

Ross E. Shanberg, Esq. (SBN 179842)
rshanberg@ssbfirm.com
Shane C. Stafford, Esq. (SBN 216151)
sstafford@ssbfirm.com
SHANBERG STAFFORD LLP
4100 Newport Place, Suite 820
Newport Beach CA 92660
Telephone: (949) 205-7515 / Fax: (949) 205-7144

Attorneys for Plaintiff
VALERIE FURNIA
on behalf of herself and all others similarly situated

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

VALERIE FURNIA, an individual on
behalf of herself and others similarly
situated,

Plaintiff,

vs.

HEARTLAND PAYMENT SYSTEMS,
LLC., a Delaware limited liability
company; GLOBAL PAYMENTS, INC., a
Georgia corporation; and DOES 1-10
inclusive,

Defendants.

Case No.: 24STCV00988

Assigned For All Purposes To Dept. 10

Hon. William F. Highberger

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT, FOR
ATTORNEYS' FEES AND COSTS AND
ADMINISTRATIVE FEES;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Declarations of Ross E. Shanberg and
Valerie Furnia, and Proposed Order filed
concurrently herewith]

Date: June 17, 2025

Time: 11:00 A.M.

Dept.: 10

PLEASE TAKE NOTICE that on June 17, 2025, at 11:00 A.M., or as soon thereafter as the matter may be heard before the Honorable William F. Highberger, Dept. 10 of the Superior Court of the State of California, County of Los Angeles, Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, Plaintiff Valerie Furnia (“Plaintiff”) will and hereby does move for entry of an order and judgment as follows:

1. Granting approval, pursuant to California Labor Code section 2699, subd. (1)(2) of the proposed settlement between Plaintiff and Defendants Heartland Payment Systems, LLC and Global Payments Inc. (“Defendants”) of the claims brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”) as set forth in the Joint Stipulation of PAGA Settlement and Release (“Settlement Agreement”), attached as **Exhibit 1** to the Declaration of Ross E. Shanberg;

2. Approving the Net Settlement Amount payable to the State of California and Aggrieved Employees as authorized by California Labor Code section 2699, subd. (i);

3. Appointing Rust Consulting, Inc. as the Settlement Administrator;

4. Directing Defendants to transmit settlement funds to the Settlement Administrator in the total amount of One Million Two Hundred Thousand Dollars (\$1,200,000.00) pursuant to the Settlement Agreement;

5. Directing the Settlement Administrator to distribute the settlement funds to the Aggrieved Employees, and distributing funds to the Labor and Workforce Development Agency (“LWDA”), Plaintiffs’ Counsel, and for Settlement Administration Costs, in accordance with the terms of the Settlement Agreement;

6. Awarding to Plaintiffs’ Counsel the amount of Four Hundred Thousand Dollars (\$400,000.00) as compensation for reasonable attorneys’ fees, \$16,123.00 for reimbursement of litigation costs and expenses, and \$4,979.00 for Settlement Administration Costs to Rust Consulting.

///

///

///

///

1 This motion is based on this Notice of Motion and Motion, the Memorandum of Points and
2 Authorities, the Settlement Agreement, the Declarations of Ross E. Shanberg and Valerie Furnia,
3 the pleadings and other records on file with the Court in this matter, and such evidence and oral
4 argument as may be presented at the hearing on this Motion.

5
6 Dated: May 20, 2025

SHANBERG STAFFORD LLP

7
8 By: /s/Ross E. Shanberg/s/
9 Ross E. Shanberg
10 Shane C. Stafford
11 Attorneys for Plaintiff
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

		<u>Page</u>
I.	INTRODUCTION AND SUMMARY OF MOTION.....	1
II.	CASE BACKGROUND.....	2
III.	SUMMARY OF SETTLEMENT.....	3
	A. Aggrieved Employees.....	3
	B. Settlement Fund Allocation	3
	C. Release	3
IV.	LEGAL STANDARD FOR APPROVAL OF PAGA SETTLEMENT.....	4
V.	THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE	5
	A. The Settlement Is Presumed Fair	5
	B. The Settlement Is The Product of Arm’s Length Negotiations	6
	C. Plaintiffs’ Counsel Is Experienced In Similar Litigation And Endorse The Settlement	7
	D. The Strength of Plaintiffs’ Case, The Amount Offered In Settlement, and The Risk, Expense, Complexity, and Duration of Further Litigation Favors Settlement.....	7
VI.	NOTICE OF THE SETTLEMENT IS NOT REQUIRED	19
VII.	ATTORNEYS’ FEES AND COSTS	20
	A. Fees Can Be Awarded As A Percentage of the Common Fund	20
	B. Plaintiff’s Attorney’s Fees Are Also Recoverable Under The Lodestar Adjustment Approach.....	21
VIII.	NOTICE OF SETTLEMENT TO LWDA.....	23
IX.	CONCLUSION.....	24

TABLE OF AUTHORITIES

Page

State Cases

Arias v. Superior Court

46 Cal.4th 969 (2009).....4, 5, 20

California State Employees' Assn. v. State of Cal.

198 Cal.App.3d 374 (1988).....14

Chavez v. Netflix, Inc.

162 Cal.App.4th 43 (2008).....20

Dunk v. Ford Motor Company

48 Cal. App. 4th 1794 (1996).....5, 6

Hadley v. Krepel

167 Cal.App.3d 677 (1985).....22

Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement

192 Cal.App.4th 75 (2011).....18

Iskanian v. CLS Transp. Los Angeles, LLC

59 Cal.4th 348 (2014).....19

Keenan v. Cox Communications California, LLC

2019 Westlaw 3288939.....16

Kerr's Catering Service v. Department of Indus. Relations

57 Cal.2d 319 (1962).....14

Ketchum v. Moses

24 Cal.4th 1122 (2001).....23

Laffitte v. Robert Half Int'l, Inc.

1 Cal.5th 480 (2016).....20, 21

Lealao v. Beneficial Cal., Inc.

82 Cal.App.4th 19 (2000).....20, 21

1	<i>Maldonado v. Epsilon Plastics, Inc.</i>	
2	22 Cal.App.5th 1308 (2018).....	18
3	<i>Mallick v. Superior Court</i>	
4	89 Cal. App. 3d 434 (1979).....	6
5	<i>Moniz v. Adecco USA, Inc.</i>	
6	72 Cal.App.5th 56 (2021).....	5
7	<i>PLCM Group, Inc. v. Drexler</i>	
8	22 Cal.4th 1084 (2000).....	21
9	<i>Press v. Lucky Stores, Inc.</i>	
10	34 Cal.3d 311 (1983).....	9, 21
11	<i>Raines v. Coastal Pacific Food Distributors, Inc.</i>	
12	23 Cal.App.5th 667 (2018).....	18
13	<i>Schiller v. David's Bridal, Inc.</i>	
14	2010 WL 2793650 (E.D. Cal. July 14, 2010).....	19
15	<i>Sciborski v. Pacific Bell Directory</i>	
16	205 Cal.App.4th 1152 (2012).....	15
17	<i>Serrano v. Priest</i>	
18	20 Cal.3d 25 (1977).....	20, 21
19	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
20	203 Cal.App.4th 1112 (2012).....	9
21	<i>Townley v. BJ's Restaurants, Inc.</i>	
22	37 Cal.App.5th 179 (2019).....	13
23	<i>Uschold v. NSMG Shared Servs., LLC</i>	
24	2020 WL 3035776, (N.D. Cal. June 5, 2020).....	22
25	<i>Williams v. Superior Court</i>	
26	3 Cal.5th 531 (2017).....	5, 19
27		
28		

Federal Cases

Boeing Co. v. Van Gemert

444 U.S. 472 [100 S.Ct. 745, 750, 62 L.Ed.2d 676] (1980).....20, 21

Casida v. Sears Holding Corp.

