

Benjamin H. Haber (SBN 315664)
benjamin.haber@wilshirelawfirm.com
Daniel J. Kramer (SBN 314625)
daniel.kramer@wilshirelawfirm.com
Angela Leong (SBN 300813)
angela.leong@wilshirelawfirm.com
Giancarlo A. Recinos (SBN 282836)
giancarlo.recinos@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
660 S. Figueroa Street, Sky Lobby
Los Angeles, CA 90017
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

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

TERRILL POINTER, individually, and on behalf
of all others similarly sit,

Plaintiff,

v.

CROTHALL HEALTHCARE, INC., a
corporation; and DOES 1 through 10, inclusive,

Defendants

Case No.: 23STCV26517

*[Assigned for All Purposes to the Honorable
Theresa M. Traber, Dept. 1]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Settlement Approval Hearing:

Date: January 13, 2027

Time: 10:30 a.m.

Dept: 1

Complaint filed: October 30, 2023

FAC filed: February 20, 2024

Trial date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 13, 2027, at 10:30 a.m., or as soon thereafter
3 as the matter may be heard in Department 1 of the above-entitled Court, located at 312 North
4 Spring Street, Los Angeles, CA 90012, Plaintiff Terrill Pointer (“Plaintiff”) will and hereby does
5 move for an order approving the settlement of the PAGA claim alleged against Defendant
6 Crothall Healthcare, Inc. (“Defendant”) in accordance with Labor Code §2699(l). The proposed
7 settlement is set forth in the accompanying PAGA Settlement Agreement (“Settlement
8 Agreement”).

9 This Motion will be based on this notice, the accompanying points and authorities, the
10 Declaration of Benjamin H. Haber, Plaintiff’s Declaration, and the complete files and records
11 in this action. The Labor Workforce Development Agency has been served with this motion and
12 the Settlement Agreement as set forth in the accompanying proof of service.

13 Dated: September 29, 2026

WILSHIRE LAW FIRM, PLC

14
15 By:



Benjamin H. Haber
Daniel J. Kramer
Angela Leong
Giancarlo A. Recinos
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION.....	5
II.	RELEVANT FACTS AND PROCEDURAL HISTORY	5
III.	TERMS OF THE PAGA SETTLEMENT	6
A.	Aggrieved Employees	6
B.	Settlement Terms	7
C.	Releases.....	8
D.	Settlement Administration	9
IV.	THE COURT SHOULD GRANT APPROVAL OF THE PAGA SETTLEMENT	11
A.	Legal Standard	11
B.	The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful and Fulfill PAGA’s Underlying Purpose to Benefit the Public.....	12
C.	The Settlement is Reasonable Given the Risks of Further Litigation.....	14
V.	THE ATTORNEYS’ FEES AND COSTS ARE FAIR AND REASONABLE.....	15
A.	Plaintiff’s Counsel’s Requested Attorneys’ Fees Are Reasonable under the Common Fund Method.....	16
B.	A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee	18
C.	Plaintiff’s Counsel’s Rates Are Similar to Those Approved by California Courts in Comparable Cases.....	19
D.	PAGA Counsel’s Costs Are Reasonable	20
VI.	THE REQUESTED PAGA REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF IS REASONABLE	20
VII.	CONCLUSION	21

TABLE OF AUTHORITIES

STATE CASES

<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018).....	14
<i>City and County of San Francisco v. Sweet</i> , 12 Cal.4th 105 (1995).....	16
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	12
<i>Gouskos v. Aptos Village Garage, Inc.</i> , 94 Cal.App.4th 754 (2001)	16
<i>Graciano v. Robinson Ford Sales, Inc.</i> , 144 Cal. App. 4th 140 (2006).....	16
<i>Huff v. Securitas Sec. Servs., USA, Inc.</i> , 23 Cal.App.5th 745 (2018)	12
<i>In re Consumer Privacy Cases</i> , 175 Cal.App.4th 545 (2009)	17
<i>Iskanian v. CLS Transportation</i> , 59 Cal. 4th 348 (2014).....	5, 12, 15
<i>Kim v. Reins Int’l California, Inc.</i> , 9 Cal.5th 73 (2020)	12
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008).....	11, 12
<i>Laffitte v. Robert Half Int’l, Inc.</i> , 1 Cal.5th 480 (2016).....	18
<i>Lealao v. Beneficial Cal., Inc.</i> , 82 Cal.App.4th 19 (2000)	17
<i>Melnyk v. Robledo</i> , 64 Cal.App.3d 618 (1976)	18
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56 (Cal. Ct. App. Nov. 30, 2021).....	11
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal.4th 1084 (2000).....	18
<i>Quinn v. State of California</i> , 15 Cal.3d 162 (1975).....	16
<i>Serrano v. Priest</i> , 20 Cal.3d 25 (1977).....	16
<i>ZB, N.A. v. Superior Court</i> , 8 Cal. 5th 175 (2019).....	5, 7, 12

