

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

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

[Additional Counsel on Next Page]

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

DARREN GARCIA, an individual on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

CLEARFREIGHT, INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

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

Plaintiffs,

vs.

CLEARFREIGHT INC., a California
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. 23STCV22946 (Lead)
(Consolidated with Case No. 23STCV28938)

*Assigned for all purposes to Hon. Carolyn B. Kuhl,
Dept. 12*

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT AND
AWARD OF PAGA COUNSEL FEES
PAYMENT, PAGA COUNSEL LITIGATION
EXPENSES PAYMENT, ENHANCEMENT
PAYMENT, AND ADMINISTRATION
EXPENSES PAYMENT**

Date: November 20, 2024
Time: 10:30 a.m.
Department: 12

Garcia Complaint Filed: September 21, 2023
Garcia FAC Filed: November 27, 2023
Jimenez Complaint Filed: November 28, 2023
Garcia SAC Filed: August 2, 2024

**NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT AND AWARD OF
PAGA COUNSEL FEES PAYMENT, PAGA COUNSEL LITIGATION EXPENSES PAYMENT,
ENHANCEMENT PAYMENT, AND ADMINISTRATION EXPENSES PAYMENT**

1 D.LAW, INC.
Emil Davtyan (SBN 299363)
2 Emil@d.law
David Yeremian (SBN 226337)
3 d.yeremian@d.law
Natalie Haritounian (SBN 324318)
4 n.haritounian@d.law
880 E Broadway
5 Glendale, CA 91205
Telephone: (818) 962-6465
6 Fax: (818) 962-6469

7 Attorneys for Plaintiffs DARREN GARCIA and
TAYLOR EDWARD LEBOWE, on behalf of
8 themselves and others similarly situated

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	2
III.	THE SETTLEMENT TERMS	5
A.	Definition of the Aggrieved Employees	5
B.	Amount of Settlement	5
C.	Allocation and Funding of the Gross Settlement Amount	5
IV.	STANDARD FOR APPROVAL OF PAGA SETTLEMENT	7
V.	THE AGREEMENT IS FAIR AND SHOULD BE APPROVED	9
A.	The Agreement is Presumed to Be Fair	9
B.	The Agreement is Fair, Adequate, and Reasonable in Light of the Parties’ Respective Legal Positions and Recovery Risks.....	10
1.	Strength of Plaintiffs’ Cases.....	10
2.	Risk, Expense, Complexity, and Likely Duration of Further Litigation	12
3.	The Benefits Conferred by the Agreement Balance in Favor of Approval	13
4.	The Scope of the Release is Narrowly Tailored.....	15
5.	Experience and Views of Counsel Favor Approval	15
6.	The Extent of Discovery and Stage of Proceedings Favor Approval	15
VI.	THE REQUESTED PAGA COUNSEL FEES PAYMENT IS FAIR AND REASONABLE	16
VII.	THE REQUESTED PAGA COUNSEL LITIGATION EXPENSES PAYMENT IS FAIR AND REASONABLE	20
VIII.	THE ADMINISTRATION EXPENSES PAYMENT IS FAIR AND REASONABLE.	20
IX.	THE REQUESTED ENHANCEMENT PAYMENT IS FAIR AND REASONABLE..	20
X.	CONCLUSION.....	22

TABLE OF AUTHORITIES

Cases

<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.</i> , 46 Cal.4th 993 (2009).....	9
<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	11
<i>Arias v. Sup. Ct.</i> , 46 Cal.4th 969 (2009)	9
<i>Arias</i> , 46 Cal. 4th, at 987	15
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> 480 F.Supp. 1195 (S.D.N.Y. 1979).....	18
<i>Bell v. Farmers Ins. Exch.</i> , 115 Cal.App.4th 715, 726 (2004).....	20
<i>Bernstein v. Virgin Am., Inc.</i> , 3 F.4th 1127, 1144 (9th Cir. 2021).....	12
<i>Casida v. Sears Holdings Corp.</i> , 2012 U.S. Dist. LEXIS 9302 (E.D. Cal. Jan. 25, 2012).....	8
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	17, 19
<i>Chu v. Wells Fargo Investments, LLC</i> , 2011 U.S. Dist. LEXIS 15821 (N.D. Cal. Feb. 15, 2011)	14
<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448, 455 & n.2 (2nd Cir. 1974).....	13
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009).....	9, 20
<i>Consumer Privacy Cases</i> , 175 Cal.App.4th 545 (2009)	18
<i>DCH Auto Wage and Hour Cases</i> , Los Angeles Superior Court, Case No. JCCP4833	14
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169 (C.D. Cal. 2008)	10
<i>Franco v. Ruiz Food Prods.</i> , 2012 U.S. Dist. LEXIS 169057 (E.D. Cal. Nov. 27, 2021)	14
<i>Garcia v. Gordon Trucking, Inc.</i> , 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. Oct. 29, 2012)	14
<i>In re Ampicillin Antitrust Litig.</i> , 526 F.Supp. 494 (D.D.C. 1981)	18
<i>In re Bluetooth Headset Prods. Liab. Litig.</i> , 654 F.3d 935, 942 (9th Cir. 2011).....	18
<i>In re Pacific Enterprises Securities Litig.</i> , 47 F.3d 373 (9th Cir. 1995).....	17
<i>In re TD Ameritrade Account Holder Litig.</i> , 2011 U.S. Dist. LEXIS 103222 (N.D. Cal. Sep. 12, 2011)	7
<i>Ketchum v. Moses</i> , 24 Cal.4th 1122 (2001)	17
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	10
<i>Laffitte v. Robert Half Int'l, Inc.</i> , 1 Cal.5th 480 (2016).....	17, 18

1	<i>Lealao v. Beneficial Cal., Inc.</i> , 82 Cal.App.4th 19 (2000)	17, 18
2	<i>Linney</i> , 151 F.3d at 1239.....	15
3	<i>Mallick v. Sup. Ct.</i> , 89 Cal.App.3d 434 (1979).....	10
4	<i>Maria P. v. Riles</i> , 43 Cal.3d 1281 (1987)	16
5	<i>Mendez v. Tween Brands, Inc.</i> , 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010)	8
6	<i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i> , 2010 U.S. Dist. LEXIS 32774 (Apr. 2, 2010).....	8
7	<i>Officers for Justice v. Civil Service Com.</i> , 688 F.2d 615 (9th Cir. 1982)	7, 13
8	<i>Resendez v. Bridgestone Retail Operations, LLC</i> , Los Angeles County Superior Court, Case No.	
9	BC596892	19
10	<i>Sandoval v. Roadlink United States Pac., Inc.</i> , 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal. Nov.	
11	9, 2011)	15
12	<i>Schiller v. David’s Bridal, Inc.</i> , 2012 U.S. Dist. LEXIS 80776 (E.D. Cal. June 11, 2012)	14
13	<i>Serrano v. Priest</i> , 20 Cal.3d 25 (1977)	16
14	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112 (2012)	11
15	<i>Westside Community for Independent Living, Inc. v. Obledo</i> , 33 Cal.3d 348 (1983)	16
16	<i>Williams v. Superior Court</i> , 3 Cal. 5th 531 (2017)	15
17	Statutes	
18	California Labor Code § 2699.3.....	2
19	California Labor Code sections 2698, <i>et seq.</i>	v, 1, 3
20	California Labor Code sections 2699 <i>et. seq.</i>	5
21	Labor Code (“Lab. Code”) § 2699(l)	7, 13
22	Labor Code §§ 2698 <i>et seq.</i>	15
23	Other Authorities	
24	Weil and Brown, California Practice Guide, <i>Civil Procedure Before Trial</i>	18
25	Rules	
26	California Rules of Court Rule 3.769	8, 9
27		
28		

