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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

RUBI MONARREZ GOMEZ, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

BEST FORMULATIONS, LLC., a limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 23STCV18983

[Assigned for all purposes to the Hon. Elihu M. Berle]

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

Date: March 7, 2025
Time: 10:00 a.m.
Courtroom: Spring Street - Dept. 6
Judge: Hon. Elihu M. Berle

Action Filed: August 9, 2023
Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on March 7, 2025, at 10:00 a.m., or as soon thereafter as the
3 matter may be heard, in Department 6 of the above-captioned Court, located at 312 N. Spring St., Los
4 Angeles, CA 90012, plaintiff RUBI MONARREZ GOMEZ ("Plaintiff") will and hereby does move this
5 Court for an order approving the PAGA SETTLEMENT AGREEMENT ("Agreement" or "Settlement")
6 reached with defendant BEST FORMULATIONS, LLC, a true and correct copy of which is attached as
7 **Exhibit 1** to the Declaration of H. Scott Leviant submitted herewith.

8 Specifically, Plaintiff moves for an order to:

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

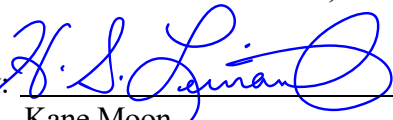
15 **TENTATIVE RULINGS:** Tentative rulings are not usually issued by this Department.

16 This motion is based on this Notice, the following Memorandum of Points and Authorities, the
17 Declarations of H. Scott Leviant and Phoenix Settlement Administrators, submitted herewith, all other
18 pleadings and papers on file in this action, and any oral argument or other matter that may be
19 considered by the Court.

20 Respectfully submitted,

21 Dated: February 13, 2025

MOON LAW GROUP, PC

22 By: 
23 Kane Moon
24 H. Scott Leviant
25 Mariam Ghazaryan

26 Attorneys for Plaintiff
27
28

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1 Labor Code § 2699.3(b)(4) 1

3 **TREATISES**

4 7 Witkin, B.E., CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261 13

1 **I. INTRODUCTION**

2 Plaintiff Rubi Monarrez Gomez (“Plaintiff”) moves the Court for approval of the PAGA
3 SETTLEMENT AGREEMENT (“Agreement” or “Settlement”) between Plaintiff and defendant Best
4 Formulations, LLC (“Defendant”) (together with Plaintiff, the “Parties”). The Agreement resolves the
5 Private Attorneys General Act (“PAGA”) claims alleged in this Action by Plaintiff, on behalf of the State
6 of California.

7 The PAGA claims are alleged pursuant to PAGA, which states: “[T]he...court shall review and
8 approve any settlement of any civil action filed pursuant to this part.” Lab. Code § 2699(l)(2). The
9 California Supreme Court has interpreted this provision to ensure “any negotiated resolution [of a PAGA
10 claim] is fair to those affected.” *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549. The California
11 Supreme Court has not defined a standard by which trial courts are to review and approve proposed
12 PAGA settlements. Nonetheless, California courts largely consider whether a proposed PAGA
13 settlement provides “genuine and meaningful [relief] consistent with the underlying purpose of the
14 statute” and is reasonable in light of the potential verdict value of all claims released. *See O’Connor v.*
15 *Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016); *see also* Lab. Code § 2699(l)(2).

16 After exchanging documents and data prior to mediation, Plaintiff and Defendant reached a
17 proposed settlement that will resolve the PAGA claims pending in this action (the “Lawsuit”) for
18 approximately 561 aggrieved employees (“Aggrieved Employees”). Under the Agreement, Defendant
19 shall pay a maximum sum of **\$215,000.00**, referred to as the “Gross Settlement Amount,” for Aggrieved
20 Employees employed in California during the designated PAGA period.

