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14 UNITED STATES DISTRICT COURT
15
16 CENTRAL DISTRICT OF CALIFORNIA

17 Keith Brooks, an individual, on behalf
18 of himself and all others similarly
19 situated and as a private attorney
20 general pursuant to the Private
21 Attorneys General Act,

22 Plaintiff,

23 vs.

24 Venture HR Services LLC, Center
25 Staffing Network LLC, Burlington Coat
26 Factory Warehouse Corporation,
27 Burlington Coat Factory of Texas, Inc.,
28 and Does 1 through 10,

Defendants.

Case No. 5:24-CV-00041-SRM-SHK

**Memorandum of Points and Authorities
in Support of Motion for Approval of
PAGA Settlement**

Date: October 22, 2025

Time: 1:30 p.m.

Crtrm.: 5D

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1 **I. INTRODUCTION**

2 This is a PAGA only action alleging that Defendants failed to pay their employees
3 for all hours worked, violated their meal and rest period obligations, failed to pay waiting
4 time penalties, committed wage statement violations, and failed to pay for time spent in
5 connection with security processes. Unless otherwise set forth herein, this Memorandum
6 incorporates by reference the definitions in the PAGA Settlement Agreement (the
7 “Settlement Agreement”), a copy of which is attached as *Exhibit 1* to the Declaration of
8 Lonnie C. Blanchard, III filed herewith.

9 Under the terms of the Settlement Agreement, Defendants Burlington Coat Factory
10 Warehouse Corporation and Burlington Coat Factory of Texas, Inc. (“Burlington” or
11 “Defendants”) will pay \$570,000.00 (“Settlement Amount”) in return for a release of all
12 claims under the PAGA against Defendants during the PAGA Period, attorney’s fees and
13 costs of PAGA Counsel, Plaintiff’s individual payment, and settlement administration
14 costs.

15 Subject to Court approval, the following amounts shall be paid from the Settlement
16 Amount:

- 17
- 18 a. An attorney’s fees award to PAGA Counsel of up to \$190,000 (which
19 is one-third of the Settlement Amount);
- 20 b. PAGA Counsel Litigation Expenses Payment of \$19,088.84 for
21 expenses documented by PAGA Counsel;
- 22 c. Plaintiff’s individual payment of \$10,000 in return for Plaintiff’s
23 general release of claims;
- 24 d. A PAGA payment of the Net Settlement Amount, wherein 75% shall
25 be allocated to the LWDA PAGA Payment and 25% allocated to the
26 Individual PAGA Payments; and
- 27 e. Claims Administrator fee not to exceed \$4,500.
- 28

1 The Settlement Agreement contains all the material terms of the settlement, the
2 releases, and other necessary and proper terms. By this motion, the Parties request that the
3 Court approve the PAGA settlement.

4 **II. SUMMARY OF THE LITIGATION**

5 **A. Plaintiff's PAGA Claims**

6 On November 29, 2023, pursuant to Labor Code section 2699.3, subdivision (a),
7 Plaintiff served Defendants and the LWDA with the PAGA Notice. On November 30,
8 2023, Plaintiff commenced the Action by filing a Complaint against Defendants and other
9 entities alleging that Defendants failed to pay certain employees for all hours worked,
10 violated their meal and rest period obligations, failed to pay waiting time penalties,
11 committed wage statement violations, and violated the UCL based on their failure to pay
12 for time spent in connection with security processes.

13 Defendants removed this case on January 8, 2024. Plaintiff then stipulated and filed
14 a first amended complaint on April 19, 2024 to state that the PAGA notice period had run.
15 On June 6, 2024, Plaintiff filed a Second Amended Complaint, naming as defendants
16 Marie Johns and Paul Anthony Johns. Defendants Marie and Paul Johns are alleged to be
17 owners of Defendant Center Staffing Network LLC. Plaintiff alleges that Plaintiff was
18 subject to various Labor Code violations while employed by Center Staffing Network
19 LLC, a temporary staffing agency, who placed workers on a temporary basis at various
20 warehouses operated by the Burlington Defendants. Plaintiff alleges that the Burlington
21 Defendants are liable as joint employers, which the Burlington Defendants dispute.

22 On September 12, 2024, the Court issued an Order to Show Cause Why Action
23 Should Not Be Dismissed for Failure to Prosecute ("OSC") due to the non-service of the
24 summons and complaint on defendants Venture HR Services LLC, Center Staffing
25 Network LLC, Marie Johns, and Paul Anthony Johns. On September 18, 2024, Plaintiff
26 responded to the OSC, submitting that:

27 Defendants Venture HR Services LLC, Center Staffing Network LLC, Marie
28 Johns, and Paul Anthony Johns cannot be located despite Plaintiff's

counsels' diligent efforts. It is believed that Venture HR Services LLC and Center Staffing Network LLC are no longer in business and Plaintiff has exhausted all resources in attempting to locate Marie Johns and Paul Anthony Johns, who are believed to have managed Center Staffing Network LLC. (Dkt. 28)

The Court dismissed without prejudice defendants Venture HR Services LLC, Center Staffing Network LLC, Marie Johns, and Paul Anthony Johns on September 20, 2024.

On December 11, 2024, the Parties participated in an all-day mediation with Mediator Michael Marcus, which led to this Agreement to settle the Action. Prior to the mediation, Plaintiff obtained through formal and informal discovery and conversations with opposing counsel data and documents from Defendants relating to its policies, procedures, records, and data regarding the services provided by its employees. Due to risks associated with the potential certification of the claims, including the inability to locate and serve several of the named Defendants, the Burlington Defendants' contention that there are numerous factual questions necessitating individualized inquiries that predominate over common questions, and the Burlington Defendants' contention that they are not joint employers of Plaintiff or any of the individuals he seeks to represent and so cannot be found liable on any of Plaintiff's claims, the Parties reached a settlement on a PAGA-only basis.

