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11 Aggrieved Employees

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION**

14 NAOMI HUDSON, on behalf of herself
15 and all other aggrieved employees of
16 Defendants in the State of California,

17 Plaintiff,

18 v.

19 WILHELM LLC, and DOES 1
20 THROUGH 50, inclusive,

21 Defendants.

Case No.: 24-cv-01602-YGR

*[Assigned to District Judge Yvonne
Gonzalez Rogers]*

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF UNOPPOSED MOTION
FOR APPROVAL OF PAGA ACTION
SETTLEMENT**

Date: May 20, 2025

Time: 2:00 p.m.

Crtrm: 1

Judge: Hon. Yvonne Gonzalez Rogers

Complaint Filed: December 15, 2023

Trial Date: None set

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I. INTRODUCTION

Plaintiff Naomi Hudson respectfully submits the following Memorandum of Points and Authorities in support of her Motion for Approval of the Private Attorneys General Act (“PAGA”) Settlement Agreement and Release (“Settlement”) between Plaintiff, in her representative capacity on behalf of the State of California and the Aggrieved Employees, and Defendant Wilhelm, LLC (“Defendant”) (collectively “the Parties”). This Court should approve the Parties’ PAGA Settlement because it is fundamentally fair and reasonable. The Parties have agreed to resolve the representative PAGA claims Plaintiff brought on behalf of the State of California and approximately 1,567 other PAGA Aggrieved Employees for \$1,225,000.00.

The Settlement provides for immediate payment of \$1,225,000.00—a significant amount equal to approximately 9% of Defendant’s maximum potential exposure if Plaintiff were to succeed on all her PAGA claims at trial. Of the \$1,225,000.00 gross settlement amount, \$306,250.00 (or 25%) will be distributed pro rata among the Aggrieved Employees, who would receive approximately \$6.84 per pay period, as civil penalties. The payment of \$306,250.00 to the Aggrieved Employees as civil penalties represents a relief that is genuine, meaningful, and consistent with California’s goal of benefitting the public through the enforcement of California’s labor laws.

The PAGA Settlement further provides for \$918,750.00 (less the costs of administering the Settlement, and the payment of attorney’s fees and costs) to be paid directly to the Labor and Workforce Development Agency (“LWDA”). The \$918,750.00 amount allocated to the LWDA is significant and will serve to augment its enforcement capabilities in the state. Therefore, the PAGA Settlement here merits approval because it is reasonable and it fulfills the purposes of PAGA, *i.e.*, to deter violations of the Labor Code and secure obedience of California’s labor laws.

II. PROCEDURAL AND FACTUAL BACKGROUND

This PAGA Settlement provides for the payment of PAGA civil penalties to the California LWDA and approximately 1,567 current and former Aggrieved Employees who

1 worked for Defendant in California at any time between June 19, 2019, to the Court’s
2 approval of this Settlement. (Declaration of Vilmarie Cordero in Support of Plaintiff’s
3 Motion to Approve PAGA Settlement (“Cordero Decl.”), ¶¶ 13, 41.) Defendant is a
4 company that provides tree cutting and traffic services. *Id.* ¶¶ 15-16. Plaintiff was
5 employed by Defendant from January 10, 2022 to June 23, 2023 as a non-exempt “flagger.”
6 *Id.* ¶ 18. Plaintiff was not covered by any Collective Bargaining Agreement (“CBA”)
7 during her employment with Defendant. *Id.* ¶ 19. On October 10, 2023, Plaintiff provided
8 written notice to the LWDA and to Defendant asserting claims for civil penalties pursuant
9 to PAGA stemming from alleged violations of the California Labor Code. *Id.* ¶¶ 22-23; Ex.
10 5 to Cordero Decl.

11 On December 15, 2023, Plaintiff filed a Complaint asserting a single representative
12 cause of action under PAGA for alleged violations of California Labor Code sections 201,
13 202, 203, 204, 210, 213, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.6, 226.7, 510, 512,
14 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802. *Id.* ¶ 24. The
15 Complaint alleges that Defendant engaged in wage and hour violations under the above-
16 mentioned California Labor Code sections and the applicable IWC Wage Order, including
17 the failure to provide recovery periods and/or timely pay for recovery periods premiums;
18 failure to provide compliant meal periods and/or timely pay premiums; failure to provide
19 rest periods and/or timely pay premiums; failure to timely pay all wages, including but not
20 limited to minimum, regular, and overtime wages (including based on allegations of pre-
21 shift/post-shift/meal period off-the-clock work claims; rounding; auto deducted time; and
22 regular rate of pay issues); failure to provide accurate itemized wage statements; failure to
23 reimburse for business expenses; and failure to pay all wages due during and upon
24 separation of employment. Dkt. 1; see also Cordero Decl. ¶ 25.

25 On March 14, 2024, Defendant removed the case to the United States District Court
26 for the Northern District of California, San Francisco Division; Case No. 24-cv-01602-
27 YGR. Dkt. 1. On March 19, 2024, Defendant filed a Notice of Pendency of Other Action
28 and an Administrative Motion to consider whether Plaintiff’s case was related to the *Lainez*

1 v. *Wilhelm, LLC*; Case No. 23-cv-04421-KAW (“*Lainez Action*”). *Id.* at ¶ 27.

2 The *Lainez* action was filed on March 24, 2021 as a class and PAGA Action and
3 removed to federal court on August 25, 2023. *Id.* ¶ 28. On April 12, 2024, Plaintiff Hudson
4 filed her Motion to Remand Dkt. 14, which this Court vacated, without prejudice, pending
5 the Parties anticipated mediation. Dkt. 18. Thereafter, this Court, in the *Lainez Action*,
6 issued an Order on September 25, 2024, finding, among other things, that:

7 “**LMRA preemption**...PAGA claims are derivative, so original
8 jurisdiction is determined by whether the LMRA preempts the predicate
9 claims. *Chatman v. WeDriveU, Inc.*, No. 3:22-CV-04849-WHO, 2022 WL
10 15654244, at *12 (N.D. Cal. Oct. 28, 2022) (citing *Radcliff v. San Diego*
11 *Gas & Elec. Co.*, 519 F. Supp. 3d 743, 748 (S.D. Cal. 2021)...Since it is
12 undisputed that Plaintiff is covered by the CBA, any right to overtime or
13 meal period wages exist solely because of the CBA, the portion of the
14 PAGA claim related to these claims are, therefore, preempted under § 301.
15 *Chatman*, 2022 WL 15654244, at *9 (quoting *Curtis*, 913 F.3d at 1154).”

