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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JUAN ARIAS, an aggrieved employee and on behalf of other aggrieved employees; Plaintiff, vs. CONTACTABILITY.COM LLC, an Ohio limited liability company; and DOES 1 through 50, Defendants.	Case No.: 30-2023-01352000-CU-OE-CXC [Assigned for All Purposes to: Hon. Layne H. Melzer, Dept. CX102] **NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT, ATTORNEY'S FEES AND COSTS, AND ENHANCEMENT AWARD** (Filed Concurrently with Supporting Declarations and [Proposed] Judgment and Order) DATE: February 5, 2026 TIME: 2:00 p.m. DEPT: CX102 Reservation No: 74663736 Action Filed: September 29, 2023 Trial Date: Not Set

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

PLEASE TAKE NOTICE that on February 5, 2026, at 2:00 p.m. in Department CX102 of the Superior Court of the State of California for the County of Orange, Civil Complex Center, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, before the Honorable Layne H. Melzer, Judge presiding, Plaintiff Juan Arias ("Plaintiff") will move the Court, pursuant to California Private Attorneys General Act ("PAGA"), Labor Code sections 2698, *et seq.,* for an Order:

1. Approving the settlement of this PAGA representative action in the form agreed to by Plaintiff and Defendant Contactability.com LLC ("Defendant") (together with Plaintiff, the "Parties") in the PAGA Settlement Agreement (the "Settlement" or "Agreement");
2. Appointing Plaintiff's counsel as PAGA counsel, for settlement purposes only, and approving an award to Plaintiff's counsel for reasonable attorney's fees in the amount of $58,333.33 and reasonable costs in the amount of $12,217.89;
3. Appointing Phoenix Settlement Administrators as the Settlement Administrator, and approving payment of Settlement Administrator's costs in the amount of $3,975.00;
4. Approving an enhancement award in the amount of $5,000.00 to Plaintiff for Plaintiff's service to the LWDA and Aggrieved Employees;
5. Approving the release of PAGA claims by Plaintiff on behalf of Aggrieved Employees and the LWDA;
6. Directing consummation of the Settlement pursuant to its terms and provisions;
7. Entering final Judgment;
8. Setting a Hearing Re: Distribution for on or after January 27, 2027; and
9. Without affecting the finality of the Judgment and Order, reserving exclusive and continuing jurisdiction over the Action, the Parties, and the Aggrieved Employees for purposes of interpreting and enforcing the terms, conditions, and obligations of the Settlement pursuant to California Code of Civil Procedure section 664.6.

This Motion will be based upon this notice, the attached Memorandum of Points and Authorities, Declarations of William C. Sung, Tiffany L. Luu, Juan Arias, and Jodey Lawrence of Phoenix Settlement Administrators, and exhibits thereto that were filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

DATED: September 21, 2025

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff Juan Arias

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I. INTRODUCTION

Plaintiff Juan Arias ("Plaintiff") seeks approval of a proposed representative action settlement for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA") against Defendant Contactability.com LLC ("Defendant") (together with Plaintiff, the "Parties"). After a full day of mediation with experienced neutral mediator Tagore Subramaniam, Esq., the Parties reached a settlement and thereafter executed a PAGA Settlement Agreement (the "Settlement" or "Agreement")[1].

The Settlement calls for a Gross Settlement Amount of **$175,000.00**. After deducting Plaintiff's counsel's reasonable attorney's fees and costs awards, payment for the Settlement Administrator's cost, and required payment to the California Labor and Workforce Development Agency (the "LWDA"), approximately **$23,868.44** will be paid to approximately **141** Aggrieved Employees. The average approximate share of the settlement paid to Aggrieved Employees is **$169.28**. Pursuant to Labor Code section 2699(l)(2)[2], Plaintiff now file this unopposed motion, seeking an order approving the proposed Settlement.

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (Lab. Code § 2699(l)(2).) In deciding whether to grant approval of a proposed settlement, the primary issues to be decided is whether the settlement is fair, adequate, and reasonable. (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

As set forth herein, the proposed Settlement embodies all the features of a settlement that is fair, adequate, and reasonable, as it is the product of (1) an arms-length negotiation, (2) negotiated

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[1] A true and correct copy of the Agreement is attached as **Exhibit 1** to the Declaration of William C. Sung in Support of Motion for Approval of PAGA Settlement ("Sung Decl."). The proposed explanatory letter regarding PAGA settlement is attached to the Agreement as **Exhibit A** to the Agreement. All defined terms in this Motion have the same definition as that in the Agreement.