2012 WL 253217 (E.D. Cal. Jan. 26, 2012).....4

Culley v. Lincare Inc.

236 F.Supp.3d 1184 (E.D. Cal. 2017).....18

Ellis v. Naval Air Rework Facility

87 F.R.D. 15 (N.D. Cal. 1980)7

Fisher Bros. v. Cambridge-Lee Industries, Inc.

630 F.Supp. 482 (E.D. Pa. 1985).....7

Hanlon v. Chrysler Comm

150 F.3d 1011 (9th Cir. 1998).....7

In re Ampicillin Antitrust Litigation

526 F.Supp. 494 (D.D.C. 1981).....20

In re Mega Financial Corp. Securities Litigation

213 F.3d 454 (9th Cir. 2000).....7

Ochoa-Hernandez v. Cjaders Foods, Inc.,

2010 WL 1340777 (N.D. Cal. Apr. 2, 2010)5, 19

Officers of Justice v. Civil Service Com'n of City and County of San Francisco

688 F.2d 615 (9th Cir. 1995).....6

Pedroza v. PetSmart, Inc.,

2013 WL 1490667 (C.D. Cal. Jan. 28, 2013).....5

Ridgeway v. Wal-Mart Stores, Inc.

269 F.Supp.3d 975 (N.D. Cal. 2017).....22

Stanton v. Boeing

327 F.3d 938 (9th Cir. 2003).....21

1	<i>Swafford v. International Business Machines</i>	
2	383 F. Supp. 3d 916 (2019).....	16
3	<i>Thomas v. Aetna Health of Cal., Inc.</i>	
4	2011 WL 2173715 (E.D. Cal. June 2, 2011).....	4
5	<i>Vizcaino v. Microsoft Corp.</i>	
6	290 F.3d 1043 (9th Cir. 2002).....	22
7	<i>Wininger v. SI Mgmt L.P.</i>	
8	301 F.3d 1115 (9th Cir. 2002).....	21
9		
10	<u>State Statutes</u>	
11	Labor Code § 201.....	18
12	Labor Code § 202.....	18
13	Labor Code § 203.....	19
14	Labor Code § 221.....	13, 15
15	Labor Code § 224.....	15
16	Labor Code § 226.....	17, 18
17	Labor Code § 232.....	17
18	Labor Code § 510.....	8
19	Labor Code § 512.....	9
20	Labor Code § 1194.....	8
21	Labor Code § 2699.....	4, 5, 9, 22
22	Labor Code § 2751.....	16, 17
23	Labor Code § 2802.....	11
24		
25	<u>State Regulations</u>	
26	Cal. Code Regs., tit. 8, § 11040.....	8
27	<u>Wage Orders</u>	
28	IWC Wage Order 4-2001.....	9, 10

Other Authorities

Posner, Economic Analysis of Law (4th ed. 1992).....	23
Rubinstein, Conte and Newberg, Newberg on Class Actions.....	21

1 **I. INTRODUCTION AND SUMMARY OF MOTION**

2 This is an action brought by Plaintiff Valerie Furnia (“Plaintiff”), pursuant to the Private
3 Attorneys General Act of 2004 (“PAGA”), to recover civil penalties for herself and other aggrieved
4 employees and the State of California. Plaintiff and the aggrieved employees (“PAGA Members”) are all current and former outside sales employees who were employed by Defendants in California
5 and who work or worked as non-exempt employees and/or who were alleged to be misclassified
6 as exempt employees during the PAGA Period and who were subject to Defendants’ wage and
7 hour policies and/or practices at any point in time from October 5, 2022 through the date of the
8 final executed settlement agreement resolving the Action, May 8, 2025.

9 Plaintiff has agreed to settle the PAGA penalties for a Gross Settlement Fund of
10 **\$1,2000,000**. There are approximately **490 employees** covered by this settlement and the
11 estimated **PAGA pay period count is 15,910**. Thus, the settlement calls for an average payment
12 of **\$75.42 per pay period**, which is an excellent settlement. (See Declaration of Ross Shanberg,
13 “Shanberg Decl.”, ¶¶ 2, 18, filed concurrently herewith, and Joint Stipulation of PAGA Settlement
14 and Release “Settlement Agreement”, attached as **Exhibit 1** thereto.)

15 The Gross Settlement Fund includes all attorneys’ fees and costs, settlement administration
16 expenses, and penalties payments to the aggrieved employees and the Labor and Workforce
17 Development Agency (LWDA). The Net Settlement Amount to be distributed to the aggrieved
18 employees and the LWDA is approximately **\$778,898**. The Net Settlement Amount will be
19 distributed 75% to the LWDA (**\$584,173.50**), and 25% to the aggrieved employees (**\$194,724.50**).
20 Each of the aggrieved employees will, therefore, receive on average approximately **\$397.40** in
21 penalties. (Shanberg Decl., ¶¶ 2, 19; Exhibit 1).

22 In exchange for such payment, the aggrieved employees are giving up no rights whatsoever
23 to recover for underlying violations of the Labor Code other than for PAGA penalties. Any
24 aggrieved employee may file a claim against Defendants for such violations. This settlement is
25 fair, reasonable and adequate, and therefore should be approved by this Court.

26 ///

27 ///

1 **II. CASE BACKGROUND**

2 Defendant Heartland is a Delaware limited liability company, with operations and
3 employees throughout California and the United States. Defendant Heartland provides credit card
4 payment processing services to merchants in California and throughout. Defendant Global
5 Payments Inc. is currently a publicly traded company on the NYSE.

6 Plaintiff Valerie Furnia worked for Defendant Heartland as a Relationship Manager from
7 April 2023 to August 2023, and alleges she worked for Defendant Global Payments Inc. as her
8 joint employer during the same time period. Her duties included prospecting and closing new
9 merchant account sales and providing account services to customers. Before being hired as a full-
10 time sales employee, Ms. Furnia contends that she, and all other sales-based employees, were
11 required to go through one week of online training and a second week of training out in the field
12 (“Field Week” program) with Defendants whereby they could not earn sales commissions.

13 Plaintiff served her PAGA letter on the Labor and Workforce Development Agency
14 (LWDA) on October 5, 2023, and supplemental PAGA letter on December 29, 2023. Plaintiff
15 thereafter filed her PAGA Complaint on January 12, 2024, and her First Amended Complaint on
16 March 12, 2024, on behalf of herself and other aggrieved employees adding violations of Labor
17 Code §§ 232, 232.5, 432.5, 1102.5, 1197.5 due to the above-referenced confidentiality provisions
18 that allegedly violated California law. (See Plaintiff’s First Amended Complaint attached as
19 **Exhibit 2** to Shanberg Decl.)

20 The operative First Amended Complaint (“FAC”) alleges: (1) the failure to compensate
21 Plaintiff and similarly situated aggrieved employees for their earned wages during employment
22 and upon separation of employment, in violation of Labor Code §§ 510, 1194 and 1194.2; (2) the
23 failure to provide legally compliant meal and rest breaks in violation of Labor Code §§ 226.7 and
24 512; (3) the failure to reimburse Plaintiff and the aggrieved employees for all of their business
25 related expenses incurred in the performance of their job duties in violation of Labor Code §
26 2802; (4) unlawful deductions from Plaintiffs’ earned wages, in violation of Labor Code § 221
27 et. seq.; (5) the failure to provide accurately itemized wage statements with all required
28 information in violation of Labor Code §§ 226(a) and 246(h); (6) unlawful commission contracts

in violation of Labor Code § 2751; and (7) unlawful prohibition of disclosure of information (unlawful confidentiality) in violation of Labor Code §§ 232, 232.5; 432.5, 1102.5, and 1197.5.

