Majarian Decl. ¶ 6,7.)

18 **D. Had Plaintiffs Tried the Case and Won As to Some Pay Periods As To Some Of**
19 **The Aggrieved Employees The Court Had the Ability to Exercise Its Discretion**
20 **to Reduce the Maximum Civil Penalties.**

21 “PAGA penalties...are mandatory, not discretionary” and the Court must award penalties
22 upon a showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163
23 Cal. App. 4th 1157, 1213; *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ,
24 2007 WL 1650942, at *3. However, PAGA does provide the Court with discretion when it awards
25 these penalties. Labor Code section 2699(e)(2) states that “a court may award a lesser amount than
26 the maximum civil penalty amount specified by this part if, based on the facts and circumstances of
27 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
28

1 or confiscatory.”

2 A court exercising its discretion to significantly reduce the civil penalty awarded under PAGA
3 is not a rare occurrence. *See e.g., Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 529
4 (awarding 10% of maximum civil penalty for meal break claims in light of Starbuck’s “good faith
5 attempts” to comply and because the violations were minimal). Even if this Court agreed with
6 Plaintiffs off the clock work claims, the Court could also conclude that Defendant acted in good faith.
7 Accordingly, Plaintiffs understood that this Court could reduce the award of penalties significantly.
8 (Bollinger Decl. ¶ 46.)

9 Plaintiffs believe that even if they overcame other risks, and prevailed at trial as to most of
10 the workweeks, Defendant could have argued that the Court should exercise its discretion under
11 PAGA to significantly reduce penalties under PAGA. (Bollinger Decl. ¶ 47.) Given the Court’s
12 discretion to reduce penalties, it is possible the Court could have awarded much less than the Parties
13 agreed to in the Settlement had Plaintiff prevailed at trial. Although Plaintiffs’ Counsel believe that
14 this case warrants penalties, they acknowledge the risk posed by Defendant’s arguments. (*Id.* ¶ 47.)

15 **E. Potential Impact That The California Employee Civil Action Law Initiative**
16 **Posed At The Time Of Mediation.**

17 Prior to mediation, the Legislature passed SB 92 (a response to the California Employee Civil
18 Action Law Initiative) which creates Section 2699(c)(2), amending PAGA, which provides early
19 opportunities for an employer to cure alleged violations. Because the claims of Plaintiff Arias were
20 exhausted after SB 92 was enacted, those claims were subject to the new PAGA regime. Accordingly,
21 there was a real possibility there would be no recovery under PAGA for those aggrieved employees
22 whose claims were brought Arias absent a settlement. (Bollinger Decl. ¶ 48.) Accordingly, Plaintiffs
23 discounted the claims brought by Arias significantly. (Bollinger Decl. ¶ 48.)

24 Based on all of the above factors, Plaintiff and his counsel determined that the mediator’s
25 proposal was fair and reasonable, and in the best interests of the aggrieved employees and the State.
26 This Settlement serves the LWDA’s interest in deterring Labor Code violations by imposing a hefty
27 monetary penalty on Defendant. (Bollinger Decl. ¶ 49.)

1 **VI. THE REQUEST FOR ATTORNEYS' FEES AND COSTS**

2 **A. The Court Should Approve the Attorneys' Fees and Costs in the PAGA**
3 **Settlement.**

4 As detailed fully in the Settlement Agreement, the Settlement requires Defendant to create a
5 Gross Settlement Amount ("GSA") of \$994,188.00. (Bollinger Decl., Ex. 1 at ¶ 1.10.) From that
6 fund, Plaintiff requests an award of attorneys' fees for Plaintiff's Counsel in an amount not to exceed
7 \$347,965.80, or 35% of the GSA, and \$24,742.07 in reimbursement for litigation expenses. (*Id.*, Ex.
8 1 at ¶¶ 1.17, 5.4.)

9 Prior to enactment of PAGA, when the State had the resources to seek civil penalties on behalf
10 of the public, it paid its employees (including their attorneys) their salaries and benefits for pursuing
11 such penalties. The Legislature enacted PAGA because the Labor Commissioner and other agencies
12 were hampered in their enforcement of civil penalties by inadequate funding and staffing constraints.
13 *Iskanian, supra*, 59 Cal.4th at 379. To facilitate broader enforcement, the Legislature enacted PAGA,
14 authorizing "aggrieved employees" to pursue civil penalties on the state's behalf. Lab. Code § 2699,
15 subd. (a).