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

23 For the reasons below, Plaintiff requests that the Court enter an order approving the terms of
24 settlement.

25
26 **II. SUMMARY OF THE TERMS OF SETTLEMENT**

27 The full terms of the settlement are in the Agreement. A summary of the terms of the Agreement
28 is as follows:

- (a) Aggrieved Employees: a person currently or formerly employed by Defendant in California and classified as an hourly-paid, non-exempt employee who worked for Defendant during the PAGA Period (August 8, 2022 to February 8, 2025). (Agreement, ¶¶ 1.4, 1.20).
- (b) No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 3.1.)
- (c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of **\$215,000.00** (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff’s Counsel’s attorney’s fees and costs, and the settlement administrator’s fees and costs, and subject to the escalator clause. (Agreement, ¶¶ 3.1, 3.2, 8)
- (d) Net Settlement Amount: At least **\$118,625.35** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$88,969.01** under the Agreement, and Aggrieved Employees will receive at least **\$29,656.34**. (Agreement, ¶¶ 1.16, 3.2.3.)
- (e) Attorney’s Fees: Plaintiff’s Counsel requests an award of attorney’s fees in the amount of **\$71,666.67**, subject to the escalator clause, which is one-third of the GSA. (Agreement, ¶¶ 3.2.1, 8.1; Leviant Decl., ¶ 39.)
- (f) Litigation Costs: Plaintiff’s Counsel seeks reimbursement of actual litigation costs, to a maximum amount of \$20,000.00. Those actual costs are expected to be \$18,957.98. Therefore, **\$18,957.98** is requested. (Agreement, ¶ 3.2.1; Leviant Decl., ¶ 40, and Exh. 2.)
- (g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator, Phoenix Settlement Administrators, which has agreed to perform Administrator duties for a flat fee not to exceed **\$5,750.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 3.2.2; Leviant Decl., ¶ 41; Declaration of Jodey Lawrence [Decl. of Lawrence], ¶ 16.)
- (h) Uncashed Checks: Uncashed checks will be cancelled, and the funds will,

pursuant to Unclaimed Property laws, be directed to the California State Controller's Office in the name of the Aggrieved Employee who did not cash the check. (Agreement, ¶ 4.4.3.)

(i) Release: In exchange for the above settlement consideration, Defendant shall be entitled to a *limited* release from the LWDA and Plaintiff.¹ (Agreement, ¶ 5; Leviant Decl. ¶ 24, Exh. 1.)

(j) Notice to LWDA: The Declaration of H. Scott Leviant confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Leviant Decl., ¶ 45, Exh. 3.)

III. STATEMENT OF FACTS

Plaintiff, a former employee of Defendant, commenced this Lawsuit against Defendant in the Superior Court of California for the County of Los Angeles, asserting violations of various provision of the Labor Code. (Leviant Decl., ¶ 4.) These alleged statutory violations subject Defendant to potential liability under California's Labor Code Private Attorneys' General Act ("PAGA") for penalties pursuant to Labor Code § 2698, *et seq.* (*Id.*) Through this action, Plaintiff seeks to recover penalties pursuant to Labor Code § 2698, *et. seq.* (*Id.*)

Defendant is a "contract manufacturer and private labeler of thousands of branded, high quality nutritional supplements including softgels, tablets, capsules, powders, and teas." (Leviant Decl., at ¶ 5.) Plaintiff worked for Defendant in California during the PAGA Period. (*Id.* at ¶ 6.) Defendant contends it had lawful policies, including break and pay policies, in effect throughout the statutory period, and viable defenses to a substantial portion of the alleged penalty claims. (*Id.* at ¶ 7.)

IV. PROCEDURAL HISTORY

Plaintiff's Counsel sent a letter to the California Labor and Workforce Development Agency

¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....").

1 (“LWDA”) on behalf of Plaintiff in compliance with Labor Code § 2699.3. (Leviant Decl., ¶ 8.) More
2 than 65 days passed after each letter was sent to the LWDA, and the LWDA did not indicate that it
3 intended to investigate the alleged violations referenced in either letter. (*Id.* at ¶ 9.) On August 9, 2023
4 Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for
5 failure to pay minimum and straight time wages; failure to pay overtime wages; failure to provide meal
6 periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses;
7 failure to timely pay final wages at termination; failure to provide accurate itemized wage statements;
8 and unfair business practices. (*Id.*, at ¶ 10.) On October 13, 2023, Plaintiff filed a First Amended
9 Complaint alleging a cause of action against Defendant for civil penalties under the Private Attorneys
10 General Act of 2004 (“PAGA”). (*Id.*) The First Amended Complaint is the operative complaint in the
11 Action (the “Operative Complaint.”). (*Id.*) Class claims were dismissed without prejudice, based on the
12 terms of an arbitration agreement. (*Id.*) The Parties agreed to settle the matter as a PAGA action. (*Id.*)
13 Defendant denies the allegations in the Operative Complaint, deny any failure to comply with the laws
14 identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.
15 (*Id.*, at ¶ 11). Defendant admits to no claim by virtue of its agreement to settle this matter. (*Id.*) Because
16 Court approval of a PAGA settlement is required, the settlement is presented to this Court for review and
17 approval. (*Id.*, at ¶ 12.)
18

