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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 CHRISTOPHER LUNA RODRIGUEZ,
13 an individual, on behalf of himself, all
14 other aggrieved employees, and the
15 general public,

16 Plaintiff,

17 vs.

18 CLASSIC BEVERAGE OF SOUTHERN
19 CALIFORNIA, LLC, a California
20 Limited Liability Company; and DOES 1
21 through 25, inclusive,

22 Defendants.

CASE NO. 24STCV06523

[Assigned for all purposes to Hon. Alison Mackenzie,
Department 55]

UNLIMITED JURISDICTION

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, AWARDED
ATTORNEYS' FEES, COSTS, ENHANCEMENT
PAYMENT, AND REIMBURSEMENT OF
SETTLEMENT ADMINISTRATION EXPENSES,
AND DISMISSING ACTION WITH PREJUDICE;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Concurrently Filed with Supporting Declarations, and
[Proposed] Final Order and Judgment]

Hearing

Hearing Date: March 21, 2025

Time: 8:30 a.m.

Courtroom: 55

Reservation ID: 656448853499

Complaint Filed: March 15, 2024

1 **PLEASE TAKE NOTICE THAT** on March 21, 2025 at 8:30 a.m., or as soon thereafter as the
2 matter may be heard, in Department 55 of the above-entitled Court, located at the Stanley Mosk
3 Courthouse located at 111 North Hill Street, Los Angeles, California 90012, Plaintiff Christopher Luna
4 Rodriguez will and hereby does move unopposed for an Order: (1) granting approval, pursuant to
5 California Labor Code § 2698 *et seq.*, subpart 1, of the proposed settlement of claims brought pursuant
6 to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) set forth in the parties'
7 Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement; (2) appointing
8 Simpluris Class Action Administration as the Settlement Administrator and approving payment of
9 \$2,750 from the Gross Settlement Amount; (3) directing disbursement of the Gross Settlement Amount
10 pursuant to the terms of the Settlement Agreement; (4) directing payment of attorneys' fees not to exceed
11 \$50,000 and costs in the amount of \$12,629.31, from the Gross Settlement Amount; (5) ordering
12 payment to Plaintiff of the requested Service Award in addition to his General Release Payment from
13 the Gross Settlement Amount (6) dismissing this action with prejudice.

14 This motion will be based on this Notice, the supporting memorandum of points and authorities,
15 the parties' Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (the
16 "Agreement"), the Declarations of Michael H. Boyamian, Esq. and Christopher Luna Rodriguez, the
17 documents and records on file in this matter, and such additional arguments, authorities, and evidence
18 and other matters as may be presented by the Parties hereafter.

19
20 DATED: February 26, 2025

Respectfully submitted,

BOYAMIAN LAW, INC.

21
22
23 By: _____

Michael H. Boyamian
Attorneys for Plaintiff, Christopher Luna Rodriguez,
Other Aggrieved Employees, and the General Public

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PERTINENT FACTUAL AND PROCEDURAL BACKGROUND.....	2
A.	Plaintiff's Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendant.....	2
B.	Plaintiff's Civil Action Against Defendant.....	2
III.	TERMS OF THE PAGA SETTLEMENT.....	3
A.	The Gross Settlement Amount.....	3
B.	Allocation of Individual PAGA Payments	4
C.	Funding and Distribution	4
D.	Release of Claims	5
IV.	THE COURT SHOULD APPROVE THE PAGA SETTLEMENT	5
A.	The Gross Settlement Amount is Fair and Reasonable	6
i.	Estimated Penalties for Meal & Rest Period Violations.....	6
ii.	Estimated Penalties for Unpaid Minimum and Overtime Wage Claims	9
iii.	Estimated Penalties for Failure to Reimburse Necessary Expenditures	10
iv.	Estimated Penalties for Inaccurate Wage Statements.....	10
v.	Estimated Penalties for Waiting Time Penalties.....	11
B.	The Gross Settlement Compares Favorably To The Likely Recovery	12
C.	The Remaining Settlement Terms Are Fair and Reasonable.....	15
V.	THE ATTORNEYS' FEES AND EXPENSES ARE FAIR AND REASONABLE.....	15
A.	The Requested Attorneys' Fee is Fair and Reasonable	15
i.	The Lodestar Approach Demonstrates that Class Counsel's Attorneys' Fee Request is Fair, Reasonable and Justified Under the Facts of this Case.	16
ii.	The Requested Attorney's Fees Were Calculated Using The Common Fund Doctrine And Are In Line With Leading Treatises On Awards Calculated Using The Common Fund Doctrine.....	17

1
2
3
4
5
6
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8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

a.	The Requested Attorneys’ Fees Comport With The Fee-Shifting Provision Set Out Under Labor Code Sections 2698, Et Seq.	19
b.	The Requested Attorney’s Fees Reflect PAGA Counsel’s Significant Experience, Reputation, and Ability In Representative Action Settlements	19
B.	Plaintiff’s Counsel Are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.....	20
C.	The Payment To The Named Plaintiff for His Services To The State of California and For His General Release Are Reasonable and Routinely Awarded by Courts	20
VII.	CONCLUSION.....	23

TABLE OF AUTHORITIES

STATE CASES

<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	8
<i>Amiri v. Cox Communs. Cal., LLC</i> (C.D. Cal.) 272 F.Supp.3d 1187, 1194	13
<i>Cal-Air Conditioning v. Auburn Union School Dist.</i> , 21 Cal.App.4th 655, 668 (1993).....	14
<i>Cardenas v. McLane Foodservice, Inc.</i> , 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	12
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504, 529 (2018)	8, 9, 13
<i>County of Tulare v. Campbell</i> , 50 Cal. App. 4th 847, 853 (1996).....	14
<i>Downtown Palo Alto v. City Council</i> , 180 Cal.App.3d 384, 395 (1986).....	14
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	6
<i>Estrada v. Royalty Carpet Mills, Inc.</i> , (Cal.App. 4th Dist. March 30, 2022)	13
<i>Fleming v. Covidien, Inc.</i> , 2011 WL 7563047, *4 (C.D. Cal. 2011).....	14
<i>Gola v. University of San Francisco</i> , San Francisco Superior Court Case No. CGC-18-5655018.....	14
<i>Hernandez v. BCI Coca-Cola Bottling Co.</i> , 2012 WL 12272348, at *8 (C.D. Cal. Apr. 12, 2012), aff'd, 554 F. App'x 661 (9th Cir. 2014)	14
<i>Hibbs-Rines v. Seagate Technologies</i> , 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009)	13
<i>Kaanaana v. Barrett Bus. Servs., Inc.</i> , 29 Cal App 5th 778, 788 (2018).....	13
<i>Kim v. Reins International California, Inc.</i> (2020) 9 Cal.5th 73	5
<i>Laffitte v. Robert Half Int'l Inc.</i> , 1 Cal.5th 480, 504, (2016).....	15, 16
<i>Lifty v. Merrill Lynch & Co.</i> (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 160448	13
<i>Lopez v. Friant & Associates, LLC</i> (2017) 15 Cal.App.5th 773	11
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal.App.5th 56	5, 6
<i>Ortiz v. CVS Caremark Corp.</i> (N.D. Cal. 2014) 2014 U.S. Dist. LEXIS 36833.....	13
<i>Pellegrino v. Robert Half Intern., Inc.</i> , 182 Cal.App.4th 278 (2010).....	16
<i>Rider v. City of San Diego</i> , 11 Cal. App. 4th 1410, 1423 n.6 (1992)	20
<i>Wesson v. Staples the Off. Superstore</i> , 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021)	13
<i>Wesson v. Staples the Office Superstore</i> , (2021) 68 Cal.App.5th 746.....	13, 14
<i>Williams v. Superior Court</i> (2017) 3 Cal.5th 531	6
<i>Zayerz v. Kiewit Infrastructure West</i> , 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018)	