On June 24, 2025, pursuant to the settlement and the Parties' Joint Stipulation, Plaintiff filed a Third Amended Complaint that conformed the pleadings with the scope of the settlement reached by the Parties that sought the dismissal without prejudice of all non-PAGA claims alleged in this action, which the court granted in the Parties' joint stipulation.

B. Discovery and Investigation

Plaintiff has conducted a formal and informal investigation into the facts of the Action, including extensive review of documents and data provided by Defendants. Such documents include, among other things, policies and billing records. PAGA Counsel also

1 reviewed and analyzed tens of thousands of rows of data evidencing PAGA Group
2 Members data, as well as other information pertinent to Plaintiff's PAGA Claims.
3 (Blanchard Decl. ¶ 15.)

4 The discovery, investigation, and information exchange conducted in this matter,
5 as well as the mediation, meetings, and discussions between PAGA Counsel and
6 Defendants' Counsel have been adequate to give Plaintiff a sound understanding of the
7 merits of Plaintiff's positions and to evaluate the worth of the PAGA claims being released
8 by the Settlement. PAGA Counsel also have considered the uncertainty and risk of further
9 litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
10 (Blanchard Decl. ¶ 16.)

11 The settlement was based upon the mediator's proposal. Based on the foregoing,
12 PAGA Counsel believe the Settlement set forth in the Agreement is a fair, adequate, and
13 reasonable settlement and is in the best interests of the State of California and the PAGA
14 Group Members. (Blanchard Decl. ¶ 17.)

15 **III. REASONS WHY SETTLEMENT SHOULD BE APPROVED**

16 PAGA Counsel believes that the provision of the payments under the Settlement
17 Agreement constitutes a reasonable PAGA settlement payment considering the risks of
18 litigation. There are numerous risks in continuing with this litigation, including the
19 possibility of being unable to demonstrate that Defendants in fact committed the wrongful
20 acts alleged, and/or prove that the PAGA Group Members were damaged as a proximate
21 result of Defendants' wrongful acts.

22 **A. A presumption of fairness is applicable to this Settlement.**

23 There is a presumption that a proposed settlement is fair and reasonable when it is
24 the result of arms-length negotiations. (*See* 2 Herbert Newberg & Alba Conte, *Newberg*
25 *on Class Actions* § 11.41 at 11-88 (3d ed. 1992); Manual For Complex Litigation (Third
26 § 30.42.) Indeed, a trial court is directed to operate under a presumption of fairness when,
27 *inter alia*, the settlement is the result of arms-length negotiations, there has been
28

1 investigation and discovery that are sufficient to permit counsel and the court to act
2 intelligently, and counsel are experienced in similar litigation. (*See Dunk v. Ford Motor*
3 *Co.*, 48 Cal. App. 4th 1794, 1800, 56 Cal. Rptr. 2d 483 (1996), as modified (Sept. 30,
4 1996).)

5 The proposed settlement herein is the product of many hours of arms-length
6 negotiations between Plaintiff's counsel and Defendants' counsel, which negotiations
7 included a formal, full-day mediation session with Michael Marcus, a well-known
8 mediator. The information exchanged by the Parties is sufficient to reliably assess the
9 merits of the Parties' respective positions and to compromise the issues on a fair and
10 equitable basis. PAGA counsel have done an extensive investigation, including legal
11 research, reviewing extensive documentation and pay records and analyzing same. In
12 addition, the parties are represented by counsel with significant experience in wage and
13 hour litigation, including employment litigation.

14 Additionally, in *Rendon v. Infinity Fasteners, Inc.*, No. 120CV01538ADABAM,
15 2023 WL 2918678, at *3 (E.D. Cal. Apr. 12, 2023), the court reasoned that:

16 Although there is no binding authority setting forth the proper standard of
17 review for PAGA settlements, California district courts have applied a Rule
18 23-like standard, asking whether the settlement of the PAGA claims is
19 "fundamentally fair, adequate, and reasonable in light of PAGA's policies
20 and purposes." *Mondrian v. Trius Trucking, Inc.*, No. 1:19-cv-00884-ADA-
21 SKO, 2022 WL 6226843, at *7 (E.D. Cal. Oct. 7, 2022) (citing *Haralson v.*
22 *U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 972 (N.D. Cal. 2019));
23 *Swain*, 2022 WL 5250139, at *5; *see also Moniz v. Adecco USA, Inc.*, 72
24 Cal. App. 5th 56, 76-78, 287 Cal.Rptr.3d 107 (2021) (agreeing with federal
district courts that have found it appropriate to review a PAGA settlement to
ascertain whether it is fair, reasonable, and adequate in view of PAGA's
purposes and policies).

25 As stated throughout this brief, this settlement is fundamentally fair, adequate, and
26 reasonable in light of PAGA's policies and purposes.

1 **B. Risk Analysis - The Settlement falls within the range of possible**
2 **approval.**

3 Based on the analysis of the data and information provided by Defendants, there
4 are 5,510 unique PAGA Pay Dates for 900 PAGA Group Members for the period from
5 November 29, 2022 through December 5, 2024. (Blanchard Declaration, ¶ 19.) Assuming
6 the Court awarded a \$100 penalty per weekly pay period for one alleged violation for each
7 Provider, the exposure would be around \$551,000. Defendants contend that additional
8 stacking of penalties and any refusal by the Court to reduce penalties (which is within the
9 Court's discretion under the PAGA) would be unfair and confiscatory. (Blanchard Decl.,
10 ¶ 20.)

11 **C. Defendants' Mertis Based Defenses Warrant Settlement**

12 Plaintiff alleged a PAGA claim for civil penalties and alleging putative class
13 claims¹ for: (1) failure to pay wages for all hours worked; (2) failure to provide compliant
14 meal periods; (3) failure to provide compliant rest periods; (4) failure to timely pay wages
15 upon termination of employment; (5) failure to provide compliant wage statements; and
16 (6) unfair and unlawful business practices under California's Unfair Competition Law.