19 **V. SETTLEMENT NEGOTIATIONS**

20 Counsel for Plaintiff has thoroughly investigated the facts relating to the claims alleged in the
21 operative complaint and have made a thorough study of the legal principles applicable to the claims
22 asserted against Defendant. (Leviant Decl., ¶ 13.) Based on their investigation and evaluation of this
23 case, Plaintiff’s Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all
24 known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings
25 regarding liability, and numerous potential appellate issues. (*Id.*)

26 On December 12, 2024, the Parties participated in an all-day mediation presided over by a
27 professional and neutral mediator, Marc Feder, Esq. (Leviant Decl., ¶ 14.) The Parties engaged in
28 extensive negotiations and exchange of data, documents and information prior to and during mediation.

1 (Id.) The Parties were able to reach a settlement, which led to this Agreement to settle the Action. (Id.)

2 The Parties have memorialized the terms of the settlement in a long-form agreement. (Levant
3 Decl., ¶ 15.)

4 5 DISCUSSION

6 VI. THE QUI TAM NATURE OF PAGA CLAIMS

7 In 2003, California enacted the Private Attorneys General Act of 2004 after recognizing systemic
8 underenforcement of many worker-protection laws and regulations. *Williams v. Superior Court*, 3 Cal.
9 5th 531, 545 (2017). The solution enacted by the Legislature deputized private citizens to recover civil
10 penalties for the State, where those penalties were previously only available to law enforcement. *Arias v.*
11 *Superior Court*, 46 Cal. 4th 969, 980 (2009) (emphasis added).

12 “*Because an aggrieved employee’s action under the Labor Code Private Attorneys General*
13 *Act of 2004 functions as a substitute for an action brought by the government itself*, a judgment in
14 that action binds all those, including nonparty aggrieved employees, who would be bound by a
15 judgment in an action brought by the government.” *Arias*, 46 Cal. 4th at 986. With limited
16 exceptions, “[o]f the civil penalties recovered, 75 percent goes to the Labor and Workforce
17 Development Agency, leaving the remaining 25 percent for the ‘aggrieved employees.’” *Iskanian v.*
18 *CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380 (2014) *certiorari denied sub nom. CLS*
19 *Transportation Los Angeles v. Iskanian*, — U.S. —, 135 S.Ct. 1155, 190 L.Ed.2d 911 (Jan. 20,
20 2015). Thus, a PAGA claim is, predominantly, a claim belonging to the State.

21 “The civil penalties recovered on behalf of the state under the PAGA are distinct from the
22 statutory damages to which employees may be entitled in their individual capacities.” *Iskanian*, 59 Cal.
23 4th at 381. Because of this distinction, and the fact that the penalties made available through PAGA fell
24 previously within the exclusive domain of State enforcement, the California Supreme Court explained
25 that PAGA suits are best viewed as a species of qui tam action. *Iskanian*, 59 Cal. 4th at 382 (“A PAGA
26 representative action is therefore a type of *qui tam* action.”).

VII. THE STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT

Prior to *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.”).

Moniz then provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts, concluded that the class action factors are appropriately considered, along with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.”

The class action settlement factors used to assess the fairness, adequacy, and reasonableness of a class action settlement are well understood. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), held that “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.”² *Id.* at 1801. The court should also consider the expense, complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at 1801. “It is, of course, the strong public policy of this state to encourage the voluntary settlement of litigation.” *Osumi v. Sutton*, 151 Cal. App. 4th 1355, 1359 (2007). Finally, these factors are not exclusive and the court is free to balance and weigh, based on circumstances. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 244-245 (2001).

While class settlement factors provide some guidance as to how a Court may approach the evaluation of a PAGA settlement, there are significant differences between PAGA settlements and class

² PAGA provides no notice or claim procedures as exist in class action cases.