.....	12
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OTHER AUTHORITIES

<i>Aguirre v. Genesis Logistics</i> (C.D. Cal 2013) No. SACV 12-00687 JVS (ANx), 2013 WL 10936035	12
<i>Boyd v. Bank of America</i> , 2014 WL 6473804, at *11 (C.D. Cal. 2014).....	18
<i>Cardenas v. McLane Foodservice, Inc.</i> , 2011 U.S. Dist. LEXIS 13126, *10	13
<i>Emmons v. Quest Diagnostics Clinical Labs., Inc.</i> , 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) ..	18
<i>Fleming v. Covidien</i> (C.D. Cal. 2011) No. ED CV 10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590	12
<i>Fleming v. Covidien, Inc.</i> , 2011 WL 7563047, *4 (C.D. Cal. 2011).....	15
<i>Harris v. Marhoefer</i> , 24 F.3d 16, 19 (9th Cir. 1994).....	23
<i>Hernandez v. BCI Coca-Cola Bottling Co.</i> , 2012 WL 12272348, at *8 (C.D. Cal. Apr. 12, 2012).....	15
<i>Hopkins v. Stryker Sales Corp.</i> , No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013).....	18
<i>Lifty v. Merrill Lynch & Co.</i> (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 160448	14
<i>Ordonez v. Radio Shack, Inc.</i> (C.D. Cal. Jan. 17, 2013) 2013 WL 210223	8
<i>Ortiz v. CVS Caremark Corp.</i> (N.D. Cal. 2014) 2014 U.S. Dist. LEXIS 36833	14
<i>Vandervort v. Balboa Capital Corp.</i> , 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	18
<i>Villa v. United Site Servs. of California, Inc.</i> (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550	8
<i>Zayerz v. Kiewit Infrastructure West</i> , 2018 U.S. Dist. LEXIS 14918	13

STATUTES

Cal. Code Civil Proc. § 382	16
Cal. Lab. Code § 2699	passim
Labor Code §§ 201 – 203.....	12

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Christopher Luna Rodriguez (“Plaintiff”) seeks approval of the PAGA Settlement
4 Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief to the State of
5 California and for 127 “Aggrieved Employees,” defined as all non-exempt hourly paid employees of
6 Defendant Classic Beverage of Southern California, LLC (collectively referred to as “Defendants” or
7 “Classic”) employed in California as a Sales Associates (aka “Merchandizers”) during the period
8 between December 22, 2022 to November 30, 2024 (“Settlement Period”). Agreement at ¶¶ 2, 13.
9 This is only a settlement of Plaintiff’s PAGA claims for civil penalties and is not a class settlement and
10 does not release the individual wage claims, if any, of the affected employees other than Plaintiff
11 himself. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014);
12 *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

13 If approved, the Aggrieved Employees and the California Labor Workforce and Development
14 Agency (“LWDA”) will share in a Gross Settlement Amount of One Hundred Fifty Thousand Dollars
15 and Zero Cents (\$150,000.00). Agreement at ¶ 5. After deducting Court-approved Attorneys’ Fees,
16 Costs, Service Award, General Release Payment, and Settlement Administrator Costs, the PAGA
17 Penalties Fund shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees.
18 Agreement at ¶¶ 8, 15.

19 An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf
20 of the Aggrieved Employees and the LWDA is fair and reasonable. The Settlement is a product of
21 informed, adversarial, and non-collusive and mediated negotiations between experienced counsel. As
22 discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval.
23 Accordingly, Plaintiff and Plaintiff’s Counsel respectfully request this Court grant approval of the
24 Agreement. MHB Dec., at ¶¶ 8-9.

25 ///

26 ///

27 ¹ The Agreement is attached as Ex “2” to the Declaration of Michael H. Boyamian (“MHB Dec.”) at ¶ 3. All citations to
28 the Agreement incorporate by this reference a citation to the MHB Dec., ¶ 13. Further, unless indicated otherwise,
capitalized terms used herein have the same meaning as those defined by the Agreement.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendant

On December 22, 2023, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) (the "PAGA Notice") and served the same on Defendants. The 65-day "waiting period" on Plaintiff's rights to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that they intended to investigate the claims in the respective PAGA Notice. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. MHB Dec., at ¶ 11, Exh. 1.

B. Plaintiff's Civil Action Against Defendant

On March 15, 2024, Plaintiff filed a representative wage and hour action and pled a singular claim for civil penalties under PAGA against Defendant in the Superior Court of the State of California, County of Los Angeles, Case No. 24STCV06523 alleging representative claims for Failure to Pay Compensation for All Hours Worked, Failure to Pay Overtime Compensation, Failure to Pay Minimum Wage, Failure to Provide Meal and Rest Periods, Failure to Reimburse for Necessary Business Expenditures, Failure to Furnish Accurate Wage and Hour Statements.

Following service of formal written discovery, counsel for the Parties engaged in robust discussions about the merits of the underlying action. The Parties then opted to engaged in private mediation to explore a possible resolution and settlement of Plaintiff's representative claims.

On October 30, 2024, the Parties attended a full-day mediation with experienced wage and hour class and PAGA action mediator the Hon. Carl J. West (Ret.) of JAMS. In advance of the mediation, Defendants provided Plaintiff with sufficient information to properly evaluate Defendants' liability exposure for civil penalties to the Aggrieved Employees. Among the data and documents Defendants produced included, but was not limited to, the total number Aggrieved Employees, pay periods, written wage and hour policies, employee handbooks, a twenty percent (25%) sample of time and payroll records for the Aggrieved Employees. MHB Dec., ¶ 12.

At the conclusion of the mediation, and with the assistance of the Mediator, the Parties reached a settlement. The Parties subsequently executed a binding and enforceable Memorandum of

1 Understanding (“MOU”). After reaching an agreement in the principle, the Parties drafted and
2 negotiated a long-form settlement which is the subject of the instant motion. The Settlement was
3 negotiated in light of all known facts and circumstances and the uncertainty associated with litigation –
4 including the risk of Plaintiff not being able to maintain representative claims and establishing
5 manageability, the difficulty of proving Plaintiff’s claims in a manageable trial, the merits of
6 Defendant’s potential defenses, and the significant delay and potential appellate issues inherent to
7 litigation – and was reached after extensive arm’s length negotiations, with the assistance of the
8 Mediator. MHB Dec., at ¶ 13.

9 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by
10 Plaintiff on behalf of the Aggrieved Employees and State of California and Plaintiff’s individual
11 settlement of his wage and hour and employment claims. This is only a Settlement of the PAGA claims
12 for civil penalties and is not a class settlement and does not release the individual claims, if any, of the
13 Aggrieved Employees. This Settlement does not release any claim that is not a PAGA claim.² Nor does
14 this Settlement waive Defendant’s right to assert *res judicata* or other available defenses to any asserted
15 claim or lawsuit. MHB Dec., at ¶ 14.

16 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
17 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion
18 for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will
19 submit to the LWDA a copy of the Court’s judgment and order approving the Settlement Agreement
20 within ten (10) days after entry of judgment or order. MHB Dec., at ¶ 15, Exh. 3.