[2] This Action and Settlement are subject to pre-PAGA reform, July 1, 2024 PAGA requirements. All citations to Labor Code §§ 2698, *et seq.* are to the pre-July 1, 2024 PAGA statute.

by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claims, as well as the risks, expense, complexity, and likely duration of further litigation.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. PLAINTIFF'S CLAIMS AND PROCEDURAL BACKGROUND

Defendant operates a call center insurance sales business in Newport Beach, California and is affiliated with Smart Financial (https://contactability.com). (Sung Decl., ¶ 9.) Defendant hired Plaintiff as a non-exempt call center agent On February 1, 2019. (Declaration of Juan Arias in Support of Motion for Approval of PAGA Settlement ["Arias Decl."], ¶ 2.) Plaintiff contends both Plaintiff and Plaintiff's coworkers were subjected to the same unlawful labor practices during their employment by Defendant. (*Id.*)

On July 26, 2023, Plaintiff submitted the LWDA Letter of alleged Labor Code violations to Defendant and the California Labor and Workforce Development Agency (the "LWDA"). (Sung Decl., ¶ 10, **Exh. 2** – LWDA Letter.) On August 15, 2023, Plaintiff submitted the Amended LWDA Letter of alleged Labor Code violations to Defendant and the LWDA. (Sung Decl., ¶ 11, **Exh. 3** – Amended LWDA Letter.) Plaintiff's administrative exhaustion period expired without the LWDA indicating its intent to investigate the allegations. (*Id.*) On September 29, 2023, Plaintiff filed the operative Representative Action Complaint ("Operative Complaint") alleging a single cause of action for violation of the PAGA. (Sung Decl., ¶ 12, **Exh. 4** – Operative Complaint.)

On November 17, 2023, the Parties stipulated to arbitration of Plaintiff's individual claims and to stay representative PAGA claims. (Sung Decl., ¶ 13.) Thereafter, Plaintiff filed a Demand for Arbitration with AAA. (*Ibid.*) During the course of the arbitration proceedings, the Parties agreed to mediate on a PAGA representative basis. (*Ibid.*)

B. DISCOVERY AND INVESTIGATION

Prior to mediation, the Parties engaged in informal discovery which allowed the Parties to meaningfully mediate this matter. (Sung Decl., ¶ 14.) Specifically, Defendant produced: (1) PAGA demographics including the number of Aggrieved Employees and PAGA Pay Periods; (2) a 25%

sampling of employees time and payroll records; (3) excerpts of Defendant's employee handbook with relevant policies; and (4) Plaintiff's personnel records. (*Id.*)

Plaintiff's counsel, with the assistance of a retained expert data analyst, analyzed and reviewed the documents regarding Defendant's wage and hour policies and practices, the Aggrieved Employees' time and pay records, and other information provided by Defendant and Plaintiff. (Sung Decl., ¶ 15.) Plaintiff's counsel was able to evaluate the probability of success on the merits and Defendant's maximum and risk-adjusted monetary exposure and prepare a damage analysis prior to mediation. (*Id.*) The time and pay records of all Aggrieved Employees allowed Plaintiff's counsel and their expert to prepare an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiff and Plaintiff's counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. SETTLEMENT NEGOTIATIONS

On March 21, 2025, the Parties participated in private mediation before Tagore Subramaniam, Esq., an experienced, neutral, class action and PAGA mediator. (Sung Decl., ¶ 16.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement of this Action, the material terms of which are encompassed within the Settlement. (*Id.*) The Parties recognized that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. (*Id.*) Plaintiff and Plaintiff's counsel considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this Settlement was the correct option. (*Id.*)

D. KEY TERMS OF THE PROPOSED PAGA SETTLEMENT

The Settlement covers all persons currently or formerly employed by Defendant as non-exempt or hourly-paid employees in the State of California, including those who fall under the salespersons exemptions, during the PAGA Period ("Aggrieved Employees"). (Agreement, § I.2.) The PAGA Period is from July 26, 2022 through May 20, 2025 (the "PAGA Period"). (Agreement, § I.12.) The Gross Settlement Amount of the Settlement is $175,000.00. (Agreement, § I.9.) The Settlement provides that Plaintiff's counsel will seek an award of reasonable attorney's fees of $58,333.33, which is equivalent to one-third (33 1/3%) of the Gross Settlement Amount, and up to $20,000.00 in litigation costs. (Agreement, § III.4.a.) Plaintiff's litigation costs are approximately $12,217.89, including $104.17 in estimated future costs in filing this Motion and supporting papers ($75.91), supplemental filings for this Motion ($14.11), and filing of the Settlement Administrator's declaration of compliance re settlement administration ($14.11). (Sung Decl., ¶ 17; Exh. 4 – Itemized Costs.)

