

1 **JUSTICE FOR WORKERS, P.C.**

William C. Sung SB# 280792

2 E-Mail: william@justiceforworkers.com

Tiffany L. Luu SB# 335127

3 E-Mail: tluu@justiceforworkers.com

3600 Wilshire Boulevard, Suite 1815

4 Los Angeles, CA 90010

Tel: 323-922-2000

5 Fax: 323-922-2000

6 Attorneys for Plaintiff TED KIM

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10
11 TED KIM, an aggrieved employee and on
behalf of other aggrieved employees;

12 Plaintiff,

13 vs.

14
15 HYUNDAI AMERICA TECHNICAL
CENTER, INC., a Michigan corporation; and
16 DOES 1 through 50,

17 Defendants.

Case No.: CIVSB2326861

[Assigned for All Purposes to:
Hon. Michael A Sachs, Dept. S28]

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

(Filed concurrently with supporting declarations
and [Proposed] Order and Judgment)

DATE: May 21, 2025

TIME: 8:30 a.m.

DEPT: S28

Action Filed: October 26, 2023

Trial Date: Not Set

1 TO THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:
2 PLEASE TAKE NOTICE that on May 21, 2025, at 8:30 a.m. in Department S28 of the
3 San Bernardino County Superior Court, San Bernardino Justice Center, located at 247 West Third
4 Street, San Bernardino, California 92415, Plaintiff Ted Kim (“Plaintiff”) will move the Court,
5 pursuant to California Private Attorneys General Act (“PAGA”), Labor Code sections 2698, *et*
6 *seq.*, for an Order:

7 1. Approving the settlement of this PAGA representative action in the form agreed to
8 by Plaintiff and Defendant Hyundai America Technical Center, Inc. (“Defendant”) (together with
9 Plaintiff, the “Parties”) in the PAGA Settlement Agreement (the “Settlement,” “Agreement,” or
10 “Settlement Agreement”);

11 2. Appointing Plaintiff’s Counsel as PAGA Counsel, for settlement purposes only,
12 and approving Plaintiff’s Counsel’s application for Attorney’s Fees in the amount of \$58,333.33
13 and Litigation Costs in the amount of \$10,168.40;

14 3. Appointing ILYM Group, Inc. as the Settlement Administrator, and approving
15 payment of Settlement Administration Fees in the amount of \$3,950.00;

16 4. Approving Plaintiff’s Service Award in the amount of \$5,000.00;

17 5. Approving the release of PAGA claims by Plaintiff, the Aggrieved Employees, and
18 the State of California and its agencies;

19 6. Directing consummation of the Settlement pursuant to its terms and provisions;

20 7. Entering Final Judgment; and

21 8. Without affecting the finality of the Order and Judgment, reserving exclusive and
22 continuing jurisdiction over the Action, the Parties, and the Aggrieved Employees for purposes of
23 interpreting and enforcing the terms, conditions, and obligations of the Settlement pursuant to
24 California Code of Civil Procedure section 664.6.

25 This Motion will be based upon this notice, the attached Memorandum of Points and
26 Authorities, the declarations and exhibits thereto that were filed concurrently herewith, the
27 records and files in this action, and any other further evidence or argument that the Court may
28 properly receive at or before the hearing.

1 DATED: February 20, 2025

Respectfully submitted,

2 **JUSTICE FOR WORKERS, P.C.**

3
4 By: 

5 William C. Sung

6 Tiffany L. Luu

7 Attorneys for Plaintiff TED KIM

TABLE OF CONTENTS

I.	INTRODUCTION	- 1 -
II.	SUMMARY OF THE LITIGATION AND SETTLEMENT.....	- 2 -
A.	PLAINTIFF’S CLAIMS AND PROCEDURAL BACKGROUND.....	- 2 -
B.	DISCOVERY AND INVESTIGATION.....	- 2 -
C.	SETTLEMENT NEGOTIATIONS.....	- 3 -
D.	KEY TERMS OF THE PROPOSED PAGA SETTLEMENT.....	- 4 -
III.	DISCUSSION	- 5 -
A.	AVAILABILITY OF CIVIL PENALTIES.....	- 5 -
B.	THE SETTLEMENT WARRANTS APPROVAL	- 6 -
1.	The Dual Statutory Purposes of Deterrence and Punishment	- 6 -
2.	The Relief is Genuine, Meaningful, and Consistent with the Underlying Purpose of the Statute to Benefit the Public.....	- 7 -
C.	THE REQUESTED ATTORNEYS’ FEES AND COST AWARD SHOULD BE APPROVED.....	- 11 -
1.	Plaintiff’s Counsel Request an Award of Fees Based on the Common Fund Method.....	- 11 -
2.	The Requested Fee is in Line with Typical Cases.....	- 12 -
3.	The Matter Involves a Fee and Cost Shifting Provision under PAGA.....	- 13 -
4.	The Experience, Reputation, and Ability of Plaintiff’s Counsel Support the Requested Fee Award.....	- 13 -
5.	While the Lodestar Method is Not Necessary in Common Fund Cases, the Court May Perform a Cross-Check to Award Fees.....	- 14 -
6.	Plaintiff’s Counsels’ Costs Are Reasonable and Actually Incurred.....	- 16 -
D.	THE COURT SHOULD APPROVE THE REQUESTED PLAINTIFF’S SERVICE AWARD.....	- 17 -
E.	THE COURT SHOULD APPROVE THE SETTLEMENT ADMINISTRATION FEES.....	- 18 -