17 Defendants have strong merits-based defenses that pose a risk to Plaintiff's claims
18 and therefore warrant settlement. Defendants can argue that Defendants were not joint
19 employers of the PAGA members as Defendants did not control the PAGA members, did
20 not suffer or permit the PAGA members to work, and did not engage the PAGA members.

21 In terms of Plaintiff's unpaid wages claim, Defendants assert: Off-the-clock work
22 was prohibited by policy, so PAGA members were presumed not to be working when they
23 clocked out; PAGA members were expected to wind down operations and exit work areas
24 a few minutes prior to the end of their shift; Plaintiff must show Defendants had actual or

25 _____
26 ¹ Plaintiff filed a Third Amended Complaint pursuant to the Parties Settlement agreement
27 that alleged PAGA only claims. Should the settlement be rejected by the Court, the
28 operative complaint reverts to the Second Amended Complaint containing the PAGA and
 Class allegations

1 constructive knowledge of off-the-clock work; Bag check time is not compensable in the
2 first place because Defendants had insufficient control over PAGA members, however,
3 even if it were compensable time, all shifts were supposed to have 3 minutes of time added
4 to cover time spent undergoing bag checks pursuant to the agreement between Defendants
5 and the third-party staffing agency; Security bag checks only apply to those who bring a
6 bag – further, those who bring a clear bag do not undergo a bag check; PAGA members
7 were expressly allowed to leave without undergoing a security bag check if security was
8 unavailable to check bags.

9 In terms of Plaintiff’s meal and Rest break claims, Defendants assert: Defendants’
10 policies provided 45-minute meal breaks and 15-minute rest breaks; there was no
11 obligation to police meal and rest periods to ensure no work was performed; Plaintiff must
12 show Defendants acted to prevent or discourage meal and rest breaks and reasons why
13 any breaks were not taken in line with the stated policy; and Defendants’ operations
14 generally shut down to facilitate breaks.

15 In terms of Plaintiff’s wage statement claim, Defendants assert that the wage
16 statements were issued by the third-party staffing agency to Plaintiff and contradicts the
17 allegations that the wage statements failed to accurately list total hours worked, wage
18 rates, gross and net pay, and inclusive dates of the pay period. Furthermore, Defendants
19 argue that this claim is derivative of Plaintiff’s unpaid wage and break claims.

20 Lastly, in terms of Plaintiff’s waiting time penalties, Defendants assert that the end
21 of temporary assignment for a staffing company does not trigger a “discharge” for
22 purposes of Labor Code section 203. (Young v. RemX Specialty Staffing, 91 Cal. App.
23 5th 427, 434–35, 308 Cal. Rptr. 3d 320, 325 (2023)). Defendants argue that Plaintiff can’t
24 show willfulness due to the presence of good faith dispute over wages that are owed by
25 Defendants. Furthermore, Defendants argue that this claim is derivative of Plaintiff’s
26 unpaid wage and meal and rest break claims.

1 Based on the foregoing, PAGA Counsel believe the proposed \$570,000 settlement
2 is reasonable and provides the certainty of a payment to the State of California and to the
3 PAGA Group Members and that when measured against the risk of obtaining nothing,
4 such settlement is reasonable and in their best interests. In so concluding, PAGA Counsel
5 have considered the uncertainty and risk of further litigation, the potential outcome, the
6 difficulties and delays inherent in such litigation, and believe the settlement is a fair,
7 adequate, and reasonable settlement in the best interests of the State of California and the
8 PAGA Group Members. (Blanchard Decl., ¶ 21.)

9
10 **IV. SETTLEMENT ADMINISTRATION**

11 **A. Settlement Administrator Duties**

12 Pursuant to the terms of this Settlement Agreement, the Settlement Administrator
13 will be responsible for: (a) calculating and determining the LWDA's 75% share of the Net
14 Settlement Amount, and preparing and mailing that payment to the LWDA; (b) preparing
15 a list of all Representative Action Members, calculating the Individual Settlement
16 Amounts due to each Representative Action Member from the remaining 25% share of
17 the Net Settlement Amount and issuing and mailing checks payable to said Representative
18 Action Members, including taking appropriate steps to trace, update and locate any
19 Representative Action Members whose address or contact information as provided to the
20 Settlement Administrator is inaccurate or outdated; (c) maintaining the Maximum
21 Settlement Amount account in an interest-bearing account at a federally insured banking
22 institution, as discussed below; (d) preparing and delivering the amount of attorneys' fees
23 and litigation costs awarded to Representative Counsel from the Gross Settlement
24 Amount; (e) preparing and mailing the General Release Payment to Plaintiff from the
25 Gross Settlement Amount; (f) reporting to Burlington Defendants' Counsel,
26 Representative Counsel, and, if necessary, the Court regarding the completion of the tasks
27 identified in this paragraph; (g) carrying out other related tasks including the proper
28 maintenance of undisbursed Net Settlement Amounts or uncashed checks in an interest

1 bearing account and reporting required for that account; and (h) filing and issuing any
2 necessary tax reporting documents, in accordance with the terms of this Settlement
3 Agreement.

4 All disputes relating to the Settlement Administrator's ability and need to perform
5 its duties will be referred to the Court, if necessary, which will have continuing
6 jurisdiction over the terms and conditions of this Settlement Agreement until all payments
7 and obligations contemplated by the Settlement Agreement have been fully executed.

8 **B. Qualified Settlement Fund**

9 The Settlement Administrator will create a Qualified Settlement Fund ("QSF"), to
10 be funded by the Maximum Settlement Amount paid by Burlington Defendants and
11 administered by the Settlement Administrator. If the Settlement Effective Date never
12 occurs for any reason whatsoever, the entire amount of the Maximum Settlement Amount
13 will revert to Burlington Defendants along with any accrued interest. Should the
14 Settlement Effective Date occur, any interest earned on the Maximum Settlement Amount
15 will inure to the benefit of the LWDA and the Representative Action Members and will
16 be treated as part of the Net Settlement Amount.