The Settlement Administrator will be paid administration costs not to exceed $3,975.00. (Agreement, § III.4.b.) The Parties jointly selected Phoenix Settlement Administrator as the neutral entity to administer this Settlement based on its bid of $3,975.00 and after obtaining and comparing bids from two administrators. (Sung Decl., ¶ 18; *see also* Declaration of Jodey Lawrence of Phoenix Settlement Administrators in Support of Plaintiff's Motion for Approval of PAGA Settlement ["Admin. Decl."], ¶ 15, Exh. B – Administrator Bid.) The Settlement further provides that Plaintiff will be paid an enhancement award in the amount of $5,000.00 for Plaintiff's service to the LWDA and the Aggrieved Employees. (Agreement, § III.4.c.)

After deducting Plaintiff's counsel's attorney's fee and cost awards and payment to the Settlement Administrator, in the amounts approved by the Court, the remainder, called the Net Settlement Amount, will be distributed as 75% to the LWDA and 25% to Aggrieved Employees. (Agreement, § III.5.) The amount estimated in the Net Settlement Amount for the LWDA payment and the Aggrieved Employee payment is **$95,473.78**. (Sung Decl., ¶ 19.) Accordingly, approximately **$23,868.44** (25% of the Net Settlement Amount) will be paid to the estimated 141 Aggrieved Employees on a pro-rata basis based on the number of pay periods each Aggrieved

Employee worked during the PAGA Period, and the raw average payment to Aggrieved Employees is estimated at **$169.28**. (*Id.*; *see* Agreement, § III.5.a.)

Defendant will fund the Gross Settlement Amount within 60 court days of the Effective Date, which is the date that the Court enters a final order and judgment approving the Settlement. (Agreement, §§ I.6, III.2.) Within 5 business days of the Effective Date, Defendant will provide the Settlement Administrator with a PAGA list of all Aggrieved Employees, including their full name, last known mailing address, social security number, and number of pay periods worked during the PAGA Period or dates of employment. (Agreement, § IV.2.)

Upon receipt of the PAGA list, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. (Agreement, § IV.3.) Within 21 calendar days of the Settlement being fully funded, the Settlement Administrator will mail copies of the explanatory letter, attached as **Exhibit A** to the Agreement and translated into Spanish, along with Individual PAGA Payments to all Aggrieved Employees; and distribute the 75% share of PAGA penalties to the LWDA, court-approved attorney's fees and cost awards to Plaintiff's counsel; and court-approval administration costs to itself. (Agreement, §§ IV.3, IV.5.)

Any checks for Individual PAGA Payments returned as non-deliverable will be remailed to the forwarding address affixed thereto. (Agreement, ¶ IV.4.) If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address, using a skip-trace or other similar search, using the name, address and/or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing if a new address is located. (*Id.*) Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued. (*Id.*)

Finally, prior to the filing of this Motion, Defendant's counsel provided Plaintiff's counsel a declaration confirming the number of PAGA Pay Periods. (Sung Decl., ¶ 37, Exh. 6 - Declaration of Christine Baran Re: Number of Pay Periods for Aggrieved Employees Through PAGA Period ["Baran Decl."].) Based on the Baran Decl., the Escalator Clause in ¶ III.3 of the Agreement will not be triggered and the PAGA Period will not need to be modified. (*Id.*)

III. DISCUSSION

A. AVAILABILITY OF CIVIL PENALTIES

The LWDA and its constituent departments and divisions are authorized to assess and collect civil penalties for specified violations of the Labor Code committed by an employer. With a stated goal of improving enforcement of existing Labor Code obligations, the California Legislature adopted the Labor Code Private Attorneys General Act of 2004, permitting, as an alternative, an aggrieved employee to initiate a private civil action "on behalf of himself or herself and other current or former employees . . ." (Lab. Code § 2699(a).) The penalties collected in these private civil actions are to be distributed 75 percent to the LWDA and 25 percent to the aggrieved employees. (*Id.* at § 2699(i).) However, before an employee may file an action seeking to recover civil penalties for violations of any of the Labor Code provisions enumerated in Labor Code section 2699.5, he or she must comply with the Act's administrative procedures as set forth in Labor Code section 2699.3, subdivision (a), which include providing notice to the LWDA and the employer of the alleged Labor Code violations, and then waiting a prescribed period of time to permit the LWDA to investigate and to decide whether to cite the employer for the alleged violations. (*Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330.)