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

22 **A. The Gross Settlement Amount**

23 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2). The
24 Settlement Agreement negotiated by the Parties provides for a “Gross Settlement Amount” payment in
25 the amount of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) to resolve the PAGA
26 claims. This is a non-revisionary settlement and no amount will revert back to Defendants. From the
27

28 ² As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: “Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”

1 Gross Settlement Amount, there is a deduction of Attorneys' Fees in the amount of \$50,000.00 (which
2 is one-third of the Gross Settlement Amount), reimbursement of incurred Attorneys' Expenses in the
3 amount of \$12,629.31, payment to the Class Representative for rendering services for the State of
4 California and the pool of Aggrieved Employees in the amount of \$5,000, settlement of Plaintiff's
5 individual wage and hour and employment-related claims for \$5,000, and payment of Claims
6 Administration Expenses to the Settlement Administrator in an amount not to exceed \$2,750.00.
7 Agreement at ¶¶ 4, 8, 11, 14, Exh. 2. After these deductions, the amount remaining is the "PAGA
8 Penalties Fund," which is estimated to be \$74,620.69.

9 Of the "Net Settlement Amount," seventy-five percent (75%) shall be paid to the LWDA and
10 the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees as Individual PAGA
11 Payments.³ Agreement at ¶ 15. This allocation is required by Labor Code § 2699 as explained by *ZB*,
12 *N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

13 **B. Allocation of Individual PAGA Payments**

14 The Individual PAGA Payments to the Aggrieved Employees shall be based on the number of
15 PAGA Pay Periods each Aggrieved Employee worked during the PAGA Period as a percentage of the
16 total PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period. Agreement at §
17 III(I)(1). At the time of mediation, ACSS estimated that there were approximately 127 Aggrieved
18 Employees who worked approximately 2,875 PAGA Pay Periods during the Settlement Period based on
19 company records. The proposed Settlement covers Defendants' non-exempt, hourly employees who
20 worked at Defendants' locations in Los Angeles and San Diego.

21 **C. Funding and Distribution**

22 Provided that an order approving this Settlement is entered by the Court, Defendant shall fund
23 the Gross Settlement Amount within sixty (60) calendar days. Agreement at ¶ 22. Within fourteen (14)
24 calendar days of its receipt of the Gross Settlement Amount in full, the Settlement Administrator will
25 transmit the LWDA Payment to the LWDA as one lump sum payment and will mail the Individual
26 PAGA Payments to the Aggrieved Employee by regular First-Class U.S. Mail to the Aggrieved

27 ³ The PAGA statute was recently amended on July 1, 2024. Certain citations to the PAGA's provisions in this Motion
28 relate to the pre-amendment version of the statute, which applies to this action based on the pre-amendment filing date of
the initial complaint and related administrative exhaustion letter.

1 Employees' last known mailing address. Agreement at ¶¶ 22-23. Settlement checks issued to Aggrieved
2 Employees will expire one hundred eighty (180) days from the date they are issued by the Settlement
3 Administrator. *Id.* at ¶ 23. If the check remains uncashed by the expiration of the 180-day period, the
4 Settlement Administrator shall cause the aggregate sum represented by those uncashed checks to be sent
5 to the State of California's Controller, to be held in the name of each expired check payee. *Id.* The
6 individual Aggrieved Employee Payments are 100% penalties and interest and shall be reported using
7 IRS Form 1099s. Agreement ¶ 23.

8 **D. Release of Claims**

9 When the Gross Settlement Amount is fully funded by Defendant in accordance with the terms
10 agreed upon by the Parties, Plaintiff, the LWDA and the State of California shall release the Defendants
11 from the Settled Claims for the Settlement Period. Agreement at ¶¶ 7, 12, 24. The Settled Claims means
12 all claims for civil penalties, fees, and costs under PAGA based on the facts and theories alleged in the
13 PAGA Notice Letter Plaintiff sent to the LWDA on December 23, 2023, and the operative Complaint
14 filed in the Action. Agreement at ¶ 7, 12, 24. This includes claims which are for civil penalties pursuant
15 to Labor Code section 2699, et seq. for violations of Labor Code sections 201, 202, 203, 204, 210, 216,
16 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1194-1197.1, 1198, 2698, and 2802,
17 and applicable Industrial Welfare Commission Wage Orders. *Id.* The release does not include
18 underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment
19 insurance, disability, and workers' compensation, and claims outside of the PAGA Period. The PAGA
20 Released Claims do not include any claims that cannot be released as a matter of law.

21 **IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

22 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any
23 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency
24 at the same time that it is submitted to the court." Further, the Court in *Moniz v. Adecco USA, Inc.*
25 (2021) 72 Cal.App.5th 56, 77 stated that "the trial court must review and approve a PAGA settlement
26 (§ 2699, subd.(l)(2)), and the Supreme Court has in dictum referred to this review as a safeguard."
27 (Citing *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88; internal quotations omitted.)
28 "The Supreme Court has also observed that trial court approval ensures that any negotiated resolution

1 is fair to those affected,” leading the Court in *Moniz* to determine that “adoption of a standard of review
2 for settlements that prevents fraud, collusion or unfairness, and protects the interests of the public and
3 the LWDA in the enforcement of state labor laws is warranted.” (*Moniz, supra*, 72 Cal.App.5th at 77;
4 citing *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549; *Dunk v. Ford Motor Co.* (1996) 48
5 Cal.App.4th 1794, 1800-1801; internal citations omitted.) In other words, “[i]n review and approval of
6 a proposed settlement under section 2699, subd. (1)(2), a trial court thus must scrutinize whether, in
7 resolving the action, a PAGA plaintiff has adequately represented the state’s interests, and hence the
8 public interest.” (*Moniz, supra*, 72 Cal.App.5th at 88.) Consequently, the Parties respectfully ask the
9 Court to review and approve the settlement of the PAGA claims and the Net Settlement Amount to be
10 paid as part of the proposed Settlement.

11 **A. The Gross Settlement Amount is Fair and Reasonable**

12 The Gross Settlement Amount of \$150,000.00 is fair and reasonable and, therefore, should be
13 approved. MHB Dec., ¶ 47. Here, *with stacking* the PAGA penalties, Defendants’ liability exposure is
14 estimated at approximately \$1,725,000 (\$100 x 6 violations x 2,875 pay periods) in PAGA penalties.
15 MHB Dec., ¶ 23. Conversely, as Defendant has never been cited for the wage and hour violations before,
16 and given surrounding case law criticizing the imposition of stacking penalties, Defendant’s liability
17 exposure, *without stacking*, is estimated to be between \$143,750 (\$50 x 2,875 pay periods) or \$287,500
18 (\$100 x 2,875 pay periods). Accordingly, the proposed obtained recovery for Plaintiff, the State of
19 California, and the pool of Aggrieved Employees, is between 8% to 52% of Defendant’s liability. With
20 the assistance of Plaintiff’s retained expert, Plaintiff also estimated Defendant’s maximum potential
21 exposure as follows, as well as the reasonable risk-adjusted amounts for penalties on the various claims
22 and theories advanced by Plaintiff:

23 **i. Estimated Penalties for Meal & Rest Period Violations**

24 Plaintiff alleged meal and rest break violations. Based on timekeeping records and information
25 gained from discovery, Plaintiff alleged that the Aggrieved Employees were subjected to meal and rest
26 break violations during approximately 2,123 pay periods. Therefore, the maximum theoretical value for
27
28

1 the meal and rest break claims is \$424,600 collectively (2,123 pay period x \$100 x 2 [1 meal break, 1
2 rest break]).