FEDERAL CASES

<i>Boeing v. Van Gemert</i> , 444 U.S. 472 (1980).....	17
<i>Cardenas v. McLane Foodservice, Inc.</i> , No. BCV-23-102915, 2011 U.S. Dist. LEXIS 13126 (C.D. Cal. Jan. 31, 2011).....	14
<i>Echavez v. Abercrombie & Fitch Co.</i> , No. CV 11-09754-GAF, 2017 WL 3669607 (C.D. Cal. Mar. 23, 2017)	13
<i>Fleming v. Covidien</i> , No. ED CV 10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011).....	14

1	<i>Flores v. Starwood Hotels & Resorts Worldwide, Inc.</i> , 253 F.Supp.3d 1074 (C.D. Cal. 2017)....	12
2	<i>In re Activision Securities Litigation</i> , 723 F.Supp. 1373 (N.D. Cal. 1989)	17
3	<i>Jordan v. TCS Grp., Inc.</i> , No. EDCV161701JVSSPX, 2018 WL 1409590 (C.D. Cal. Jan. 5,	
4	2018).....	13
5	<i>McKenzie v. Federal Exp. Corp.</i> , 765 F.Supp.2d 1222 (C.D. Cal. 2011).....	12
6	<i>O'Connor v. Uber Technologies, Inc.</i> , 201 F. Supp. 3d 1110 (N.D. Cal. 2016).....	11
7	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F.2d 759 (9th Cir. 1977)	16
8		
9	STATUTES	
10	Cal. Labor Code § 2699(e)(2)	15
11	Cal. Labor Code § 2699(g)(1).....	5, 16
12	Cal. Labor Code § 2699(k)(l).....	21
13	Cal. Labor Code § 2699(l)	11
14	TREATISES	
15	<i>Newberg on Class Actions</i> , 4th Ed. 2002	17

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Terrill Pointer (“Plaintiff”) and Defendant Crothall Healthcare, Inc. (“Defendant”) (Plaintiff and Defendant collectively, the “Parties”) reached a settlement of the California Private Attorneys General Act, Cal. Labor Code § 2699, et seq. (“PAGA”) claims asserted in this action. In accordance with Labor Code §2699(l), Plaintiff now asks this Court to review and approve the settlement of Plaintiff’s PAGA claims. This is PAGA Settlement for civil penalties and is not a class settlement and does not release the individual wage claims, if any, of the affected employees other than those of Plaintiff. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

The PAGA Settlement is set forth in the accompanying PAGA Settlement Agreement (“Settlement Agreement”). A true and correct copy of the Settlement Agreement which sets forth the terms for the settlement of the PAGA claims is attached as Exhibit 2 to the Declaration of Benjamin H. Haber in Support of Motion for Approval of PAGA Settlement (“Haber Decl.”), filed concurrently herewith. Capitalized terms shall have the same meaning as defined in the Settlement Agreement. The LWDA received notice of this Settlement on September 29, 2026. Haber Decl. ¶ 31, Exhibit 7.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

On October 30, 2023, Plaintiff filed this action as a putative class action against Defendant alleging: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; and (8) unfair business practices (“Class Action”). Haber Decl. at ¶ 3.

Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice on December 12, 2023, to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the Labor Code alleged to have been violated, including

1 the facts and theories in support (LWDA-CM-999402-23). Haber Decl. at ¶ 4, Exhibit 1. On
2 February 20, 2024, Plaintiff filed a First Amended Complaint adding an allegation for civil
3 penalties pursuant to California Private Attorneys General Act, Cal. Labor Code § 2699, et seq.
4 (“PAGA”). Settlement Agreement § 2.1; Haber Decl. at ¶ 4. On August 27, 2024, the Court
5 granted the Plaintiff’s request for dismissal of the Class claims. *Id.*

6 Thereafter, the Parties met and conferred and agreed to mediate the PAGA Action with
7 Phillip Cha, Esq., a well-respected and experienced mediator in wage-and-hour class and
8 representative actions. Haber Decl. at ¶ 5. In advance of mediation, PAGA Counsel conducted a
9 thorough investigation into the facts of, and applicable law to, the PAGA Action. *Id.* Prior to
10 mediation, Plaintiff obtained through informal discovery a representative sampling of time and
11 payroll data for Aggrieved Employees and the necessary policy documents to properly evaluate
12 the strengths and weaknesses of the claims and engage in meaningful settlement discussions. *Id.*

13 On October 28, 2025, the Parties engaged in an all-day mediation session before Phillip
14 Cha, Esq. Settlement Agreement § 2.3; Haber Decl. at ¶ 6. With the help of Mr. Cha, the Parties
15 were able to reach an agreement on general settlement terms at mediation. *Id.* The settlement was
16 negotiated in light of all known facts and circumstances and the uncertainty associated with
17 litigation – including the risk of Plaintiff not being able to maintain representative claims, the
18 difficulty of proving Plaintiff’s claims in a manageable trial, the merits of Defendant’s potential
19 defenses, and the significant delay and potential appellate issues inherent to litigation – and was
20 reached after extensive arm’s length negotiations, with the assistance of Mr. Cha. Settlement
21 Agreement §§ 2.3, 2.4; Haber Decl. at ¶ 6.

