

Jonathan M. Genish (State Bar No. 259031)
Barbara DuVan-Clarke (State Bar No. 259268)
BDC@blackstonepc.com
Danielle GruppChang (State Bar No. 313881)
dgruppchang@blackstonepc.com
P.J. Van Ert (State Bar No. 234858)
pjvanert@blackstonepc.com
Annabel Blanchard (State Bar No. 258135)
ablanchard@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Blvd., Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff, Vanessa Cortes

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

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

Plaintiff,

vs.

GITI TIRE (USA) LTD; and DOES 1 through
25, inclusive,

Defendants.

Case No. CIVSB2332578

Honorable Wilfred J. Schneider
Department S32

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT,
AWARD OF ATTORNEYS' FEES AND
COSTS, SERVICE AWARD, AND
SETTLEMENT ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: February 13, 2025
Time: 8:30 a.m.
Dept.: S32

Complaint Filed: December 18, 2023
Trial Date: None Set

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

2 **PLEASE TAKE NOTICE THAT** on February 13, 2025 at 8:30 a.m. in Department S32 of
3 the above-captioned Court located at the San Bernardino Justice Center, 247 West Third Street, San
4 Bernardino, California 92415, Plaintiff Vanessa Cortes (“Plaintiff”) will and hereby does move the
5 Court for an Order granting approval of California Labor Code Private Attorneys General Act of
6 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) settlement. Specifically, Plaintiff
7 requests that the Court enter an Order:

- 8 1. Granting approval pursuant to California Labor Code section 2699(l)(2) of the PAGA
9 Settlement Agreement (“Settlement” or “Settlement Agreement”) attached as **Exhibit 3**
10 to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Approval
11 of PAGA Settlement and Award of Attorneys’ Fees and Costs, Service Award, and
12 Settlement Administration Costs (“Genish Decl.”);
- 13 2. Directing the distribution of the Gross Settlement Amount of One Hundred Thousand
14 Dollars and Zero Cents (\$100,000.00) pursuant to the terms of the Settlement;
- 15 3. Approving the PAGA Penalties, estimated to be Thirty-Seven Thousand Two Hundred
16 Four Dollars and Eight-One Cents (\$37,204.81), of which seventy-five percent (75%)
17 will be distributed to the California Labor and Workforce Development Agency
18 (“LWDA”) and twenty-five percent (25%) will be distributed to the Aggrieved
19 Employees;
- 20 4. Approving an award of reasonable attorneys’ fees of Thirty-Five Thousand Dollars and
21 Zero Cents (\$35,000.00) to Plaintiff’s Counsel, Blackstone Law, APC;
- 22 5. Approving the amount of Eighteen Thousand Seven Hundred Ninety-Five Thousand
23 Dollars and Nineteen Cents (\$18,795.19) to Plaintiff’s Counsel, Blackstone Law, APC,
24 for reimbursement of actual litigation costs and expenses pursuant to California Labor
25 Code section 2699(g)(1);
- 26 6. Approving the award of Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff
27 as a Service Award;
- 28 7. Appointing Apex Class Action Administrators (“Apex” or “Administrator”) as the

1 Administrator; and

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

4 Pursuant to California Labor Code section 2699(l)(2), a copy of the proposed Settlement, as
5 well as information regarding the approval hearing in this matter, were submitted to the LWDA via
6 online submission through its public portal concurrently with the filing of this Motion. (Genish Decl.,
7 ¶ 17).

8 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities,
9 the Declarations of Plaintiff's Counsel Jonathan M. Genish and Plaintiff Vanessa Cortes, the
10 pleadings and other records on file with the Court in this matter, and any other further evidence or
11 argument that the Court may properly receive at or before the hearing.

12 Respectfully submitted,

13 Dated: December 27, 2024

BLACKSTONE LAW, APC

14
15 By: 

16 Jonathan M. Genish
17 Attorneys for Plaintiff, Vanessa Cortes
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	2
III.	THE SETTLEMENT TERMS.....	4
A.	Definition of the Aggrieved Employees	4
B.	Amount of Settlement	4
C.	Allocation and Funding of the Gross Settlement Amount.....	5
IV.	STANDARD FOR APPROVAL OF PAGA SETTLEMENT.....	6
V.	THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED	8
A.	The Settlement is Presumed to Be Fair	8
B.	The Settlement is Fair, Adequate, and Reasonable in Light of the Parties’ Respective Legal Positions and Recovery Risks	9
1.	Strength of Plaintiff’s Case	9
2.	Risk, Expense, Complexity, and Likely Duration of Further Litigation.....	12
3.	The Benefits Conferred by the Settlement Balance in Favor of Approval ..	12
4.	The Scope of the Release is Narrowly Tailored.....	14
5.	Experience and Views of Counsel Favor Approval	14
6.	The Extent of Discovery and Stage of Proceedings Favor Approval	15
VI.	THE REQUESTED PLAINTIFF’S COUNSEL FEES PAYMENT IS FAIR AND REASONABLE	16
VII.	THE REQUESTED PLAINTIFF’S COUNSEL LITIGATION COSTS ARE FAIR AND REASONABLE.....	19
VIII.	THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE	19
X.	CONCLUSION.....	21

TABLE OF AUTHORITIES

Federal Cases

<i>Ali v. U.S.A. Cab Ltd.</i> , 176 Cal.App.4th 1333 (2009)	11
<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.</i> , 46 Cal.4th 993 (2009)	8
<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)	8
<i>Arias</i> , 46 Cal. 4th, at 987	14
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> 480 F.Supp. 1195 (S.D.N.Y. 1979)....	18
<i>Bernstein v. Virgin Am., Inc.</i> , 3 F.4th 1127, 1144 (9th Cir. 2021)	10
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1004 (2012)	11
<i>Casida v. Sears Holdings Corp.</i> , 2012 U.S. Dist. LEXIS 9302 (E.D. Cal. Jan. 25, 2012)	7
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	16, 18
<i>Chu v. Wells Fargo Investments, LLC</i> , 2011 U.S. Dist. LEXIS 15821 (N.D. Cal. Feb. 15, 2011)	14
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	8
<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>Duran v. U.S. Bank Nat. Assn.</i> , 59 Cal.4th 1 (2014)	11
<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)	17
<i>In re Pacific Enterprises Securities Litig.</i> , 47 F.3d 373 (9th Cir. 1995)	16
<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	9
<i>Laffitte v. Robert Half Int'l, Inc.</i> , 1 Cal.5th 480 (2016)	16, 17