3 To start, through discovery and Plaintiff's Counsel's investigation, Aggrieved Employees
4 including Plaintiff had on-duty meal break agreements and meal break waivers. The PAGA Group,
5 including Plaintiff, were required to clock in and clock out for timekeeping and payroll purposes. From
6 the sample of time and pay records to Plaintiff's Counsel, approximately 70% of the meal breaks were
7 perfectly, whole round numbers of 30-minute breaks without any deviation. Plaintiff contended that
8 this is highly suggestive of a practice of inserting idealized meal breaks when, in reality, no meal break
9 occurred, was short, or late. Additionally, the entirety of the meal period – and relatedly the rest break -
10 is not completely uninterrupted and duty-free as Aggrieved Employees, including Mr. Rordriguez, were
11 out in the field, would continue to work, travel to locations and service Defendant's retail clients
12 rendering the actual meal period or rest period short of the required thirty-minutes, ten minutes, and/or
13 interrupted.

14 Plaintiff further contended that Classic's managers are then directed to alter and manipulate the
15 payroll processing by automatically deducting 30-minutes of time to give the false impression that
16 Aggrieved Employees, including Mr. Rodriguez, took an uninterrupted, duty-free meal period every day
17 of work for exactly thirty minutes when in fact, nothing could be further from the truth. Plaintiff's
18 position, therefore, was that Defendant knowingly or intentionally misreports the meal breaks of
19 Aggrieved Employees, including Mr. Rodriguez, in violation of Labor Code §§ 1174(d) and 226.7.

20 However, these claims face many risks that make it unrealistic to only look at the maximum
21 potential value. First, Defendant maintained paper compliant policies on meal and rest periods during
22 the relevant PAGA period. In turn, Defendant argued that Plaintiff's claims were based solely on
23 "individualized issues" since no official corporate policy, procedure or practice deprived Plaintiff and
24 Aggrieved Employees of meal and rest periods. Defendant additionally countered that employees had
25 ample latitude regarding whether, when, and how they took their breaks. Defendant thus asserted that
26 any meal and rest break claims were inherently unmanageable on a representative basis given that a fact-
27 finder would have to determine for each Aggrieved Employee whether a break was missed, and why a
28 break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches

1 to the defendant. Establishing liability likely would have entailed competing testimony stating either
2 rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.*
3 (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the
4 Court, plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient
5 for this Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.*
6 (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the
7 written policy does not generate uniform practices.”).

8 Defendant also demonstrated that it did pay substantial sums of meal period premiums during
9 the relevant PAGA period when confronted with meal and/or rest period violations. Defendant further
10 argued that increased civil penalties for subsequent violations do not apply unless the plaintiff can
11 present evidence that the Labor Commission or a court notified the employer that it was in violation of
12 the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 [“Until the employer
13 has been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be
14 aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”].) Separately,
15 Defendants also argued that courts have considerable discretion to reduce the penalty awards under
16 PAGA. *See, e.g. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (“*Carrington*”) (reducing
17 the maximum PAGA penalty amount by 90%, at \$5 per pay period). In *Carrington*, the California Court
18 of Appeal upheld San Diego Superior Court Judge Katherine Bacal’s heavily discounted award of only
19 \$5 per pay period. In that case, during the penalty phase of trial in *Carrington*, the plaintiff requested
20 PAGA penalties in the amount of approximately \$70 million. *Carrington*, Cal.App.5th at 528. The trial
21 court instead awarded only \$150,000 of the maximum (the equivalent of \$5 per pay period) and stated
22 that this reduction was warranted because imposing the maximum penalty would be “unjust, arbitrary,
23 and oppressive” based on Starbucks’ “good faith attempts” to comply with meal period obligations and
24 because the court found the violations were minimal. *Id.* at 517. The Court of Appeal affirmed the lower
25 court’s reduced award of a \$150,000 penalty under PAGA. *Id.* at 529. If the amount of \$5 per pay period
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1 from *Carrington v. Starbucks* were used, the potential recovery of civil penalties would only be \$10,615,
2 which is less than this settlement provides.

3 Taking all of these defenses into account, and after a careful consideration of Defendants' time
4 and payroll records, Plaintiff reasonably believed that there was a 50% risk of defeat on these claims.
5 And, even if these claims succeeded, Plaintiff believes that the Court would reduce any penalties by
6 50% given Defendant has never been a "repeat" offender so to speak in the wage and hour
7 class/representative action arena and that the imposition of a maximum penalty would be "unjust,
8 arbitrary, and oppressive." As such, Plaintiff believes that the meal and rest break claims have a
9 reasonable trial estimate of \$106,150 [$\$424,600 \times 50\% \times 50\%$]. MHB Dec., ¶¶ 22-27.

10 **ii. Estimated Penalties for Unpaid Minimum and Overtime Wage Claims**

11 Relatedly, for the unpaid minimum and overtime wage claims, Plaintiff argued that because
12 Defendant maintained a de facto practice of inserting idealized meal periods of 30 minutes when in
13 reality no such break was being provided, the deduction of time while under the control of Defendant
14 resulted in a minimum wage claim, and in some instances, of overtime wages. Plaintiff alleged that these
15 violations occurred nearly 87% of the pay periods at issue. As such, there was a maximum theoretical
16 value of \$274,800 (2,748 pay periods x \$100 = \$274,800) for the minimum and overtime wage claims.

17 Plaintiff was again mindful of the wide discretion given to trial courts in assessing the civil
18 penalties associated with such violations. *See Carrington, supra*. Based on these defenses, as well as a
19 review of Defendant's policies and practices, Plaintiff estimated that there was a 50% risk of defeat on
20 the minimum and overtime wage claims as they were entirely contingent on the success of the primary
21 meal and rest period theories of liability. However, unlike the claims where Plaintiff anticipated a
22 substantial discretionary reduction of the penalties, Plaintiff believes that any PAGA penalties for unpaid
23 wages would only receive a slight reduction by this Court (20%) given that the claim, if true, caused
24 harm to the Aggrieved Employees through the deprivation of earned wages. Therefore, Plaintiff believes
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1 that the reasonable trial estimate for the unpaid minimum and overtime wage claims is \$109,920
2 (\$274,800 x 50% x 80%). MHB Dec., ¶¶ 28-29.

3 **iii. Estimated Penalties for Failure to Reimburse Necessary Expenditures**

4 Plaintiff and other Aggrieved Employees were sales associates, the expenses they incurred –
5 and this resulting claim - arise from their job duties traveling to, promoting and distributing the products
6 Defendant's customers purchase from Defendant. Plaintiff and Aggrieved Employees used their own
7 personal vehicles in discharging their duties for Classic Beverage. Defendant will agree that automobile
8 expenses, especially gas and mileage, are common and significant for Aggrieved Employees. Sales
9 Associates often make several trips in one day, cover a large geographic territory, to deliver products
10 and to prepare for and attend customer locations for stocking and restocking needs. Plaintiff argued that
11 a barrage of work-related expenses including parking, tolls, and expenses associated with car usage (i.e.,
12 maintenance costs, gas, depreciation, and insurance premiums), these necessary expenditures as
13 described above should have been borne by Defendant and thus Plaintiff and the Aggrieved Employees
14 are entitled to civil penalties for incurring these expenses in connection with their work at Classic
15 Beverage. An employer must indemnify its employees for all necessary expenditures incurred by the
16 employee in direct consequence of the discharge of his or her duties. Cal. Lab. Code § 2802.

17 Defendant denied any liability for this claim. Defendant contended that they had in place a
18 comprehensive and sophisticated software to reimburse Aggrieved Employees separately for mileage,
19 insurance, and related expenses all based on the make and model of the Aggrieved Employees' vehicle.
20 As a result, Defendant further argued where Aggrieved Employees did incur business expenses, these
21 expenses were fully reimbursed. While Plaintiff and Defendant argued over the breadth or scope of
22 what expenses were actually covered for reimbursement or not, Plaintiff assessed a maximum figure of
23 \$252,900 but when considering Defendant's defenses and the Court's assessment of liability and
24 penalties, for the same reasons articulated above, Plaintiff concluded that the risk-adjusted amount of
25 penalties for Plaintiff's §2802 claim would equate to \$101,160. MHB Dec., ¶¶ 30-31.