22 **III. TERMS OF THE PAGA SETTLEMENT**

23 **A. Aggrieved Employees**

24 “Aggrieved Employee” means a person employed by Defendant in California and
25 classified as a non-exempt or hourly paid employee who worked for Defendant during the
26 PAGA Period beginning December 12, 2022, through December 28, 2025. Settlement
27 Agreement §§ 1.4, 1.19. Defendant estimates that there are approximately 1,913 Aggrieved
28 Employees who worked an estimated 56,731 Pay Periods between December 12, 2022, through

December 28, 2025. *Id.* at § 4.1.

B. Settlement Terms

The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount (“GSA”) payment in the amount of \$1,197,000.00 to resolve the PAGA Action. Settlement Agreement §§ 1.10, 3.1; Haber Decl. at ¶ 7. The GSA will be used to PAGA Representative Service Award, Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment. Settlement Agreement § 1.10; Haber Decl. at ¶ 7. After deducting the PAGA Representative Service Payment (\$10,000.00), PAGA Counsel Fees (\$399,000.00), PAGA Counsel Litigation Expenses (\$18,682.83), and Administrator Expenses Payment (\$11,990.00) from the GSA, the amount remaining is the Net Settlement Amount (“NSA”). Settlement Agreement § 1.15; Haber Decl. at ¶ 7. The NSA, which is estimated to be \$757,327.17, shall be distributed as PAGA Penalties with 75% of the NSA allocated to the LWDA PAGA Payment (\$567,995.38) and 25% of the NSA allocated to Individual PAGA Payments (\$189,331.79). Settlement Agreement § 3.2.4; Haber Decl. at ¶ 7.

PAGA Penalties: The NSA will be distributed as PAGA Penalties with seventy-five percent (75%) allocated to the LWDA PAGA Payment and the remaining twenty-five percent (25%) allocated to the Individual PAGA Payments for Aggrieved Employees. Settlement Agreement § 3.2.4. This 75/25 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

Individual PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ collective 25% share of PAGA Penalties by the total number of Pay Periods worked by the Aggrieved Employees during the PAGA Period, and (b) multiplying the resulting sum by each Aggrieved Employee’s PAGA Period Pay Periods. Settlement Agreement § 3.2.4.1. The PAGA Period is the period from December 12, 2022, to December 28, 2025. Settlement Agreement § 1.19.

PAGA Representative Service Payment: Subject to Court approval, the Plaintiff shall be

1 paid a Representative Service Payment not to exceed \$10,000.00 for his time and effort in
2 bringing and presenting the Action. Settlement Agreement § 3.2.1.

3 PAGA Counsel Fees Payment: Subject to Court approval, PAGA Counsel shall be
4 entitled to receive an award of reasonable attorneys' fees of not more than 33 1/3% of the GSA
5 which is currently estimated to be \$399,000.00. Settlement Agreement § 3.2.2.

6 PAGA Counsel Litigation Expenses Payment: Per the Settlement Agreement, PAGA
7 Counsel shall be entitled to request reimbursement of costs, not to exceed \$30,000.00.
8 Settlement Agreement § 3.2.2. Counsel has incurred \$18,382.83 in expenses on items such as
9 filing fees, service fees, mediation fees, and expert fees. Haber Decl. ¶ 29. Additionally, we
10 anticipate incurring \$300.00 in future costs for filing fees and service fees for a total of
11 \$18,682.83 in costs. *Id.* The remaining \$11,317.17 will revert to the NSA to be distributed as
12 PAGA Penalties to the LWDA and Aggrieved Employees. *Id.*

13 Administrator Expenses Payment: The Parties agreed to appoint Apex Class Action
14 Administration ("Apex") as the Administrator for the Settlement. Settlement Agreement § 7.1.
15 The Settlement Administration Expenses, which are not to exceed \$11,990.00 shall be paid from
16 the GSA. Settlement Agreement § 3.2.3.

17 **C. Releases**

18 Plaintiff's Release: "Plaintiff and his respective former and present spouses,
19 representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors,
20 and assigns generally, release and discharge the Released Parties from all claims, transactions,
21 or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all
22 claims that arise from or are related to Plaintiff's employment with Defendant and the cessation
23 thereof; and (b) all claims that were, or reasonably could have been, alleged, based on the facts
24 contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's
25 Release does not extend to any claims or actions to enforce this Agreement, or to any claims for
26 vested benefits, unemployment benefits, disability benefits, social security benefits, workers'
27 compensation benefits that arose at any time, or based on occurrences outside the PAGA Period.
28 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,

1 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
2 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different
3 or additional facts or Plaintiff's discovery of them." Settlement Agreement § 5.1.

4 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. "For
5 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions,
6 rights, and benefits, if any, of California Civil Code, section 1542, which reads:

7 A general release does not extend to claims that the creditor or releasing party
8 does not know or suspect to exist in his or her favor at the time of executing the release, and
9 that if known by him or her would have materially affected his or her settlement with the debtor
10 or Released Party." Settlement Agreement § 5.1.1.