Here, in compliance with Labor Code section 2699.3, on July 26, 2023, Plaintiff provided notice to the LWDA and Defendant. (Sung Decl., ¶ 10; Exh. 2.) Plaintiff's administrative exhaustion periods expired without the LWDA indicating its intent to investigate the allegations. (*Ibid*.) Accordingly, Plaintiff may proceed with this PAGA representative action.

B. THE SETTLEMENT WARRANTS APPROVAL

Settlement of PAGA claims must be approved by a Court. (Lab. Code § 2699(l).) Here, the circumstances weigh heavily in favor of approval, as explained below.

1. The Dual Statutory Purposes of Deterrence and Punishment

As a result of this litigation, Defendant has had to hire legal counsel, engage in informal discovery, and participate in mediation. Defendant is also now having to pay civil penalties to the

LWDA pursuant to the terms of the Settlement. Not including its own attorneys' fees and costs, Defendant is paying $175,000.00 to resolve this matter.

2. <u>The Relief is Genuine, Meaningful, and Consistent with the Underlying Purpose of the Statute to Benefit the Public</u>

Plaintiff's counsel has conducted a thorough investigation into the facts of this case. (Sung Decl., ¶ 20.) Based on the foregoing discovery and on their own independent investigation and evaluation, Plaintiff's counsel is of the opinion that the Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant on the merits, the Settlement is in the best interests of the Aggrieved Employees and the State. (*Id.*) The Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id*) Although the Parties have engaged in a significant amount of investigation, informal discovery, and employee data analysis, they have not participated in substantial formal discovery procedures, including depositions and expert discovery. (*Id.*) Moreover, preparation for trial would remain for the Parties, as well as the prospect of appeals in the wake of any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*)

Based on Plaintiff's counsel's analysis of the time and payroll records provided by Defendant and on information from Plaintiff, Plaintiff's counsel evaluated Defendant's maximum and risk-adjusted potential exposure. (Sung Decl., ¶ 21.) Based on Defendant's disclosures, there were approximately 141 Aggrieved Employees who collectively worked approximately 2,564 pay periods. (*Id.*) Plaintiff's counsel's damages valuation utilizes the initial violation rate penalty of $100 in analyzing PAGA penalties because, based on Plaintiff's counsel's investigation, Defendant has not been subject to any prior court judgments or Labor Commissioner order placing it on notice of any violation pertaining to the claims Plaintiff asserted and the heightened subsequent violation penalty does not apply. (*Id*; *see Bernstein v. Virgin America, Inc.* (9th Cir. 2021) 990 F.3d 1157, 1173.) Plaintiff's counsel's valuation of each theory of liability is set forth below.

<u>Regular Rate Violations</u>. Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift

differentials and the per-hour value of any nonhourly compensation the employee has earned." *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554; *see also Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 (meal and rest period premiums to be paid at regular rate of pay); Lab. Code § 246(l)(1) (paid sick leave to be paid at the regular rate of pay or at a rate based on a 90-day lookback of compensation earned).

Here, Plaintiff alleges that Defendant failed to factor commissions and bonuses into the regular rate of pay for overtime, meal period premiums, and paid sick leave. (Sung Decl., ¶ 22.) Plaintiff's counsel found approximately 36.21% of pay periods had an overtime regular rate violation, 1.88% of pay periods had a meal period premium regular rate violation, and approximately 21.76% of pay periods had a paid sick leave violation. (*Id.*) At $100 initial penalty per pay period and extrapolated to the date of mediation, PAGA penalties for regular rate violations total $**153,455.16**. (*Id.*) In response, Defendant argues that Plaintiff's damages analysis is grossly inflated because it includes employees who were exempt from overtime under the Inside Sales Exemption under IWC Wage Order 4, § 3(D), which provides: "The [overtime] provisions of [the Wage Order] above shall not apply to any employee whose earnings exceed one and one-half (1½) times the minimum wage if more than half of that employee's compensation represents commissions." (*Id.*)

Off-the-Clock Work. "An employer that requires its employees to work minutes off the clock on a regular basis or as a regular feature of the job may not evade the obligation to compensate the employee for that time by invoking the de minimis doctrine. As the facts here demonstrate, a few extra minutes of work each day can add up." *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 847, as modified on denial of reh'g (Aug. 29, 2018); *see also Troester v. Starbucks Corp*. (C.D. Cal. 2019) 387 F. Supp. 3d 1019, 1025 ("A few extra minutes each day can add up, amounting to enough to pay a utility bill, buy a week of groceries, or cover a month of bus fares.")

