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as an individual and on behalf of all employees similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

SUSANA HERNANDEZ DE MARTINEZ,
individually, and on behalf of all others
similarly situated,

Plaintiff,

vs.

FACILITY SERVICES PARTNERS, INC., a
California Corporation; and DOES 1 through
10, inclusive,

Defendant

Case No.: CVRI2304625

[Assigned for all purposes to Hon. Eric A Keen,
Dept. 6]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT OF 2004;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Reservation N: 353152327678

Date: June 24, 2024

Time: 8:30a.m.

Courtroom: Dept. 6

Judge: Hon. Eric A Keen

Action Filed: September 5, 2023

Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on June 24, 2024, at 8:30 a.m., or as soon thereafter as the matter
3 may be heard, in Department 6 of the above-captioned Court, located at 4050 Main Street, Riverside,
4 California 92501, Plaintiff SUSANA HERNANDEZ DE MARTINEZ (“Plaintiff”) will and hereby does
5 move this Court for an order approving of the PRIVATE ATTORNEYS GENERAL ACT
6 SETTLEMENT AGREEMENT AND RELEASE (“Agreement” or “Settlement”) reached with
7 Defendant FACILITY SERVICES PARTNERS, INC. (“Defendant”), a true and correct copy of
8 which is attached as **Exhibit 1** to the Declaration of Lilit Tunyan submitted herewith.

9 Specifically, the Plaintiff moves for an order to:

- 10 1. grant approval of the terms of the Agreement pursuant to the Labor Code Private
11 Attorney Generals Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
12 settlement; the amount of distributions to the State and Aggrieved Employees; the amounts
13 allocated to attorney’s fees and costs; and, the amount allocated to the settlement administrator;
14 and,
15 2. direct disbursement of the Gross Settlement Amount pursuant to the terms of the
16 Agreement.

17 This motion is based on this Notice, the following Memorandum of Points and Authorities, the
18 Declarations of Lilit Tunyan, Plaintiff and ILYM Group, Inc. submitted herewith, all other pleadings and
19 papers on file in this action, and any oral argument or other matter that may be considered by the Court.

20 Respectfully submitted,

21 Dated: May 17, 2024

TUNYAN LAW, APC

22 
23 _____

24 Lilit Tunyan
25 Artur Tunyan

26 Attorneys for Plaintiff SUSANA HERNANDEZ DE MARTINEZ
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff SUSANA HERNANDEZ DE MARTINEZ (“Plaintiff”) filed this action seeking civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. (“PAGA”) stemming from alleged wage and hour claims against Defendant FACILITY SERVICES PARTNERS, INC. (“Defendant”) (Plaintiff and Defendant collectively referred to herein as the “Parties”), which is a company providing janitorial and maintenance services in California.

After exchanging documents and voluminous data prior to mediation, Plaintiff and Defendant reached a proposed settlement that will resolve the PAGA claims pending in this action (the “Lawsuit”).

Under the PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE (“Agreement” or “Settlement”), Defendant shall pay a maximum sum of **\$165,000.00**, referred to in the Agreement as the “Gross Settlement Amount”, for aggrieved employees employed in California as non-exempt hourly employees during the designated PAGA period (there were approximately **93** individuals meeting this definition of aggrieved employee who are or were employed by Defendant within the State of California from July 2, 2022 to April 6, 2024). It is estimated that there are approximately **3,020** pay periods as of April 6, 2024 during the relevant statutory period. This is a good result, based upon the facts and circumstances discovered to exist.

The proposed settlement will dispose of the PAGA claim alleged in this matter – which was predicated upon certain alleged violations of the Labor Code – on behalf of the California Labor and Workforce Development Agency (“LWDA”) and non-exempt current and former California employees of Defendant who were employed at any time from July 2, 2022 through the date of entry of order for PAGA settlement approval or 60 days from April 6, 2024, whichever is earlier (“PAGA Period”).

This motion is brought pursuant to Labor Code § 2699.3(b)(4). This motion and the Agreement were served on the LWDA prior to the filing of this Motion. Labor Code § 2699(e)(2).

For the reasons below, Plaintiff requests that the Court enter an order approving the settlement.

II. SUMMARY OF THE TERMS OF SETTLEMENT

The full terms of the settlement are in the Agreement. The key material terms are as follows:

(a) The Aggrieved Employees: The Aggrieved Employees (also known as the

“PAGA Members”) are: “All non-exempt employees who are or were employed by Defendant within the State of California from July 2, 2022, through the date of entry of order for PAGA settlement approval or 60 days from April 6, 2024, whichever is earlier.” It is estimated that there are approximately 3,020 pay periods as of April 6, 2024. (Agreement, ¶ 9.)

(b) No Reversion: The Settlement is non-reversionary. (Agreement, ¶ 6.)

(c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of **\$165,000.00** (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff’s Counsel’s attorney’s fees and costs and the settlement administrator’s costs. (Agreement, ¶ 6.)

(d) Net Settlement Amount: At least **\$91,715.55** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$68,786.66** under the Agreement, and Aggrieved Employees will receive at least **\$22,928.89**. (Agreement, ¶ 6.c.)

(e) Attorney’s Fees: Plaintiff’s Counsel request an award of attorney’s fees in the amount of **\$55,000.00**, which is one third of the GSA. (Agreement, ¶ 6.a.)

(f) Litigation Costs: Plaintiff’s Counsel’s litigation costs are capped to a maximum amount of **\$16,000**. Those actual costs are **\$14,344.45** which include the future motion filing, final report filing and joint stipulation fees. Therefore, **\$14,344.45** is requested, by Plaintiff. (Agreement, ¶¶ 6.a, 13.b.)