16 *Lainez Action*, Case 4:23-cv-04421-KAW; at Dkt. 59; see also Cordero Decl. ¶ 33;
17 Ex. 6 to Cordero Decl. Plaintiff Lainez’s individual PAGA claims were compelled to
18 arbitration, and the *Lainez* PAGA Action was stayed pending arbitration. *Id.* On October
19 23, 2024, and after the court’s ruling on LMRA preemption in the *Lainez Action*, the Parties
20 participated in a full-day mediation with Judge Wynne S. Carvill, a mediator with extensive
21 experience in California wage and hour litigation. *Id.* ¶ 34. The Parties discussed the many
22 difficult legal and factual issues of this case with the assistance of the mediator. The
23 mediator provided a neutral analysis of the issues and risks to both sides, and both sides
24 were required to make reasonable compromises considering the facts, issues, and risks
25 presented. *Id.*

26 The Parties resolved the entirety of the PAGA civil penalties claims alleged against
27 Defendant at the mediation. *Id.* ¶¶ 35-36. The Parties also agreed to separately resolve
28 Plaintiff’s individual claims through a separate individual settlement agreement in
exchange of a full release of Plaintiff’s underlying unpaid wages and statutory penalties
claims. *Id.* ¶ 36. The Parties executed the Settlement on February 27, 2025. *Id.* ¶ 37.

1 Plaintiff submitted a copy of the Settlement Agreement to the LWDA on April 14, 2025,
2 along with a copy of this Motion. *Id.* ¶ 5; Ex. 3 to Cordero Decl.

3 **III. DISCOVERY AND INVESTIGATION OF THE PAGA CLAIMS**

4 The Parties conducted extensive informal discovery of the PAGA civil penalties
5 claims alleged in the *Lainez* and *Hudson* actions¹. Specifically, Defendant provided
6 Plaintiff Hudson with all relevant handbooks, written policies, applicable CBAs,
7 timekeeping and payroll records, and contact information for approximately 25% of the
8 non-exempt PAGA Aggrieved Employees. Cordero Decl., ¶¶ 39-54. Defendant also
9 provided extensive information regarding their payroll records, including pay codes,
10 procedures for the calculation of overtime and other relevant information necessary to
11 address the underlying wage and hour claims. Plaintiff's counsel conducted several in-
12 depth interviews of the non-exempt employees, determined violation rates, and prepared a
13 detailed analysis of the maximum possible liability exposure for Defendant if Plaintiff
14 succeeded at trial on the PAGA claims. *Id.* The exchange of information and documents
15 was comprehensive and enabled the Parties to sufficiently assess the strengths and
16 weaknesses of their respective positions during arm's length negotiations at mediation.
17 Plaintiff's counsel had sufficient information to determine the number of pay periods to
18 calculate a close estimation of potential civil penalties exposure to Defendant. *Id.*

19 **IV. SUMMARY OF THE PAGA SETTLEMENT TERMS**

20 **A. The Aggrieved Employees**

21 The PAGA Aggrieved Employees covered by the PAGA Settlement are the current
22 and former non-exempt employees of Wilhelm that worked in California during the PAGA
23 Period—i.e. the period starting June 19, 2019 through the date of approval of the PAGA
24 Settlement, subject to the limitations of the Escalator Clause. Cordero Decl. ¶ 92; Ex. 1 to
25 ///

26 ¹As set forth in the concurrently filed Declaration of Vincent R. Fisher (Counsel for Defendant Wilhelm), Wilhelm had made
27 multiple attempts to have Plaintiff Lainez participate in a mediation, but Counsel for Lainez did not engage. Counsel for Lainez
28 indicated a preference to await the results of various motions, including a motion for judgment on the pleadings, before
engaging in mediation. Counsel for Lainez also did not engage with Wilhelm's counsel on a potential mediation following the
result of the various motions in the *Lainez* Action. Similarly, Plaintiff Hudson's Counsel did not receive any communications
from Plaintiff Lainez's counsel about participating in a mediation.

1 Cordero Decl., SA ¶¶ 1.4, 1.20, 3.1.1.

2 **B. The Scope of the Release**

3 The Settlement provides Defendant will pay the Gross Settlement Amount of
4 \$1,225,000.00 in exchange for the following release:

5 “Plaintiff, the State of California, and All Aggrieved Employees will
6 release the Released Parties from any and all civil penalties claim that
7 were alleged, or that could have reasonably alleged, based on the facts
8 alleged in the Complaint and/or the PAGA Notices, including but not
9 limited to, any claims for civil penalties arising from Defendant’s
10 alleged violations of the California Labor Code for, inter alia, failure
11 to recovery periods and/or timely pay for recovery periods premiums;
12 failure to provide compliant meal periods and/or timely pay premiums;
13 failure to provide rest periods and/or timely pay premiums; failure to
14 timely pay all wages, including but not limited to minimum, regular,
15 and overtime wages (including based on allegations of pre-shift/post-
16 shift/meal period off-the-clock work claims; rounding; auto deducted
17 time; and regular rate of pay issues); failure to provide separate rest
18 period compensation for nonproductive work; failure to provide
19 accurate itemized wage statements; failure to reimburse for business
20 expenses; and failure to pay all wages due during and upon separation
21 of employment, and including but not limited to PAGA claims
22 predicated on or that could have been predicated on alleged violations
23 of Cal. Lab. Code §§ 201, 202, 203, 204, 210, 213, 218.5, 218.6, 223,
24 225.5, 226, 226.3, 226.6, 226.7, 510, 512, 558, 558.1, 1174, 1174.5,
25 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and the provisions
26 within the governing Wage Order.”

27 Ex. 1 to Cordero Decl., SA ¶ 5.1; Cordero Decl. ¶ 93.

28 **C. Settlement Administrator**

29 The Parties have chosen Apex Class Action, LLC as the Settlement Administrator
30 following a competitive bidding process. Cordero Decl. ¶ 95. The Settlement
31 Administration costs are not to exceed \$14,890.00. *Id.* ¶ 97; Ex. 1 to Cordero Decl.
32 The Settlement Administrator’s tasks include updating the PAGA Aggrieved
33 Employees’ mailing addresses, determining the individual PAGA payment amount for
34 each Aggrieved Employee, distributing the payments to the Aggrieved Employees
35 and the LWDA,

performing tax related accounting and administrative services, and distributing funds from undeliverable or uncashed settlement checks to the California State Controller's Office in the name of the PAGA Aggrieved Employee. Cordero Decl. ¶ 96; SA at ¶¶ 4.1-4.10.

D. Estimated Individual PAGA Payments

The Settlement Administrator will calculate the LWDA and Individual PAGA payments as follows. The Gross Settlement Amount ("GSA") will be divided 75% to the LWDA and 25% to the Aggrieved Employees. Cordero Decl. ¶ 98; SA ¶¶ 4.1-4.10.