1
2
3
4
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6
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8
9
10
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20
21
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23
24
25
26
27
28

F. PLAINTIFF’S COUNSEL GAVE NOTICE OF THE PAGA SETTLEMENT TO
THE LWDA - 18 -
IV. CONCLUSION..... - 19 -

TABLE OF AUTHORITIES

FEDERAL CASES

<i>In re Activision Securities Litigation</i> (N.D. Cal. 1989) 723 F.Supp.1373	12
<i>In re Pacific Enterprises Securities Litigation</i> (9th Cir. 1995) 47 F.3d 373	12
<i>O'Connor v. Uber Technologies, Inc.</i> (N.D. Cal. 2016) 201 F.Supp.3d 1110.....	1, 10
<i>Staton v. Boeing Co.</i> (9th Cir. 2003) 327 F.3d 938.....	16
<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	12
<i>Villalobos v. Calandri Sonrise Farm LP</i> (C.D. Cal., July 22, 2015, No. C CV 12-2615 PSG (JEMx)) 2015 WL 12732709	1, 10
<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759	11

STATE CASES

<i>Alvarado v. Dart Container Corp. of California</i> (2018) 4 Cal.5th 542	8
<i>Caliber Bodyworks, Inc. v. Superior Court</i> (2005) 134 Cal.App.4th 36.....	6
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	12
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105	11
<i>Dunlap v. Superior Court</i> (2006) 142 Cal.App.4th 330	6
<i>In re Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545	14
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19	14
<i>Quinn v. State of California</i> (1975) 15 Cal.3d 162	11
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	11
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	15

STATUTES

California Private Attorneys General Act, Labor Code §§ 2698, <i>et seq.</i>	passim
Labor Code § 226	9
Labor. Code § 246	7, 8
29 C.F.R. § 778.224.....	8

TREATISES

Newberg, <i>Newberg on Class Actions</i> (3rd ed. 1992) § 14.03	12
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff TED KIM (“Plaintiff”) seeks approval of a proposed representative action
4 settlement for civil penalties pursuant to the California Private Attorneys General Act, Labor Code
5 sections 2698, *et seq.* (“PAGA”) against Defendant Hyundai America Technical Center, Inc.
6 (“Defendant”) (together, the “Parties”). After a full-day of mediation with experienced neutral
7 mediator Hon. Thierry Patrick Colaw (Ret.), the Parties reached a settlement and thereafter
8 executed a PAGA Settlement Agreement (the “Settlement,” “Agreement,” or “Settlement
9 Agreement”)¹.

10 The Settlement calls for a Gross Settlement Amount of **\$175,000.00**. After deducting
11 Plaintiff’s Counsel’s Attorneys’ Fees and Litigation Costs, Settlement Administration Fees,
12 Plaintiff’s Service Award, and required payment to the California Labor and Workforce
13 Development Agency (the “LWDA”), approximately **\$24,409.57** will be paid to approximately **72**
14 Aggrieved Employees. The average share of the settlement paid to Aggrieved Employees is
15 **\$339.02**. Pursuant to Labor Code section 2699(1)(2), Plaintiff now file this unopposed motion,
16 seeking an order approving the proposed Settlement.

17 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
18 statute, which states that the “court shall review and approve any penalties sought as part of a
19 proposed settlement agreement pursuant to this part.” (Lab. Code § 2699(1)(2).) In deciding whether
20 to grant approval of a proposed settlement, the primary issues to be decided is whether the
21 settlement is fair, adequate, and reasonable. (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal.,
22 July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O’Connor v.*
23 *Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

24 As set forth herein, the proposed Settlement embodies all the features of a settlement that is
25 fair, adequate, and reasonable, as it is the product of (1) an arms-length negotiation, (2) negotiated
26

27
28 ¹ A true and correct copy of the Settlement Agreement is attached as **Exhibit 1** to the Declaration of William C. Sung in Support of Motion for Approval of PAGA Settlement (“Sung Decl.”). All defined terms in this motion have the same definition as that in the Agreement.

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

5 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

6 **A. PLAINTIFF’S CLAIMS AND PROCEDURAL BACKGROUND**

7 Defendant owns and operates Hyundai Motor Group’s research and development centers in
8 the State of California. (Sung Decl., ¶ 9.) Defendant employed Plaintiff as an hourly-paid, non-
9 exempt technician from November 1, 1997 to May 16, 2023 at its campus in Chino, California.
10 (Declaration of Ted Kim in Support of Motion for Approval of PAGA Settlement [“Kim Decl.”], ¶
11 2.) Plaintiff contends both he and his former coworkers were subjected to the same unlawful labor
12 practices during their employment by Defendant. (*Id.*)

13 On August 22, 2023, Plaintiff submitted the initial PAGA notice of alleged Labor Code
14 violations to Defendant and the California Labor and Workforce Development Agency (the
15 “LWDA”). (Sung Decl., ¶ 10, Exh. 2.) On October 26, 2023, Plaintiff submitted the amended
16 PAGA notice of alleged Labor Code violations to Defendant and the LWDA. (*Id.* at ¶ 11, Exh. 3.)
17 Plaintiff’s administrative exhaustion period expired without the LWDA indicating its intent to
18 investigate the allegations. (*Id.*) On October 26, 2023, Plaintiff filed a Representative Action
19 Complaint (the “Operative Complaint”) alleging a single cause of action for violation of the PAGA,
20 and uploaded the Operative Complaint to the LWDA’s website. (*Id.* at ¶ 12, Exh. 4.)

