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individually, and on behalf of Aggrieved
Employees pursuant to the California Private
Attorneys General Act

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

DANIEL RODRIGUEZ, individually, and on
behalf of Aggrieved Employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

REPUBLIQUE, LLC, a California Limited
Liability Company; and DOES 1 through 25,
inclusive,

Defendants.

Case No. 23STCV14521

*Assigned for all purposes to Hon. Joseph Lipner,
Dept. 72*

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Date: October 1, 2024
Time: 8:30 a.m.
Dept.: 72
Reservation ID: 143101574900

Complaint Filed: June 22, 2023

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on October 1, 2024, at 8:30 a.m. in Department 72 of the
3 above-captioned Court located at Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles,
4 California 90012, Plaintiff Daniel Rodriguez (“Plaintiff”) will and hereby does move the Court for an
5 Order granting approval of the parties’ Private Attorneys General Act Settlement Agreement and
6 Release

7 Pursuant to California Labor Code section 2699(1)(2), a copy of the proposed Settlement
8 Agreement was submitted to the LWDA via online submission through its public portal. Genish Decl.,
9 ¶ 16. The date, time and location of the hearing on this Motion was also provided to the LWDA
10 concurrently with this filing. Genish Decl., ¶ 17.

11 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities,
12 the Declaration of PAGA Counsel Jonathan M. Genish, the Declaration of the Settlement
13 Administrator (Jodey Lawrence of Phoenix Settlement Administrators), the pleadings and other
14 records on file with the Court in this matter, and any other further evidence or argument that the Court
15 may properly receive at or before the hearing.

16
17 Respectfully submitted,

18 Dated: August 23, 2024

BLACKSTONE LAW, APC

19
20
21 By: _____

Jonathan M. Genish

22 *Attorneys for Plaintiff DANIEL RODRIGUEZ,*
23 *individually, and on behalf of Aggrieved Employees*
24 *pursuant to the California Private Attorneys*
25 *General Act*
26
27
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant Republique, LLC (“Defendant”) owns and operates a restaurant in the Miracle Mile
4 area of Los Angeles, which includes a casual bakery, café, and bar in the front with a more formal
5 dining area located in the rear. Plaintiff Daniel Rodriguez (“Plaintiff”) was employed by Defendant
6 as a Line Cook from approximately May 1, 2022 to June 22, 2022.

7 On June 22, 2023, Plaintiff filed this PAGA-only lawsuit against Defendant, alleging meal and
8 rest break violations, off-the-clock work, over time violations, and related derivative claims.
9 (Declaration of Jonathan M Genish [“Genish Decl.”], ¶ 10). Following the exchange of comprehensive
10 information, data and documents, Plaintiff’s counsel conducted several interviews with various
11 employees, reviewed all documents provided, and sent the data to its expert consultant, who performed
12 a detailed analysis of the time and pay records. The parties then participated in a full-day mediation
13 with respected wage and hour mediator, Chris Barnes. The case did not settle at mediation, and after
14 several weeks of further negotiations, the parties finally agreed to a mediator’s proposal for
15 \$225,000.00 to settle Plaintiff’s PAGA claims.

16 The proposed Private Attorneys’ General Act Settlement Agreement and Release (“Settlement
17 Agreement”) includes the following key terms:

- 18 • Number of Aggrieved Employees: 275 individuals (as of the date of mediation).
- 19 • Gross Settlement Amount: Two Hundred Twenty-Five Thousand Dollars and Zero Cents
20 (\$225,000.00).
- 21 • PAGA Counsel Fees Payment: Sixty-Seven Thousand Five Hundred Dollars and Zero
22 Cents (\$67,500.00) (30% of the Gross Settlement Amount), to be paid from the Gross
23 Settlement Amount.
- 24 • PAGA Counsel Litigation Expenses Payment: Twelve Thousand Five Hundred Twenty
25 Dollars and Sixteen Cents (\$12,520.16), to be paid from the Gross Settlement Amount.
- 26 • Administration Expenses Payment: Not to exceed Four Thousand Four Hundred and Fifty
27 Dollars and Zero Cents (\$4,450.00), to be paid from the Gross Settlement Amount.
- 28 • Estimated Net Settlement Amount: One Hundred Forty Thousand, Five Hundred and
Twenty-Nine Dollars and Eighty-Four Cents (\$140,529.84), of which 75% (\$105,397.38)

1 will be paid to the California Labor and Workforce Development Agency (“LWDA”) and
2 the remaining 25% (\$35,132.46) will be paid to the Aggrieved Employees.

