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11 all others similarly situated, and on behalf of the general public

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF ORANGE**

14 JESSICA TEPPER on behalf of herself,  
15 all others similarly situated, and on  
16 behalf of the general public,

17 Plaintiffs,

18 v.

19 CHARLES & CYNITHA EBERLY,  
20 INC. DBA THE EBERLY COMPANY;  
21 and DOES 1-100,

22 Defendants.

Case No. 30-2024-01371238-CU-OE-CXC

*[Assigned for All Purposes to the  
Honorable William D. Claster; Dept. CX101]*

**PLAINTIFF JESSICA TEPPER'S MOTION  
FOR APPROVAL OF PAGA  
SETTLEMENT**

Date: June 13, 2025

Time: 9:00 a.m.

Reservation No.: 74569019

Complaint Filed: January 4, 2024

Trial Date: None Set

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1       **I.     INTRODUCTION**

2           Plaintiff Jessica Tepper (“Plaintiff” or “Ms. Tepper”) respectfully requests that the Court  
3 approve the Joint Stipulation and Settlement Agreement (“Settlement Agreement”)<sup>1</sup> entered into  
4 between Plaintiff and Defendant Charles & Cynthia Eberly Inc. dba The Eberly Company (“The  
5 Eberly Company” or “Defendant”) (collectively Plaintiff and Defendant are referred to as the  
6 “Parties”) which resolves the claims raised against Defendant in exchange for a non-reversionary  
7 \$200,000 Gross Settlement Amount. **Aggrieved Employees are estimated to receive an average**  
8 **payment of approximately \$1,549.49.**<sup>2</sup> The pay period value is estimated to be approximately  
9 \$32.54.<sup>3</sup>

10          This proposed settlement will settle the claims alleged in Plaintiff’s complaint under the  
11 Private Attorney Generals Act of 2004 (“PAGA”) on behalf of the California Labor and Workforce  
12 Development Agency (“LWDA”) and all non-exempt salaried property managers who worked for  
13 Defendant in California at any time from October 20, 2022, to November 23, 2024 (“Aggrieved  
14 Employees”). The relief provided for under the Settlement Agreement is solely for the payment of  
15 penalties under the PAGA.

16          Pursuant to California Labor Code § 2699, subsection (1)(2), a superior court shall review and  
17 approve any settlement of any civil action filed pursuant to the PAGA. *See* Cal. Lab. Code §  
18 2699(1)(2).<sup>4</sup> In deciding whether to grant approval of the proposed settlement, the primary issue to be  
19 decided is whether the settlement is fair, adequate, and reasonable. As set forth herein, the proposed  
20 settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is  
21 the product of (1) arms-length negotiations, employing a neutral mediator, (2) negotiations by  
22 attorneys experienced in these issues, (3) sufficient investigation which was necessary to evaluate the  
23 relative strength and value of Plaintiff’s claims, and (4) a reasoned compromise based on the strength

24 \_\_\_\_\_  
25 <sup>1</sup> The Settlement Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as  
Exhibit 1. Exhibit 1 herein refers to the Settlement Agreement.

26 <sup>2</sup> The Net Settlement Amount is approximately \$27,890.75. \$27,890.75 divided by approximately  
18 Aggrieved Employees = \$1,549.49. (*See* Declaration of Christopher A. Olsen (“Olsen Dec.”) ¶  
27 3).

<sup>3</sup> \$27,890.75 Net Settlement Amount divided by 857 pay periods = \$32.54. (*See* Olsen Dec. ¶ 3).

28 <sup>4</sup> Plaintiff will upload a copy of the Settlement Agreement to the LWDA’s website at the same time  
this motion is filed with the Court.

1 and value of the case, as well as, the risks, expense, complexity, and likely duration of further  
2 litigation.

## 3 **II. BACKGROUND**

4 Defendant provides professional property management services. Plaintiff was employed  
5 by Defendant as a non-exempt salaried property manager in Los Angeles, California.

### 6 **a. Procedural History**

7 Plaintiff sent her Notice of Labor Code Violations Pursuant to Labor Code § 2699.3 on or  
8 about October 20, 2023. In the letter, Plaintiff apprised the LWDA of her wage and hour claims  
9 against Defendant. (Mara Dec. ¶ 11; *see also* Exhibit 6 attached thereto).

10 On or about January 4, 2024, Plaintiff filed a complaint asserting claims for civil penalties  
11 under the Private Attorneys General Act of 2004 (“PAGA”). Plaintiff’s Complaint alleges causes  
12 of action on behalf of Plaintiff and those similarly situated aggrieved employees under the PAGA  
13 for Defendant’s alleged failure to pay all straight time wages, failure to pay all overtime wages,  
14 failure to provide lawful meal periods, failure to provide lawful rest periods, failure to provide  
15 compliant wage statements, failure to pay all wages due at termination, failing to pay wages twice  
16 per month, failing to adopt a compliant sick leave/absence control policy, and failure to reimburse  
17 business expenses. (Mara Dec. ¶ 12).

### 18 **b. Discovery and Investigation**

19 After filing, the Parties conducted discovery. Defendant produced hundreds of pages of  
20 documents. These documents included Plaintiff’s personnel file and policy documents that covered  
21 Plaintiff’s and the aggrieved employees’ employment with Defendant. Defendant also produced  
22 Plaintiff’s time and pay records. These documents also included a 20% random sampling of  
23 records for aggrieved employees which were comprised of handwritten time records and Excel  
24 files that contained wage data. Plaintiff’s Counsel reviewed and analyzed these records. In  
25 addition, Plaintiff provided her Counsel with hundreds of pages of documents, including text  
26 messages and emails from her employment with Defendant. Plaintiff’s Counsel also talked with  
27 other aggrieved employees who provided Plaintiff’s Counsel with additional documents and  
28 information. These documents included emails and text messages sent between Defendant and

aggrieved employees. (Mara Dec. ¶ 13).

**c. Mediation**

The Parties attended mediation with respected wage and hour mediator David Rotman on September 22, 2024. The mediation concluded with a mediator’s proposal that was ultimately accepted by the Parties. Thereafter, the Parties negotiated the Settlement Agreement they now ask the Court to approve. (Mara Dec. ¶ 14; *see also* Exhibit 1 attached thereto).

**II. THE PARTIES’ CONFLICTING POSITIONS**

**a. Meal and Rest Periods**

Plaintiff alleges that Defendant does not provide lawful meal and rest periods because Plaintiff asserts that employees must always answer their phones when Defendant, prospective tenants, or current tenants call them, including when they are on meal or rest breaks. Under Labor Code § 512(a), “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...[and] an employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Under California law an employer “satisfies this obligation [to provide meal periods] 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 Restaurant Corp. v. Superior Court* (“*Brinker*”) (2012) 53 Cal.4th 1004, 1040. (Mara Dec. ¶ 15).