III. SUMMARY OF SETTLEMENT

A. Aggrieved Employees

The Settlement covers the following aggrieved employees:

Any and all current and former outside sales employees who were employed by Defendants in California and who work or worked as non-exempt employees and/or who were alleged to be misclassified as exempt employees during the PAGA Period and who were subject to Defendants' wage and hour policies and/or practices at any point in time from October 5, 2022, through May 8, 2025. The sales positions covered by the settlement are the following: Relationship Manager, Territory Manager, Division Manager, Payroll Division Manager, Senior Product Advisor, Payroll Territory Manager, Jump Start Relationship Manager, Financial Institution Relationship Manager, and Jump Start Senior Product Advisor. Based upon Defendants' records, there are approximately 490 employees covered by the settlement and the estimated PAGA pay period count is approximately 15,910. (Shanberg Decl., ¶¶ 17, 18).

B. Settlement Fund Allocation

Defendants will pay into a common fund the total amount of \$1.2 million to settle the matter. The net settlement fund shall be allocated 75% to the LWDA and 25% to the aggrieved employees. The Net Settlement Amount shall be calculated by deducting the Attorneys' Fees and Costs and Settlement Administration Costs from the Gross Settlement Amount.

A breakdown of the Gross Settlement Fund of **\$1,200,000.00** is provided below:

1. Individual Settlement Payments to allegedly aggrieved employees: \$194,724.50;
2. LWDA Settlement Payment: \$584,173.50;
3. Attorneys' Fees: \$400,000;
4. Costs: \$16,123.00;
5. Administration Expenses Payment: \$4,979.00.

(Shanberg Decl., ¶ 20)

C. Release

The "Released Parties" include:

Defendants Heartland Payment Systems, LLC and Global Payments Inc. and each of their parents, subsidiaries, affiliates, owners, predecessors, successors, and associated organizations, past and present, and each of their respective trustees, directors, officers, agents, joint employers, attorneys, managing agents, employees, contractors, insurers, representatives, assigns, all persons acting by, through, under, or in concert with any of them, and/or all persons acting on their behalf.

The “Released Claims” include:

All claims for PAGA penalties and penalties under California Labor Code sections §§ 201, 202, 203, 204, 221, 223, 225.5, 226, 226.3, 226.7, 232, 232.5, 256, 432.5, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 2751, and 2802 that were alleged, or reasonably could have been alleged, based on the facts and allegations in the First Amended Complaint and PAGA notices dated October 5, 2023, and December 29, 2023, underlying the Furnia Action. (See Shanberg Decl., ¶ 22, 23; Ex 1: ¶¶ 17, 18)

IV. LEGAL STANDARD FOR APPROVAL OF PAGA SETTLEMENT

The PAGA statute allows an “aggrieved employee” to bring a civil action on behalf of himself or herself and on behalf of other aggrieved employees and the State to recover civil penalties which are specifically established by the PAGA with respect to provisions of the California Labor Code which does not otherwise provide for civil penalties (Lab. Code § 2699(g)), and also, civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. *See* Labor Code § 2699(a).

The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699, subd. (1)(2) (“The superior court shall review and approve any settlement of any civil action pursuant to this part”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action” and therefore one does not have to meet the requirements of a class action. *Casida v. Sears Holding Corp.*, 2012 WL 253217, at *3 (E.D. Cal. Jan. 26, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 WL 2173715, at * 11 (E.D. Cal. June 2, 2011); *Arias v. Superior Court*, 46 Cal.4th 969, 980-88 (2009) (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.*, 2013 WL 1490667, at *15 (C.D. Cal. Jan. 28, 2013). As such, a court’s

1 review of a PAGA settlement involves analysis of several unique features that render the approval
2 process distinct from approval of a class action settlement. A court reviewing a PAGA settlement
3 need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams v. Superior*
4 *Court*, 3 Cal.5th 531, 549 (2017).

5 In a PAGA case, the Court’s focus is not the monetary amount which aggrieved employees
6 or the State are to receive, but instead, whether the total settlement amount achieves the PAGA’s
7 objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties
8 for the government that otherwise may not have been assessed and collected by overburdened state
9 enforcement agencies.” *See Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *4
10 (N.D. Cal. Apr. 2, 2010) (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the
11 PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for
12 education of employers and employees about their rights and responsibilities under this code, to
13 be continuously appropriated to supplement and not supplant the finding to the agency for those
14 purposes.” *See* Labor Code § 2699(j).

15 **V. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE**

16 This settlement resulted from Plaintiff’s aggressive litigation stance to obtain a reasonable
17 recovery after making a full and fair evaluation of the case. This PAGA settlement should
18 therefore be approved.

19 **A. The Settlement Is Presumed Fair**

20 A representative settlement is presumed fair where: (1) the settlement is reached through
21 arm’s length bargaining, (2) investigation and discovery are sufficient to allow counsel and the
22 court to act intelligently, (3) [and] counsel is experienced in similar litigation. *See Dunk v. Ford*
23 *Motor Company*, 48 Cal. App. 4th 1794, 1802 (1996). Similar to class actions, PAGA settlements
24 are subject to a court’s approval under a fair, adequate and reasonable standard. *See Moniz v.*
25 *Adecco USA, Inc.*, 72 Cal.App.5th 56, 76-77 (2021). A court may also consider relevant factors
26 such as the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of
27 further litigation, the risk of maintaining class action status through trial, the amount offered in
28 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
views of counsel, [and] the presence of a governmental participant. . . . *See Officers of Justice v.*

1 *Civil Service Com’n of City and County of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1995).
2 “This list is not exhaustive and should be tailored to each case. Due regard should be given to
3 what is otherwise a private consensual agreement between the parties.” *Dunk, supra*, 48 Cal. App.
4 4th at 1801. Moreover, the trial court has broad powers to determine whether a proposed
5 [representative action] settlement is fair. *See Mallick v. Superior Court*, 89 Cal. App. 3d 434
6 (1979).

7 **B. The Settlement Is The Product of Arm’s Length Negotiations**

8 In this action, Defendant produced a sampling of (1) Defendants’ payroll records for 10%
9 of all Aggrieved Employees between October 5, 2022 to March 11, 2025; (2) Defendants’
10 commission records for 10% of all Aggrieved Employees between October 5, 2022 and March 11,
11 2025; (3) Defendants’ relevant policy documents applicable between October 5, 2022 and March
12 11, 2025, including multiple versions of the employee handbooks, multiple travel and expenses
13 documents, sales policy documents; (4) Defendants’ sales employee agreements applicable to the
14 Aggrieved Employees for 10% of all Aggrieved Employees between October 5, 2022 and March
15 11, 2025; and (5) a 3% sample of A/R, true up, and portfolio buyout information for 3% of the all
16 Aggrieved Employees between October 5, 2022 and March 11, 2025. Defendants also produced
17 a list of allegedly aggrieved employees, and Plaintiff’s interviewed a considerable number of
18 aggrieved employees in support of Plaintiffs’ alleged claims. Plaintiff also hired statistical expert
19 James Toney to analyze the data on the aggrieved employees and to create models reflecting the
20 total exposure to PAGA penalties in this case. (Shanberg Decl., ¶ 24).

21 After litigating this case for over a year, the parties attended Mediation before the
22 Honorable Judge Amy Hogue (Ret.) on April 3, 2025. The mediation was vigorously contested,
23 and at all times, the settlement negotiations were non-collusive and involved considerable disputes
24 over payment terms. After an all-day mediation before Ms. Hogue, the parties did not settle the
25 matter. However, after continued negotiations over the next several weeks, the parties successfully
26 reached a settlement. (Shanberg Decl., ¶ 25).