3 As set forth herein, the Settlement Agreement is the product of informed discovery, arms-
4 length negotiations, and provides a fair, adequate, and reasonable recovery for the State of California
5 and Aggrieved Employees. Plaintiff therefore respectfully requests that the Court approve of the
6 proposed Settlement Agreement.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 Defendant is a restaurant, bar, and bakery in the Miracle Mile area of Los Angeles. Genish
9 Decl., ¶ 8. Defendant employed Plaintiff as an hourly-paid, non-exempt Line Cook from
10 approximately May 2022 to June 2022. Complaint, ¶ 18.

11 On May 16, 2023, Plaintiff provided written notice by electronic submission to the LWDA and
12 by U.S. Certified Mail to Defendant, pursuant to California Labor Code § 2699.3, of the specific
13 provisions of the California Labor Code alleged to have been violated by Defendant. Genish Decl., ¶
14 9 & Exh. 1.

15 On June 22, 2023, Plaintiff filed a Complaint for Enforcement Action Under the Private
16 Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq* (“Operative Complaint”) in the action entitled
17 *Daniel Rodriguez v. Republique, LLC*, Los Angeles County Superior Court Case No. 23STCV14521
18 (“Action”), alleging one cause of action under PAGA. Genish Decl., ¶ 10.

19 During the course of informal discovery in the Action, PAGA Counsel conducted an
20 investigation into the facts. This included obtaining data, information, and documents relating to the
21 underlying alleged violations, including, but not limited to, Plaintiff’s employee files, all Aggrieved
22 Employees’ time and payroll data, Defendant’s Employee Handbooks, and Aggrieved Employees’
23 data points so that Plaintiff, his counsel, and his expert could assess the number of alleged potential
24 violations and value of the recoverable penalties, as well as evaluate the strengths and weaknesses of
25 his claims. Genish Decl., ¶ 11.

26 Based on the data, information, and documents received, as well as thorough discussions with
27 Defendant’s counsel, PAGA Counsel was able to (i) determine the total number of distinct individuals
28 falling within the definition of “Aggrieved Employees” for the relevant statutory period, (ii) the

1 number of pay periods at issue among them, and (iii) construct a damages model that calculated the
2 maximum realistic amount of PAGA penalties that could be levied against Defendant within the
3 relevant statutory period. Genish Decl., ¶ 12. Defendant, however, disputed Plaintiff's claims and
4 disputed both the existence of and extent of liability as alleged by Plaintiff. *Id.* PAGA Counsel's
5 experience in litigating similar representative wage and hour claims, the degree of investigation that
6 was conducted here, and the amount of data, information, and documents that was obtained, allowed
7 counsel to determine the reasonable value of the PAGA claims, and to evaluate the strength of the
8 claims for purposes of settlement. *Id.*

9 On February 28, 2024, the Parties participated in a formal mediation conducted by Chris
10 Barnes, Esq., a neutral and respected mediator with extensive experience in complex wage and hour
11 matters. Genish Decl., ¶ 13. The case did not settle at mediation, and a settlement was reached only
12 after weeks of follow-up efforts with both Parties by Mr. Barnes.

13 The Parties believe the Settlement Agreement is fair, reasonable, and adequate. The Parties
14 understand, acknowledge, and agree that the Settlement Agreement constitutes a compromise of
15 Plaintiff's PAGA claims, and that it is the desire and intention of the Parties to affect a final and
16 complete resolution of the Actions. Genish Decl., ¶ 14.

17 Defendant denies all wrongdoing, and does not waive, but rather expressly reserves, all rights
18 to challenge all such claims and allegations upon all legal, procedural, and factual grounds should the
19 Settlement Agreement not become final. Genish Decl., ¶ 15. The Settlement Agreement reflects a
20 compromise reached to end litigation in the Action. *Id.* Following significant investigation and
21 extensive settlement negotiations, Plaintiff now seeks approval of the proposed Settlement Agreement,
22 which will resolve all representative claims alleged in the Action. *Id.*

23 In accordance with California Labor Code sections 2699 *et. seq.*, a copy of the proposed
24 Settlement Agreement was submitted to the LWDA via online submission through the LWDA's
25 website. Genish Decl., ¶ 16. Moreover, concurrently with the filing of this Motion, information on
26 the hearing of this Motion was also provided to the LWDA. Genish Decl., ¶ 17.

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28 ///

III. THE SETTLEMENT TERMS

A. Definition of the Aggrieved Employees

For purposes of settlement only, the Parties have agreed that the “Aggrieved Employees” shall be defined as current and former non-exempt employees who worked for Defendant in California at least one workday from May 16, 2022 to February 28, 2024 (Genish Decl., ¶ 18; Settlement Agreement, ¶ I(2)). The “PAGA Period” is the period from May 16, 2022, to February 28, 2024. (Genish Decl., ¶ 18; Settlement Agreement, ¶ I(15)). Based on its records, Defendant has reported that there are 275 Aggrieved Employees who worked 5,992 pay periods during the PAGA Period. (Genish Decl., ¶ 18).