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)	9
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).....	7
6	<i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i> , 2010 U.S. Dist. LEXIS 32774 (Apr. 2, 2010).....	7, 8
7	<i>Officers for Justice v. Civil Service Com.</i> , 688 F.2d 615 (9th Cir. 1982)	7
8	<i>Resendez v. Bridgestone Retail Operations, LLC</i> , Los Angeles County Superior Court, Case No.	
9	BC596892.....	18
10	<i>Sandoval v. Roadlink United States Pac., Inc.</i> , 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal.	
11	Nov. 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 sections 2698, <i>et seq.</i>	i, 1
19	Labor Code (“Lab. Code”) § 2699(l)	6, 13
20	Labor Code §§ 2698 <i>et seq.</i>	14
21	Labor Code sections 2699 <i>et. seq.</i>	4
22	Other Authorities	
23	<i>Lealao</i>	17
24	Weil and Brown, California Practice Guide, <i>Civil Procedure Before Trial</i>	17
25	Rules	
26	California Rules of Court Rule 3.769.....	7, 8
27		
28		

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”), Plaintiff Vanessa Cortes (“Plaintiff”) seeks approval of the PAGA
5 Settlement Agreement (“Settlement” or “Settlement Agreement”) entered into with Defendant Giti
6 Tire (USA) Ltd (“Defendant”) (collectively with Plaintiff, the “Parties”), which is attached as Exhibit
7 3 to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Approval of PAGA
8 Settlement and Award of Attorneys’ Fees and Costs, Service Award, and Settlement Administration
9 Costs (“Genish Decl.”). The Settlement terms are outlined as follows:

- 10 • Number of Aggrieved Employees: 37 individuals.
- 11 • Gross Settlement Amount: One Hundred Thousand Dollars and Zero Cents
- 12 (\$100,000.00).
- 13 • Requested Plaintiff’s Counsel’s Fees: Thirty-Five Thousand Dollars and Zero Cents
- 14 (\$35,000.00) (35% of the Gross Settlement Amount).
- 15 • Requested Plaintiff’s Counsel’s Costs: Eighteen Thousand Seven Hundred Ninety-Five
- 16 Dollars and Nineteen Cents (\$18,795.19).
- 17 • Service Award: Five Thousand Dollars and Zero Cents (\$5,000.00) to the Plaintiff.
- 18 • Settlement Administration Costs: Not to exceed Four Thousand Dollars and Zero Cents
- 19 (\$4,000.00).
- 20 • Estimated PAGA Penalties: Thirty-Seven Thousand Two Hundred Four Dollars and
- 21 Eighty-One Cents (\$37,204.81), of which 75% (\$27,903.61) will be paid to the California
- 22 Labor and Workforce Development Agency (“LWDA”) and the remaining 25%
- 23 (\$9,301.20) will be paid to the Aggrieved Employees.

24 As set forth herein, the Settlement is the product of extensive informal discovery, arms-length
25 negotiations, and provides a fair, adequate, and reasonable recovery for the State of California and
26 Aggrieved Employees. Plaintiff therefore respectfully requests that the Court grant approval of the
27 proposed Settlement, among other requested relief.

28 ///

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 Defendant operates manufacturing plants and produces a broad range of tire or automotive
3 products, serving major original equipment vehicle manufacturers, auto service outlets, and tire
4 dealers in California. (Genish Decl., ¶ 7). Defendant employed Plaintiff as an hourly-paid, non-
5 exempt ‘import traffic coordinator’ beginning in or around April 2022 through approximately April
6 2024. (Declaration of Vanessa Cortes in Support of Motion for Approval of PAGA Settlement and
7 Award of Attorneys’ Fees and Costs, Service Award, and Settlement Administration Costs [“Cortes
8 Decl.”], ¶ 3; Genish Decl., ¶ 7).

9 On October 12, 2023, Plaintiff provided written notice by electronic submission to the Labor
10 and Workforce Development Agency (“LWDA”) and by Certified U.S. Mail to Defendant, pursuant
11 to California Labor Code § 2699.3, providing notice of the specific provisions of the California Labor
12 Code which Plaintiff alleged Defendant violated, including the facts and theories to support the
13 allegations (“PAGA Notice”). (Genish Decl., ¶ 8, Exh. 1).

14 On December 18, 2023, Plaintiff filed a Complaint for Enforcement Action under the Private
15 Attorneys General Act alleging a single cause of action for civil penalties premised on Defendant’s
16 alleged violations of the Labor Code: (1) violation of Labor Code sections 1194, 1197, and 1197.1
17 (unpaid minimum wages); (2) violation of Labor Code sections 510 and 1198 (unpaid overtime
18 wages); (3) violation of Labor Code sections 226.7 and 512 (unpaid meal period premiums); (4)
19 violation of Labor Code section 226.7 (unpaid rest period premiums); (5) violation of Labor Code
20 section 204 (failure to timely pay wages during employment); (6) violation of Labor Code sections
21 201, 202, and 203 (failure to timely pay wages upon discharge from employment); (7) violation of
22 Labor Code section 226(a) (failure to provide accurate wage statements); (8) violation of Labor Code
23 section 1174(d) (failure to keep complete and accurate payroll records; and (9) violation of Labor
24 Code sections 2800 and 2802 (failure to reimburse necessary business-related expenses), in the action
25 entitled *Cortes v. Giti Tire (USA) Ltd.*, San Bernardino Superior Court Case No. CIVSB2332578
26 (“Action”). This complaint remains the operative complaint in the Action (“Operative Complaint”).
27 (*Id.*, ¶ 9).