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

2 **PLEASE TAKE NOTICE THAT** on November 20, 2024 at 10:30 a.m. in Department 12 of
3 the above-captioned Court located at Spring Street Courthouse, 312 North Spring Street, Los Angeles,
4 California 90012, Plaintiffs Darren Garcia, Taylor Lebowe, and Alejandra Jimenez (together,
5 “Plaintiffs”) will and hereby do move the Court for an Order granting approval of the California Labor
6 Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) settlement.
7 Specifically, Plaintiffs request that the Court enter an Order:

- 8 1. Granting approval pursuant to California Labor Code section 2699(1)(2) of the PAGA
9 Settlement Agreement (“Agreement” or “Settlement Agreement”) attached as **Exhibit 3**
10 to the Declaration of Jonathan M. Genish in Support of Plaintiffs’ Motion for Approval
11 of PAGA Settlement and Award of PAGA Counsel Fees Payment, PAGA Counsel
12 Litigation Expenses Payment, Enhancement Payment, and Administration Expenses
13 Payment (“Genish Decl.”);
- 14 2. Directing the distribution of the Gross Settlement Amount of Two Hundred Ninety
15 Thousand Dollars and Zero Cents (\$290,000.00) pursuant to the terms of the Agreement;
- 16 3. Approving the Net Settlement Amount, estimated to be One Hundred Sixty-Nine
17 Thousand Four Hundred Twenty-Eight Dollars and Forty-Six Cents (\$169,428.46), of
18 which seventy-five percent (75%) will be distributed to the California Labor and
19 Workforce Development Agency (“LWDA”) and twenty-five percent (25%) of which will
20 be distributed to the Aggrieved Employees;
- 21 4. Approving an award of reasonable attorneys’ fees of Ninety-Six Thousand Six Hundred
22 Sixty-Six Dollars and Sixty-Seven Cents (\$96,666.67) to PAGA Counsel;
- 23 5. Approving the amount of Fourteen Thousand Nine Hundred Four Dollars and Eighty-
24 Seven Cents (\$14,904.87) to PAGA Counsel for reimbursement of actual litigation costs
25 and expenses pursuant to California Labor Code section 2699(g)(1);
- 26 6. Approving award of Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff
27 Lebowe as an Enhancement Payment;
- 28 7. Appointing ILYM Group, Inc. as the Administrator; and

1 8. Approving an award of up to Four Thousand Dollars and Zero Cents (\$4,000.00) in
2 anticipated costs to ILYM Group, Inc. for its settlement administration services.

3 Pursuant to California Labor Code section 2699(1)(2), a copy of the proposed Settlement
4 Agreement, as well as information regarding the approval hearing in this matter, were submitted to
5 the LWDA via online submission through its public portal concurrently with the filing of this Motion.
6 (Genish Decl., ¶ 22 & Exh. 4).

7 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities,
8 the Declarations of PAGA Counsel (Jonathan M. Genish and David Yeremian), and Plaintiffs (Darren
9 Garcia, Taylor Lebowe, and Alejandra Jimenez), and the Administrator (Lisa Mullins of ILYM Group,
10 Inc.), the pleadings and other records on file with the Court in this matter, and any other further
11 evidence or argument that the Court may properly receive at or before the hearing.

12
13 Respectfully submitted,

14 Dated: September 13, 2024

BLACKSTONE LAW, APC

15
16
17 By: 

Jonathan M. Genish
Attorneys for Plaintiff Alejandra Jimenez

18
19
20 Dated: September 13, 2024

D.LAW, INC.

21
22 By: /s/ Natalie Haritoonian

David Yeremian
Natalie Haritoonian
Attorneys for Plaintiffs
Darren Garcia and Taylor Lebowe

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Labor Code Private Attorneys General Act, California Labor Code
4 sections 2698, *et seq.* (“PAGA”), Plaintiffs Darren Garcia, Taylor Lebowe, and Alejandra Jimenez
5 (together, “Plaintiffs”) seek approval of the PAGA Settlement Agreement (“Agreement” or
6 “Settlement Agreement”) entered into with Defendant ClearFreight, Inc. (“Defendant”) (collectively
7 with Plaintiffs, the “Parties”), which is attached as Exhibit 3 to the Declaration of Jonathan M. Genish
8 in Support of Plaintiffs’ Motion for Approval of PAGA Settlement and Award of PAGA Counsel Fees
9 Payment, PAGA Counsel Litigation Expenses Payment, Enhancement Payment, and Administration
10 Expenses Payment (“Genish Decl.”). The Agreement terms are outlined as follows:

- 11 • Number of Aggrieved Employees: 72 individuals (as of April 30, 2024).
- 12 • Gross Settlement Amount: Two Hundred Ninety Thousand Dollars and Zero Cents
13 (\$290,000.00).
- 14 • PAGA Counsel Fees Payment: Ninety-Six Thousand Six Hundred Sixty-Six Dollars and
15 Sixty-Seven Cents (\$96,666.67) (1/3 of the Gross Settlement Amount), to be paid from
16 the Gross Settlement Amount.
- 17 • PAGA Counsel Litigation Expenses Payment: Fourteen Thousand Nine Hundred Four
18 Dollars and Eighty-Seven Cents (\$14,904.87), to be paid from the Gross Settlement
19 Amount.
- 20 • Enhancement Payment: Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff
21 Taylor Lebowe, to be paid from the Gross Settlement Amount.
- 22 • Administration Expenses Payment: Not to exceed Four Thousand Dollars and Zero Cents
23 (\$4,000.00), to be paid from the Gross Settlement Amount.
- 24 • Estimated Net Settlement Amount: One Hundred Sixty-Nine Thousand Four Hundred
25 Twenty-Eight Dollars and Forty-Six Cents (\$169,428.46), of which 75% (\$127,071.35)
26 will be paid to the California Labor and Workforce Development Agency (“LWDA”) and
27 the remaining 25% (\$42,357.11) will be paid to the Aggrieved Employees.