16 In creating PAGA, the Legislature expressly provided that the private counsel retained by the
17 plaintiffs to represent the public's interest can recover fees if the plaintiffs are the prevailing party.
18 Lab. Code § 2699(g)(1).

19 One major difference between public and private enforcement is that when the State pursues
20 civil penalties directly, not through an aggrieved employee proxy, it must pay its attorneys for their
21 work, win or lose. Through PAGA, the State's *de facto* attorneys, Plaintiffs' Counsel, take a
22 substantial risk. They only get paid if they prevail through a judgment or settlement. Accordingly,
23 the State benefits substantially from the contingent nature of the PAGA enforcement mechanism—
24 expending no resources and getting the benefit of risk-taking attorneys' willingness to take on risk.
25 In this case, the State, after payment of fees, costs and aggrieved employee shares will receive
26 approximately \$242,014.33, with an expenditure of essentially no time or money.

1 1) Plaintiffs’ Counsel Are Entitled to a Fee from the Civil Penalties Represented
2 by the Gross Settlement Amount.

3 As previously indicated, this is *not* a class action. However, like a class action, it is a
4 representative action where instead of a class the Plaintiffs represent the State, the public. As a matter
5 of law and substance, counsel’s client is the public at large and the State of California. Plaintiffs are
6 simply “proxies” for the State.

7 On August 11, 2016, the California Supreme Court decided *Laffitte v. Robert Half*
8 *International*, which addressed, in a class action context, the correct methodology for awarding fees
9 in a representative action settlement. *Laffitte v. Robert Half Intern. Inc.* (2016) 205 Cal.Rptr.3d 555,
10 573. The *Laffitte* Court approved awarding fees as a percentage of the settlement fund.:

11 We join the overwhelming majority of federal and state courts in holding
12 that when class action litigation establishes a monetary fund for the benefit
13 of the class members, and the trial court in its equitable powers awards Class
14 Counsel a fee out of that fund, the court may determine the amount of a
15 reasonable fee by choosing an appropriate percentage of the fund created.

16 *Id.* at p. 573. Here, the fund created for the benefit of the public is, with Plaintiffs as proxies for the
17 State, not unlike the fund created in class action settlements, with the public the equivalent of the
18 class referenced in *Laffitte*. The Supreme Court in *Kim v. Reins International California, Inc.* (2020)
19 9 Cal.5th 73, reiterated the State-as-the-client aspect of PAGA actions, stating:

20 An employee suing under PAGA “does so as the *proxy or agent of the*
21 *state’s labor law enforcement agencies.*” (*Arias, supra*, 46 Cal.4th at p. 986,
22 italics added.) Every PAGA claim is “a dispute between an employer and
23 the *state.*” (*Iskanian, supra*, 59 Cal.4th at p. 386, Relief under PAGA is
24 designed primarily to benefit the general public, not the party bringing the
25 action. (*Arias*, at p. 986; *Brown v. Ralphs Grocery Co.* (2011) 197
26 Cal.App.4th 489, 501 (*Brown*).) “A PAGA representative action is therefore
27 a type of *qui tam* action,” conforming to all “traditional criteria, except that
28 a portion of the penalty goes not only to the citizen bringing the suit but to
all employees affected by the Labor Code violation.” (*Iskanian*, at p. 382,
9.) The “government entity on whose behalf the plaintiff files suit is always
the real party in interest.” (*Ibid.*)

26 *Id.* at 81.

27 The Court, in *Laffitte*, pointed out several reasons why the percentage-of-the-fund method is

1 preferred over the alternative lodestar-multiplier approach in California courts:

2 The recognized advantages of the percentage method—including relative
3 ease of calculation, alignment of incentives between counsel and the class,
4 a better approximation of market conditions in a contingency case, and the
5 encouragement it provides counsel to seek an early settlement and avoid
6 unnecessarily prolonging the litigation [citations]—convince us the
percentage method is a valuable tool that should not be denied our trial
courts.