B. Amount of Settlement

The Parties have agreed to settle the PAGA claims at issue in the Action for a non-reversionary Gross Settlement Amount of Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00). (Genish Decl., ¶ 19; Settlement Agreement, ¶ III(1)).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. Genish Decl., ¶ 19. The Gross Settlement Amount includes: (1) PAGA Counsel’s fees in the amount of thirty percent (30%) of the Gross Settlement Amount, equaling Sixty-Seven Thousand Five Hundred Dollars and Zero Cents (\$67,500.00); (2) PAGA Counsel’s actual litigation costs and expenses in the amount of Twelve Thousand Five Hundred Twenty Dollars and Sixteen Cents (\$12,520.16); and (3) Administration Expenses Payment, not to exceed Four Thousand Four Hundred and Fifty Dollars and Zero Cents (\$4,450.00). Genish Decl., ¶ 19; Settlement Agreement, ¶¶ III(3)(a)-(b).

After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount will be One Hundred Forty Thousand and Five Hundred Twenty-Nine Dollars and Eighty-Four Cents (\$140,529.84), of which seventy-five percent (75%), or One Hundred Five Thousand Three Hundred Ninety-Seven Dollars and Thirty-Eight Cents (\$105,397.38), will be paid to the LWDA (“LWDA PAGA Payment”), and twenty-five percent (25%), or Thirty-Five Thousand One Hundred Thirty-Two Dollars and Forty-Six Cents (\$35,132.46), will be distributed and paid to

1 Aggrieved Employees on a pro rata basis based on the number of pay periods each worked for
2 Defendant for at least one day during the PAGA Period (“PAGA Pay Periods”). Genish Decl., ¶ 20;
3 Settlement Agreement ¶ III(4).

4 Within fourteen (14) calendar days of the Effective Date (the latter of: (a) the Court’s approval
5 of the Settlement; or (b) the final resolution of any appeal that has been filed), Defendant will deliver
6 Aggrieved Employee identifying information in Defendant’s possession including each Aggrieved
7 Employee’s full name, last-known mailing address, Social Security number, and number of PAGA
8 Pay Periods (collectively, “Aggrieved Employee Data”) to the Administrator in the form of a
9 Microsoft Excel spreadsheet. Genish Decl., ¶ 21; Settlement Agreement, ¶ IV(2).

10 Within thirty (30) calendar days of the Effective Date, Defendant will fund the Gross
11 Settlement Amount by transferring the funds to the Administrator. Genish Decl., ¶ 22; Settlement
12 Agreement, ¶ III(1).

13 Within twenty-one (21) calendar days after Defendant funds the Gross Settlement Amount, the
14 Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the
15 Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel
16 Litigation Expenses Payment. Genish Decl., ¶ 23; Settlement Agreement, ¶ IV(3)-(4).

17 The Settlement Administrator shall exercise its best judgment to determine the current mailing
18 address for each Aggrieved Employee. Genish Decl., ¶ 24; Settlement Agreement, ¶ IV(4). Any
19 checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via
20 regular First-Class U.S. Mail to the forwarding address affixed thereto. *Id.* If no forwarding address
21 is provided, the Settlement Administrator will promptly attempt to determine the correct address using
22 a skip-trace or other search using the name, address or Social Security Number of the Aggrieved
23 Employee involved and will perform up to a single re-mailing if a new address is located. *Id.*

24 Individual PAGA Payment checks that are issued to Aggrieved Employees will be valid and
25 negotiable for up to one hundred and eighty (180) calendar days after the checks are initially mailed
26 to the Aggrieved Employees, and thereafter, will be canceled. Genish Decl., ¶ 25; Settlement
27 Agreement, ¶ IV(4). Any funds associated with such canceled checks will be distributed to the State
28 of California’s Unclaimed Property Fund in the name of the Aggrieved Employee. *Id.*

1 If the actual number of pay periods during the period May 16, 2022, to February 28, 2024, is
2 more than ten percent (10%) above 5,992, then the Gross Settlement Amount will be increased by the
3 percentage in excess of this ten percent (10%) threshold. Genish Decl., ¶ 26; Settlement Agreement,
4 ¶ III(2).