27 Plaintiff did not settle this case until she had conducted sufficient investigation into the
28 claims, interviewed current and former non-exempt employees, and reviewed sufficient data to
make a settlement determination. Plaintiff believes the approximate \$75 per pay period settlement

1 is an excellent result and is generally higher than most PAGA-only settlements in Los Angeles
2 County. Moreover, the settlement will not affect any aggrieved employee's right to pursue
3 underlying Labor Code violations against Defendants if he or she chooses to do so. (Shanberg
4 Decl., ¶ 26)

5 **C. Plaintiffs' Counsel Is Experienced In Similar Litigation And Endorse The**
6 **Settlement**

7 The view of attorneys in representative litigation is "entitled to significant weight." *Fisher*
8 *Bros. v. Cambridge-Lee Industries, Inc.*, 630 F.Supp. 482, 488 (E.D. Pa. 1985); *see also Ellis v.*
9 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). Plaintiff's counsel has significant
10 experience in complex representative and class action wage and hour litigation. (Shanberg Decl.,
11 ¶¶ 27-32). As such, they are experienced and qualified to evaluate the claims and defenses in this
12 case, and unequivocally support the settlement reached herein.

13 **D. The Strength of Plaintiffs' Case, The Amount Offered In Settlement, and**
14 **The Risk, Expense, Complexity, and Duration of Further Litigation Favors**
15 **Settlement**

16 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon*
17 *v. Chrysler Comm.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Moreover, "[t]he expense and possible
18 duration of the litigation should be considered in evaluating the reasonableness of [a] settlement."
19 *In re Mega Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000).

20 In this case, Plaintiff seeks PAGA penalties only. The sole PAGA claim that is at issue
21 in this settlement concerns Defendants': (1) failure to pay all wages, including minimum wages,
22 straight time wages, and overtime compensation; (2) failure to provide meal periods or provide
23 compensation in lieu thereof; (3) failure to authorize and permit rest periods or provide
24 compensation in lieu thereof; (4) failure to reimburse for necessary business expenditures; (5)
25 illegal deductions from earned wages; (6) commissions contracts violations; (7) failure to
26 properly maintain and submit accurate itemized wage statements; (8) failure to timely pay all
27 wages owed (at termination or otherwise); (9) illegal prohibitions on disclosure of information
28 about wages, working conditions and related non-disclosure violations. (Shanberg Exhibit 2).
Plaintiff's penalties exposure analysis for the PAGA claims is set forth below.

1 **1. Failure to Compensate Sales Employees Proper Wages During Online**
2 **Training and Field Week**

3 In this case, Plaintiff contends that, prior to being hired as full-time sales employees
4 eligible to earn commissions, employees must go through one week of online training and one
5 week of Heartland's Field Week program. Under the Field Week program, Heartland requires
6 “Trainees” to generate at least 10 sales appointments and business referrals within a 5 day
7 period. Typically, a participant in Field Week works in excess of eight (8) hours in a day and
8 over 40 hours in a week to generate the 10 sales leads/appointments and business referrals
9 required for full time employment. Plaintiff contends the participants in Field Week are paid
10 below the minimum wage for their hours worked, or not at all. Plaintiff further claims that the
11 employees are not paid rates above their straight time rate. (See Labor Code §§ 510 and 1194).

12 In response to Plaintiff’s allegations, Defendants contend they have valid defenses to
13 Plaintiff’s unpaid wage claims, including the outside salesperson exemption set forth in Wage
14 Order 4-2001 and Labor Code §1171. Defendants further contend that all employees, even
15 employees working during Field Week and those engaged in online training, were paid for all
16 hours worked at the correct rate of pay.

17 Plaintiff’s evaluation of this claim reflects the maximum potential PAGA penalty
18 exposure for the unpaid wage claim is approximately \$98,000 (\$49,000 for minimum wages and
19 \$49,000 for overtime wages) as calculated by Plaintiffs’ expert, James Toney. (See Mr. Toney’s
20 PAGA total penalty damage model, attached to the Shanberg Decl. as **Exhibit 3**; See also
21 Shanberg Decl., ¶ 33a). Based on the issues and defenses above, Plaintiff believes she has an
22 80% chance of success on the unpaid wage theories of liability. Nevertheless, Labor Code
23 section 2699(e)(2) also gives a trial court broad discretion to reduce PAGA penalties: “[A] court
24 may award a lesser amount than the maximum civil penalty amount specified by this part if,
25 based on the facts and circumstances of the particular case, to do otherwise would result in an
26 award that is unjust, arbitrary and oppressive, or confiscatory.” Case law supports a trial court’s
27 discretion in downgrading penalties based on these factors. *See Thurman v. Bayshore Transit*
28 *Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no abuse of discretion by reducing
penalty by 30 percent). Thus, Plaintiff believes that the real value of the unpaid wage penalties

is **\$54,880** (\$98,000 x .8 [chances of success] x .7 [court discretion] = \$54,880). (Shanberg Decl., ¶ 33a).

2. Failure to Authorize and Permit Meal and Rest Periods for Trainees

a. Meal periods

In relevant part, Labor Code section 512(a) reads: An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes... IWC Wage Order 4-2001 sections 11(A) and (B) mirror the same mandatory meal period requirements as Labor Code section 512. IWC Wage Order 4-2001 § 11(A) further provides in pertinent part that: “Unless the employee is relieved of all duty during the 30 minute meal period, the meal period shall be considered an on duty meal period and counted as time worked...”.

As set forth in the California Supreme Court’s seminal *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 decision, “[t]he employer satisfies [its meal period obligation] if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.” (*Brinker, supra*, 53 Cal.4th at 1040.)

In this case, Plaintiff contends that trainees were not afforded any reasonable opportunity to take duty-free meal periods, as they were under Heartland’s direction and control to set up the requisite number of appointments and referrals in a limited time. Plaintiff further asserts that Heartland does not maintain any such records of meal periods. Thus, Heartland must pay Trainees premium pay for failing to provide such meal breaks.

In response to such arguments, Defendants contend that Heartland permits all aggrieved employees more than 30-minute meal periods, and the aggrieved employees will be unable to establish why certain aggrieved employees did not take their meal periods, and that in any event, Defendants had no duty to ensure that meal periods were taken, pursuant to *Brinker, supra*. Defendants further argue the aggrieved employees qualify under the outside salesperson exemption, and therefore, Defendants are under no obligation to provide meal periods.

The maximum potential PAGA penalties recoverable for meal period violations, as calculated by Plaintiffs’ expert, is \$49,000. (See Ex. 3) Based on the various issues raised above

1 regarding proving meal period violations, Plaintiff believes she has a 50% chance of proving a
2 right to recover all meal period penalties during the employee training period. Thus, Plaintiff
3 believes that the real value of the meal period penalties is **\$17,150**. (\$49,000 x .5 [chances of
4 success] x .7 [court discretion] = \$17,150). (Shanberg Decl., ¶ 33.b.i).

5 **b. Rest periods**

6 Section 12(A) of the IWC Wage Order(s) states: “Every employer shall authorize and
7 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
8 each work period. The authorized rest period time shall be based on the total hours worked daily
9 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

10 Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide an
11 employee a rest period in accordance with the applicable provisions of this order, the employer
12 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for
13 each workday that the rest period is not provided.” Moreover, during rest periods, “employees
14 must not only be relieved of work duties, but also be freed from employer control over how they
15 spend their time.” *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 270 (2016).