11 Aggrieved Employee's Release: "Plaintiff, acting in his representative capacity as the
12 authorized proxy of the LWDA pursuant to Labor Code section 2699, releases on behalf of the
13 State of California, All Aggrieved Employees are deemed to release, on behalf of themselves
14 and their respective former and present representatives, agents, attorneys, heirs, administrators,
15 successors, and assigns, the Released Parties from all claims for PAGA penalties that were
16 alleged, or reasonably could have been alleged, based on the facts stated in the Operative
17 Complaint and the PAGA Notice, which occurred during the PAGA Period, including but not
18 limited to, any claims for civil penalties based on Defendant's alleged failure to pay minimum,
19 straight time, and overtime wages and/or failure to pay minimum, straight time, and overtime
20 wages at the correct rate(s) of pay, failure to provide legally compliant meal periods, failure to
21 authorize and permit rest periods, failure to timely pay wages during employment, failure to
22 timely pay final wages at termination, failure to provide accurate itemized wage statements,
23 failure to indemnify necessary business expenses, failure to maintain accurate records, and
24 unfair business practices." Settlement Agreement § 5.2.

25 **D. Settlement Administration**

26 Defendant will provide the Aggrieved Employee Data to the Administrator Not later than
27 twenty (20) calendar days after the Court grants PAGA Approval. Settlement Agreement §§ 1.5,
28 4.2. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that

1 the Aggrieved Employee Data omitted Aggrieved Employee identifying information and to
2 provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. *Id.*

3 The Effective Date is the date when all of the following occurs: (a) the Court enters a
4 Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The
5 Judgment is final as of the latest of the following occurrences: (a) if there is no appeal, the date
6 that is 61 days after the Judgment; (b) if there is an appeal of the Court's Judgment, the date the
7 Order Approving the PAGA Settlement and Judgment are affirmed on appeal, the date of
8 dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to
9 the California Supreme Court; or (iii) if a petition for writ of certiorari is filed, the date of denial
10 of the petition for writ of certiorari, or the date the Order Approving the PAGA Settlement and
11 Judgment are affirmed pursuant to such petition. Settlement Agreement § 1.9. Defendant shall
12 fully fund the Gross Settlement Amount by transmitting the funds to the Administrator within
13 fourteen (14) days after the Effective Date. *Id.* at § 4.3.

14 Within fourteen (14) calendar days after Defendant funds the GSA, the Settlement
15 Administrator mail checks to the respective addressees for all Individual PAGA Payments, the
16 LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fee and
17 Expenses Payment. Settlement Agreement § 4.4. The Administrator must conduct an Aggrieved
18 Employee Address Search for all Aggrieved Employees whose checks are returned undelivered
19 without USPS forwarding address. *Id.* at § 4.4.2. Within 7 days of receiving a returned check,
20 the Administrator must re-mail checks to the USPS forwarding address provided or to an address
21 ascertained through the Aggrieved Employee Address Search. *Id.*

22 The Individual PAGA payments will expire one hundred eighty (180) calendar days from
23 the date they are issued by the Administrator. Settlement Agreement § 4.4.1. For any Aggrieved
24 Employee whose Individual PAGA Payment check is uncashed and cancelled after the void
25 date, the Administrator shall transmit the funds represented by such checks to the California
26 Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Settlement
27 Agreement § 4.4.3. The Administrator will report the Individual PAGA Payments on IRS 1099
28

Forms. *Id.* at § 3.2.4.2.

Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks to the respective addressees for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fee and Expenses Payment. Settlement Agreement § 4.4. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. *Id.*

Pursuant to California Labor Code Section 2699(s)(2), Plaintiff submitted the proposed Settlement Agreement to the LWDA on September 29, 2026. Haber Decl. at ¶ 31, Exhibit 7. Plaintiff will submit a copy of the Court’s judgment and order approving the Settlement Agreement to the LWDA within ten (10) days after entry of judgment or order. *Id.*

IV. THE COURT SHOULD GRANT APPROVAL OF THE PAGA SETTLEMENT

A. Legal Standard

Labor Code § 2699(l) requires that the Court “shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.” In doing so, the trial court must consider whether the settlement is “fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77-78 (Cal. Ct. App. Nov. 30, 2021) (overruled in part on other grounds); *see also O’Connor v. Uber Technologies, Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016) (adopting guidance from the LWDA providing that “when a PAGA claim is settled, the relief provided for under the PAGA [must] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public”).

The court’s role in reviewing PAGA settlements differs from its gatekeeping function in the class action context. In class actions, courts have a fiduciary duty to protect the interests of absent class members, whose individual claims will be discharged. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129 (2008). In this role, courts conduct an “independent assessment of the adequacy of the settlement terms,” which requires them to have sufficient data and

1 information about the amount in controversy and the realistic range of outcomes. *Id.* at 132.
2 Courts consider a variety of factors in conducting this analysis, including whether the settlement
3 is negotiated at an arm's length, whether there is sufficient discovery and information to permit
4 parties and the court to act intelligently, whether the attorneys have experience with the type of
5 issues, and whether the number of objectors is small. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th
6 1794, 1800-1801 (1996).