The LWDA is estimated to receive approximately \$485,966.92. Cordero Decl. ¶ 97. This amount represents 75% of the GSA (i.e. \$918,750.00), less the costs of administering the Settlement, and attorney's fees and costs. Specifically, the Administrator will deduct the following payments from the LWDA PAGA Payment:

1. PAGA Counsel Attorney's Fees: The Settlement Administrator will pay PAGA Counsel's Attorney's Fees Payment of 1/3 of the GSA or \$408,333.33.
2. PAGA Counsel Litigation Expenses Payment: PAGA Counsel requests reimbursement of the actually incurred litigation costs totaling \$9,599.75.
3. Settlement Administrator's Costs: The Settlement Administrator's Cost will not exceed \$14,890.00.

Cordero Decl. ¶ 97. The Settlement Administrator will calculate the Individual PAGA Settlement payments by dividing the amount of the Aggrieved Employees' 25% share (i.e., \$306,250.00) by the total number of Qualifying Pay Periods worked by all Aggrieved Employees during the PAGA Period. Cordero Decl. ¶ 98. The Parties in good faith calculated the Qualifying PAGA Pay Periods at 44,806 from June 19, 2019, to the present. *Id.* ¶¶ 82; 99. The Settlement provides for 25% of the GSA, or \$306,250.00, will be distributed a pro-rata among the Aggrieved Employees. *Id.* ¶ 98. Therefore, Plaintiff's counsel estimates the Aggrieved Employees are anticipated to receive approximately \$6.84 per pay period if the Settlement receives approval. *Id.* ¶¶ 82; 98-99.

The Settlement further provides that if the number of Qualifying Pay Periods worked by the Aggrieved Employees during the PAGA Period increases by more than 15%, (i.e.,

1 51,527), Wilhelm, at its sole discretion, will either: (a) pay the pro rata percentage increase
2 in excess of 15% of the Gross Settlement Amount to include the additional pay periods
3 (e.g., a 16% increase in pay periods would result in a 1% increase in the GSA); or (b)
4 reduce the PAGA Period to the date that 51,527 pay periods were met, but not exceeded.
5 *Id.* The Settlement Administrator will mail the Individual PAGA Payments within 14 days
6 after obtaining approval from the Parties. The Settlement Administrator will mail the
7 Individual PAGA Payments via first-class US Mail along with the PAGA Explanatory
8 Letter after the Administrator had conducted an NCOA search and an Accurant (or
9 substantially similar) in depth skip trace to obtain the best possible address for the
10 Aggrieved Employees. *Id.* ¶ 96.

11 The Parties agree that the Settlement provides for a fair, adequate, and reasonable
12 resolution of the PAGA Claims, which was arrived at after extensive, arms-length
13 negotiations, taking into account all relevant factors. Ex. 1, SA §§ 2.7-2.10. As such,
14 Plaintiff respectfully requests this Court grant approval of the Settlement and enter
15 judgment pursuant to the terms of the Parties' Settlement Agreement.

16 **V. LEGAL STANDARD**

17 A PAGA action is a type of *qui tam action* filed on behalf of the state to assist it with
18 labor law enforcement. *Iskanian v. CLS Transp. Los Angeles LLC*, 59 Cal. 4th 348, 380-
19 382 (2014). PAGA provides an enforcement mechanism for California's labor laws by
20 enlisting individual plaintiffs as private attorney generals to recover civil penalties for the
21 state, with a share also going to the individual plaintiff(s) and other employees. *Id.*
22 Aggrieved employees who comply with PAGA's notice, waiting period, and filing
23 requirements—like Plaintiff Hudson here—are deputized to represent “the same legal right
24 and interest” as the LWDA. *Arias v. Superior Court*, 46 Cal. 4th 969, 985-986 (2009). A
25 PAGA action is designed to penalize employers who violate California's labor laws.” *Id.*
26 at 986. The Legislature's goal was to impose civil penalties for Labor Code violations
27 “significant enough to deter violations.” *Iskanian*, 59 Cal. 4th at 379; *see also Kim v. Reins*
28 *International California, Inc.*, 9 Cal. 5th 73, 86 (2020) [“civil penalties recovered on the

1 state's behalf are intended to 'remediate present violations and deter future ones.'] The
2 Legislature enacted PAGA to augment the limited enforcement capability of the LWDA
3 by empowering employees to bring actions to enforce California's labor laws. *Iskanian*, 59
4 Cal. 4th at 379; *Arias*, 46 Cal. 4th at 980.

5 California Labor Code section 2699 provides that the court shall review and approve
6 any settlement of any civil action filed pursuant to the PAGA. Settling parties must
7 simultaneously submit the proposed settlement to the LWDA. These notice requirements,
8 and court oversight of PAGA settlements, are safeguards to protect the public interest. *See*
9 *Kim*, 9 Cal. 5th at 88. The California enforcement agencies are the "real parties in interest"
10 in PAGA actions, and the court's task in reviewing the settlement is to ensure that the
11 state's interest in enforcing the law is upheld. *See Sakrab v. Luxottica Retail N. Am., Inc.*,
12 803 F.3d 425, 435–36 (9th Cir. 2015). Thus, courts reviewing PAGA settlements must
13 "ensur[e] that any negotiated resolution is fair to those affected." *Williams v. Superior*
14 *Court*, 3 Cal. 5th 531, 549 (2017). Trial courts must also consider whether the PAGA only
15 settlement provides adequate remedy and deterrence. *See e.g. Iskanian*, 59 Cal. 4th at 379;
16 *Kim*, 9 Cal. 5th 86. However, neither the California legislature nor the California Supreme
17 Court has provided any definitive answer as the appropriate standard for approval of a
18 PAGA settlement. *See e.g. Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F.
19 Supp. 3d 1074, 1075 (C.D. Cal. 2017) citing *O'Connor v. Uber Technologies, Inc.*, 201 F.
20 Supp. 3d 1110, 1132-35 (N.D. Cal. 2016).

21 California courts interpreting PAGA have consistently held that the Plaintiff does
22 not need to establish the elements of class certification nor is there a two-step, preliminary
23 and final, approval process as found in class actions. *See Arias*, 46 Cal. 4th 985; *see also*
24 *Iskanian*, 59 Cal. 4th 380. Rather, a PAGA-only settlement merely requires a one-step
25 review and approval process. Even though PAGA does not identify criteria for a court's
26 approval of settlements, the bill enacting PAGA indicates that its purpose is "to ensure an
27 effective disincentive for employers to engage in unlawful and anticompetitive business
28 practices." (Sen. Bill No. 796, 2003-2004 Reg. Sess. § 1(a).) In *O'Connor v. Uber*

1 *Technologies, Inc.*, 201 F. Supp. 3d 1110, 1134 (2016), the court properly described the
2 duty to review the PAGA Settlement as follows:

3 “...plaintiff also owes responsibility to the public at large; they
4 act, as the statute’s name suggests, as a private attorney general
5 ... Cal. Lab. Code § 2699(i). This duty imposed upon the PAGA
6 representative is especially significant given that PAGA does not
7 require class action procedures, such as notice and opt-out rights...