26 **iv. Estimated Penalties for Inaccurate Wage Statements**

27 Plaintiff further argued that Defendant failed to provide accurate itemized wage statements to
28 the Aggrieved Employees. Based on information learned from both formal and informal discovery, the

1 maximum theoretical value of this claim was \$287,500 [2,875 allegedly violative wage statements x
2 \$100].

3 However, this maximum figure ignores the many risks and defenses of this wage statement
4 claim. After a thorough analysis of this claim and the corresponding defenses, Plaintiff estimates that
5 there was a 30% risk of defeat on the merits. Plaintiff also believes that the Court would reduce the
6 assessed penalty amount by 70% because a higher assessment would be “unjust, arbitrary and
7 oppressive, or confiscatory” in light of “the facts and circumstances of [this] particular case” (Labor
8 Code § 2699(h)); namely, Defendants contended that it would be “unjust” to impose significant penalties
9 for the alleged wage statement violations because the Aggrieved Employees did not suffer any injury in
10 relation to these claims. *See Fleming v. Covidien* (C.D. Cal. 2011) No. ED CV 10-01487 RGK (OPx),
11 2011 U.S. Dist. LEXIS 154590 (approximate 82.14% reduction of PAGA penalties on Labor Code §
12 226 claim); *Aguirre v. Genesis Logistics* (C.D. Cal 2013) No. SACV 12-00687 JVS (ANx), 2013 WL
13 10936035 (applying approximate 73% reduction on PAGA penalties for Labor Code § 226 claims).

14 Furthermore, while a PAGA claim for violation of Labor Code § 226 does not require a showing
15 of knowledge or willfulness (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773), Defendant
16 contended that it would be “unjust” to impose significant penalties for the alleged wage statement
17 violations because the Aggrieved Employees did not suffer any injury in relation to these claims. As
18 such, Plaintiff believes that wage statement claim has a reasonable trial estimate of \$60,375 [\$287,500
19 x 70% x 30%]. MHB Dec., ¶¶ 32-34.

20 **v. Estimated Penalties for Waiting Time Penalties**

21 Plaintiff also raised claims for failure to timely pay wages under the theory that Defendants’
22 failure to timely pay wages on separation of employment under Labor Code §§ 201 – 203. Plaintiff
23 premised this claim directly on Defendant’s practice of failing to pay Plaintiff and Aggrieved Employees
24 for all hours worked “off-the-clock” and failure to pay premium wages for meal and rest break
25 violations. Thus, the claim was entirely derivative and duplicative of penalties for unpaid wages. And
26 because Plaintiff believes that he could not stack penalties in this manner, Plaintiff further believes that
27 the only potential recovery (if any) for failure to timely pay wage claim was under Labor Code § 201 –
28 203. For the Labor Code §§ 201 – 203 claims, Plaintiff calculated the maximum penalty as \$6,200,

1 which is the \$100 penalty multiplied by 62 former Aggrieved Employees that allegedly did not receive
2 all wages owed upon separation of employment. Because Plaintiff believes that these individuals were
3 subjected to the unpaid wage claims discussed above, these derivative claims rise and fall based on the
4 same defenses and risks. Therefore, Plaintiff applied only a 5% risk of defeat on the merits and also
5 assumed that the Court would only reduce the penalties by 5%. Thus, the reasonable trial value of these
6 derivative claims is \$5,595.50. MHB Dec., ¶¶ 35-37.

7 **B. The Gross Settlement Compares Favorably To The Likely Recovery**

8 In light of the above, the Gross Settlement Amount is between approximately 8% to 52% of
9 Defendant’s potential PAGA maximum exposure – whether to include stacking or not. If the Court
10 accepts Plaintiff’s risk-adjusted trial estimates as articulated above, the Gross Settlement Amount is
11 approximately 39% of the \$383,200.50 calculated exposure [Unpaid Wages (\$109,920) + Meal & Rest
12 Breaks (\$106,150) + Reimbursement Claim (\$101,160) + Inaccurate Wage Statements (\$60,375) +
13 Waiting Time Penalties (\$5,595.50)]. The Gross Settlement Amount compares favorably to the likely
14 recovery of PAGA penalties through continued litigation. MHB Dec., ¶ 38.

15 Defendant’s maximum exposure to PAGA penalties is not a realistic outcome of the litigation
16 because it fails to account for the multiple risks of continued litigation including, but not limited to,
17 Defendant’s defenses. *See, Zayerz v. Kiewit Infrastructure West*, 2018 U.S. Dist. LEXIS 14918, *14
18 (C.D. Cal. January 18, 2018). For instance, Defendant argued that it can only be assessed civil penalties
19 for actual violations of the Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil
20 penalties, Plaintiff would be required to prove the underlying Labor Code violations. (*Cardenas v.*
21 *McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) [“Given the statutory
22 language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not
23 proven suffered a violation of the Labor Code by the defendant.”].) To do this, Plaintiff would need to
24 prove each Aggrieved Employee was subject to the alleged Labor Code violation, which would be
25 difficult to do, since Defendant denies any liability or wrongdoing of any kind associated with the claims
26 alleged in this action. MHB Dec., ¶ 39.

27 Thus, Defendant contended that Plaintiff would be required to “prove Labor Code violations
28 with respect to each and every individual on whose behalf plaintiff seeks to recover civil penalties under

1 PAGA.” *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009). When
2 “determining whether the employer committed Labor Code violations with respect to each employee”
3 is impractical, the PAGA action can be dismissed. *Wesson v. Staples the Off. Superstore*, 2021 WL
4 4099059, *11 (Cal. Ct. App. Sept. 9, 2021). MHB Decl., ¶ 40.

5 Second, Defendants contended that PAGA actions with numerous employees, working primarily
6 out in the field servicing clients, with different schedules, and different types of employees are not
7 manageable and may be dismissed on that basis. *See, Wesson v. Staples the Office Superstore*, (2021)
8 68 Cal.App.5th 746 (holding that courts can dismiss PAGA claims if significant variation exists among
9 aggrieved employees, who have unique factual situations) *see also, Ortiz v. CVS Caremark Corp.* (N.D.
10 Cal. 2014) 2014 U.S. Dist. LEXIS 36833 (dismissing PAGA claim as unmanageable because “a
11 multitude of individualized assessments would be necessary”); *Lifty v. Merrill Lynch & Co.* (C.D. Cal.
12 2014) 2014 U.S. Dist. LEXIS 160448 (striking PAGA claim as unmanageable because “individualized
13 issues predominate in this action” and a “multitude of individualized assessments would be necessary”);
14 *Amiri v. Cox Communs. Cal., LLC* (C.D. Cal.) 272 F.Supp.3d 1187, 1194 (striking PAGA claim as
15 unmanageable). Here, with over 127 aggrieved employees working in different departments and in
16 different types of jobs, out in the field with very little to no supervision, Defendant asserted that
17 Plaintiff’s theories could be and were unmanageable. *Cf. Estrada v. Royalty Carpet Mills, Inc.*,
18 (Cal.App. 4th Dist. March 30, 2022) (disagreeing with *Wesson* and creating a split among the Courts of
19 Appeal on whether manageability is a prerequisite to bringing a PAGA claim). MHB Dec., ¶ 41.