16 Plaintiff contends Heartland maintained no policy allowing rest periods, and Trainees were
17 never authorized or permitted to take them. Plaintiff further contends that because of the minimum
18 meeting and prospecting requirements during the two-week training period, employees were not
19 permitted a reasonable opportunity to take regular duty-free rest periods. As such, Heartland failed
20 to authorize 10-minute net rest periods, and has violated Wage Order 4-2001, thus entitling
21 aggrieved employees to civil penalties under Labor Code § 226.7 and § 2699(f).

22 Defendants contend, on the other hand, that Heartland complied with California’s rest
23 period requirements, and implemented rest period policies throughout the PAGA period that
24 comply with California law. Defendants further argue that there is no way to prove, on a
25 representative basis, that the aggrieved employees did not receive their duty-free rest periods,
26 except on an individual basis, which would be completely unmanageable.

27 Plaintiffs’ damages expert calculates total penalties on the rest period claim of \$49,000.
28 Plaintiff believes she has a 50% chance of recovering all of the above penalties on the rest period
claim, in the absence of other mitigating factors. Given that a court has discretion regarding the

1 amount of penalties to be assessed, Plaintiff therefore believes the real exposure of PAGA
2 penalties on the rest period claim is approximately **\$17,150**. (\$49,000 x .5 [chances of success] x
3 .7 [court discretion] = \$17,150.) (Shanberg Decl., ¶ 33.b.ii).

4 **3. Failure to Reimburse Necessary Business Expenditures**

5 California Labor Code section 2802(a) provides:

6 An employer shall indemnify employees for all necessary expenditures or losses incurred
7 by the employee in direct consequence of the discharge of his or her duties, or of his or her
8 obedience to the directions of the employer, even though unlawful, unless the employee, at the
9 time of obeying the directions, believed them to be unlawful. Plaintiff contends Heartland fails
10 and refuses to comply with California's reimbursement requirements in at least four respects:

11 **a. Trainee Business Expenses**

12 Plaintiff contends that Heartland has no policy or practice to reimburse Trainees for any
13 of their reimbursable expenses, including but not limited to, the use of their automobile to set
14 referrals and appointments, use of their personal cell phone, and in-home office expenses
15 incurred in carrying out their duties during the Field Week period. Plaintiff and other aggrieved
16 employees pay records confirm this fact and that Heartland does not reimburse Trainees during
17 (at minimum) their first two weeks of employment. Heartland disputes Plaintiff's contentions,
18 and contends that it maintains a compliant expense reimbursement policy for all employees.

19 **b. Business Expenses Allocated as "25 of Gross Sales Compensation"**

20 For Salespersons, Heartland purports to allocate 25% of their total gross sales
21 compensation to business expenses. Plaintiff contends this allocation is illusory and does not
22 comply with California law.

23 First, in the seminal California Supreme Court case, *Gattuso v. Harte-Hanks Shoppers,*
24 *Inc.*, 42 Cal.4th 554 (2007), the Court held that reimbursements may be made to commissioned-
25 based sales employees only if the employer pays the employee enhanced commission rates to
26 compensate for such business expenses, and only when such enhanced commissions are adequate
27 to compensate the employee for all necessarily incurred business expenses. Heartland's
28 commission policy fails on both fronts.

1 For example, Plaintiff contends that Heartland pays sales employees the same commission
2 rates, regardless of expenses incurred by these employees. Further, Plaintiff contends that while
3 Heartland purports to allocate a percentage of all Salespersons' commissions to reimbursable
4 expenses (i.e. 25%), Heartland fails to pay the Salespersons' enhanced commissions to satisfy
5 Heartland's reimbursement obligation, and such allocation percentage does not as a matter of law
6 fully reimburse Salespersons for all of their expenses. Plaintiff contends that this is because
7 Heartland does not characterize the commissions as earned, but only as advances, and Heartland
8 regularly and repeatedly claws back these advances from Salespersons' wages (commonly referred
9 to as "Signing Bonuses" to repay Heartland for its costs of doing business (commonly referred to
10 as "True Ups"). In essence, Plaintiff's claim asserts that Heartland makes Salespersons the insurer
11 of Heartland's business and sales losses, which is patently illegal.

12 Heartland disputes Plaintiff's allegations and contends that its reimbursement policies and
13 procedures comply with California law.

14 **c. Business Expenses Added to Salespersons' "A/R Balance"**

15 Plaintiff also contends that Heartland has adopted unlawful policies by making its
16 Salespersons the insurer of Heartland's business losses. As set forth in various employee payroll
17 records, sales employees were frequently "charged" for incurring business expenses which were
18 then deducted from their A/R Balance. Heartland disputes Plaintiff's allegations and contends that
19 its reimbursement policies and procedures comply with California law.

20 **d. Heartland's "Cap" on Business Expense Reimbursements**

21 Plaintiff further contends that Heartland's reimbursement policy is illegal because
22 Heartland places artificial caps on reimbursing Salespersons' business expenses, with either a flat
23 dollar amount (i.e. \$75 for cell phone), or percentage of the prior month's gross profit margin, both
24 of which do not account for all business expenses incurred by Salespersons. Moreover, Heartland's
25 reimbursement policy excludes payment for mileage below 1,000 miles per month along with other
26 necessarily incurred expenses, including computer equipment, hardware, and software.

27 Plaintiff also contends that Heartland required Plaintiff and other employees to use their
28 personal cell phones, computers, software, and home internet to carry out their job duties. Plaintiff
claims Heartland failed to reimburse Plaintiff and other aggrieved employees for these expenses.

1 Defendants on the other hand contend that Heartland had a compliant reimbursement
2 policy, and that Plaintiff and other aggrieved employees did not have to use their phones for work
3 purposes, and that any required equipment was usable outside of work and therefore not
4 compensable. *See, e.g., Townley v. BJ's Restaurants, Inc.*, 37 Cal.App.5th 179 (2019).
5 Defendants further contend that Heartland's 25% of commissions expense reimbursement policy
6 is lawful and meets the parameters of *Gattuso*. Plaintiff acknowledges the uncertainty of how a
7 court would rule on the lawfulness of Defendant's expense policy.

8 According to Plaintiff's expert, and assuming a maximum PAGA penalty of \$100 per pay
9 period per employee, the maximum exposure on the unreimbursed business expense claim is
10 approximately \$1,591,000. Plaintiff believes she has a 50% chance of recovering all of the
11 potentially recoverable civil penalties. Moreover, Plaintiffs apply the same discounts as set forth
12 above in the analysis as to the court's discretion to reduce penalties. As such, Plaintiff believes
13 the real exposure on this claim to be **\$566,850**. ($\$1,591,000 \times .5$ [chances of success] $\times .7$ [court
14 discretion] = \$566,850). (Shanberg Decl., ¶ 33.c. i-iv).

15 **4. Unlawful deductions from wages**

16 Labor Code section 221 provides, in pertinent part, that it is "unlawful for any employer
17 to collect from an employee any part of wages theretofore paid by said employer to said
18 employee." Moreover, Labor Code section 223 provides that it is "unlawful to secretly pay a
19 lower wage while purporting to pay the wage designated by statute or by contract."

20 Plaintiff contends that Heartland engages in unlawful deductions from Salespersons'
21 wages by several of its written policies and practices. These policies and practices adopt self-
22 help remedies whereby Heartland repays itself for business losses, or purported business losses,
23 and Heartland makes the employee the insurer of its losses, which California prohibits. *See*
24 *Kerr's Catering Service v. Department of Indus. Relations*, 57 Cal.2d 319, 327-328 (1962).

25 **a. Portfolio Buyouts**

26 Plaintiff contends that when Salespersons have positive "A/R Balances," Heartland often
27 unilaterally forces the sale of employees' vested commission accounts, to purportedly repay
28 Heartland for amounts Heartland deems are owed to it. Heartland identifies these as "Portfolio
Buyouts." During discovery, Plaintiff uncovered that some aggrieved employees were forced to

1 sell their vested accounts in order to cover “losses” or overpayments of commissions on new
2 accounts, and other balances charged to the employee by Heartland. Many of these “losses”,
3 according to Heartland, were attributable to “over-payments” of Signing Bonuses, True-Ups to
4 cover over-paid residual sales commissions,” and other charges such as “expenses”.