28 ///

1 On September 23, 2024, Defendant filed its Answer to the Operative Complaint, asserting
2 twenty-two (22) affirmative defenses. (Genish Decl., ¶ 10).

3 On March 29, 2024, Plaintiff and Defendant (collectively, the “Parties”) attended a formal
4 mediation conducted by Monique Ngo-Bonnici, a neutral and respected mediator with extensive
5 experience in complex wage and hour matters. The Parties reached an agreement in principle at the
6 mediation and fully executed a final memorandum of understanding within days of the mediation.
7 (*Id.*, ¶ 11).

8 During the course of informal discovery in the Action, PAGA Counsel conducted an intensive
9 investigation into the facts of the Action. (*Id.*, ¶ 12). This included obtaining data, information, and
10 documents relating to the underlying alleged violations, including, but not limited to, Plaintiff’s
11 personnel file, a sampling of Aggrieved Employees’ timecards and earnings statements, Defendant’s
12 Giti USA Handbook, Defendant’s arbitration agreement, and Aggrieved Employees’ data points so
13 that Plaintiff could assess the number of alleged potential violations and value of the recoverable
14 penalties, as well as evaluate the strengths and weaknesses of her claim. (*Ibid.*).

15 Based on the data, information, and documents received, as well as thorough discussions with
16 Defendant’s counsel, Plaintiff’s Counsel was able to: (i) determine the total number of distinct
17 individuals falling within the definition of “Aggrieved Employees” for the relevant statutory period;
18 (ii) determine the number of affected pay periods at issue among them; and (iii) construct a damages
19 model that calculated the maximum realistic amount of PAGA penalties that could be levied against
20 Defendant within the relevant statutory period. (*Id.*, ¶ 13). Defendant, however, disputed Plaintiff’s
21 claims and disputed both the existence of and extent of liability as alleged by Plaintiff, which allowed
22 Plaintiff’s Counsel to further assess the strength of Plaintiff’s claim. Plaintiff’s Counsel’s experience
23 in litigating similar representative wage and hour claims, the degree of investigation that was
24 conducted here, and the amount of data, information, and documents that were obtained, was
25 sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of this
26 claim for purposes of settlement. (Genish Decl., ¶ 13).

27 Ultimately, the Parties were able to reach an agreement to resolve the Action in its entirety.
28 The Parties believe the Settlement is fair, reasonable, and adequate. (*Id.*, ¶¶ 14, 15). The Parties

1 understand, acknowledge, and agree that the Settlement Agreement constitutes a compromise of
2 Plaintiff's PAGA claim, and that it is the desire and intention of the Parties to affect a final and
3 complete resolution of the Released Claims. (*Id.*, ¶ 15).

4 Defendant denies all of the claims in the Action, and does not waive, but rather expressly
5 reserves, all rights to challenge all such claims and allegations upon all legal, procedural, and factual
6 grounds should the Settlement Agreement not be approved by the Court. (*Id.*, ¶ 16). The Settlement
7 Agreement reflects a compromise reached to end litigation in the Action. (*Ibid*). Now, following
8 significant investigation and extensive settlement negotiations, Plaintiff seeks approval of the
9 proposed Settlement, which will resolve all representative claims alleged in the Operative Complaint.
10 (*Ibid*).

11 In accordance with California Labor Code sections 2699 *et. seq.*, PAGA Counsel provided
12 notice of the proposed Settlement to the LWDA by uploading this Motion and the Settlement
13 Agreement to the LWDA's online portal concurrently with the filing of this Motion on December 27,
14 2024. (*Id.*, ¶ 17).

15 **III. THE SETTLEMENT TERMS**

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

17 For purposes of settlement only, the Parties have agreed that "Aggrieved Employees" shall be
18 defined as "all current and former non-exempt employees of Defendant within the State of California
19 at any time during the PAGA Period." (Genish Decl., ¶ 18; Settlement Agreement, ¶ 3(a)(5)). The
20 "PAGA Period" is the period from October 12, 2022, through March 29, 2024. (Genish Decl., ¶ 18;
21 Settlement Agreement, ¶ 3(a)(5)). Based on its records, Defendant represented that there are 37
22 Aggrieved Employees who worked a total of 952 Pay Periods during the PAGA Period. (Genish
23 Decl., ¶ 18; Settlement Agreement, ¶ 3(a)(6)).

24 **B. Amount of Settlement**

25 The Parties have agreed to settle the PAGA claims at issue in the Operative Complaint for a
26 non-reversionary Gross Settlement Amount of One Hundred Thousand Dollars and Zero Cents
27 (\$100,000.00). (Genish Decl., ¶ 19; Settlement Agreement, ¶ 3(a)).
28

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

2 The Gross Settlement Amount is a common fund and therefore includes all requested costs,
3 fees, and other allocations. (Genish Decl., ¶ 19). The Gross Settlement Amount includes: (1)
4 Plaintiff's Counsel's fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount,
5 equaling Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00); (2) Plaintiff's Counsel's actual
6 litigation costs and expenses of Eighteen Thousand Seven Hundred Ninety-Five Dollars and Nineteen
7 Cents (\$18,795.19); (3) Settlement Administration Costs, not to exceed Four Thousand Dollars and
8 Zero Cents (\$4,000.00); and (4) Service Award in the amount of Five Thousand Dollars and Zero
9 Cents (\$5,000.00) to Plaintiff. (Genish Decl., ¶ 19; Settlement Agreement, ¶¶ 3(a)(1) – (3)).