28 ///

///

As set forth herein, the Settlement Agreement is the product of informed discovery, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the State of California and Aggrieved Employees. Plaintiffs therefore respectfully request that the Court grant approval of the proposed Settlement Agreement, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a global logistics company that handles international freight transportation services. (Genish Decl., ¶ 8). Defendant employed Plaintiff Alejandra Jimenez (“Plaintiff Jimenez”) as an hourly-paid, non-exempt Import Traffic Coordinator from approximately October 2021 to March 2023, Plaintiff Darren Garcia (“Plaintiff Garcia”) as an hourly-paid, non-exempt Ocean Export Coordinator from approximately September 2022 through May 2023, and Plaintiff Taylor Lebowe (“Plaintiff Lebowe”) as an hourly-paid, non-exempt Import Specialist from approximately January 2022 to March 2023. (Genish Decl., ¶ 8; Declaration of Alejandra Jimenez in Support of Plaintiffs’ Motion for Approval of PAGA Settlement and Award of PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Enhancement Payment, and Administration Expenses Payment [“Jimenez Decl.”], ¶ 2; Declaration of Darren Garcia in Support of Plaintiffs’ Motion for Approval of PAGA Settlement and Award of PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Enhancement Payment, and Administration Expenses Payment [“Garcia Decl.”], ¶ 3; Declaration of Taylor Lebowe in Support of Plaintiffs’ Motion for Approval of PAGA Settlement and Award of PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Enhancement Payment, and Administration Expenses Payment [“LeBowe Decl.”], ¶ 3).

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

On September 21, 2023, Plaintiff Garcia provided written notice by electronic submission to the LWDA and by U.S. Certified Mail to Defendant, pursuant to California Labor Code § 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendant. (*Id.*, ¶ 10). Also on September 21, 2023, Plaintiff Garcia filed a Class Action Complaint against Defendant

1 in the action entitled *Darren Garcia v. ClearFreight, Inc.*, Los Angeles County Superior Court Case
2 No. 23STCV22946 (“*Garcia Action*”) alleging class action claims based on various alleged wage and
3 hour violations. (*Ibid*). On November 27, 2023, Plaintiff Garcia filed a First Amended Class Action
4 Complaint in the *Garcia Action* alleging an additional cause of action under PAGA. (*Ibid*).

5 On November 28, 2023, Plaintiff Jimenez filed a Complaint for Enforcement Action Under
6 the Private Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq* (“*Jimenez Operative Complaint*”)
7 in the action entitled *Alejandra Jimenez v. ClearFreight Inc.*, Los Angeles County Superior Court
8 Case No. 23STCV28938 (“*Jimenez Action*”) alleging one cause of action under PAGA. (*Id.*, ¶ 11).

9 On March 8, 2024, Plaintiffs Garcia and Lebowe provided an amended written notice by
10 electronic submission to the LWDA and by U.S. Certified Mail to Defendant. (*Id.*, ¶ 12 & Exh. 2).

11 On March 23, 2024, pursuant to joint stipulation of Plaintiff Garcia and Defendant, the Court
12 entered an Order, dismissing the class claims in the *Garcia Action* without prejudice. (*Id.*, ¶ 13).

13 On April 11, 2024, the Court entered a Minute Order, which related the *Garcia Action* and
14 *Jimenez Action* (together, “*Actions*”) and designated the *Garcia Action* as the lead case. (*Id.*, ¶ 14).

15 On August 2, 2024, Plaintiffs Garcia and Lebowe filed a Second Amended Complaint for
16 Representative Action for Penalties Under Private Attorneys General Act, Labor Code § 2698 *et seq.*
17 (“*Garcia Operative Complaint*”) in the *Garcia Action*, which, *inter alia*, added Plaintiff Lebowe as a
18 named plaintiff. (*Id.*, ¶ 15). The *Jimenez Operative Complaint* and the *Garcia Operative Complaint*
19 are the operative complaints in the *Actions* (together, “*Operative Complaints*”). (*Ibid*).

20 On September 9, 2024, pursuant to the Parties’ joint stipulation, the Court entered an Order,
21 which consolidated the *Actions* and deemed the *Garcia Action* the lead case. (*Id.*, ¶ 16).

22 During the course of informal discovery in the *Actions*, PAGA Counsel conducted an intense
23 investigation into the facts of the *Actions*. (*Id.*, ¶ 17). This included obtaining data, information, and
24 documents relating to the underlying alleged violations, including, but not limited to, Plaintiffs’
25 employee files, a sampling of Aggrieved Employees’ time and payroll data, Defendant’s Employee
26 Handbook, and Aggrieved Employees’ data points so that Plaintiffs could assess the number of alleged
27 potential violations and value of the recoverable penalties, as well as evaluate the strengths and
28 weaknesses of their claims. (*Ibid*).

1 Based on the data, information, and documents received, as well as thorough discussions with
2 Defendant's counsel, PAGA Counsel was able to (i) determine the total number of distinct individuals
3 falling within the definition of "Aggrieved Employees" for the relevant statutory period, (ii) the
4 number of affected pay periods at issue among them, and (iii) construct a damages model that
5 calculated the maximum realistic amount of PAGA penalties that could be levied against Defendant
6 within the relevant statutory period. (*Id.*, ¶ 18). Defendant, however, disputed Plaintiffs' claims and
7 disputed both the existence of and extent of liability as alleged by Plaintiffs, which allowed PAGA
8 Counsel to further assess the strength of Plaintiffs' claims. (*Ibid.*). PAGA Counsel's experience in
9 litigating similar representative wage and hour claims, the degree of investigation that was conducted
10 here, and the amount of data, information, and documents that was obtained, was sufficient to
11 determine the potential value of the PAGA claims, and to evaluate the strength of these claims for
12 purposes of settlement. (*Ibid.*).

13 On April 30, 2024, the Parties participated in a formal mediation conducted by Tagore
14 Subramaniam, Esq., a neutral and respected mediator with extensive experience in complex wage and
15 hour matters, during which the Parties were able to reach an agreement to resolve the Actions in their
16 entirety. (*Id.*, ¶ 19 & Exh. 3).

17 The Parties believe the Settlement Agreement is fair, reasonable, and adequate. (*Id.*, ¶ 20).
18 The Parties understand, acknowledge, and agree that the Settlement Agreement constitutes a
19 compromise of Plaintiffs' PAGA claims, and that it is the desire and intention of the Parties to affect
20 a final and complete resolution of the Actions. (*Ibid.*).