5 **b. True-ups**

6 Plaintiff also contends that Heartland’s “True-Up” policy results in Heartland unlawfully
7 deducts monies from its sales employees. The “True-Up” policy purports to repay Heartland for
8 previously paid commissions earned by Salespersons, and to repay Heartland for other amounts
9 identified on a Salespersons’ “A/R Balance.” Heartland, however, unilaterally decides how
10 these “A/R Balances” are to be collected and has absolute discretion “to collect [Salespersons’]
11 A/R Balance in full at any time. “True-Up” are generally always negative, so that Heartland is
12 owed money from the employee.

13 Plaintiff claims that such a practice is illegal, by in essence circumventing California law
14 prohibiting attachment of a person’s wages by a creditor. See *California State Employees’ Assn.*
15 *v. State of Cal.*, 198 Cal.App.3d 374, 378 (1988) (even if an “employee owed a debt. . . , does not
16 ‘affect the validity or alter the amount of the current claim’ for wages earned”).

17 **c. Bridge Compensation**

18 Plaintiff received “bridge compensation” during the course of her employment, whereby
19 Heartland agreed to pay her a salary in lieu of commissions for a period of weeks until Plaintiff
20 Furnia could secure enough clients to obtain meaningful commissions. However, even though
21 Defendants allegedly had no right to recoup the “bridge compensation” at any time, Defendants
22 setoff such “bridge compensation” from Plaintiff Furnia’s wages in order repay themselves.
23 Plaintiff contends that Defendants engaged in the same practices with other similarly situated
24 employees as Plaintiff.

25 Defendants vehemently disputed that they had any exposure for unlawful deduction of
26 wages and argued that any deductions were proper under Labor Code section 224, which states,
27 in relevant part, that certain deductions expressly authorized in writing by the employee through
28 a wage agreement are not unlawful. Cal. Lab. Code § 224; see also *Sciborski v. Pacific Bell*
Directory (2012) 205 Cal.App.4th 1152, 1167 (stating that “[b]ecause a commission is not

1 earned until the express contractual conditions are met, Labor Code section 221 does not prohibit
2 an employer from recouping [an] advance if the conditions are not satisfied”). Defendants further
3 argue that its sales employees each signed a valid commission agreement providing for certain
4 deductions from any commissions and/or advances, and that any sales compensation was not
5 considered “earned” until certain conditions precedent were met, including performing additional
6 services for merchants and calculating and applying true-up amounts.

7 Plaintiff determined after analyzing pay stubs on behalf of a sampling of employees that
8 approximately one-third of the aggrieved employees pay periods reflected potential unlawful
9 deductions in the form of “True-Ups”, Portfolio Buyouts, and/or Bridge Compensation
10 deductions. As such, Plaintiff calculated the total exposure on the unlawful deduction claim to
11 be approximately \$550,000. However, given difficulties with proving these claims at trial and
12 concerns over individualized issues and manageability, Plaintiff’s counsel discounted this
13 amount by approximately 40%. Thus, Plaintiff believes that the real value of the unlawful
14 deductions penalties is **\$231,000**. ($\$555,000 \times .6$ [chances of success] $\times .7$ [court discretion] =
15 \$38,850). (Shanberg Decl., ¶ 33.d.(i) – (iii)).

16 **5. Unlawful Commission Contracts**

17 Pursuant to Labor Code § 2751, “Whenever an employer enters into a contract of
18 employment with an employee for services to be rendered within this state and the contemplated
19 method of payment of the employee involves commissions, the contract shall be in writing and
20 shall set forth the method by which the commission shall be computed and paid. The employer
21 shall give a signed copy of the contract to every employee who is a party thereto and shall obtain
22 a signed receipt for the contract from the employee.”

23 In the instant case, Plaintiff contended Heartland’s employee sales agreement violates
24 Labor Code §2751 by failing to identify the method of payment and how commissions shall be
25 computed and paid, among other things. Plaintiff also alleged the agreement’s generic reference
26 to Heartland’s “Sales Policies”, which were so numerous and convoluted resulted in sales
27 employees having little to no understanding of how and what their commissions would be each
28 month and therefore violated Labor Code §2751. Plaintiff further cited authorities that
specifically hold an aggrieved employee may recover civil penalties pursuant to the default

1 penalty provision in Labor Code § 2699(f) as a result of a violation of Labor Code § 2751. (See
2 *Swafford v. International Business Machines*, (2019) 383 F. Supp. 3d 916; See also *Keenan v*
3 *Cox Communications California, LLC*, 2019 Westlaw 3288939, reversed on other grounds.)

4 In response, Defendants argued that Labor Code § 2751 does not permit the recovery of
5 civil penalties pursuant to Labor Code § 2698 et. seq. Defendants further contended that even if
6 the aggrieved employees were entitled to civil penalties for a Labor Code §2751 violation, only
7 one pay period violation was warranted as opposed to multiple pay period violations throughout
8 each aggrieved employees' employment.

9 Plaintiff's expert calculated the total potential exposure for the unlawful commission
10 contract claim to be approximately \$1,591,000. This included a penalty for every pay period for
11 every aggrieved employee. However, given the legal and factual hurdles to prove both a violation
12 of Labor Code §2751 and a right to recoup aggregated civil penalties for such a violation, Plaintiff
13 believes she has a 30% chance of recovering all of the potentially recoverable civil penalties.
14 Moreover, Plaintiff applies the same discounts above in the analysis as to the court's discretion to
15 reduce penalties. As such, Plaintiffs believe the real exposure on this claim to be **\$334,110**.
16 (\$1,591,000 x .3 [chances of success] x .7 [court discretion] = \$334,110). (Shanberg Decl., ¶ 33.e).

17 **6. Non-Disclosure Agreements**

18 Plaintiff's position is that Heartland's employment agreements have several confidentiality
19 and non-disclosure provisions which contravene California law. In particular, the standard form
20 Employee Sales Agreement, HPS Sales Policy 42.0, and Heartland's Exit Packet and Separation
21 Letter contain confidentiality provisions that Plaintiff alleges violates California law. Specifically,
22 California Labor Code §§ 232(a) and (b) prohibit employers from requiring, as a condition of
23 employment, that an employee refrain from disclosing the amount of his or her wages. Plaintiff's
24 Complaint alleges that Defendants' confidentiality policies prohibit employees from disclosing the
25 amount of their wages in violation of Labor Code §§ 232(a) and (b), 232.5, 432.5, 1102.5(a), and
26 1197.5(k). (See Exhibit 2, ¶¶ 71- 87)

27 In response to such arguments, Defendants contend that all employee agreements and
28 related documents do not violate any of the non-disclosure provisions cited above. Defendants

1 further argue, similar to the Labor Code §2751 claim, that even if a violation was found, only one
2 pay period penalty would be authorized per the Labor Code.

3 Plaintiff's expert again calculated the total civil penalty exposure on the Labor Code non-
4 disclosure claims based on one penalty per period for every aggrieved employee. As such, the
5 total potential exposure on this claim is approximately \$1,591,000. Plaintiff, however, believes
6 there is a 10% chance of recovering all of the potentially recoverable civil penalties. Moreover,
7 Plaintiffs apply the same discounts as set forth above in the analysis as to the court's discretion to
8 reduce penalties. As such, Plaintiffs believe the real exposure on this claim to be **\$111,370.**
9 $(\$1,591,000 \times .1 \text{ [chances of success]} \times .7 \text{ [court discretion]} = \$111,370)$. (Shanberg Decl., ¶
10 33.f).