21 On September 18, 2024, the Parties participated in a global mediation before Hon. Thierry
22 Patrick Colaw (Ret.) where the Settlement was achieved. (Sung Decl., ¶ 13.)

23 **B. DISCOVERY AND INVESTIGATION**

24 Following the filing of the Operative Complaint, Plaintiff and Defendant met and conferred
25 regarding an agreement to mediate the action and further agreed to a protocol for an informal exchange
26 of documents and information before mediation. (Sung Decl., ¶ 14.) Prior to mediation, the Parties
27 engaged in informal discovery which allowed the Parties to meaningfully mediate this matter. (*Id.*)
28 Specifically, Defendant produced: (1) PAGA statistics including the number of Aggrieved Employees,

1 the number of formerly employed Aggrieved Employees, and the number of pay periods worked by
2 Aggrieved Employees; (2) a 21% sampling of Aggrieved Employees' time and payroll records; (3)
3 Plaintiff's personnel file and time and payroll records; and (4) Defendant's employee handbook and
4 relevant policies and procedures applicable to Aggrieved Employees. (*Id.*)

5 After reviewing and analyzing the documents regarding Defendant's wage and hour policies
6 and practices, the Aggrieved Employees' time and pay records, and other information provided by
7 Defendant and Plaintiff, Plaintiff's Counsel was able to evaluate the probability of success on the
8 merits and Defendant's maximum and risk-adjusted monetary exposure. (Sung Decl., ¶ 15.)
9 Plaintiff's Counsel analyzed the records produced and prepare a damage analysis prior to
10 mediation. (*Id.*) The 21% sampling of time and pay records allowed Plaintiff's Counsel to prepare
11 an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual
12 investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and
13 defenses asserted in the litigation. (*Id.*) Thus, Plaintiff and Plaintiff's Counsel's familiarity with the
14 facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in
15 negotiating the Settlement. (*Id.*)

16 C. SETTLEMENT NEGOTIATIONS

17 On September 18, 2024, the Parties participated in private mediation before Hon. Thierry
18 Patrick Colaw (Ret.), an experienced, neutral, class action and PAGA mediator. (Sung Decl., ¶ 16.)
19 The settlement negotiations were at arm's length and, although conducted in a professional manner,
20 were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a
21 settlement of the dispute, but each side was also prepared to litigate their position through trial and
22 appeal if a settlement had not been reached. After extensive negotiations and discussions regarding
23 the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a
24 settlement of this Action, the material terms of which are encompassed within the Settlement
25 Agreement. (*Id.*) The Parties recognized that the issues presented in the Action are likely only to be
26 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead
27 to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential
28 benefits of litigation. (*Id.*) Plaintiff and Plaintiff's Counsel considered the risk and uncertainty of the

1 outcome inherent in any litigation when determining whether this Settlement was the correct
2 option². (*Id.*)

3 **D. KEY TERMS OF THE PROPOSED PAGA SETTLEMENT**

4 The Settlement covers all individuals who are or were employed as hourly, non-exempt
5 employees by Defendant within the State of California at any time from August 22, 2022 through
6 the date the Court approves the Settlement (“Aggrieved Employees”). (Agreement, ¶ 1.) The PAGA
7 Period is the period from August 22, 2022 through the date the Court approves the Settlement (the
8 “PAGA Period”). (Agreement, ¶ 2.)

9 The Gross Settlement Amount of the Settlement is \$175,000.00. (Agreement, ¶ 5.) The
10 Settlement provides that Plaintiff’s Counsel will seek an award of Attorney’s Fees of \$58,333.33,
11 which is equivalent to One-Third (33 1/3%) of the Gross Settlement Amount, and up to \$15,000.00
12 in Litigation Costs. (Agreement, ¶ 5.b.) At this time, Plaintiff’s Litigation Costs are \$10,078.38,
13 including \$90.02 in estimated future costs in filing this Motion and supporting papers (\$75.91) and
14 filing of the Settlement Administrator’s declaration of compliance re settlement administration
15 (\$14.11). (Sung Decl., ¶ 18; Exh. 5.)

16 The Settlement Agreement provides the Settlement Administrator will be paid Settlement
17 Administration Fees not to exceed \$3,950.00 for its fees and expenses in administering this
18 Settlement. (Settlement Agreement, ¶ 5.a.) The Parties jointly selected IYLM Group, Inc as the
19 neutral entity to administer this Settlement based on its bid of \$3,950.00. (*Id.*; Declaration of Lisa
20 Mullins in Support of Plaintiff’s Motion for Approval of PAGA Settlement [“ILYM Decl.”], ¶¶ 6-7,
21 Ex. C.) The Settlement further provides that Plaintiff will request the Court to approval a Service
22 Award not to exceed \$5,000.00. (Agreement, ¶ 5.c.)