8 ... While a proposed settlement must be viewed as a whole, see
9 *In re Online DVD–Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th
10 Cir. 2015), the Court must evaluate the adequacy of compensation
11 to the class as well as the adequacy of the settlement in view of
12 the purposes and policies of PAGA. In doing so, the court may
13 apply a sliding scale. For example, if the settlement for the Rule
14 23 class is robust, the purposes of PAGA may be concurrently
15 fulfilled. By providing...substantial monetary relief, a settlement
16 not only vindicates the rights of the class members as employees,
17 but may have a deterrent effect upon the defendant employer and
18 other employers, an objective of PAGA.”

19 *Id.* Thus, California federal courts typically apply a Rule 23-like standard, asking whether
20 the settlement of the PAGA claims is “fundamentally fair, adequate, and reasonable in light
21 of PAGA’s policies and purposes.” *Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp.
22 3d 959, 972 (N.D. Cal. 2019); *see also Boddie v. Signature Flight Support Corp.*, No. 19-
23 CV-03044-DMR, 2021 WL 2651369 at *5 (N.D. Cal. June 28, 2021).

24 **VI. THE PROPOSED PAGA SETTLEMENT IS FAIR, REASONABLE, AND** 25 **WARRANTS APPROVAL**

26 **A. Plaintiff Has Exhausted the Required Notice Requirements**

27 An aggrieved employee must first provide written notice to the LWDA as well as to
28 the employer before bringing a PAGA Action in Court. Cal. Lab. Code § 2699.3(a)(1).
Plaintiff did so here. Cordero Decl. ¶¶ 22-25; Ex.5 to Cordero Decl. Furthermore, a plaintiff
seeking approval of a PAGA Settlement must simultaneously submit the proposed
Settlement to the LWDA to allow the LWDA to comment on the settlement if the LWDA
so desires. Cal. Labor Code § 2699(l)(2). Plaintiff Hudson submitted to the LWDA a copy

1 of the Settlement and this Motion for Approval on April 14, 2025. Cordero Decl. ¶ 5; Ex.
2 3 to Cordero Decl.

3 **B. A Presumption of Fairness Exists in Favor of the Settlement²**

4 In the context of class action settlements, “a presumption of fairness exists where:
5 (1) the settlement is reached through arm’s-length bargaining; (2) investigation and
6 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
7 experienced in similar litigation; and (4) the percentage of objectors is small.” *Wershba v.*
8 *Apple Computer, Inc.*, 91 Cal. App. 4th 224 at 245 (2001).

9 Here, the Parties reached the Settlement only after an extensive informal discovery
10 and investigation of the claims had occurred. Specifically, Defendant provided Plaintiff’s
11 counsel with thousands of time and payroll records for the Aggrieved Employees³; the
12 employee identification numbers, dates of employment, department affiliation, and job
13 positions of all Aggrieved Employees up to the time of the mediation; the name, addresses
14 and contact information for over 250 Aggrieved Employees (which enabled Plaintiff’s
15 counsel to conduct in depth interviews with dozens of Aggrieved Employees); the
16 production of all applicable CBAs; and the production of all handbooks and policies
17 relating to the claims of Plaintiff and the Aggrieved Employees and Wilhelm’s
18 corresponding defenses during the PAGA Period. Cordero Decl. ¶¶ 41-54. Defendant
19 further provided other relevant information including the estimated pay periods during the
20 PAGA Period; the number of current and former Aggrieved Employees; the types of non-
21 discretionary bonuses paid during the PAGA Period; the number of Aggrieved Employees
22 subject to CBAs; and the total number of pay periods Aggrieved Employees subject to any
23 CBA worked during the PAGA Period. Prior to the mediation, Plaintiff’s counsel acquired
24 sufficient understanding of the issues involved and the strengths and weaknesses of the
25 case. *Id.*

26 ///

27 ² Although this argument is framed in the context of class action settlements, Plaintiff argues the same reasoning applies in the
context of approval of a Settlement in a PAGA representative action.

28 ³ Defendant provided Plaintiff with all the timekeeping and corresponding payroll records in Excel format for 25% of the
estimated 1,019 Aggrieved Employees at the time. Cordero Decl., ¶ 43.

The Settlement was the result of good faith, informed negotiations with experienced counsel, and with the help of a mediator. At all times, the Parties' negotiations were conducted at arm's length between attorneys with substantial wage and hour class and PAGA action experience. Cordero Decl. ¶¶ 8-14. The mediator informed the Parties of the relative strengths of the claims and the benefits of the proposed Settlement, prompting each side to compromise. *Id.* at ¶ 34. The Parties not only exchanged well-researched damages analysis, but also mediation briefs, in which both sides provided strong legal arguments and defenses to the PAGA claims alleged. *Id.* at ¶ 41-53. Because the three relevant factors are satisfied, the PAGA Settlement merits a presumption of fairness. *Wershba*, 91 Cal. App. 4th 245-46.

C. The Settlement Satisfies the Fairness Factors

The fairness factors federal courts typically consider, include, but are not limited to, the following: "[1] the strength of plaintiffs' case, [2] the risk, expense, complexity and likely duration of further litigation, [3] the risk of maintaining [the PAGA] action status through trial, [4] the amount offered in settlement, [5] the extent of discovery completed and the stage of the proceedings, [6] the experience and views of counsel, and [7] the presence of a governmental participant. *See e.g. Boddie v. Signature Flight Support Corp.*, No. 19-CV-03044-DMR, 2021 WL 2651369 at *5 (N.D. Cal. June 28, 2021).

1. The Strength of Plaintiff's Case Favors Approval of the Settlement

Plaintiff's counsel conducted a thorough investigation and performed a complete analysis of the time and pay records to determine the average violation rates for PAGA Settlement Members. Cordero Decl., ¶¶ 41-48. While Plaintiff Hudson believes she would prevail on her individual and representative PAGA claims, she is aware of several significant risks of continued litigation.

- a) The Court in *Lainez* determined that the PAGA meal break and overtime claims were derivative and pre-empted because they were covered by a valid CBA. *Lainez* Action, Case 4:23-cv-04421-KAW; Dkt. 59. Thus, even if Plaintiff Hudson is not covered by any CBA, Plaintiff will nevertheless face significant

litigation on the preemption issue on behalf of other Aggrieved Employees who are admittedly covered by a CBA. Of the total Aggrieved Employees, roughly 55% are or were Aggrieved Employees covered by a valid CBA. Cordero Decl. ¶¶ 19,45. This is a significant issue given that this Court, Honorable U.S. Magistrate Judge Kandis A. Westmore presiding, held in the *Lainez* Action that Plaintiff Lainez's PAGA claims for "overtime or meal period wages exist solely because of the CBA." Ex. 6 to Cordero Decl.