(g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator ILYM Group, Inc., which has agreed to perform Settlement Administrator duties for a flat fee not to exceed **\$3,950.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 12)

(h) General Release by Plaintiff: The Parties have entered into a separate settlement and release agreement for the general release of Plaintiff’s individual claims

1 against Defendant. Upon approval of this PAGA settlement Plaintiff will receive
2 **\$10,000.00** as a consideration for general release of her claims beyond claims in
3 which action and for representing all Aggrieved Employees which shall be paid
4 by Defendant in addition to the GSA. (Agreement, ¶ 2.)

5 (i) Uncashed Checks: Funds represented by checks returned as undeliverable after a
6 re-mailing, and funds represented by checks remaining un-cashed for more than
7 180 days after issuance, shall be transmitted to the California Controller's
8 Unclaimed Property Fund in the name of the Aggrieved Employee. (Agreement,
9 ¶ 13.c.)

10 (j) Release: In exchange for the above settlement consideration, Defendant shall be
11 entitled to a release from the LWDA and each and every Aggrieved Employee,
12 including Plaintiff. (Agreement, ¶ 2.)

13 (k) Tax Allocation: The Settlement Payments to Aggrieved Employees are
14 classified as other miscellaneous income and will be allocated as 100%
15 penalties, which will be reported on IRS Form 1099-MISC, if required.
16 (Agreement, ¶ 10.)

17 (l) No Right to Opt-out: There is no statutory right for any Aggrieved Employee to
18 object, opt out or otherwise exclude themselves from the Settlement.
19 (Agreement, ¶ 5.)

20 (m) Notice to LWDA: The Declaration of Lilit Tunyan confirms that notice was
21 provided to the LWDA and attaches the confirmatory submission documents.
22 (Declaration of Lilit Tunyan, hereinafter "Tunyan Decl.", ¶ 47 and Exh. 3.)

23 **III. STATEMENT OF FACTS**

24 Plaintiff alleges that Defendant engaged in practices and procedures that violated the California
25 Labor Code. These alleged statutory violations subject Defendant to potential liability for PAGA
26 penalties pursuant to Labor Code § 2698. Through this action, Plaintiff seeks to recover penalties
27 pursuant to Labor Code § 2698, *et. seq.* (Tunyan Decl., ¶ 3.)

28 Defendant is a company providing janitorial and maintenance services in California. (Tunyan

Decl., ¶ 4.) For purposes of this settlement, Defendant employed individuals in non-exempt positions in California. (Tunyan Decl., ¶ 5.) Plaintiff worked for Defendant in California during the PAGA Period. (Tunyan Decl., ¶ 6.) Defendant contends they had lawful policies, including break and pay policies, in effect throughout the statutory period, and viable legal defenses to a substantial portion of the alleged penalty claims. (Tunyan Decl., ¶ 9.)

IV. **PROCEDURAL HISTORY**

On June 26, 2023, Plaintiff's Counsel sent a letter to the LWDA on behalf of Plaintiff, in compliance with California Labor Code § 2699.3. (Tunyan Decl., ¶ 7.) More than 65 days passed after the letter was sent to the LWDA, and the LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter. (Tunyan Decl., ¶ 7) On September 5, 2024, Plaintiff filed a complaint seeking civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. ("PAGA") stemming from alleged wage and hour claims against Defendant ("Complaint") in the Superior Court of California, Riverside County entitled *De Martinez v. Facility Services Partners, Inc.*, Case No. CVRI2304625 (the "Lawsuit"). (Tunyan Decl., ¶ 8.) Defendant denies all liability and admit to no claim by virtue of its agreement to settle. (Tunyan Decl., ¶ 9.) Because Court approval of a PAGA settlement is required, the settlement is presented for approval. (Tunyan Decl., ¶ 10.)

V. **SETTLEMENT NEGOTIATIONS**

Counsel for Plaintiff has thoroughly investigated the facts relating to the claims alleged in the Complaint and have made a thorough study of the legal principles applicable to the claims asserted against Defendant. Based on their investigation and evaluation of this case, Plaintiff's Counsel have concluded that the settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings regarding liability, and numerous potential appellate issues. (Tunyan Decl., ¶ 11.)

The Parties agreed to participate in a mediation in an effort to resolve the claims asserted in this matter. The Parties selected mediator Lynn S. Frank, Esq., a neutral with extensive experience mediating wage and hour class and representative actions. Prior to the mediation, Plaintiff requested substantial data from Defendant, and Defendant provided the requested data. Prior to and during the mediation, the

1 Parties exchanged extensive information and engaged in discussions regarding their evaluations of the
2 case and various aspects of the case, including but not limited to, the risks and delays of further litigation,
3 the risks to the Parties of proceeding with representative adjudication, the law relating to time rounding,
4 off-the-clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and
5 enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other
6 things. Plaintiff's Counsel conducted significant investigation and informal discovery regarding the facts
7 of the case, including and not limited to, the exchange, review, and analysis of a large volume of
8 documents and data obtained from Defendant, Plaintiff, and other sources. The volume of data and
9 documents that Plaintiff's Counsel reviewed and analyzed included and was not limited to Plaintiff and
10 Aggrieved Employees' employment records, a detailed sampling of Aggrieved Employees' time and pay
11 data, Defendant's Employee Handbook and employment practices, procedures, and policies including,
12 but not limited to Defendant's expenses policy, meal and rest periods policy, work time policy, overtime
13 policy, pay periods and pay days policy, among other information and documents. Counsel for the
14 Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the production of
15 documents and data prior to the mediation. Plaintiff's Counsel also drafted the pleading and the
16 mediation brief and prepared for and attended court proceedings, mediation, and settlement negotiations,
17 among other tasks. (Tunyan Decl., ¶ 12.) Counsel for the Parties have also invested time researching and
18 investigating the applicable law, which is constantly evolving as it relates to representative PAGA
19 claims, time rounding, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement,
20 Plaintiff's claims and damages, and Defendant's defenses thereto, as well as facts discovered. (Tunyan
21 Decl., ¶ 13.) Based on Plaintiff's Counsel's analysis, the result achieved in this litigation is fair, adequate,
22 and reasonable. Based on investigation and information discovered, Plaintiff's Counsel believes that
23 there is sufficient evidence to support the allegations made in the Lawsuit, including the allegations that
24 Defendant, with respect to Plaintiff and the Aggrieved Employees, inter alia, failed to properly pay
25 wages, failed to provide compliant meal and rest periods and to pay associated premium pay, failed to
26 timely pay wages during employment and upon termination of employment, failed to provide compliant
27 wage statements, failed to maintain requisite payroll records, and failed to reimburse necessary business
28 expenses, and thereby engaged in conduct giving rise to civil penalties recoverable under the Private

Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). Plaintiff also asserted that Aggrieved Employees were expected to perform similar job duties and were subject to the same or similar operations and employment policies, practices, and procedures. Additionally, Plaintiff asserted that Defendant's recordkeeping practices with respect to Plaintiff and Aggrieved Employees were substantially the same during the time period at issue. As a result of said alleged uniform practices, Plaintiff claims that Aggrieved Employees were not paid all of the compensation that was owed to them by Defendant. Thus, in Plaintiff's Counsel's view, it is clear that the outcome of this litigation would be determined by Defendant's uniform operations and employment practices, policies, and procedures that Plaintiff alleges applied across Defendant's hourly-paid or non-exempt employees in California during the PAGA period. (Tunyan Decl., ¶ 14.)

The Parties participated in a full-day mediation on April 6, 2024, reaching a settlement at that time. The Parties then spent many weeks thereafter negotiating the detailed terms of the Settlement memorialized in a long-form agreement to resolve this matter. (Tunyan Decl., ¶ 15.)

DISCUSSION

VI. THE QUI TAM NATURE OF PAGA CLAIMS

This case is solely a PAGA claim, not a class action, and the standard for determining the reasonableness of a settlement has not been the subject of significant judicial discussion. In 2003, California enacted the Private Attorneys General Act of 2004 to remedy systemic underenforcement of many worker protections. *Williams v. Superior Court*, 3 Cal. 5th 531, 545 (2017).

The solution enacted by the Legislature deputized private citizens to recover civil penalties for the State, where those penalties were previously only available to State law enforcement agencies:

The Legislature declared that ***adequate financing of labor law enforcement was necessary to achieve maximum compliance with state labor laws, that staffing levels for labor law enforcement agencies had declined and were unlikely to keep pace with the future growth of the labor market***, and that it was therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations, with the understanding that labor law enforcement agencies were to retain primacy over private enforcement efforts.

Arias v. Superior Court, 46 Cal. 4th 969, 980 (2009) (emphasis added).

"Because an aggrieved employee's action under the Labor Code Private Attorneys General Act of 2004 functions as a substitute for an action brought by the government itself, a judgment in that action

1 binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an
2 action brought by the government.” *Arias*, 46 Cal. 4th at 986. With limited exceptions, “[o]f the civil
3 penalties recovered, 75 percent goes to the Labor and Workforce Development Agency, leaving the
4 remaining 25 percent for the ‘aggrieved employees.’” *Iskanian v. CLS Transp. Los Angeles, LLC*, 59
5 Cal. 4th 348, 380 (2014) *certiorari denied sub nom. CLS Transportation Los Angeles v. Iskanian*, —
6 U.S. —, 135 S.Ct. 1155, 190 L.Ed.2d 911 (Jan. 20, 2015). Thus, a PAGA claim is, predominantly, a
7 claim belonging to the State.

8 “The civil penalties recovered on behalf of the state under the PAGA are distinct from the
9 statutory damages to which employees may be entitled in their individual capacities.” *Iskanian*, 59 Cal.
10 4th at 381. Because of this distinction, and the fact that the penalties made available through PAGA
11 fell previously within the exclusive domain of State enforcement, the California Supreme Court
12 explained that PAGA suits are best viewed as a species of *qui tam* action. *Iskanian*, 59 Cal. 4th at 382.
13 After recognizing that PAGA actions are a form of *qui tam* action, *Iskanian* concluded that because the
14 State was the real party in interest in a PAGA suit, it would violate public policy to compel an individual
15 employee to waive representative claims under PAGA: “[W]here, as here, an employment agreement
16 compels the waiver of representative claims under the PAGA, it is contrary to public policy and
17 unenforceable as a matter of state law.” *Iskanian*, 59 Cal. 4th at 384.

18 **VII. THE STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT**

19 In deciding whether to grant approval of the proposed Settlement, the primary issue to be decided
20 is whether the Settlement is fair, adequate, and reasonable. Specifically, the issues are whether the PAGA
21 penalties to which the parties have agreed provide “genuine and meaningful” relief, “consistent with the
22 underlying purpose of the statute to benefit the public” and whether the penalties are reasonable in light
23 of the potential verdict value in this case. *Villalobos v. Calandri Sunrise Farm LP*, 2015 WL 12732709,
24 Case No. CV 12-2615 PSG (JEMx) (C.D. Cal., July 22, 2015).

25 In *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug.
26 18, 2016) the court was faced with a proposed class action settlement which also included a claim under
27 PAGA. The court separately discussed the standard for approval under PAGA. The court recognized that
28 cases discussing class action standards may be helpful and required the parties to demonstrate that either

1 the factors set forth in the class action case of *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
2 1998) “or any other coherent analysis” justified the proposed settlement of the PAGA claim.¹

3 Therefore, although class settlement jurisprudence has no direct application to this case, it is not
4 inappropriate to consider the *Hanlon* factors: (1) the strength of the plaintiff's case; (2) the risk, expense,
5 complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent
6 of discovery completed and the stage of the proceedings; (5) the experience and views of counsel; and
7 (6) the presence of a government participant.