7 However, a PAGA representative action is “not akin to a class action,” it “is a species of
8 qui tam action.” *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F.Supp.3d 1074,
9 1076 (C.D. Cal. 2017). When reviewing a PAGA-only settlement, courts do not consider the
10 value of individuals' claims for damages because a PAGA settlement does not release those
11 claims. *See Kim v. Reins Int'l California, Inc.*, 9 Cal.5th 73, 87 (2020) (PAGA claims differ
12 from individual claims); *ZB, N.A. v. Superior Court*, 8 Cal.5th 175, 188 (2019) (noting that
13 PAGA penalties do not seek damages that are compensatory in nature). “The state's interest in
14 such an action is to enforce its laws, not to recover damages on behalf of a particular individual.”
15 *Huff v. Securitas Sec. Servs., USA, Inc.*, 23 Cal.App.5th 745, 760 (2018). Instead of focusing on
16 fair recovery for individual claims, the goal of PAGA enforcement is to achieve “maximum
17 compliance with state labor laws.” *Id.* at 756; *see also Iskanian*, 59 Cal.4th at 383 (noting that
18 the goal of PAGA is to impose civil penalties for Labor Code violations “significant enough to
19 deter violations”); *McKenzie v. Federal Exp. Corp.*, 765 F.Supp.2d 1222, 1233 (C.D. Cal. 2011)
20 (“Unlike a class action seeking damages... for injured employees, the purpose of PAGA is to
21 incentivize private parties to recover civil penalties for the government that otherwise may not
22 have been assessed and collected by overburdened state enforcement agencies.”).

23 **B. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful**
24 **and Fulfill PAGA's Underlying Purpose to Benefit the Public**

25 The Settlement of \$1,197,000.00 penalizes Defendant for the alleged violations of
26 California's labor laws in an amount that is significant enough to deter violations and provide
27
28

1 genuine and meaningful relief – and approximately \$757,327.17¹ in PAGA Penalties to the State
2 of California and Aggrieved Employees – thus fulfilling the underlying purpose of PAGA to
3 benefit the public. Haber Decl. at §§ 7-11; *see Jordan v. TCS Grp., Inc.*, No.
4 EDCV161701JVSSPX, 2018 WL 1409590, at *3 (C.D. Cal. Jan. 5, 2018) (“The proposed
5 settlement imposes a substantial penalty payment of \$150,000.00, paid in exchange for a release
6 of only those claims pled in the notice to the LWDA and the Complaint. This penalty has a
7 substantial deterrent effect on Defendant and other California employers. Furthermore, the
8 proposed settlement encourages compliance with the specific requirements of the Labor Code,
9 which has the effect of protecting workers from unlawful employment practices and working
10 conditions.”); *Echavez v. Abercrombie & Fitch Co.*, No. CV 11-09754-GAF, 2017 WL 3669607,
11 at *3 (C.D. Cal. Mar. 23, 2017) (finding that “[t]he primary purpose of PAGA, i.e., the
12 empowerment of Aggrieved Employees to act as private attorneys general to collect civil
13 penalties from their employers for Labor Code violations, [was] served by the proposed PAGA
14 penalty in the parties’ settlement agreement,” where \$340,000 of \$700,000 settlement was
15 allocated to PAGA penalties which were divided 75% to the LWDA and 25% to an estimated
16 10,000 Aggrieved Employees).

17 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
18 penalties. Plaintiff calculated that the maximum amount of statutory PAGA civil penalties was
19 potentially \$5,673,100.00 for an estimated 1,913 employees based on 56,731_pay periods.²
20 Haber Decl. at ¶ 8. Importantly, however, these calculations were performed at the maximum
21

22
23 ¹ The Net Settlement Amount of \$757,327.17 was calculated using the following
24 arithmetic: \$1,197,000.00 minus \$399,000.00 for Plaintiff’s Counsel’s attorneys’ fees, minus
25 \$18,682.83 for Plaintiff’s Counsel’s litigation expenses, minus \$11,990.00 for administration
26 costs, and minus \$10,000.00 for the class representative service payment to Plaintiff.

27 ² Stacking is where more than one civil penalty is imposed in a pay period for the same
28 conduct. The valuation of \$5,673,100.00 is the civil penalty amount without stacking. If stacking
is permitted, then the valuation increases with each additional penalty added to each pay period.
Courts to consider the issue have refused to “stack” penalties. *See Carrington v. Starbucks Corp.*,
30 Cal.App.5th 504 (2018).

1 statutory rate for the penalties, when in fact, it is likely that any penalties awarded would be at
2 a lower rate. California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount
3 than the maximum civil penalty if based on the facts and circumstances to do otherwise would
4 result in an award that is “unjust, arbitrary and oppressive or confiscatory.” *See Carrington v.*
5 *Starbucks Corp.*, 30 Cal.App.5th 504 (2018) (affirming a judgment after trial that only provided
6 for a PAGA penalty of \$5 per pay period). Therefore, at trial, any PAGA penalties awarded
7 could be significantly less than Plaintiff’s calculation even where Plaintiff prevailed on the
8 PAGA claim. *See Fleming v. Covidien*, No. ED CV 10-01487 RGK (OPx), 2011 U.S. Dist.
9 LEXIS 154590 (C.D. Cal. Aug. 12, 2011) (a federal court reduced PAGA penalties from
10 \$2,800,000.00 to \$500,000.00, a reduction of 82.2%, because the court found maximum
11 penalties “unjust” because the employees had suffered no injuries).