21 Defendant denies all of the claims in the Actions, and does not waive, but rather expressly
22 reserves, all rights to challenge all such claims and allegations upon all legal, procedural, and factual
23 grounds should the Settlement Agreement not become final. (*Id.*, ¶ 21). The Settlement Agreement
24 reflects a compromise reached to end litigation in the Actions. (*Ibid.*). Following significant
25 investigation and extensive settlement negotiations, Plaintiffs now seek approval of the proposed
26 Settlement Agreement, which will resolve all representative claims alleged in the Actions. (*Ibid.*).

27 ///

28 ///

1 In accordance with California Labor Code sections 2699 *et. seq.* and concurrently with the
2 filing of this Motion, a copy of the proposed Settlement Agreement was submitted to the LWDA via
3 online submission through the LWDA’s website. (*Id.*, ¶ 22 & Exh. 4).

4 **III. THE SETTLEMENT TERMS**

5 **A. Definition of the Aggrieved Employees**

6 For purposes of settlement only, the Parties have agreed that the “Aggrieved Employees” shall
7 be defined as all current and former non-exempt employees who worked for Defendant in the State of
8 California during the PAGA Period. (Genish Decl., ¶ 23; Settlement Agreement, ¶ 1.4). The “PAGA
9 Period” is the period from September 1, 2022 to June 30, 2024. (Genish Decl., ¶ 23; Settlement
10 Agreement, ¶ 1.22). Based on its records, Defendant has represented that there are approximately 72
11 Aggrieved Employees who worked 2,250 pay periods as of April 30, 2024. (Genish Decl., ¶ 23;
12 Settlement Agreement, ¶ 8).

13 **B. Amount of Settlement**

14 The Parties have agreed to settle the PAGA claims at issue in the Actions for a non-
15 reversionary Gross Settlement Amount of Two Hundred Ninety Thousand Dollars and Zero Cents
16 (\$290,000.00). (Genish Decl., ¶ 24; Settlement Agreement, ¶ 3.1).

17 **C. Allocation and Funding of the Gross Settlement Amount**

18 The Gross Settlement Amount is a common fund and therefore includes all requested costs,
19 fees, and other allocations. (Genish Decl., ¶ 24). The Gross Settlement Amount includes: (1) PAGA
20 Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement Amount, equaling Ninety-Six
21 Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$96,666.67); (2) PAGA Counsel’s
22 actual litigation costs and expenses in the amount of Fourteen Thousand Nine Hundred Four Dollars
23 and Eighty-Seven Cents (\$14,904.87); (3) Enhancement Payment in the amount of Five Thousand
24 Dollars and Zero Cents (\$5,000.00) to Plaintiff Lebowe; and (4) Administration Expenses Payment,
25 not to exceed Four Thousand Dollars and Zero Cents (\$4,000.00). (Genish Decl., ¶ 24; Settlement
26 Agreement, ¶¶ 3.1-3.2.3).

27 ///

28 ///

1 After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net
2 Settlement Amount will amount to approximately One Hundred Sixty-Nine Thousand Four Hundred
3 Twenty-Eight Dollars and Forty-Six Cents (\$169,428.46), of which seventy-five percent (75%), or
4 One Hundred Twenty-Seven Thousand Seventy-One Dollars and Thirty-Five Cents (\$127,071.35),
5 will be distributed and paid to Aggrieved Employees on a pro rata basis based on their number of pay
6 periods they each worked for Defendant for at least one day during the PAGA Period (“PAGA Pay
7 Periods”). (Genish Decl., ¶ 25; Settlement Agreement ¶¶ 1.17, 1.21, & 3.2.4).

8 Within fifteen (15) calendar days of the Effective Date, Defendant will deliver Aggrieved
9 Employee identifying information in Defendant’s possession including each Aggrieved Employee’s
10 full name, last-known mailing address, Social Security number, and number of PAGA Pay Periods
11 (collectively, “Aggrieved Employee Data”) to the Administrator in the form of a Microsoft Excel
12 spreadsheet. (Genish Decl., ¶ 26; Settlement Agreement, ¶¶ 1.5 & 4.1).

13 Within thirty (30) calendar days of the Effective Date, Defendant will fund the Gross
14 Settlement Amount by transmitting the funds to the Administrator. (Genish Decl., ¶ 27; Settlement
15 Agreement, ¶ 4.2).

16 Within seven (7) calendar days after Defendant funds the Gross Settlement Amount, the
17 Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the
18 Administration Expenses Payment, the Enhancement Payment, the PAGA Counsel Fees Payment, and
19 the PAGA Counsel Litigation Expenses Payment. (Genish Decl., ¶ 28; Settlement Agreement, ¶ 4.3).
20 Disbursement of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment
21 will not precede disbursement of Individual PAGA Payments. (Genish Decl., ¶ 28; Settlement
22 Agreement, ¶ 4.3).

23 Prior to mailing the Individual PAGA Payment checks, the Administrator will update the
24 Aggrieved Employees’ mailing addresses using the National Change of Address Database. (Genish
25 Decl., ¶ 29; Settlement Agreement, ¶ 4.3.1). Additionally, for all Individual PAGA Payment checks
26 that are returned as undeliverable without a USPS forwarding address, the Administrator will conduct
27 an investigation and search for current Aggrieved Employees’ mailing addresses using all reasonably
28 available sources, methods, and means including, but not limited to, the National Change of Address

1 database, skip traces, and direct contact by the Administrator with the Aggrieved Employees
2 (“Aggrieved Employee Address Search”). (Genish Decl., ¶ 29; Settlement Agreement, ¶¶ 1.6 & 4.3.2).
3 Within seven (7) calendar days of receiving a returned check, the Administrator will re-mail the check
4 to the USPS forwarding address provided or to an address ascertained through the Aggrieved
5 Employee Address search. (Genish Decl., ¶ 29; Settlement Agreement, ¶ 4.3.2). The Administrator
6 will promptly send a replacement check to any Aggrieved Employee whose original check was lost or
7 misplaced, requested by the Aggrieved Employee prior to the void date. (Genish Decl., ¶ 29;
8 Settlement Agreement, ¶ 4.3.2).

9 Individual PAGA Payment checks that are issued to Aggrieved Employees will be valid and
10 negotiable for up to one hundred and eighty (180) calendar days after the checks are initially mailed
11 to the Aggrieved Employees, and thereafter, will be canceled. (Genish Decl., ¶ 30; Settlement
12 Agreement, ¶ 4.3.1). Any funds associated with such canceled checks will be distributed to the State
13 of California’s Unclaimed Property Fund in the name of the Aggrieved Employee. (Genish Decl., ¶
14 30; Settlement Agreement, ¶ 4.3.3).

15 If the actual number of pay periods during the period September 1, 2022 through April 30,
16 2024 is more than ten percent (10%) above 2,250, then the Gross Settlement Amount will be increased
17 by the percentage in excess of this ten percent (10%) threshold. (Genish Decl., ¶ 31; Settlement
18 Agreement, ¶ 8).