10 After the above-estimated amounts are deducted from the Gross Settlement Amount, the
11 PAGA Penalties will amount to approximately Thirty-Seven Thousand Two Hundred and Four
12 Dollars and Eighty-One Cents (\$37,204.81), of which seventy-five percent (75%), or Twenty-Seven
13 Thousand Nine Hundred and Three Dollars and Sixty-One Cents (\$27,903.61), will be paid to the
14 LWDA ("LWDA Payment"), and twenty-five percent (25%), or Nine Thousand Three Hundred and
15 One Dollars and Twenty Cents (\$9,301.20), will be distributed and paid to Aggrieved Employees
16 on a *pro-rata* basis based on their number of pay periods worked for Defendant as a non-exempt
17 employee during the PAGA Period ("Pay Periods"). (Genish Decl., ¶ 20; Settlement Agreement ¶¶
18 3(a)(5), 5(b)).

19 Within seven (7) calendar days of the Court's entry of an order approving the PAGA
20 Settlement, Defendant will deliver Aggrieved Employee identifying information in Defendant's
21 possession, including each Aggrieved Employee's first and last name, last-known address, last known
22 telephone number, Social Security number, start and end dates of employment, and number of Pay
23 Periods during the PAGA Period, (collectively, "Aggrieved Employee List") to the Administrator in
24 the form of a Microsoft Excel spreadsheet, or a comparable format. (Genish Decl., ¶ 21; Settlement
25 Agreement, ¶ 5(c)(1)).

26 Within twenty-one (21) calendar days of the Court's entry of an order approving the PAGA
27 Settlement, Defendant will fund the Gross Settlement Amount by transmitting the funds to the
28 Administrator (Genish Decl., ¶ 22; Settlement Agreement, ¶ 5(a)).

1 Within seven (7) calendar days after the Settlement Administrator receives the Aggrieved
2 Employees List and the Gross Settlement Amount, the Administrator will mail checks for all
3 Individual PAGA Payments, the LWDA Payment, the Settlement Administration Costs, the Service
4 Award, and the Attorneys' Fees and Costs. Disbursement of the Attorneys' Fees and Costs shall not
5 precede disbursement of Individual PAGA Payments. (Genish Decl., ¶ 23; Settlement Agreement, ¶
6 5(c)(3)).

7 Prior to mailing the Individual PAGA Payment checks, the Administrator will update the
8 Aggrieved Employees' mailing addresses using the National Change of Address Database.
9 (Settlement Agreement, ¶ 5(c)(2)). Additionally, for all Individual PAGA Payment checks that are
10 returned as undeliverable without a USPS forwarding address, the Administrator will conduct an
11 investigation and search for current Aggrieved Employee mailing addresses using all reasonably
12 available sources, methods, and means including, but not limited to, the National Change of Address
13 database, skip traces, and direct contact by the Administrator with the Aggrieved Employees.
14 (Genish Decl., ¶ 24; Settlement Agreement, ¶ 5(c)(3)). The Administrator will re-mail the check to
15 the USPS forwarding address provided or to an address ascertained through the Aggrieved
16 Employee address search. (Genish Decl., ¶ 24; Settlement Agreement, ¶ 5(c)(3)).

17 Individual PAGA Payment checks that are issued to Aggrieved Employees will be valid and
18 negotiable for up to one hundred and eighty (180) calendar days after the checks are initially mailed
19 to the Aggrieved Employees, and thereafter, will be canceled. (Genish Decl., ¶ 25; Settlement
20 Agreement, ¶ 5(c)(4)). Any funds associated with such canceled checks will be distributed to the
21 State of California's Unclaimed Property Fund in the name of the Aggrieved Employee. (Genish
22 Decl., ¶ 25; Settlement Agreement, ¶ 5(c)(4)).

23 If the actual number of Pay Periods during the PAGA Period exceeds 952 by more than ten
24 percent (10%), then the Gross Settlement Amount will increase proportionally by the actual
25 percentage over the 10% threshold. (Genish Decl., ¶ 26; Settlement Agreement, ¶ 3(a)(6)).

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

27 The settlement of a PAGA claim requires court approval. (California Labor Code ("Lab.
28 Code") § 2699(l).) The Court must be mindful that "[s]ettlement is a compromise, which balances

1 the possible recovery against the risks inherent in litigating further.” (*In re TD Ameritrade Account*
2 *Holder Litig.*, 2011 U.S. Dist. LEXIS 103222 at *24 (N.D. Cal. Sep. 12, 2011).) “[T]he very essence
3 of a settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes,’” as “it is the very
4 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
5 consensual settlements.” (*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir.
6 1982).) As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for
7 trial on the merits,” or “judged against a hypothetical or speculative measure of what might have been
8 achieved.” (*Ibid.*).

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

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

1 penalties for the government that otherwise may not have been assessed and collected by
2 overburdened state enforcement agencies.” (*Ibid*).

3 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
4 claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the
5 ability to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS
6 32774 at *13.) Indeed, “[PAGA] does not create property rights or any other substantive rights” as
7 “[i]t is simply a procedural statute allowing an aggrieved employees to recover civil penalties – for
8 Labor Code violations – that otherwise would be sought by state labor law enforcement agencies.”
9 (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009).) This
10 renders the approval process of a PAGA settlement distinct from a class action settlement, as there is
11 no need for the Court to employ the “two-step approval process” required under California Rules of
12 Court Rule 3.769.

13 Finally, unlike class action settlements, the scope of release permitted in a PAGA settlement
14 is limited. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff
15 but also on government agencies and any aggrieved employee not a party to the proceeding...the non-
16 party employees, because they were not given notice of the action or afforded any opportunity to be
17 heard, would not be bound by the judgment as to remedies other than civil penalties.” (*Arias v. Sup.*
18 *Ct.*, 46 Cal.4th 969, 986-87 (2009).) Thus, the scope of a release in a PAGA settlement is confined
19 to the PAGA penalties alleged in the complaint and to the claims that were, or could have been,
20 alleged pursuant to PAGA based on the factual allegations in the complaint. In the case at hand, as
21 the only claims at issue are PAGA claims, those will be the only claims extinguished through the
22 Settlement.