Here, Plaintiff and his coworkers experienced off-the-clock work because it took several minutes to start his computer before they were able to clock in for their shift. (Sung Decl., ¶ 23.) At $100 initial penalty per pay period and assuming a 100% violation rate, PAGA penalties for off the clock work violations total **$256,400.00**. (*Id.*) In response, Defendant vigorously contests that the few minutes Aggrieved Employees spent to start their computers before clocking in was compensable. (*Id.*; *see Troester*, 5 Cal.5th at 855 [Kruger J. Concurring] [In situations where employees needs to start their computers before clocking in, "requirement that the employer accurately account for every second spent on work tasks may well be impractical and unreasonable.")

Meal Period Violations. Plaintiff alleges that Defendant sometimes failed to provide him with full, 30-minute meal periods before the end of the fifth hour of work. (Sung Decl., ¶ 24.) Plaintiff's counsel and his expert analyzed the 25% sampling of time and payroll records and found, out of 5,161 shifts and 560 pay periods, after accounting for meal period premiums paid, 26.96% of pay periods had one or more meal period violations. (*Id.*). At $100 initial penalty per pay period, an 26.96% violation rate, and extrapolated to 2,564 pay periods, PAGA penalties for meal period violations are **$69,125.44**. (*Id.*)

In response, Defendant counters that it has maintained compliant meal period policies and practices throughout the PAGA Period and always provided compliant meal periods in line with those policies. (*Id.; see Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040-1041 [holding employers need only "provide" meal periods to employees and are not obligated to "police" meal periods].) Defendant points to the fact that it paid approximately 89 meal period premiums totaling $2,443.18 in the sampling as evidence of their superior meal period compliance practices. *Ibid.* As such, Defendant maintains Plaintiff's meal period claim is unmanageable since individual inquiries would be needed to assess which employees, if any, took non-compliant meal periods, how many meal periods were non-compliant, and the reasons why a particular employee did not take a meal period on a particular shift and a meal period premium was not paid. *Ibid.*

Rest Period Violations. Plaintiff contends that he occasionally could not take his 10-minute rest breaks because of his work duties. (Sung Decl., ¶ 25.) Any rest period violations would not be reflected in the time or payroll records. (*Id.*) Estimating that Aggrieved Employees experienced rest period violations during approximately 20% of pay periods, and at $100 initial violation rates and extrapolated to the date of mediation, PAGA penalties for rest period violations are **$51,280.00.** (*Id.*)

In response, Defendant counters that it has maintained compliant rest period policies and practices throughout the PAGA Period and always provided compliant rest periods in line with those policies. (*Id.*) Defendant further argued that Aggrieved Employees worked from home and had significant flexibility to take their breaks. (*Id.*) As such, Defendant maintains Plaintiff's rest period claim is unmanageable since individual inquiries would be needed to assess which employees, if any, took non-compliant rest periods, how many rest periods were non-compliant, and the reasons why a particular employee did not take a rest period on a particular shift. *Ibid.*

Derivative Wage Statement and Waiting Time Violations. Plaintiff alleges that, as a result of the aforementioned wage violations, Defendant failed to furnish Aggrieved Employees with accurate itemized wage statements in violation of Labor Code section 226(a). (Sung Decl., ¶ 26.) At an 100% violation rate by pay period, and at $100 initial violation rate penalty per pay period, PAGA penalties are estimated at **$256,400.00**. (*Id.*) Plaintiff alleges that, as a result of the aforementioned wage violations, Defendant failed to pay all wages due to formerly employed Aggrieved employees upon their separation of employment in violation of Labor Code sections 201 and 202. (*Id.*) At $100 per former employee for 115 former employees, PAGA penalties are estimated to be **$11,500.00**. (*Id.*) In response, Defendant points to its substantive defenses on regular rate, off-the-clock work, and meal/rest period claims to argue that these derivative claims will fail with the underlying claims. (*Id.*)

Failure to Reimburse Business Expenses. During the PAGA period, Plaintiff and other Aggrieved Employees were required to work from home since COVID. (Sung Decl., ¶ 27.) Although Defendant provided Plaintiff with a work computer that contains a phone app, it failed to reimburse him for any other costs of working from home, including prorated internet and utility expenses. (*Id.*) At $100 per pay period over 2,564 pay periods, PAGA penalties for reimbursements violations are **$256,400.00**. (*Id.*)

Unlawful Non-Compete Agreement. Labor Code § 432.5 provides that "no employer . . . shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer . . . to be prohibited by law." Business and Professions Code § 16600 provides any contract that restricts an individual from "engaging in a lawful profession, trade, or business" is null and void. During the relevant time period, Defendant required Plaintiff and other aggrieved employees to sign an Employee Confidentiality, Non-Solicitation, and Non-Competition Agreement which contains non-compete and non-solicitation covenants, such as a covenant to not compete with Defendants for 18 months following the separation of employment. (Sung Decl., ¶ 28.) At $100 per employee for 141 employees, PAGA penalties are **$14,100.00**. (*Id.*)