11 **7. Improper pay stubs**

12 Plaintiff further alleges that Defendants failed to provide proper pay statements that
13 complied with Labor Code § 226. Pay stub civil penalties are potentially recoverable because
14 Heartland allegedly failed to provide accurate pay stubs. (Cal. Lab. Code § 226.) For instance,
15 as a result of Heartland's failure to pay all wages due and owing, as discussed above, the wage
16 statements issued to Heartland's employees fail to accurately state all gross wages earned, in
17 violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code §226(a)(2),
18 all deductions, in violation of Labor Code § 226(a)(4), net wages earned, in violation of Labor
19 Code § 226(a)(5), etc.

20 Plaintiff further alleges that to obtain PAGA penalties for pay stub violations, a plaintiff
21 need not satisfy the "injury" or "knowing and intentional" requirements of Labor Code section
22 226(e)(1). *See Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667 (2018).

23 On the other hand, Defendants argue derivative violations of Labor Code § 226 do not
24 give rise to pay stub violations upon which PAGA penalties arise. *See Maldonado v. Epsilon*
25 *Plastics, Inc.*, 22 Cal.App.5th 1308 (2018); *see also Culley v. Lincare Inc.*, 236 F.Supp.3d 1184,
26 1195-1196 (E.D. Cal. 2017). Defendants further argue that any such violations were inadvertent,
27 and therefore not actionable. *See Heritage Residential Care, Inc. v. Division of Labor Standards*
28 *Enforcement*, 192 Cal.App.4th 75 (2011).

1 Plaintiffs' expert calculated total pay stub penalty exposure based on the assumption that
2 all employees incurred pay stub violations during the entire PAGA period. This amounted to
3 approximately \$3,977,500. Although the pay stub penalty claims are primarily derivative in
4 nature, Plaintiff still believes she had a 50% chance of recovering all of the potentially
5 recoverable civil penalties. After applying the same discount based on the court's discretion to
6 reduce penalties, Plaintiff believes the real exposure on this claim to be **\$1,392,125**. ($\$3,977,500$
7 $\times .5$ [chances of success] $\times .7$ [court discretion] = \$1,392,125). (Shanberg Decl., ¶ 33.g).

8 **8. Waiting time penalties**

9 Plaintiff further contends Heartland willfully failed to timely pay all compensation due
10 and owing to Ms. Furnia and other similarly situated aggrieved employees who participated in
11 the Field Week and online training program (two pay periods only) whose employment was
12 terminated during the relevant time period, as required by Labor Code §§ 201 and 202.

13 Defendant counters that no waiting-time penalties should be awarded. Defendants
14 pointed out that waiting-time penalties are derivative of each and every other underlying alleged
15 California Labor Code violation and contended that it paid the terminated employees all wages
16 due and owing. Moreover, Defendants emphasized that, under California Labor Code section
17 203, employers are only obligated to pay waiting-time penalties if they "willfully" fail to pay
18 wages due and owing at the time of termination or resignation.

19 Plaintiff's expert calculates PAGA penalties on this claim in the amount of \$30,000.
20 Based on the heightened willfulness standard, as well as the case law undermining Plaintiffs'
21 ability to recover waiting time penalties under Labor Code § 256, Plaintiffs estimate that the real
22 exposure of this claim is 25% of those total penalties. Plaintiff again applies the same discount
23 as set forth above in the above analysis as to the court's discretion to reduce penalties. As such,
24 Plaintiffs believe the real exposure on this claim to be **\$7,500** ($\$30,000 \times .25$ [chances of
25 success] $\times .70$ [court discretion] = \$7,500). (Shanberg Decl., ¶ 33.h).

26 **9. Total exposure PAGA penalties**

27 Based upon the alleged Labor Code violations, Plaintiff believes the total actual PAGA
28 exposure is approximately **\$2,732,135**. Based on a settlement value of \$1,200,000, this amounts
to approximately **44%** of the total exposure to PAGA penalties. Plaintiff believes this to be an

1 excellent result, given that Defendants have arguably valid defenses to Plaintiff's claims, and
2 that there is a substantial question as to whether a trial court will award cumulative
3 penalties sought by Plaintiff for alleged multiple Labor Code violations because there is no
4 precedent for such an award.¹ (Shanberg Dec., ¶ 33.i)

5 The purpose of the PAGA is to "achieve maximum compliance with [California's] labor
6 laws." *See Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). The
7 penalties recovered here on behalf of the State and aggrieved employees achieve that purpose.

8 **VI. NOTICE OF THE SETTLEMENT IS NOT REQUIRED**

9 "[A] PAGA action is a statutory action for penalties brought as a proxy for the State," and
10 as such, "there is no need to protect absent employees' due process rights[.]" *Williams v. Superior*
11 *Court*, 3 Cal.5th 531, 546 (2017). "Unnamed employees need not be given notice of the PAGA
12 claim, nor do they have the ability to opt-out of the representative PAGA claim." *Ochoa-*
13 *Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *5 (N.D. Cal. Apr. 2, 2010). A
14 representative PAGA action need not satisfy class action requirements, and no due process concern
15 arises from the fact that there are "nonparty aggrieved employees who are not given notice if, and
16 an opportunity to be heard in, a representative action that is not brought a class action." *Arias v.*
17 *Sup. Ct.*, 46 Cal.4th 969, 984 (2009).

18 Nonetheless, the parties are providing a one-page Notice of Settlement to be included with
19 the aggrieved employees' payments so that aggrieved employees are apprised of the nature of the
20 payment and the release of penalties, and the Notice of Settlement clearly states that "No wage
21 claims are released by this settlement." (See Ex. A to Settlement Agreement.)

22
23
24
25
26
27 ¹ While there are cases allowing for the "stacking" of penalties when it comes to evaluating the
28 "amount in controversy" where a case has been removed to federal court (*see Schiller v. David's*
Bridal, Inc., 2010 WL 2793650 (E.D. Cal. July 14, 2010), it appears to be an open question
whether such "stacked" penalties may be awarded when they potentially overlap and "double
count" remedies for similar violations.

1 **VII. ATTORNEYS' FEES AND COSTS**

2 **A. Fees Can Be Awarded As A Percentage of the Common Fund**

3 When a common fund is created, attorneys who secured the fund are entitled to a
4 percentage of the fund. (*See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 [“the
5 court may determine the amount of a reasonable fee by choosing an appropriate percentage of
6 the fund created”]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 [“percentage fees
7 have traditionally been allowed in . . . common fund cases”]). “[F]ee awards in class actions
8 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11
9 (2008); *see also* Rubinstein, Conte and Newberg, *Newberg on Class Actions* at § 14:6 (surveying
10 cases, and finding that 30-50% of fees awarded in cases in which the common fund is relatively
11 small); *see also In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494 (court
12 approved attorney fee award equal to 45% of the settlement fund).

13 Under the common fund doctrine, “a litigant or a lawyer who recovers a common fund
14 for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee
15 from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S.Ct. 745, 750, 62
16 L.Ed.2d 676 (1980). The Supreme Court explained:

17 The doctrine rests on the perception that persons who obtain the benefit of a
18 lawsuit without contributing to its cost are unjustly enriched at the successful
19 litigant’s expense. Jurisdiction over the fund involved in litigation allows a court
20 to prevent this inequity by assessing attorney’s fees against the entire fund, thus
spreading fees proportionately among those benefitted by the suit.” (Citations
omitted.)