- b) The existence of a valid arbitration agreement and the Supreme Court's *Viking River* decision regarding arbitration of individual PAGA claims might require further litigation, including defending a Motion to Compel and a potential stay of the representative PAGA claims. *See Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022). Plaintiff will have to prevail on her individual wage claims in arbitration before the merits of the PAGA representative action can be decided by the Court, which greatly increases the risks of an adverse ruling. The arbitration proceedings will cause significant delay in any potential recovery for the State and the Aggrieved Employees.
- c) The existence of multiple departments, job positions, and diverse job duties among the Aggrieved Employees (e.g. flaggers, tree cutters, machine operators, and forepersons, among others), and the fact that Defendant has argued that the representative PAGA claims cannot be tried in a single proceeding in an efficient manner on behalf of all 1,567 Aggrieved Employees given the large number of employees and claims at issue, will create additional litigation prior and during the trial of this action, potentially resulting in reducing the scope of the claims.
- d) Defendant disputes the merits of Plaintiff's claims, including, but not limited to, the off-the-clock claims, rounding, meal and rest break claims, and regular rate claims at issue here. Cordero Decl. ¶¶ 64-66.
- e) Even if Plaintiff prevailed on all claims in arbitration, and then further prevailed at trial on the merits, the Court could reduce the civil penalties. *See Cotter v. Lyft*,

1 *Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); *see also*, J. Kramer, *et. al.*,
2 *PAGA at 20: What Happens When Cases Go to Trial?*, 38 Cal. Lab. & Emp. Law
3 Rev. 4 (July 2024)

4 f) Finally, Defendant would likely appeal any judgment entered in Plaintiff's favor.

5 The "legal uncertainties at the time of Settlement" favor approval of the Settlement
6 here. *See Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2007 WL 4105971 at *10 (N.D.
7 Cal. Nov. 16, 2007). Accordingly, this factor weighs in favor of approval.

8 **2. The Risk, Expense, Complexity, and Likely Duration of Further**
9 **Litigation Favors Approval of the Settlement**

10 The Settlement here reflects a reasonable compromise of the disputed claims given
11 the stage of the proceedings, the strength of some of Defendant's defenses, the potential
12 that some of the claims are preempted by the existence of the 2020 and 2022 CBAs, and
13 the risks associated with the uncertainty of continued litigation. This action was originally
14 filed in state court in December 2023, and even though it has been pending for about 1.5
15 years, a significant amount of work and discovery would be necessary before the Parties
16 are ready for trial. Absent a Settlement, Plaintiff anticipates the Parties will file several
17 motions and engage in litigation before any formal discovery occurs. For example, Plaintiff
18 anticipates re-noticing her motion to remand, and Defendant will file a Motion to Compel
19 Arbitration of Plaintiff's individual claims and a Motion to Dismiss and Stay some of the
20 PAGA claims, and a Motion for Judgment on the Pleadings.

21 The Parties will also incur in additional litigation costs and attorney's fees related to
22 the arbitration of Plaintiff's individual PAGA claims. Additionally, and assuming Plaintiff
23 prevails in the anticipated motions and at arbitration, Plaintiff anticipates the filing of
24 discovery motions; taking several depositions; conducting several additional witness
25 interviews and obtaining several declarations; and engaging the help of an expert before
26 the trial. Moreover, Plaintiff anticipates the expert fees associated with engaging the help
27 of an expert to analyze the time and pay records of the thousands Aggrieved Employees in
28 this case will be significantly high. Even if successful at trial, Plaintiff anticipates that

Defendant will appeal any judgment awarding civil penalties to Plaintiff and the Aggrieved Employees. Since the beginning of the litigation, Wilhelm has categorically denied any wrongdoing and has mounted extraordinary defenses, as exemplified in the *Lainez* Action, which after several years of litigation, Plaintiff Lainez's principal claims were deemed preempted, and the PAGA remaining claims were stayed pending arbitration.

"The risk, expense, complexity, and likely duration of further litigation are factors that consider the probable costs, in both time and money, of continued litigation." *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 446 (E.D. Cal. 2013). Generally, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004). Here, without the Settlement, Plaintiff faces significant additional costs, delay, and risks of the trial and a possible appeal. The Settlement provides a timely, certain, and significant recovery to the LWDA and the Aggrieved Employees. Therefore, this factor favors approval.

3. The Amount Offered in Settlement Is Adequate and Merits Approval

Plaintiff estimates the maximum potential recovery of PAGA civil penalties in the amount \$17,319,546.00, of which \$9,319,468.00 represents the value of the civil penalties for the pay periods worked by the non-union employees, and \$8,000,078.00 represents the value of the civil penalties for the pay periods worked by the union employees. Cordero Decl. ¶¶ 71-74. Plaintiff's maximum recovery estimates are premised on the assumption that Plaintiff would be able to successfully establish liability on all claims alleged for meal periods violations, rest periods violations, recovery period violations, reporting time and pay, wage statements violations, minimum/regular/overtime violations, and failure to maintain accurate records. It also assumes the Court would allow "stacking" of penalties for the same underlying violation (e.g. for each meal period civil penalty Plaintiff also calculated one wage statement civil penalties), and that Plaintiff's estimated damages would be awarded in their entirety. *Id.* Accordingly, the estimated maximum recovery value represents an unlikely scenario given the strength of some of the defenses and

1 variance among Aggrieved Employees which would likely to reduce the overall value of
2 some claims.

3 Here, the GSA (\$1,225,000.00) represents approximately 9% of the maximum
4 potential exposure (*i.e.*, \$17,319,546.00). Even though the GSA represents a significant
5 discount of the maximum potential damage's exposure, this discount is justified based on
6 Defendant's defenses and the risks and uncertainty inherent in litigation, trial and appeal.
7 Cordero Decl. ¶¶ 75-81;87-90. While Plaintiff maintains that her claims have merit,
8 Plaintiff recognizes the risk of possible adverse rulings on the issue of preemption, given
9 that a district court has ruled some of the Aggrieved Employees claims in the *Lainez* action
10 preempted. Ex. 6 to Cordero Decl. Similarly, Plaintiff recognizes the risk of possible
11 adverse rulings on liability, and penalties on the PAGA claims she asserted, including the
12 discretion of the Court to reduce any award of civil penalties. Protracted litigation would
13 also involve numerous additional depositions, written discovery, and trial, all of which
14 would involve significant time and expense. *Id.* ¶¶ 88-89.