12 **C. The Settlement is Reasonable Given the Risks of Further Litigation**

13 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
14 of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, No. BCV-
15 23-102915, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. Jan. 31, 2011) (“Given the statutory
16 language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has
17 not proven suffered a violation of the Labor Code by the defendant.”). Here, Plaintiff would
18 need to prove, among other things, that each Aggrieved Employee suffered a violation for each
19 period the employee worked in relation to (1) failure to pay for all hours worked, including
20 minimum, straight time, and overtime wages; (2) failure to provide meal periods; (3) failure to
21 authorize and permit rest periods; (4) failure to pay all earned wages twice per month; (5) failure
22 to maintain accurate records of hours worked and meal periods; (6) failure to timely pay all
23 wages at termination; (7) failure to furnish accurate itemized wage statements; (8) failure to
24 indemnify for necessary expenditures; and (9) and failure to produce requested employment
25 records.

26 Defendant maintains that Plaintiff and the Aggrieved Employees were properly
27 compensated, and that Defendant did not commit any violations of the Labor Code as to Plaintiff
28 or the Aggrieved Employees. Haber Decl. at ¶ 9. Accordingly, Defendant disputes and denies

1 Plaintiff's allegations and claims asserted in the operative complaint which are resolved by the
2 Settlement Agreement. *Id.* Defendant asserted additional defenses to the PAGA claim, not only
3 as to liability but also as to the amount of the penalties. *Id.* Defendant could argue that no
4 penalties prior to the PAGA notification should be awarded because the violations were not
5 intentional, and at least one Court has so ruled. *Id.* These defenses present a risk to the PAGA
6 claim and the potential that some or all the PAGA penalties sought may not be awarded. *Id.*

7 While Plaintiff is confident in the merits of the case, a legitimate controversy exists as
8 to each cause of action for penalties, the factual allegations, the evidentiary basis, and the
9 underlying claims. Haber Decl. at ¶ 10. Plaintiff also took into account the fact that continued
10 litigation would be expensive, involving a trial and possible appeals, and would substantially
11 delay and potentially reduce any recovery to the State of California and the Aggrieved
12 Employees. *Id.* Assuming Plaintiff could prove at least one violation per pay period and the
13 Court awarded \$100.00 in PAGA penalties for each of the 56,731 pay periods during the PAGA
14 Period (estimated as of the date of mediation), the total penalties would be approximately
15 \$5,673,100.00. *Id.* As such, the Gross Settlement Amount of \$1,197,000.00 is approximately
16 21.1% of the maximum potential liability in this case. *Id.*

17 Thus, when the risks of litigation, the burdens of proof necessary to establish liability,
18 and the probability of appeal of a favorable judgment are considered, it is clear the settlement
19 amount of \$1,197,000.00 is reasonable and in the best interest of the State of California and the
20 public. Haber Decl. at ¶ 11. Plaintiff objectively and knowledgably balanced the strengths and
21 weaknesses of his claims against the risk of continued litigation and were able to determine a
22 realistic range of settlement recovery for PAGA penalties. *Id.* The Settlement therefore
23 accomplishes PAGA's objectives by imposing sufficient civil penalties "to punish and deter"
24 Defendant from future alleged Labor Code violations, while also ensuring that the penalties are
25 not "unjust, arbitrary and oppressive, or confiscatory." Lab. Code § 2699(e)(2); *Iskanian*, 59
26 Cal. 4th at 384.

27 **V. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

28 PAGA Counsel seeks approval of attorneys' fees from the PAGA settlement in the

1 amount of \$399,000.00 representing 33 1/3% of the GSA and costs not to exceed \$30,000.00.
2 Settlement Agreement § 3.2.2. Plaintiff is entitled to attorneys' fees under Labor Code section
3 2699(g)(1), which provides that "[a]ny employee who prevails in any action shall be entitled to
4 an award of reasonable attorney's fees and costs." Lab. Code § 2699(g)(1); *see also Gouskos v.*
5 *Aptos Village Garage, Inc.*, 94 Cal.App.4th 754, 765 (2001) (holding that attorneys' fees to
6 prevailing party are mandatory when the statute uses the word "shall"). It is undisputed that
7 Plaintiff is the prevailing party. *See Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th
8 140, 153 (2006) ("[P]laintiffs may be considered 'prevailing parties' for attorney's fee purposes
9 if they succeed on any significant issue in the litigation that achieves some of the benefit the
10 parties sought in bringing suit.") (internal citation omitted). Accordingly, Plaintiff is entitled to
11 recover attorneys' fees and costs.

12 **A. Plaintiff's Counsel's Requested Attorneys' Fees Are Reasonable under the**
13 **Common Fund Method**

14 The request for attorneys' fees as a percentage of the gross settlement amount is
15 supported by the "common fund theory," where "one who expends attorneys' fees in winning a
16 suit which creates a fund from which others derive benefits, may require those passive
17 beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest*, 20 Cal.3d 25, 35
18 (1977).

19 The purpose of the common fund approach is to "spread litigation costs proportionally
20 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone."
21 *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Thus, the common fund
22 doctrine has been applied "consistently in California when an action brought by one party
23 creates a fund in which other persons are entitled to share." *City and County of San Francisco*
24 *v. Sweet*, 12 Cal.4th 105, 110 (1995); *see Quinn v. State of California*, 15 Cal.3d 162, 167 (1975)
25 ("[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others
26 derive benefits may require those passive beneficiaries to bear a fair share of the litigation
27 costs.").