5 IV. STANDARD FOR APPROVAL OF PAGA SETTLEMENT

6 The settlement of a PAGA claim requires court approval. California Labor Code (“Lab. Code”)
7 § 2699(l). The Court must be mindful that a “[s]ettlement is a compromise, which balances the
8 possible recovery against the risks inherent in litigating further.” *In re TD Ameritrade Account Holder*
9 *Litig.*, 2011 U.S. Dist. LEXIS 103222 at *24 (N.D. Cal. Sep. 12, 2011). “[T]he very essence of a
10 settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes,’” as “it is the very
11 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
12 consensual settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-26 (9th Cir.
13 1982). As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial
14 on the merits,” or “judged against a hypothetical or speculative measure of what might have been
15 achieved.” *Ibid.*

16 Although the California Labor Code does not set forth the criteria by which a PAGA settlement
17 is to be evaluated, it is presumed that a reviewing court may take into consideration some of the factors
18 that courts use when reviewing a class action settlement. However, “a PAGA claim asserted on a non-
19 class representative basis...is not considered a class action but a law enforcement action, and therefore
20 does not have to meet the requirements of [a class action].” *Casida v. Sears Holdings Corp.*, 2012
21 U.S. Dist. LEXIS 9302 at *8 (E.D. Cal. Jan. 25, 2012).

22 A court’s review of a PAGA settlement necessarily implicates the following unique features
23 that render the approval process distinct from approval of a class action settlement under Code of Civil
24 Procedure Section 382 and California Rules of Court Rule 3.769. First, in evaluating the adequacy of
25 the settlement amount, the Court’s focus is not concerned with the amount aggrieved employees are
26 to receive, but rather, must focus on the total settlement amount in achieving PAGA’s objective.
27 Indeed, “[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class
28 damages,” and while a “[PAGA] action is ... designed to protect the public and penalize the employer

1 for past illegal conduct,” a reviewing court must be mindful of the fact that settlement of a PAGA
2 claim involves a compromise. *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 at *11
3 (E.D. Cal. June 30, 2010). “Unlike class actions, these civil penalties are not meant to compensate
4 unnamed employees because the action is fundamentally a law enforcement action.” *Ochoa-*
5 *Hernandez v. Cjaders Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774 at *12 (Apr. 2, 2010). The Court
6 should not lose sight of the fact that, “[u]nlike a class action seeking damages or injunctive relief for
7 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for
8 the government that otherwise may not have been assessed and collected by overburdened state
9 enforcement agencies.” *Ibid.*

10 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
11 claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the
12 ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS
13 32774 at *13. Indeed, “[PAGA] does not create property rights or any other substantive rights” as
14 “[i]t is simply a procedural statute allowing an aggrieved employees to recover civil penalties – for
15 Labor Code violations – that otherwise would be sought by state labor law enforcement agencies.”
16 *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009). This
17 renders the approval process of a PAGA settlement distinct from a class action settlement, as there is
18 no need for the Court to employ the “two-step approval process” required under California Rules of
19 Court Rule 3.769. *See id.*

20 Finally, unlike class action settlements, the scope of release permitted in a PAGA settlement
21 is limited. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff
22 but also on government agencies and any aggrieved employee not a party to the proceeding...the
23 nonparty employees, because they were not given notice of the action or afforded any opportunity to
24 be heard, would not be bound by the judgment as to remedies other than civil penalties.” *Arias v. Sup.*
25 *Ct.*, 46 Cal.4th 969, 985-87 (2009). Thus, the scope of a release in a PAGA settlement is confined to
26 the PAGA penalties alleged in the complaint and/or the plaintiff’s notice to the LWDA and to the
27 claims that were, or could have been, alleged pursuant to PAGA based on the factual allegations in
28 the complaint and/or the plaintiff’s notice to the LWDA. *LaCour v. Marshalls of California, LLC*, 94

Cal. App. 5th 1172, 1197. In the cases at hand, as the only claims at issue are PAGA claims, those will be the only claims extinguished through the Settlement.

V. THE AGREEMENT IS FAIR AND SHOULD BE APPROVED

A. The Agreement is Presumed to Be Fair

California courts recognize that “a presumption of fairness exists where . . . [a] settlement is reached through arm’s-length bargaining.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009). Here, the Agreement is presumptively fair because: (1) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claims, and the risks of litigating these claims through trial; and (2) it was negotiated at great length and effort by counsel with significant experience in similar complex labor and employment matters. Genish Decl., ¶ 27.

B. The Agreement is Fair, Adequate, and Reasonable in Light of the Parties’

Respective Legal Positions and Recovery Risks

In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if it is fair given the circumstances of the case. *Mallick v. Sup. Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain one hundred percent of the damages sought to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 246, 250. In evaluating the reasonableness of a settlement, a trial court must consider “the strength of Plaintiff” 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, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.”¹ *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008). Even

¹ As this is not a class action, the *Kullar* factors pertaining to the risk of maintaining class action status through trial and the reaction of class members to the proposed settlement are inapplicable.

1 though a Kullar analysis is not required for approval of a PAGA settlement, a brief analysis is included
2 to support approval of the Settlement Agreement. *See* Genish Decl., ¶¶ 27-60.