<u>Maximum Exposure and Realistic Recovery at Trial</u>. Based on the foregoing, Plaintiff's counsel estimates Defendant's maximum exposure for PAGA penalties to be approximately **$1,068,660.60**. (Sung Decl., ¶ 29.) However, PAGA penalties are subject to discretionary reduction by this Court. (*Id.*) Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties where ". . . if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, courts have affirmed the reduction of PAGA penalties in the past. As shown in *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 517, the Court of Appeal affirmed the trial court's reduction of PAGA penalties by 90%, citing the employer's good-faith attempt at complying with the law. (*See also Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 [affirming reduction of PAGA penalties]; *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 [reducing PAGA penalties by over 82% in part because employer "not aware" of violations].) Here, Defendant argued that based on their compliant policies and practices, their defenses on Plaintiff's theories of liability on the merits, and the hypertechnical nature of the regular rate claims, the Court will significantly reduce any award of PAGA penalties based on its good-faith compliance with the Labor Code. (Sung Decl., ¶ 29.)

Taking into account Defendant's defenses on the merits and the potential for the Court to reduce a PAGA penalty award, Plaintiff's counsel believes there is a 75% risk factor that the Court will find some of the claims in Defendant's favor and/or exercise its discretion to reduce the PAGA penalty award. (Sung Decl. at ¶ 30.) Accordingly, applying a 75% discount to the maximum penalty exposure, Plaintiff's counsel believes the realistic recovery at trial on these claims to be **$267,165.15**. (*Id.*) The $175,000.00 settlement is an excellent result and amounts to "genuine and meaningful" relief "consistent with the underlying purpose of the statute to benefit the public" as it represents approximately **65.50%** of Plaintiff's realistic recovery. (*Id.*; *see Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.) This is an excellent result, particularly because, under the Settlement, Aggrieved Employees will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything. (Sung Decl., ¶ 30.)

C. THE REQUESTED ATTORNEYS' FEES AND COST AWARD SHOULD BE APPROVED

For the reasons set forth below, Plaintiff requests that the Court approve an attorney's fee award of **$58,333.33** and cost award of **$12,217.89** to Plaintiff's counsel.

1. <u>Plaintiff's Counsel Request an Award of Fees Based on the Common Fund Method</u>

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. (*See, e.g.*, *Serrano v. Priest* (1977) 20 Cal.3d 25.) The California Supreme Court has held, "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or Plaintiff for the benefit of all results in the creation or preservation of that fund, such plaintiff or Plaintiff may be awarded attorney's fees out of the fund." (*Id.* at p. 34.)

Plaintiff's counsel seeks an award of attorneys' fees on the "percentage of recovery/common fund" theory. The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying this doctrine include:

> fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.

(*Id.* at p. 111.)

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp.1373:

> **This court is compelled to ask, "Is this process necessary?" Under a cost-benefit analysis, the answer would be a resounding, "No!"** Not only do the *Lindy* and *Kerr–Johnson* analyses consume an undue amount of court time with little resulting advantage to anyone, but, in fact, it may be to the detriment of the class members.

(*Id.* at p. 1375 [emphasis added].) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id*. at pp. 1378–79.) California Courts now routinely use the percentage of the common fund approach to determine the award of attorney's fees. (*See*, *e.g.*, *In re Pac. Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378–79 [approving attorneys' fee award of 33%].)

2. <u>The Requested Fee is in Line with Typical Cases</u>

According to a leading treatise on class actions: "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (Newberg, Newberg on Class Actions (3rd ed. 1992) § 14.03.) Attorneys' fees that are 50% of the fund are typically considered the upper limit, with 30–40% commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases where 30–50% was awarded involved "smaller" settlement funds of under $10 million].)

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Here, Plaintiff request attorneys' fees equal to 35% of the Gross Settlement Amount, which is in line with the prevailing guidelines established under California case law and in academic literature and is consistent with awards in California. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].)

3. <u>The Matter Involves a Fee and Cost Shifting Provision under PAGA</u>

Labor Code section 2699 provides for the recovery of reasonable attorney's fees as well as costs of suit. (Lab. Code § 2699(g)(1).) Specifically, it states: "Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs . . ." (*Id.*) This fee/cost-shifting provision reflects the understanding that PAGA Counsel must accept significant risk of substantial expenses and consumption of time, energy, and other resources in litigating a PAGA claim, and thus, that PAGA Counsel is not only permitted, but entitled, to recover reasonable attorneys' fees and costs if successful in litigating a PAGA claim.