23 **V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

24 **A. The Settlement is Presumed to Be Fair**

25 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
26 reached through arm’s-length bargaining.” (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
27 245 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009).) Here,
28 the Settlement is presumptively fair because: (1) it occurred after counsel for the Parties engaged in

1 significant investigation to evaluate the strength and potential value of the PAGA claim, and the risks
2 of litigating this claim through trial; and (2) it was negotiated at great length and effort by counsel
3 with significant experience in similar complex labor and employment matters. (Genish Decl., ¶ 27).

4 **B. The Settlement is Fair, Adequate, and Reasonable in Light of the Parties' Respective**
5 **Legal Positions and Recovery Risks**

6 In deciding whether to approve a proposed settlement, a trial court has broad powers to
7 determine if it is fair given the circumstances of the case. (*Mallick v. Sup. Ct.*, 89 Cal.App.3d 434,
8 438 (1979).) In exercising these powers, the overriding concern is to ensure that a proposed settlement
9 is “fair, adequate, and reasonable.” (*Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). A
10 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor
11 does the settlement have to obtain one hundred percent of the damages sought to be fair and
12 reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250.) In evaluating the reasonableness of a settlement,
13 a trial court must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely
14 duration of further litigation, the risk of maintaining class action status through trial, the amount
15 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
16 experience and views of counsel, the presence of a governmental participant, and the reaction of the
17 class members to the proposed settlement.”¹ (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116,
18 128 (2008)). Even though a Kullar analysis is not required for approval of a PAGA settlement, a brief
19 analysis is included to support approval of the Settlement.

20 These factors require balancing and are non-exhaustive. Trial courts should therefore tailor
21 the factors to each case and give due regard to “what is otherwise a private consensual agreement
22 between the parties.” (*Ibid*).

23 1. Strength of Plaintiff’s Case

24 In order to prevail at trial, Plaintiff would have to prove violations of the California Labor
25 Code underlying their PAGA claims, demonstrate that Aggrieved Employees suffered violations of
26 the Labor Code, and demonstrate that Defendant’s conduct gives rise to penalties. (*See Elliot v.*

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 *Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) [“Plaintiffs’ claim under
2 [PAGA] is wholly dependent upon her other claims. Because all of plaintiff’s other claims fail as a
3 matter of law, so does her PAGA claim.”].)

4 This case and settlement address important employee protections embodied in the California
5 Labor Code. (Genish Decl., ¶ 28). Plaintiff’s core allegations are that Defendant systematically
6 violated the California Labor Code by, *inter alia*, failing to properly pay wages for all hours worked,
7 failure to properly pay overtime and to pay overtime at the correct rate, failing to provide compliant
8 meal and rest periods, failing to timely pay wages during employment and upon termination, failing
9 to provide accurate wage statements, and failing to reimburse necessary business expenses. (*Ibid.*).

10 Defendant’s maximum theoretical exposure in the Action, totals approximately \$462,500.00,
11 (*Id.*, ¶ 49). While the PAGA does provide the potential for a heightened penalty for subsequent
12 violations, courts are often hesitant to award a heightened penalty where there is no prior citation by
13 the Labor Commissioner, as is the case here. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144
14 (9th Cir. 2021) (holding no heightened penalty where defendant was not notified by Labor
15 Commissioner or any court that it was subject to the California Labor Code). The Ninth Circuit’s
16 holding in *Bernstein* also supports a settlement valuation that does not apply heightened penalties for
17 subsequent violations. (*Ibid.*).

18 Defendant maintained several defenses to Plaintiff’s theories of liability, which, if
19 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
20 (Genish Decl., ¶ 29). Throughout this litigation, Defendant maintained, and continues to maintain,
21 that it had, and continues to have, compliant employment policies and practices throughout the time
22 period at issue. (*Ibid.*). Defendant denies that it ever violated any provision of the California Labor
23 Code, including, but not limited to, those sections for which Plaintiff seeks penalties under PAGA.
24 (*Ibid.*). Defendant further denied, and continues to deny, that the lawsuit is appropriate for
25 representative treatment for any purpose other than settlement. (*Ibid.*). Defendant also challenged
26 Plaintiff’s standing as aggrieved employees and denied that any of Defendant’s other employees
27 whom Plaintiff seeks to represent are aggrieved. (*Ibid.*).

1 Defendant also argued that an important feature of PAGA is that the Court retains discretion
2 to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise
3 would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (*Ibid*). (Lab. Code
4 § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136
5 (2012) [holding that a court may reduce the amount of PAGA penalties awarded to an employee
6 based upon discretionary factors].)

7 Even if violations of the California Labor Code occurred, which Defendant denies, Defendant
8 contended that said violations would only be considered “initial violations” and thus heightened
9 “subsequent violation” penalties were not warranted. (Genish Decl., ¶ 30). (Lab. Code § 2699(f)(2);
10 *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) [“Until the employer
11 has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed
12 to be aware that its continuing underpayment of employees is a 'violation' subject to penalties.”].)

13 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess
14 cumulative penalties for the maximum number of possible, separate California Labor Code
15 violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where
16 certain conduct may be regulated by multiple provisions of the California Labor Code that are
17 interrelated and work in tandem. (Genish Decl., ¶ 31). As such, Defendant contended that cumulative
18 penalties and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory. (*Ibid*).

19 Some courts have held that the claims raised by a plaintiff may raise individualized issues
20 and/or be unmanageable and thus not suitable for adjudication as to a group of employees. (*See, e.g.*,
21 *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 25, 29, 31, 34-35 (2014) [even where employer
22 consistently imposed a uniform policy, plaintiff “must still demonstrate that the illegal effects of this
23 conduct can be proven efficiently and manageably” and in litigating representative actions the
24 procedures utilized by the court “may not be used to abridge a party’s substantive rights”]; *Ali v.*
25 *U.S.A. Cab Ltd.*, 176 Cal.App.4th 1333, 1341 (2009) [affirming denial of certification because
26 employees’ declarations attesting to having taken meal and rest breaks demonstrated that
27 individualized inquiries were required to show harm]; *Brinker Restaurant Corp. v. Superior Court*,
28 53 Cal.4th 1004, 1018 (2012) [although employers must authorize employees to take duty-free meal

1 and rest breaks, they are not obligated to affirmatively ensure that no work related tasks are performed
2 during such periods]). Although California case law clearly states that PAGA actions need not satisfy
3 class action requirements, Plaintiff’s Counsel remained mindful of the fact that some courts have
4 nevertheless held that PAGA claims must still be able to prove the alleged violations in an efficient
5 manner.