19 **IV. STANDARD FOR APPROVAL OF PAGA SETTLEMENT**

20 The settlement of a PAGA claim requires court approval. (California Labor Code (“Lab.
21 Code”) § 2699(1)). The Court must be mindful that a “[s]ettlement is a compromise, which balances
22 the possible recovery against the risks inherent in litigating further.” (*In re TD Ameritrade Account*
23 *Holder Litig.*, 2011 U.S. Dist. LEXIS 103222 at *24 (N.D. Cal. Sep. 12, 2011)). “[T]he very essence
24 of a settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes,’” as “it is the very
25 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
26 consensual settlements.” (*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-26 (9th Cir.
27 1982)). As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial
28 on the merits,” or “judged against a hypothetical or speculative measure of what might have been

1 achieved.” (Ibid).

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

8 A court’s review of a PAGA settlement necessarily implicates the following unique features
9 that render the approval process distinct from approval of a class action settlement under Code of Civil
10 Procedure Section 382 and California Rules of Court Rule 3.769. First, in evaluating the adequacy of
11 the settlement amount, the Court’s focus is not concerned with the amount aggrieved employees are
12 to receive, but rather, must focus on the total settlement amount in achieving PAGA’s objective.
13 Indeed, “[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class
14 damages,” and while a “[PAGA] action is ... designed to protect the public and penalize the employer
15 for past illegal conduct,” a reviewing court must be mindful of the fact that settlement of a PAGA
16 claim involves a compromise. (*Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 at *11
17 (E.D. Cal. June 30, 2010)). “Unlike class actions, these civil penalties are not meant to compensate
18 unnamed employees because the action is fundamentally a law enforcement action.” (*Ochoa-
19 Hernandez v. Cjaders Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774 at *12 (Apr. 2, 2010)). The Court
20 should not lose sight of the fact that, “[u]nlike a class action seeking damages or injunctive relief for
21 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for
22 the government that otherwise may not have been assessed and collected by overburdened state
23 enforcement agencies.” (Ibid).

24 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
25 claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the
26 ability to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS
27 32774 at *13). Indeed, “[PAGA] does not create property rights or any other substantive rights” as
28 “[i]t is simply a procedural statute allowing an aggrieved employees to recover civil penalties – for

1 Labor Code violations – that otherwise would be sought by state labor law enforcement agencies.”
2 (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009)). This
3 renders the approval process of a PAGA settlement distinct from a class action settlement, as there is
4 no need for the Court to employ the “two-step approval process” required under California Rules of
5 Court Rule 3.769.

6 Finally, unlike class action settlements, the scope of release permitted in a PAGA settlement
7 is limited. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff
8 but also on government agencies and any aggrieved employee not a party to the proceeding...the
9 nonparty employees, because they were not given notice of the action or afforded any opportunity to
10 be heard, would not be bound by the judgment as to remedies other than civil penalties.” (*Arias v.*
11 *Sup. Ct.*, 46 Cal.4th 969, 985-87 (2009)). Thus, the scope of a release in a PAGA settlement is
12 confined to the PAGA penalties alleged in the complaint and/or the plaintiff’s notice to the LWDA
13 and to the claims that were, or could have been, alleged pursuant to PAGA based on the factual
14 allegations in the complaint and/or the plaintiff’s notice to the LWDA. In the cases at hand, as the
15 only claims at issue are PAGA claims, those will be the only claims extinguished through the
16 Settlement.

17 V. THE AGREEMENT IS FAIR AND SHOULD BE APPROVED

18 A. The Agreement is Presumed to Be Fair

19 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
20 reached through arm’s-length bargaining.” (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
21 245 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009)). Here,
22 the Agreement is presumptively fair because: (1) it occurred after counsel for the Parties engaged in
23 significant investigation to evaluate the strength and potential value of the PAGA claims, and the risks
24 of litigating these claims through trial; and (2) it was negotiated at great length and effort by counsel
25 with significant experience in similar complex labor and employment matters. (Genish Decl., ¶ 32).

26 ///

27 ///

28 ///

1 **B. The Agreement is Fair, Adequate, and Reasonable in Light of the Parties’ Respective**
2 **Legal Positions and Recovery Risks**

3 In deciding whether to approve a proposed settlement, a trial court has broad powers to
4 determine if it is fair given the circumstances of the case. (*Mallick v. Sup. Ct.*, 89 Cal.App.3d 434,
5 438 (1979)). In exercising these powers, the overriding concern is to ensure that a proposed settlement
6 is “fair, adequate, and reasonable.” (*Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted)). A
7 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor
8 does the settlement have to obtain one hundred percent of the damages sought to be fair and reasonable.
9 (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court
10 must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
11 further litigation, the risk of maintaining class action status through trial, the amount offered in
12 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
13 views of counsel, the presence of a governmental participant, and the reaction of the class members to
14 the proposed settlement.”¹ (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).
15 Even though a Kullar analysis is not required for approval of a PAGA settlement, a brief analysis is
16 included to support approval of the Settlement Agreement. (*See Genish Decl.*, ¶¶ 40-53).

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

20 1. Strength of Plaintiffs’ Cases

21 In order to prevail at trial, Plaintiffs would have to prove violations of the California Labor
22 Code underlying their PAGA claims, demonstrate that Aggrieved Employees suffered, and
23 demonstrate that Defendant’s conduct gives rise to penalties. (*See Elliot v. Spherion Pac. Work, LLC*,
24 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) [“Plaintiff’s claim under [PAGA] is wholly dependent
25 upon her other claims. Because all of Plaintiff’s other claims fail as a matter of law, so does her PAGA
26 claim.”]).

27
28 ¹ As this is not a class action, the *Kullar* factors pertaining to the risk of maintaining class action status through trial and the reaction of class members to the proposed settlement are inapplicable.

1 Here, Plaintiffs’ core allegations are that Defendant systematically violated the California
2 Labor Code by, *inter alia*, failing to properly pay wages for all hours worked, failure to pay overtime
3 at the correct rate, failing to provide compliant meal and rest periods, failure to pay premiums at the
4 correct rate of pay, failing to timely pay wages during employment and upon termination, failing to
5 maintain accurate payroll records, failing to provide accurate wage statements, and failing to reimburse
6 necessary business expenses. (Genish Decl., ¶ 33).

7 Defendant maintained several defenses to Plaintiffs’ theories of liability, which, if successfully
8 argued and proven, had the potential to eliminate or substantially reduce recovery. (*Id.*, ¶ 34).
9 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues
10 to have, compliant employment policies and practices throughout the time period at issue. (*Ibid.*).
11 Defendant denies that it ever violated any provision of the California Labor Code, including, but not
12 limited to, those sections for which Plaintiffs seek penalties under PAGA. (*Ibid.*). Defendant further
13 denied, and continues to deny, that the lawsuits are appropriate for representative treatment for any
14 purpose other than settlement. (*Ibid.*). Defendant also challenged Plaintiffs’ standing as aggrieved
15 employees and denied that any of Defendant’s other employees whom Plaintiffs seek to represent are
16 aggrieved. (*Ibid.*).