This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff's counsel for their decision to assume risk by taking on this matter. (Sung Decl., ¶ 31.) In fact, prosecution of this action involved significant financial risk for Plaintiff's counsel. (*Id.*) Plaintiff's counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Plaintiff's counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, placing their fiduciary duty to the Aggrieved Employees ahead of all other concerns. (*Id.*)

4. <u>The Experience, Reputation, and Ability of Plaintiff's counsel Support the Requested Fee Award</u>

As demonstrated by their past experience in pursuing class and representative actions on behalf of employees, Plaintiff's counsel possess considerable expertise in litigating class action and representative matters. (Sung Decl., ¶¶ 2-7; Declaration of Tiffany L. Luu in Support of Motion for Approval of PAGA Settlement ["Luu Decl."], ¶¶ 2-6.) Plaintiff's counsel have been involved as lead counsel or co-counsel in a multitude of class and representative actions resulting in beneficial results to class members and aggrieved employees in California. (Sung Decl., ¶¶ 6-7; Luu Decl., ¶¶ 5-6.) Because it is reasonable to compensate Plaintiff's counsel commensurate with their skill, reputation, and experience, Plaintiff's counsel's requested fee award is supported here.

Plaintiff's counsels' experience in wage and hour class and representative actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of this Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of representative action litigation. Based on these and other factors, Plaintiff's counsel have recently received fee awards based on a percentage of the gross recovery. (Sung Decl., ¶ 32.) Therefore, the requested fee award is reasonable and fair.

5. <u>While the Lodestar Method is Not Necessary in Common Fund Cases, the Court May Perform a Cross-Check to Award Fees</u>

"Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-risk, challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: "(1) 'increases the workload of an already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that are far from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law,' (4) 'is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the Plaintiff or of an overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and . . . engage in duplicative and unjustified work,' (6) 'creates a disincentive for the early settlement of cases,' (7) deprives trial courts of 'flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered,' (8) 'works to the particular disadvantage of the public interest bar,' and (9) results in 'confusion and lack of predictability.'" (*Id.* [quoting Third Circuit Task Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

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Although California courts support the common fund doctrine, the lodestar method can be used to cross-check fee awards. “It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to ‘cross-check’ or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 [quoting *Lealao*, *supra*, 82 Cal.App.4th at pp. 49–50].)

Applying the lodestar method is a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the lodestar to account for various factors. (*Id.* at p. 556.) “The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services.” (*Id*.) “Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis.” (*Id*. at pp. 556–57.) Further, “California case law permits fee awards in the absence of detailed time sheets.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.)

Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 49-50 (approving multiplier of about 2.5); *Coalition for L.A. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving multiplier of about 12.8). In representative actions such as this one, where the value of the benefit conferred to the representative group “can be monetized with a reasonable degree of certainty,” the court may “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.

Moreover, the use of a multiplier is permitted in a PAGA action. PAGA provides that “[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.” (Lab. Code § 2699(g)(1).) Although PAGA does not provide a specific standard for evaluating attorneys' fees in connection with a settlement of PAGA claims, California Courts have employed a lodestar analysis and use of multipliers for this purpose. "Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method. . . To guard against an unreasonable result, the Ninth Circuit encourages district courts to "cross-check[] their calculations against a second method. . . . Accordingly, the Court calculates attorneys' fees in the instant case using the percentage-of-recovery method and then cross-checks its calculations against the lodestar method." (*Hermosillo v. Davey Tree Surgery Co.* (N.D. Cal. July 7, 2021, No. 18-CV-00393-LHK) 2021 WL 2826697, at *1 [quoting *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942, 944–45].) The court in *Hermosillo* granted, in part, a plaintiff's counsel's unopposed motion for attorneys' fees and costs in a PAGA-only settlement, wherein 33.33% of the gross settlement fund was requested for fees. (*Hermosillo*, at *1–3.)

Here, Plaintiff's counsel's current lodestar is **$67,005.00**, broken down as:

Name	Laffey Matrix Fee	Actual Billing Rate	Hours Billed	Lodestar
William C. Sung (14th Year Attorney)	$948	$850	63.30	$53,805
Tiffany L. Luu (5th Year Attorney)	$581	$500	26.40	$13,200

(Sung Decl., ¶¶ 32-35.) Plaintiff's counsel's requested fee award represents a **negative 0.87** lodestar multiplier. (Sung Decl., ¶ 32.) Additionally, Plaintiff's counsel estimate they will devote no less than 10 hours, although likely more time, to additional tasks, which are hours not included in the foregoing lodestar total. (Sung Decl., ¶ 35.) These additional hours will include time spent to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the case. (*Id.*) Plaintiff's counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay. The amount of fees requested under the Settlement is warranted based on the contingent risk that Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a result of the Settlement, and the skill displayed by Plaintiff's counsel. Thus, the request for attorneys' fees satisfies a lodestar check. Accordingly, the Court should find that the circumstances of the present case justify an award of 33 1/3% of the Gross Settlement Amount for attorneys' fees.