6 While Plaintiff maintains that her PAGA claim has merit, in reaching the Settlement, Plaintiff
7 and her counsel took into account the strengths and weaknesses of each side’s position, Defendant’s
8 arguments regarding the enforceability of its arbitration agreement, and the uncertainty of how the
9 case might have concluded, as litigation continued, at trial, and/or upon appeal. (Genish Decl., ¶ 32).
10 Based on these disputes, which had the potential to completely eliminate Plaintiff’s recovery, the
11 range of realistic “litigation outcomes” on Plaintiff’s PAGA claim was defined by a “maximum
12 possible liability” amount of approximately \$462,500.00 (*Id.*, ¶ 49), and a “risk-adjusted value”
13 amount of approximately \$127,187.50. In light thereof, the Gross Settlement amount of \$100,000 is
14 a significant settlement. (*Id.*, ¶ 49).

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

16 Approval of the Settlement Agreement is also appropriate in light of the risk, expense, and
17 complexity of further litigation. As discussed above, the Settlement Agreement takes into
18 consideration the specific factual and legal hurdles faced by Plaintiff in establishing Defendant’s
19 penalty-liability in this case, which again, may have resulted in a net-zero recovery. Any recovery on
20 these claims is not certain. And even when liability is found, PAGA claims are discretionary, such
21 that the Court could decline to award their full value. Some of Plaintiff’s claims are also derivative,
22 and as such, Plaintiff must prevail on the underlying California Labor Code claims in order to prevail
23 on the derivative claims. These risks – when balanced with the fact that the Settlement achieved a
24 very significant recovery (as demonstrated below), and that further litigation posed a risk of
25 diminishing such recovery by increasing litigation expenses – weigh strongly in favor of settlement
26 approval.

27 3. The Benefits Conferred by the Settlement Balance in Favor of Approval

28 The Settlement Agreement provides a *significant* monetary benefit that falls well within “the

1 range of an acceptable settlement” under the circumstances, which is the standard on which the instant
2 Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable
3 even where it only provides a fraction of what could have been obtained at trial:

4 The proposed settlement is not to be judged against a hypothetical or speculative measure of
5 what might have been achieved by the negotiators." *Officers for Justice v. Civil Serv. Comm'n*,
6 688 F.2d at 625 (emphasis in original). Thus, “the very essence of a settlement is compromise,
7 ‘a yielding of absolutes and an abandoning of highest hopes.’” *Id.* at 624 (citations omitted).
8 As the Second Circuit has pointed out: “The fact that a proposed settlement may only amount
9 to a fraction of the potential recovery does not, in and of itself, mean that the proposed
10 settlement is grossly inadequate and should be disapproved.” *City of Detroit v. Grinnell Corp.*,
11 495 F.2d 448, 455 & n.2 (2nd Cir. 1974).

12 See *Linney, supra*, 151 F.3d at 1242

13 The PAGA Penalties are currently estimated to be \$37,204.81. After all deductions are made
14 from the Gross Settlement Amount for the Plaintiff’s Counsel’s Fees, Plaintiff’s Counsel’s Costs,
15 Service Award, and Settlement Administration Costs, \$27,903.61 (i.e. 75% of the PAGA Penalties)
16 will go to the LWDA, and \$9,301.20 (i.e. 25% of the PAGA Penalties) will go to the Aggrieved
17 Employees. Note that the Action was filed on December 6, 2022, and, at that time, the California
18 Labor Code § 2699(i) (2004) specified that “civil penalties recovered by aggrieved employees shall
19 be distributed as follows: 75 percent to the Labor and Workforce Development Agency . . . and 25
20 percent to the aggrieved employees.” (Genish Decl., ¶ 50). There is no reason to doubt the fairness
21 of the proposed plan of allocation of the PAGA Penalties as it fully complies with California Labor
22 Code section 2699(i), as it was applied at the time of the filing of the Action. (*Ibid.*).

23 The Settlement is a compromise of highly disputed claims. (*Id.*, ¶ 51). Plaintiff and her counsel
24 recognize the expense and length of continued proceedings necessary to litigate the matter through
25 trial and any possible appeals. (*Ibid.*). Plaintiff and her counsel have also taken into account the
26 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
27 such litigation. (*Ibid.*). Plaintiff and her counsel are also aware of the burdens of proof necessary to
28 establish liability, both generally and in response to Defendant’s defenses thereto, and the difficulties
in establishing Defendant’s liability for, and the right to recover, penalties on behalf of Plaintiff, the
State of California, and other Aggrieved Employees. (*Ibid.*). Plaintiff and her counsel have also taken
into account Defendant’s agreement to enter into a settlement that confers significant relief upon the

1 Aggrieved Employees and the State of California. (Genish Decl., ¶ 51). Considering all of the facts
2 in this case, Plaintiff and her counsel have determined that the Settlement represents a fair, adequate,
3 and reasonable resolution of the PAGA claim, and that it is in the best interests of the Aggrieved
4 Employees and the State of California. (*Ibid*).

5 The result achieved in this case is well within the range of what is considered an acceptable
6 settlement under the circumstances, especially when compared to the settlement of PAGA claims in
7 other cases. (*Id.*, ¶ 52). (*See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court,
8 Case No. JCCP4833 (May 2017) [approving \$15,000 out of \$4 million toward settlement of PAGA
9 claims]; *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal. Oct. 29,
10 2012) [approving \$10,000 out of \$3.7 million toward settlement of PAGA claims]; *Schiller v. David's*
11 *Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving \$7,500 out
12 of \$518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC*, 2011 U.S.
13 Dist. LEXIS 15821, at *4 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 out of \$6.9 million toward
14 settlement of PAGA claims]; *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, at *14
15 (E.D. Cal. Nov. 27, 2021) [approving \$10,000 out of \$2.5 million toward settlement of PAGA
16 claims]). Here, the value obtained for settlement of the PAGA claim is significant, and it will be
17 distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

18 4. The Scope of the Release is Narrowly Tailored

19 As discussed above, the California Supreme Court has concluded that in the context of PAGA
20 “the nonparty employees, because they were not given notice of the action or afforded any
21 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
22 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in exchange
23 for the foregoing consideration is limited to a full release of the PAGA Claims that could have been
24 sought by the State of California Labor Commissioner for the violations identified in Plaintiff’s
25 PAGA Notice under California Labor Code §§ 2698 *et seq.* *See Settlement Agreement*, at ¶ 6(a). As
26 such, this factor balances strongly in favor of approval of the Settlement.

27 5. Experience and Views of Counsel Favor Approval

28 Plaintiff’s Counsel is experienced in complex representative and class action wage-and-hour

1 litigation. (Genish Decl., ¶¶ 2-6, 55 – 59). In the view of Plaintiff’s Counsel, the benefits conferred
2 by the Settlement are eminently fair and reasonable, and in the best interests of the State of California
3 and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and
4 the substantial monetary benefits provided for by the Settlement. (*Id.*, ¶ 53). Furthermore, courts have
5 acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees are
6 largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code
7 violations as the evidence will sustain[.]” (*Williams v. Superior Court*, 3 Cal. 5th 531, 548 (2017)
8 [citing Labor Code § 2699(g)(1)(i)].)

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

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

15 Here, the extent of informal discovery conducted was sufficient to enable Plaintiff’s Counsel
16 to evaluate the strength and value of the PAGA claim for purposes of settlement. (Genish Decl., ¶¶
17 12 & 54). Prior to settling, Defendant provided Plaintiff with data, information, and documents
18 relating to the underlying alleged violations, including but not limited to, Plaintiff’s personnel file, a
19 sampling of Aggrieved Employees’ timecards and earnings statements, Defendant’s Giti USA
20 Handbook, Defendant’s arbitration agreement, and Aggrieved Employees’ data points. (*Id.*, ¶ 12).
21 As discussed above, Plaintiff’s Counsel’s investigation was sufficient to, among other things, tabulate
22 with precision the total number of alleged California Labor Code violations at issue during the
23 relevant statutory period and identify the total number of individuals falling within the definition of
24 “Aggrieved Employees” for the relevant statutory period. (*Id.*, ¶¶ 12, 13).

25 Based on Plaintiff’s Counsel’s experience litigating wage and hour claims, such investigation
26 was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of
27 this claim for purposes of settlement. (*Id.*, ¶¶ 12, 13, 27, 32, 35 – 49).

1 **VI. THE REQUESTED PLAINTIFF’S COUNSEL FEES PAYMENT IS FAIR AND**
2 **REASONABLE**

3 As the prevailing party in settlement, Plaintiff is entitled to recover attorneys’ fees and costs
4 for bringing her PAGA claim. (Lab. Code § 2699(g) [“Any employee who prevails in any action shall
5 be entitled to an award of reasonable attorney’s fees and costs.”].) Plaintiff’s Counsel is also entitled
6 to attorneys’ fees pursuant to Code of Civil Procedure section 1021.5(a), as the instant action has
7 resulted in the enforcement of important rights benefitting the public and secures monetary recovery
8 for the State of California as well as the Aggrieved Employees. A fee award is justified where the
9 legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles*,
10 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33
11 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) [“when a number of persons
12 are entitled in common to a specific fund, and an action brought by a plaintiff ... for the benefit of all
13 results in the creation or preservation of that fund, such plaintiff ... may be awarded attorney’s fees
14 out of the fund.”].)

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

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

22 (*Id.*, at 503 [internal citation omitted].) Fee awards of roughly one-third of the settlement fund are
23 routinely awarded in California state and federal courts in class actions. (*Chavez v. Netflix, Inc.*, 162
24 Cal.App.4th 43, 66, fn. 11 (2008); *see also, e.g., In re Pacific Enterprises Securities Litig.*, 47 F.3d
25 373, 379 (9th Cir. 1995) [affirming 33% fee award]).

26 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
27 method, the California Supreme Court has taken the position that trial courts also “retain the
28 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a

1 requested percentage fee.” (*Laffitte*, 1 Cal.5th at 506; *see also Wershba*, 91 Cal.App. 4th at 253.)
2 Courts award fees to serve as an economic incentive for lawyers to undertake litigation, and thereby
3 enhance and facilitate access to the judicial system for adjudication of meritorious claims, and to
4 deter wrongdoing. This is especially true in situations where multiple similar alleged wrongs would
5 not be economically feasible to pursue individually, such as here. Trial courts have “wide latitude”
6 in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a
7 manifest abuse of discretion.” (*Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000); *see also*
8 *Laffitte*, 1 Cal.5th at 506 [holding that “trial court did not abuse its discretion in using [the percentage
9 of fund method], in part to approve the fee request”].) Indeed, it is long settled that the “experienced
10 trial judge is the best judge of the value of professional services rendered in his court.” (*Ketchum v.*
11 *Moses*, 24 Cal.4th 1122, 1132 (2001).)

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

1 and client in comparable litigation. (*Id.* at 48). “The ultimate goal ... is the award of a ‘reasonable’
2 fee to compensate counsel for their efforts, irrespective of the method of calculation.” (*Consumer*
3 *Privacy Cases*, 175 Cal.App.4th 545, 557-58 (2009) [quoting *Apple Computer, Inc. v. Superior Court*,
4 *supra*, 126 Cal.App.4th at 1270].)