3 These factors require balancing and are non-exhaustive. Trial courts should therefore tailor
4 the factors to each case and give due regard to “what is otherwise a private consensual agreement
5 between the parties.” *Dunk, supra*, 48 Cal. App. 4th, at 1801.

6 1. Strength of Plaintiff’s Case

7 In order to prevail at trial, Plaintiff would have to prove violations of the California Labor
8 Code underlying his PAGA claims. *See Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-
9 82 (C.D. Cal. 2008).

10 Here, Plaintiff’s core allegations are that Defendant systematically violated the California
11 Labor Code by, *inter alia*, failing to properly pay wages for all hours worked, failing to pay overtime,
12 failing to provide compliant meal and rest periods, failing to pay premiums, failing to timely pay wages
13 during employment and upon termination, failing to maintain accurate payroll records, failing to
14 provide accurate wage statements, and failing to reimburse necessary business expenses. Genish Decl.,
15 ¶ 28.

16 Defendant maintained several defenses to Plaintiff’s theories of liability, which, if successfully
17 argued and proven, had the potential to eliminate or substantially reduce Plaintiff’s recovery. Genish
18 Decl., ¶ 29. Throughout this litigation, Defendant maintained, and continues to maintain, that it had,
19 and continues to have, compliant employment policies and practices throughout the time period at
20 issue. *Id.* Defendant denies that it ever violated any provision of the California Labor Code, including,
21 but not limited to, those sections for which Plaintiff seek penalties under PAGA. *Id.* Defendant further
22 denied, and continues to deny, that the lawsuit is appropriate for representative treatment for any
23 purpose other than settlement. *Id.* Defendant also challenged Plaintiff’s standing as an aggrieved
24 employee and denied that any of Defendant’s other employees whom Plaintiff sought to represent are
25 aggrieved. *Id.*

26 Defendant also argued that an important feature of PAGA is that the Court retains discretion
27 to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise
28 would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” *Id.*; Lab. Code §

1 2699(e)(2); *see also* *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136
2 (2012) [holding that a court may reduce the amount of PAGA penalties awarded to an employee based
3 upon discretionary factors].

4 Even if violations of the California Labor Code occurred, which Defendant denied, Defendant
5 contended that said violations would only be considered “initial violations” and thus heightened
6 “subsequent violation” penalties were not warranted. Genish Decl., ¶ 30; Lab. Code § 2699(f)(2); *see*
7 *also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) [“Until the employer has
8 been notified that it is violating a Labor Code provision [...], the employer cannot be presumed to be
9 aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”].

10 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess
11 cumulative penalties for the maximum number of possible, separate California Labor Code violations,
12 because Defendant contended that it would be unjust, arbitrary, oppressive, and/or confiscatory,
13 especially where certain conduct may be regulated by multiple provisions of the California Labor Code
14 that are interrelated and work in tandem. Genish Decl., ¶ 31. While the PAGA does provide the
15 potential for a heightened penalty for subsequent violations, courts are often hesitant to award a
16 heightened penalty where there is no prior citation by the Labor Commissioner, as is the case here.
17 *See e.g. Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no heightened
18 penalty where defendant was not notified by Labor Commissioner or any court that it was subject to
19 the California Labor Code). The Ninth Circuit’s holding in *Bernstein* also supports that a settlement
20 valuation that does not “stack” penalties. *Ibid.*

21 While Plaintiff maintains that his PAGA claims have merit, in reaching the Agreement,
22 Plaintiff and his counsel took into account the strengths and weaknesses of each side’s position and
23 the uncertainty of how the cases might have concluded as litigation continued, at trial, and/or upon
24 appeal. Genish Decl., ¶ 32. Based on these disputes, which had the potential to completely eliminate
25 Plaintiff’s recovery, the range of realistic “litigation outcomes” on Plaintiff’s PAGA claims was
26 defined by a “maximum possible liability” amount of approximately \$3,737,200 and a “risk-adjusted
27 realistic value” amount of approximately \$233,575. Genish Decl., ¶ 48. In light thereof, the Gross
28 Settlement Amount of \$225,000 is a significant settlement. *Id.*

1 2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

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

12 3. The Benefits Conferred by the Agreement Favor of Approval

13 The Settlement Agreement provides a *significant* monetary benefit that falls well within the
14 range of an acceptable settlement under the circumstances, which is the standard on which the instant
15 Agreement must be judged. As held by the Ninth Circuit: “The proposed settlement is not to be judged
16 against a hypothetical or speculative measure of what might have been achieved by the negotiators.”
17 *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d at 625 (emphasis in original). As the Second
18 Circuit has pointed out: “The fact that a proposed settlement may only amount to a fraction of the
19 potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate
20 and should be disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2 (2nd Cir.
21 1974).