An employer’s obligation to provide its employees with rest periods arises under the IWC Wage Orders. Wage Order 5-2001, Section 12(A) requires, “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof...”

Plaintiff contends that Defendant does not provide Plaintiff and the Aggrieved Employees with duty-free meal and rest periods because Plaintiff asserts that employees must always answer their phones when Defendant, prospective tenants, or current tenants call them. Plaintiff contends

1 that this includes when employees are on meal and rest periods. In addition, Plaintiff asserts that  
2 employees always had to be available to let in outside vendors, including during meal and rest  
3 periods. Plaintiff further asserts that employees also always must be available should an emergency  
4 arise. (Mara Dec. ¶ 15).

5 Defendant argues that it provides employees with lawful, off-duty meal and rest periods.  
6 Defendant further asserts that employees' schedules are flexible and employees can take meal and  
7 rest periods whenever they want. Defendant contends that employees work remotely at the  
8 apartment complexes they manage and can turn off their phones during meal and rest periods.  
9 Defendant asserts that employees schedule times for outside vendors to visit and can schedule  
10 these times around their meal and rest periods. Defendant contends that its meal and rest period  
11 policies are, and have been, lawful. Defendant contends that if litigation were to continue, it would  
12 file a motion for summary judgment on this issue and provide declarations from Aggrieved  
13 Employees which verify they received meal periods in accordance with California law. (Mara Dec.  
14 ¶ 16).

15 **b. Unpaid Wages**

16 Plaintiff argues that Defendant does not pay employees for all hours worked. Employees  
17 must be paid for all "hours worked," as that phrase is defined in the Wage Order and interpreted  
18 by California courts. Hours worked is defined in the Wage Order as "the time during which an  
19 employee is subject to the control of an employer and includes all the time the employee is suffered  
20 or permitted to work, whether or not required to do so." Wage Order 5-2001, Subd. 2(G); *see also*  
21 *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833.

22 Plaintiff contends that Defendant requires employees to record a set number of hours  
23 worked per pay period, regardless of how many hours they actually work. Plaintiff asserts that this  
24 is because employees are only allowed to record the number of hours stated in their contract with  
25 Defendant. Plaintiff asserts that any other hours must receive prior approval before they can be  
26 recorded. Plaintiff contends that Defendant requires employees to work additional hours for which  
27 their salary does not cover. Plaintiff asserts that employees must be available to handle any issues  
28 that arise even if it is outside of the hours stated in their contract. (Mara Dec. ¶ 17).

1 Defendant argues that it pays for all hours worked. Defendant contends that employees do  
2 not have to work hours outside of what is specified in their contract. Defendant asserts that it pays  
3 employees for all hours worked and that employees are told to record all hours worked. Defendant  
4 contends that employees' schedules are flexible, and employees can determine what hours to work  
5 each day depending on the needs of the apartment complex. Defendant asserts that when  
6 employees work over the number of hours in their contract, employees are told to submit those  
7 hours and are paid for those hours. As such, Defendant contends that it pays employees for all of  
8 the hours they work. (Mara Dec. ¶ 18).

9 **c. Business Reimbursements**

10 Plaintiff contends that employees must use their personal cell phones for business purposes.  
11 Under Labor Code § 2802, the employer must "indemnify its employees for expenses they  
12 necessarily incur in the discharge of their duties..." *Gattuso v. Harte-Hanks Shoppers, Inc.* (2015)  
13 169 P.3d 889. In *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1140, it  
14 was held that § 2802 requires employers to always reimburse employees who are required to use  
15 personal cell phones for work-related calls for a reasonable percentage of their cell phone bills.

16 Plaintiff asserts that Defendant requires employees to use their personnel cell phones for  
17 business purposes. Plaintiff contends that employees are contacted by current and prospective  
18 tenants on their personnel cell phones. In addition, Plaintiff asserts that Defendant calls and texts  
19 employees on their personnel cell phones for business purposes such as to inform them of times  
20 when vendors will be arriving. Plaintiff contends that Defendant fails to reimburse employees for  
21 this expense. Defendant asserts that it reimburses employees for all business expenses, including  
22 the use of employees' personal cell phones. (Mara Dec. ¶ 19).

23 **d. Wage Statement and Waiting Time Penalties**

24 Plaintiff also pursued claims for failure to provide accurate itemized wage statements and  
25 waiting time penalty claims. These claims are derivative of Plaintiff's unpaid wages claim. Should  
26 Plaintiff's unpaid wages claim fail, these claims would also fail. (Mara Dec. ¶ 20).

27 In addition, Defendant contends that even if Plaintiff were successful in her unpaid wages  
28 claim, she would have to prove Defendant "willfully" failed to pay employees the appropriate

1 wages due upon separation of employment. “A willful failure to pay wages within the meaning of  
2 Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee  
3 when those wages are due. However, a good faith dispute that any wages are due will preclude  
4 imposition of waiting time penalties under Section 203.” Cal. Code Regs. Tit. 8 § 13520. “A ‘good  
5 faith dispute’ that any wages are due occurs when an employer presents a defense, based in law or  
6 fact, which would preclude any recovery on the part of the employee. The fact that a defense is  
7 ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.” *Id.* (Mara  
8 Dec. ¶ 21).

9 Defendant contends that any failure to pay wages due at the separation of employment was  
10 not willful. Defendant argues that it would not be liable for waiting time penalties because a “good  
11 faith dispute” exists over the payment of those premium wages. *See* Cal. Code Regs. Tit. 8 § 13520;  
12 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. (Mara Dec. ¶ 22).

13 Further, Defendant contends that Plaintiff would also have to prove that Defendant  
14 “knowingly and intentionally” failed to comply with the wage statement requirements under Labor  
15 Code § 226. *See Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056. Defendant  
16 maintains that it reasonably, and in good faith believes that it was providing a complete and  
17 accurate wage statement in compliance with California law. (Mara Dec. ¶ 23).

18 Defendant also argues that Plaintiff’s unpaid wages claim cannot form the basis of her  
19 wage statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22  
20 Cal.App.5th 1308, for the position that employees do not suffer injury under California Labor  
21 Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay  
22 received even if the pay is later determined to be inaccurate. (Mara Dec. ¶ 24).

#### 23 **e. Manageability**

24 Defendant also argues that should litigation continue, it will bring a motion challenging the  
25 manageability of trial as Defendant does not believe that this case can be tried manageably and  
26 will require the testimony of every individual aggrieved employee. Furthermore, while Defendant  
27 do not concede that any of its wage and hour policies are unlawful, Defendant claims that any  
28 challenges Plaintiff has posed to its policies are easily refuted by how they are implemented in

1 practice; as a result, no aggrieved employee has suffered any damages. (Mara Dec. ¶ 25).