17 Defendant also argued that an important feature of PAGA is that the Court retains discretion
18 to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise
19 would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (*Ibid.*; Lab. Code
20 § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136
21 (2012) [holding that a court may reduce the amount of PAGA penalties awarded to an employee based
22 upon discretionary factors]).

23 Even if violations of the California Labor Code occurred, which Defendant denies, Defendant
24 contended that said violations would only be considered “initial violations” and thus heightened
25 “subsequent violation” penalties were not warranted. (Genish Decl., ¶ 35; Lab. Code § 2699(f)(2);
26 *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) [“Until the employer
27 has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed
28 to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”]).

1 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess
2 cumulative penalties for the maximum number of possible, separate California Labor Code violations,
3 because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct
4 may be regulated by multiple provisions of the California Labor Code that are interrelated and work
5 in tandem. (Genish Decl., ¶ 36). As such, Defendant contended that cumulative penalties and
6 heightened penalties would be unjust, arbitrary, oppressive, and confiscatory. (Ibid). While the PAGA
7 does provide the potential for a heightened penalty for subsequent violations, courts are often hesitant
8 to award a heightened penalty where there is no prior citation by the Labor Commissioner, as is the
9 case here. (See *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no
10 heightened penalty where defendant was not notified by Labor Commissioner or any court that it was
11 subject to the California Labor Code)). The Ninth Circuit’s holding in *Bernstein* also supports that a
12 settlement valuation that does not “stack” penalties. (Ibid).

13 While Plaintiffs maintain that their PAGA claims have merit, in reaching the Agreement,
14 Plaintiffs and their counsel took into account the strengths and weaknesses of each side’s position and
15 the uncertainty of how the cases might have concluded as litigation continued, at trial, and/or upon
16 appeal. (Genish Decl., ¶ 37). Based on these disputes, which had the potential to completely eliminate
17 Plaintiffs’ recovery, the range of realistic “litigation outcomes” on Plaintiffs’ PAGA claims was
18 defined by a “maximum possible liability” amount of approximately \$1,125,000 and a “risk-adjusted
19 realistic value” amount of approximately \$337,500 (*Id.*, ¶ 53). In light thereof, the Gross Settlement
20 Amount of \$290,000 is a significant settlement. (Ibid).

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

22 Approval of the Settlement Agreement is also appropriate in light of the risk, expense, and
23 complexity of further litigation. As discussed above, the Settlement Agreement takes into
24 consideration the specific factual and legal hurdles faced by Plaintiffs in establishing Defendant’s
25 penalty-liability in these cases, which may have resulted in a net-zero recovery. Any recovery on
26 these claims is not certain. And even when liability is found, PAGA claims are discretionary, such
27 that the Court could decline to award their full value. Some of Plaintiffs’ claims are also derivative,
28 and as such, Plaintiffs must prevail on their underlying California Labor Code claims in order to

1 prevail on the derivative claims. These risks – when balanced with the fact that the Agreement
2 achieved a very significant recovery (as demonstrated below), and that further litigation posed a risk
3 of diminishing such recovery by increasing litigation expenses – weigh strongly in favor of settlement
4 approval.

5 3. The Benefits Conferred by the Agreement Balance in Favor of Approval

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

15 The Net Settlement Amount is currently estimated to be One Hundred Sixty-Nine Thousand
16 Four Hundred Twenty-Eight Dollars and Forty-Six Cents (\$169,428.46). After all deductions are
17 made from the Gross Settlement Amount for the PAGA Counsel Fees Payment, PAGA Counsel
18 Litigation Expenses Payment, Enhancement Payment, and Administration Expenses Payment, One
19 Hundred Twenty-Seven Thousand Seventy-One Dollars and Thirty-Five Cents (\$127,071.35) (i.e.
20 75% of the Net Settlement Amount) will go to the LWDA, and Forty-Two Thousand Three Hundred
21 Fifty-Seven Dollars and Eleven Cents (\$42,357.11) (i.e. 25% of the Net Settlement Amount) will go
22 to the Aggrieved Employees, as required by California Labor Code § 2699(i) (“civil penalties
23 recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and
24 Workforce Development Agency . . . and 25 percent to the aggrieved employees.”). (Genish Decl., ¶
25 54). There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement
26 Amount as it fully complies with California Labor Code section 2699(i). (Ibid).

27 ///

28 ///

1 The Settlement Agreement is a compromise of highly disputed claims. (*Id.*, ¶ 55). Plaintiffs
2 and their counsel recognize the expense and length of continued proceedings necessary to litigate the
3 matter through trial and any possible appeals. (*Ibid*). Plaintiffs and their counsel have also taken into
4 account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
5 inherent in such litigation. (*Ibid*). Plaintiffs and their counsel are also aware of the burdens of proof
6 necessary to establish liability, both generally and in response to Defendant’s defenses thereto, and
7 the difficulties in establishing Defendant’s liability for, and the right to recover, penalties on behalf of
8 Plaintiffs, the State of California, and other Aggrieved Employees. (*Ibid*). Plaintiffs and their counsel
9 have also taken into account Defendant’s agreement to enter into a settlement that confers significant
10 relief upon the Aggrieved Employees and the State of California. (*Ibid*). Considering all of the facts
11 in these cases, Plaintiffs and their counsel have determined that the Agreement represents a fair,
12 adequate, and reasonable resolution of the PAGA claims, and that it is in the best interests of the
13 Aggrieved Employees and the State of California. (*Ibid*).

14 The result achieved in these cases is well within the range of what is considered an acceptable
15 settlement under the circumstances, especially when compared to the settlement of PAGA claims in
16 other cases. (*Id.*, ¶ 56). (*See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court,
17 Case No. JCCP4833 (May 2017) [approving \$15,000 out of \$4 million toward settlement of PAGA
18 claims]; *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal. Oct. 29,
19 2012) [approving \$10,000 out of \$3.7 million toward settlement of PAGA claims]; *Schiller v. David’s*
20 *Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving \$7,500 out of
21 \$518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC*, 2011 U.S. Dist.
22 LEXIS 15821, at *4 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 out of \$6.9 million toward
23 settlement of PAGA claims]; *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, at *14
24 (E.D. Cal. Nov. 27, 2021) [approving \$10,000 out of \$2.5 million toward settlement of PAGA
25 claims]). Here, the value obtained for settlement of the PAGA claims is significant, and it will be
26 distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

27 ///

28 ///

1 4. The Scope of the Release is Narrowly Tailored

2 As discussed above, the California Supreme Court has concluded that in the context of PAGA
3 “the nonparty employees, because they were not given notice of the action or afforded any opportunity
4 to be heard, would not be bound by the judgment as to remedies other than civil penalties.” (*See Arias*,
5 46 Cal. 4th, at 987). Thus, the scope of the limited release provided in exchange for the foregoing
6 consideration is limited to the civil penalties asserted in the Operative Complaints and Plaintiffs’
7 notices to the LWDA, under California Labor Code §§ 2698 *et seq.* (*See Settlement Agreement*, at ¶
8 5.2).