17 The Settlement Administrator will not distribute any money from the QSF until the
18 Settlement Effective Date has occurred and each condition in this Settlement Agreement
19 has been satisfied.

20 **C. Calculating and Issuing Payments**

21 When and if the Court enters the Order Granting Settlement Approval and
22 Judgment and the Settlement Effective Date as defined in the Settlement has passed, the
23 Settlement Administrator will be responsible for (a) preparing a list of all Representative
24 Action Members, calculating the Individual Settlement Amounts due to each
25 Representative Action Member, and issuing and mailing checks payable to said
26 Representative Action Members whose mailing addresses can be reasonably identified;
27 (b) issuing and mailing a check to the LWDA for its 75% share of the Net Settlement
28

1 Amount as penalties pursuant to PAGA; (c) issuing and mailing a check to Plaintiff for
2 General Release Payment; (d) issuing a check or wire to Representative Counsel for any
3 attorneys' fees and out-of-pocket litigation expenses awarded by the Court; and (e)
4 distributing any undeliverable and/or uncashed settlement amounts following the deadline
5 for cashing settlement checks by *cy pres* to Legal Aid at Work (amounts to be earmarked
6 for legal aid clinics and educational functions).

7 Prior to mailing the Individual Settlement Amount payments to Representative
8 Action Members, the Settlement Administrator will update the addresses for the
9 Representative Action Members using the National Change of Address database and other
10 available resources deemed suitable by the Settlement Administrator. Any returned
11 envelopes from the initial mailing with forwarding addresses will be used by the
12 Settlement Administrator to locate Representative Action Members and re-mail the
13 Individual Settlement Amount payments to the correct or updated address. The Settlement
14 Administrator will use appropriate tracing methods, including skip tracing, to ensure that
15 the Individual Settlement Amount payments are received by Representative Action
16 Members. The Settlement Administrator will also take reasonable steps, including skip
17 tracing, to locate any Representative Action Member whose Individual Settlement
18 Amount payments are returned as undeliverable.

19 The Individual Settlement Amount payments mailed to each Representative Action
20 Member will include the notice letter attached to the Settlement Agreement as **Exhibit A**
21 and will provide payment of each Representative Action Member's pro rata share from
22 the 25% of the Net Settlement Amount allocated to Representative Action Members.

23 All payments to the LWDA and any Individual Settlement Amount Payments will
24 be treated as civil penalties under PAGA and will be reported on an IRS 1099 without
25 withholdings. Plaintiff and Representative Action Members will be exclusively liable for
26 any and all tax liability, if any. The General Release Payment to Plaintiff will be treated
27 100% as non-wages, and will be reported accordingly on an IRS 1099. All Parties
28

1 represent that they have not received and will not rely on the advice or representations
2 from other Parties or their agents or attorneys regarding the tax treatment of payments
3 under federal, state, or local law.

4 Representative Action Members who are sent Individual Settlement Amount
5 payments will have 90 calendar days after mailing by the Settlement Administrator to cash
6 their settlement checks and will be so advised of such deadline. If Representative Action
7 Members do not cash their checks within that period, those checks will become void and
8 the Settlement Administrator shall distribute any undeliverable and/or uncashed
9 settlement amounts following the deadline for cashing settlement checks by *cy pres* to
10 Legal Aid at Work (amounts to be earmarked for legal aid clinics and educational
11 functions).

12 **V. SUMMARY OF SETTLEMENT**

13 **A. Gross Settlement Amount**

14 Defendants agree to pay \$570,000 as the Gross Settlement Amount. None of the
15 Gross Settlement Amount will revert to Defendants.

16 **B. Net Settlement Amount**

17 The Net Settlement Amount is the Maximum Settlement Amount less
18 Representative Counsel's attorneys' fees, litigation costs and expenses, the General
19 Release Payment, and Settlement Administration Expenses as explained below. 75% of
20 the Net Settlement Amount will be paid to the LWDA and the Remaining 25% of the Net
21 Settlement amount will be paid to the Representative Action Members which are all
22 individuals employed by Center Staffing Network LLC who were assigned to and
23 performed any work at a distribution center in California operated by Burlington
24 Defendants from November 29, 2022 through the Date of Court Approval.

25 **C. Payments from the Gross Settlement Amount**

26 The Administrator will make and deduct the following payments from the Gross
27 Settlement Amount in the amounts specified by the Court:
28

1 **1. To Plaintiff**

2 Plaintiff has individual claims against Defendants. In consideration of Plaintiff's
3 general release, the Parties agree that \$10,000 of the Gross Settlement Payment shall be
4 paid to Plaintiff. The Administrator will send Plaintiff an IRS 1099 Form for this payment.
5 Plaintiff assumes full responsibility and liability for taxes owed on this payment, and
6 Defendants shall have no responsibility or liability for any taxes owed because of any
7 payments made pursuant to this Agreement.

8 **2. To PAGA Counsel**

9 A PAGA Counsel Fees Payment of not more than one-third of the Gross
10 Settlement Amount in the amount of \$190,000. The PAGA Counsel Litigation Expenses
11 Payment will be for an amount of expenses documented by PAGA Counsel. Defendants
12 will not oppose a request for Court approval of such payments.

13 If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel
14 Litigation Expenses Payment less than the amounts requested, the Administrator will
15 allocate the remainder to the Net Settlement Amount.

16 **a) A one-third fee is appropriate in this case**

17 The request for attorney's fees of one-third of the \$570,000 gross settlement is fair
18 and reasonable. This amount is well-earned, supported by controlling case law, and is
19 within the fee range awarded by courts in similar complex cases. The one-third fee award
20 is also in line with other fee awards in California class and PAGA actions. (Blanchard
21 Decl. ¶ 23.)

22 PAGA Counsel are being paid entirely on contingency and have not been paid any
23 attorney's fees since assuming representation of Plaintiff. The work performed by PAGA
24 Counsel was extensive. In litigating this case against Defendants, PAGA Counsel faced
25 serious risks, including the risk that Plaintiff's theory of liability may ultimately be
26 rejected by the Court. Despite the many risks PAGA Counsel faced, PAGA Counsel
27 nevertheless achieved a favorable result. PAGA Counsel accepted this representation
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1 aware of the risks involved and with the full intention of seeing the case to the end,
2 including through any appeals. Also, PAGA Counsel were opposed by attorneys from an
3 experienced and well-qualified defense firm with the resources of a corporate client at its
4 disposal. (Blanchard Decl. ¶ 24.)

5 Given the highly uncertain current landscape of the legal issues involved, coupled
6 with the ensuing risks of lengthy appeals and risk of no recovery, the result achieved
7 shows that the amounts allocated to both attorney's fees and costs under the Settlement
8 warrant the Court's approval. (Blanchard Decl. ¶ 25.)

9 **b) The California Supreme Court has endorsed the use of a**
10 **percentage approach to award attorneys' fees in wage and**
11 **hour common funds cases.**

12 In Laffitte v. Robert Half Internat. Inc., 1 Cal. 5th 480, 488–89, 376 P.3d 672, 676
13 (2016), the California Supreme Court joined the overwhelming majority of federal and
14 state courts in holding that when litigation establishes a monetary fund for the benefit of
15 represented members, the court may determine the amount of a reasonable fee by choosing
16 an appropriate percentage of the fund created. (*Id* at 503.) In so doing, the Court described
17 the “recognized advantages of the percentage method,” including “ease of calculation,
18 alignment of incentives between counsel and the [represented members] . . . , a better
19 approximation of market conditions in a contingency case, and the encouragement it
20 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
21 litigation.” (*Id.*) Most of the Ninth Circuit and other federal courts are in accord. (*See*
22 Aichele v. City of Los Angeles, No. CV1210863DMGFFMX, 2015 WL 5286028, at *5
23 (C.D. Cal. Sept. 9, 2015) (“Many courts and commentators have recognized that the
24 percentage of the available fund analysis is the preferred approach in fee requests because
25 it more closely aligns the interests of the counsel and the [represented members] . . . *i.e.*,
26 . . . counsel directly benefit from increasing the size of the . . . fund and working in the
27 most efficient manner.”).)

1 One of the principal advantages of the percentage approach for awarding attorney's
2 fees in representative action litigation is that it is result-oriented, thereby promoting the
3 more efficient use of attorney time and resources rather than encouraging attorneys to
4 prolong litigation to inflate their recoverable hours. (*See In re Thirteen Appeals Arising*
5 *Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295 (1st Cir. 1995) (“[U]sing the
6 [percentage of fund] method . . . enhances efficiency, or, put in the reverse, using the
7 lodestar method in such a case encourages inefficiency. Under the latter approach,
8 attorneys not only have a monetary incentive to spend as many hours as possible (and bill
9 for them) but also face a strong disincentive to early settlement”).) Similarly, the
10 percentage method better approximates the workings of the marketplace by ensuring that
11 attorneys receive compensation for the true value of their services and skills. (*Id.* at 307
12 (“Another point is worth making: because the [percentage of fund] technique is result-
13 oriented rather than process-oriented, it better approximates the workings of the
14 marketplace . . . the market pays for the result achieved”) (*quoting Matter of Cont'l Illinois*
15 *Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992), as amended on denial of reh'g (May 22,
16 1992).)

17 Cases which result in no recovery also demonstrate why the percentage approach
18 is essential to plaintiff-side firms that engage in contingency practice on behalf of low-
19 wage workers: for every successful case, there are always others that will be vigorously
20 pursued for years only to result in no recovery or diminished recovery for the represented
21 employees or counsel. Indeed, PAGA Counsel have spent years litigating other cases on
22 behalf of workers without compensation, at considerable expense. In the practice of
23 PAGA Counsels' contingency work, PAGA Counsel have incurred substantial dollars in
24 out-of-pocket expenses, much of which have not been repaid, to pursue litigation on
25 behalf of workers in various types of employment cases, including unpaid wages, meal
26 and rest period violations, and misclassification. (Blanchard Decl. ¶ 26.)
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1 In sum, a plaintiffs-side contingency practice on behalf of low wage workers who
2 could not afford to pay out-of-pocket for counsel, such as PAGA Counsel, is made
3 possible by the nature of contingency fee work. Thus, in considering the fairness and
4 reasonableness of the proposed attorney's fees in this case, the Court should consider the
5 nature of PAGA Counsels' practice, which is only made possible by this contingency fee
6 structure. (Blanchard Decl. ¶ 27.)

7 **c) PAGA Counsels' request for one-third of the fund for**
8 **attorney's fees is presumptively reasonable.**

9 As noted above, courts in California have consistently approved a request for one-
10 third of the common fund. (*See* cases cited *supra*.) "Empirical studies show that,
11 regardless whether the percentage method or the lodestar method is used, fee awards in
12 [representative] actions average around one-third of the recovery." (Chavez v. Netflix,
13 Inc., 162 Cal. App. 4th 43, 65 fn. 11, 75 Cal. Rptr. 3d 413, 433 (2008) (citation omitted);
14 Cotchett, Pitre & McCarthy v. Universal Paragon Corp., 187 Cal. App. 4th 1405, 1421,
15 114 Cal. Rptr. 3d 781, 793 (2010), as modified on denial of reh'g (Sept. 21, 2010)
16 (contingency fees typically range from 33 to 40 percent of benefit); *see also* Laffitte,
17 *supra*, 1 Cal.5th at 485 (approving a one-third of common fund settlement.); Romero v.
18 Producers Dairy Foods, Inc., No. 1:05CV0484 DLB, 2007 WL 3492841, at *4 (E.D. Cal.
19 Nov. 14, 2007) (in wage and hour action, stating "fee awards in [representative] actions
20 average around one-third of the recovery" and awarding fees in that amount) (citing 4
21 Newberg and Conte, Newberg on Class Actions § 14.6 (4th ed. 2007)); In re Mego Fin.
22 Corp. Sec. Litig., 213 F.3d 454, 457–58 (9th Cir. 2000), as amended (June 19, 2000)
23 (upholding fee award of 33.3% of settlement); *see also* Lusby v. GameStop Inc., No. C12-
24 03783 HRL, 2015 WL 1501095, at *9 (N.D. Cal. Mar. 31, 2015) (in wage and hour action,
25 awarding fees in the amount of one-third of common fund); Singer v. Becton Dickinson
26 & Co., No. 08-CV-821-IEG (BLM), 2010 WL 2196104, at *8 (S.D. Cal. June 1, 2010)
27 (same); Burden v. SelectQuote Ins. Servs., No. C 10-5966 LB, 2013 WL 3988771, at *4
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(N.D. Cal. Aug. 2, 2013) (same); Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 450 (E.D. Cal. 2013) (same); Barnes v. The Equinox Grp., Inc., No. C 10-3586 LB, 2013 WL 3988804, at *4 (N.D. Cal. Aug. 2, 2013) (same).) Indeed, “a 33% contingent fee of the total recovery is on the low end of what is typically negotiated ex ante by Plaintiff’s firms taking on large, complex cases analogous to [this one].” (Young v. Cnty. of Cook, No. 06 C 552, 2017 WL 4164238, at *6 (N.D. Ill. Sept. 20, 2017).) As such, “one-third of the common fund is a reasonable reflection of the hypothetical market price of [counsel’s] services in this case...[and], there is no need to cross-check this percentage against the lodestar.” (*Id.* (awarding fees of one-third of \$32.5 million common fund).) Thus, PAGA Counsels’ request for attorney’s fees of one-third of the common fund is reasonable.

d) Other factors support the requested fees.

Federal courts assessing fee requests under California standards have utilized factors including: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. (See Hendricks v. Starkist Co., No. 13-CV-00729-HSG, 2016 WL 5462423, at *11 (N.D. Cal. Sept. 29, 2016), *aff’d sub nom. Hendricks v. Ference*, 754 F. App’x 510 (9th Cir. 2018) citing Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1048–50 (9th Cir. 2002).) Other courts have additionally considered a lodestar cross-check. (See Barnes, 2013 WL 3988804, at *4.)

(1) The monetary results achieved by this Settlement support the fee request.

“When determining the value of a settlement, courts consider the monetary and non-monetary benefits that the settlement confers.” (*Taylor v. Meadowbrook Meat Company, Inc.* (N.D. Cal., Sept. 15, 2016, No. 3:15-CV-00132-LB) 2016 WL 4916955, at *5.) Here, the settlement provides a gross settlement fund of \$570,000 for the State of California and approximately 900 PAGA Group Members. After deductions for a PAGA payment to the LWDA, the Settlement Administrator fees of \$4,500, Counsel’s litigation

1 expense reimbursement of \$19,088.84, and a \$10,000 general release payment to the
2 named Plaintiff, the balance of the settlement will be distributed to PAGA Group
3 Members based on their respective gross earnings during the PAGA Period. Importantly,
4 no funds will revert to Defendants – any funds from uncashed checks will be distributed
5 to a *cy pres* recipient. (Blanchard Decl. ¶ 46.)

6 PAGA Counsel have achieved this substantial relief for the State of California and
7 PAGA Group Members, which would not have been possible without their significant
8 experience litigating class action and PAGA cases. PAGA Counsels’ extensive experience
9 litigating wage and hour cases and particular specialization in PAGA cases contributed to
10 counsel’s ability to leverage a favorable result in this case. (Blanchard Decl. ¶¶ 4-7;
11 Kindem Decl. ¶¶ 4-8; *see also* Sproul v. Astrue, No. 11-CV-1000-IEG DHB, 2013 WL
12 394056, at *2 (S.D. Cal. Jan. 30, 2013) (“Courts are loathe to penalize experienced
13 counsel for efficient representation...”).)

14 **(2) The risks of litigating this case were substantial.**

15 There are many risks inherent in litigating a PAGA action and issues involved
16 therein that can result in no recovery whatsoever to PAGA Group Members or PAGA
17 counsel. (See Parkinson v. Hyundai Motor Am., 796 F. Supp. 2d 1160, 1166 (C.D. Cal.
18 2010) (“The most important factor is the risk of nonpayment, which was significant in
19 this contingency... action”).) For this reason, courts routinely find that this factor supports
20 a higher fee request.²

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23 ² See Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245, 261 (N.D. Cal. 2015) (noting
24 that “when counsel takes cases on a contingency fee basis, and litigation is protracted, the
25 risk of non-payment after years of litigation justifies a significant fee award”); Hensley v.
26 Eckerhart, 461 U.S. 424, 448, 103 S. Ct. 1933, 1947, 76 L. Ed. 2d 40 (1983) (noting that
27 “[a]ttorneys who take cases on contingency, thus deferring payment of their fees until the
28 case has ended and taking upon themselves the risk that they will receive no payment at
all, generally receive far more in winning cases than they would if they charged an hourly
rate”).)

1 In this case, Plaintiff and PAGA Counsel took all these risks, including the risk the
2 PAGA Group Members would be determined to not be employed by Defendants, all of
3 which could have resulted in no recovery whatsoever. Defendants have consistently
4 asserted that the PAGA Group Members were not their employees and therefore had no
5 claim under the PAGA to pursue. (Blanchard Decl. ¶ 29.)

6 Finally, even if the PAGA claims proceeded expeditiously (without an appeal) and
7 Plaintiff prevailed, there was a significant risk that any potential penalties would have
8 been greatly reduced by the Court to a fraction of what theoretically might have been
9 recovered. Courts have abundant discretion to reduce PAGA penalties. (See Cal. Lab.
10 Code § 2699 (e)(2).)³ Further, even without the risks outlined above, absent this
11 settlement, PAGA Group Members would run the risk of losing on the merits at trial or
12 on appeal. (Blanchard Decl. ¶ 30.)

13 **(3) Counsel have extensive experience in this field of law.**

14 Prosecuting wage and hour, PAGA, representative actions require an
15 “extraordinary commitment of time, resources, and energy from ... Counsel,” and, many
16 times, settlements “simply [are not] possible but for the commitment and skill of ...
17 Counsel.” (*Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW, 2010 WL
18 1687829, at *2 (N.D. Cal. Apr. 22, 2010).) This is particularly so where a “case was
19 wholly without precedent, raised numerous novel and complex issues of both law and
20 fact, and required a considerable effort from ... Counsel simply to be in a position to file
21 suit, let alone to litigate this case successfully.” (*Id.*) (Blanchard Decl. ¶ 31.)

22 Here, PAGA Counsel’s substantial experience in wage and hour class actions,
23 including PAGA actions, made this settlement possible. PAGA Counsels’ skill and
24 extensive experience in this area of law allowed PAGA Counsel to leverage a settlement
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27 ³ See also *Stuart v. Radioshack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645, at *3–4
28 (N.D. Cal. Aug. 9, 2010); *Fleming v. Covidien Inc.*, No. (OPX), 2011 WL 7563047, at
*3–4 (C.D. Cal. Aug. 12, 2011).

1 in this case. Both PAGA Counsel have extensive experience in wage and hour litigation,
2 including class and PAGA actions and other civil litigation practice areas. Mr. Blanchard
3 has been counsel of record and briefed numerous appeals and extraordinary writ petitions
4 and was counsel of record in numerous class and PAGA actions that have been approved
5 by Courts. (Blanchard Decl. ¶ 32.)

6 **(4) Plaintiff's Counsel incurred a financial burden in**
7 **litigating this case on a contingency fee basis.**

8 The contingent nature of litigating a PAGA action and the financial burden assumed
9 typically justifies a higher percentage of the fund as well since counsel litigates with no
10 payment and no guarantee that the time or money expended will result in any recovery.⁴
11 As with virtually all work handled by PAGA Counsel, PAGA Counsel accepted this case
12 on a fully contingent arrangement with no payment up front and have borne the expenses,
13 costs, and risks associated with litigating this case. Plaintiff attorneys who accept cases
14 on contingency often spend years litigating cases (typically while incurring significant
15 out-of-pocket expenses for experts, transcripts, document production, mediator fees, *inter*
16 *alia*), without receiving any ongoing payment for their work. Sometimes fees and
17 expenses are recovered -- other times nothing is recovered. As discussed *supra*, PAGA
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19 ⁴ See Bower v. Cycle Gear, Inc., No. 14-CV-02712-HSG, 2016 WL 4439875, at *7 (N.D.
20 Cal. Aug. 23, 2016) (noting that counsel had litigated the action for almost two years with
21 no payment and no guarantee of recovery); see also Hendricks, 2016 WL 5462423, at *12
22 (finding that enhancement from benchmark was warranted because ... counsel carried a
23 substantial financial burden both in advancing out-of-pocket costs and in representing
24 plaintiff and the [represented] members on a contingency basis); see also Hightower v.
25 JPMorgan Chase Bank, N.A., No. CV111802PSGPLAX, 2015 WL 9664959, at *10 (C.D.
26 Cal. Aug. 4, 2015) (“any law firm undertaking representation of a large number of affected
27 employees in wage and hour actions inevitably must be prepared to make a tremendous
28 investment of time, energy, and resources with the very real possibility of an unsuccessful
outcome and no fee recovery of any kind.”) (internal quotations omitted) citing Vizcaino,
290 F.3d at 1051 (“attorneys whose compensation depends on their winning the case must
make up in compensation in the cases they win for the lack of compensation in the cases
they lose”).

Counsel have litigated many cases for years only to lose on appeal and receive nothing for many hours of work. As noted in Vizcaino, *supra*, and other cases, substantial fee awards encourage counsel to take on risky cases on behalf of clients who cannot pay hourly rates and would therefore not have realistic access to courts. That access is particularly important for the effective enforcement of public protection statutes, such as the wage laws at issue here. Thus, “private suits provide a significant supplement to the limited resources available to [government enforcement agencies] for enforcing [public protection] laws and deterring violations.” (Reiter v. Sonotone Corp., 442 U.S. 330, 344, 99 S. Ct. 2326, 2333–34, 60 L. Ed. 2d 931 (1979).) By incentivizing Plaintiff attorneys to take on risky, high-stakes, and important litigation and devote themselves to it aggressively and fully, fee awards serve an important purpose and extend the access of top legal talent to constituencies such as low-wage workers who would otherwise never be able to confront large corporations, which are often represented by top-rated and top-billing attorneys. The fees awarded in this case will be used to support future cases on behalf of workers in California as well as providing compensation for counsel for past and future cases where the risks result in no reward. (Blanchard Decl. ¶ 33.)

e) The Fee Request is Justified by a Lodestar Analysis.

PAGA Counsels’ requested attorney’s fees are also justified under the lodestar method. Courts have the discretion to employ (or decline to employ) a “lodestar cross-check” on a request for a percentage of the fund fee award. (Laffitte, 1 Cal. 5th at 505.) The Court in Laffitte held, however, that this cross-check is not required. (*Id.*) Plaintiff submits that a cross-check is not necessary in this case because courts recognize that the lodestar cross-check can reward unnecessary overbilling, inflation of timekeeping records, and inefficient litigation. (*See Albion Pac. Prop. Res., LLC v. Seligman*, 329 F. Supp. 2d 1163, 1170–71 (N.D. Cal. 2004) (noting that “[a] fee applicant should neither be rewarded for hiring expensive legal counsel nor penalized for hiring more efficient legal counsel. Thus, if a fee applicant can demonstrate that its attorneys billed fewer hours

than reasonably competent counsel would have billed, the fee applicant should be reimbursed at an above-average hourly rate”).) (Blanchard Decl. ¶ 34.)

Using PAGA Counsel’s hourly rates, the “lodestar” fees they incurred (excluding paralegal hours) and reasonably estimate to be incurred through the conclusion of the case are:

Attorney	Years of Experience	Hours	Rate	Fees
Lonnie C. Blanchard III	Since 1980	118.25	\$1,141	\$134,923.25
Peter R. Dion-Kindem	Since 1980	119	\$1,141	\$135,779.00
			Total:	\$270,702.25
			Fees Sought:	\$190,000.00
			Multiplier:	0.70

(Blanchard Decl. ¶ 35.)

Through PAGA Counsels’ practice, PAGA Counsel have become familiar with the fees charged by attorneys in wage and hour actions in Southern California with comparable experience to PAGA Counsel. Mr. Blanchard and Mr. Dion-Kindem have obtained this familiarity in several ways: (1) by reviewing attorney fee applications and awards filed in other class action and PAGA cases in southern California; (2) by reviewing declarations regarding prevailing market rates and other factors filed in other class action and PAGA cases in southern California; (3) by reviewing surveys and articles on attorney’s fees in legal newspapers, journals, and treatises; and (4) by discussing fees in class action and PAGA cases with other attorneys. Based on this information, PAGA Counsel’s current rates are consistent with the market rate for attorneys with comparable expertise, experience, and qualifications practicing in wage and hour class and PAGA actions. (Blanchard Decl. ¶ 36.) Numerous courts have approved attorney’s fee awards in other cases for attorneys with less years of experience than PAGA Counsel. (Blanchard Decl. ¶ 37.)

1 The proposed attorney’s fees award would result in a negative multiplier of .70.
2 State and federal court in California have “routinely awarded” multipliers. (Wershba v.
3 Apple Computer, Inc., 91 Cal. App. 4th 224, 255, 110 Cal. Rptr. 2d 145 (2001),
4 disapproved of by Hernandez v. Restoration Hardware, Inc., 4 Cal. 5th 260, 409 P.3d 281
5 (2018) (“multipliers can range from 2 to 4 or even higher.”); Sutter Health Uninsured
6 Pricing Cases, 171 Cal. App. 4th 495, 512, 89 Cal. Rptr. 3d 615, 629 (2009) (affirming
7 multiplier of 2.52 as “fair and reasonable); Chavez, 162 Cal.App.4th at (affirming
8 multiplier of 2.53 as well within the approved range of 2 to 4); Perks v. Activehours, Inc.,
9 No. 5:19-CV-05543-BLF, 2021 WL 1146038, at *6 (N.D. Cal. Mar. 25, 2021); *see also*
10 Vizcaino, 290 F.3d at 1051 (3.65 multiplier approved because of substantial risk);.)
11 Indeed, courts will often award higher multipliers where the circumstances warrant it
12 because of the excellent results obtained, complexity of the case, and risks involved. (*See*,
13 *e.g.*, Craft v. Cnty. of San Bernardino, 624 F. Supp. 2d 1113, 1123 (C.D. Cal. 2008)
14 (awarding a percentage of the common fund equivalent to a 5.2 multiplier) (collecting
15 cases); Stevens v. SEI Invs. Co., No. CV 18-4205, 2020 WL 996418, at *13 (E.D. Pa.
16 Feb. 28, 2020) (holding that “multiples ranging from 1 to 8 are often used in common
17 fund cases” and awarding fees equivalent to a multiplier of 6.16).) Indeed, multipliers in
18 the range of 5x to 10x are not uncommon, and some courts have even been known to
19 award higher multipliers. (*See, e.g.*, Weiss v. Mercedes-Benz of N. Am., Inc., 899 F. Supp.
20 1297, 1304 (D.N.J.), aff’d, 66 F.3d 314 (3d Cir. 1995) (9.3 multiplier); In re Merry-Go-
21 Round Enters., Inc., 244 B.R. 327 (Bankr. D. Md. 2000) (40% award for \$71 million fund
22 awarded, resulting in a cross-check multiplier of 19.6); Stop & Shop Supermarket Co. v.
23 SmithKline Beecham Corp., No. CIV.A. 03-4578, 2005 WL 1213926 (E.D. Pa. May 19,
24 2005) (\$100 million fund in antitrust case, with fee award that amounted to a multiplier
25 of 15.6).) The cases cited above support the multiplier here. (Blanchard Decl. ¶ 40.)
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E. Calculation and Distribution of the Net Settlement Amount

PAGA Penalties shall be the amount of the Net Settlement Amount, and 75% shall be allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by multiplying the individual percentage of total Applicable Pay Periods worked by that Representative Action Member by the 25% of the Net Settlement Amount allocated to all Representative Action Members. (Blanchard Decl. ¶ 13.) The number of Applicable Pay Periods will be provided to the Settlement Administrator by Burlington Defendants based on Center Staffing's invoice records to Burlington Defendants.

PAGA Penalties shall be the amount of the Net Settlement Amount, and 75% shall be allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by multiplying the individual percentage of total Applicable Pay Periods worked by that Representative Action Member by the 25% of the Net Settlement Amount allocated to all Representative Action Members. (Blanchard Decl. ¶ 13.) The number of Applicable Pay Periods will be provided to the Settlement Administrator by Burlington Defendants based on Center Staffing's invoice records to Burlington Defendants.

Because the settlement meets the criteria for approval and is well within the range of what might be approved as fair, reasonable, and adequate, Plaintiffs request that the Court approve the Settlement Agreement.

BY: S/LONNIE C. BLANCHARD III
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Attorneys for Plaintiff Keith Brooks

Memorandum of Points and Authorities in Support of Motion for Approval of PAGA Settlement