22 The Net Settlement Amount is currently estimated to be One Hundred Forty Thousand and
23 Five Hundred Twenty-Nine Dollars and Eighty-Four Cents (\$140,529.84). After all deductions are
24 made from the Gross Settlement Amount for the PAGA Counsel Fees Payment, PAGA Counsel
25 Litigation Expenses Payment, and Administration Expenses Payment, One Hundred Five Thousand
26 Three Hundred Ninety-Seven Dollars and Thirty-Eight Cents (\$105,397.38) (i.e. 75% of the Net
27 Settlement Amount) will go to the LWDA, and Thirty-Five Thousand One Hundred Thirty-Two
28 Dollars and Forty-Six Cents (\$35,132.46) (i.e. 25% of the Net Settlement Amount) will go to the

1 Aggrieved Employees, as required by California Labor Code § 2699(i). Genish Decl., ¶ 49. There is
2 no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it
3 fully complies with California Labor Code section 2699(i). *Id.*

4 The Settlement Agreement is a compromise of highly disputed claims. Genish Decl., ¶ 50.
5 Plaintiff and his counsel recognize the expense and length of continued proceedings necessary to
6 litigate the matter through trial and any possible appeals. *Id.* Plaintiff and his counsel have also taken
7 into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
8 inherent in such litigation. *Id.* Plaintiff and his counsel are also aware of the burdens of proof necessary
9 to establish liability, both generally and in response to Defendant's defenses thereto, and the
10 difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf of
11 Plaintiff, the State of California, and other Aggrieved Employees. *Id.* Plaintiff and his counsel have
12 also taken into account Defendant's agreement to enter into a settlement that confers significant relief
13 upon the Aggrieved Employees and the State of California. *Id.* Considering all of the facts present
14 here, Plaintiff and his counsel believe that the Agreement represents a fair, adequate, and reasonable
15 resolution of the PAGA claims, and that it is in the best interests of the Aggrieved Employees and the
16 State of California. *Id.*

17 The result achieved in this case is well within the range of what is considered an acceptable
18 settlement under the circumstances, especially when compared to the settlement of PAGA claims in
19 other cases. Genish Decl., ¶ 51; *see also e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior
20 Court, Case No. JCCP4833 (May 2017) [approving \$15,000 out of \$4 million toward settlement of
21 PAGA claims]; *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal.
22 Oct. 29, 2012) [approving \$10,000 out of \$3.7 million toward settlement of PAGA claims]; *Schiller*
23 *v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving
24 \$7,500 out of \$518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC*,
25 2011 U.S. Dist. LEXIS 15821, at *4 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 out of \$6.9 million
26 toward settlement of PAGA claims); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, at
27 *14 (E.D. Cal. Nov. 27, 2021) [approving \$10,000 out of \$2.5 million toward settlement of PAGA
28 claims]). Here, the value obtained for settlement of the PAGA claims is significant, and it will be

distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

4. The Scope of the Release is Narrowly Tailored

As discussed above, the California Supreme Court has concluded that in the context of PAGA “the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in exchange for the foregoing consideration is limited to the civil penalties asserted in the Operative Complaint and Plaintiff’s notice to the LWDA, under California Labor Code §§ 2698 *et seq.* *See Settlement Agreement*, at ¶ I(16).

As such, this factor balances strongly in favor of approval of the Agreement.

5. Experience and Views of Counsel Favor Approval

PAGA Counsel is experienced in complex representative and class action wage-and-hour litigation, and believes that the benefits conferred by the Agreement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Agreement. Genish Decl., ¶ 52. Furthermore, courts have acknowledged that “the interests of a plaintiff, counsel, and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]” *Williams v. Superior Court*, 3 Cal. 5th 531, 548 (2017) [citing Labor Code § 2699(g)(1)(i)].

6. The Extent of Discovery and Stage of Proceedings Favor Approval

In evaluating this element, the Court should be mindful that “‘formal discovery is not a necessary ticket to the bargaining table’” [*Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239], as the relevant consideration is “whether ‘the parties have sufficient information to make an informed decision about settlement.’” *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal. Nov. 9, 2011).

Here, the extent of informal discovery conducted was sufficient to enable PAGA Counsel to evaluate the strength and value of the PAGA claims for purposes of settlement. Genish Decl., ¶ 53. Prior to settling, Defendant provided Plaintiff with data, information, and documents relating to the underlying alleged violations, including, but not limited to, Plaintiff’s employee files, all Aggrieved

1 Employees' time and payroll data, Defendant's Employee Handbooks, and Aggrieved Employees'
2 data points. Genish Decl., ¶ 11. As discussed above, PAGA Counsel's investigation was sufficient
3 to, among other things, tabulate with precision the total number of alleged California Labor Code
4 violations at issue during the relevant statutory period and identify the total number of individuals
5 falling within the definition of "Aggrieved Employees" for the relevant statutory period. Genish Decl.,
6 ¶ 12.