23 After deducting the Attorney’s Fees and Litigation Costs awards, the Settlement
24 Administration Fees, and Plaintiff’s Service Award, in the amounts approved by the Court, the
25 _____

26 ² The Settlement Agreement also includes settlement of Plaintiff’s separate individual action entitled *Ted Kim v.*
27 *Hyundai America Technical Center, Inc.*; *Mark Guin*, in San Bernardino Superior Court, Case No. CIVSB2327862 (the
28 “Individual Action”) for \$15,000. (Agreement, ¶¶ 12-15.) In the Individual Action, filed on November 1, 2023, Plaintiff
alleges claims for (1) age discrimination in violation of FEHA; (2) hostile work environment harassment based on age;
(3) failure to engage in the interactive process; (4) failure to accommodate disability; (5) failure to prevent
discrimination and harassment; and (6) wrongful termination in violation of public policy. (Sung Decl., ¶ 17.)

1 remainder, called the Net Settlement Amount, will be distributed as 75% to the LWDA and 25% to
2 Aggrieved Employees. (Agreement, ¶¶ 5.d., 5.e., 7.) The amount estimated in the Net Settlement
3 Amount for the LWDA Payment and the Aggrieved Employees' individual settlement payments is
4 **\$97,638.29**. (Sung Decl., ¶ 19.) Accordingly, approximately **\$24,409.57** (25% of the Net Settlement
5 Amount) will be paid to the estimated 72 Aggrieved Employees on a pro-rata basis based on the
6 number of pay periods each Aggrieved Employee worked during the PAGA Period, and the raw
7 average payment to Aggrieved Employees is estimated at **\$339.02**. (*Id.*; Agreement, ¶ 7.)

8 Defendant will fund the Gross Settlement Amount within 30 days of the Effective Date,
9 which is the date that the Court enters an order and judgment approving the PAGA Settlement and
10 no timely appeal thereto has been filed within 60 days of entry of the order and judgment ("Court
11 Approval Order and Judgment"), and in the event that a timely appeal is filed within 60 days of the
12 Court Approval Order and Judgment, the Effective Date shall occur when the appeal is adjudicated
13 and no longer subject to further judicial review. (Agreement, ¶¶ 3, 10.)

14 Within 30 days of the Effective Date, Defendant will provide the Settlement Administrator
15 with a list of all Aggrieved Employees, including their full name, last known mailing address, social
16 security number, and number of pay periods worked. (Agreement, ¶ 10.) Within 15 days of receipt
17 of the Gross Settlement Amount, the Settlement Administrator will run the addresses of Aggrieved
18 Employees through the U.S. Postal Service NCOA database to obtain current address information
19 and disburse: (1) the Net Settlement Amount to be paid to Aggrieved Employees along with an
20 explanatory letter in the form attached as Exhibit A to the Agreement; (2) the Attorneys' Fee and
21 Litigation Costs awards to Plaintiff's Counsel; (3) the Service Award to Plaintiff; (4) the Settlement
22 Administration Fees; and (5) payment to the LWDA. (Agreement, ¶¶ 10, 11, Exh. A.) Any
23 uncashed checks after 180 days will be tendered to the California State Controller's Unclaimed
24 Property Fund to be held in the name of the Aggrieved Employee. (Agreement, ¶ 11.)

25 **III. DISCUSSION**

26 **A. AVAILABILITY OF CIVIL PENALTIES**

27 The LWDA and its constituent departments and divisions are authorized to assess and
28 collect civil penalties for specified violations of the Labor Code committed by an employer. With a

1 stated goal of improving enforcement of existing Labor Code obligations, the California Legislature
2 adopted the Labor Code Private Attorneys General Act of 2004, permitting, as an alternative, an
3 aggrieved employee to initiate a private civil action “on behalf of himself or herself and other
4 current or former employees . . .” (Lab. Code § 2699(a).) The penalties collected in these private
5 civil actions are to be distributed 75 percent to the LWDA and 25 percent to the aggrieved
6 employees. (*Id.* at § 2699(i).) However, before an employee may file an action seeking to recover
7 civil penalties for violations of any of the Labor Code provisions enumerated in Labor Code section
8 2699.5, he or she must comply with the Act’s administrative procedures as set forth in Labor Code
9 section 2699.3, subdivision (a), which include providing notice to the LWDA and the employer of
10 the alleged Labor Code violations, and then waiting a prescribed period of time to permit the
11 LWDA to investigate and to decide whether to cite the employer for the alleged violations. (*Id.* at
12 §§ 2699.3, 2699.5; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370;
13 *see also Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330.)

14 Here, in compliance with Labor Code section 2699.3, on August 22, 2023 and October 26,
15 2023, Plaintiff provided notice to the LWDA and Defendant. (Sung Decl., ¶¶ 10-11; Exhs. 2-3.)
16 Both Plaintiff’s administrative exhaustion periods expired without the LWDA indicating its intent
17 to investigate the allegations. (*Id.* at ¶ 11.) Accordingly, Plaintiff may proceed with his PAGA
18 representative action.