28 A number of other courts have recognized the advantages of awarding fees as a

percentage of the common fund over the alternative lodestar approach, which usually involves wading through voluminous and often indecipherable time records. *See, e.g., In re Activision Securities Litigation*, 723 F.Supp. 1373, 1375 (N.D. Cal. 1989). The percentage approach is preferable to the lodestar method because: (1) it provides predictability to counsel; (2) encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the demands on judicial records. *Id.* at 1378-79; *see also Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 28 (2000) (discussing findings of task force commissioned by the Third Circuit, which “concluded that the lodestar approach (1) increases the workload of an already overtaxed judicial system, (2) is insufficiently objective and produces results that are far from homogenous, (3) creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, (4) is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the Claimants or of an overall dollar amount, (5) encourages lawyers to expend excessive hours, and engage in duplicative and unjustified work, (6) creates a disservice for the early settlement of cases, (7) deprives trial courts of flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered, (8) works to the particular disadvantage of the public interest bar, and (9) results in confusion and lack of predictability.”).

The percentage of attorneys’ fees set forth in the Settlement Agreement – one third (1/3) of the Gross Settlement Amount – is reasonable. Historically, courts have awarded percentage fees in the range of 20% to 50% in common fund cases. *Newberg on Class Actions*, 4th Ed. 2002, § 14:6. *Newberg* notes that achievement of a substantial recovery with modest hours expended should not be penalized but should be rewarded for considerations of time saved by superior services performed. *Id.* Furthermore, California and federal courts have long recognized that a percentage of recovery for attorneys’ fees is properly awarded on the basis of the total value. *Boeing v. Van Gemert*, 444 U.S. 472, 480-481 (1980); *see also In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 n.13 (2009) (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”)

1 The Court should also consider that Plaintiff's counsel's efforts have resulted in
2 substantial benefits to the State of California and the Aggrieved Employees, in the form of a
3 significant, non-reversionary settlement fund established to compensate the State of California
4 and the Aggrieved Employees and to penalize Defendant for the alleged PAGA violations.
5 Without the efforts of Plaintiff's counsel, the claims alleged in the complaint would likely have
6 gone without remedy. Haber Decl. at ¶ 28.

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

8 Although *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 489 (2016) makes clear that a
9 lodestar cross-check is not required, Class Counsel's lodestar supports the reasonableness of the
10 requested fee. The lodestar is determined by multiplying the number of hours reasonably
11 expended by the reasonable hourly rate. *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095
12 (2000). The lodestar figure may then be adjusted, based on consideration of factors specific to
13 the case, in order to fix the fee at the fair market value for the legal services provided." *Id.* The
14 factors that can be considered include "the nature of the litigation, its difficulty, the amount
15 involved, the skill required in its handling, the skill employed, the attention given, the success
16 or failure, and other circumstances in the case." *Melnyk v. Robledo*, 64 Cal.App.3d 618, 623-
17 624 (1976) (citations omitted).

18 The total hours expended on this action by PAGA Counsel were reasonable and in line
19 with comparable cases. While it is not necessary to substantiate the fee award with a lodestar in
20 this PAGA Action, it should be noted that PAGA Counsel spent approximately 241.2 hours
21 prosecuting this action, which were divided among the attorneys working on this case according
22 to skill level. Haber Decl. at ¶¶ 26-27. Multiplying the total hours expended by PAGA Counsel
23 by their reasonable hourly rates yields a lodestar of \$202,155.00. *Id.* at ¶ 26. This amount does
24 not include the time PAGA Counsel will spend at the final approval hearing and assisting the
25 Administrator following final approval. *Id.* PAGA Counsel dedicated significant resources to
26 this case by dividing the tasks required according to skill level. *Id.* The hours expended by each
27 attorney were not duplicative and reflect the extensive investigation and analysis that was
28 required to achieve this Settlement. This time could have been spent on other potentially

lucrative cases. *Id.* PAGA Counsel's lodestar reflects the efficiencies achieved by attorneys experienced in this field. *Id.* Moreover, PAGA Counsel has singularly assumed the risk and costs of litigation purely on a contingency basis. *Id.* And, while Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action, posing an actual risk that Plaintiff may not succeed at class certification and/or trial. *Id.* Any of these obstacles could have prevented recovery completely, meaning PAGA Counsel would have been left with no compensation for all the time and money invested in litigating this case. *Id.* Despite these risks, PAGA Counsel took this case on a contingency basis so that Aggrieved Employees (a particularly vulnerable group of hourly paid workers) could be compensated for their unpaid wages. *Id.* Consequently, PAGA Counsel was precluded from focusing on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain. *Id.*

The Court should also consider that PAGA Counsel's efforts have resulted in substantial benefits to the State of California and the Aggrieved Employees, in the form of a significant, non-reversionary settlement fund established to compensate the State of California and the Aggrieved Employees and to punish Defendant for the alleged PAGA violations. Haber Decl. at ¶ 28. Without the efforts of PAGA Counsel, the claims alleged in the complaint would likely have gone without remedy. *Id.*