8 The *Hanlon* court also mentioned, as a factor, the “reaction of the class members to the proposed
9 settlement.” That factor has no analogous component here. The interest served is that of the State of
10 California and the LWDA is the only person or entity who has standing to comment upon any settlement.
11 Labor Code § 2699.3(b)(4). The *Hanlon* court also identified “the risk of maintaining class action status
12 throughout the trial” as a factor, but, again, that factor has no application here. Otherwise, the six
13 remaining factors provide a useful framework for evaluating the settlement. *Hanlon*, 150 F.3d at 1026;
14 *see also Allen v. Bedolla*, 787 F.3d 1218, 1222 (9th Cir. 2015) (same); *Churchill Vill., L.L.C. v. Gen.*
15 *Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (same).

16 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), held that “a presumption of fairness
17 exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and
18 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
19 similar litigation; and (4) the percentage of objectors is small.”² *Id.* at 1801; *In re Microsoft I-V Cases*,
20 135 Cal. App. 4th 703, 723 (2006); *see also Newberg & Conte*, *Newberg on Class Actions*, (2d.Ed.
21 1987) § 11.41, p. 11-91.

22 It would also be appropriate for this court to look to case law concerning settlement of a claim
23

24
25 ¹ The *O'Connor v. Uber* court did not approve the settlement, finding the disparity between the
26 amount proposed for the class compared to the PAGA settlement was not fair to the LWDA. That is not
a concern here. Seventy-five percent of the net will be paid to the LWDA by statute.

27 ² PAGA provides no notice or claim procedures as exist in class action cases. Therefore, objections
28 (other than potentially by the LWDA) are not contemplated in PAGA actions. Despite the absence of
any right to object, the Agreement here contemplates informing Aggrieved Plaintiffs of the resolution so
that they are made aware of the result, despite having no standing to object to this settlement.

1 brought under the Fair Labor Standards Act 28 U.S.C. § 201 et seq. (“FLSA”) which, likewise, requires
2 court approval. Because the Ninth Circuit has not established a standard for district courts to follow when
3 evaluating an FLSA settlement, California district courts have applied the standard established by the
4 Eleventh Circuit in *Lynn's Food Stores, Inc. v. U.S. By & Through U.S. Dept of Labor*, 679 F.2d 1350,
5 1352 (11th Cir. 1982). See *Dunn v. Teaches Ins. & Annuity Ass’n of Am.*, 2016 WL 153266, at *3 (N.D.
6 Cal. Jan. 13, 2016) and *Ambrosino v. Home Depot U.S.A., Inc.*, No. 11 CV 1319 L (MDD), 2014 WL
7 3924609, at * 1 (S.D. Cal. Aug. 11, 2014) (“A district court may approve an FLSA settlement if the
8 proposed settlement reflects ‘a reasonable compromise over [disputed] issues.’”) (quoting *Lynn’s Food*
9 *Stores, Inc.*, 679 F.2d at 1354). Although the standard for approving FLSA collective actions may be
10 different from the standard for approving class actions under Federal Rule of Civil Procedure 23, courts
11 have applied the *Hanlon* factors to a settlement of an FLSA claim. *Millan v. Cascade Water Sews., Inc.*,
12 No. 1:12 - cv -1821-AWI-EPG, 2016 WL 3077710, at * 3 (E.D. Cal. Jun. 2, 2016); see also *Otey v.*
13 *CrowdFlower, Inc.*, No. 12-CV-05524-JST, 2014 WL 1477630, at * 11 (N.D. Cal. Apr. 15, 2014). In
14 *Selk v. Pioneers Mem’l Healthcare Dist.*, 159 F. Supp. 3d 1164, 1173 (S.D. Cal. 2016) the court
15 evaluated an FLSA settlement using a totality of the circumstances approach “that replicates the factors
16 relevant to Rule 23 class actions where appropriate, but adjusts or departs from those factors when
17 necessary to account for the labor rights at issue.”

18 While a court should not simply “rubber stamp” a proposed settlement with little or no
19 independent evaluation, the court “must stop short of the detailed and thorough investigation that it
20 would undertake if it were actually trying the case.” *Clark v. Am. Residential Sews. LLC*, 175 Cal. App.
21 4th 785, 799 (2009). The court should not expect that the parties offer concrete “proof” in support of
22 settlement, but rather that the parties have made a good faith effort to explain the reasoning behind
23 certain strategic decisions and the valuation of specific claims. “[W]hether a settlement is fundamentally
24 fair within the meaning of Rule 23(e) is different from the question whether the settlement is perfect in
25 the estimation of the reviewing court.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). “It is,
26 of course, the strong public policy of this state to encourage the voluntary settlement of litigation.”
27 *Osumi v. Sutton*, 151 Cal. App. 4th 1355, 1359 (2007).

28 Finally, the factors identified above are not exclusive and the court is free to balance factors

1 depending on circumstances. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 244-245 (2001).

2 While class settlement factors provide some guidance as to how a Court may approach the
3 evaluation of a PAGA settlement, there are significant differences between PAGA settlements and class
4 action settlements that must be recognized. Unlike a class action settlement, the scope of release
5 permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is binding not only on
6 the named employee plaintiff but also on government agencies and any aggrieved employee not a party
7 to the proceeding,” *Arias*, 46 Cal. 4th at 986, “the non-party employees, because they were not given
8 notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to
9 remedies other than civil penalties.” *See id.*, at 987. Thus, with the possible exception of a Plaintiff, the
10 scope of a release in a PAGA settlement is confined to PAGA penalties, and not related individual
11 claims.³ Applying the above standards to this settlement, the settlement meets all criteria for approval.