7 *Id.* at 573.

8 An award of 35% of the civil penalties realized in the Settlement is appropriate here under the
9 “substantial benefit” theory. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1810; *Wershba*
10 *v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254. That theory permits a litigant who has
11 sued in a representative capacity to recover fees from the beneficiaries of that representation – here,
12 the State and the public, when the litigant’s efforts have created a substantial, actual, and concrete
benefit for the party it represents. *Laffitte, supra, passim.*

13 This doctrine rests on the understanding that attorneys should normally be paid by their
14 clients, in this case the State/public, and that unless attorneys’ fees are paid out of the settlement fund,
15 those who benefitted from the fund would be unjustly enriched. *Woodland Hills Residents Assn., Inc.*
16 *v. City Council* (1979) 23 Cal.3d 917, 943; *Save El Toro Ass’n v. Days* (1979) 98 Cal. App. 3d 544,
17 548-49. To prevent this unfair result, courts exercise their inherent equitable powers to assess
18 attorneys’ fees against the entire fund, thereby spreading the cost of those fees among the public who
19 benefits from PAGA actions. *Serrano v. Priest* (1977) 20 Cal.3d 25, 35 (*Serrano III*) As this approach
20 “better approximates the workings of the marketplace than the lodestar approach,” there is “a greater
21 judicial willingness to evaluate a fee award as a percentage of the recovery.” *Lealao v. Beneficial*
22 *Calif., Inc.* (2000) 82 Cal. App. 4th 19, 31, 48.⁴

23
24
25 ⁴ *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 (the percentage of
26 the fund method for calculating attorney’s fees more accurately reflects the results achieved for the
27 putative class than the lodestar method and “establishes reasonable expectations on the part of
28 plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids
protracted litigation.”); *In re Rite Aid Corp. Securities Litigation* (3d Cir. 2005) 396 F.3d 294, 300
(footnote continued)

1 The Court should also take into account whether the LWDA opposes the fee request herein
2 after receiving the Settlement pursuant to Labor Code § 2699(1)(2) along with a copy of this Motion;
3 *see Chamberlain v. Baker Hughes, a GE Co., LLC* (E.D. Cal. July 29, 2020) No.
4 119CV00831DADJLT, 2020 WL 4350207, at *5 (E.D. Cal. July 29, 2020) (finding “the lack of
5 objection from the LWDA despite being provided timely notice of the terms of this proposed [PAGA]
6 settlement ... weighs in favor of approval.”). The Settlement Agreement was submitted to the LWDA
7 on October 7, 2024. (Bollinger Decl. ¶ 3 & Ex. 2.)

8 2) The Attorneys’ Fees Request Is Well Within the Range of Fees in Comparable
9 Cases.

10 Plaintiffs’ Counsel at Moss Bollinger LLP, Koul Law Firm, APC and Majarian Law Group,
11 APC are experienced employment attorneys with expertise in wage and hour class and representative
12 actions. (*See* Bollinger Decl. ¶¶ 24-25; Moss Decl. ¶¶ 4-6; Koulloukian Decl. ¶¶ 6-13; Majarian Decl.
13 ¶ 2-5.)

14 Courts historically award fees in the twenty to fifty percent range, depending on the
15 circumstances of the case. As stated in Newberg:

16 No general rule can be articulated on what is a reasonable percentage of a common
17 fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
18 common fund in order to assure that the fees do not consume a disproportionate
19 part of the recovery obtained for the Class, although somewhat larger percentages
20 are not unprecedented.

21 Newberg on Class Actions, 3rd Ed., 1992, § 14.03; *and see Chavez v. Netflix, Inc.* (2008) 162 Cal.
22 App. 4th 43, 66, fn 11 (“Empirical studies show that, regardless whether the percentage method or
23 the lodestar method is used, fee awards in class actions average around one-third of the recovery.”);
24 *Bennett v. Simplexgrinnell LP* (N.D. Cal. 2015) 2015 WL 12932332 at *7 (awarding fee of 38.8%
25 plus costs of \$4,900,000 settlement fund); *In re Heritage Bond Litig.* (C.D. Cal Jun. 10, 2005) 2005

26 (“The percentage-of-recovery method is generally favored in common fund cases because it allows
27 courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
28 failure.”)