19 **B. THE SETTLEMENT WARRANTS APPROVAL**

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

22 **1. The Dual Statutory Purposes of Deterrence and Punishment**

23 As a result of this litigation, Defendant has had to hire legal counsel, engage in informal
24 discovery, and participate in mediation. Defendant is also now having to pay civil penalties to the
25 LWDA pursuant to the terms of the Settlement. Not including its own attorneys’ fees and costs,
26 Defendant is paying \$175,000.00 to resolve this matter.

27 ///

28 ///

1 2. **The Relief is Genuine, Meaningful, and Consistent with the Underlying**
2 **Purpose of the Statute to Benefit the Public**

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

15 Based on Plaintiff's counsel's analysis of the time and payroll records provided by
16 Defendant and on information from Plaintiff, Plaintiff's Counsel evaluated Defendant's maximum
17 and risk-adjusted potential exposure. (Sung Decl., ¶ 21.) Based on Defendant's disclosures, there
18 were approximately 72 Aggrieved Employees who collectively worked 3,076.91 pay periods. (*Id.*)
19 Plaintiff's counsel's valuation of each theory of liability is set forth below.

20 Late Payment of Overtime and Paid Sick Leave. Under California law, overtime
21 compensation and paid sick leave may be paid one pay period in arrears. (*See* Lab. Code §§ 204(b);
22 246(n).) Here, Plaintiff alleges that Defendant violated these statutes by sometimes paying overtime
23 compensation and paid sick leave two pay periods in arrears. (Sung Decl., ¶ 22.) In response,
24 Defendant argues that the occasional late payment was due to its employees submitting their time
25 sheets. (*Id.*) Based on the sampling, there were 7.33% of pay periods with a Labor Code section 204
26 violation due to late payment of overtime. (*Id.*) Extrapolated to 3,076.91 pay periods and at a \$100
27 initial violation penalty, PAGA penalties are estimated to be **\$28,071.99**. Based on the sampling,
28 there were 7.69% of pay periods with a Labor Code § 246 violation due to late payment of paid sick

1 leave³. (*Id.*) Extrapolated to 3,076.91 pay periods and at a \$100 initial violation penalty, PAGA
2 penalties are estimated to be **\$23,668.54**. (*Id.*)

3 Regular Rate of Pay Incentive Compensation Violations.

4 Plaintiff alleges that Defendant failed to incorporate non-discretionary incentive
5 compensation into the regular rate of pay for overtime and paid sick leave purposes. (Sung Decl., ¶
6 23.) “Regular rate of pay, which can change from pay period to pay period, includes adjustments to
7 the straight time rate, reflecting, among other things, shift differentials and the per-hour value of
8 any nonhourly compensation the employee has earned.” (*Alvarado v. Dart Container Corp. of*
9 *California* (2018) 4 Cal.5th 542, 554; *see also* Lab. Code § 246(l)(1).) Here, Defendant provided
10 some Aggrieved Employees with a flat-sum monthly fuel allowance and discounted lease vehicles,
11 which Plaintiff contends are non-discretionary incentive compensation that must be factored into
12 the regular rate for overtime and paid sick leave. (Sung Decl., ¶ 23.) In response, Defendant
13 contends that the fuel allowance was a reimbursement of mileage expenses not subject to inclusion
14 in the regular rate, and the discounted lease program is considered an exclusion from the regular
15 rate under federal regulations. (Sung Decl., ¶ 23; *see* Lab. Code § 2802, 29 C.F.R. § 778.224.)

16 Based on the sampling, there were 9.12% of pay periods where an employee earned
17 overtime and lease car and fuel allowance earnings in the same pay period. (Sung Decl., ¶ 23.)
18 Extrapolated to 3,076.91 pay periods and at a \$100 initial violation penalty, PAGA penalties are
19 estimated to be **\$28,071.99**. (*Id.*) Based on the sampling and excluding pay periods in which there
20 was a late paid sick leave violation, there were 7.33% of pay periods where an employee earned
21 paid sick leave and lease car and fuel allowance earnings in the same pay period. (*Id.*) Extrapolated
22 to 3,076.91 pay periods and at a \$100 initial violation penalty, PAGA penalties are estimated to be
23 **\$22,567.68**. (*Id.*)

24 Meal Period Violations. Plaintiff alleges that Defendant failed to provide Aggrieved
25 Employees with compliant meal periods. (Sung Decl., ¶ 24.) In response, Defendant contends that it
26

27 ³ Utilizing the initial violation rate penalty of \$100 is appropriate because Defendant has not been subject to any prior
28 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. (Sung Decl., ¶ 22; *see Bernstein v. Virgin*
America, Inc. (9th Cir. 2021) 990 F.3d 1157, 1173.)