21 (*Id.*; *see also Laffitte, supra*, 1 Cal.5th at 503 [“the percentage method is a valuable tool that
22 should not be denied our trial courts”]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [“one who
23 expends attorneys’ fees in winning a suit which creates a fund from which other derive benefits,
24 may require those passive beneficiaries to bear a fair share of the litigation costs”].)

25 Thus, the common fund doctrine ensures that each member of the class contributes
26 proportionately to the payment of attorney’s fees recovered from monetary payments that the
27 prevailing party recovered in the lawsuit. “Put another way, in common fund cases, a variant of
28 the usual rule applies and the winning party pays his or her own attorney’s fees. . .” *Stanton v.*

1 *Boeing*, 327 F.3d 938, 967 (9th Cir. 2003), citing *Wininger v. SI Mgmt L.P.*, 301 F.3d 1115 (9th
2 Cir. 2002).

3 Because Plaintiff's attorneys secured a fund for Plaintiff and the other aggrieved
4 employees, they are entitled to a reasonable percentage of that fund.

5 **B. Plaintiff's Attorney's Fees Are Also Recoverable Under The Lodestar**
6 **Adjustment Approach**

7 Fees in representative cases are also appropriate under the lodestar method, whereby the
8 number of hours reasonably expended is multiplied by a reasonable hourly rate. *See Lealao*,
9 *supra*, 82 Cal.App.4th at 26. Under PAGA, moreover, attorneys' fees and costs are statutorily
10 recoverable. See Cal. Labor Code § 2699, subd. (g)(1). Once a lodestar has been established, it
11 may "be adjusted, based on consideration of factors specific to the case, in order to fix the fee at
12 the fair market value for the legal services provided." *PLCM Group, Inc. v. Drexler*, 22 Cal.4th
13 1084, 1095 (2000). In evaluating the lodestar, and whether an upward adjustment is appropriate,
14 courts look to the qualifications of counsel, the reasonableness of the rates charged, the novelty
15 and difficulty of the case, the contingent nature of the case, the results achieved, and related
16 matters. *See, e.g., Serrano, supra*, 20 Cal.3d 25, 49; *see also Press v. Lucky Stores, Inc.*, 34
17 Cal.3d 311, 321-322 (1983). All such factors support the fee award here.

18 **1. Plaintiffs' Counsel Are Well-Qualified To Represent The Aggrieved**
19 **Employees And Their Rates Are Reasonable**

20 Counsel for Plaintiffs are experienced employment lawyers, and have extensive
21 experience in the specific subcategory of wage and hour claims. (Shanberg Decl., ¶¶ 27-32).
22 Moreover, counsel for Plaintiff have hourly rates that are reasonable in the relevant market, and
23 below that found with other class action employment lawyers with similar expertise. (Shanberg
24 Decl., ¶ 34).

25 **2. Plaintiffs' Counsel's Lodestar Is Well Documented**

26 A properly supported motion for attorney's fees is prima facie evidence that the expenses
27 and services were necessarily incurred. *Hadley v. Krepel*, 167 Cal.App.3d 677, 682 (1985).
28 Here, counsel provide appropriately detailed declarations and detailed, contemporaneous billing

statements in support of the lodestar amounts. (See **Exhibit 4** to Shanberg Decl.; ¶ 34). Plaintiff's counsel's billing records reflect 333.20 hours spent on this matter.

Based on Plaintiff's counsel's lodestar, the fee requested results in a 1.63 multiplier. Plaintiffs' counsel took this case on a full contingency basis, and there was a substantial risk both at the beginning of the case and that this case could not move forward as a PAGA action given that Plaintiff had signed an arbitration agreement and the uncertainty with the law regarding PAGA and arbitration agreements. (See ¶ 34 and Exhibit 4 to Shanberg Decl.) Plaintiff's hourly rates are also similar to market rates for hourly defense counsel and do not reflect the risk with this being a contingency case. (Shanberg Decl., ¶ 34.)

The multiplier requested here is in line and well below other wage and hour complex actions. Multipliers between 1 and 4 are common within the Ninth Circuit. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051, n.6 (9th Cir. 2002); *Uschold v. NSMG Shared Servs., LLC*, 2020 WL 3035776, at *16 (N.D. Cal. June 5, 2020) (applying multiplier of 4); *Ridgeway v. Wal-Mart Stores, Inc.* 269 F.Supp.3d 975, 999 (N.D. Cal. 2017) (applying multiplier of 2).

3. Novelty And Difficulty Of The Case

Plaintiff and her counsel were able to secure a favorable settlement only after investigating the claims and researching the theories of potential liability in this case. The claims alleged were not assured, however Plaintiff pushed forward and secured an excellent settlement.

Significantly, moreover, this case is not your "run of the mill" wage and hour case. The complex issues surrounding Heartland's commission, deduction, and expense reimbursement policies, including the "True Up", "Portfolio Buyout", and 25% expense reimbursement policy were challenging to analyze and evaluate, both from a factual and legal standpoint. Nonetheless, Plaintiff took aggressive settlement positions at every turn and achieved an excellent result for the aggrieved employees and the State of California.

4. Plaintiffs' Counsel Worked Efficiently And Skillfully

Plaintiff propounded significant representative discovery, conducted extensive witness outreach, and secured informal discovery to evaluate and investigate the alleged wage and hour violations. Plaintiff and her counsel resolved the case only after challenging Defendants at every turn to obtain the highest and best settlement possible from Defendants.

1 **5. Plaintiff's Counsel Worked Entirely On A Contingency Basis**

2 Plaintiff's counsel worked on a complete contingency and advanced all expenses and
3 costs. The contingent risk included liability issues, damage issues, and evolving changes under
4 PAGA. According to the California Supreme Court:

5 A contingent fee must be higher than a fee for the same legal services paid as they
6 are performed. The contingent fee compensates the lawyer not only for the legal
7 services he renders but for the loan of those services. The implicit interest rate on
8 such a loan is higher because the risk of default (the loss of the case, which
cancels the debt of the client to the lawyer) is much higher than that of
conventional loans.

9 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, *Economic Analysis of*
10 *Law* (4th ed. 1992) pp. 534, 567.)

11 **6. Plaintiff's Counsel Achieved An Excellent Result**

12 Plaintiff's counsel obtained a \$1.2 million settlement, which would not have been
13 achieved but for Plaintiff's and her attorneys' ability to efficiently prosecute the case to a
14 successful conclusion. This amounts to a gross recovery of over \$75 per pay period, an amount
15 which is higher than most PAGA settlements which generally range in the amount of \$10 - \$50
16 per pay period. (Shanberg Decl., ¶ 26).

17 **7. Plaintiff's Counsel's Costs Are Documented and Reasonable**

18 Plaintiff's counsel is also entitled to its reasonable out-of-pocket costs incurred in
19 prosecuting this action, in the amount of \$16,123, which includes mediation and expert witness
20 fees, and other costs necessary to the prosecution of this case. (See **Exhibit 5** to Shanberg Decl.;
21 ¶ 35). Moreover, Rust Consulting, Inc. has agreed to provide settlement administration services
22 in the amount of \$4,979, including preparing and mailing the notices to the aggrieved employees,
23 distributing the payments, and performing other administration duties for this PAGA settlement.
24 (See **Exhibit 6** to Shanberg Decl.; ¶ 36).

25 **VIII. NOTICE OF SETTLEMENT TO LWDA**

26 Plaintiff provided notice of the settlement to the LWDA concurrently with the filing of
27 this Motion. (See Shanberg Decl., ¶ 38)
28

1 **IX. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests that this Court grant her Motion to
3 Approve the PAGA Settlement.
4

5 Dated: May 20, 2025

SHANBERG STAFFORD LLP

6
7 By: /s/Ross E. Shanberg/s/
8 Ross E. Shanberg
9 Attorneys for Plaintiff
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28