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

10 5. Experience and Views of Counsel Favor Approval

11 PAGA Counsel is experienced in complex representative and class action wage-and-hour
12 litigation. (Genish Decl., ¶¶ 2-7 & 61; Declaration of David Yeremian in Support of Plaintiffs’ Motion
13 for Approval of PAGA Settlement and Award of PAGA Counsel Fees Payment, PAGA Counsel
14 Litigation Expenses Payment, Enhancement Payment, and Administration Expenses Payment
15 [“Yeremian Decl.”], ¶¶ 4-12). In the view of PAGA Counsel, the benefits conferred by the Agreement
16 are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved
17 Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial
18 monetary benefits provided for by the Agreement. (Genish Decl., ¶ 57). Furthermore, courts have
19 acknowledged that “the interests of a plaintiff, counsel, and other potentially aggrieved employees are
20 largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code
21 violations as the evidence will sustain[.]” (*Williams v. Superior Court*, 3 Cal. 5th 531, 548 (2017)
22 [citing Labor Code § 2699(g)(l)(i)]).

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

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

1 Here, the extent of informal discovery conducted was sufficient to enable PAGA Counsel to
2 evaluate the strength and value of the PAGA claims for purposes of settlement. (Genish Decl., ¶ 58).
3 Prior to settling, Defendant provided Plaintiffs with data, information, and documents relating to the
4 underlying alleged violations, including, but not limited to, Plaintiffs' employee files, a sampling of
5 Aggrieved Employees' time and payroll data, Defendant's Employee Handbook, and Aggrieved
6 Employees' data points. (*Id.*, ¶ 17). As discussed above, PAGA Counsel's investigation was sufficient
7 to, among other things, tabulate with precision the total number of alleged California Labor Code
8 violations at issue during the relevant statutory period and identify the total number of individuals
9 falling within the definition of "Aggrieved Employees" for the relevant statutory period. (*Id.*, ¶ 18).

10 Based on PAGA Counsel's experience litigating wage and hour claims, such investigation was
11 sufficient to determine the potential value of the PAGA claims, and to evaluate the strength of these
12 claims for purposes of settlement. (*Ibid.*).

13 **VI. THE REQUESTED PAGA COUNSEL FEES PAYMENT IS FAIR AND** 14 **REASONABLE**

15 As the prevailing party in settlement, Plaintiffs are entitled to recover attorneys' fees and costs
16 for bringing their PAGA claims. (Lab. Code § 2699(g) ["Any employee who prevails in any action
17 shall be entitled to an award of reasonable attorney's fees and costs."]). PAGA Counsel is also entitled
18 to attorneys' fees pursuant to Code of Civil Procedure section 1021.5(a), as the instant action has
19 resulted in the enforcement of important rights benefitting the public and secures monetary recovery
20 for the State of California as well as the Aggrieved Employees. A fee award is justified where the
21 legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles*,
22 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33
23 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ["when a number of persons
24 are entitled in common to a specific fund, and an action brought by a plaintiff ... for the benefit of all
25 results in the creation or preservation of that fund, such plaintiff ... may be awarded attorney's fees out
26 of the fund."]).

27 ///

28 ///

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

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

9 (*Id.*, at 503 [internal citation omitted]). Fee awards of roughly one-third of the settlement fund are
10 routinely awarded in California state and federal courts in class actions. (*Chavez v. Netflix, Inc.*, 162
11 Cal.App.4th 43, 66, fn. 11 (2008); *see also, e.g., In re Pacific Enterprises Securities Litig.*, 47 F.3d
12 373, 379 (9th Cir. 1995) [affirming 33% fee award]).

13 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
14 method, the California Supreme Court has taken the position that trial courts also “retain the discretion
15 to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested
16 percentage fee.” (*Lafitte*, 1 Cal.5th at 506; *see also Wershba*, 91 Cal.App. 4th at 253). Courts award
17 fees to serve as an economic incentive for lawyers to undertake litigation, and thereby enhance and
18 facilitate access to the judicial system for adjudication of meritorious claims, and to deter wrongdoing.
19 This is especially true in situations where multiple similar alleged wrongs would not be economically
20 feasible to pursue individually, such as here. Trial courts have “wide latitude” in assessing the value
21 of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of
22 discretion.” (*Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000); *see also Laffitte*, 1 Cal.5th
23 at 506 [holding that “trial court did not abuse its discretion in using [the percentage of fund method],
24 in part to approve the fee request”]). Indeed, it is long settled that the “experienced trial judge is the
25 best judge of the value of professional services rendered in his court.” (*Ketchum v. Moses*, 24 Cal.4th
26 1122, 1132 (2001)).

27 ///

28 ///

1 The percentage method is particularly appropriate where a monetary settlement has been
2 recovered and “the benefit [recovered can be] easily quantified.” (*In re Bluetooth Headset Prods.*
3 *Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)). Where the amount of a settlement is a “certain or
4 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
5 percentage of the settlement created. (Weil and Brown, California Practice Guide, *Civil Procedure*
6 *Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808). The percentage fee
7 method is preferred in representative actions because “it better approximates the workings of the
8 marketplace than the lodestar approach.” (*Lealao, supra*, 82 Cal.App.4th at 49). California law
9 provides that the award for attorneys’ fees should be equivalent to fees freely negotiated in the legal
10 marketplace and paid in comparable litigation based on the result achieved and risk incurred. (*See*
11 *Lealao*, 82 Cal.App.4th at 47-50; *Laffitte*, 1 Cal.5th 480 at 503). In cases where the settlement
12 agreement provides that the defendant will pay the plaintiffs’ attorneys a percentage of the fund created
13 by the settlement, use of that percentage method is appropriate. (*Lealao*, 82 Cal.App.4th at 32). Fee
14 awards that are too small will “chill the private enforcement essential to the vindication of many legal
15 rights and obstruct the representative actions that often relieve the courts of the need to separately
16 adjudicate numerous claims.” (*Id.* at 53). Therefore, fees in representative actions should approximate
17 the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in
18 comparable litigation. (*Id.* at 48). “The ultimate goal ... is the award of a ‘reasonable’ fee to
19 compensate counsel for their efforts, irrespective of the method of calculation.” (*Consumer Privacy*
20 *Cases*, 175 Cal.App.4th 545, 557-58 (2009) [quoting *Apple Computer, Inc. v. Superior Court, supra*,
21 126 Cal.App.4th at 1270]).