15 "In this district, courts have raised concerns about settlements of less than 1% of the
16 total value of a PAGA claim." *Jennings v. Open Door Mktg., LLC*, No. 15-CV-04080-
17 KAW, 2018 WL 4773057 at *9 (N.D. Cal. Oct. 3, 2018) (citing *Viceral v. Mistras Group,*
18 *Inc.*, No. 15-cv-02198-EMC, 2016 WL 5907869 at *9 (N.D. Cal. Oct. 11 2016)); *cf.*
19 *McLeod v. Bank of Am., N.A.*, No. 16-CV-03294-EMC, 2018 WL 5982863 at *4 (N.D. Cal.
20 Nov. 14, 2018) (finding \$50,000 PAGA allocation for claims estimated at \$4.7 million—
21 approximately 1.1 percent—adequate). Some other courts have looked instead to the
22 proportion of the PAGA settlement to the overall settlement recovery. *See Slavkov v. Fast*
23 *Water Heater Partners I, LP*, No.14-cv-04324-JST, 2017 WL 3834873 at *2 (N.D. Cal.
24 Jul. 25, 2017) (finding that "\$7,500 PAGA payment is reasonable when measured against
25 the total overall settlement [of \$345,000] and the possible weaknesses in Plaintiffs' case,"
26 or 2.2 percent).

27 Here, if the Settlement is approved, the Gross Settlement Amount immediately due
28 totals \$1,225,000.00. Neither the Court nor the Parties received an objection from LWDA.

1 The Settlement provides recovery for over 9% of the maximum potential exposure, and
2 thus, this Settlement does not raise the problems or concerns identified by the other courts
3 in minuscule PAGA settlements allocations. *See Rodriguez v. RCO Reforesting, Inc.*, No.
4 2:16-CV-2523 WBS DMC, 2019 WL 331159 at *5 (E.D. Cal. Jan. 25, 2019) (finding
5 payment of 6% of the estimated value of the PAGA claims significant). Instead, the
6 Settlement provides for payment of a gross amount of \$27.34 per pay period—calculated
7 by dividing the GSA \$1,225,000 by the 44,806 estimated pay periods—and an estimated
8 amount of \$6.84 per pay period—calculated by dividing the 25% allocation \$306,250.00
9 by the 44,806 estimated pay periods—to the Aggrieved Employees, amounts that are
10 significant and typically approved by California courts. Cordero Decl. ¶¶ 82-83. Plaintiff’s
11 counsel further calculated Aggrieved Employees worked on average 52 pay periods. Thus,
12 Plaintiff’s counsel estimates an average recovery of \$312.00 (\$6.84*52 pay periods) per
13 Aggrieved Employee.

14 Moreover, given that any recovery here is a civil penalty, and that the Aggrieved
15 Employees will **not** release their individual wage claims, this factor further supports the
16 reasonableness of the Settlement. *See, e.g., Hartley v. On My Own, Inc.*, No. 2:17-cv-
17 00353-KJM-EFB, 2020 WL 5017608 at *4 (E.D. Cal. Aug. 25, 2020) (approving
18 settlement where average payment per employee was \$61.18 per aggrieved employee
19 reasonable). Therefore, the \$312.00 average amount expected per Aggrieved Employee is
20 reasonable and significantly higher than other PAGA only Settlements approved by
21 California courts. Therefore, this factor also favors approval of the Settlement.

22 **4. The Extent of Discovery Completed Favors Settlement**

23 The Parties have engaged in substantial research, and exchanged large amounts of
24 data and information that allowed Plaintiff to conduct her independent investigation and
25 valuation of the PAGA claims alleged. Cordero Decl. ¶¶ 39-54. Therefore, the Settlement
26 occurred only after both Parties “ha[d] a clear view of the strengths and weaknesses of their
27 cases.” *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010).
28 Therefore, this factor also favors approval of the Settlement.

1 **5. The Presence of a Government Participant Is Neutral**

2 Plaintiff submitted the Settlement to the LWDA on April 14, 2025. Cordero Decl. ¶

3 5. The LWDA has not directly or indirectly intervened in this case or spoken on the
4 proposed Settlement.

5 **6. The Experience and Views of Counsel Support Settlement Approval**

6 This factor weighs in favor of approval, as the Parties are represented by competent
7 counsel, with extensive experience in employment litigation and wage and hour class and
8 representative actions. Cordero Decl. ¶¶ 8-12; 68-92.

9 **D. The Settlement Is Consistent with the Purposes of the PAGA**

10 The purpose of PAGA is to incentivize private enforcement of labor laws while
11 ensuring that civil penalties serve as a deterrent function. *See Arias*, 46 Cal. 4th at 986;
12 *Iskanian*, 59 Cal. 4th at 384 (holding a waiver of representative claims under the PAGA
13 unenforceable because it frustrates the deterrence purpose of the act). The LWDA’s top
14 enforcement priorities are “to vigorously enforce minimum labor standards in order to
15 ensure employers are not required or permitted to work under substandard unlawful
16 conditions . . .” and to “protect employers who comply with the law from those who attempt
17 to gain a competitive advantage at the expense of their workers by failing to comply with
18 minimum labor standards.” Cal. Lab. Code § 90.5(a); *see also Sakkab*, 803 F.3d at 439.
19 Here, the proposed Settlement furthers these objectives by achieving significant relief for
20 Aggrieved Employees and securing penalties for the LWDA, without the delay and
21 uncertainty. The \$1,225,000.00 GSA provides a real incentive to Plaintiff and the
22 Aggrieved Employees for the private enforcement of California’s labor code, while also
23 reasonably advancing PAGA’s purpose of deterring similar violations.

24 The proposed Settlement, even with deductions, provides a substantial sum to the
25 State of California, approximately \$485,966.92. It also provides monetary compensation
26 for each alleged Aggrieved Employee on a pro-rata basis. The Parties estimate the number
27 of pay periods during the PAGA Period (June 19, 2019 to Settlement Approval) at 44,806.
28 Therefore, the value per pay period is estimated in approximately \$6.84 per pay period

(\\$306,250.00/44,806). Cordero Decl. at ¶ 83. However, the purpose of a PAGA Settlement is not to compensate the Aggrieved Employees, as they will retain any private right of action they may have under the applicable Labor Code provisions, and they are free to pursue any additional remedies they may have. The Settlement only seeks to resolve the alleged claims for civil penalties. Moreover, the PAGA group shall receive a notice explaining the claims that will be released upon its approval. Ex. 2 to Cordero Decl. Plaintiff contends this notice, along with the Complaint filed in this case, will educate Aggrieved Employees as to the requirements of the Labor Code, something that is in the public interest and consistent with PAGA’s purpose. See Labor Code § 2699(m).

Although the Settlement represents a significant departure from maximum potential recovery in this case, it merits approval because it is fair, reasonable, and consistent with the purpose of PAGA.