1 action settlements that must be recognized. Unlike a class action settlement, the scope of release
2 permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is binding not only on
3 the named employee plaintiff but also on government agencies and any aggrieved employee not a party
4 to the proceeding,” *Arias*, 46 Cal. 4th at 986, “the nonparty employees, because they were not given
5 notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to
6 remedies other than civil penalties.” *See id.*, at 987. Thus, the scope of a release in a PAGA settlement is
7 confined to PAGA penalties, and not related individual claims available under the Labor Code.³

8 Applying the above standards to this Settlement, the Settlement meets all criteria for approval.

9 10 **VIII. THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL**

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

14 Plaintiff and Plaintiff’s counsel have diligently investigated the claims in this matter. (Leviant
15 Decl., ¶ 18.) Plaintiff and Counsel concluded, after taking into account the disputed factual and legal
16 issues involved in this Action, the substantial risks attending further prosecution, including risks related
17 to the outcome of possible summary judgment efforts, and the substantial benefits to be received
18 pursuant to the compromise and settlement of the Action as set forth in the Settlement, that settlement on
19 the terms agreed to are in the best interest of Plaintiff and the Aggrieved Employees and are fair and
20 reasonable. (*Id.*) Plaintiff’s Counsel brought to bear a great deal of experience with wage and hour
21 actions in negotiating the settlement of this case. (*Id.*)

22 Resolution at this time will forestall the need for additional expensive and time-consuming
23 litigation that could very well result in an outcome less satisfactory than that proposed under this
24 settlement. (Leviant Decl., ¶ 19.) But, before any other consideration, we have agreed to this settlement
25

26
27 ³ This is contrasted with the much broader release permitted in a class action context, which may be
28 based on “any matter or fact” alleged in the complaint. *See In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981). In this matter, the Agreement will not affect the rights of Aggrieved Employees who may possess individual wage and hour claims.

1 because it is objectively reasonable. (*Id.*) The potential for resolution benefits the Aggrieved Employees
2 and the State of California, since they do not have to wait additional years for a similar recovery. (*Id.*)
3 The efficiency of this litigation benefits the Court, the parties and their counsel. (*Id.*) A settled
4 resolution now is the most realistic method for addressing the claims raised in this matter.

5 Plaintiff's counsel have engaged in the necessary investigation in this case that made it possible
6 to exercise informed judgment in those aspects of the settlement process in which we were involved.
7 (Leviant Decl., ¶ 20.) The Defendant in this matter produced important information, pay and time data
8 for a random sample of 20% of the Aggrieved Employees. (*Id.*) That information, coupled with other
9 data provided, was sufficient to permit Plaintiff's counsel to adequately evaluate the settlement; Plaintiff
10 had more than enough information upon which to evaluate its reasonableness. (*Id.*)

11 Here, the expense, complexity and likely duration of future litigation was to some extent an
12 unknown. (Leviant Decl., ¶ 21.) However, what is certain is that to adequately establish the
13 foundational violations that would support any penalty award, significant time and expense would be
14 invested. (*Id.*) To adequately establish that Aggrieved Employees experience the alleged violations, and
15 at what frequency, the Aggrieved Employees would need to be interviewed in a systematic fashion. (*Id.*)
16 The process would be expensive and time-consuming. (*Id.*) But doing so would have been required,
17 since frequency of violations would need to be established before any penalties could be recovered. (*Id.*)
18 As to claims such as meal period and rest break violations, the decisions of Aggrieved Employees are a
19 major factor in assessing liability. (*Id.*) Thus, even if records show a facially non-compliant meal
20 period, no penalty could be assessed automatically. (*Id.*) In sum, the evidence collected to date leads
21 Plaintiff to conclude that, to the extent violations occurred, a fact which Defendant disputes, the
22 violations were *not* systematic and *not* uniform across all of Defendant's employees who worked during
23 the PAGA period. (*Id.*) With these considerations in mind, the amount of the Settlement is reasonable.
24 (*Id.*)

25 **A. The PAGA Penalties Provide Genuine and Meaningful Relief to the LWDA and**
26 **Aggrieved Employees Consistent with the Dual-Purpose of PAGA**

27 The PAGA Penalties, pursuant to PAGA and the terms of the Agreement, will be allocated to the
28 LWDA and all Aggrieved Employees, with seventy-five percent allocated to the former and twenty-five

1 percent allocated to the latter. (Leviant Decl., ¶ 22.)