12 **VIII. THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL**

13 Applying the class settlement fairness factors discussed above – limited to those compatible with
14 the unique features of PAGA claims – the proposed settlement embodies all of the key features of a
15 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

16 **A. The Relative Strength of the PAGA Claim, and the Realistic Range of Outcomes in** 17 **the Litigation and Estimate of the Value of Each Claim Strongly Favor Approval of** 18 **the Settlement**

19 “In determining whether the proposed settlement falls within the range of reasonableness,
20 perhaps the most important factor to consider is plaintiffs’ expected recovery balanced against the value
21 of the settlement offer.” *Cotter v. Lyft, Inc.*, 176 5 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (internal
22 quotation omitted). Here, the relative strength of the PAGA claim brought by Plaintiffs weigh in favor of
23

24 ³ This is contrasted with the much broader release permitted in a class action context, which may be
25 based on “any matter or fact” alleged in the complaint. *See In re Corrugated Container Antitrust*
26 *Litigation*, 643 F.2d 195, 221 (5th Cir. 1981) (“The weight of authority establishes that ... a court may
27 release not only those claims alleged in the complaint and before the court, but also claims which ‘could
28 have been alleged by reason of or in connection with any matter or fact set forth or referred to in’ the
complaint.”); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (“we have held that federal district
courts properly released claims not alleged in the underlying complaint where those claims depended on
the same set of facts as the claims that gave rise to the settlement.”). In this matter, the Agreement will
not affect the rights of Aggrieved Employees who may possess individual wage and hour claims.

1 the Court finding that the settlement is fair, adequate, and reasonable, since there are significant risk
2 factors that Plaintiffs would face if they did not settle this matter.

3 Most significantly, the ultimate decision as to the amount of penalties is always up to the
4 discretion of the Court. Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee
5 seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser
6 amount than the maximum civil penalty amount specified by this part if, based on the facts and
7 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
8 oppressive, or confiscatory.” Subdivision (a) states, “Notwithstanding any other provision of law, any
9 provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
10 Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or
11 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
12 brought by an aggrieved employee on behalf of himself or herself and other current or former employees
13 pursuant to the procedures specified in Section 2699.3.” Subdivision (f) specifies the penalties in
14 instances where the underlying statute does not specify any civil penalty. In other words, where the facts
15 and circumstances of the case demonstrate that an unreduced award would be “unjust, arbitrary and
16 oppressive, or confiscatory,” the court (or arbitrator) may reduce the award to ameliorate such.

17 In *Cotter*, the court found a significant reduction of the PAGA claim would be appropriate
18 because “[t]his does not appear to be a case where a company has deliberately sought to evade the law.”
19 *Cotter*, 176 F. Supp. 3d at 941. Here, Defendant can state a strong case that, as the Court concluded in
20 *Cotter*, its efforts to devise compliant operational policies do not indicate an organization that has
21 deliberately sought to evade the law. This is a very significant risk factor. Defendant dispute that
22 Plaintiffs could find a coherent method for proving liability for roughly 93 employees working in
23 different locations. Establishing violations for purposes of PAGA would be difficult in this matter.

24 After analyzing the claims in this matter, Plaintiff has concluded that the value of this Settlement
25 is fair, adequate, and reasonable. (Tunyan Decl., ¶ 25.)

26 Using the most straightforward formulation of applying the “catch-all” \$100 penalty specified in
27 Labor Code § 2699(f)(2) to each pay period per employee, for all of the estimated 3,020 pay periods
28 through mediation, the maximum single penalty plausible exposure under that direct approach is

1 **\$302,000.00**. The Settlement of **\$165,000.00** is about 54.6% of that roughly estimated maximum
2 exposure value. When considering the serious risks discussed herein, and the Court's inherent power to
3 adjust penalties downward to reflect an employer that sought to be in compliance with wage and hour
4 laws, even if mistakes were sometimes made, the compromise figure is reasonable.

5 The Settlement can also be evaluated by looking at each allegation and the penalty that would
6 attach thereto. The Settlement of **\$165,000.00** is 68.3% of the **\$241,545.00 estimate** of *risk-adjusted*
7 penalty recovery (excluding interest) at this stage in the litigation, *based upon a penalty-by-penalty*
8 *analysis*. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is
9 based on a carefully constructed model of the current fair value of the case, using estimated risks,
10 appellate authority, and estimates of violation frequency by pay period. *Id.*

11 The maximum calculated plausible risk-adjusted exposure is **\$1,299,100.00**, *when examining*
12 *each penalty provision separately. Id.* That exposure consists of the following components:

- 13 • The reasonably estimated penalty exposure for unpaid wages as a result of rounding and off-
14 the-clock was estimated to be **\$90,600** which is a risk adjusted estimation of the maximum
15 possible exposure of **\$302,000.00** (3,020 pay periodsX\$100 penalty) after 70% reduction
16 (30% of \$302,000.00). Per produced by Defendant records' rounding underpaid employees
17 in 63% of all pay periods, and overpaid in 29% of all pay periods. As for the off-the-clock
18 work, based on the fact of impossibility to collect testimony from all employees regarding
19 off-the-clock work and the risk of manageability and ability to prove liability, the risk-
20 adjusted estimated exposure is estimated to be **\$90,600** assuming one penalty per each pay
21 period, based on a risk reduction of 70%, before any Court-imposed reductions for good
22 faith conduct by Defendant.
- 23 • The reasonably estimated exposure for meal break violations over the PAGA period was
24 calculated at **\$59,625.00** which is a risk adjusted estimation of the maximum possible
25 exposure of **\$238,500.00** (2,385 pay periodsX\$100 penalty) after 75% reduction (25% of
26 \$238,500.00). Defendant's produced sample meal period records show a 79% unique meal
27 period violation rate over all pay periods (2, 385 pay periods), and 92.5% of shifts greater
28 than 10 hours had no second meal period recorded. Based on the records of facial violations

1 and the serious risk that employee choice would become an issue that impeded proof, the
2 risk-adjusted estimated exposure is estimated to be **\$59,625.00**, based on a risk reduction of
3 75%, before any Court-imposed reductions for good faith conduct by Defendant.