VII. ATTORNEY’S FEES AND COSTS ARE FAIR AND REASONABLE

A. The Fees Sought as a Percentage-of-the-Fund Are Reasonable

PAGA provides that a plaintiff is entitled to recover reasonable attorneys’ fees, expenses, and costs. Labor Code Section 2699(k)(1). While PAGA provides for an award of reasonable attorney’s fees and costs, it “does not provide a specific standard for evaluating attorney’s fees in connection with a settlement of PAGA claims.” *Ramirez v. Benito Valley Farms, LLC*, No. 16-CV-04708-LHK, 2017 WL 3670794 at *6 (N.D. Cal. Aug. 25, 2017). However, the “percentage-of-recovery method” is a well-established method for determining the reasonableness of an attorney’s fee award and has been regularly used by courts to assess attorney’s fees in connection with PAGA settlements that create a common fund. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); see also *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049-51 (9th Cir. 2002) (applying a lodestar cross-check to ensure the percentage-of-recovery method yielded a reasonable result).

Under the percentage-of-recovery method, where there are only state law claims, as there are here, state law also governs the fee award. *Indep. Living Ctr. of S. California, Inc.*

v. *Kent*, 909 F.3d 272, 283 (9th Cir. 2018) (holding a state statute requiring an award of attorneys’ fees should be applied in a case removed from the state courts to the federal courts irrespective of whether the source of subject matter jurisdiction is diversity or federal question); *Crommie v. State of Cal., Pub. Utilities Comm’n*, 840 F. Supp. 719, 724 (N.D. Cal. 1994). The California Supreme Court held the common fund approach furthers the goal of attracting competent counsel to handle representative actions enforcing California’s labor laws. *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal. 5th 480, 503 (2016). The same reasoning applies here.

The benchmark percentage under California law is in the 33% range. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008) citing *Shaw v. Toshiba America Information Systems, Inc.* 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) (Finding that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery). The benchmark for attorney’s fees in the Ninth Circuit is 25% of the common fund under the percentage-of-recovery method. *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003). However, “it is common practice to award attorneys’ fees at a higher percentage than the 25% benchmark in cases that involve a relatively small—i.e., under \$10 million—settlement fund.” *Kulik v. NMCI Med. Clinic Inc.*, No. 21-CV-03495-BLF, 2023 WL 2503539, at *9 (N.D. Cal. Mar. 13, 2023) citing *Thieriot v. Celtic Ins. Co.*, No. C 10-04462 LB, 2011 WL 1522385, at *6-7 (N.D. Cal. Apr. 21, 2011).

The percentage requested here, 1/3 or 33.33%, falls well in line with the percentage awarded in similar representative cases. *Stuart v. RadioShack Corp.*, No. C–07–4499 EMC, 2010 WL 3155645 * 6 (N.D. Cal. Aug. 9, 2010) (holding a fee award representing one-third of the non-reversionary settlement amount was well within the range of percentages which courts have upheld as reasonable in other class action lawsuits); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010) (noting that “[t]he typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of the total settlement value, with 25% considered the benchmark”); *Singer v. Becton Dickinson & Co.*, No. 08-

CV-821-IEG (BLM), 2010 WL 2196104, at *8–9 (S.D. Cal. June 1, 2010) (Plaintiff’s counsel was awarded 33.33% of the common fund for a wage and hour class action settlement and the court noted that 1/3 of the settlement sums “falls within the typical range of 20% to 50% awarded in similar cases”). Courts in the Ninth Circuit regularly award attorney’s fees of one-third of the total class settlement value as long as a loadstar crosscheck does not result in a multiplier that is unreasonably high. *Collier v. Delaware N. Companies Travel Hosp. Servs., Inc.*, No. EDCV 17-1938-R, 2018 WL 9457989 at *1 (C.D. Cal. Sept. 18, 2018) (noting California courts routinely award attorneys’ fees equaling or exceeding one-third); see *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460 (9th Cir. 2000) (affirming award of fees equal to one-third of total recovery); *Rippee v. Boston Market Corporation*, No. 05cv1359 BTM(JMA), 05cv1360 BTM(JMA), 2006 WL 8455400 at *1 (S.D. Cal. Oct. 10, 2006) (awarding 40% in attorneys’ fees and approving a 3.23 upward multiplier); *Clarke v. Insight Global, Inc.*, No. 13-CV-0357-H (BLM), 2015 WL 13828417 at *7 (S.D. Cal. Jan. 5, 2015) (approving Plaintiffs’ request for 33% of a common fund settlement as reasonable after a loadstar crosscheck).

Here, the results achieved are favorable. The LWDA and the Aggrieved Employees will be provided with immediate and substantial monetary relief, and the overall award of \$1,225,000.00 is significant enough to advance the PAGA’s purpose of deterring similar violations. Similarly, the requested attorney’s fees are reasonable considering Plaintiff’s counsel’s in-depth investigation and substantial amount of work performed in this case, exceeding 610 hours to date. Cordero Decl. ¶ 113.

Moreover, counsel has taken significant risks in taking this action on a pure contingency basis. Plaintiff’s counsel prepared and prosecuted this action while advancing all costs and deferring all payment of fees with no guarantee that any of the fees incurred or litigation costs advanced would ever be recovered. Cordero Decl ¶ 112. Had the litigation continued, Defendant would undoubtedly have mounted an aggressive defense at the pleadings stage and at the merits stage. *Id.* ¶ 88. A defeat at one of these stages could have foreclosed the possibility of counsel recovering full remuneration for their time and

1 effort. This is significant here because, even though Plaintiff Hudson did not sign a CBA
2 herself—and she adamantly disputes that the PAGA claims raised on her action exists
3 solely because of the existence of CBAs—at least one federal court in a different district
4 found some of the PAGA claims preempted in a situation where the PAGA plaintiff was
5 not covered by the CBA. *Braswell v. AHMC San Gabriel Valley Med. Ctr. LP*, No. CV 21-
6 09959-MWF (AGR), 2022 WL 707206 at *4 (C.D. Cal. Mar. 8, 2022). Plaintiff’s counsel
7 has significant experience with this issue and has successfully litigated it before. *See e.g.*
8 *Stoddart v. Heavy Metal Iron, Inc.*, No. 2:22-cv-01532-DAD-DB, 2023 WL 2524313 at *5
9 (E.D. Cal. March 15, 2023) (finding no federal jurisdiction over a derivative PAGA claim
10 when plaintiff was not subject to a qualifying CBA but plaintiff’s representative PAGA
11 claim included aggrieved employees who were subject to a CBA). Nonetheless, Plaintiff’s
12 counsel is also aware of the inherent risks of continued litigation and the fact that the Ninth
13 Circuit has not ruled on the issue. As the California Supreme Court explained in *Graham*
14 *v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 580 (2004):

15 The contingent fee compensates the lawyer not only for the legal
16 services he renders but for the loan of those services. The implicit
17 interest rate on such a loan is higher because the risk of default
18 (the loss of the case, which cancels the debt of the client to the
19 lawyers) is much higher than that of conventional loans. A lawyer
20 who both bears the risk of not being paid and provides legal
21 services is not receiving the fair market value of his work if he is
22 paid only for the second of these functions. If he is paid no more,
23 competent counsel will be reluctant to accept fee award cases.