2 The PAGA Penalties, which are estimated to be \$118,625.35⁴, provide genuine and meaningful
3 relief to the LWDA and all alleged Aggrieved Employees consistent with the dual-purpose of PAGA
4 because it both redresses the alleged Aggrieved Employees for the Labor Code violations they suffered
5 from throughout their employment with Defendant and deters Defendant from violating the Labor Code
6 in the future, in light of the long-term, costly process required to litigate, mediate, and ultimately settle
7 the Action. (Leviant Decl., at ¶ 23.) For these reasons, the PAGA Penalties amount to genuine and
8 meaningful relief consistent with the underlying purpose of PAGA. (*Id.*)

9 **B. The PAGA Penalties Are Reasonable Pursuant to Labor Code § 2699(e)**

10 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
11 Labor Code § 2699(e) states: “For purposes of this part, whenever the [LWDA] has discretion to assess a
12 civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and
13 conditions, to assess a civil penalty...[A] court may award a lesser amount than the maximum civil
14 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
15 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Lab. Code §
16 2699(e). This section grants the Court discretion to limit a PAGA civil penalties award where the facts or
17 circumstances justify reduction, or where such award is unreasonable and/or excessive.

18 The PAGA Penalties are also reasonable in light of the potential verdict value of all claims
19 released. Indeed, the Agreement contains a release of all PAGA claims that arise or could arise from the
20 facts underlying the Operative Complaint and PAGA Notice, including those related to unpaid wages,
21 including minimum wages, overtime compensation, meal period premiums, rest break premiums and
22 unreimbursed business expenses. (Leviant Decl., ¶ 24.) These claims served as the basis of the alleged
23 Aggrieved Employees’ PAGA claims. (*Id.*)

24 For the PAGA Period, the number of PAGA Pay Periods at issue is estimated to be about 18,336
25 total for the 561 Aggrieved Employees. (*Id.* at ¶ 21.) Using the most straightforward formulation of
26

27 ⁴ The PAGA Penalties equal the Gross Settlement Amount (\$392,500.00) less the PAGA Counsel Fees
28 Payment (\$130,833.33), PAGA Counsel Litigation Expenses Payment (\$18,000.00), and Administration Expenses
Payment (\$4,750.00).

1 applying the “catch-all” \$100 penalty specified in Labor Code § 2699(f)(2) to each PAGA Pay Period,
2 the total penalty exposure is approximately \$1,833,600.00 (*Id.*)

3 In addition, with assistance from Plaintiff’s data consultant, and after a thorough review of
4 evidence casting serious doubt on the viability of many of the theories of penalty recover, counsel
5 separately estimated the plausible maximum potential PAGA exposure, on a penalty-by-penalty basis, to
6 be approximately **\$1,067,900.00**, which includes many overly optimistic assumptions about the ability to
7 prove the frequency of violations for all Aggrieved Employees who allegedly experienced issues. (*Id.*)
8 The settlement is approximately **20%** of that optimistic but plausible exposure calculation, described
9 below:

- 10 • Failure to compensate for unpaid wages based on off-the-clock work: Off-the-clock work is
11 heavily disputed in the case. It is alleged that employees had to wait an unreasonably amount
12 of time in line to clock in on occasions when the timeclock malfunctioned. The on-call
13 theory presents significant risk, factually and legally. Clock-in delays do not appear to have a
14 high likelihood of success. The plausible exposure is estimated to be \$183,360.00 (18,336
15 total pay periods × \$100 penalty × 0.1), based on the on-call theory of liability and estimating
16 that timeclock malfunctions occurred in 10% of the pay periods. This is a high-risk theory of
17 recovery.
- 18 • Regular Rate Calculation Errors: Data analysis showed a tiny, potential error in the
19 calculation of the regular rate of pay. The error occurred in only 337 pay periods. The
20 exposure is estimated to be \$33,700.00 (337 total pay periods × \$100 penalty).
- 21 • Failure to provide meal periods: Assuming that facial violations in time records all result in a
22 penalty, a generous assumption given that employee choice can be a significant factor, the
23 calculated maximum exposure is just \$92,250.00 (1,845 total pay periods with violations ×
24 \$50 penalty). Defendant’s meal period compliance, on the fact of its records, was very high.
- 25 • Failure to provide rest breaks: It was alleged that rest breaks were sometimes missed, due to
26 the volume of work on projects with strict completion deadlines. However, Defendant
27 provided 15-minute rest breaks, which is more than is required under California law. In
28 addition, any systematic failure to provide rest breaks was heavily disputed, and, given the

high rate of compliance with meal period requirements, it would be unexpected to find an employer disregarding this legal obligation while carefully complying with another. Given the absence of any record to establish missed rest breaks and the need to rely heavily on Aggrieved Employee testimony, it is estimated that this claim could support, at best, an exposure of \$91,680.00 (18,336 pay periods × 10% violation rate × \$50.00).