- 4 • The reasonably estimated exposure for rest break violations over the PAGA period was
5 calculated at **\$30,200.00** which is a risk adjusted estimation of the maximum possible
6 exposure of **\$302,000.00** (3,020 pay periodsX\$100 penalty) after 90% reduction (25% of
7 \$302,000.00). Based on the lack of facial violations as rest breaks were not recorded, the
8 risk-adjusted estimated exposure is estimated to be **\$30,200.00**, based on a risk reduction of
9 90%, before any Court-imposed reductions for good faith conduct by Defendant.
- 10 • The risk-adjusted penalty recovery for violation of Labor Code § 203 was estimated to be
11 approximately **\$720** on a maximum exposure of **\$3,600.00** after risk-adjusted 80% reduction
12 (20% of \$3,600.00) given the number of terminated employees during the PAGA period was
13 36 (36 employeesX\$100 penalty). To avoid an imposition of penalties for failing to pay
14 wages at termination, Defendant would necessarily be forced to prevail on several distinct
15 theories of recovery. However, I believe it would be unrealistic to expect the Court to award
16 the full exposure amount given the foregoing issues and potential defenses regarding the
17 underlying wage claims, including that any failure to pay wages at termination was not
18 willful or intentional. A risk reduction of 80% was applied to reflect the contingent nature of
19 this claim and the additional need to demonstrate willful misconduct.
- 20 • The risk-adjusted penalty recovery for violation of Labor Code § 226 was estimated to be
21 approximately **\$30,200.00**, which is a risk adjusted estimation of the maximum possible
22 exposure of **\$302,000.00** (3,020 pay periodsX\$100 penalty) after 90% reduction (10% of
23 \$302,000.00). To avoid an imposition of penalties for failing to provide correct itemized
24 wage statements (including correct gross and net wages earned, and total hours worked),
25 Defendant would necessarily be forced to prevail on several distinct theories of recovery.
26 However, I believe it would be unrealistic to expect the Court to award the full exposure
27 amount given the foregoing issues and potential defenses regarding the underlying wage
28 claims, including that any failure to provide accurate itemized wage statements was not
willful or intentional. A risk reduction of 90% was applied to reflect the contingent nature of

1 this claim and the additional need to demonstrate willful misconduct.

- 2 • The risk-adjusted penalty recovery for violation of Labor Code § 2082 was estimated to be
3 approximately **\$30,200.00**, on a maximum possible exposure of **\$151,000.00** (1,510 pay
4 periodsX\$100 penalty) after 80% reduction (20% of \$151,000.00) should Plaintiff be able to
5 prove 100% liability for all 93 employees for unreimbursed expenses every two pay periods)
6 during PAGA period for this one violation. A risk reduction of 80% was applied to reflect
7 the risk of manageability and proving liability given Defendant denies that employees were
8 required to use their personal cell phones for work.
- 9 • Performing risk-adjusted valuations for all claims yields a total value in the range of
10 **\$241,545.00**.

11 The concurrently filed Tunyan Declaration sets forth claim valuation. (See, Tunyan Decl., ¶ 25.)

12 **B. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor**
13 **of Approval of the Settlement**

14 To assess the fairness, adequacy, and reasonableness of a class action settlement, the court should
15 consider the expense, complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at
16 1801. Here, the expense, complexity and likely duration of future litigation was to some extent an
17 unknown. However, what is certain is that to adequately establish the foundational violations that would
18 support a substantial penalty award, tremendous time and expense would be invested. To adequately
19 establish that aggrieved employees experience the alleged violations, and at what frequency, most of the
20 aggrieved employees would need to be interviewed in a systematic fashion and their testimony cataloged
21 in way sufficiently meaningful to permit the submission of summary evidence at trial, such as via survey.
22 *First*, the burdensome nature of such a process would be expensive and time-consuming. *Second*, the
23 review of the provided by Defendant's data confirmed substantial risk that the Court would either
24 substantially reduce any penalty ultimately awarded *or* conclude that the conduct was insufficient to
25 support a penalty award. *Third*, it would be essentially impossible to formulate an objectively reliable
26 means of summarizing testimonial experiences, other than by an extraordinarily detailed survey which
27 would impose the risk of manageability. And formulating such a survey would have been important,
28 since frequency of violations would need to be established before any penalties could be recovered. In

sum, the evidence collected to date leads Plaintiff to conclude that, direct testimony would have been required from as many of the roughly 93 aggrieved employees as could be obtained, which would be, at best, very difficult. (Tunyan Decl., ¶ 21.)

C. The Amount Offered in Settlement Under the Agreement

The Settlement provides a monetary benefit that falls well within “the range of an acceptable settlement” under the circumstances, which is the standard on which the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only provides a fraction of what could have been obtained at trial. *See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

1. The Total Amount Offered in Settlement is \$165,000.00

Under the Agreement, Defendant shall pay a maximum sum of \$165,000.00. Plaintiff’s Counsel, with the assistance of a data analyst, assessed the maximum plausible penalty exposure to be \$1,299,000.00 and the risk adjusted penalty exposure to be \$241,545.00. (Tunyan Decl., ¶ 25.) This estimate is overly optimistic. The Settlement is 13% of that maximum plausible exposure before factoring in the many risk adjustments (*e.g.*, Defendant paid meal premiums for some meal period violations, off-the-clock claims could raise individualized questions of fact and could pose challenges to manageability, employee choice would be an issue on rest break and meal period claims and usage of personal cell phones) and the Court’s ability to reduce the penalty at its discretion. The Settlement is 68.3% of the risk-adjusted exposure. (Tunyan Decl., ¶¶ 23-25.)