1 WL 1594403, at *18, n.12 (noting that more than 200 federal cases have awarded fees higher than
2 30%).

3 Courts have approved attorney fees' awards in other PAGA settlements on a common fund
4 basis at the same percentage requested by Plaintiffs here.⁵ Courts throughout California have awarded
5 attorneys' fees in the amount of 35%-40% of the gross class/PAGA settlement in cases recently
6 settled by Plaintiffs' Counsel.⁶

7 Throughout this case, Plaintiffs' Counsel has borne, and continues to bear, the entire risk and
8 cost of litigation associated with this PAGA action on a purely contingency basis. (Bollinger Decl. ¶
9 50.) As a result, Plaintiffs' Counsel have yet to receive any compensation for the amount of time and
10

11 ⁵ See Bollinger Decl., Exh. 5 (Final Judgment and Order of Dismissal ¶¶ 6, 8 (July 25, 2023) in
12 *Matimba v. EmployBridge LLC et al.*, Los Angeles County Sup. Ct. Case No. 21STCV46986)
13 (awarding 35% attorneys' fees of PAGA Settlement); Exh 6 (Final Judgment and Order of Dismissal
14 at ¶¶ 6, 8 (Feb. 10, 2022) in *Santiago v. Four Star Fruit et al.*, Kern County Sup. Ct. Case No. BCV-
15 20-100477 (awarding 35% attorneys' fees of PAGA Settlement); Exh. 7 [Final Judgment and Order
16 of Dismissal at ¶¶ 5-6 (February 4, 2021) in *Thomas v. CVS Health Corporation et al.*, Los Angeles
17 County Sup. Ct. Case No. 18AVCV00120 (awarding 35% attorneys' fees of PAGA Settlement)];
18 Exh. 8 [Final Judgment and Order at ¶¶ 4-5 (Oct. 30, 2020) in *Verge v. Wal-Mart Stores, Inc.*, Los
19 Angeles County Sup. Ct. Case No. BC591286 (same)]; Exh. 9 [Order and Judgement Granting
20 Unopposed Motion for Settlement Approval at ¶¶ 8, 11 (Aug. 26, 2020) in *Bustillo v. Swissport SA,*
21 *LLC*, Los Angeles County Sup. Ct. Case No. BC 700752 (same)]; Exh 17 [Final Judgment and Order
22 of Dismissal at ¶¶ 6, 8 (July 26, 2024) in *Soriano v. Recruitgigs LLC et al*, San Joaquin County Sup.
23 Ct. Case No. STK-CV-UOE-2022-0010399 (same)].)

19 ⁶ See Bollinger Decl., Exh. 10 (Order Granting Final Approval of Class Action Settlement at ¶¶ 14,
20 15b (Jan. 31, 2024), *Reyes v. Van Groningen & Sons, Inc.*, San Joaquin County Case No. STK-CU-
21 UOE-2021-0009368 (same); Exh. 11 (Final Order Approving Class Action Settlement and Release;
22 and Judgment at ¶¶ 5, 11 (Jan. 31, 2024), *Gonzalez v. Fletchline, Inc. et al.*, San Joaquin County Case
23 No. STK-CU-UOE-2022-0003439 (awarding 35%); Exh. 12 (Final Order Approving Class Action
24 and PAGA Settlement and Release; and Judgment (Oct. 6, 2023) in *Pineda v. Sun Valley Packing,*
25 *L.P. et al.*, Kings County Sup. Ct. Case No. 23CU0351) (awarding 40%); Exh. 13 (Order Granting
26 Final Approval of Class Action Settlement at ¶ 11(d) [Aug. 7, 2018] in *Medina-Yepes v. River Ranch*
27 *Farms, LLC*, Kings County Sup. Ct. Case No. 17C-0109) (awarding 40%); Exh. 14 (Final Order
28 Approving Class Action Settlement; and Judgement at ¶¶ 6, 12 in *Mendoza v. Weimer Farms*, Merced
County Sup. Ct. Case No. 19CV-03306 (Feb. 26, 2021) (awarding 35%); Exh. 15 (Order re: Motion
for Final Approval of Class Action Settlement; Judgement at pp.3, 5 in *Elizararras et al. v. SJ*
Distributors, Inc., Santa Clara County Sup. Ct. Case No. 18CV333810 (Nov. 4, 2020) (awarding
35%); Exh. 16 (Final Order Approving Class Action Settlement; and Judgement at ¶¶ 6, 12 in
Hernandez v. Stanislaus Food Prods. Co., Stanislaus County Sup. Ct. Case No. CV-19-006977 (Oct.
28, 2020) (awarding 35%). See also Bollinger Decl. ¶ 45 (discussing additional settlements).