### 2 **III. THE PROPOSED SETTLEMENT**

3 The Parties have agreed (subject to and contingent upon the Court’s approval) that this  
4 action be settled and compromised for the non-reversionary total sum of \$200,000 (“Gross  
5 Settlement Amount”), which includes, subject to Court approval: (a) attorneys’ fees of \$66,660  
6 (33.33% of the Gross Settlement Amount) to compensate Plaintiff’s Counsel for work already  
7 performed and work remaining to be performed in securing Court approval and overseeing  
8 administration of the settlement; (b) litigation costs in the amount of \$15,277.02; (c) a PAGA  
9 Representative Payment to the named class representative in the sum of \$5,000 in consideration  
10 for prosecuting this action, work performed, and risks undertaken for the payment of attorneys’  
11 fees and costs in the event she had been unsuccessful in the matter; and (c) administration fees and  
12 expenses to APEX in the amount of \$1,500.<sup>5</sup>

13 After all Court-approved deductions from the PAGA Settlement Sum, it is estimated that  
14 the Net Settlement Fund (“NSF”) will be \$111,562.98. California Labor Code § 2699(i) states that  
15 “civil penalties recovered by aggrieved employees shall be distributed in accordance with Labor  
16 Code § 2699 *et seq.* as follows: 75% to the LWDA for enforcement of labor laws, including the  
17 administration of this part, and for education of employers and employees about their rights and  
18 responsibilities under this code, to be continuously appropriated to supplement and not supplant  
19 the funding to the agency for those purposes; and 25% to the aggrieved employees.” Therefore, of  
20 the Gross Settlement Amount, \$83,672.23 (75% of the Gross Settlement Amount) will go to the  
21 LWDA and \$27,890.75 (25% of the Gross Settlement Amount) will be distributed to Aggrieved  
22 Employees (this portion of the settlement funds is referred to as the “Net Settlement Amount”).

#### 23 **a. Calculation of the Settlement Payments to the Aggrieved Employees**

24 Subject to the terms and conditions of the Settlement Agreement, the Settlement  
25 Administrator will calculate and issue Individual Settlement Shares to Aggrieved Employees based  
26 on the following formula:

27  
28 <sup>5</sup> See Declaration of Sean Hartranft (“Hartranft Dec.”) ¶ 7.

Each Aggrieved Employee will receive a proportionate share of the NSA that is equal to (i) the number of pay periods he or she worked for Defendant in California during the PAGA Period based on the Database provided by Defendant, divided by (ii) the total number of pay periods worked by all Aggrieved Employees based on the same Database, which is then multiplied by the NSA. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual Settlement Share ties directly to the amount of pay periods that he or she worked.

(Exhibit 1 at Section III, Paragraph B.1.a., Page 6). Each Aggrieved Employee's gross settlement award will be apportioned as 100% penalties and be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. (Exhibit 1 at Section III, Paragraph B.2., Page 6).

**b. Funding and Disbursement**

Within fifteen (15) days after the Effective Date,<sup>6</sup> Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number; and (4) the total number of pay periods during which the Aggrieved Employee performed work during the PAGA Period as an Aggrieved Employee ("Database"). (Exhibit 1 at Section III, Paragraph E.2.a., Page 9). The Settlement Administrator will conduct a skip trace for the address of all Aggrieved Employees who are former employees of Defendant and an NCOA search on all addresses. (*Id.*).

The Gross Settlement Amount will be wired by Defendant to the settlement administrator within thirty (30) days of the Effective Date. (Exhibit 1 at Section I, Paragraph K, Page 2; *see also* Section III, Paragraph E.2.b., Page 9). The Settlement Administrator will disburse the GSA within fifteen (15) days after funding, as instructed herein. The Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Aggrieved Employees; (2) the Attorney Fee Award and Cost Award to Plaintiff's Counsel, as approved by the Court; (3) the PAGA Representative Payment, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the LWDA Payment. (Exhibit 1 at Section III, Paragraph E.2.d., Page 9). A Notice of PAGA

<sup>6</sup> The Effective Date is the date the Court grants approval of the settlement. (Exhibit 1 at Section I, Paragraph J, Page 2).

1 Settlement, substantially similar to the form attached to the Settlement Agreement as Exhibit A,  
2 subject to Court approval, shall accompany each Individual Settlement Share check. (Exhibit 1 at  
3 Section I, Paragraph S, Page 3). The notice will be mailed out in English only as all of the Class  
4 Members speak English. (Olsen Dec. ¶ 6).

5 **c. Returned Notices and Checks**

6 If a Notice and Individual Settlement Check are returned because of an incorrect address,  
7 within five (5) days from receipt of the returned Notice, the Settlement Administrator will conduct  
8 a search for a more current address for the Aggrieved Employee and re-mail the Notice and  
9 Individual Settlement Share check to the Aggrieved Employee. The Settlement Administrator will  
10 use the NCOA and skip traces to attempt to find the current address. The Settlement Administrator  
11 will be responsible for taking reasonable steps to trace the mailing address of any Aggrieved  
12 Employee for whom a Notice and Individual Settlement Share check is returned by U.S. Postal  
13 Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all  
14 undelivered mail; performing address searches for all mail returned without a forwarding address;  
15 and promptly re-mailing the Notice and Individual Settlement Check to Aggrieved Employees for  
16 whom new addresses are found. If the PAGA Notice is re-mailed, the Settlement Administrator  
17 will note for its own records the date and address of each re-mailing. (Exhibit 1 at Section III,  
18 Paragraph E.2.e., Pages 9-10).

19 **d. Uncashed Checks**

20 Aggrieved Employees must cash or deposit their Individual Settlement Share checks within  
21 one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are  
22 not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement  
23 Administrator will send a reminder postcard indicating that unless the check is redeemed or  
24 deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to  
25 replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by  
26 the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator  
27 will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All  
28 funds associated with the Individual Settlement Share checks returned as undeliverable and funds

1 associated with those Individual Settlement Share checks remaining un-cashed, shall be  
2 transmitted by the Settlement Administrator to the California Controller's Unclaimed Property  
3 Fund in the name of the Aggrieved Employee. (Exhibit 1 at Section III, Paragraph E.6., Pages 10-  
4 11).