- Unreimbursed business expenses: Plaintiff alleged that Defendant’s supervisors communicated with employees by cell phone without reimbursement. If true, it does not appear to apply to all employees. Based on an estimated scope of impact of 20% of the workforce, and on a monthly basis, this results in a maximum exposure of \$183,360.00 (9,168 total pay periods × 0.20 × \$100 penalty). Defendant contends that any incurred business expenses were highly individualized and, if business expenses were incurred, employees were reimbursed.
- Failure to timely pay final wages: It is estimated that the maximum exposure for this claim is \$21,300 (213 former employees × \$100 penalty).
- Failure to furnish accurate itemized wage statements: It is estimated that the maximum exposure for this claim is \$458,250.00 (1,833 total pay periods × \$250 penalty). This claim is based on the unpaid wage claims, which makes it entirely derivative as to either violation. Thus the \$250 penalty may not be recoverable due to the “stacking” of penalties for the same underlying theory of recovery.

(See, Leviant Decl., ¶ 21.)

The amount of the settlement must then be viewed in light of the potential risks in continuing to litigate, including, but not limited to, the risk of not prevailing at trial, and the risk that, even if Plaintiff prevailed, the PAGA damages would be limited due to the largely discretionary nature of PAGA civil penalties, Defendant’s defenses, and the fact that the ultimate purpose of the Action is to obtain genuine and meaningful relief for the LWDA and, secondarily, the Aggrieved Employees. (Leviant Decl., ¶ 25.)

1. The Total Amount Offered in Settlement is \$215,000.00

The settlement provides a monetary benefit that falls well within “the range of an acceptable settlement” under the circumstances, which is the standard on which the instant Settlement must be

1 judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only
2 provides a fraction of what could have been obtained at trial. *See Linney v. Cellular Alaska P'ship*, 151
3 F.3d 1234, 1242 (9th Cir. 1998).

4 Under the Agreement, Defendant shall pay a maximum sum of \$215,000.00. Defendant argued
5 that numerous individualized inquiries would be needed to determine liability on Plaintiff's claims,
6 including (1) whether employees worked off-the-clock with knowledge of a supervisor or Defendant, (2)
7 whether each individual took a particular meal period or rest break on a particular occasion, (3) whether
8 the meal period was waived or voluntarily not taken, and (4) where the individual skipped the meal or
9 rest period, or *why* it was skipped for each of the allegedly Aggrieved Employees.

10 **2. Payment of At Least \$118,625.35 in Penalties**

11 Under the Agreement, the amount available for distribution as penalties under PAGA is at least
12 **\$118,625.35**. The amount is a significant penalty, but it is not confiscatory, nor is it, in the terms of the
13 PAGA statute, "unjust, arbitrary, or oppressive." Labor Code § 2699(e)(2).

14 *a) The LWDA shall receive at least \$88,969.01*

15 As 75% of the penalties are allocated to the LWDA, the LWDA stands to receive at least
16 **\$88,969.01** under the Agreement. Further, pursuant to Labor Code § 2699.3(b)(4) the "provisions of the
17 settlement relating to health and safety laws shall be submitted to the division at the same time that they
18 are submitted to the court. This requirement shall be construed to authorize and permit the division to
19 comment on the settlement provisions, and the court shall grant the division's commentary appropriate
20 weight." The LWDA will have an opportunity to comment upon the amount to be paid to the LWDA.

21 *b) Aggrieved Employees shall receive at least \$29,656.34*

22 Approximately 561 Aggrieved Employees shall receive at least **\$29,656.34** (25% of the penalty)
23 under the terms of the Agreement and by operation of PAGA. The Court should give weight to the fact
24 that the primary purpose of PAGA is not to provide a windfall to Aggrieved Employees; the penalties
25 recovered under PAGA are *not* surrogate individual damages. Instead, the amount available to
26 Aggrieved Employees is in addition to any damages that could be recovered via individual claims.