22 PAGA Counsel’s application for attorneys’ fees in light of the facts and circumstances
23 surrounding the cases is within the range of reasonableness. Historically, courts have awarded fees as
24 high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of
25 the case. (*See In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) [awarding attorneys’
26 fees in the amount of 45% of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v.*
27 *Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195 (S.D.N.Y. 1979) [awarding approximately 53%
28 of the settlement as attorneys’ fees]). California courts routinely approve attorneys’ fees awards

1 “average[ing] around one-third of the recovery.” (*Chavez*, 162 Cal.App.4th at 66 [trial court found
2 the range of contingency fees in marketplace to be 20 to 40 percent and determined such a percentage
3 fee was appropriate]; *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles
4 County Superior Court, Case No. BC596892 (June 2016) [approving a fee award of one-third of the
5 settlement amount of \$950,000 in a PAGA action, because it was “reasonable and consistent with fee
6 awards in class action cases”]).

7 Here, PAGA Counsel’s fee request of one-third (1/3) of the Gross Settlement Amount (i.e.,
8 \$96,666.67) is fair and reasonable based on the percentage of the recovery method. PAGA Counsel
9 have vigorously litigated these cases since they were commenced, with the very real possibility of an
10 unsuccessful outcome and no fee recovery of any kind. (Genish Decl., ¶ 59). Counsel for Plaintiffs
11 undertook significant investigation and invested a significant amount of time analyzing relevant
12 documents and data to evaluate the nature and extent of the alleged underlying California Labor Code
13 violations and calculation of the potential monetary recovery as they relate to Plaintiffs’ PAGA claims
14 under PAGA. (Genish Decl., ¶¶ 61-62; Yeremian Decl., ¶¶ 12-15). PAGA Counsel possesses
15 combined extensive experience litigating wage and hour and other complex litigation matters, and the
16 attorneys who worked on this matter have been approved as class counsel and/or have had their billable
17 rates approved in the settlement of other class and PAGA actions, numerous times. (Genish Decl., ¶
18 61; Yeremian Decl., ¶¶ 6 & 12).

19 In the present cases, PAGA Counsel has borne all of the risks and costs of litigation and will
20 not receive any compensation until recovery is obtained. (Genish Decl., ¶ 60). PAGA Counsel are
21 experienced in complex wage-and-hour litigation and used that experience to obtain a favorable result
22 for Plaintiffs, the Aggrieved Employees, and the State of California. (Ibid). Considering the amount
23 of fees requested, work performed, risks incurred, and experience of PAGA Counsel in handling
24 similar matters, Plaintiffs maintain that the requested attorneys’ fees of one-third (1/3) of the Gross
25 Settlement Amount (i.e., \$96,666.67) are reasonable and should be awarded. (Genish Decl., ¶ 60;
26 Yeremian Decl., ¶ 11).

27 ///

28 ///

VII. THE REQUESTED PAGA COUNSEL LITIGATION EXPENSES PAYMENT IS FAIR AND REASONABLE

The Agreement provides for reimbursement of actual litigation costs and expenses up to the amount of Eighteen Thousand Dollars and Zero Cents (\$18,000.00). (Genish Decl., ¶ 64; Settlement Agreement, ¶ 3.2.1). PAGA Counsel only seeks reimbursement of a total of Fourteen Thousand Nine Hundred Four Dollars and Eighty-Seven Cents (\$14,904.87) in litigation costs and expenses. (Genish Decl., ¶ 64 & Exh. 5; Yeremian Decl., ¶ 17 & Exh. 1). Accordingly, PAGA Counsel respectfully requests that the Court reimburse them for actual litigation costs and expenses in the amount of Fourteen Thousand Nine Hundred Four Dollars and Eighty-Seven Cents (\$14,904.87).

VIII. THE ADMINISTRATION EXPENSES PAYMENT IS FAIR AND REASONABLE

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, ILYM Group, Inc. to handle the administration of the Agreement. (Genish Decl., ¶ 65; Settlement Agreement, ¶ 7.1). The fees and expenses of the Administrator are estimated not to exceed \$4,000.00. (Genish Decl., ¶ 65; Settlement Agreement, ¶ 3.2.2). These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual PAGA Payment checks to the Aggrieved Employees, re-mailing the returned Individual PAGA Payment checks to any new addresses obtained, and handling inquiries from Aggrieved Employees regarding the Agreement, among other things. (Genish Decl., ¶ 65). Accordingly, the Court should grant approval of the Administration Expenses Payment in the amount of up to \$4,000.00 to ILYM Group, Inc., a necessary third-party for handling the settlement process. (Ibid).

IX. THE REQUESTED ENHANCEMENT PAYMENT IS FAIR AND REASONABLE

The purpose of an enhancement award is to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. (*See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the action); *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) (“an incentive award is

appropriate ‘if it is necessary to induce an individual to participate in the suit’”). Plaintiffs initiated this litigation on behalf of the State of California and their former co-workers who will now be entitled to receive payment from the Agreement. By initiating and pursuing the Actions, Plaintiffs stepped into the shoes of the State of California and undertook the responsibilities of serving in representative capacities. (Genish Decl., ¶ 68; Garcia Decl., ¶¶ 4-7; Lebowe Decl., ¶ 4-7; Jimenez Decl., ¶¶ 5-7). Plaintiffs were available whenever Plaintiffs’ counsel needed them and actively tried to obtain information that would benefit the prosecution of the Actions. (Genish Decl., ¶ 68; Garcia Decl., ¶¶ 6-8; Lebowe Decl., ¶ 6-8; Jimenez Decl., ¶¶ 5-6). Plaintiffs Garcia and Jimenez executed separate agreements to settle and resolve their individual claims with Defendant. (Genish Decl., ¶ 67; Garcia Decl., ¶ 9; Jimenez Decl., ¶ 8). The Enhancement Payment for Plaintiff Lebowe is eminently reasonable given the time and effort Plaintiff Lebowe spent on this matter, his services on behalf of the State of California and the Aggrieved Employees, and his broader, general release of claims. (Genish Decl., ¶ 66).

Accordingly, Plaintiffs respectfully submit that it is appropriate and just for Plaintiff Lebowe to receive an Enhancement Payment in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) in addition to the Individual PAGA Payment he will receive as an Aggrieved Employee, for his services on behalf of the State of California and the other Aggrieved Employees, as well as for the broader, general release of claims. (Genish Decl., ¶ 69).

///

///

///

///

///

///

///

///

///

///

[illegible]

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

6

7

7

8
90
12.2
3.32.2
3.3

4
5

4
5
6
7