5 **e. Release of Claims**

6 Each PAGA Aggrieved Employee shall fully release and discharge Defendant and the  
7 Released Parties from any and all claims that were alleged or could have been alleged based on  
8 the claims, facts, and/or allegations contained in operative Complaint and in the PAGA Notice  
9 submitted by Plaintiff to the LDWA. The release shall be for the PAGA Period. (Section I,  
10 Paragraph Y, Page 3). The Released Parties are Defendants including their past, present, and future  
11 divisions, affiliates, parents, subsidiaries, predecessors, successors, assigns, members,  
12 shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives,  
13 administrators, fiduciaries, beneficiaries, subrogees, executors, partners, and privies. (Exhibit 1 at  
14 Section I, Paragraph Z, Page 3).

15 The Parties are unaware of any other actions, including individual, class, and PAGA  
16 actions, that may be affected by this settlement. (Mara Dec. ¶ 41, Olsen Dec. ¶ 5).

17 **f. Number of Pay Periods**

18 It was estimated for purposes of mediation that there are approximately 18 PAGA  
19 Aggrieved Employees that worked approximately 1,325 pay periods between the start of the  
20 PAGA Period and the mediation. As such, this settlement is estimated to encompass approximately  
21 18 PAGA Aggrieved Employees and approximately 1,325 pay periods. To the extent that the total  
22 number of PAGA Aggrieved Employees or pay periods increases by more than ten percent (10%)  
23 of this estimate, the Gross Settlement Amount shall increase proportionately. Alternatively, in the  
24 event this escalator provision is triggered, Defendant shall have the option to adjust the end of the  
25 PAGA Period so as to have an earlier end date to limit the number of PAGA Aggrieved Employees  
26 or pay periods below the ten percent (10%) escalator threshold. (Exhibit 1 at Section III, Paragraph  
27 A.1., Pages 5-6).

28 Based upon Defendant's records, there are 18 Aggrieved Employees that worked 857 pay

1 periods included in the settlement. (Olsen Dec. ¶ 3). As such, the escalator clause is not triggered.  
2 (Olsen Dec. ¶ 4).

#### 3 **IV. THE COURT SHOULD APPROVE THE SETTLEMENT**

4 The PAGA allows for the private enforcement of certain California Labor Code sections  
5 relating to wage and hour violations. The settlement of a PAGA action requires court approval  
6 pursuant to the operative PAGA statute, which states that a superior court shall review and approve  
7 the settlement of any civil action filed pursuant to the PAGA. *See* Cal. Lab. Code § 2699(1)(2).

8 In evaluating the adequacy of the settlement amount, a court is not concerned with the  
9 amount the aggrieved employees are to receive, but rather, a court must focus on the total  
10 settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit  
11 consists of civil penalties, not individual or class damages.” *Mendez v. Tween Brands, Inc.* (E.D.  
12 Cal. July 1, 2010) 2010 WL 2650571 \*4. “Unlike class actions, these civil penalties are not meant  
13 to compensate unnamed employees because the action is fundamentally a law enforcement action.”  
14 *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. April 2, 2010) 2010 WL 1340777 \*4.  
15 Moreover, a court must not lose sight of the fact that “[u]nlike a class action seeking damages or  
16 injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to  
17 recover civil penalties for the government that otherwise may not have been assessed and collected  
18 by overburdened state enforcement agencies.” *Id.*

19 As with any settlement, a court must be mindful in conducting its inquiry that “[s]ettlement  
20 is a compromise, which balances the possible recovery against the risks inherent in litigating  
21 further.” *See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) 2011 U.S.  
22 Dist. LEXIS 103222, \*24. Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes  
23 and an abandoning of highest hopes’” [*Officers for Justice v. Civil Service Com.* (9th Cir. 1982)  
24 688 F.2d 615, 624], as “it is the very uncertainty of outcome in litigation and avoidance of wasteful  
25 and expensive litigation that induce consensual settlements.” *Id.* at 625.

26 In analyzing PAGA settlements, it is important that “the relief provided for under the  
27 PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit  
28 the public[.]” *O’Connor v. Uber Techs., Inc.* (N.D. Cal. Aug. 18, 2016) 201 F.Supp.3d 1110, 1133.

1 The court in *O'Connor* suggests that courts can look at the factors outlined in *Hanlon v. Chrysler*  
2 *Corp.* (9th Cir. 1998) 150 F.3d 1011, in evaluating a PAGA settlement. *See O'Connor*, 201  
3 F.Supp.3d at 1134.

4 Under *Hanlon*, a court must conclude that a settlement is “fundamentally fair, adequate,  
5 and reasonable” before it approves of the settlement. *Hanlon*, 150 F.3d at 1026. The analysis in  
6 *Hanlon* is typically used in federal district courts to evaluate proposed class action settlements. In  
7 California state courts, settlements are more typically evaluated under the standards set forth in the  
8 cases *Dunk v. Ford Motor Co.* (“*Dunk*”) (1996) 48 Cal.App.4th 1794, and *Kullar v. Foot Locker*  
9 *Retail, Inc.* (“*Kullar*”) (2008) 168 Cal.App.4th 116. Similar to *Hanlon*, *Dunk* found that in deciding  
10 whether to approve a proposed class action settlement under California Code of Civil Procedure §  
11 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” *Dunk*, 48  
12 Cal.App.4th at 1801.

13 A proposed settlement is presumed fair under the following circumstances: (1) the Parties  
14 reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient  
15 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;  
16 and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802. Here, as will be shown  
17 herein, all of these elements bearing on the fairness of the proposed settlement—with the exception  
18 of the percentage of objectors, which is not applicable in a PAGA action<sup>7</sup>—are present.

19 *Kullar* instructs that an understanding of the amount in controversy is an important factor  
20 into whether the settlement “of the class members’ claims is reasonable in light of the strengths  
21 and weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker*  
22 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of*  
23 *Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the  
24 strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”  
25 *Id.* In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to “decide

26 <sup>7</sup> The PAGA provides no notice or claim procedures. Therefore, objections, other than the potential  
27 objection of the LWDA, are not contemplated in PAGA actions. *See Baumann v. Chase Inv. Servs.*  
28 *Corp.* (2014) 747 F.3d 1117, 1122 (“Unlike *Rule 23(c)(2)*, PAGA has no notice requirements for  
unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”).

the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.” *Kullar*, 168 Cal.App.4th at 133.

**a. The Settlement is Fair, Reasonable, and Adequate**

**i. The Settlement was Reached as a Result of Arm’s Length Negotiations**

The settlement was reached as a result of arm’s-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. At the mediation, counsel for the Parties conducted extensive arm’s length settlement negotiations until the settlement was reached.