27 **C. The Presence of a Government Participant**

28 As set forth above, 75% of the penalty is paid to the LWDA. In connection therewith, Labor

Code § 2699.3(b)(4) permits the LWDA to comment on the penalties. This provides an independent check on settlements. The LWDA was notified of the Settlement. (Leviant Decl., ¶ 45.)

D. PAGA Counsel Are Experienced and Negotiated Aggressively

The court may also consider that negotiations between the Parties were conducted at arm's length, in an adversarial manner, despite a mutual desire to resolve the case. (Leviant Decl. ¶¶ 14, 18.) The court may consider the opinion of all counsel that the settlement arrived at is fair, reasonable and in the best interests of the Aggrieved Employees. PAGA Counsel are experienced with employment class and representative actions, as set forth more fully in the Declaration of H. Scott Leviant filed herewith.

E. Additional Factors Weigh in Favor of Approving the Terms of the Proposed Settlement, Including the Requested Fees and Costs

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

1. Fees and Costs

Courts in the Ninth Circuit and California generally use the “percentage method” rather than the lodestar approach when awarding attorneys’ fees in a common fund type settlements. *See* 7 Witkin, B.E., CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261 at 236-241 (describing prevalence of percentage method in California); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole”); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (endorsing percentage method).

While this is not a class action, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (“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.”) (emphasis added). The proposed attorney fee award here is 33 1/3% of the Gross Settlement Amount, an amount reasonably comparable to “average” fees awarded in California state court class action cases used for comparison purposes here. *Chavez*, 162 Cal. App. 4th at 66 n. 11. Again, this is *not* a class action. It is more akin to contingent representation with an additional requirement of Court review due to the *qui tam* nature of PAGA claims.

1 The California Supreme Court has removed any lingering doubt about the use of the percentage of the
2 fund method to award attorney's fees in California Courts, endorsing and encouraging that method.
3 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁵

4 Thus, courts regard circumstances in which class counsel's work is wholly contingent, such as in
5 class actions and other common fund type cases, as a factor weighing in favor of approving a negotiated
6 fee award that approximates market rates. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001). This
7 matter has been litigated by Plaintiff's Counsel in a manner that is reasonable, diligent, and efficient.
8 The actual lodestar incurred by Plaintiff's counsel to date is no less than \$106,070.00, not including
9 unbilled time and estimated future work. (Leviant Decl., ¶¶ 37-38.) Counsel for Plaintiff invested time
10 evaluating data before the negotiations in this matter and in preparing for settlement discussions with
11 Defendant's counsel. (*Id.* at ¶ 20.) Those efforts led to this reasonable settlement. (*Id.*) Plaintiff's
12 Counsel requests a fee of **\$71,666.67**, as specified in the Agreement, which represents a negative
13 multiplier of 0.68. (Leviant Decl., ¶ 39.)

14 The Agreement also provides for the award of actual costs, capped at \$20,000.00 based on
15 Plaintiff's Counsel's actual out of pocket expenses in taking on representation in this lawsuit on a
16 contingency basis. (Leviant Decl., ¶ 40.) Actual costs are below the capped amount, thus consistent with
17 the Settlement, a cost award of **\$18,957.98** is requested. (Leviant Decl., ¶ 40.)

18 **2. Administration Fees Are Very Reasonable**

19 Administration will be completed by Phoenix Settlement Administrators for **\$5,750.00**, a very
20 reasonable amount for the services rendered. (Leviant Decl., ¶ 41; Lawrence Decl., ¶ 16.)
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26 ⁵ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
27 doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method
28 inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases." *Laffitte*, at 501.

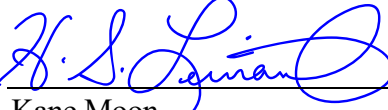
1 **IX. CONCLUSION**

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

4
5 Respectfully submitted,

6 Dated: February 13, 2025

MOON LAW GROUP, PC

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8 By:  _____
9 Kane Moon
H. Scott Leviant
Mariam Ghazaryan

10 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., Suite 3100, Los Angeles, CA 90017.

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

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Counsel for Defendant BEST FORMULATIONS, LLC

☒ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the above-named document(s) has (have) been electronically served on counsel of record by an approved electronic service provider. The transmission of these documents was reported complete and a copy of the service confirmation will be maintained, along with the original document(s) and proof of service in our office.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **February 13, 2025** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature