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

DANIEL CISNEROS, individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

HCI SYSTEMS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CIVSB2408988

Honorable Stephanie Tañada
Department S33

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (CAL. LABOR CODE § 2698, *ET
SEQ.*) SETTLEMENT AGREEMENT
AND AWARD OF ATTORNEYS' FEES
AND COSTS, GENERAL RELEASE
FEE, AND SETTLEMENT
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: April 9, 2026
Time: 8:30 a.m.
Department: Dept. S33

Complaint Filed: March 18, 2024
Trial Date: None Set

PLEASE TAKE NOTICE that on April 9, 2026, at 8:30 a.m. or as soon thereafter as the matter may be heard in Department S33 of the Superior Court of the State of California, for the County of San Bernardino, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff Daniel Cisneros (“Plaintiff”) will and hereby does move for entry of the following orders:

1. Granting approval, pursuant to former California Labor Code section 2699(1)(2), of the settlement between Plaintiff and Defendant HCI Systems, Inc. (“Defendant”) of the claims brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as set forth in the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Charles T. Sweeny, as well as “**EXHIBIT 1**” to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys’ Fees and Costs, General Release Fee, and Settlement Administration Costs (“[Proposed] Order and Judgement”) filed concurrently herewith, including and not limited to, the plan of allocation and distribution of the Gross Settlement Amount for payment of the LWDA Payment to the California Labor and Workforce Development Agency (“LWDA”), Individual Settlement Shares to the Aggrieved Employees, Attorneys’ Fees and Costs to Plaintiff’s Counsel, Settlement Administration Costs to the PAGA Settlement Administrator, and General Release Fee to Plaintiff;
2. Approving the Net Settlement Amount, estimated to be no less than \$817,013.85 which will be distributed to the LWDA and the Aggrieved Employees, pursuant to former California Labor Code section 2699(i), of which seventy-five percent (75%) will be paid to the LWDA (“LWDA Payment”) and twenty-five percent (25%) will be paid to the Aggrieved Employees (“Employees’ Portion”);
3. Appointing Simpluris (“Simpluris”) as the PAGA Settlement Administrator, to handle the administration of the Settlement;

- 1 4. Directing Defendant to transmit the Gross Settlement Amount into a qualified
2 settlement account established by the PAGA Settlement Administrator for
3 administration of the Settlement, and directing the PAGA Settlement Administrator
4 to distribute the Gross Settlement Amount in accordance with the Settlement
5 Agreement;
- 6 5. Directing the mailing of Individual Settlement Share checks to the Aggrieved
7 Employees along with the Cover Letter, which is substantially similar in content and
8 form to that attached as “EXHIBIT A” to the EXHIBIT 1 Settlement Agreement that
9 is itself attached to the [Proposed] Order and Judgment;¹
- 10 6. Awarding \$5,000.00 to Plaintiff Daniel Cisneros as a General Release Fee;
- 11 7. Awarding \$7,084.00 to the PAGA Settlement Administrator as Settlement
12 Administration Costs; and
- 13 8. Awarding to Lawyers *for* Justice, PC and Sweeny Law, PC (“Plaintiff’s Counsel”) the
14 amount of \$453,250.00 as compensation for reasonable attorneys’ fees and the
15 amount of \$12,652.15 for reimbursement of litigation costs and expenses (together,
16 “Attorneys’ Fees and Costs”), pursuant to former California Labor Code section
17 2699(g)(1).

18 The Settlement Agreement and moving and supporting papers for this motion are being
19 concurrently submitted to the California Labor and Workforce Development Agency in
20 conformity with former California Labor Code section 2699(1)(2).

21 This motion is made pursuant to former California Labor Code section 2699(1)(2), which
22 provides for review and approval by the Court of the settlement of a civil action filed pursuant
23 to PAGA, and Rule 3.1113(e) of the California Rules of Court, which permits the Court to
24 extend the page limit for memoranda.

25 This motion will be based upon the following Memorandum of Points and Authorities,

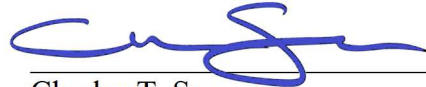
26
27 ¹ Defendant has advised Plaintiff that it intends to respectfully request permission from this Court that the specific
28 numbers set forth in Exhibit 1 for ‘Gross Settlement Amount’ and ‘Net Settlement Amount’ be excluded from the
notice to hourly employees.

1 the Settlement Agreement, the Declarations of Plaintiff's Counsel (Charles T. Sweeny and
2 Daniel Bass) and Plaintiff Daniel Cisneros in support thereof, as well as the pleadings and other
3 records on file with the Court in this matter, and such evidence and oral argument as may be
4 presented at the hearing on this motion.

5
6 Dated: March 17, 2026

SWEENY LAW, PC

7
8 By:



Charles T. Sweeny
Counsel for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Plaintiff Daniel Cisneros (“Plaintiff”) seeks approval of the Private Attorneys General
4 Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement
5 Agreement”) entered into between Plaintiff, individually and on behalf of the State of California
6 with respect to Aggrieved Employees, and Defendant HCI Systems, Inc. (“Defendant”),
7 pursuant to former California Labor Code section 2699(1)(2).²

8 Subject to approval by the Court, Plaintiff and Defendant (together, the “Parties”) have
9 agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General
10 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Gross Settlement
11 Amount of One Million Two Hundred Ninety Five Thousand Dollars and Zero Cents
12 (\$1,295,000.00), subject to possible increase pursuant to Section 3(a)(5) of the Settlement
13 Agreement.³

14 The Gross Settlement Amount is inclusive of: (1) Attorneys’ Fees and Costs to be paid
15 to Lawyers *for* Justice, PC and Sweeny Law, PC (“Plaintiff’s Counsel”); (2) General Release
16 Fee to Plaintiff; (3) Settlement Administration Costs to be paid to the PAGA Settlement
17 Administrator; and (4) Net Settlement Amount to be paid to the California Labor and Workforce
18 Development Agency (“LWDA”) and all current and former hourly-paid or non-exempt
19 individuals employed by Defendant within the State of California at any time during the PAGA
20 Period (“Aggrieved Employees”).⁴

21 The Net Settlement Amount will be the Gross Settlement Amount less the Court-approved
22 Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee; the Net
23

24
25 ² The Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement”) is attached as
“EXHIBIT 1” to the Declaration of Charles T. Sweeny (“Sweeny Decl.”).

26 ³ Settlement Agreement, §§ 3(a) and 3(a)(5). (“If the actual number of Compensable Pay Periods during the PAGA
Period is more than ten percent (10%) above 66,788, the Gross Settlement Amount will be increased by the
percentage that the actual number exceeds 73,468 (which is 10% more than 66,7988) (the “Escalator Clause”).”)

27 ⁴ Settlement Agreement, §§ 3(a)(5). “PAGA Period” is defined as the period of November 15, 2022 to June 27,
2025. Settlement Agreement, § 3(a)(5). It is very unlikely, however, that there will be any increase because
28 Defendant has informed Plaintiff that if the escalator clause is triggered, Defendant intends to exercise its discretion
to shorten the end date to avoid any increase in the Gross Settlement Amount.

Settlement Amount is currently estimated to be no less than \$817,013.85.⁵ The Net Settlement Amount will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and twenty-five percent (25%) to the Aggrieved Employees (“Employees’ Portion”).⁶ Each Aggrieved Employee will be entitled to payment of his or her *pro rata* share of the Employees’ Portion, based upon the number of pay periods they each worked during the period November 15, 2022 to June 27, 2025 (“Compensable Pay Periods”).⁷

The payments to Aggrieved Employees will be treated and reported for tax purposes as one hundred percent (100%) penalties and the PAGA Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.⁸

Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the requirements for approval by the Court based upon the relevant fairness factors, the strengths of the PAGA claim, the risk, expense, and complexity of further litigation, the benefit conferred by the Settlement, the scope of the release of claims, the experience and views of counsel, and the reasonableness of the Net Settlement Amount (consisting of the LWDA Payment and Employees’ Portion), Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee. Plaintiff respectfully requests that this Court approve the Settlement, award the Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee and approve the LWDA Payment, which are provided for by the Settlement and requested herein.

In order to efficiently present the Court with adequate information to determine whether to grant approval of the Settlement in conformity with former California Labor Code section 2699(l)(2), Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant is located in Ontario, California and provides fire safety and alarm systems

⁵ Settlement Agreement, §§ 3(a)(4) and 3(a)(5). A

⁶ Settlement Agreement, § 3(a)(5).

⁷ Settlement Agreement, § 7(b).

⁸ Settlement Agreement, § 7(b)(1).

1 for businesses throughout California.⁹ Defendant is a licensed systems integration contractor
2 offering a full spectrum of services, including sales, engineering, installation, service, and
3 maintenance.¹⁰ During the relevant time period, Defendant provided services for several of the
4 major city areas in California, including San Diego, Los Angeles, Sacramento, as well as Fresno,
5 Irvine, Ontario, and Pleasanton.¹¹ Plaintiff Daniel Cisneros is a former employee of
6 Defendant.¹²

7 Prior to commencing this lawsuit, on November 15, 2023, as required by California
8 Labor Code section 2699.3, Plaintiff Daniel Cisneros provided the LWDA and Defendant with
9 written notice of his intent to assert a claim for civil penalties under PAGA and the basis for the
10 claim, to which the LWDA did not respond (“PAGA Notice”).¹³ A true and correct copy of
11 Plaintiff’s November 15, 2023 PAGA Notice is attached to the Declaration of Daniel Bass as
12 “**EXHIBIT 1.**”

13 On March 18, 2024, Plaintiff filed a Class Action Complaint for Damages and
14 Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *et seq.*
15 (“Operative Complaint”) against Defendant in the San Bernardino County Superior Court
16 (“Court”), Case No. CIVSB2408988 (the “Action”). The Operative Complaint asserted ten
17 causes of action on behalf of Plaintiff and on behalf of a putative class of Defendant’s non-
18 exempt or hourly paid employees for damages, restitution, and penalties, flowing from the
19 California Labor Code, California Business & Professions Code, as well as applicable Industrial
20 Commission Wage Orders (the “Stand-Alone Claims”). The Operative Complaint also asserted,
21 as to the eleventh cause of action, a single cause of action for civil penalties under PAGA, for
22 violations of multiple provisions of the California Labor Code (the “PAGA Claim”).

23 On May 22, 2024, Defendant filed a Motion to Compel Arbitration (the “MTCA”),
24 asking the Court to compel all of Plaintiff’s claims to arbitration on an individual basis and stay
25

26 ⁹ Declaration of Daniel Bass (“Bass Decl.”), ¶ 9.

27 ¹⁰ Bass Decl., ¶ 9.

28 ¹¹ Bass Decl., ¶ 9.

¹² Bass Decl., ¶ 9..

¹³ Bass Decl., ¶ 10, Ex. 1.

the case pending the outcome of the individual arbitration.¹⁴

After being served with Defendant’s MTCA, but before the motion was heard, Plaintiff propounded multiple sets of written discovery requests on June 3, 2024, including Requests for Production of Documents, (Set One); Special Interrogatories (Sets One), Form Interrogatories—General (Set One), and Requests for Admission (Set One), all of which sought information relevant to numerous defenses to arbitration.¹⁵

Plaintiff filed extensive opposition papers to the MTCA, consisting of two separate declarations and a series of objections to Defendant’s purported evidence.¹⁶ In his opposition, filed on June 25, 2024, Plaintiff explained that upon receiving Plaintiff’s arbitration-related discovery requests, Defendant took the position that the mere filing of its MTCA automatically stayed the action and that no discovery responses were therefore required under California Code of Civil Procedure § 1281.4.¹⁷ Plaintiff also argued *inter alia*, that arbitration-related discovery should first be completed for numerous reasons and that the discovery responses were not due until after the opposition deadline, that Defendant had not met its evidentiary contract formation burden, that the alleged agreement was unconscionable, that PAGA claims were excluded from the scope of the agreement, and that a stay should not be imposed in any event.¹⁸

The MTCA was heard on July 30, 2024, and, following the hearing, the Court issued an order granting the MTCA as to the first ten causes of action (i.e., the Stand-Alone Claims for labor code violations brought individually and on behalf of the putative class) and denying the MTCA in its entirety as to the eleventh cause of action under PAGA (the “Arbitration Order”).¹⁹ The Court also stayed the Action in its entirety, including both the individual and non-individual components of the PAGA Claim, pending the outcome of the arbitration of Plaintiff’s individual, Stand-Alone Claims.²⁰ Thus, as a result of the Arbitration Order, the class action components

¹⁴ Bass Decl., ¶ 12.

¹⁵ Bass Decl., ¶ 13.

¹⁶ Bass Decl., ¶ 14.

¹⁷ Bass Decl., ¶ 14.

¹⁸ Bass Decl., ¶ 15.

¹⁹ Bass Decl., ¶ 16.

²⁰ Bass Decl., ¶ 16; Sweeny Decl., ¶ 7.

of the Stand-Alone Claims in the Operative Complaint are no longer pending.²¹

Sweeny Law, PC associated into this case shortly after the Arbitration Order was issued and advised Defendant’s counsel that Plaintiff intended to move to lift the stay on the PAGA Claims and proceed with litigation and discovery notwithstanding any individual arbitration of Plaintiff’s Stand-Alone Claims.²² In response, the Parties agreed to pursue mediation to resolve both the individual and non-individual PAGA Claims and Plaintiff’s individual Stand-Alone Claims before taking any further action to either lift the stay or address individual arbitration.²³

In advance of the mediation, Defendant produced thousands of pages of documents and extensive data to facilitate a full and robust settlement dialogue and detailed analysis of Plaintiff’s individual claims as well as the non-individual PAGA claims and potential penalties, both of which Defendant disputed and continues to dispute, as is explained in detail below.²⁴

On April 30, 2025, the Parties participated in a full-day mediation conducted by the Honorable Patrick J. Walsh (Ret.), a former Chief United States Magistrate Judge and a highly-regarded mediator with extensive experience mediating complex labor and employment matters.²⁵ The matter did not settle at mediation, however, the Parties continued to engage in extensive post-mediation settlement discussion and, with the further assistance of the mediator, the Parties tentatively agreed to the core terms of the settlement that is described herein via mediator’s proposal.²⁶

In August 2025, the Parties prepared and executed a short Memorandum of Understanding (“MOU”) that they each believed was consistent with the mediator’s proposal.²⁷ However, following execution of the MOU, the Parties spent several months in continued negotiations over the detailed terms of a long-form settlement agreement.²⁸ In fact, even *after* the Parties believed they had reached a final deal towards the end of 2025, and even though the

²¹ Bass Decl., ¶ 16; Sweeny Decl., ¶ 7.

²² Bass Decl., ¶ 17; Sweeny Decl., ¶ 7.

²³ Bass Decl., ¶ 17; Sweeny Decl., ¶ 7.

²⁴ Sweeny Decl., ¶ 8.

²⁵ Bass Decl., ¶ 18; Sweeny Decl., ¶ 9.

²⁶ Bass Decl., ¶ 18; Sweeny Decl., ¶ 9.

²⁷ Sweeny Decl., ¶ 10.

²⁸ Sweeny Decl., ¶ 10.

Parties fully-executed a long-form agreement on January 6, 2026, upon further review of this Court's rulings on similar settlement approval motions in other cases and cross reference to this Court's approval checklist, and with further guidance from this Court itself during status conferences, the Parties continued to negotiate and subsequently amended the Settlement Agreement.²⁹ The final, revised Settlement, which the Parties took great lengths to ensure complied with this Court's detailed checklist and with this Court's prior rulings, was fully executed on March 6, 2026. Moreover, as contemplated by Paragraph 8(d) of the Settlement, the Parties also entered into a separate agreement of \$5,000.00 to resolve Plaintiff's Stand-Alone Claims alleged in the Action, since those were still at issue albeit compelled to arbitration on an individual basis by the Arbitration Order.³⁰

Plaintiff now moves for an order granting approval of the Settlement pursuant to former California Labor Code section 2699(1)(2). The Settlement Agreement and moving and supporting papers for this motion are being submitted to the LWDA in conformity with former California Labor Code section 2699(1)(2), concurrently with this filing.³¹

III. NO OTHER CASES ARE ACTIVELY PURSUING RELATED PAGA CLAIMS

At a January 2026 Case Management Conference, this Court asked the Parties to provide a separate discussion of whether there were any other related cases.³² As of today, there are no other cases that are actively pursuing overlapping PAGA claims.³³ There were, however, two other arguably related cases that similarly alleged wage and hour claims during overlapping time period, but, as of today, based on Defendant's description of those cases' procedural posture and/or based on public records, neither of those cases are pursuing any PAGA claims that are or will be encompassed by this Settlement such that they would be related to this action.³⁴ The first, *Jorge Galindo v. HCI Systems, Inc., et al.*, San Bernardino County Superior Court Case

²⁹ Sweeny Decl., ¶ 10.

³⁰ Sweeny Decl., ¶ 10. And since no class claims remain pending because of the Arbitration Order, no consideration has been provided to Plaintiff or to Plaintiff's Counsel, including any fees or costs, in order to, for example, dismiss class claims, which were necessarily dismissed by the Arbitration Order.

³¹ Sweeny Decl., ¶ 28, Ex. 4.

³² Sweeny Decl., ¶ 29.

³³ Sweeny Decl., ¶ 29.

³⁴ Sweeny Decl., ¶ 29.

No. CIVSB2430713, was filed after this Action as a class action and PAGA action, but the named Plaintiff ultimately sought dismissal of all class and PAGA claims without prejudice upon learning of this earlier-filed Action, which the Honorable David E. Driscoll granted on or about November 17, 2025.³⁵ The second, *Thomas Joseph LeMasters v. HCI Systems, Inc., et al.*, San Bernardino County Superior Court Case No. CIVSB2530668, was also filed after this Action, on October 17, 2025, and was originally filed without a PAGA claim.³⁶ However, according to Defendant's counsel, the *LeMasters* plaintiff filed a First Amended Complaint adding a PAGA claim before ultimately and evidently purporting to abandon it by not serving that FAC once learning that this action fully subsumed the would-be PAGA claims in *LeMasters*.³⁷ Defendant's counsel has represented, and the Court docket confirms, that Defendant is moving to compel arbitration in the *LeMasters* action, and that their motion is set for hearing on May 11, 2026.³⁸

IV. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Settlement pertains to the following allegedly Aggrieved Employees:

All current and former hourly-paid or non-exempt individuals employed by Defendant within the State of California at any time during the PAGA Period.³⁹

The Settlement covers approximately Nine Hundred Ten (910) Aggrieved Employees who, according to information provided by Defendant, have worked Sixty-Six Thousand Seven Hundred Eighty-Eight (66,788) Compensable Pay Periods during the PAGA Period.⁴⁰ Notably, and as is explained in more detail below, throughout this litigation Defendant has taken the position that because it paid its non-exempt employees on a weekly basis, as opposed to biweekly or semimonthly, that this trial court, if it ever assessed any PAGA penalties, which Defendant strongly disputed, would only assess them on a *biweekly* basis, meaning that the

³⁵ Sweeny Decl., ¶ 29.

³⁶ Sweeny Decl., ¶ 29.

³⁷ Sweeny Decl., ¶ 29.

³⁸ Sweeny Decl., ¶ 29.

³⁹ Settlement Agreement, § 3(a)(5).

⁴⁰ Settlement Agreement, § 3(a)(5); Sweeny Decl., ¶ 21; *id.*, fn. 4.

Compensable Pay Period count would be one half of the actual pay period count.⁴¹

B. Funding and Distribution of the Gross Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount of One Million Two Hundred Ninety Five Thousand Dollars and Zero Cents (\$1,295,000.00), subject to possible increase pursuant to Section 3(a)(5) of the Settlement Agreement.⁴² Within thirty (30) calendar days of the Court's order granting approval of the Settlement, Defendant will transmit the Gross Settlement Amount to a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement.⁴³

C. Distribution of the Net Settlement Amount

The Net Settlement Amount will be the Gross Settlement Amount less the following amounts: (1) Attorneys' Fees and Costs consisting of attorneys' fees of \$453,250.00 and reimbursement of litigation costs and expenses of \$12,652.15 to Plaintiff's Counsel; (2) General Release Fee of \$5,000.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$7,084.00 to Simpluris ("Simpluris" or "PAGA Settlement Administrator").⁴⁴ The Net Settlement Amount will be fully distributed to the Aggrieved Employees and the LWDA.⁴⁵

No later than fourteen (14) calendar days after the Court's order granting approval of the Settlement, Defendant will provide the PAGA Settlement Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) Social Security number; and (v) the number of Compensable Pay Periods worked during the PAGA Period.⁴⁶

Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$612,760.39) will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent

⁴¹ Sweeny Decl., ¶ 21; *id.*, fn. 4.

⁴² Settlement Agreement, §§ 3(a)(1) & 3(a)(5).

⁴³ Settlement Agreement, § 7(a).

⁴⁴ Settlement Agreement, § 3(a)(1-3).

⁴⁵ Settlement Agreement, § 3(a)(4-5).

⁴⁶ Settlement Agreement, § 7(c)(1).

(25%) of the Net Settlement Amount (or approximately \$204,253.46) (i.e., Employees' Portion) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods.⁴⁷ To calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator will: (1) for each Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.⁴⁸ The payments to Aggrieved Employees for their Individual Settlement Share are considered one hundred percent (100%) penalties to be reported on IRS Form 1099, if required.⁴⁹

No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Gross Settlement Amount, the PAGA Settlement Administrator will mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package(s)") to all Aggrieved Employees by first-class United States mail.⁵⁰ For each PAGA Settlement Package that is returned as undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator will promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.⁵¹

No later than fourteen (14) calendar days after receipt of the Gross Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA, the General Release Fee to Plaintiff, the Settlement Administration Costs to itself (but only after the PAGA Settlement Packages have been mailed to all Aggrieved Employees), the Attorneys' Fees and Costs (unless instructed otherwise by Plaintiff's Counsel), as provided for by this Order and Judgment and the Settlement Agreement.⁵²

⁴⁷ Settlement Agreement, § 3(a)(5).

⁴⁸ Settlement Agreement, § 7(b).

⁴⁹ Settlement Agreement, §§ 3(a)(6) & 7(b)(1).

⁵⁰ Settlement Agreement, § 7(c)(1).

⁵¹ Settlement Agreement, § 7(c)(3).

⁵² Settlement Agreement, §§ 7(c)(3)(d)-(g).

1 The Individual Settlement Share checks issued to Aggrieved Employees will remain
2 valid for ninety (90) calendar days from the original date of issuance, and thereafter, will be
3 canceled.⁵³ Funds associated with canceled checks will be transmitted to the State Controller's
4 Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in
5 the amount of his or her respective Individual Settlement Share(s).⁵⁴

6 **D. The Scope of the Release in the Settlement Agreement**

7 Upon the date the Court has entered an order approving the Settlement Agreement and
8 full funding of the Gross Settlement Amount, and except as to the rights and obligations created
9 by Settlement Agreement, Plaintiff and the State of California with respect to Aggrieved
10 Employees will be deemed to have knowingly and voluntarily released and forever discharged
11 Released Parties, to the full extent permitted by law, of and from the Action and Released
12 Claims.

13 The "Released Claims" are any and all claims, arising during the PAGA Period, for
14 civil penalties under the California Labor Code, Wage Orders, and/or regulations,
15 pursuant to PAGA as well as any interest, fees, and costs available under PAGA,
16 for any claims that were or could have been alleged in the Action based on the
17 factual allegations pled in the PAGA Notice or in the Operative Complaint, and any
18 amendments thereto, including without limitation for failure to pay minimum,
19 regular, and overtime, failure to provide compliant meal periods and associated
20 premiums, failure to provide compliant rest periods and associated premiums,
21 failure to timely pay wages during employment, failure to timely pay wages upon
22 termination, failure to provide compliant and accurate wage statements, failure to
23 maintain complete and accurate payroll records, failure to reimburse necessary
24 business-related expenses and costs, and for violations of California Labor Code §§
25 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197,
26 1197.1, 1198, 2800, and 2802 and applicable Industrial Welfare Commission Wage
27 Orders, including *inter alia*, Wage Orders 4-2001 and 16-2001.⁵⁵

28 The "Released Parties" are Defendant, including Defendant's parent corporation,
franchisees, affiliates, subsidiaries, divisions, predecessors, insurers, successors and
assigns, and their current and former employees, attorneys, officers, directors and
agents thereof, both individually and in their business capacities, and their employee
benefit plans and programs and the trustees, administrators, fiduciaries and insurers
of such plans and programs.⁵⁶

⁵³ Settlement Agreement, § 7(c)(4).

⁵⁴ Settlement Agreement, § 7(c)(4).

⁵⁵ Settlement Agreement, § 8(a).

⁵⁶ Settlement Agreement, § 8(a).

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(citations omitted); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (aggrieved employee cannot opt out of a PAGA settlement).

As such, the Settlement is consistent with the law, and there is no requirement that the Aggrieved Employees be provided with a mechanism to opt out of or object to the Settlement.⁵⁷

V. STANDARDS FOR APPROVAL OF PAGA SETTLEMENTS

The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or herself and on behalf of other aggrieved employees and the State of California to recover civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer. Cal. Lab. Code § 2699(a). Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. See Cal. Lab. Code § 2699(a). Plaintiff has complied.

The settlement of a PAGA action requires court approval. See Cal. Lab. Code § 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action” and therefore does not have to meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from, and simpler than, the process for approval of a class action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims. See, e.g., *Resendez v. Bridgestone*

⁵⁷ Settlement Agreement, § 9(c).

1 *Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH*
2 *Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May
3 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller*
4 *v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo*
5 *Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D.
6 Cal Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186
7 Cal.App.4th 576, 589.

8 In a PAGA case, the court's focus is not the monetary amount which aggrieved
9 employees or the State stand to receive, but instead, whether the total settlement amount
10 achieves the PAGA's objectives. The purpose of the PAGA is "to incentivize private parties to
11 recover civil penalties for the government that otherwise may not have been assessed and
12 collected by overburdened state enforcement agencies." See *Ochoa-Hernandez, supra*, 2010
13 WL 1340777, at *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the
14 PAGA are, in part, to "be distributed to the [LWDA] for enforcement of labor laws . . . and for
15 education of employers and employees about their rights and responsibilities under this code, to
16 be continuously appropriated to supplement and not supplant the funding to the agency for those
17 purposes." See Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by
18 way of a PAGA claim, is essentially a law enforcement action. See *Amalgamated, supra*, 46
19 Cal.4th at 1003 (stating that the PAGA is a mechanism for "an aggrieved employee to recover
20 civil penalties—for Labor Code violations—that otherwise would be sought by state labor law
21 enforcement agencies"); see also *Iskanian, supra*, at 381.

22 A PAGA settlement is a settlement of claims for penalties and other remedies which the
23 LWDA could assess and collect on behalf of employees without their involvement or approval.
24 "[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
25 to opt-out of the representative PAGA claim." *Ochoa-Hernandez, supra*, 2010 WL 1340777,
26 at *5. This renders the approval process of a PAGA settlement distinct from a class action
27 settlement, and the Court need not employ the two-step approval process that applies to a class
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1 action settlement, under both state and federal law.

2 **VI. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

3 The Settlement resulted from hard-fought negotiations, fulfills the objectives of the
4 PAGA statute, is fair, adequate, and reasonable, and meets all of the criteria for approval for the
5 reasons discussed below.

6 **A. The Factors Giving Rise to a Presumption of Fairness Exist**

7 The Parties reached the Settlement after conducting extensive, arm's-length settlement
8 negotiations and the involvement of a neutral mediator, the Honorable Patrick J. Walsh (Ret.),
9 a former Chief United States Magistrate Judge and a highly-regarded mediator with extensive
10 experience mediating complex labor and employment matters.⁵⁸ A settlement that is "the
11 product of extensive and hard-fought adversarial negotiations between the parties" is entitled to
12 a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

13 The Settlement is presumptively fair because: (1) it is the product of adversarial, non-
14 collusive, and arm's-length negotiations with the assistance of an independent mediator
15 knowledgeable in complex labor and employment matters; (2) it was negotiated by counsel with
16 significant experience in similar complex labor and employment matters; and (3) it occurred
17 after counsel for the Parties engaged in significant investigation to evaluate the strength and
18 potential value of the PAGA claim, and risks and expenses of litigating this claim through trial.⁵⁹

19 In the course of litigation and after engaging in significant investigations, informal
20 discovery, and the exchange of information, data and documents, including a sampling of
21 Aggrieved Employees' time and pay data across the PAGA Period, the Parties participated in
22 extensive settlement discussions and negotiations to try to resolve the lawsuit.⁶⁰ These efforts
23 included participating in a formal mediation conducted by Judge Patrick J. Walsh (Ret.), a
24 former Chief United States Magistrate Judge and a highly regarded mediator with extensive
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26 ⁵⁸ Bass Decl., ¶¶ 18, 20; Sweeny Decl., ¶¶ 9, 23.

27 ⁵⁹ Bass Decl., ¶¶ 2-8, and 19-23; Sweeny Decl., ¶¶ 2-6, and 14-23.

28 ⁶⁰ Bass Decl., ¶¶ 19-23; Sweeny Decl., ¶¶ 14-23.

1 experience mediating complex labor and employment matters.⁶¹ In the course of mediation and
2 settlement negotiations, the Parties discussed all aspects of the case, including the risks and
3 delays of further litigation and proceeding with trial, as well as the law relating to representative
4 PAGA actions, various off-the-clock theories, rounding of time and meal periods, meal and rest
5 periods, on-premises rest periods, on-call issues, regular rate of pay, arbitration
6 agreements/clauses, business expenses reimbursement, wage statement noncompliance, and
7 wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of
8 bifurcation of discovery and/or trial and appeals, among other things, Plaintiff's claims, and
9 Defendant's defenses, as well as facts discovered.⁶² During all settlement discussions, the
10 Parties conducted their negotiations at arm's length in an adversarial position.⁶³

11 Based on all of the information available to the Parties, the Parties agree that this matter
12 is well-suited for settlement given the strengths and weaknesses of the PAGA claim and the
13 facts and circumstances of the case.⁶⁴ Plaintiff and Plaintiff's Counsel believe that the settlement
14 is a fair, adequate, and reasonable resolution of this matter.⁶⁵ Plaintiff's Counsel have extensive
15 experience handling representative and class action wage-and-hour litigation and used that
16 experience to achieve a settlement recovery for Plaintiff, the State of California, and the
17 Aggrieved Employees.⁶⁶ Therefore, the Court should give considerable weight to the
18 competency, experience, and opinion of counsel and the involvement of a neutral mediator in
19 assuring that the settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli*
20 (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to
21 considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622
22 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness); see
23 also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating
24 that the "assistance of an experienced mediator in the settlement process confirms that the
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26 ⁶¹ Bass Decl., ¶¶ 19-23; Sweeny Decl., ¶¶ 14-23.

27 ⁶² Bass Decl., ¶¶ 19-23; Sweeny Decl., ¶¶ 14-23.

28 ⁶³ Bass Decl., ¶¶ 19-23; Sweeny Decl., ¶¶ 14-23.

⁶⁴ Bass Decl., ¶ 30; Sweeny Decl., ¶ 36.

⁶⁵ *Id.*

⁶⁶ Bass Decl., ¶¶ 2-8; Sweeny Decl., ¶¶ 2-6.

settlement is non-collusive”).

B. The Relative Strength of the PAGA Claim and the Range of Possible Outcomes in the Litigation Strongly Favor Approval of the Settlement

In order for Plaintiff to prevail on the PAGA claim, he would have to prove that Defendant engaged in the alleged California Labor Code violations and demonstrate that Defendant’s conduct warrants the imposition of penalties. *See, e.g., Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 (“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims. Because all of plaintiff’s other claims fail as a matter of law, so does her PAGA claim.”).

Plaintiff’s core allegation is that Defendant has systematically violated the California Labor Code, with respect to Plaintiff and the Aggrieved Employees, by, *inter alia*, failing to properly pay wages, failing to provide compliant meal and rest periods and associated premiums, failing to timely pay wages during employment and upon termination of employment, failing to provide complete and accurate wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.⁶⁷

Although wage-and-hour actions are amenable to resolution as to a group of employees, some courts have also found that, for various reasons, the issues raised by Plaintiff raises individualized issues and/or are not suitable for adjudication as to a group of employees.

Defendant maintained several defenses to Plaintiff’s theories of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time period at issue.⁶⁸ Defendant denies that it ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.⁶⁹ Defendant further denied, and continues to deny, that the lawsuit is appropriate for

⁶⁷ Bass Decl., ¶ 11; Sweeny Decl., ¶ 18.

⁶⁸ Sweeny Decl., ¶ 19.

⁶⁹ Sweeny Decl., ¶ 19.

1 representative treatment for any purpose other than settlement.⁷⁰

2 Defendant also challenged Plaintiff's standing as an aggrieved employee and denied that
3 any of its other employees whom Plaintiff seeks to represent are aggrieved.⁷¹ Also, multiple
4 courts have taken an approach requiring a plaintiff to establish standing and face the possibility
5 of bifurcation of discovery and/or trial of the PAGA claim. *See Amalgamated Transit Union,*
6 *supra*, 46 Cal.4th at 1001 (noting that PAGA "require[s] a plaintiff to have suffered an injury
7 resulting from an unlawful action"); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21,
8 2014) 2014 WL 6633396, at *4 (finding that judicial economy supported bifurcation because of
9 the difficulties and inherent uncertainties of being able to establish liability with respect to a
10 large number of potentially aggrieved employees and noted that "PAGA's public purpose would
11 be ill-served if the court finds [the plaintiff] has not been aggrieved by a Labor Code violation");
12 *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of
13 litigation is allowed to avoid wasting time and money on trial when litigation of issues could be
14 rendered moot).

15 Defendant also argued that an important feature of PAGA is that the Court retains
16 discretion to lower the penalties if, based on the facts and circumstances of the particular case,
17 to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or
18 confiscatory." *See* Cal. Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit*
19 *Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the
20 amount of PAGA penalties awarded to an employee based upon discretionary factors).
21 Defendant maintained, and continues to maintain, that it had and continues to have, legally-
22 compliant employment policies and practices throughout the time period at issue.⁷² Defendant
23 denies that it ever violated any provision of the California Labor Code.⁷³ Even if, *arguendo*,
24 such violations occurred, which Defendant denies, Defendant contended that said violations
25 would only be considered "initial violations" and thus heightened "subsequent violation"

26 ⁷⁰ Sweeny Decl., ¶ 19.

27 ⁷¹ Sweeny Decl., ¶¶ 19-20.

28 ⁷² *Ibid.*

⁷³ *Ibid.*

1 penalties were not warranted. *See* Cal. Lab. Code § 2699(f)(2); *see also Amaral v. Cintas Corp.*
2 *No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 (“Until the employer has been notified that it is
3 violating a Labor Code provision [...], the employer cannot be presumed to be aware that its
4 continuing underpayment of employees is a ‘violation’ subject to penalties.”).

5 Defendant also contended that, with respect to PAGA claims, trial courts are unlikely to
6 assess cumulative penalties for the maximum number of possible, separate California Labor
7 Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory,
8 especially where certain conduct may be regulated by multiple provisions of the California
9 Labor Code that are interrelated and work in tandem. As such, Defendant contended that
10 cumulative penalties and heightened penalties would be unjust, arbitrary, oppressive, and
11 confiscatory.

12 One highly contested point regarding cumulative penalties was based on Defendant’s
13 position that because it paid its non-exempt employees on a weekly basis, as opposed to
14 biweekly or semimonthly, that this trial court, if it ever assessed any PAGA penalties, which
15 Defendant strongly disputed in the first instance, would only award penalties on a biweekly
16 basis.⁷⁴ In other words, although there are Sixty-Six Thousand Seven Hundred Eighty-Eight
17 (66,788) Compensable Pay Periods during the PAGA Period covered by this Settlement,
18 Defendant has consistently maintained that pay periods should be viewed as half of that number,
19 i.e., 33,394 Compensable Pay Periods for purposes of determining any available PAGA
20 penalties that could be assessed at trial.⁷⁵

21 There is also uncertainty regarding PAGA claims due to decisions of the high courts and
22 recent amendment of the PAGA statute. For example, as a result of a recent United States
23 Supreme Court decision, it is more likely that employer agreements containing arbitration terms
24 will impact the viability of adjudication of PAGA claims in the judicial forum. This is relevant
25 in this matter in light of the arbitration agreements that Defendant obtained from its employees
26 (that included, *inter alia*, binding individual arbitration and class and collective action waiver

27 ⁷⁴ Sweeny Decl., ¶ 21.

28 ⁷⁵ Sweeny Decl., ¶ 21.

provisions). *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940.⁷⁶ Recently, the California Supreme Court confirmed that an aggrieved employee who has been compelled to arbitrate claims under PAGA that are premised on California Labor Code violations actually sustained by the plaintiff still maintains statutory standing to pursue a PAGA claim arising out of events involving other employees through a PAGA representative claim. *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 532 P.3d 682, 685. Nevertheless, while the arbitrable and non-arbitrable components of an action are not severed from one another, it is still possible that trial courts will stay the representative/non-individual PAGA claims pending arbitration of a plaintiff's individual PAGA claims and if a plaintiff is determined to not be an "aggrieved employee" for PAGA purposes, issue preclusion may apply and, once reduced to a final judgment, trial courts are bound by the arbitrator's determination and the plaintiff may lose standing to pursue non-individual PAGA claims. *Id.* at 693.

While Plaintiff disagrees with Defendant's contentions and maintains that his PAGA claim has merit, in reaching the settlement, Plaintiff and his counsel took into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon appeal.⁷⁷

Furthermore, the recent amendment of the PAGA statute enacted on July 1, 2024, adopting, *inter alia*, modified standing requirements, codifying a manageability requirement, capping civil penalties that can be assessed against an employer if an employer meets certain conditions, and allowing an employer to cure violations to avoid the assessment of civil penalties

⁷⁶ In *Viking River Cruises*, the U.S. Supreme Court determined that PAGA claims can be split into individual claims based on California Labor Code violations suffered by the plaintiff (that can then be subject to arbitration) and non-individual claims (that are representative in nature) and that the "indivisibility rule" recognized by the California Supreme Court in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348 is preempted by the Federal Arbitration Act (FAA) to the extent it circumscribes the freedom of parties to agree to such contractual division or splitting of PAGA actions. *Viking River Cruises, Inc.*, 123-125. The U.S. Supreme Court also determined that, important structural differences between PAGA actions and class actions preclude any straightforward application of U.S. Supreme Court precedents invalidating prohibitions on class-action waivers, to *Iskanian*'s ban on wholesale PAGA representative action waivers, and thus this aspect of *Iskanian* is not preempted by the FAA. *Id.* at 1919, 1922-1925. The U.S. Supreme Court also expressed its understanding of California state law, and the impact of its ruling on, PAGA's standing requirement, regarding which California courts will have the last word, as noted by a concurring opinion. *Id.* at 1925-1926 (concurring opinion). Taken together, the substantive statutory right to pursue a PAGA claim has not been eviscerated and has been preserved, however, arbitration agreements may be used to select the forum and procedure to be used to resolve PAGA claims to some extent.

⁷⁷ Sweeney Decl., ¶ 20.

1 if an employer meets certain conditions, has created uncertainty regarding the future of claims
2 for civil penalties under PAGA.

3 **C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation**

4 Courts favor voluntary conciliation and settlement of complex litigation. *Class Plaintiffs*
5 *v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, “unless the settlement is
6 clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation
7 with uncertain results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan. 5,
8 2004) 221 F.R.D. 523, 526 (citation omitted).

9 Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope
10 of the PAGA claim and allegations.⁷⁸ In addition, the Parties exchanged thousands of pages of
11 information, documents, and data relevant to Plaintiff’s claim and Defendant’s defenses thereto,
12 including, and not limited to, the employment records of Plaintiff, time and pay data of
13 Aggrieved Employees, constituting a representative sample across the PAGA Period,
14 Defendant’s list of Aggrieved Employees, arbitration agreements, meal break premium
15 documents, wage statements, and Defendant’s operations and employment practices, policies,
16 and procedures, among other documents.⁷⁹ Counsel for the Parties undertook significant
17 investigation, and also invested time reviewing and analyzing relevant information, documents,
18 and data to evaluate the PAGA claim and related allegations, including, and not limited to,
19 calculating the potential monetary recovery under PAGA.⁸⁰ Other work performed by Plaintiff’s
20 Counsel included, but was not limited to: meeting and conferring with Defendant’s counsel
21 regarding the pleadings, case management, pending discovery, arbitration, mediation, and
22 settlement negotiations, among other issues; case strategy and analysis; researching, drafting,
23 reviewing, and revising pleadings, court filings, motion-related papers (e.g., with respect to
24 settlement approval motion papers and opposing a motion to compel arbitration), briefs for
25 settlement negotiations and mediation, and the settlement agreement; propounding written
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27 ⁷⁸ Sweeny Decl., ¶ 15; Bass Decl., ¶ 21.

⁷⁹ Sweeny Decl., ¶ 15; Bass Decl., ¶ 21.

28 ⁸⁰ Sweeny Decl., ¶¶ 15, 16; Bass Decl., ¶ 21.

discovery requests; claims evaluation and analysis; preparing for and participating in settlement negotiations and the mediation; and appearing for court proceedings.⁸¹

Had the case not settled, the Parties would have conducted extensive additional formal discovery, including propounding additional written discovery requests as well as multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendant indicated that it would aggressively litigate this case. Even if Defendant failed on its defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.⁸² Additionally, there is a real possibility that Plaintiff could recover nothing, either for himself or on behalf of the State of California or other Aggrieved Employees after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

D. The Settlement is Fair, Adequate, and Reasonable Given the Risks

“[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Service Comm’n* (9th Cir. 1981) 688 F.2d 615, 624. “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625.

The Settlement provides significant benefits to the State of California and the Aggrieved Employees and falls well-within the range of acceptable settlements under the circumstances. Under the Agreement, Defendant has agreed to pay a Gross Settlement Amount of One Million Two Hundred Ninety Five Thousand Dollars and Zero Cents (\$1,295,000.00), subject to possible increase pursuant to Section 3(a)(5) of the Settlement Agreement, which encompasses the Net Settlement Amount, Attorneys’ Fees and Costs, Settlement Administration Costs, and General Release Fee.⁸³ Subject to approval by the Court, the following amounts will be

⁸¹ Sweeny Decl., ¶¶ 15, 16; Bass Decl., ¶ 21.

⁸² Sweeny Decl., ¶ 22.

⁸³ Settlement Agreement, §§ 3(a) & 3(a)(1)-(5).

1 subtracted from the Gross Settlement Amount to yield the Net Settlement Amount: (1)
2 Attorneys' Fees and Costs consisting of attorneys' fees in the amount of \$453,250.00 and
3 reimbursement of litigation costs and expenses in the amount of \$12,652.15 to Plaintiff's
4 Counsel⁸⁴; (2) the Settlement Administration Costs of \$7,084.00; and (3) General Release Fee
5 of up to \$5,000.00 to Plaintiff.⁸⁵

6 The Net Settlement Amount is currently estimated to be Eight Hundred Seventeen
7 Thousand and Thirteen Dollars and Eighty Five Cents (\$817,013.85), of which an estimated
8 Two Hundred and Four Thousand Two Hundred Fifty Three Dollars and Forty Six Cents
9 (\$204,253.46) is to be distributed to Aggrieved Employees on a *pro rata* basis, based on their
10 Compensable Pay Periods and Six Hundred Twelve Thousand Seven Hundred and Sixty Dollars
11 and Thirty Nine Cents (\$612,760.39) is to be distributed to the LWDA. There is no reason to
12 doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully
13 complies with former California Labor Code section 2699(i).

14 In assessing whether the amount in civil penalties is genuine and meaningful, the Court
15 may balance the amount in civil penalties with the risks of further litigation. Here, Plaintiff
16 obtained a meaningful amount in civil penalties despite facing significant challenges had the
17 litigation continued.

18 Plaintiff's Counsel considered information, data, and documents obtained from Plaintiff,
19 Defendant, and other sources, and created violation, damages, and penalties valuations and
20 models prior to reaching the Settlement. Based thereon, Plaintiff calculated the potential value
21 of the theories of liability under PAGA (referred to as "claims"). However, the potential value
22 of each claim assumed an exposure based on the above-captioned action having a 100%
23 violation rate for every Aggrieved Employee during every pay period with no discretionary
24 penalty reduction, allowing "stacked" PAGA penalties (i.e., multiple penalties for different
25 Labor Code violations in the same pay period based on the same alleged underlying violation),
26 and allowing for an "inflated" pay period count due to Defendant's weekly pay period system.

27 ⁸⁴ Settlement Agreement, § 3(a)(1).

28 ⁸⁵ Settlement Agreement, §§ 3(a)-3(a)(4).

1 In addition, the potential value of each claim assumes Plaintiff having proven all elements of
2 the claims and entitlement to penalties in the above-captioned action (on a representative basis),
3 despite risks associated with demonstrating manageability, risks to establishing liability and any
4 underlying California Labor Code and IWC Wage Order violations and significant additional
5 costs that would have to be incurred in order to establish liability and penalties amounts in the
6 cases. Plaintiff faced the risk of the Court finding that individualized issues predominate, such
7 that the case is not suitable for representative adjudication.

8 While Plaintiff's Counsel disagreed with Defendant's arguments and factual
9 contentions, Plaintiff Counsel recognized the circumstances and realities of the case, applicable
10 case law and regulations, the extensive time and pay records produced by Defendant, the costs
11 and expenses of further litigation, and risks to recovery, and applied appropriate discounts for
12 them. Class Counsel calculated the potential and realistic values of each claim as follows:

- 13 1. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of
14 \$100 for an initial violation and \$200 for each subsequent violation. Using the
15 initial pay period rate for all violations, and a violation every single pay period
16 for every single non-exempt employee in the PAGA Period, this amounts to a
17 maximum exposure of \$6,678,800.00 (66,788 pay periods x \$100). At this
18 juncture, a discount of 50% was applied to account for the risks associated with
19 the Court reducing this claim to avoid stacked penalties (bringing the value of
20 this claim closer to \$3,339,400.00), a discount of 35% was applied to account for
21 the risks associated with succeeding on the merits and establishing liability
22 (bringing the value of this claim closer to \$2,170,610.00), a discount of 75% was
23 applied to account for the risks associated with the Court reducing penalties for
24 finding such award would be unjust, arbitrary, oppressive, or confiscatory
25 (bringing the value of this claim closer to \$542,652.50), and a final discount of
26 50% was applied to account for the risks associated with the Court
27 discretionarily reducing penalties so as not to arbitrarily penalize Defendant for
28

1 paying its employees on a weekly as opposed to biweekly basis, e.g., to avoid
2 double penalties simply because employees were paid more frequently (bringing
3 the value of this claim closer to \$271,326.25).

4 2. Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an
5 initial violation and \$100 for each subsequent violation. Using the initial pay
6 period rate for all violations, and a violation every single pay period for every
7 single non-exempt employee in the PAGA Period, this amounts to a maximum
8 exposure of \$3,339,400.00 (66,788 pay periods x \$50). At this juncture, a
9 discount of 50% was applied to account for the risks associated with the Court
10 reducing this claim to avoid stacked penalties (bringing the value of this claim
11 closer to \$1,669,700.00), a discount of 20% was applied to account for the risks
12 associated with succeeding on the merits and establishing liability, a discount of
13 75% was applied to account for the risks associated with the Court reducing
14 penalties for finding such award would be unjust, arbitrary, oppressive, or
15 confiscatory, and a final discount of 50% was applied to account for the risks
16 associated with the Court discretionarily reducing penalties so as not to
17 arbitrarily penalize Defendant for paying its employees on a weekly as opposed
18 to biweekly basis, e.g., to avoid double penalties simply because employees
19 were paid more frequently (bringing the value of this claim closer to
20 \$166,970.00).

21 3. Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for
22 an initial violation and \$100 for each subsequent violation. Using the initial pay
23 period rate for all violations, and a violation every single pay period for every
24 single non-exempt employee in the PAGA Period, this amounts to a maximum
25 exposure of \$3,339,400.00 (66,788 pay periods x \$50). At this juncture, a
26 discount of 50% was applied to account for the risks associated with the Court
27 reducing this claim to avoid stacked penalties (bringing the value of this claim
28

1 closer to \$1,669,700.00), a discount of 25% was applied to account for the risks
2 associated with succeeding on the merits and establishing liability , a discount of
3 75% was applied to account for the risks associated with the Court reducing
4 penalties for finding such award would be unjust, arbitrary, oppressive, or
5 confiscatory, and a final discount of 50% was applied to account for the risks
6 associated with the Court discretionarily reducing penalties so as not to
7 arbitrarily penalize Defendant for paying its employees on a weekly as opposed
8 to biweekly basis, e.g., to avoid double penalties simply because employees
9 were paid more frequently (bringing the value of this claim closer to
10 \$156,534.38).

- 11 4. Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for
12 an initial violation and \$100 for each subsequent violation. Using the initial pay
13 period rate for all violations, and a violation every single pay period for every
14 single non-exempt employee in the PAGA Period, this amounts to a maximum
15 exposure of \$3,339,400.00 (66,788 pay periods x \$50). At this juncture, a
16 discount of 50% was applied to account for the risks associated with the Court
17 reducing this claim to avoid stacked penalties (bringing the value of this claim
18 closer to \$1,669,700.00), a discount of 65% was applied to account for the risks
19 associated with succeeding on the merits and establishing liability (bringing the
20 value of this claim closer to \$584,395.00), a discount of 75% was applied to
21 account for the risks associated with the Court reducing penalties for finding
22 such award would be unjust, arbitrary, oppressive, or confiscatory (bringing the
23 value of this claim closer to \$146,098.75), and a final discount of 50% was
24 applied to account for the risks associated with the Court discretionarily
25 reducing penalties so as not to arbitrarily penalize Defendant for paying its
26 employees on a weekly as opposed to biweekly basis, e.g., to avoid double
27 penalties simply because employees were paid more frequently (bringing the
28

value of this claim closer to \$73,049.38).

5. Violations for Untimely Wages During Employment: Labor Code section 2699 penalties of \$100 for an initial violation and \$200 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of \$6,678,800.00 (66,788 pay periods x \$100). At this juncture, a discount of 50% was applied to account for the risks associated with the Court reducing this claim to avoid stacked penalties (bringing the value of this claim closer to \$3,339,400.00), a discount of 45% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$1,836,670.00), a discount of 75% was applied to account for the risks associated with the Court reducing penalties for finding such award would be unjust, arbitrary, oppressive, or confiscatory, and a final discount of 25% was applied to account for the risks associated with the Court discretionarily reducing penalties so as not to arbitrarily penalize Defendant for paying its employees on a weekly as opposed to biweekly basis, e.g., to avoid double penalties simply because employees were paid more frequently (bringing the value of this claim closer to \$344,375.63).

6. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial violation and \$200 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of \$6,678,800.00 (66,788 pay periods x \$100). At this juncture, a discount of 50% was applied to account for

the risks associated with the Court reducing this claim to avoid stacked penalties (bringing the value of this claim closer to \$3,339,400.00), a discount of 35% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$2,170,610.00), a discount of 75% was applied to account for the risks associated with the Court reducing penalties for finding such award would be unjust, arbitrary, oppressive, or confiscatory (bringing the value of this claim closer to \$542,652.50), and a final discount of 50% was applied to account for the risks associated with the Court discretionarily reducing penalties so as not to arbitrarily penalize Defendant for paying its employees on a weekly as opposed to biweekly basis, e.g., to avoid double penalties simply because employees were paid more frequently (bringing the value of this claim closer to \$271,326.25).

7. Violations Associated with Payroll Record Noncompliance: Labor Code section 2699 penalties of \$100 for an initial violation and \$200 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of \$6,678,800.00 (66,788 pay periods x \$100). At this juncture, a discount of 50% was applied to account for the risks associated with the Court reducing this claim to avoid stacked penalties (bringing the value of this claim closer to \$3,339,400.00), a discount of 85% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$500,910.00), a discount of 85% was applied to account for the risks associated with the Court reducing penalties for finding such award would be unjust, arbitrary, oppressive, or confiscatory (bringing the value of this claim closer to \$125,227.50), and a final discount of 50% was applied to account for the risks associated with the Court discretionarily reducing penalties so as not to arbitrarily penalize

1 Defendant for paying its employees on a weekly as opposed to biweekly basis,
2 e.g., to avoid double penalties simply because employees were paid more
3 frequently (bringing the value of this claim closer to \$62,613.25).

4 8. Violations for Unreimbursed Business Expenses: Labor Code section 2699
5 penalties of \$100 for an initial violation and \$200 for each subsequent violation.
6 Using the initial pay period rate for all violations, and a violation every single
7 pay period for every single non-exempt employee in the PAGA Period, this
8 amounts to a maximum exposure of \$6,678,800.00 (66,788 pay periods x \$100).
9 At this juncture, a discount of 50% was applied to account for the risks
10 associated with the Court reducing this claim to avoid stacked penalties
11 (bringing the value of this claim closer to \$3,339,400.00), a discount of 85% was
12 applied to account for the risks associated with succeeding on the merits and
13 establishing liability (bringing the value of this claim closer to \$500,910.00), a
14 discount of 85% was applied to account for the risks associated with the Court
15 reducing penalties for finding such award would be unjust, arbitrary, oppressive,
16 or confiscatory (bringing the value of this claim closer to \$75,136.50), and a
17 final discount of 50% was applied to account for the risks associated with the
18 Court discretionarily reducing penalties so as not to arbitrarily penalize
19 Defendant for paying its employees on a weekly as opposed to biweekly basis,
20 e.g., to avoid double penalties simply because employees were paid more
21 frequently (bringing the value of this claim closer to \$37,568.25).

22 The total value of the potential claims with the appropriate discounts is \$1,112,437.63.
23 The foregoing discussion confirms that the amount of the Settlement is adequate in light of
24 Plaintiff's allegations and theories of liability, the evidence at issue with respect to those
25 allegations and theories of liability, and legal and factual arguments and circumstances which
26 pose challenges to manageability, merits, and penalty recovery. The conclusion to be drawn
27 from the foregoing analysis is that neither manageability, liability, nor the ability to adjudicate
28

1 and/or recover penalties on a representative basis is clear-cut, which is why the Parties elected
2 to settle this matter. Plaintiff's Counsel recognized the circumstances and realities of the case,
3 applicable case law and regulations, and risks to recovery and applied appropriate discounts.

4 The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel
5 recognize the expense and length of continued proceedings necessary to pursue the matter
6 through trial and any possible appeals.⁸⁶ Plaintiff and his counsel have also taken into account
7 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
8 inherent in such litigation.⁸⁷ Plaintiff and his counsel are also aware of the burdens of proof
9 necessary to establish liability, both generally and in response to Defendant's defenses thereto,
10 and the difficulties in establishing Defendant's liability for, and the right to recover, penalties
11 on behalf of Plaintiff, the State of California, and other Aggrieved Employees.⁸⁸ Plaintiff and
12 his counsel have also taken into account Defendant's agreement to enter into a settlement that
13 confers significant relief upon the Aggrieved Employees and the State of California.⁸⁹

14 Considering all of the facts in this case, Plaintiff and his counsel have determined that
15 the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and
16 that it is in the best interests of the Aggrieved Employees and the State of California.⁹⁰

17 The result achieved in this case, and the monetary recovery provided by this settlement,
18 are well-within the range of an acceptable settlement under the circumstances, especially when
19 compared to trial court penalties assessments in contested cases⁹¹ and the settlement of PAGA

20 ⁸⁶ Bass Decl., ¶¶ 19-23; Sweeny Decl., ¶¶ 14-23.

21 ⁸⁷ *Ibid.*

22 ⁸⁸ *Ibid.*

23 ⁸⁹ *Ibid.*

24 ⁹⁰ Bass Decl., ¶¶ 19-23; Sweeny Decl., ¶¶ 14-23.

25 ⁹¹ *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp. 3d 1058, 1100-1101, 1103-1104, 1111 (finding that,
26 under Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA penalties as the Court sees fit"
27 and reducing the PAGA penalty award significantly from the maximum penalties possible); *Morales v Bridgestone*
28 *Retail Operations LLC* (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244 (of \$7 million PAGA
penalties requested, the court awarded \$425,000); *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517,
529 (of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based
on 30,000 violations, which reduced the penalty rate to \$5 per violation); *Arnold v San Diego Second Chance*
Program (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375 (no PAGA penalties awarded);
Felczer v Apple Inc. (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593 (no PAGA penalties
awarded); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S.
Dist. LEXIS 48557 at *41 (the court declined to award PAGA penalties after trial); *Allen v American Multi-Cinema*
(July 24, 2016) Alameda County Superior Court No. RG11585502 (no PAGA penalties awarded); *Atempa v Pama*
(July 31, 2015) San Diego County Superior Court (of PAGA penalties of \$456,133 sought, the court awarded

(Footnote continued)

claims in other cases⁹². Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

E. The Experience and Views of Plaintiff's Counsel Favor Approval of the Settlement

Plaintiff's Counsel are highly experienced in complex representative and class action wage-and-hour litigation.⁹³ In the view of Plaintiff's Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁹⁴ Furthermore, courts have acknowledged that "the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]" *Williams, supra*, 548 (citing former Cal. Lab. Code § 2699(g)(1)(i)).

VII. THE REQUESTED ATTORNEYS' FEES AWARD IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

A. A Fee Award of a Percentage of the Entire Fund Is Appropriate

The Settlement provides for a Gross Settlement Amount of One Million Two Hundred

\$197,434.00); *Driscoll v Granite Rock* (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426 (the court declined to award PAGA penalties); *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at **8-9 (of \$2,800,000 PAGA penalties requested, the court awarded \$500,000); *Aguirre v Genesis Logistics* (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820 at **6-7 (of \$1,800,000 PAGA penalties requested, the court awarded \$500,000); *Halevi v Aroma Bakery Café, Inc.*, Los Angeles County Superior Court No. 468146 (Aug. 30, 2013) (the court declined to award PAGA penalties after trial awarding wages to class on the basis that, *inter alia*, the lawsuit was not prompted by availability of PAGA penalties, penalties were not necessary to remedy ongoing or future violations, corporate defendants corrected violations and were no longer in business, and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory).

⁹² See, e.g., *DCH Auto Wage and Hour Cases* (May 2017) Los Angeles Superior Court, Case No. JCCP4833 (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit).

⁹³ Sweeny Decl., ¶ 36; Bass Decl., ¶ 30.

⁹⁴ *Ibid.*

1 Ninety Five Thousand Dollars and Zero Cents (\$1,295,000.00), subject to possible increase
2 pursuant to Section 3(a)(5) of the Settlement Agreement.⁹⁵ The Settlement provides for
3 attorneys' fees in an amount of up to thirty-five percent (35%) of the Gross Settlement Amount,
4 (assuming the Gross Settlement Amount remains \$453,250.00),⁹⁶ subject to approval and award
5 by the Court.⁹⁷ The requested attorneys' fees award is commensurate with: (1) the risk that
6 Plaintiff's Counsel took in bringing and litigating the case, (2) the time, effort, and expense
7 dedicated to the case, (3) the skill and determination that Plaintiff's Counsel have shown, (4)
8 the results that Plaintiff's Counsel have achieved in the case, (5) the value that Plaintiff's
9 Counsel have achieved in the case, and (6) the other cases that Plaintiff's Counsel have turned
10 down in order to devote their time and effort to this case.

11 Plaintiff's Counsel are entitled to recover reasonable attorneys' fees and costs as a matter
12 of right under PAGA. *See former* Cal. Lab. Code § 2699(g)(1) ("Any employee who prevails
13 in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs").
14 Plaintiff's Counsel are also entitled to fees and costs under California Code of Civil Procedure
15 section 1021.5, as the instant PAGA action is by definition "for the benefit" of others and secures
16 monetary recovery for a large number of allegedly aggrieved employees, as well as the State of
17 California. *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
18 (recognizing that recovery obtained on behalf of 209 individuals satisfies the "significant
19 benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure
20 section 1021.5, regardless of plaintiff's personal motivation). The settlement will also provide
21 significant funds to the state labor agency, to enhance enforcement of labor laws and education
22 of "employers and employees about their rights and responsibilities under [the California Labor
23 Code]." Cal. Lab. Code § 2699(i).

24 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
25 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
26

27 ⁹⁵ Settlement Agreement, §§ 3(a) and 3(a)(5).

⁹⁶ Settlement Agreement, §§ 3(a) and 3(a)(5).

28 ⁹⁷ Settlement Agreement, §§ 3(a)(1).

confirmed by the California Supreme Court. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480 at 486 & 506. While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund method, the California Supreme Court has taken the position that trial courts also “retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee” and “[t]he percentage of fund method survives in California.” *Id.* (internal quotes omitted); see also *Wershba, supra*, 91 Cal.App. 4th at 253.

Courts award fees to serve as an economic incentive for lawyers to undertake litigation, and thereby enhance and facilitate access to the judicial system for adjudication of meritorious claims, and to deter wrongdoing. This is especially true in situations where multiple similar alleged wrongs would not be economically feasible to pursue individually, such as here. See A. Conte, *Attorney Fee Awards* (2d ed. 1993) 104, at 6.

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; see also *Laffitte, supra*, 1 Cal.5th 480 at 506 (holding that “trial court did not abuse its discretion in using [the percentage of fund method], in part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.

The percentage method is particularly appropriate where a monetary settlement has been recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a “certain easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable percentage of the settlement created. Weil and Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.

The percentage fee method is preferred in representative actions because “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be

1 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
2 based on the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at 47-50;
3 *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the
4 defendant will pay the plaintiff's attorneys a percentage of the fund created by the settlement,
5 use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards
6 that are too small will "chill the private enforcement essential to the vindication of many legal
7 rights and obstruct the representative actions that often relieve the courts of the need to
8 separately adjudicate numerous claims." *Id.* at 53. Therefore, fees in representative actions
9 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
10 attorney and client in comparable litigation. *Id.* at 48. "The ultimate goal . . . is the award of a
11 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of
12 calculation." *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple*
13 *Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270).

14 Plaintiff's Counsel's application for attorneys' fees in light of the facts and
15 circumstances surrounding the case is well-within the range of reasonableness. Historically,
16 courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions,
17 depending on the circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981)
18 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million total
19 settlement amount); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979)
20 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California
21 courts routinely approve attorneys' fees awards "average[ing] around one-third of the recovery."
22 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of
23 contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee
24 was appropriate).

25 Plaintiff's Counsel have litigated this case since it was commenced, with the very real
26 possibility of an unsuccessful outcome and no fee recovery of any kind.⁹⁸ Counsel for the Parties

27
28 ⁹⁸ Sweeny Decl., ¶ 27; Bass Decl., ¶ 27.

1 undertook significant investigation, and also invested time reviewing and analyzing relevant
2 information, documents, and data to evaluate the allegations, including, and not limited to,
3 calculating the potential monetary recovery under PAGA.⁹⁹ Other work performed by Plaintiff's
4 Counsel included, but was not limited to: meeting and conferring with Defendant's counsel
5 regarding the pleadings, case management, pending discovery, arbitration, mediation, and
6 settlement negotiations, among other issues; case strategy and analysis; researching, drafting,
7 reviewing, and revising pleadings, court filings, motion-related papers (e.g., with respect to
8 settlement approval motion papers and opposing a motion to compel arbitration), briefs for
9 settlement negotiations and mediation, and the settlement agreement; propounding written
10 discovery requests; claims evaluation and analysis; preparing for and participating in settlement
11 negotiations and the mediation; and appearing for court proceedings.¹⁰⁰

12 In the present case, Plaintiff's Counsel have borne all of the risks and costs of litigation
13 and will not receive any compensation until recovery is obtained.¹⁰¹ Plaintiff's Counsel are
14 experienced in complex wage-and-hour litigation and used that experience to obtain a significant
15 settlement recovery for Plaintiff, the Aggrieved Employees, and the State of California.¹⁰²
16 Considering the amount of fees requested, work performed, risks incurred, results obtained, and
17 experience of Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the
18 requested attorneys' fees are reasonable and should be awarded.

19 **B. The Requested Fee Award is Reasonable Based on the Factors Considered in**
20 **Determination of Fee Awards**

21 The factors that courts consider in determining whether fee awards are reasonable, all of
22 which support the fee award requested by Plaintiff's Counsel, are: (1) the time and labor
23 required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to
24 perform the legal services properly; (4) the preclusion of other employment by the attorney due
25 to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent;

26 ⁹⁹ Bass Decl., ¶¶ 19-23; Sweeny Decl., ¶¶ 14-23.

27 ¹⁰⁰ Bass Decl., ¶¶ 19-23; Sweeny Decl., ¶¶ 14-23.

¹⁰¹ Bass Decl., ¶¶ 27; Sweeny Decl., ¶¶ 27.

28 ¹⁰² Bass Decl., ¶¶ 2-8; Sweeny Decl., ¶¶ 2-6.

(7) the time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772. Some of the most relevant factors to this Court’s fee determination will be addressed below.

The percentage award sought is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Plaintiff’s Counsel’s representation and the risks taken in commencing the case, the skill and determination required, the results that Plaintiff’s Counsel have achieved, and the value of the settlement that Plaintiff’s Counsel have obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California. For the reasons discussed herein, an award of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount is reasonable.

1. Time & Labor

Plaintiff’s Counsel have used their experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, Plaintiff’s Counsel conducted a significant amount of investigation into the factual and legal issues, Defendant’s business, and its operations and employment policies, practices, and procedures.¹⁰³ During the litigation of the case, Plaintiff’s Counsel interviewed and obtained information from Plaintiff, Defendant, and other sources, conducted legal research, reviewed and analyzed thousands of pages of documents and data, including a representative sampling of Aggrieved Employees’ time and pay data across the PAGA Period, prepared for and participated in mediation and robust settlement discussions, evaluated the PAGA claim, and calculated the potential monetary recovery under PAGA.¹⁰⁴ Plaintiff’s Counsel also met and conferred with Defendant’s counsel regarding the pleadings, case management, pending discovery, arbitration,

¹⁰³ Bass Decl., ¶¶ 19-23; Sweeny Decl., ¶¶ 14-23.

¹⁰⁴ *Ibid.*

1 mediation, and settlement negotiations, among other issues.¹⁰⁵ Plaintiff's Counsel performed
2 other work including, *inter alia*, case strategy and analysis; and engaging in extensive settlement
3 negotiations.

4 Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary
5 to prosecute the case with maximum efficiency and has fully and actively participated in the
6 litigation process. The Attorney Task and Time Charts, which are attached as "**EXHIBIT 2**" to
7 the accompanying Declaration of Daniel Bass and as "**EXHIBIT 2**" to the accompanying
8 Declaration of Charles T. Sweeny, set forth in detail the hours that Plaintiff's Counsel have spent
9 performing tasks in this matter. Attorneys at Lawyers *for* Justice, PC and Sweeny Law, PC have
10 spent a collective **231.3 hours** to obtain a recovery on behalf of Plaintiff, the Aggrieved
11 Employees, and the State of California. These hours were required to bring the case to its
12 successful conclusion.

13 In light of the value of time expended and the carrying of costs involved in this litigation,
14 the requested attorneys' fees award is fair, adequate, and reasonable.

15 ***2. The Skill Required to Perform Legal Services Properly***

16 The skill required to properly litigate this case is evident not only in the results achieved,
17 but in the steps necessary to reach the same. Defendant retained highly-respected counsel to
18 represent its defenses. Defendant and its counsel felt very strongly about Defendant's ability to
19 prevail on the merits and avoid representative adjudication of the PAGA claim. Plaintiff and
20 Plaintiff's Counsel believe that the PAGA claim has merit and that Plaintiff will prevail at trial.
21 Plaintiff's Counsel undertook extensive investigation, analysis, and research prior to filing the
22 lawsuit and during the litigation. Plaintiff's Counsel took steps to prepare the case for trial and
23 had every intention of taking the case to trial if Defendant did not offer an appropriate settlement.

24 Plaintiff's Counsel's effort and skill were used to, among other things, investigate the
25 allegations and gather facts, research the legal issues, analyze data, documents, and information
26 obtained from Defendant, Plaintiff, and through other sources, evaluate the PAGA claim, and
27

28 ¹⁰⁵ Bass Decl., ¶¶ 19-23; Sweeny Decl., ¶¶ 14-23.

1 negotiate the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel
2 used their extensive experience and skill in the handling of complex wage-and-hour matters to
3 advocate for and obtain Aggrieved Employees and the State of California a recovery now, with
4 maximum efficiency, as opposed to the possibility of recovery in the future, after significant
5 expense and time.¹⁰⁶

6 *3. The Value of the Settlement*

7 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty
8 and risks of further litigation. Had the case not settled, Defendant would have vigorously
9 defended the case, and would have challenged manageability and liability, and also sought a
10 reduction in the amount assessed as civil penalties. Defendant, however, faced risks too,
11 including and not limited to, the risk of trial and the risk of having the Court assess civil
12 penalties. Additionally, preparing for trial would have been extraordinarily expensive for the
13 Parties.

14 At this stage, the Settlement is preferred over continued litigation because such
15 resolution saves time and money that would otherwise go to litigation. The risks and expenses
16 of further litigation outweighed any benefit that might have been gained otherwise. The
17 Settlement provides an immediate recovery, as opposed to an uncertain result in the future after
18 prolonged expert discovery, trial preparation, and appellate review of those proceedings. The
19 Settlement offers present monetary relief to Plaintiff, the Aggrieved Employees, and the State
20 of California while avoiding additional expense, risk, and delay in obtaining possible further
21 recovery.

22 *4. Whether the Fee Is Fixed or Contingent*

23 The representation provided by Plaintiff's Counsel have been wholly contingent and
24 Plaintiff's Counsel took on this matter without knowing whether any recovery would be
25 obtained. Plaintiff's Counsel have invested **231.3 collective hours** of time to obtain relief on
26 behalf of Plaintiff, the Aggrieved Employees, and the State of California. Plaintiff's Counsel

27 ¹⁰⁶ Bass Decl., ¶¶ 19-23; Sweeny Decl., ¶¶ 14-23.

1 are also requesting reimbursement of litigation costs and expenses in the amount of
2 \$12,652.15.¹⁰⁷

3 In this case, Plaintiff's Counsel have borne all of the risks and costs of litigation and will
4 not receive any compensation until recovery is obtained.¹⁰⁸ If Plaintiff's Counsel had not been
5 successful, the time that they have devoted to litigating the case would have been for naught and
6 would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel
7 are well-experienced in complex wage-and-hour litigation and used that experience to obtain a
8 great result for Plaintiff, the Aggrieved Employees, and the State of California.¹⁰⁹ The skill and
9 determination that Plaintiff's Counsel have shown throughout the prosecution of the case
10 justifies the requested attorneys' fees and costs. Considering the amounts requested, work
11 performed, and risks incurred, the requested fees and costs are reasonable and should be
12 awarded.

13 ***5. The Amount Involved and the Results Achieved***

14 The results achieved, in light of the difficulties inherent in similar cases and the specific
15 difficulties faced in this case, are considerable. Here, the results achieved, and the recovery
16 obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California represent
17 a fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's effort has resulted in a
18 settlement that provides for a Gross Settlement Amount of One Million Two Hundred Ninety
19 Five Thousand Dollars and Zero Cents (\$1,295,000.00), subject to possible increase pursuant to
20 Section 3(a)(5) of the Settlement Agreement, and it is currently estimated that the Net Settlement
21 Amount available for distribution to the Aggrieved Employees and the State of California, is
22 approximately Two Hundred and Four Thousand Two Hundred Fifty Three Dollars and Forty
23 Six Cents (\$204,253.46).¹¹⁰

24 ***6. The Reputation and Ability of the Attorneys***

25 Plaintiff's Counsel are recognized class action and complex litigation law firms, and

26 ¹⁰⁷ Bass Decl., ¶ 27, Ex. 3; Sweeny Decl., ¶ 27, Ex. 3;

27 ¹⁰⁸ *Id.*

28 ¹⁰⁹ Bass Decl., ¶¶ 2-8; Sweeny Decl., ¶¶ 2-6.

¹¹⁰ Settlement Agreement, § 3(a).

1 their attorneys employed their knowledge, skill, and experience to bring the case to a successful
2 conclusion. Plaintiff's Counsel have years of wage-and-hour class action and complex litigation
3 experience, have recovered millions of dollars on behalf of thousands of individuals in
4 California, and have successfully handled numerous significant wage-and-hour class action and
5 representative action cases.¹¹¹

6 **C. The Lodestar Methodology Also Justifies Approval of the Requested Fees,**
7 **Because Plaintiff's Counsel Have Performed Work That Is of Significant**
8 **Value Based on Reasonable Hours and Prevailing Hourly Rates of**
9 **Compensation**

10 While the percentage-of-the-benefit approach is endorsed as the better approximation of
11 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
12 method to "cross-check" the results of the other. *See Laffitte, supra*, 1 Cal.5th at 505 (explaining
13 that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time
14 spent by counsel into the trial court's reasonableness determination"); *see also, e.g., Vizcaino*,
15 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method,
16 the lodestar may provide a useful perspective on the reasonableness of a given percentage
17 award."). Importantly, "the lodestar calculation . . . does not override the trial court's primary
18 determination of the fee as a percentage" and "does not impose an absolute maximum or
19 minimum on the potential fee award." *Laffitte, supra*, 1 Cal.5th at 505.

20 The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates
21 for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is
22 entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

23 ***1. Plaintiff's Counsel Performed Work for a Reasonable Number of Hours***

24 The reasonableness of hours is assessed by "the entire course of the litigation, including
25 pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo*
26 *v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

27
28 ¹¹¹ Bass Decl., ¶¶ 2-8; Sweeny Decl., ¶¶ 2-6.

1 As discussed above, this case was highly contested and required a significant amount of
2 time and labor. Defendant made it clear very early on that it disputed all of Plaintiff's allegations
3 and disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*,
4 that it had facially-compliant employment policies and practices throughout the time period at
5 issue. Defendant raised affirmative defenses and denied liability, and the pursuit of this case
6 involved gathering and analyzing data from Defendant as well as other sources. The handling
7 of this litigation involved a great amount of effort, and also required and involved the exercise
8 of a high level of skill, which Plaintiff's Counsel have, as a result of its extensive experience in
9 complex wage-and-hour litigation. Long and difficult battles would have followed as the case
10 moved toward trial, including taking and defending declarant and expert depositions,
11 depositions of person most knowledgeable designees, conducting additional formal discovery,
12 and engaging in extensive motion practice. As Plaintiff's Counsel geared up for these battles,
13 Plaintiff's Counsel undertook intense preparation in an attempt to resolve the entire matter
14 through settlement negotiations.

15 Plaintiff's Counsel had to bring together a volume of information, data, and documents
16 that were obtained from Plaintiff, Defendant, and other sources. Plaintiff's Counsel conducted
17 extensive review and analysis of the information, documents, and data to strategize and evaluate
18 the case and engage in settlement discussions.

19 As set forth above in Part VI.B.1 *infra*, attached to the Declarations of Daniel Bass and
20 Charles T. Sweeny are the Attorney Task and Time Charts that set forth in detail the numerous
21 tasks that Plaintiff's Counsel performed in this case, and the time required for completing those
22 tasks.¹¹² The charts demonstrate that Lawyers *for* Justice, PC and Sweeny Law PC have spent
23 a total of **231.3 hours** on this matter. In light of the facts and circumstances of this case, as well
24 as the results Plaintiff's Counsel have achieved on behalf of Plaintiff, the Aggrieved Employees,
25 and the State of California, Plaintiff's Counsel have spent a reasonable number of hours on this
26 matter.

27
28 ¹¹² Bass Decl., ¶ 25, Ex. 2; Sweeny Decl., ¶ 25, Ex. 2.

1 **2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation**
2 **in Light of Plaintiff's Counsel's Efforts and Experience**

3 Both California and federal courts recognize that attorneys should be compensated for
4 providing representation on a contingency basis and for taking on the risks associated with said
5 representation, as well as being provided with financial incentives to enforce important rights
6 and protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In
7 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market
8 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
9 normal hourly rates for winning contingency cases." *See id.*

10 Plaintiff's Counsel have been actively involved in the prosecution of this case, prior to
11 the commencement of the Action and all the way up to approval of the settlement, and their
12 dedication to the representation of Plaintiff, the Aggrieved Employees, and the State of
13 California has precluded other employment. Here, Plaintiff's Counsel bore the risk that, despite
14 all of their efforts and skills employed, there may be no recovery. Ultimately, Plaintiff's
15 Counsel were successful in reaching a settlement of \$1,295,000.00, subject to possible increase
16 pursuant to Section 3(a)(5) of the Settlement Agreement.

17 As set forth in the Declaration of Daniel Bass, the professional backgrounds and
18 experience of Lawyers *for* Justice, PC support the hourly rates for various attorneys at Lawyers
19 *for* Justice, PC who worked on this case.¹¹³ Similarly, the Declaration of Charles T. Sweeny
20 supports a reasonable hourly rate of compensation of at least \$750 per hour for services provided
21 by Sweeny Law, PC.¹¹⁴ While the circumstance of every case is unique, the fact remains that
22 the work performed and efforts undertaken by Plaintiff's Counsel in this matter justify the
23 requested attorneys' fees award.

24 **3. The Risks Involved, Skill Required, Complexity of the Matter, and**
25 **Results Obtained Warrant Upward Enhancement of the Lodestar.**

26 Even when courts have opted to award fees in settlement fund cases based on time

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¹¹³ Bass Decl., ¶ 25, Ex. 2.

28 ¹¹⁴ Sweeny Decl., ¶ 25, Ex. 2.

1 reasonably expended on the action, courts have generally awarded these fees based on the actual
2 time expended (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v. Screen*
3 *Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67. Such a multiplier is warranted in this matter.

4 Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved,
5 the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051;
6 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of the most common fee
7 enhancers [...] is for contingency risk.”). Such an enhancement “mirrors the established practice
8 in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying
9 them a premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 290
10 F.3d at 1051; *accord Ketchum*, 24 Cal.4th at 1132-33. A risk multiplier also serves to bring the
11 financial incentives for enforcing important rights “into line with incentives [attorneys] have to
12 undertake claims for which they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal. 4th at
13 1132.

14 In determining whether or not to enhance the lodestar, California courts take into account
15 multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See,
16 *Cates* at 822-23. Multiple factors warrant enhancement in this case, including the following:

- 17 • The time and labor required
- 18 • The skill requisite to perform the legal services properly
- 19 • The preclusion of other employment by the attorney due to the acceptance of the case
- 20 • The contingent nature of the fee
- 21 • The amount involved and results obtained
- 22 • The experience, reputation, and ability of the attorney
- 23 • Awards in similar cases

24 *Ketchum* at 1134.

25 Adjustment of the base lodestar figure to compute an award of attorneys’ fees for a claim
26 under the California Labor Code is appropriate. See *Id.*, at 1135-36; *Serrano v. Priest* (1977)
27 20 Cal.3d 25, 48-49. “The lodestar is calculated by multiplying the reasonable hours expended
28

1 by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if
2 appropriate.” *Wershba, supra*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment
3 method, the trial court determines the reasonable hourly rate of compensation for counsel, which
4 it then multiplies by the number of hours the court finds were reasonably spent preparing the
5 case, to obtain the lodestar figure. *Ketchum, supra*, 24 Cal.4th at 1131-32. The lodestar figure
6 is the “basic fee for comparable legal services in the community” based upon the “hourly amount
7 to which attorneys of like skill in the area would typically be entitled.” *Id.*, at 1132-33 (quotation
8 marks and citation omitted).

9 As discussed above, this was a highly-contested matter which required an extensive
10 amount of time and labor. Defendant raised defenses and denied liability, and the case involved
11 gathering and analyzing documents and data from Defendant and obtained through other
12 sources. The handling of this matter involved a great amount of effort, and required the exercise
13 of high-level of skill, which Plaintiff’s Counsel have as a result of extensive experience in
14 employment wage-and-hour litigation. Plaintiff’s Counsel have been actively involved in the
15 prosecution of this matter, prior to its commencement and Plaintiff’s Counsel’s work has
16 continued all the way up to the present. Plaintiff’s Counsel’s dedication to the representation of
17 Plaintiff, the Aggrieved Employees, and the State of California has precluded other employment.

18 Most importantly, all services were performed by Plaintiff’s Counsel on a contingent
19 basis. Both California and federal courts recognize that attorneys should be compensated for
20 taking on such contingent risks and provided with financial incentives to enforce important
21 rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at
22 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Plaintiff’s Counsel bore the risk that, despite all
23 of its efforts and the skill employed, there may be no recovery. Therefore, at a minimum,
24 Plaintiff’s Counsel are entitled to a risk multiplier. The results obtained by way of Plaintiff’s
25 Counsel’s efforts are significant here. Plaintiff’s Counsel were successful in achieving
26 substantial results in the form of a settlement of \$1,295,000.00. Also, Plaintiff’s Counsel’s
27 efforts throughout the matter demonstrate dedication to the interests of both the Aggrieved
28

1 Employees and the State of California.

2 Plaintiff's Counsel's application for attorneys' fees in light of the facts and
3 circumstances surrounding the matter is well within the range of reasonableness. While
4 handling this matter, Plaintiff's Counsel devoted the hours in legal time summarized above and
5 detailed in the Attorney Task and Time Charts which are attached as exhibits to the Declaration
6 of Daniel Bass and the Declaration of Charles T. Sweeny.¹¹⁵ As the Declarations indicate,
7 Plaintiff's Counsel have worked a collective 231.3 hours in the pursuit of this matter. Applying
8 a reasonable blended rate stated at Paragraph 26 of the Declaration of Daniel Bass to the 105.6
9 hours of work performed by various lawyers at Lawyers *for* Justice, PC, and applying a
10 reasonable hourly rate of \$750 per hour to the 125.7 hours of work performed by Sweeny Law,
11 PC would place a base lodestar value of \$184,035.00, and applying a modest multiplier of 3.0
12 would create a total enhanced lodestar fees are \$552,105.00, for Plaintiff's Counsel's services.
13 However, Plaintiff's Counsel seek an attorneys' fee award of \$453,250.00 (equal to 35% of the
14 Gross Settlement Amount based on the Settlement Agreement). Far greater multipliers have
15 been awarded in similar cases, and the total amount of fees sought by Plaintiff's Counsel is also
16 reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar
17 amounts based on multipliers that "range from **2 to 4 or even higher.**" *Wershba, supra*, 91
18 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v. Netflix, Inc.* (2008) 162
19 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at 1051 (approving
20 **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123
21 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624
22 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with cross-check
23 **multipliers ranging from 4.5 to 19.6**).

24 Therefore, application of a modest multiplier of 2.46 is warranted, and the lodestar as a
25 cross-check to the percentage figure sought herein strongly supports the reasonableness of the
26 requested attorneys' fees award. Plaintiff respectfully requests that the Court grant final

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28 ¹¹⁵ Bass Decl., ¶ 25, Ex. 2; Sweeny Decl., ¶ 25, Ex. 2.

1 approval of, and award, attorneys' fees in the amount of \$453,250.00 to Plaintiff's Counsel.

2 **VIII. COSTS TO BE REIMBURSED TO PLAINTIFF'S COUNSEL ARE FAIR AND**
3 **REASONABLE, AND SHOULD BE APPROVED**

4 The Settlement provides for reimbursement of all actual, reasonable out-of-pocket
5 litigation costs and expenses. As set forth in the Declarations of Daniel Bass and Charles T.
6 Sweeny, Plaintiff's Counsel seek reimbursement of \$12,652.15 in litigation costs and
7 expenses.¹¹⁶ These expenses were reasonable and necessary in the prosecution of this matter
8 and to obtain the Settlement. Accordingly, the Court is requested to award reimbursement of
9 litigation costs and expenses to Plaintiff's Counsel in the amount of \$12,652.15.

10 **IX. THE PROPOSED COVER LETTER TO THE AGGRIEVED EMPLOYEES**
11 **SHOULD BE APPROVED**

12 Although PAGA does not require notice to unnamed aggrieved employees of a
13 settlement, the Parties prepared, and now present for the Court's consideration and approval, the
14 Cover Letter for transmission to the Aggrieved Employees along with their Individual
15 Settlement Share checks (together, "PAGA Settlement Package(s)"), substantially in the form
16 attached as "EXHIBIT A" to the "EXHIBIT 1" Settlement Agreement that is attached to the
17 [Proposed] Order and Judgment.¹¹⁷ The Cover Letter informs the Aggrieved Employees about
18 the Action and the Settlement. Accordingly, Plaintiff respectfully requests that the Court
19 approve the Cover Letter for transmission to the Aggrieved Employees at the time of disbursing
20 their Individual Settlement Shares. The Cover Letter will only be distributed in English, as
21 Defendant has represented that its workforce does not have any employees incapable of speaking
22 English.¹¹⁸

23 ///

24 ///

26 ¹¹⁶ Bass Decl., ¶ 27, Ex. 3; Sweeny Decl., ¶ 27, Ex. 3.

27 ¹¹⁷ Defendant has advised Plaintiff that it intends to respectfully request permission from this Court that the specific
28 numbers set forth in Exhibit 1 for 'Gross Settlement Amount' and 'Net Settlement Amount' be excluded from the
notice to hourly employees.

¹¹⁸ Sweeny Decl., ¶ 31.

1 **X. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND**
2 **REASONABLE, AND SHOULD BE APPROVED**

3 As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to
4 approval by the Court, Simpluris to handle the administration of the Settlement. The fees and
5 expenses of the PAGA Settlement Administrator are estimated to be \$7,084.00 and are agreed
6 by the PAGA Settlement Administrator not to exceed \$8,500.00. These costs include, but are
7 not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual
8 Settlement Shares checks to the Aggrieved Employees (i.e., PAGA Settlement Packages);
9 performing skip-trace searches; re-mailing the returned PAGA Settlement Packages; and
10 handling inquiries from Aggrieved Employees regarding the Settlement, among other things.
11 Accordingly, the Court should grant approval of the Settlement Administration Costs in the
12 amount of \$7,084.00 to Simpluris, a necessary third-party for handling the settlement process.

13 **XI. THE PROPOSED GENERAL RELEASE FEE IS FAIR, ADEQUATE, AND**
14 **REASONABLE, AND SHOULD BE APPROVED**

15 The Settlement provides for a General Release Fee to be paid to Plaintiff in the amount
16 of \$5,000.00 for his broader individual release (set forth in Section 8(b) of the Settlement
17 Agreement).¹¹⁹ As indicated at Paragraph 8(d) of the Settlement Agreement, Plaintiff also
18 entered into a separate agreement to release his individual, non-PAGA claims that were
19 originally brought in this action (i.e., the Stand-Alone Claims that were compelled to arbitration
20 on an individual basis by the Arbitration Order) for \$5,000.00.¹²⁰

21 It is also worth noting that, Plaintiff contributed considerable time and effort to the
22 litigation of this case in order to enforce the California Labor Code on behalf of the State of
23 California and for the benefit of other Aggrieved Employees. Plaintiff discussed his
24 employment with his counsel, gathered and produced relevant documents and information, and
25

26 ¹¹⁹ Settlement Agreement, §§ 3(a)(2) & 8(b). The PAGA statute recognizes that a plaintiff employee may pursue
27 or recover other remedies and relief available to the plaintiff employee under state or federal law through an action
28 under PAGA. See, Cal. Lab. Code § 2699(k)(1) (formerly Cal. Lab. Code § 2699(g)(1)). As such, it is appropriate
 for Plaintiff to receive a payment for her broader individual release of claims.

¹²⁰ Settlement Agreement, § 8(b)

provided the facts and evidence necessary to attempt to prove the allegations.¹²¹ Plaintiff also prepared a declaration in opposition of Defendant's Motion to Compel Arbitration.¹²² Plaintiff was available whenever his counsel needed him and tried to obtain and provide documents and information that would aid in the litigation of the PAGA claim and pursuit of recovery on behalf of the State of California and Aggrieved Employees.¹²³

Accordingly, it is reasonable and just for Plaintiff to receive a General Release Fee in the amount of \$5,000.00, in addition to the Individual Settlement Shares he will receive as an Aggrieved Employee and as a separate fee outside of his separate individual settlement agreement.

XII. CONCLUSION

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise of disputed claims that has been reached through arm's-length negotiations, in light of the risks, complexity, and expense of further litigation. Plaintiff respectfully requests that the Court approve the Settlement, including the plan of allocation and distribution of the Gross Settlement Amount for the LWDA Payment to the LWDA, Individual Settlement Shares to the Aggrieved Employees, Attorneys' Fees and Costs to Plaintiff's Counsel, Settlement Administration Costs to the PAGA Settlement Administrator, and General Release Fee to Plaintiff, and permit the filing of a memorandum that exceeds the page limit.

Dated: March 17, 2026

SWEENEY LAW, PC

By:



Charles T. Sweeny
Counsel for Plaintiff

¹²¹ Declaration of Daniel Cisneros ("Cisneros Decl."), *generally*.

¹²² *Ibid.*

¹²³ *Ibid.*