Furthermore, Defendant asserted a number of defenses that potentially could have undermined Plaintiff’s claims if they were to be litigated. Specifically, Defendant argued that numerous individualized inquiries would be needed to determine liability on Plaintiff’s claims, including (1) whether employees worked off-the-clock with knowledge of a supervisor or Defendant, (2) whether each individual took a particular meal period or rest break on a particular occasion, (3) where the individual skipped the meal or rest period, *why* it was skipped for each of the allegedly aggrieved employees, and (4) whether employees used their personal cell phones. Defendant argued the case would be unmanageable. (Tunyan Decl., ¶¶ 23-24.)

1 **2. Payment of At Least \$91,715.55 in Penalties**

2 Under the Agreement, the amount available for distribution as penalties under PAGA is at least
3 **\$91,715.55**. The amount is a significant penalty, but it is not confiscatory, nor is it, in the terms of the
4 PAGA statute, “unjust, arbitrary, or oppressive.” Labor Code § 2699(e)(2).

5 a) *The LWDA shall receive at least \$68,786.66.*

6 As 75% of the penalties are allocated to the LWDA, the LWDA stands to receive at least
7 **\$68,786.66** under the Agreement. Further, pursuant to Labor Code § 2699.3(b)(4) the “provisions of the
8 settlement relating to health and safety laws shall be submitted to the division at the same time that they
9 are submitted to the court. This requirement shall be construed to authorize and permit the division to
10 comment on the settlement provisions, and the court shall grant the division's commentary appropriate
11 weight.” The LWDA will have an opportunity to comment upon the amount to be paid to the LWDA.
12 This provision protects against collusive settlements for less than a reasonable value of the claim.

13 b) *Aggrieved Employees shall receive at least \$22,928.89 and Each*
14 *Aggrieved Employee shall receive on average \$246.54*

15 Approximately 93 Aggrieved Employees shall receive at least **\$22,928.89** (25% of the penalty)
16 under the terms of the Agreement and by operation of PAGA. The Aggrieved Employees group consists
17 of 93 non-exempt employees who are or were employed by Defendant within the State of California
18 during PAGA period. As a result, each Aggrieved Employee will receive an estimated average amount
19 of \$246.54. The amount to Aggrieved Employees will vary based on each individual’s duration of
20 employment during the PAGA Period. Thus, those who worked longer for Defendant during the relevant
21 period will receive a benefit greater than the average estimated amount. The high and low range of
22 payments to Aggrieved Employees at this time is unknown, as these amounts will be calculated by the
23 Settlement Administrator following approval and the receipt and processing of the employee data. The
24 Court should give weight to the fact that the primary purpose of PAGA is not to provide a windfall to
25 Aggrieved Employees; the penalties recovered under PAGA are not surrogate individual damages.
26 Instead, the amount available to Aggrieved Employees is in addition to any damages that could be
27 recovered via individual claims. (Tunyan Decl., ¶ 28.)
28

1 **D. The Presence of a Government Participant**

2 As set forth above, 75% of the penalty is paid to the LWDA. In connection therewith, Labor
3 Code § 2699.3(b)(4) permits the LWDA to comment on the penalties. This provides an independent
4 check on collusive settlements. The LWDA was notified of the Settlement. (Tunyan Decl., ¶ 47.)

5 **E. PAGA Counsel Are Experienced and Negotiated Aggressively**

6 The court may also consider that negotiations between the Parties were conducted at arm's
7 length, in an adversarial manner, despite a mutual desire to resolve the case. (Tunyan Decl. ¶¶ 11-14.)
8 The court may consider the opinion of all counsel that the settlement arrived at is fair, reasonable and in
9 the best interests of the aggrieved employees. PAGA Counsel are experienced with employment class
10 actions and representative actions, as set forth more fully in the Declaration of Lilit Tunyan filed
11 herewith.

12 **F. The Substantial Exchange of Data and the Stage of the Proceedings Favor Approval**

13 In evaluating the Parties' basis for valuing a settlement, "“formal discovery is not a necessary
14 ticket to the bargaining table.”” *Linney*, 151 F.3d at 1239.

15 Here, the substantial exchange of data was sufficient to enable Plaintiff's Counsel to evaluate the
16 strength and value of the claim for purposes of settlement. (Tunyan Decl., ¶¶ 12-14, 18-20.) As
17 discussed above, Plaintiff's Counsel spoke with employees, reviewed policies, performed calculations
18 with data, and inspected related documents, such as handbooks and wage statements, to assess exposure
19 and risk.

20 Based on Plaintiff's Counsel's experience litigating wage and hour claims, such investigation
21 was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of this
22 claim for purposes of settlement. (Tunyan Decl., ¶ 21.)

23 **G. Additional Factors Weigh in Favor of Approving the Terms of the Proposed**
24 **Settlement, Including the Requested Fees and Costs**

25 In addition to the factors presented above, the proposed settlement does not possess any obvious
26 deficiencies with respect to its other terms, including the agreed-upon fees and costs.