1 money invested in the case to date. They had to incur substantial risk and expense, and were precluded
2 from taking other fee generating employment for the attorney time devoted to this case. Litigating a
3 high-stakes case against well-funded and well-respected Defendant is both difficult and not appealing
4 to many lawyers. Here, Defendant is represented by a top-notch law firm. There is no doubt that the
5 high caliber of defense counsel in this case, as well as the defense strategies employed to date,
6 required Plaintiffs' Counsel to spend more time litigating this action than in other PAGA cases.
7 (Bollinger Decl. ¶ 50.)

8 For these reasons, Plaintiffs' Counsel's requested fee of 35% is well within the range of
9 reasonableness and is fair compensation for undertaking this complex, risky, expensive, and time-
10 consuming litigation on a contingent basis.

11 3) The Court Should Approve the Reimbursement of Costs.

12 In addition to their requests for fees, Plaintiff's Counsel seek \$24,742.07 in reimbursement
13 for litigation expenses. (Bollinger Decl. ¶ 40 & Ex. 1 at ¶ 1.17 [providing for reimbursement of
14 \$25,000 in litigation expenses]). To date, including costs associated with filing the instant motion,
15 Moss Bollinger LLP has incurred \$24,667.07 in costs and Koul Law Firm has incurred \$75 in costs.
16 (Bollinger Decl. ¶ 52; Koulloukian Decl. ¶ 18.) All the requested costs are reasonable in amount and
17 necessarily incurred by Plaintiffs' Counsel in prosecuting this litigation. (*Id.*)

18 Expenses in this matter to date include costs for filing fees, research, mediation, discovery,
19 and additional costs for the prosecution of this case evidenced in the costs breakdown included in the
20 Declarations of Jeremy F. Bollinger and Nazo Koulloukian. All of these costs were incurred in the
21 course of this litigation, and all costs advanced were paid by Plaintiffs' Counsel.

22 Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses
23 advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court
24 should approve the request for reimbursement in the amount of \$24,742.07.

25 **VII. THE COURT SHOULD APPROVE THE PROPOSED ENHANCEMENT PAYMENT**
26 **TO PLAINTIFF.**

27 The Settlement Agreement calls for the payment of Enhancement Payments totaling \$20,000
28

1 (\$10,000.00 per plaintiff). (Bollinger Decl., Ex. 1 at ¶ 5.6.) Incentive awards are within the equitable
2 powers of the Court in representative contexts. In a class action context, the Ninth Circuit pointed
3 out that they “are intended to compensate class representatives for work done on behalf of the class,
4 to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to
5 recognize their willingness to act as a private attorney general.” *Rodriguez v. West Publishing Corp.*
6 (9th Cir. 2009) 563 F.3d 948, 958-59. “[I]t is established that named plaintiffs are eligible for
7 reasonable incentive payments to compensate them for the expense or risk they have incurred in
8 conferring a benefit on other members of the class.” *Munoz v. BCI Coca-Cola Bottling Co. of Los*
9 *Angeles* (2010) 186 Cal. App. 4th 399, 412 (citing *Clark v. American Residential Services LLC* (2009)
10 175 Cal. App. 4th 785, 805-806; *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977).

11 Here, the enhancement awards take into consideration the time, effort, and expense incurred
12 by Plaintiffs in coming forward to litigate this matter on behalf of the public. The time spent by
13 Plaintiffs includes finding competent counsel, providing information to Plaintiffs’ Counsel regarding
14 their relevant employment experiences, compiling documents, identifying witnesses, conducting
15 several meetings and conferences with Plaintiffs’ Counsel to discuss the status of the case,
16 participating in the mediation, calling Plaintiffs’ Counsel for updates on the progress of the case and
17 negotiations, and reviewing settlement documents, including their declarations submitted in support
18 of this motion. (Escobedo Decl. ¶¶ 5-14; Arias Decl. ¶¶ 10-14.) This was time Plaintiffs took away
19 from their family, work and other personal endeavors.

20 Plaintiffs’ Counsel consider this to be a fair and reasonable service award in light of similar
21 or greater service awards awarded in other PAGA settlements.⁷ (See Bollinger Decl., Exh. 4 [Final
22

23 ⁷ Courts in other class cases have awarded plaintiffs service awards in excess of the \$7,500 requested
24 by Plaintiff here. See *Reyes v. Macy’s, Inc.* (2011) 202 Cal. App. 4th 1119 (awarding \$25,000); *Glass*
25 *v. UBS Fin. Servs.* (N.D. Cal. Jan. 27, 2007) 2007 U.S. Dist. LEXIS 8476 at *51-*52 (awarding
26 \$25,000 service award in overtime class action); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal.
27 1995) 901 F. Supp. 294, 300 (approving \$50,000); *Louie v. Kaiser Permanente. et al.* (S.D. Cal. Feb.
28 2, 2009) S.D. Cal. Case No. 08CV0795 (awarding \$25,000); *Ralston v. US-Reports. Inc.* (Alameda
County Sup. Ct. May 22, 2009) Case No. RG07328773 (order filed May 22, 2009) (awarding
\$12,000); *Tate v. Kaiser* (Alameda County Sup. Ct. Nov. 24, 2009) Case No. RG07318416 (awarding
(footnote continued)

Judgment and Order of Dismissal ¶ 8 (Feb. 22, 2022) in *Santiago v. Four Star Fruit et al.*, Kern County Sup. Ct. Case No. BCV-20-100477 (\$10K service award to the PAGA plaintiff); Exh. 6 [Final Judgment and Order of Dismissal at ¶ 6 (February 4, 2021) in *Thomas v. CVS Health Corporation et al.*, Los Angeles County Sup. Ct. Case No. 18AVCV00120 (\$12K service award to each PAGA plaintiff)]; Exh. 7 [Final Judgement and Order at ¶ 5 (Oct. 30, 2020) in *Verge v. Wal-Mart Stores, Inc.*, Los Angeles County Sup. Ct. Case No. BC591286 (\$10K service award to the PAGA plaintiff)]; Exh 17 [Final Judgment and Order of Dismissal at ¶¶ 6, 8 (July 26, 2024) in *Soriano v. Recruitgigs LLC et al.*, San Joaquin County Sup. Ct. Case No. STK-CV-UOE-2022-0010399 (same)].)

Plaintiffs put their future employment prospects at risk by bringing this action as the fact that