24 In sum, this Court should approve the requested award of attorney’s fees to
25 compensate counsel for the time they spent successfully prosecuting this litigation despite
26 the very real risk they may never be compensated at all.

27 **B. A Loadstar Cross Check Confirms 1/3 Percentage-of-the-Fund Fee Request Is**
28 **Reasonable**

 Courts using the percentage method have generally weighed the time counsel spent
on the case as an important factor in choosing a reasonable percentage to apply. 5 Newberg

1 and Rubenstein on Class Actions § 15:86 (6th ed.). A lodestar cross-check confirms the
2 reasonableness of an award of 1/3 of the common fund to Plaintiff's and Aggrieved
3 Employees' counsel. To date, counsel's lodestar is over **\$300,912.00**. Counsel has spent
4 and will spend over 610 hours litigating this case. Cordero Decl., ¶ 113. This includes time
5 billed for investigating and researching Plaintiff's claims and Defendant's defenses,
6 preparing written notices to the LWDA, drafting and filing the Complaint, preparing a first
7 set of written discovery, preparing and exchanging in extensive meet and confer efforts,
8 preparing and filing motions, including a Motion to Remand, preparing and exchanging
9 Plaintiff's Initial Disclosures; engaging in multiple informal discovery meet and confer
10 efforts regarding the exchange of PAGA Aggrieved Employees' contact information;
11 reviewing and analyzing several thousands of time and pay records; preparing detailed
12 damages' calculations for mediation; conducting several dozens of interviews and
13 summarizing witnesses' interviews for mediation; preparing for and attending mediation;
14 conducting settlement negotiations at mediation and after mediation; negotiating the terms
15 of the Settlement, and preparing the current motion seeking approval of the PAGA
16 Settlement. Cordero Decl. ¶ 112.

17 Nonetheless, the \$300,912.00 lodestar only includes work performed to date, and it
18 does not include the time and effort counsel will incur in the future attending the approval
19 hearing, or in the administration of the PAGA Settlement. The hours spent by counsel in
20 prosecuting this action, and the hours estimated to be spend in the future, were and are not
21 only reasonable but entirely necessary to achieve the excellent results obtained on behalf
22 of the Aggrieved Employees. *Id.* ¶ 113.

23 The hourly rates used by counsel in their lodestar range from \$200.00 per hour to
24 \$1,100.00 per hour. These rates are fully supported by counsel's experience and reputation
25 handling complex employment litigation, a very specialized and high-risk area of the law.
26 *Id.* ¶ 115-116. Counsel is highly experienced in wage and hour matters, class, and
27 representative action cases and has been appointed class counsel in numerous employment
28 class and representative action cases. *Id.* ¶ 10. The hourly rates here commensurate with

1 the prevailing market rates for attorneys and paralegals of comparable experience and skill.
2 *Id.* ¶ 114. Calculating fees at prevailing rates to compensate for delay in receipt of payment
3 is within the district court’s discretion. See *Gates v. Deukmejian*, 987 F.2d 1392, 1406 (9th
4 Cir.1992). Further, the requested hourly rates have been approved by many courts in other
5 employment-related Class and PAGA actions, where Counsel also served as counsel. *Id.* ¶
6 10, Exhibit 4.

7 Here, the requested \$408,333.33 as an award of attorney’s fees to PAGA Counsel
8 represents a positive multiplier 1.36 of counsel’s current lodestar. The percentage-based
9 fee will typically be larger than the lodestar-based fee. *Laffitte*, 1 Cal. 5th 480, 496.
10 However, “if the implied multiplier is reasonable, then the cross-check confirms the
11 reasonableness of the percentage-based fee.” *Id.* If a comparison between the percentage
12 and lodestar calculations produces an imputed multiplier far outside the normal range,
13 the court will have reason to reexamine its choice of a percentage. *Id.* The lodestar-
14 multiplier calculation here produces a 1.36 multiplier well within the range typically
15 approved for contingency cases like this one. California courts have considered lodestar
16 multipliers of 1.25 to 2.0 reasonable and appropriate after accounting for the risk of non-
17 payment and the result achieved. See, e.g., *Chavez*, 162 Cal. App. 4th 49-50 (approving
18 multiplier of approximately 2.5); *Ridgeway v. Wal-Mart Stores Inc.*, 269 F. Supp. 3d 975,
19 1000 (N.D. Cal. 2017) (approving multiplier of 2.0). Similarly, the Ninth Circuit has
20 recognized that multipliers generally range from 1 to 4. *Vizcaino*, 290 F.3d at 1051 n.6; see
21 also *Kulik*, No. 21-cv-03495-BLF, 2023 WL 2503539 at *9 (applying a multiplier of 1.83);
22 *Uschold v. NSMG Shared Servs., LLC*, No. 18-cv-01039-JSC, 2020 WL 3035776 at *16
23 (N.D. Cal. June 5, 2020) (applying a multiplier of 4).

24 Counsel’s lodestar should be adjusted upward by employing a reasonable multiplier
25 of 1.36, which reflects the quality of representation, the benefit counsel obtained for the
26 Aggrieved Employees, the complexity of the issues presented, and the risk of nonpayment.
27 Therefore, the requested \$408,333.33 as an award of attorney’s fees pursuant to the
28 Settlement, represents a reasonable percentage—one third—of the common fund because

1 it requests a 1.36 upward multiplier, which is not outside the normal range, and consistent
2 with the multipliers awarded by this Court.

3 **C. The Litigation Costs Sought Are Reasonable**

4 To date, Plaintiff's counsel has incurred \$9,559.75 in litigation costs. Cordero Decl.
5 ¶ 122. These costs include filing fees, court fees, delivery, postage, telephone charges, and
6 mediation fees. *Id.* All of these incurred expenses were necessary to prosecute this case
7 and would normally have been billed to a client on a non-contingency basis. *Id.* The
8 requested litigation costs are reasonable for a PAGA case such as this in which substantial
9 investigation, document review, and analysis took place.

10 **VIII. CONCLUSION**

11 For all of the foregoing reasons, Plaintiff requests the Court grant the Unopposed
12 Motion for Approval of PAGA Action Settlement, appoint Apex Class Actions, LLC as
13 the Settlement Administrator, and approve Plaintiff's request for attorney's fees and costs.

14
15 Respectfully submitted,

16 Dated: April 14, 2025

GRAHAMHOLLIS APC

17
18 By: /s/ Vilmarie Cordero

VILMARIE CORDERO

TAYLOR M. GEE

Attorneys for Plaintiff Naomi Hudson and
Aggrieved Employees