27 **1. Fees and Costs**

28 Courts in the Ninth Circuit and California generally use the “percentage method” rather than the

1 lodestar approach when awarding attorneys' fees in a common fund settlement. See 7 Witkin, B.E.,
2 CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261 at 236-241 (describing prevalence of percentage
3 method under California law); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] litigant or a
4 lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled
5 to a reasonable attorney’s fee from the fund as a whole”); *In re Activision Sec. Litig.*, 723 F. Supp. 1373,
6 1377-78 (N.D. Cal. 1989) (Patel, J.) (endorsing percentage method). See generally, *Serrano*, 20 Cal. 3d
7 at 25; *accord Hanlon*, 150 F.3d 1011 (9th Cir. 1998). While this settlement is what is traditionally
8 imagined when using the term “common fund,” it does create benefit for others beyond Plaintiff.

9 According to a leading treatise on class actions, “No general rule can be articulated on what is a
10 reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee
11 award from a common fund in order to assure that the fees do not consume a disproportionate part of the
12 recovery obtained for the class, although somewhat larger percentages are not unprecedented.” See
13 Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03. Attorneys’ fees that are fifty percent of
14 the fund are typically considered the upper limit, with **thirty to forty percent commonly awarded in**
15 **cases where the settlement is relatively small**. See *id*; see also, *Van Vranken v. Atlantic Richfield*
16 *Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases where 30-50 percent was awarded
17 involved “smaller” settlement funds of under \$10 million).

18 While this is not a class action, the custom and practice in class actions is to award approximately
19 one-third of a fund as a fee award. See *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008)
20 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used,
21 fee awards in class actions average around **one-third** of the recovery.”) (emphasis added). The proposed
22 attorney fee award here is 33,3% of the Gross Settlement Amount, and amount reasonably comparable to
23 “average” fees awarded in California state court class action cases used for comparison purposes here.
24 *Chavez*, 162 Cal. App. 4th at 66 n. 11. Again, this is **not** a class action. It is more akin to contingent
25 representation with an additional requirement of Court review due to the qui tam nature of a PAGA
26 claim.

27 As a PAGA claim is unique to California, it is also appropriate to consider how California treats
28 common fund recoveries. The California Supreme Court removed all doubt about the use of the

percentage of the fund method to award attorney's fees in California, stating, "We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁴

Thus, Ninth Circuit and California state courts regard circumstances in which class counsel's work is wholly contingent, such as in class actions and other common fund type cases, as a factor weighing in favor of approving a negotiated fee award that approximates market rates. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001). This matter has been litigated by Plaintiff's Counsel in a manner that is reasonable, diligent, and efficient. The actual lodestar incurred by Plaintiff's Counsel to date is no less than **\$80,910.00** not including at least \$2, 750 in estimated future work. (Tunyan Decl., ¶¶ 39-42.) Attorneys for Plaintiff invested substantial amounts of time evaluating data before the mediation in this matter, revising damage models, and in preparing for the mediation. Those efforts led to this reasonable settlement. (Tunyan Decl., ¶ 39-42.) Plaintiff's Counsel requests **\$55,000.00**, as specified in the Settlement, which constitutes a **negative lodestar multiplier** of 1.52, when compared to recorded and estimated future lodestar of **\$83,660.00**. (Tunyan Decl., ¶ 42.)

The Agreement also provides for the award of actual costs, up to \$16,000, based on Plaintiff's Counsel's actual out of pocket expenses in taking on representation in this Lawsuit on a contingency basis. (Tunyan Decl., ¶ 16.) Plaintiff requests an award of **\$14,334.45** in actual costs which include the future motion, final report and stipulation filing fee. (Tunyan Decl., ¶ 43.)

2. Administration Fees Are Very Reasonable

Administration will be completed by ILYM Group, Inc. for **\$3,950.00**, a very reasonable amount for the services rendered which was selected after requesting bids from four potential settlement administrators. Defendant will provide the Settlement Administrator with a list of Aggrieved Employees

⁴ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, at 501.

1 within 15 days from entry of the order approving the Settlement that Defendant will compile from its
2 records, which will include each Aggrieved Employee's last known full name, last known address, last
3 known telephone number, Social Security number and employee ID number, start and end dates of
4 employment as a non-exempt and/or hourly-paid employee of Defendant in California during the PAGA
5 Period, and other such mutually agreed upon information by the Parties as may be necessary for the
6 Settlement Administrator to independently calculate and review the Pay Periods attributed to each
7 Aggrieved Employee, and the Settlement Administrator will calculate each Aggrieved Employee's
8 estimated share of the twenty-five percent (25%) portion of the PAGA Payment. The Settlement
9 Administrator will also establish Qualified Settlement Fund Escrow Account, prepare, administer, and
10 distribute settlement checks to the Aggrieved Employees, including necessary tax forms (W2 and/or
11 1099), calculate and withhold all applicable state and federal taxes, should any disbursements be returned
12 to ILYM Group's office as undeliverable, ILYM Group will attempt to locate an update address using
13 the NCOA database and/or other skip trace efforts and will promptly remail the disbursement,
14 redistribute all uncashed checks to the LWDA and to those aggrieved employees' who had previously
15 cashed their settlement checks, perform any other usual and customary duties for administering a PAGA
16 action settlement. Funds represented by checks returned as undeliverable after a re-mailing, and funds
17 represented by checks remaining un-cashed for more than 180 days after issuance, will be redistributed
18 to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.
19 (Tunyan Decl., ¶ 44.)

20 **IX. CONCLUSION**

21 For the above reasons in fact and law, Plaintiff requests this court enter an order approving the
22 settlement memorialized in the Agreement.

23 Respectfully submitted,

24 Dated: May 17, 2024

TUNYAN LAW, APC

25
26 By: _____

Lilit Tunyan
Artur Tunyan

27
28 Attorneys for Plaintiff SUSANA HERNANDEZ
DE MARTINEZ

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Attorneys for Defendant Facility Services Partners, Inc.

Signature