7 Based on PAGA Counsel's experience litigating wage and hour claims, such investigation was
8 sufficient to determine the potential value of the PAGA claims, and to evaluate the strength of these
9 claims for purposes of settlement. *Id.*

10 VI. THE REQUESTED FEES ARE FAIR AND REASONABLE

11 Plaintiff is entitled to recover attorneys' fees and costs for bringing his PAGA claims. Lab.
12 Code § 2699(g); *Atempa v. Pedrazzani*, 27 Cal. App. 5th 809,829 (2018). PAGA Counsel is also
13 entitled to attorneys' fees pursuant to Code of Civil Procedure section 1021.5(a), as the instant action
14 has resulted in the enforcement of important rights benefitting the public and secures monetary
15 recovery for the State of California as well as the Aggrieved Employees. A fee award is justified
16 where the legal action has produced its benefits by way of a voluntary settlement. *See e.g., Maria P.*
17 *v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*,
18 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ["when a number of persons
19 are entitled in common to a specific fund, and an action brought by a plaintiff ... for the benefit of all
20 results in the creation or preservation of that fund, such plaintiff ... may be awarded attorney's fees out
21 of the fund."].

22 In *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016), the California Supreme Court
23 confirmed that "[t]he percentage of fund method survives in California class action cases."
24 Specifically, the *Laffitte* Court held:

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

1 *Id.*, at 503 [internal citation omitted]. Fee awards of roughly one-third of the settlement fund are
2 routinely awarded in California state and federal courts in class actions. *Chavez v. Netflix, Inc.*, 162
3 Cal.App.4th 43, 66, fn. 11 (2008); *see also, e.g., In re Pacific Enterprises Securities Litig.*, 47 F.3d
4 373, 379 (9th Cir. 1995) [affirming 33% fee award].

5 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
6 method, the California Supreme Court has taken the position that trial courts also “retain the discretion
7 to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested
8 percentage fee.” *Lafitte*, 1 Cal.5th at 506; *see also Wershba*, 91 Cal.App. 4th at 253. Courts award
9 fees to serve as an economic incentive for lawyers to undertake litigation, and thereby enhance and
10 facilitate access to the judicial system for adjudication of meritorious claims, and to deter wrongdoing.
11 This is especially true in situations where multiple similar alleged wrongs would not be economically
12 feasible to pursue individually, such as here. Trial courts have “wide latitude” in assessing the value
13 of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of
14 discretion.” *Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000); *see also Lafitte*, 1 Cal.5th
15 at 506 [holding that “trial court did not abuse its discretion in using [the percentage of fund method],
16 in part to approve the fee request”]. Indeed, it is long settled that the “experienced trial judge is the
17 best judge of the value of professional services rendered in his court.” *Ketchum v. Moses*, 24 Cal.4th
18 1122, 1132 (2001).

19 The percentage method is particularly appropriate where a monetary settlement has been
20 recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset Prods. Liab.*
21 *Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). Where the amount of a settlement is a “certain or easily
22 calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable percentage
23 of the settlement created. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*,
24 Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808. The percentage fee method is
25 preferred in representative actions because “it better approximates the workings of the marketplace
26 than the lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49. California law provides that the
27 award for attorneys’ fees should be equivalent to fees freely negotiated in the legal marketplace and
28 paid in comparable litigation based on the result achieved and risk incurred. *See Lealao*, 82

1 Cal.App.4th at 47-50; *Laffitte*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides
2 that the defendant will pay the plaintiffs’ attorneys a percentage of the fund created by the settlement,
3 use of that percentage method is appropriate. *Lealao*, 82 Cal.App.4th at 32. Fee awards that are too
4 small will “chill the private enforcement essential to the vindication of many legal rights and obstruct
5 the representative actions that often relieve the courts of the need to separately adjudicate numerous
6 claims.” *Id.* at 53. Therefore, fees in representative actions should approximate the probable terms of
7 a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.*
8 at 48. “The ultimate goal ... is the award of a ‘reasonable’ fee to compensate counsel for their efforts,
9 irrespective of the method of calculation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557-58
10 (2009) [quoting *Apple Computer, Inc. v. Superior Court*, *supra*, 126 Cal.App.4th at 1270].

11 PAGA Counsel’s application for attorneys’ fees in light of the facts and circumstances
12 surrounding the cases is within the range of reasonableness. Historically, courts have awarded fees as
13 high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of
14 the case. *See e.g. In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) [awarding attorneys’
15 fees in the amount of 45% of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v.*
16 *Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195 (S.D.N.Y. 1979) [awarding approximately 53%
17 of the settlement as attorneys’ fees]). California courts routinely approve attorneys’ fees awards
18 “average[ing] around one-third of the recovery.” (*Chavez*, 162 Cal.App.4th at 66 [trial court found
19 the range of contingency fees in marketplace to be 20 to 40 percent and determined such a percentage
20 fee was appropriate]; *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles
21 County Superior Court, Case No. BC596892 (June 2016) [approving a fee award of one-third of the
22 settlement amount of \$950,000 in a PAGA action, because it was “reasonable and consistent with fee
23 awards in class action cases”]).