1 maintains compliant meal period policies in its employee handbook and any non-compliant meal
2 periods resulted from lawful employee waiver for voluntary choice, rather than any systemic policy
3 or practice of Defendant. (*Id.*) The sampling records evidence 10.20% of pay periods in which
4 Aggrieved Employees worked more than 5 hours without a meal period or took their meal periods
5 after the end of the fifth hour of work. (*Id.*) Extrapolated to 3,076.91 pay periods and at a \$100
6 initial violation penalty, PAGA penalties are estimated to be **\$31,374.58**. (*Id.*)

7 Inaccurate Wage Statements. Plaintiff alleges that, as a result of the aforementioned wage
8 violations, Defendant failed to furnish Aggrieved Employees with accurate itemized wage
9 statements in violation of Labor Code section 226(a). (Sung Decl., ¶ 25.) In response, Defendant
10 contends that this claim is derivative of the foregoing unpaid wage claims and will fail along the
11 underlying wage claims. (*Id.*) In the sampling, 24.87% of pay periods had one or more overtime and
12 paid sick leave violation (regular rate or late). (*Id.*) Extrapolated to 3,076.91 pay periods and at a
13 \$100 initial violation penalty, PAGA penalties are estimated to be **\$76,509.94**. (*Id.*)

14 Failure to Pay All Wages Due Upon Termination. Plaintiff alleges that, as a result of the
15 aforementioned wage violations, Defendant failed to pay all wages due to formerly employed
16 Aggrieved employees upon their separation of employment in violation of Labor Code sections 201
17 and 202. (Sung Decl., ¶ 26.) In response, Defendant contends that this claim is derivative of the
18 foregoing unpaid wage claims and will fail along the underlying wage claims. (*Id.*)
19 At \$100 per former employee, PAGA penalties are estimated to be **\$900**. (*Id.*)

20 Failure to Maintain Accurate Time Records. Plaintiff alleges that Defendant failed to
21 accurately maintain and record hours worked by Aggrieved Employees because it required
22 Aggrieved Employees to manually input their time on an electronic time sheet, as opposed to
23 clocking in and out contemporaneously. (Sung Decl., ¶ 27.) Based on Defendant's sampling time
24 records, over 99% of the time entries were exactly on the hour or half hour, such as an Aggrieved
25 Employee's timesheets reflecting that the same entries every day: shift started at 8:30 a.m., meal
26 period started at 12 p.m., meal period ended at 1 p.m., and shift ended at 5:30 p.m. (*Id.*) Plaintiff
27 contends that these time records are *per se* inaccurate, resulting in Defendant's violation of Labor
28 Code section 1174. (*Id.*) In response, Defendant argues that it is not liable for maintaining

1 inaccurate records of hours worked because Aggrieved Employees chose to input their timesheets in
2 this type of rounded format instead of inputting them contemporaneously and accurate to the
3 minute. (*Id.*) At a \$100 initial violation rate, and over 3,076.91 pay periods, PAGA penalties are
4 **307,691.04.** (*Id.*)

5 Maximum Exposure and Realistic Recovery at Trial. Based on the foregoing, Plaintiff's
6 Counsel estimates Defendant's maximum exposure for PAGA penalties to be approximately
7 **\$518,764.72.** (Sung Decl., ¶ 28.) However, in addition to Defendant's defenses on the merits as
8 discussed above, PAGA penalties are discretionary and subject to reduction by this Court. (*Id.*)
9 Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA
10 penalties where ". . . if, based on the facts and circumstances of the particular case, to do otherwise,
11 would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, courts
12 have affirmed the reduction of PAGA penalties in the past. As shown in *Carrington v. Starbucks*
13 *Corp.* (2018) 30 Cal.App.5th 504, 517, the Court of Appeal affirmed the trial court's reduction of
14 PAGA penalties by 90%, citing the employer's good-faith attempt at complying with the law. Here,
15 Defendant argued that based on their compliant policies and practices, the Court will significantly
16 reduce any award of PAGA penalties based on its good-faith compliance with the Labor Code.
17 (Sung Decl., ¶ 28.)

18 Taking into account Defendant's defenses on the merits and the potential for the Court to
19 reduce a PAGA penalty award, Plaintiff's Counsel believes there is a 50% risk factor that the Court
20 will find some of the claims in Defendant's favor and/or reduce the PAGA penalty award. (Sung
21 Decl. at ¶ 29.) Accordingly, applying a 50% discount to the maximum potential recovery, Plaintiff's
22 Counsel believes the realistic recovery at trial on these claims to be **\$259,382.36.**

23 The \$175,000.00 settlement is an excellent result and amounts to "genuine and meaningful"
24 relief "consistent with the underlying purpose of the statute to benefit the public" as it represents
25 approximately **67.47%** of Plaintiff's realistic recovery. (Sung Decl., ¶ 30; *see Villalobos v. Calandri*
26 *Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at
27 *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.) This
28 is an excellent result, particularly because, under the Settlement, Aggrieved Employees will receive

1 timely, guaranteed relief and will avoid the risk of not being able to recover anything. (Sung Decl., ¶
2 30.)

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

5 For the reasons set forth below, Plaintiff requests that the Court approve **\$58,333.33** in
6 Attorneys' Fees and **\$10,078.38** in Litigation Costs to Plaintiff's Counsel.

7 **1. Plaintiff's Counsel Request an Award of Fees Based on the Common**
8 **Fund Method**

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

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

24 fairness to the successful litigant, who might otherwise receive no benefit because his
25 recovery might be consumed by the expenses; correlative prevention of an unfair
26 advantage to the others who are entitled to share in the fund and who should bear their
27 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.

28 (*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. The Requested Fee is in Line with Typical Cases

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].)

Here, Plaintiff request attorneys’ fees equal to One-Third (33 1/3%) 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.”].)