20 Finally, the maximum penalty figure does not consider that courts have complete discretion to
21 “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the
22 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
23 arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). In fact, Courts routinely
24 exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v. Starbucks*
25 *Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per pay period; “Although the
26 trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the
27 circumstances proffered by Starbucks into consideration when it imposed the penalty ... only \$5 per
28 initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th 778, 788 (2018), review granted

1 on other grounds (noting that the trial court “exercised its discretion to reduce the [PAGA] penalties to
2 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of 13 percent
3 of the 30-minute meal period”); *Fleming v. Covidien, Inc.*, 2011 WL 7563047, *4 (C.D. Cal. 2011)
4 (exercising discretion to reduce the maximum amount of PAGA civil penalties for plaintiffs’ section
5 226 claims from \$2,800,000 to \$500,000 because the employees suffered no injuries as a result of the
6 erroneous wage statements and made no complaints about the errors or omissions in the wage
7 statements, thus reducing the maximum penalty by 82%); *see also, Gola v. University of San Francisco*,
8 San Francisco Superior Court Case No. CGC-18-5655018, Proposed Statement of Decision, dated July
9 21, 2020, Judge Curtis A. Karnow of San Francisco Complex (concluding after a full-blown bench trial
10 that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The gross amount
11 obtained by Plaintiff’s Counsel is reasonable in light Defendant’s arguments. Further, the adverse
12 decision in *Wesson* poses very significant, and even fatal, risk to Plaintiff’s case. MHB Dec., ¶¶ 42-43.

13 Defendants’ substantial compliance could also operate to prevent the imposition of PAGA
14 penalties. A corollary of PAGA being an enforcement action is that “substantial compliance with
15 statutory directives will suffice if the purpose of the statute is thereby satisfied.” *Downtown Palo Alto*
16 *v. City Council*, 180 Cal.App.3d 384, 395 (1986); *see also Hernandez v. BCI Coca-Cola Bottling Co.*,
17 2012 WL 12272348, at *8 (C.D. Cal. Apr. 12, 2012), *aff’d*, 554 F. App’x 661 (9th Cir. 2014) (granting
18 defendant’s motion for summary judgment based on defendant’s “substantial compliance” with Labor
19 Code section 226). In this regard, “[t]he paramount consideration is the objective of the statute.” *Id.*
20 “Where there is compliance as to all matters of substance[,] technical deviations are not to be given the
21 stature of noncompliance.” *Cal-Air Conditioning v. Auburn Union School Dist.*, 21 Cal.App.4th 655,
22 668 (1993) (emphasis supplied). “Unless the intent of a statute can only be served by demanding strict
23 compliance with its terms, *substantial compliance* is the governing test.” *County of Tulare v. Campbell*,
24 50 Cal. App. 4th 847, 853 (1996) (emphasis supplied).

25 Given Defendants’ defenses to the claimed Labor Code violations at issue, and the risks and
26 costs of continued litigation, Plaintiff and Plaintiff’s Counsel believe that the Gross Settlement Amount
27 is fair and reasonable. This settlement was negotiated by experienced counsel at arm’s length. MHB
28 Dec., ¶¶ 2-7, 14, 16. The LWDA has been provided notice of this motion and the PAGA settlement, and

1 the decision of LWDA to accept the PAGA settlement and not oppose the motion should be given
2 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and
3 protect its own rights. MHB Dec., ¶¶ 44-45.

4 **C. The Remaining Settlement Terms Are Fair and Reasonable**

5 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
6 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
7 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to
8 class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs to
9 approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
10 herein, the settlement terms for attorneys' fees and costs are reasonable.

11 **V. THE ATTORNEYS' FEES AND EXPENSES ARE FAIR AND REASONABLE**

12 Plaintiff's Counsel seeks approval of Attorneys' Fees in the amount of \$50,000 (one-third of the
13 Gross Settlement Amount) and Attorneys' Expenses of \$12,629.31 for reimbursement of actually
14 incurred litigation expenses. PAGA does not have any requirements for reviewing attorneys' fees, and
15 Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a matter of
16 contract for a contingent representation. Nevertheless, should this Court review the requested attorneys'
17 fees, the requested fees and costs are reasonable for experienced wage and hour counsel.

18 **A. The Requested Attorneys' Fee is Fair and Reasonable**

19 The requested Attorneys' Fee of \$50,000 and reimbursement of Attorneys' Expenses of
20 \$12,629.31 is fair, reasonable, and justified by the result achieved. Agreement at ¶ 16; MHB Dec., ¶¶
21 48-51. Plaintiff's Counsel negotiated a recovery of \$150,000.00, and this result justifies the requested
22 fees equal to one third of this recovery. This percentage is within the standard contingent recovery
23 percentage of one-third, and this percentage is what was expressly approved by the Supreme Court in
24 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At the time this case was brought, the result
25 was far from certain. Defendant's defenses to the merits of the case created difficulties with proof and
26 complex legal issues for Plaintiff's Counsel to overcome. Here, several defenses asserted by Defendant
27 present serious threats to the claims of Plaintiff and the Aggrieved Employees. Defendant asserted that
28 its employment policies and practices complied with all applicable labor laws. If successful, Defendant's

1 factual and legal defenses would eliminate *any recovery* to the Aggrieved Employees. While Plaintiff
2 believes that these defenses could be overcome, Defendant maintains that these defenses have merit and
3 therefore present a serious risk to recovery. The Settlement was possible because, in Plaintiff's
4 Counsel's eyes, Plaintiff's Counsel was able to persuade Defendant that there was an appreciable risk
5 that Plaintiff would prevail on the factual and legal issues underlying liability and overcome difficulties
6 in proof as to monetary relief. MHB Dec., ¶ 42-47.

7 **i. The Lodestar Approach Demonstrates that Class Counsel's Attorneys' Fee**
8 **Request is Fair, Reasonable and Justified Under the Facts of this Case.**

9 The fee award is justified by the work performed. A cross-check of Plaintiff Counsel's lodestar
10 confirms that the fee request here is reasonable. Generally, the Ninth Circuit and California Courts
11 award multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks
12 of the litigation or obtaining good results. *See, e.g., Laffitte*, 1 Cal. 5th at 506 (approving one-third fee
13 award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th
14 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier);
15 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range
16 from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014)
17 (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014
18 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of
19 lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal.
20 Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority"
21 range for risk multipliers).

22 As detailed in Plaintiff's Counsel's time and billing records submitted herewith, Plaintiffs'
23 Counsels' current combined lodestar is \$52,096. MHB Dec., ¶¶49-50, Ex. 6. Here, the lodestar
24 approach supports the conclusion that the fee award sought by Class Counsel is fair and reasonable.

25 California courts and the Ninth Circuit hold that the trial court in determining whether to apply
26 a multiplier should look at the case and its results as a whole. Historically, California courts have
27 approved multipliers of 1.5 to 4. (*See Coalition for Los Angeles County Planning v. Board of*
28 *Supervisors* (1977) 76 Cal. App. 3d 241, 251 [multiplier of 2+]; *Kern River Public Access*

1 *Committee v. City of Bakersfield* (1985) 170 Cal. App. 3d 1205, 1228 [multiplier of 1.5]; *Downey Cares*
2 *v. Downey Community Development Commission* (1987) 196 Cal. App. 3d 983, 994 [multiplier of 1.5];
3 *Sternwest Corp. v. Ash* (1986) 183 Cal. App. 3d 74, 75.)

4 **ii. The Requested Attorney's Fees Were Calculated Using The Common Fund**
5 **Doctrine And Are In Line With Leading Treatises On Awards Calculated**
6 **Using The Common Fund Doctrine**

7 The Common Fund Doctrine is also applicable in the context of Representative Action
8 Settlements. The common fund doctrine provides that, when a number of persons are entitled in
9 common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results
10 in the creation or preservation of that fund, the plaintiff or plaintiffs may be awarded attorney's fees
11 and costs out of the fund. *See Progressive West Ins. Co. v. Superior Court* (2005) 135 Cal.App.4th 263,
12 273; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1. The common fund doctrine is therefore
13 applicable in the context of representative action settlements, as representative action settlements
14 produce a specific fund to which a number of persons are entitled in common and are the product of an
15 action brought by a plaintiff or plaintiffs for the benefit of a group. (*See Petrovic v. Amoco Oil Co.* (8th
16 Cir. 1999) 200 F.3d 1140, 1153.)