C. Plaintiff's Counsel's Rates Are Similar to Those Approved by California Courts in Comparable Cases.

Plaintiff's Counsel's hourly rates are comparable to those charged by other class action plaintiffs' counsel and the firms defending class actions. Haber Decl. at ¶ 24. Plaintiff's Counsel's rates are well within the range of hourly rates that the Los Angeles legal marketplace would compensate counsel for similar services accomplishing similar results. *Id.* For example, in *Bronshteyn v. State of California*, Los Angeles County Superior Ct. No. 19SMCV00057, Order Granting Plaintiff's Motion for Statutory Attorneys' Fees and Costs filed March 30, 2023, an employment action brought by two small law firms (Levy, Vinick, Burrell & Hyams LLP and Law Offices of Wendy Musell), the court found that counsel's 2022 hourly rates of \$1,100 and \$1,000 per hour were reasonable for the plaintiff's five senior attorneys, including \$1,000 per hour for the

1 plaintiff's 23-year lead counsel and \$850 per hour for a senior associate. *Id.* These rates were then
2 augmented by a 1.75 lodestar multiplier and affirmed by the California Court of Appeals. *Id.* The
3 rates (and multiplier) requested here are well in line with those found reasonable in *Bronshteyn*. In
4 *Tran v. Golden State FC LLC, et al.* (LASC Case No. BC699931), Fee Order filed 4/8/2022, the
5 court found hourly rates of \$1,300 per hour reasonable for plaintiff's 32-year attorney and \$1,000
6 per hour reasonable for a 14-year attorney. *Id.*

7 Likewise, WLF's hourly rates are reasonable when compared to rates charged within the
8 relevant legal marketplace. Haber Decl. ¶¶ 23-24, Exhibit 3, Exhibit 4. In light of the foregoing,
9 and considered against the risks of continued litigation, and the importance of advocating for
10 employment rights and a speedy recovery, the relief provided under the Settlement represents a
11 very strong result for the Aggrieved Employees. PAGA Counsel's fee request is fair and
12 reasonable and should be approved.

13 **D. PAGA Counsel's Costs Are Reasonable**

14 PAGA Counsel is entitled to reimbursement of its litigation costs under PAGA. *See* Lab.
15 Code § 2699(k)(1) ("Any employee who prevails in any action shall be entitled to an award of
16 reasonable attorney's fees and costs."). The Settlement provides for reimbursement of costs not
17 to exceed \$30,000.00. Settlement Agreement § 3.2.2. To date, PAGA Counsel has incurred costs
18 in the amount of \$18,382.83. ³ Haber Decl. at ¶ 29, Exhibit 5. Additionally, we anticipate
19 incurring \$300.00 in future costs for filing fees and service fees for a total of \$18,682.83 in
20 costs. *Id.* These costs were reasonably incurred in prosecuting this Action on behalf of the
21 Aggrieved Employees and should be approved by the Court. *Id.* Accordingly, PAGA Counsel
22 respectfully requests the Court approve costs in the amount of \$18,682.83.

23 **VI. THE REQUESTED PAGA REPRESENTATIVE SERVICE PAYMENT TO** 24 **PLAINTIFF IS REASONABLE**

25 Both the State of California and the Aggrieved Employees are beneficiaries of a
26

27 ³ Because PAGA Counsel's costs are less than \$30,000.00, upon approval of \$18,682.83 for the
28 PAGA Counsel Expenses Payment, the remaining \$11,317.17 will revert to the NSA to be
distributed as PAGA Penalties to the LWDA and Aggrieved Employees. Haber Decl. at ¶ 29.

1 settlement that would not have been made possible but for the effort and commitment of
2 Plaintiff. The Settlement provides the Plaintiff shall be paid a PAGA Representative Service
3 Payment not to exceed \$10,000.00, in recognition of his efforts in bringing and presenting the
4 Action. Settlement Agreement § 3.2.1. The requested payment is intended to recognize
5 Plaintiff's effort in bringing the Action, serving as private attorneys general under PAGA,
6 assisting counsel with the investigation, litigation, and settlement, regularly conferring with
7 counsel on the status of the case, and reviewing the proposed settlement to ensure that its terms
8 are fair and achieve PAGA's objectives.

9 Plaintiff has provided a declaration detailing the risk he faced in bringing the suit, the
10 notoriety and personal difficulties he encountered, the amount of time and effort he spent on
11 this litigation, the duration of this litigation, and the personal benefit he will receive as a result
12 of the litigation. *See generally* Declaration of Plaintiff Terrill Pointer Support of Plaintiff's
13 Motion for Approval of PAGA Settlement ("Pointer Decl."). Plaintiff also faced the real risk
14 that future employers may not hire him because he each lent his name as a PAGA representative
15 in this case, and he could have been liable for Defendant's litigation costs if the case went to
16 trial and he lost. Pointer Decl. at ¶¶ 4, 6. Accordingly, Plaintiff respectfully requests that the
17 Court approve the PAGA Representative Service Payment in the amount of \$10,000.00.

18 **VII. CONCLUSION**

19 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA
20 settlement as set forth in the Settlement Agreement and enter the proposed order and judgment
21 submitted herewith.

22 Dated: September 29, 2026

WILSHIRE LAW FIRM, PLC

23
24 By:



Benjamin H. Haber
Daniel J. Kramer
Angela Leong
Giancarlo A. Recinos
Attorneys for Plaintiff