1 **3. The Matter Involves a Fee and Cost Shifting Provision under PAGA**

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

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

17 **4. The Experience, Reputation, and Ability of Plaintiff’s Counsel Support**
18 **the Requested Fee Award**

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

27 Plaintiff’s Counsels’ experience in wage and hour class and representative actions was
28 integral in evaluating the strengths and weaknesses of the case against Defendant and the

1 reasonableness of this Settlement. Practice in the narrow field of wage and hour litigation requires
2 skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as
3 the procedural law of representative action litigation. Based on these and other factors, Plaintiff's
4 Counsel recently received a fee award of this percentage from the gross recovery. (Sung Decl., ¶
5 32.) Therefore, the requested fee award is reasonable and fair.

6 **5. While the Lodestar Method is Not Necessary in Common Fund Cases,**
7 **the Court May Perform a Cross-Check to Award Fees**

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

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

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

11 Moreover, the use of a multiplier is permitted in a PAGA action. PAGA provides that “[a]ny
12 employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and
13 costs.” (Lab. Code § 2699(g)(1).) Although PAGA does not provide a specific standard for
14 evaluating attorneys’ fees in connection with a settlement of PAGA claims, California Courts have
15 employed a lodestar analysis and use of multipliers for this purpose. “Where a settlement produces
16 a common fund for the benefit of the entire class, courts have discretion to employ either the
17 lodestar method or the percentage-of-recovery method. . . To guard against an unreasonable result,
18 the Ninth Circuit encourages district courts to “cross-check[] their calculations against a second
19 method. . . . Accordingly, the Court calculates attorneys’ fees in the instant case using the
20 percentage-of-recovery method and then cross-checks its calculations against the lodestar method.”
21 (*Hermosillo v. Davey Tree Surgery Co.* (N.D. Cal. July 7, 2021, No. 18-CV-00393-LHK) 2021 WL
22 2826697, at *1 [quoting *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935,
23 942, 944–45].) The court in *Hermosillo* granted, in part, a plaintiff’s counsel’s unopposed motion
24 for attorneys’ fees and costs in a PAGA-only settlement, wherein 33.33% of the gross settlement
25 fund was requested for fees. (*Hermosillo*, at *1–3.) The court stated, “[w]here the percentage-of-
26 recovery method is used, it is well-established that 25 percent of a common fund is a presumptively
27 reasonable amount of attorneys’ fees.” (*Id.* at *1.) The Court further stated, “the Ninth Circuit has
28 emphasized that ‘[t]he 25% benchmark rate, although a starting point for analysis, may be

1 inappropriate in some cases. . . . Selection of the benchmark or any other rate must be supported by
2 findings that take into account all the circumstances of the case.” (*Id.* [quoting *Vizcaino v.*
3 *Microsoft Corp.* (2022) 290 F.3d 1043, 1048].) The Court found the settlement at issue “d[id] not
4 justify an upward deviation from th[e] standard [25%] benchmark rate, given the plaintiff’s
5 counsel’s effective abandonment of the Aggrieved Employees’ wage and hour [class action] claims
6 after more than 3.5 years of litigation,” and therefore, only approved 25% for fees and a lodestar
7 multiplier of 1.22. (*Id.* at *1, 3.) .) Accordingly, the Court should find that the circumstances of the
8 present case justify an award of one-third (1/3) of the Gross Settlement Amount for attorneys’ fees.
9 (*Id.*)

10 Here, Plaintiff’s Counsel’s current lodestar is **\$76,270** which is based on 111.30 hours of
11 attorney time for William Sung and Tiffany Luu at their customary hourly rates. (Sung Decl., ¶¶ 32-
12 33, Exhs. 6 and 7; Luu Decl., ¶ 8.) Accordingly, the fee request of \$58,333.33 does not need a
13 positive multiplier. (Sung Decl., ¶ 33.) Additionally, Plaintiff’s Counsel estimate they will devote
14 no less than 10 hours, although likely more time, to additional tasks, which are hours not included
15 in the foregoing lodestar total. (Sung Decl., ¶ 34.) These additional hours will include time spent to
16 obtain and monitor approval of the Settlement and requested awards, oversee the settlement
17 administration process and distribution of funds, respond to inquiries, and communicate with
18 Plaintiff regarding the case. (*Id.*) Plaintiff’s Counsel also bear the risk of taking whatever actions
19 are necessary if Defendant fails to pay. The amount of fees requested under the Settlement is
20 warranted based on the contingent risk that Counsel incurred, the difficulty of the questions
21 involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a
22 result of the Settlement, and the skill displayed by Plaintiff’s Counsel. Thus, the request for
23 attorneys’ fees satisfies a lodestar check.