17 The Common Fund Doctrine is also favorable in the context of Representative Action
18 Settlements. In *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California
19 Supreme Court recognized that the common fund doctrine has been applied "consistently in California
20 when an action brought by one party creates a fund in which other persons are entitled to share." (*Id.* at
21 p. 110.) In fact, California Courts now routinely use the common fund doctrine to determine the award
22 of attorneys' fees in class and representative actions. *See, e.g., In re Pacific Enterprises Securities City*
23 *and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 [approving attorney's fees
24 of 33 1/3%].

25 California Courts utilize the common fund doctrine because it helps to "spread litigation costs
26 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
27 alone." *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. More specifically, the
28 common fund doctrine seeks to offset those who "expend attorneys' fees in winning a suit which creates

1 a fund from which others derive benefits” by requiring “those passive beneficiaries to bear a fair share
2 of the litigation costs.” *Quinn v. State of California* (1995) 15 Cal.3d 162, 167. Other reasons California
3 Courts do so include: “...fairness to the successful litigant, who might otherwise receive no benefit
4 because her recovery might be consumed by the expenses; correlative prevention of an unfair advantage
5 to the others who are entitled to share in the fund and who should bear their share of the burden of its
6 recovery; and encouragement of the attorney for the successful litigant, who will be more willing to
7 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is
8 assured that he will be properly...compensated should her efforts be successful.” (*Id.*)

9 California Courts also utilize the common fund doctrine in light of the fact that several courts
10 have expressed frustration with the alternative “lodestar” approach for deciding fee awards, as the
11 lodestar approach usually involves wading through voluminous and often indecipherable time records.
12 Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision*
13 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp.1373: “This court is compelled to ask, ‘Is this process
14 necessary?’ Under a cost-benefit analysis, the answer would be a resounding, ‘No!’ Not only do the
15 Lindy Kerr-Johnson analyses consume an undue amount of court time with little resulting advantage
16 to anyone, but in fact, it may be to the detriment of the Class Members.”

17 In contrast to the loadstar approach, the common fund doctrine aligns with the interests of PAGA
18 Counsel; encourages efficient resolution of the litigation by providing an incentive for early, yet
19 reasonable, settlement; and reduces the demands on judicial resources—thus making it preferable to
20 the lodestar approach. *Id.* at pp. 1378-79.

21 The requested attorney’s fees are in line with leading treatises on awards calculated using the
22 Common Fund Doctrine. The requested Attorneys’ Fees are in line with leading treatises, which concur
23 that “[n]o general rule can be articulated on what is a reasonable percentage of a common fund. Usually,
24 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure
25 that the fees do not consume a disproportionate part of the recovery obtained for the class, although
26 somewhat larger percentages are not unprecedented.” *See Conte & Newberg, Newberg on Class Actions*
27 (3rd Ed.) § 14.03.) Thus, attorneys’ fees that are fifty percent of the fund are typically considered the
28 upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively

1 small. *Id.*; see also *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294
2 [stating that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under
3 \$10 million].)

4 In this case, the requested Attorneys’ Fees equal 33-1/3% of the Gross Settlement Amount,
5 which is in line with prevailing guidelines established in California case law and academic literature
6 and consistent with prior awards in California. See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43,
7 66, n.11 [“Empirical studies show that, regardless of whether the percentage method or the lodestar
8 method is used, fee awards in class actions average around one-third of the recovery.”].)

9 **a. The Requested Attorneys’ Fees Comport With The Fee-Shifting**
10 **Provision Set Out Under Labor Code Sections 2698, Et Seq.**

11 Here, the PAGA claim arose under Labor Code sections 2698, et seq. Labor Code sections 2698,
12 et seq. provide that “any employee who prevails in any action [thereunder] shall be entitled to an award
13 of reasonable attorneys’ fees and [litigation] costs. (Cal. Lab. Code § 2699(g).) This fee-shifting
14 provision reflects the understanding that PAGA Counsel must accept significant risk of substantial
15 expenses and consumption of time, energy, and other resources in litigating a PAGA claim, and thus,
16 that it is reasonable for PAGA Counsel to recover reasonable attorneys’ fees and costs if successful in
17 litigating a PAGA claim.

18 In this case, the prosecution of the action involved significant financial risk for PAGA Counsel,
19 as they undertook this matter solely on a contingency basis, with no guarantee of recovery. (Boyamian
20 Decl., ¶¶ 36-39.) The Attorneys’ Fees therefore comport with the fee-shifting provision set out under
21 Labor Code sections 2698, et seq.

22 **b. The Requested Attorney’s Fees Reflect PAGA Counsel’s Significant**
23 **Experience, Reputation, and Ability In Representative Action**
24 **Settlements**

25 The experience, reputation, and ability of PAGA Counsel supports the requested Attorneys’
26 Fees. PAGA Counsel has significant and specific experience in pursuing, as well as litigating, class
27 and representative actions on behalf of employees. (MHB Decl., ¶¶ 2-8.) Moreover, PAGA Counsel
28 has been involved as lead or co-counsel in a multitude of class and representative actions resulting in

1 beneficial results to Class and PAGA Members in California. *Id.* This experience has familiarized
2 PAGA Counsel with this rapidly evolving area of law. In particular, it has familiarized PAGA Counsel
3 with the state and federal, and substantive and procedural, law of wage and hour litigation such that
4 PAGA Counsel possess significant expertise in this narrow field. Because attorneys' fees are awarded
5 with regard to and commensurate with the experience, reputation, and skill of PAGA Counsel, PAGA
6 Counsel's requested fee award is supported here.

7 **B. Plaintiff's Counsel Are Entitled to Reimbursement of Actual and Reasonably Incurred**
8 **Litigation Costs.**

9 Attorneys who create a common fund for the benefit of a class are entitled to payment from the
10 fund of reasonable litigation expenses and costs. Common fund fee and expense awards include
11 counsel's incurred expenses because those who benefit from their effort should share in the cost. *See*
12 *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in
13 deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to
14 paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also*
15 *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation
16 costs for consultants, online legal research, copying, postage, long distance charges, travel expenses,
17 filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this motion,
18 Plaintiffs' Counsel expended \$12,629.31 prosecuting this action. MHB Decl. ¶ 47, Exh. 4. Plaintiff's
19 Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients
20 including the following: filing fees; copying; postage; factual and legal research charges; mediation
21 fees; and expert costs which were all incurred during, and were necessary for the successful prosecution
22 of, the litigation and, therefore, should be reimbursed. *Id.*

23 **C. The Payment To The Named Plaintiff for His Services To The State of California and**
24 **For His General Release Are Reasonable and Routinely Awarded by Courts**

25 In addition to releasing a broader and more comprehensive release of his individual wage and
26 hour and employment claims against Defendant – and above and beyond what Aggrieved Employees
27 are releasing as part of this settlement (Settlement at ¶ 18), Plaintiff, as the named PAGA
28 Representative, seeks an enhancement or service award of \$5,000. *Id.* at ¶ 17. PAGA Counsel is of the

1 opinion that the enhancement award for Plaintiff is reasonable and proper and supported by the
2 particular circumstances of this case and the applicable case law. Defendant does not oppose this
3 request.