6. <u>Plaintiff's Counsels' Costs Are Reasonable and Actually Incurred</u>

Plaintiff's counsel are entitled to recover the out-of-pocket costs and expenses they reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974; Lab. Code § 2699(g)(1).) Under the proposed Settlement, Plaintiff's counsel may request reimbursement of costs up to $20,000.00. (Agreement, § III.4.a.) Plaintiff's counsel seek reimbursement of actual costs in the amount of $12,217.89, including $104.17 in estimated future costs in filing this Motion and supporting papers ($75.91), supplemental filings for this Motion ($14.11), and filing of the Settlement Administrator's declaration of compliance re settlement administration ($14.11). (Sung Decl., ¶ 17; Exh. 4.) These expenses were reasonably necessary to the litigation and were actually incurred. Moreover, these expenses are below the maximum amount ($20,000.00) allowed in the Settlement, and the remainder will be allocated to the Net Settlement Amount. Therefore, costs should be reimbursed in full, up to the maximum amount allowed in the Settlement.

D. THE COURT SHOULD APPROVE THE REQUESTED PLAINTIFF'S ENHANCEMENT AWARD.

Courts routinely approve enhancement payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 (approving $50,000 service payment). Indeed, "[i]ncentive awards are fairly typical in class action cases." *Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958. The Court may award incentive payments "to compensate [Plaintiff] for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action. *Id.* at 958-59.

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Here, Plaintiff seeks an enhancement award of $5,000.00 and Plaintiff and Plaintiff's counsel submit that this request is reasonable given Plaintiff's efforts in this case and the risks Plaintiff undertook on behalf of the State and Aggrieved Employees. (Arias Decl., ¶¶ 4-5; Sung Decl., ¶ 36.) Plaintiff expended substantial time and effort on behalf of the State and Aggrieved Employees, including providing factual information and documents to counsel, attending meetings with counsel to discuss the claims and theories at issue in the litigation, and otherwise actively participating in the prosecution of his claims. (Arias Decl., ¶ 4.) As a result of Plaintiff's efforts, he has helped the State recover over $71,000.00 in civil penalties and 141 Aggrieved Employees recover on average $169.28 in civil penalties per person.

E. THE COURT SHOULD APPROVE THE SETTLEMENT ADMINISTRATION FEES

Pursuant to the terms of the Settlement, the fees and costs of the Settlement Administrator, are to be paid out of the common fund. (Agreement, § III.4.B.) The settlement administration fees are based on a flat-sum amount of $3,975.00. (*Id.*; Admin. Decl., ¶ 15, Exh. B.) The Settlement Administrator's duties include, but are not limited to, receiving and analyzing the Aggrieved Employee list, processing Aggrieved Employees' names and addresses against the National Change of Address database ("NCOA") prior to mailing, setting up and managing a Qualified Settlement Fund ("QSF") Escrow Account, calculating Individual PAGA Payments to Aggrieved Employees, disbursing settlement payments to Aggrieved Employees, the State of California, and Plaintiff's counsel including necessary tax forms (i.e., 1099 Forms) and PAGA settlement explanatory letter, tendering funds from uncashed checks to the Unclaimed Property Fund to be held in the name of the Aggrieved Employee, and submitting final accounting to the Court. (Admin Decl., ¶¶ 14-15, Exh. C; Agreement, §§ IV.1-7.) All of these duties are included in the agreed-upon flat fee of $3,975.00. Thus, the Administrator's fees should be approved.

F. PLAINTIFF'S COUNSEL GAVE NOTICE OF THE PAGA SETTLEMENT TO THE LWDA

On September 21, 2025, Plaintiff's counsel caused a copy of the Motion for Approval of PAGA Settlement and the fully executed Agreement to be uploaded to the LWDA's website. (Sung

Decl., ¶ 36, **Exh. 7**-LWDA Upload Confirmation.)

IV. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully request that the Court grant approval of the proposed settlement, sign the (Proposed) Order and Judgment submitted herewith, and set a Compliance Hearing Re: Status of Distribution for on or after January 27, 2027.

DATED: September 21, 2025

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________

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Tiffany L. Luu
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