**ii. The Settlement is the Result of Thorough Investigation and Discovery**

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to support the settlement. The significant amount of discovery, the production and analysis of hundreds of documents and thousands of lines of data, and protracted settlement negotiations through the mediations and in the discussions that followed were the substantial bases upon which the Parties’ “clear view of the strengths and weaknesses of their cases” was made possible. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

**iii. Counsel for Both Parties are Experienced in Similar Litigation**

Both Plaintiff’s Counsel and Defendant’s Counsel are particularly experienced in wage and hour employment law and class actions. Plaintiff’s Counsel has significant experience in litigating unpaid wages, unprovided meal and rest periods, and overtime claims. Indeed, Plaintiff’s Counsel was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. (Mara Dec. ¶¶ 2-10). Plaintiff’s Counsel has prosecuted numerous wage and hour cases on behalf of employees for California Labor Code violations and thus are experienced and qualified to evaluate the claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. This experience instructed Plaintiff’s Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement. Defendant’s Counsel practices labor and employment law and have represented

1 numerous employers in similar types of claims. Accordingly, both Parties' Counsel are  
2 experienced in wage and hour employment law and class actions.

3 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

4 An understanding of the amount in controversy is an important factor into whether the  
5 settlement of the Aggrieved Employees' "claims is reasonable in light of the strengths and  
6 weaknesses of the claims and the risks of the particular litigation." *Kullar*, 168 Cal.App.4th 116,  
7 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,  
8 409. The most important factor in this regard is "the strength of the case for plaintiffs on the merits,  
9 balanced against the amount offered in settlement." *Id.*

10 In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to  
11 "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for  
12 that of the attorneys." *Kullar*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit  
13 statement of the maximum amount the Aggrieved Employees could recover if it prevailed on all  
14 its claims, provided there is a record which allows "an understanding of the amount that is in  
15 controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409.  
16 Put differently, "as the court does when it approves a settlement as in good faith under *Code of*  
17 *Civil Procedure* section 877.6, the court must at least satisfy itself that the [PAGA] settlement is  
18 within the 'ballpark' of reasonableness." *Kullar*, 168 Cal.App.4th at 133, citing *Tech-Bilt v.*  
19 *Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.

20 As the following subsections show, the Parties' investigation and discovery revealed a  
21 healthy discount was needed in order to reach a settlement.

22 **1. The Settlement is Fair and Reasonable Based on the Strengths  
of Plaintiff's Case and the Risks and Costs of Further Litigation**

23 There are approximately 18 Aggrieved Employees who worked approximately 857 pay  
24 periods. (Mara Dec. ¶ 26; *see also* Exhibit 1 at Section III, Paragraph A.1., Pages 5-6; *see also*  
25 Olsen Dec. ¶ 3).

26 Plaintiff claims that there are six (6) potential violations under § 2699(f)(2) – failure to  
27 provide lawful meal breaks, failure to provide lawful rest breaks, failure to pay all wages owed,  
28 failure to reimburse for business expenses, failure to provide accurate itemized wage statements,

1 and failure to pay wages owed at the time of termination<sup>8</sup> – of the Labor Code sections which give  
2 rise to PAGA penalties. (Mara Dec. ¶ 27).

3 The PAGA allows the private enforcement of certain California Labor Code sections  
4 relating to wage and hour violations. PAGA Section 2699(f)(2) reads, in part, as follows:

5 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per  
6 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved  
7 employee per pay period for each subsequent violation.

8 California courts have interpreted this language to require notice to the employer that an initial  
9 violation occurred before penalties for subsequent violations could be assessed. *See Amaral v.*  
10 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1210. Under *Amaral*, “subsequent” has a special  
11 meaning within the California Labor Code that triggers heightened statutory penalties only after  
12 an employer has learned that its conduct violates the Labor Code—that is, pursuant to  
13 *Amaral*, courts may reject a purely chronological understanding of the term “subsequent” and  
14 interpret its use in California Labor Code to require that “the employer has been notified that it is  
15 violated a Labor Code provision” before higher penalties are triggered. *Amaral*, 163 Cal.App.4th  
16 at 1157, 1207–09. Each of Plaintiff’s claims, with the exception of Plaintiff’s claims waiting time  
17 penalties, occurred at least once in every pay period. Plaintiff’s claims for waiting time penalties  
18 only occurred in approximately 18 pay periods. Thus, Defendant’s maximum exposure under  
19 §2699(f)(2) is \$430,300:

20 \$100 x 5 PAGA violations x 857 pay periods = \$428,500

21 \$100 x 1 PAGA violations x 18 pay periods = \$1,800

22 Maximum Exposure: \$430,300

23 (Mara Dec. ¶ 28).

24 In exploring the settlement of any PAGA action, the critical fact that the Court is permitted  
25 discretion to award a “lesser amount than the maximum penalty amount” must be heavily taken  
26 into consideration. *Lab. Code*. § (e)(2). Unlike the underlying violations upon which the plaintiffs

27 <sup>8</sup> Plaintiff’s claims are wage statements and waiting time penalties are derivative of Plaintiff’s  
28 claim for failure to pay all wages.

1 seek to impose PAGA civil penalties, there is no set amount the Court must levy on an employer  
2 Defendant it finds to have violated the underlying claims. Under “the facts and circumstances of  
3 the particular case,” the Court is permitted wide discretion to slash civil penalty amounts. This  
4 discretion and how a particular court will exercise it is always an unknown variable in predicting  
5 the dollar outcome of any PAGA action when evaluating settlement. Under its wide discretion to  
6 award lesser amounts, a Court could side with Plaintiff on her claims and find that the underlying  
7 Labor Code rights were violated but decide to substantially moderate the imposition of PAGA  
8 penalties for those violations.

9 Courts have used this discretion to massively discount PAGA penalties imposed where it  
10 found the defendant employer took its Labor Code obligations seriously, even if the employer fell  
11 short of complying with them. In *Thurman v. Bayshore Transit Management, Inc.* (“*Thurman*”)  
12 (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum penalty  
13 allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the  
14 maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th  
15 1112, 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has  
16 taken its obligations to comply with the law seriously. *Id.* In *Kaanaana v. Barrett Business*  
17 *Services, Inc.* (2018) 29 Cal.App.5th 778, 788 & 809, the Court of Appeals took no issue with the  
18 trial court exercising its discretion in slashing PAGA civil penalties for violations of Labor Code  
19 section 512 to 13% of the total recoverable penalties. In *Carrington v. Starbucks* (2018) 30  
20 Cal.App.5th 504, the plaintiff requested penalties in excess of \$70 million, based on a \$25 to \$75  
21 penalty per violation. The court reduced the award, stating that awarding the maximum penalty  
22 would be unjust, arbitrary, and oppressive based on Starbucks’s good faith attempts to comply with  
23 the law. The lower court’s reduced award of \$150,000 was affirmed on appeal, which reflects .2%  
24 of the total recoverable penalties sought.<sup>9</sup>

25  
26 <sup>9</sup> These instances of judicial discretion imposing massive reductions in recoverable penalties is to  
27 be contrasted with *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) 365 F.Supp. 3d 980, 992, where  
28 the trial court reduced the recoverable PAGA penalties by only 25%. *Bernstein*, however, only  
amplifies the predictive blind spot of how a court can exercise its wide-discretion to reduce full  
PAGA exposure.

1           Thus, the projected value of PAGA claims is a variable value of two predictive indexes:  
2 (1) the likelihood that Plaintiff will succeed in proving the underlying claims were violated, and  
3 (2) the extent to which the Court will impose Civil Penalties permitted under PAGA. This is to be  
4 distinguished from the projected values of class claims of Labor Code and Wage Order violations.  
5 For instance, and relevant to the underlying claims in this action, class claims alleging California's  
6 meal and rest break, minimum wage, and wage statement laws were violated, the predictive value  
7 for purposes of determining whether settlement values are fair and reasonable rests only on the  
8 likelihood of prevailing on the merits and the exposure related thereto, as there is no judicial  
9 discretion to award lesser amounts owed for adjudged violations. It is for these reasons that, in  
10 assessing and judging the reasonableness of PAGA settlements, the touchstone feature is the  
11 "remedial purpose" achieved in the settlement amount, which takes into account the defendant  
12 employer's "good faith" belief that it complied with the laws claimed to be violated. *Bernstein*,  
13 365 F. Supp. 3d at 991.

14           Based on this blind spot of how the Court would exercise its discretion in addition to the  
15 likelihood the Court would side with Plaintiff on the underlying Labor Code violations, Plaintiff  
16 necessarily had to discount the settlement value off of the full PAGA penalty amounts. As  
17 discussed earlier, Defendant argues its meal and rest policies and practices track the Labor Code  
18 and Wage Order requirements and the standards articulated in *Brinker* and *Augustus*. Likewise,  
19 Defendant argues that it pays employees for all hours worked, not just the hours specified in  
20 employees' contracts. Further, Defendant argues that it maintains a uniform policy and practice of  
21 reimbursing employees for business expenses. Thus, even if Defendant were proven wrong on  
22 these fronts and ultimately found to have violated the underlying Labor Code claims, the Court  
23 could find a good faith reliance on *Brinker*, *Augustus*, and other governing authorities justifiably  
24 instructed Defendant's actions and thereby impose a massive reduction of PAGA penalties akin to  
25 the Courts in *Kaanaana* and *Carrington*.

26           Good faith settlement negotiations, after discovery and investigation, necessarily had to  
27 focus on amounts less than the potential exposure. The proposed PAGA settlement here of  
28 \$200,000, which takes into account the realistic exposure, the very real impediments of succeeding

1 on the merits, the risk of further litigation, and, even if Plaintiff succeeded on the merits,  
2 persuading against a robust discount, reflects an appropriate, balanced, and reasonable settlement  
3 value of the PAGA claims. The settlement amount fits within the “remedial purpose” of PAGA of  
4 enforcing compliance with important employee protections in the Labor Code and Wage Order.

5 **b. The Court Should Approve the Requested Attorneys’ Fees and Costs**

6 The PAGA provides that any employee who prevails is entitled to an award of reasonable  
7 attorneys’ fees and costs. Cal. Lab. Code § 2699(g)(1). The PAGA statute provides for approval  
8 of the settlement but does not specifically provide that the amount or reasonableness of attorneys’  
9 fees and costs is subject to court approval. Cal. Lab. Code §§ 2699(g)(1) and (l)(2). A reasonable  
10 interpretation of the PAGA is that the amount of attorneys’ fees need only be addressed by a court  
11 when the LWDA objects because there is no need to provide absent employees’ due process rights  
12 in a PAGA settlement since the aggrieved employees do not have their own substantive rights. *See*  
13 *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 436. And, the LWDA,  
14 as the real party in interest and the primary beneficiary of the settlement, has an opportunity to  
15 review the settlement before it is approved. Cal. Lab. Code § 2699(l)(2). Unlike a class action,  
16 where the purpose of court approval is to protect absent class members, in a PAGA settlement the  
17 real party in interest, the LWDA, has the opportunity to review and consider the reasonableness of  
18 the fees and object before the court hears the approval motion. If a court considers the  
19 reasonableness of the attorneys’ fees requested, it should be guided by the common fund doctrine  
20 typically applied in class action cases.

21 **i. The Requested Attorneys’ Fee and Cost Award is Within the Range of  
Fees Approved in Comparable Common Fund Cases**

22 California state and federal courts have recognized that an appropriate method for  
23 determining an award of attorneys’ fees is based on a percentage of the total value of benefits to  
24 class members by a settlement, also known as the “common fund” method. *Serrano v. Priest*  
25 (1977) 20 Cal.3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent*  
26 *v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. “Despite its primacy, the lodestar  
27 method is not necessarily utilized in common fund cases.” *Lealao v. Beneficial California, Inc.*  
28 (2000) 82 Cal.App.4th 19, 27 [*“Lealao”*]; *Dunk*, 48 Cal. App. 4th at 1808 (the percentage method

1 calculates attorney fees as a reasonable percentage of the common fund and may be used where  
2 the amount of the settlement is a certain or easily calculable sum of money). The purpose of the  
3 common fund/percentage approach is to “spread litigation costs proportionally among all the  
4 beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent*, 557  
5 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: “[O]ne  
6 who expends attorneys’ fees in winning a suit which creates a fund from which others derive  
7 benefits may require those passive beneficiaries to bear a fair share of the litigation costs.”

8 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the  
9 California Supreme Court recognized that the common fund doctrine has been applied  
10 “consistently in California when an action brought by one party creates a fund in which other  
11 persons are entitled to share.” The reasons for applying the common fund doctrine include:  
12 “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery  
13 might be consumed by the expenses; correlative prevention of an unfair advantage to the others  
14 who are entitled to share in the fund and who should bear their share of the burden of its recovery;  
15 encouragement of the attorney for the successful litigant, who will be more willing to undertake  
16 and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured  
17 that he will be properly and directly compensated should his efforts be successful.” *Id.*

18 Assessing an appropriate fee based on a percentage of the fund involves taking into account  
19 “all of the circumstances of the case.” There is sparse case law addressing the evaluation of  
20 reasonable attorneys’ fees in employee representative or class actions as appellate cases addressing  
21 fees arise almost exclusively where awards were challenged by defendants or objectors – the only  
22 parties with standing to appeal. *Wershba*, 91 Cal.App.4th at 236. Several studies of class action  
23 fee awards have found that the median common fund fee award is approximately one-third of the  
24 total settlement fund. See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11  
25 (numerous studies have shown that “fee awards in class actions average around one-third of the  
26 recovery.”); Reagan W. Silber and Frank E. Goodrich, Common Funds and Common Problems:  
27 Fee Objections and Class Counsel’s Response, 17 Rev. Litig. 525, 546 ; T. Willging, L. Hooper  
28 and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to

the Advisory Committee on Civil Rules, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in the traditional range of approximately one-third of the total settlement”).

Here, PAGA Counsel applies for an award of attorneys’ fees in the sum of \$66,660 (which is 33.33% of the Gross Settlement Amount). The requested fee falls in the mid-range of percentage class fee awards, which commonly range from 20% to 50% of a common fund, and constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates PAGA Counsel for their efforts, as well as the result achieved for the benefit of the State of California and the Aggrieved Employees. (Mara Dec. ¶ 29).

Numerous state and federal courts in California routinely approve fee requests equal to or greater than 33.33% of the common fund. In short, PAGA Counsel’s fee request of \$66,660 is in line with awards in California and nationwide and demonstrates that PAGA Counsel’s fee request is consistent with market rates and is reasonable.

**ii. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee**

PAGA Counsel’s fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *see also Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 834, (“[t]here is no ... rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar”).

PAGA Counsel has worked 155.7 hours to date on this case and have calculated the lodestar fee on those hours at \$113,695 at rates reflecting those currently earned in the marketplace. (Mara Dec. ¶ 30; Exhibit 5, Summary of Time and Costs). All of the work and tasks performed by PAGA Counsel were reasonable and necessary to the prosecution of this case and are reflected in the result achieved.

PAGA Counsel respectfully requests a fee of \$66,660, which, based on the total attorney

1 hours expended (155.7) and applicable hourly rates would result in a lodestar fee of \$113,695. As  
2 Class Counsel's lodestar fee is in excess of their fee request, a multiplier on their lodestar fee is  
3 not sought herein. (Mara Dec. ¶ 33). In fact, the requested fee results in a so-called "negative  
4 multiplier" which suggests the percentage of the fund amount is reasonable and fair. *See Chun-*  
5 *Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc.*  
6 *Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at \*16.

7 **iii. PAGA Counsel's Hourly Rates are Reasonable**

8 PAGA Counsel's hourly rates are between \$600 and \$850 and are in line with rates  
9 typically approved in wage and hour class action and PAGA litigation and which rates have been  
10 approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda,  
11 Orange and San Diego County Superior Courts. (Mara Dec. ¶ 34; Exhibit 2, Westlaw Court  
12 Express's Legal Billing Report, Volume 14, Number 3, California Region for December 2012;  
13 Exhibit 3, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC  
14 GIC834348; Exhibit 4, 2012 National Law Journal Survey of Hourly Billing Rates for Partners  
15 and Associates)).

16 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and  
17 experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson*  
18 *v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining a  
19 reasonable hourly rate, courts may consider factors such as the attorney's skill and experience, the  
20 nature of the work performed, the relevant area of expertise and the attorney's customary billing  
21 rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.

22 PAGA Counsel's skill and experience support their hourly rates. Their practice is limited  
23 exclusively to litigation, focusing on the representation of employees in wage and hour class action  
24 and PAGA matters. As prominent attorneys in the field of wage and hour employment litigation,  
25 Plaintiff's counsel continually monitors the prevailing market rates charged by both defense and  
26 plaintiff law firms and set the billing rates of their attorneys and paralegals/law clerks to be  
27 consistent with the prevailing market rates in the private sector for attorneys and staff of  
28 comparable skill, qualifications and experience. Other wage and hour attorneys working as class  
counsel before California courts charge comparable if not higher rates.

1                                   **iv. PAGA Counsel's Total Hours are Reasonable**

2           In determining a lodestar fee, reasonable hours include, in addition to time spent during  
3 litigation, the time spent before the action was filed, including time spent interviewing clients,  
4 investigating the facts and the law, and preparing the initial pleadings.<sup>10</sup> Further, the fee award  
5 should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Priest*  
6 (1982) 32 Cal.3d 621, 639 ("*Serrano IV*"). PAGA Counsel has expended a total of 155.7 hours on  
7 this case. The work performed by PAGA Counsel in order to achieve a settlement that will provide  
8 valuable consideration to the State of California and the Aggrieved Employees is summarized by  
9 PAGA Counsel in the declarations submitted herewith. (Mara Dec. ¶¶ 35, 38; *see also* Exhibit 5).

10           Counsel's many tasks, in summary form, included the following: pre-filing investigation  
11 and legal research; communicating with Plaintiff; interviewing aggrieved employees; drafting  
12 PAGA letter notifying the LWDA of Plaintiff's claims; investigation into Defendant's pay-  
13 structures and policies; draft and file pleadings; numerous communications with Defendant's  
14 Counsel regarding a variety of issues throughout the litigation, mediation, and settlement; draft  
15 and revise stipulations; propound discovery; analyze records produced by Defendants relating to  
16 their policies, pay-structures, and time keeping; prepare for and attend mediation; draft mediation  
17 brief and mediation damage and exposure models; draft, review, negotiate, and revise the  
18 settlement agreement; draft settlement approval motion and supporting papers; and appearing at  
19 the settlement approval hearing. (Mara Dec. ¶¶ 35, 38; *see also* Exhibit 5).

20           All of the tasks and work performed were reasonable and necessary to the prosecution of  
21 this case.

22                                   **v. Costs of Litigation**

23           PAGA Counsel seeks reimbursement of the litigation costs and expenses of \$15,277.02.  
24 These costs were all reasonable and necessary to the prosecution of this case and the results  
25 achieved, and are fair, reasonable, and unopposed by Defendant. (Mara Dec. ¶ 40; Exhibit 5).

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28 <sup>10</sup> *See New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.

1                   **c. The Court Should Approve the Requested PAGA Representative Payment**

2           Plaintiff's Counsel seeks approval of a PAGA Representative Payment for the named  
3 Plaintiff in the sum of \$5,000. Case law supports the award of incentive payments in private  
4 attorney general actions. The Ninth Circuit has recognized that a named Plaintiff's "willingness to  
5 act as a private attorney general" may justify the award of an incentive payment. *Rodriguez v. West*  
6 *Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub*  
7 *LLC*, 2013 WL 12415482 (E.D. Cal., Sep. 6, 2013), the United States District Court for the Eastern  
8 District of California approved a similar PAGA-only settlement and awarded a service payment to  
9 the representative plaintiff in recognition of his efforts.

10           The traditional bases for awarding incentive awards in class settlements support the award  
11 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)  
12 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive  
13 awards and held that "the rationale for making enhancement or incentive awards to named  
14 Plaintiffs is that he or she should be compensated for the expense or risk he has incurred in  
15 conferring a benefit" on others. *Id.* at 806. That rationale applies synonymously in this action.  
16 Without Plaintiff's efforts, there would be no recovery at all. The requested PAGA Representative  
17 Payment is reasonable in light of the benefits Plaintiff has conferred upon the LWDA and  
18 Aggrieved Employees, resulting in substantial payments to Aggrieved Employees averaging  
19 approximately \$1,549.49.

20           There are also other factors supporting the request that Plaintiff receive \$5,000. The  
21 requested award is appropriate and reasonable based upon Plaintiff's time and effort expended on  
22 this case, the risks she faced, and the outcome of this case. Plaintiff has submitted a declaration  
23 detailing the efforts and time she expended on behalf of the LWDA and Aggrieved Employees in  
24 order to advance this case to its successful conclusion. There is no question that this case would  
25 not have reached the same result but for Plaintiff's involvement and input at all stages of the  
26 litigation.

27           Moreover, here, Plaintiff was a current employee when she decided to file this case and pursue  
28 claims against Defendant. Plaintiff took on the risk that her employment may be affected by filing

1 this case and decided to file her case anyway to remedy issues she perceived as affecting not only  
2 herself by other employees. She put the interests of the LWDA and Aggrieved Employees ahead  
3 of her own in filing this lawsuit.

4 Plaintiff has spent over 50 hours on this case. Plaintiff searched for and provided her attorneys  
5 with hundreds of pages of documents from her employment with Defendant. These documents  
6 included emails and text messages from her employment. Plaintiff spent a significant amount of  
7 time locating these documents so she could provide them to her counsel. Plaintiff was in constant  
8 communication with her counsel and was apprised of and involved in every aspect of this lawsuit.  
9 Plaintiff's efforts in pursuing this case are evident by the significant recovery she obtained for the  
10 LWDA and Aggrieved Employees.

11 It should be noted that service awards are particularly important to plaintiffs in wage and hour  
12 cases because they promote the important public policies underlying the wage and hour laws. This  
13 strong policy is codified in California Labor Code section 90.5, which provides that "[i]t is the  
14 policy of this state to vigorously enforce minimum labor standards in order to ensure employees  
15 are not required or permitted to work under substandard unlawful conditions . . ." Cal. Lab. Code  
16 § 90.5. Nonetheless, the California Supreme Court has noted that "retaliation against employees  
17 for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes  
18 designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61. In this context,  
19 class representatives should be rewarded for assuming the risk of retaliation for the sake of class  
20 members. *See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

21 In addition, there are few individuals that are willing to act as a PAGA representative and  
22 provide the work, diligence, and willingness to assume a substantial financial risk should  
23 Defendant have prevailed in this case. Plaintiff's willingness to assume the financial risk is  
24 significant. Plaintiff risked a potential judgment taken against her for attorneys' fees and costs if  
25 this matter had not been successfully concluded. Case law holds that a losing party is liable for the  
26 prevailing party's costs, *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000), and in some  
27 wage and hour actions, such as this case, pursuant to California Labor Code § 218.5, for attorneys'  
28 fees as well. Though the fee agreement provides that Class Counsel would pay such costs, Plaintiff

1 would nevertheless have had a cost bill entered against her leaving her ultimately liable for  
2 potentially hundreds of thousands of dollars in the unexpected possibility that Class Counsel did  
3 not meet their obligation to cover those costs. Unfortunately, there have been several judgments  
4 entered against class representatives, e.g. *Koehl v. Verio, Inc.* 142 Cal.App.4th 1313, 1328 (2006)  
5 (a wage and hour class action where Defendant prevailed at trial, the named plaintiffs were held  
6 liable, jointly and severally for the Defendant's attorneys' fees); *Whiteway v. Fedex Kinkos Office*  
7 *& Print Services, Inc.*, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. 2007) (a wage and hour  
8 misclassification case lost on summary judgment, after the case was certified, the named Plaintiff  
9 was assessed costs in the sum of \$56,788.). The risk of payment of Defendant's costs, alone, is a  
10 sufficient basis for an award of the requested enhancement sum. Few individuals are willing to  
11 take this risk, and it is clear that Plaintiff, here, championed a cause on behalf of others with  
12 potentially huge monetary risks.

13       Moreover, the modern-day work force is mobile, with employees holding several jobs over  
14 the span of their career. It is also true that prospective employers in this computer, high-tech age  
15 "Google" and/or do extensive background checks and have access to court databases to see if  
16 applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiff's conduct will not be  
17 lost on a prospective employer who has to choose between an applicant who has never sued an  
18 employer and one who has done so. The requested award far from compensates Plaintiff for  
19 opportunities she may lose in the future because of the exercise of a Constitutional right to Petition  
20 the Courts for redress of a grievance.

21       Based on the foregoing, the \$5,000 PAGA Representative Payment to the named Plaintiff  
22 is fair, appropriate, and justified in light of the work performed, risks undertaken for payment of  
23 fees and costs if this case had not been successfully concluded, stigma on future employment  
24 opportunities, and the benefits to the LWDA and Aggrieved Employees.

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1                   **d. The Administration Costs are Reasonable**

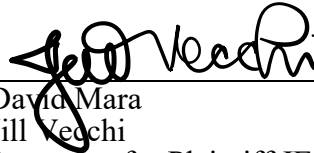
2           The Parties agreed to hire APEX as the Administrator.<sup>11</sup> APEX will be responsible for  
3 formatting, printing, and mailing an agreed upon Notice of Settlement of PAGA Action to be sent  
4 along with the Individual Settlement Shares. It will also be responsible for updating addresses and  
5 re-mailing checks returned as undeliverable, responding to Aggrieved Employee inquiries, and  
6 answering questions from the Parties. APEX also provided a declaration for filing with the  
7 settlement motion. APEX seeks a fee of \$1,500 for the services it will provide in conjunction with  
8 this settlement. (*See* Hartranft Dec. ¶ 7). Plaintiff now requests that the Court approve a fee of  
9 \$1,500 to APEX for services to be rendered. Following the grant of approval, APEX will calculate  
10 and mail the Individual Settlement Share checks to the Aggrieved Employees, disburse other  
11 payments as ordered by the Court, and perform such other duties as set forth in the Settlement  
12 Agreement. APEX's fee of \$1,500 for services rendered and to be rendered is fair and reasonable  
13 and should be granted.

14           **V. CONCLUSION**

15           For the reasons stated herein, the Court should grant Plaintiff's motion in its entirety.

16 DATED: May 20, 2025

MARA LAW FIRM, PC

17  
18 By: 

David Mara

Jill Vecchi

Attorneys for Plaintiff JESSICA TEPPER

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28 <sup>11</sup> *See* Hartranft Dec., which outlines APEX's qualifications and experience.