5 Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and circumstances
6 surrounding the case is within the range of reasonableness. Historically, courts have awarded fees as
7 high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of
8 the case. (*See In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) [awarding attorneys’
9 fees in the amount of 45% of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v.*
10 *Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195 (S.D.N.Y. 1979) [awarding approximately 53%
11 of the settlement as attorneys’ fees].) California courts routinely approve attorneys’ fees awards
12 “average[ing] around one-third of the recovery.” (*Chavez*, 162 Cal.App.4th at 66 [trial court found
13 the range of contingency fees in marketplace to be 20 to 40 percent and determined such a percentage
14 fee was appropriate]; *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles
15 County Superior Court, Case No. BC596892 (June 2016) [approving a fee award of one-third of the
16 settlement amount of \$950,000 in a PAGA action, because it was “reasonable and consistent with fee
17 awards in class action cases”].)

18 Here, Plaintiff’s Counsel’s fee request of thirty-five percent (35%) of the Gross Settlement
19 Amount (i.e., \$35,000.00) is fair and reasonable based on the percentage of the recovery method.
20 Plaintiff’s Counsel has vigorously litigated this case since it was commenced, with the very real
21 possibility of an unsuccessful outcome and no fee recovery of any kind. (Genish Decl., ¶ 55).
22 Counsel for Plaintiff undertook significant investigation and invested a significant amount of time
23 analyzing relevant documents and data to evaluate the nature and extent of the alleged underlying
24 Labor Code violations and calculation of the potential monetary recovery as they relate to Plaintiff’s
25 claim under PAGA. (*Id.*, ¶¶ 12, 13, 27, 32, 35 – 49). The attorneys at Blackstone Law, APC possess
26 combined extensive experience litigating wage and hour and other complex litigation matters, and
27 the attorneys who worked on this matter have been approved as class counsel and/or have had their
28 billable rates approved in the settlement of other class and PAGA actions, numerous times. (Genish

1 Decl., ¶¶ 56 & 57).

2 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation and
3 will not receive any compensation until recovery is obtained. (*Id.*, ¶ 56). Plaintiff's Counsel is
4 experienced in complex wage-and-hour litigation and used that experience to obtain a favorable result
5 for Plaintiffs, the Aggrieved Employees, and the State of California. (*Id.*, ¶¶ 2-6; 57). Considering
6 the amount of fees requested, work performed, risks incurred, and experience of Plaintiff's Counsel
7 in handling similar matters, Plaintiff maintains that the requested attorneys' fees of thirty-five percent
8 (35%) of the Gross Settlement Amount (i.e., \$35,000.00) are reasonable and should be awarded. (*Id.*,
9 ¶¶ 56, 57).

10 **VII. THE REQUESTED PLAINTIFF'S COUNSEL LITIGATION COSTS ARE**
11 **FAIR AND REASONABLE**

12 The Settlement provides for reimbursement of actual litigation costs and expenses up to the
13 amount of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). (Genish Decl., ¶ 60;
14 Settlement Agreement, ¶ 3(a)(1)). Plaintiff's Counsel only seeks reimbursement of a total of
15 \$18,795.19 in litigation costs and expenses. (Genish Decl., ¶ 60, Exhibit 4 thereto). Accordingly,
16 Plaintiff's Counsel respectfully requests that the Court reimburse them for actual litigation costs and
17 expenses in the amount of \$18,795.19.

18 **VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND**
19 **REASONABLE**

20 As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval
21 by the Court, Apex Class Action Administration to handle the administration of the Settlement.
22 (Genish Decl., ¶ 61; Settlement Agreement, ¶ 3(a)(3)). The fees and expenses of the Administrator
23 are estimated not to exceed \$4,000.00. (Genish Decl., ¶ 60; Settlement Agreement, ¶ 3(a)(3)). These
24 costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter
25 and Individual PAGA Payment checks to the Aggrieved Employees, re-mailing the returned
26 Individual PAGA Payment checks to any new addresses obtained, and handling inquiries from
27 Aggrieved Employees regarding the Settlement, among other things. (Genish Decl., ¶ 61).
28 Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount

1 of up to \$4,000.00 to Apex, a necessary third-party for handling the settlement process. (Genish
2 Decl., ¶ 61).

3 **IX. THE REQUESTED SERVICE AWARD IS FAIR AND REASONABLE**

4 The purpose of an enhancement award is to incentivize aggrieved employees to step into the
5 shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit
6 and serving in a representative capacity. *See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715,
7 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the action);
8 *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) (“an incentive award is
9 appropriate ‘if it is necessary to induce an individual to participate in the suit’”). Plaintiff initiated
10 this litigation on behalf of the State of California and her former co-workers who will now be entitled
11 to receive payment from the Settlement. By initiating and pursuing the Action, Plaintiff stepped into
12 the shoes of the State of California and undertook the responsibilities of serving in a representative
13 capacity. (Genish Decl., ¶ 62; Cortes Decl., ¶¶ 4-11). Plaintiff was available whenever Plaintiff’s
14 counsel needed her and actively tried to obtain information that would benefit the prosecution of the
15 Action. (Genish Decl., ¶ 62; Cortes Decl., ¶¶ 4-11). The Service Award is eminently reasonable given
16 the time and effort Plaintiff spent on the Action, and the benefit to the other Aggrieved Employees
17 and the State of California as a result of Plaintiff’s actions. (Genish Decl., ¶ 62). Accordingly, Plaintiff
18 respectfully submits that it is appropriate and just for Plaintiff to receive a Service Award in the
19 amount of \$5,000.00 in addition to the Individual PAGA Payments she will receive as an Aggrieved
20 Employee, for her services on behalf of the State of California and the other Aggrieved Employees.
21 (*Ibid*).

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: December 27, 2024

BLACKSTONE LAW, APC


Jonathan M. Genish
Attorneys for Plaintiff, Vanessa Cortes