24 Here, PAGA Counsel’s fee request of thirty percent (30%) of the Gross Settlement Amount
25 (*i.e.*, \$67,500.00) is fair and reasonable based on the percentage of the recovery method. PAGA
26 Counsel has litigated this case since it was commenced, with the very real possibility of an
27 unsuccessful outcome and no fee recovery of any kind. Genish Decl., ¶ 54. PAGA Counsel possesses
28 combined extensive experience litigating wage and hour and other complex litigation matters, and

undertook significant investigation and invested a significant amount of time and money analyzing relevant documents and data to evaluate the nature and extent of the alleged underlying California Labor Code violations and calculation of the potential monetary recovery as they relate to Plaintiff's PAGA claims under PAGA. Genish Decl., ¶¶ 3, 11, & 56.

In the present cases, PAGA Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained. Genish Decl., ¶ 55. PAGA Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a favorable result for Plaintiff, the Aggrieved Employees, and the State of California. *Id.* Considering the amount of fees requested, work performed, risks incurred, and experience of PAGA Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees of thirty percent (30%) of the Gross Settlement Amount (*i.e.*, \$67,500.00) are reasonable and should be awarded. (*Id.*).

VII. THE REQUESTED LITIGATION EXPENSES ARE FAIR AND REASONABLE

The Agreement provides for reimbursement of actual litigation costs and expenses up to the amount of Sixteen Thousand Dollars and Zero Cents (\$16,000.00). Genish Decl., ¶ 59; Settlement Agreement, ¶ III(3)(b). PAGA Counsel only seeks reimbursement of a total of Twelve Thousand Five Hundred Twenty Dollars and Sixteen Cents (\$12,520.16) in litigation costs and expenses. Genish Decl., ¶ 59 & Exh. 3. Accordingly, PAGA Counsel respectfully requests that the Court reimburse them for actual litigation costs and expenses in the amount of Twelve Thousand Five Hundred Twenty Dollars and Sixteen Cents (\$12,520.16).

VIII. THE ADMINISTRATION EXPENSES ARE FAIR AND REASONABLE

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Phoenix Settlement Administrators to handle the administration of the Agreement. Genish Decl., ¶ 60; Settlement Agreement, ¶ IV(1). The fees and expenses of the Administrator are estimated not to exceed \$4,450.00. Genish Decl., ¶ 60; Settlement Agreement, ¶ III*(3)(a). These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual PAGA Payment checks to the Aggrieved Employees, re-mailing the returned Individual PAGA Payment checks to any new addresses obtained, and handling inquiries from Aggrieved Employees regarding the Agreement, among other things. Genish Decl., ¶ 60. Accordingly, the Court

1 should grant approval of the Administration Expenses Payment in the amount of up to \$4,450.00 to
2 Phoenix Settlement Administrators, a necessary third-party for handling the settlement process. *Id.*;
3 *see also* Declaration of Jodey Lawrence.

4 **IX. CONCLUSION**

5 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
6 Motion for Approval of the parties' Private Attorneys' General Act Settlement Agreement and Release
7 pursuant to PAGA in this Action.

8 Respectfully submitted,

9 Dated: August 23, 2024

BLACKSTONE LAW, APC

10
11 

12 By: _____

Jonathan M. Genish

13 *Attorneys for Plaintiff DANIEL RODRIGUEZ,*
14 *individually, and on behalf of Aggrieved Employees*
15 *pursuant to the California Private Attorneys*
16 *General Act*
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Make a Reservation

DANIEL RODRIGUEZ, et al. vs REPUBLIQUE, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

Case Number: 23STCV14521 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2023-06-22 Location: Stanley Mosk Courthouse - Department 72

Reservation

Case Name:

DANIEL RODRIGUEZ, et al. vs REPUBLIQUE, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

Case Number:

23STCV14521

Type:

Motion re: (Approval of PAGA Settlement)

Status:

RESERVED

Filing Party:

Daniel Rodriguez (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 72

Date/Time:

10/01/2024 8:30 AM

Number of Motions:

1

Reservation ID:

143101574900

Confirmation Code:

CR-EGAGO2TOMV93XMAHP

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount:

\$0.00

Type:

NOFEE

Account Number:

n/a

Authorization:

n/a

Payment Date:

n/a

Print Receipt

[Reserve Another Hearing](#)