24 **6. Plaintiff’s Counsels’ Costs Are Reasonable and Actually Incurred**

25 Plaintiff’s Counsel are entitled to recover the out-of-pocket costs and expenses they
26 reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir.
27 2003) 327 F.3d 938, 974; Lab. Code § 2699(g)(1).) Under the proposed Settlement, Plaintiff’s
28 Counsel may request reimbursement of costs up to \$15,000.00. (Settlement Agreement, ¶ 5.b.) As

1 of the drafting of this motion, Plaintiff's Counsel seek reimbursement of actual costs in the amount
2 of \$10,078.38, including \$90.02 in estimated future costs in filing this Motion and supporting
3 papers (\$75.91) and filing of the Settlement Administrator's declaration of compliance re settlement
4 administration (\$14.11). (Sung Decl., ¶ 18; Exh. 5.) These expenses were reasonably necessary to
5 the litigation and were actually incurred. Moreover, these expenses are below the maximum amount
6 (\$15,000.00) allowed in the Settlement Agreement, and the remainder will be allocated to the Net
7 Settlement Amount. (Agreement, ¶ 5.d.) Therefore, costs should be reimbursed in full, up to the
8 maximum amount allowed in the Settlement.

9 **D. THE COURT SHOULD APPROVE THE REQUESTED PLAINTIFF'S**
10 **SERVICE AWARD**

11 Plaintiff requests a Service Award of \$5,000.00. Plaintiff has not previously been a named
12 plaintiff in any other class or PAGA action cases. (Kim Decl., ¶ 7.) Plaintiff understood that the
13 filing of this action was a matter of public record and this was being prosecuted on a representative
14 basis. (*Id.* at ¶¶ 4-6.) Plaintiff further understood that a representative action would take longer in
15 litigation than an individual action and undertook such risks. (*Id.*) Plaintiff spent approximately 25
16 hours discussing this matter with Class Counsel on a number of occasions, including proving
17 substantive information regarding Defendant's practices, and providing documents related to her
18 own claims and the claims of Class Members. (*Id.* at ¶ 4.)

19 Plaintiff took these risks upon himself and the Aggrieved Employees and the State benefited
20 from this. Aggrieved Employees did not have to file individual lawsuits and bear the risks of
21 payment of fees and costs if they did not prevail, nor did they have to face the potential for
22 retaliation and not getting future employment had they filed a lawsuit which is a public record.
23 These are significant benefits, even apart from the time the Plaintiff has spent working on this case,
24 that weigh in favor of granting the requested enhancement. Courts have routinely granted approval
25 of settlements containing such enhancements. In *League of Martin v. City of Milwaukee* (E. D. Wis.
26 1984) 588 F.Supp. 1004, the court held that the proposal settlement properly granted the class
27 representatives individual relief. It is "not uncommon for Class Members . . . to receive special
28 relief in settlement . . . [The Plaintiff] . . . had been instrument in prosecuting this lawsuit since the

1 date it was filed.” (*Id.* at p. 1024.) In *Kyriazi v. Western Elec. Co.* (D. N. J. 1981) 527 F.Supp. 18, a
2 named plaintiff in a Title VII class action was awarded individual relief of back-pay and interest,
3 reinstatement, punitive damages and counsel fees. Similarly, in *Women’s Committee for Equal*
4 *Employment Opportunity v. NBC* (S.D.N.Y. 1977) 76 F.R.D. 173, the court approved as fair a
5 settlement that included awards to 16 class representatives of virtually all the damages they sought.

6 **E. THE COURT SHOULD APPROVE THE SETTLEMENT**
7 **ADMINISTRATION FEES**

8 Pursuant to the terms of the Settlement, the fees and costs of the Administrator, are to be
9 paid out of the common fund. (Agreement, ¶ 8.) The settlement administration fees are based on a
10 flat-sum amount of \$3,950.00. (*Id.*; Declaration of Lisa Mullins in Support of Plaintiff’s Motion for
11 Approval of PAGA Settlement [“Admin Decl.”], ¶¶ 6-7, Exh. C.) The Administrator’s duties
12 include, but are not limited to, receiving and analyzing the Aggrieved Employee data list,
13 processing Aggrieved Employees’ names and addresses against the National Change of Address
14 database (“NCOA”) prior to mailing, setting up and managing a Qualified Settlement Fund (“QSF”)
15 Escrow Account, calculating Settlement Payments to Aggrieved Employees, disbursement
16 settlement payments to Aggrieved Employees, the State of California, and Plaintiff’s Counsel
17 including necessary tax forms (i.e., 1099 Forms) and PAGA settlement explanatory letter, and
18 tendering funds from uncashed checks to the Unclaimed Property Fund to be held in the name of the
19 Aggrieved Employee. (Admin Decl., ¶¶ 4-6, Exh. C; Settlement, ¶ 11.) All of these duties are
20 included in the agreed-upon flat fee of \$3,950.00. Thus, the Administrator’s fees should be
21 approved.

22 **F. PLAINTIFF’S COUNSEL GAVE NOTICE OF THE PAGA SETTLEMENT**
23 **TO THE LWDA**

24 On February 20, 2025, Plaintiff’s Counsel caused a copy of the Motion for Approval of
25 PAGA Settlement and the fully executed Agreement to be uploaded to the LWDA’s website. (Sung
26 Decl., ¶ 35, Exh. 8.)

27 ///

28 ///

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully request that the Court grant approval of the
3 proposed settlement and sign the proposed order and judgment submitted herewith.

4
5 DATED: February 20, 2025

Respectfully submitted,

6 **JUSTICE FOR WORKERS, P.C.**

7
8 By: 

9 William C. Sung

10 Tiffany L. Luu

11 Attorneys for Plaintiff TED KIM
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