\$25,000); *Amezquita v. Classic Beverage and Distributing Group, Inc.* (L.A. County Sup. Ct. May 17, 2012) Case No. BC412216 (awarding \$15,000); *Hall v. O.C. Jones & Sons, Inc.* (San Francisco County Sup. Ct. May 10, 2013) Case No. CGC-12-523668 (awarding \$15,000); *Stokes v. CSE Holdings, Inc., et al.* (San Francisco County Sup. Ct. Dec. 15, 2014) Case No. CGC-13-530640 (awarding \$25,000); *Stokes v. Interline, San Francisco County Superior Court*, Case No. CGC-12-523274 (order filed April 6, 2015) (awarding \$15,000); *In re York Wage and Hour Class Actions*, Sacramento County Sup. Ct. Judicial Council Coordination Proceeding No. 4560 May 27, 2015) (awarding \$25,000); *Magee v. American Residential Services, LLC* (L.A. County Super. Ct. Apr. 21, 2011) No. BC423798 (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations LLC* (L.A. County Super. Ct. June 24, 2010) No. BC375967 (awarding \$15,000 enhancement payments to the named plaintiffs); *Zamora v. Balboa Life & Casualty LLC* (L.A. County Super. Ct. Mar. 7, 2013) No. BC360026 (awarding \$25,000 enhancement payments to the named plaintiffs); *Aguilar v. Cingular Wireless LLC* (C.D. Cal. Mar. 17, 2011) No. CV 06-81997 DDP (awarding \$14,767 enhancement payment); *In re Dun & Bradstreet Credit Servs. Customer Litig.* (S.D. Ohio 1990) 130 F.R.D. 366 (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.* (S.D. Ohio 1991) 137 F.R.D. 240, 255 (approving \$50,000); *Yap v. Sumitomo Corp.* (S.D.N.Y. 1991) 1991 U.S. Dist. LEXIS 2124 *12, *24 (approving \$30,000); *Roberts v. Texaco* (S.D.N.Y. 1997) 979 F. Supp. 185, 203-204 (approving incentive payments of up to \$85,000); *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (affirming \$25,000); *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (approving \$300,000 to each class representative); *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F. Supp. 2d 907, 913-14 (granting \$50,000 service award); *Will v. Gen. Dynamics Corp.* (S.D. Ill. Nov. 22, 2010) 2010 WL 4818174, at *4 (awarding \$25,000 each to three class representatives); *Velez v. Novartis Pharm. Corp.* (S.D.N.Y. Nov. 30, 2010) 2010 U.S. Dist. LEXIS 125945, at *69-75 (granting service awards between \$175,000 and \$425,000 to 26 named plaintiffs); *Been v. O.K. Indus., Inc.* (E.D. Okla. Aug. 16, 2011) 2011 WL 448766, at *12-13 (awarding \$100,000 service awards to representatives for assuming risk of retaliation); *Heekin v. Anthem, Inc.* (S.D. Ind. Nov. 20, 2012) 2012 WL 5878032, at *1 (awarding \$25,000 each to two named plaintiffs); *In re Titanium Dioxide Antitrust Litig.* (D. Md. Dec. 13, 2013) 2013 WL 6577029, at *1 (approving \$125,000).

they filed a lawsuit against their employer “is searchable on the internet and may become known to prospective employers when evaluating” him for employment. *Guippone v. BH S&B Holdings, LLC* (S.D.N.Y. Oct. 28, 2011) 2011 U.S. Dist. LEXIS 126026, at *20; *see also* Bollinger Decl. ¶ 54 (discussing additional risks to employees who sue their employers). Accordingly, Plaintiffs should be awarded the agreed-upon service awards of \$10,000 per plaintiff.

VIII. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION

The Parties solicited bids from multiple settlement administrators and agreed to use Phoenix Settlement Administrators (“Phoenix”) as the third-party settlement administrator in this case. (Bollinger Decl. ¶ 56.) Phoenix has extensive experience administering class action matters, including PAGA settlements. (Declaration of Jodey Lawrence [“Admin Decl.”] ¶¶ 5-8 & Exh. A.) Phoenix shall be responsible for updating the addresses for PAGA Members, mailing the Notice of Settlement and calculating and distributing the settlement checks, among other duties. (*Id.* ¶ 8.) Phoenix capped its fees at \$11,500 for administering the settlement based on 2,050 PAGA Members. (Admin Decl. ¶ 17 & Exh. B.) Many courts appointed Phoenix to administer many other complex class and PAGA settlements, which is one of the reasons why the parties selected Phoenix. (Admin Decl. ¶ 9 & Exh. A; Bollinger Decl. ¶ 56.) Phoenix also has security protocols and other safeguards in place for protecting the data provided by Defendant. (Admin Decl. ¶¶ 11-12, Exh. B). Based on counsels’ experience in other class and PAGA settlements, Phoenix’s costs for administering this settlement are fair and reasonable. (Bollinger Decl. ¶ 56.)

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1 **IX. CONCLUSION**

2 Plaintiffs and their Counsel submit that the proposed Settlement as documented in the
3 Settlement Agreement is fair, adequate, reasonable, and in the best interest of the Parties and the State
4 of California. Plaintiffs respectfully request that the Court approve the Settlement and Order the
5 Parties to carry out the Settlement according to the terms of the Settlement Agreement.

6 Dated: October 7, 2024

7
8 By: _____


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