4 Courts have long acknowledged that active litigants are entitled to be compensated for bearing
5 the risk and time to represent others. *Lo Re v. Chase Manhattan Corp.* (S.D.N.Y. 1979) 19 F.E.P. Cas.
6 (BNA) 1366). Similar to PAGA representatives, where class representatives are provided with special
7 compensation as part of a class or representative settlement, the Court should ensure that it is fair and
8 reasonable. However, “[i]t is the complete package, taken as a whole, rather than the individual
9 component parts, that must be examined.” *Officers for Justice v. Civil Service Commission of San*
10 *Francisco* (9th Cir. 1982) 688 F.2d 615, 628. Because PAGA is a “type of qui tam action,” it is
11 appropriate for the Plaintiff to receive a modest additional payment from the settlement as a “bounty”
12 for his special effort in vindicating the State’s interests by enforcing its labor laws. *See Iskanian*, 59 Cal.
13 4th at 382 (“A PAGA representative action is therefore a type of qui tam action.”); *see also People ex*
14 *rel. Strathmann v. Acacia Research Corp.*, 210 Cal. App. 4th 487, 500 (2012) (“The person who brings
15 the qui tam action, called the ‘relator,’ stands in the shoes of the People of the State of California, who
16 are deemed to be the real party in interest . . . The relator in a qui tam action under section 1871.7 does
17 not personally recover damages but, if successful, receives [a portion] of the recovery as a bounty.”)
18 (internal citations omitted).

19 Such a payment incentivizes employees to step forward to enforce the Labor Code. *See MMM*
20 *Holdings, Inc. v. Reich*, 21 Cal. App. 5th 167, 180 (2018) (“The bounty advances the public purpose
21 and benefit by encouraging private qui tam actions; indeed, this prospect of reward may be the only
22 means of inducing such private parties to come forward with their information.”) (internal quotations
23 omitted). This is especially important in this context, as “the lack of government resources to enforce
24 the Labor Code led to a legislative choice to deputize and incentivize employees uniquely positioned
25 to detect and prosecute such violations through the PAGA.” *Iskanian*, 59 Cal. 4th at 390. Absent the
26 incentive payment, fewer employees would be willing to step forward, and PAGA’s primary purpose—
27 enforcement of the Labor Code—would be substantially undermined.

28 Such awards are justified when the representatives risk retaliation as a result of their

1 participation. *See, e.g., Ingram v. Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694. Specifically
2 in the context of employment-related cases, many courts have recognized that a class representative
3 “lends his or her name and efforts to the prosecution of litigation at some personal peril.” *Sheppard*,
4 2002 U.S. Dist. LEXIS at *17 [citing *Roberts v. Texaco, Inc.* (S.D.N.Y. 1997) 979 F. Supp. 185, 200]).

5 Indeed, retaliation extends outside the immediate workplace. It is common knowledge that the
6 modern-day workforce is quite mobile, with employees holding several jobs in a career during their
7 lifetime. It is also true that prospective employers in this computer age “Google” and/or do extensive
8 background checks and have access to court databases to see if applicants have ever filed a lawsuit or
9 ever have been sued. The Class Representative cost his former employer a substantial sum of money
10 in this case. Such conduct will not be lost on a prospective employer who has to choose between an
11 applicant who has sued an employer and one that has not. The enhancement requested herein far from
12 compensates the PAGA Representative for the opportunities he may lose in the future. (Declaration of
13 Christopher Luna Rodriguez (“Rodriguez Decl.”) ¶¶ 2, 5, 10. Indeed, Plaintiff feels that any future,
14 prospective employer will treat him differently since stepping forward to participate in the lawsuit. *Id.*
15 *See Billingshausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267-68 (N.D. Cal. 2015) (finding “personal
16 detriment” upon testimony that future employers can easily learn that a prospective employee served
17 as a plaintiff through the internet); *see also Guippone v. BH S&B Holdings LLC*, No. 09 Civ. 1029,
18 2011 U.S. Dist. LEXIS 126026, at **4, 20 (S.D.N.Y. Oct. 28, 2011) (“[T]he fact that a plaintiff has
19 filed a federal lawsuit is searchable on the internet and may become known to prospective employers
20 when evaluating the person . . . Even where there is not a record of actual retaliation, notoriety, or
21 personal difficulties, [representative Plaintiffs] merit recognition for assuming the risk of such for the
22 sake of absent [parties].”). By bringing this action against an employer, Plaintiff has assumed
23 considerable reputational risk that may impact his ability to find employment in the future. *La Fleur v.*
24 *Medical Management Intern, Inc.*, No. 13-00398-VAP, 2014 WL 2967475, *8 (C.D. Cal. June 25,
25 2014) (awarding \$15,000 to each named plaintiff in part for attesting to their fear that the lawsuit will
26 harm their future job prospects in the industry).

27 The PAGA Representative also risked having potential judgments entered against him. In fact,
28 several judgments against class representatives have been entered. *See, e.g., Koehl v. Verio, Inc.* (2006)

1 142 Cal. App. 41th 1313, 1328 [a wage and hour class action where Defendant prevailed at trial and
2 the named plaintiffs were held liable, jointly and severally, for the Defendants' attorney fees];
3 *Whiteway v. Fedex Kinkos Office & Print Services, Inc.* (N.D. Cal. 1997) 2007 U.S. Dist. LEXIS 95398
4 (cost award of \$56,788 was entered against the Named Plaintiff after the Court granted Summary
5 Judgment in a misclassification case)].

6 The enhancement award being sought here is also justified by the level of participation of the
7 PAGA Representative. (Boyamian Decl., ¶¶ 42-45.) Even prior to the initiation of this lawsuit, the
8 Representative Plaintiff extensively communicated with his counsel about issues related to the case,
9 and attended in-person meetings. *Id.* The Representative Plaintiff was invaluable in helping Class
10 Counsel understand Defendant's compensation practices, the nature of Defendant's operations, and the
11 policies and procedures with respect to meal and rest periods. *Id.* In addition, the Representative
12 Plaintiff frequently communicated with other members of the PAGA Group about issues related to the
13 case and relayed this information to counsel. (Rodriguez Decl., ¶¶ 3-5, 9). In total, the Class
14 Representatives spent approximately 20-25 hours on this case. (Rodriguez Decl., ¶¶ 3-5, 9)

15 VII. CONCLUSION

16 As shown herein, the PAGA Settlement Agreement is fair, adequate, and reasonable, as it
17 represents a reasoned compromise obtained through arms-length negotiations. For all the reasons set
18 forth above, Plaintiff respectfully requests that this Court, as set forth in the Proposed Order Approving
19 Settlement, do the following:

- 20 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
21 2699, subpart I;
- 22 2. Appoint Simpluris Class Action Administration as the Settlement Administrator and
23 approve payment of \$2,750 from the Settlement Sum;
- 24 3. Direct disbursement of the Settlement Sum pursuant to the terms of the Settlement
25 Agreement;
- 26 4. Approve the award of attorneys' fees to Plaintiff's Counsel in the amount not to exceed
27 \$50,000, payment of which shall come from the Settlement Sum;
- 28 5. Approve the reimbursement of costs to Plaintiff's Counsel in the amount of \$12,629.31

1 which shall come from the Settlement Sum; and

2 6. Approve the Service Award to Plaintiff of \$5,000 along with his General Release
3 Payment.

4 Dated: February 26, 2025

Respectfully submitted,

5 **BOYAMIAN LAW, INC.**

6
7 By: 

8 Michael H. Boyamian
9 Attorneys for Plaintiff, CHRISTOPHER LUNA
10 RODRIGUEZ, Other Aggrieved Employees, and
11 the General Public
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