

Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
Jared C. Osborne (State Bar No. 335968)
josborne@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiffs DAMON SILER and
ARISTOTLE DELPILAR, individually, and
on behalf of Aggrieved Employees pursuant
to the California Private Attorneys General Act

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

DAMON SILER and ARISTOTLE DELPILAR,
individually, and on behalf of Aggrieved
Employees pursuant to the California Private
Attorneys General Act,

Plaintiffs,

vs.

CALL-THE-CAR dba CALL THE CAR, a
California Corporation; CALL-THE-CAR, LLC
dba CALL THE CAR, a California Limited
Liability Company; and DOES 1 through 25,
inclusive,

Defendants.

Case No. 24STCV07514

Honorable David S. Cunningham
Department SS11

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT
AND AWARD OF PAGA COUNSEL FEES
PAYMENT, PAGA COUNSEL
LITIGATION EXPENSES PAYMENT,
REPRESENTATIVE ENHANCEMENT
PAYMENT, AND ADMINISTRATION
EXPENSES PAYMENT**

Date: September 5, 2025
Time: 11:00 a.m.
Department: 11

Complaint Filed: March 25, 2024
FAC Filed: August 16, 2024
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE THAT** on September 5, 2025 at 11:00 a.m. in Department 11 of
3 the above-captioned Court located at Spring Street Courthouse, 312 North Spring Street, Los Angeles,
4 California 90012, Plaintiffs Damon Siler and Aristotle Delpilar (together, “Plaintiffs”) will and hereby
5 do move the Court for an Order granting approval of the California Labor Code Private Attorneys
6 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) settlement. Specifically,
7 Plaintiffs request that the Court enter an Order:

- 8 1. Granting approval pursuant to California Labor Code section 2699(1)(2) of the Settlement
9 Agreement and Release of PAGA Claim (“Agreement”) attached as **Exhibit 3** to the
10 Declaration of Alexandra Rose in Support of Plaintiffs’ PAGA Settlement and Award of
11 PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment,
12 Representative Enhancement Payment, and Administration Expenses Payment (“Rose
13 Decl.”);
- 14 2. Directing the distribution of the Gross Settlement Amount of Four Hundred Seventy-Five
15 Thousand Dollars and Zero Cents (\$475,000.00) pursuant to the terms of the Agreement;
- 16 3. Approving the Net Settlement Amount, estimated to be Two Hundred Eighty-Two
17 Thousand Five Hundred Thirty-Nine Dollars and Fifty-Eight Cents (\$282,539.58), of
18 which seventy-five percent (75%) will be distributed to the California Labor and
19 Workforce Development Agency (“LWDA”) and twenty-five percent (25%) of which will
20 be distributed to the Aggrieved Employees;
- 21 4. Approving an award of reasonable attorneys’ fees of one-third of the Gross Settlement
22 Amount (i.e., \$158,333.33) to PAGA Counsel;
- 23 5. Approving the amount of Fourteen Thousand One Hundred Twenty-Seven Dollars and
24 Nine Cents (\$14,127.09) to PAGA Counsel for reimbursement of actual litigation costs
25 and expenses pursuant to California Labor Code section 2699(g)(1);
- 26 6. Approving the award of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff
27 Damon Siler as a Representative Enhancement Payment;
7. Appointing ILYM Group, Inc. as the Administrator; and

8. Approving an award of *up to* Ten Thousand Dollars and Zero Cents (\$10,000.00) in anticipated costs to ILYM Group, Inc. for its settlement administration services.

In accordance with California Labor Code sections 2699 *et. seq.*, a copy of the proposed Agreement was submitted to the LWDA via online submission through the LWDA's website on May 27, 2025. (Rose Decl., ¶ 16 & Exh. 4).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Alexandra Rose, Plaintiff Damon Siler, Plaintiff Aristotle Delpilar, and the Administrator (Lisa Mullins of ILYM Group, Inc.), the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: June 5, 2025

BLACKSTONE LAW, APC

By:

Alexandra Rose
Attorneys for Plaintiffs

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	2
III.	THE SETTLEMENT TERMS	5
A.	Definition of the Aggrieved Employees	5
B.	Amount of Settlement	5
C.	Allocation and Funding of the Gross Settlement Amount	5
IV.	STANDARD FOR APPROVAL OF PAGA SETTLEMENT	7
V.	THE AGREEMENT IS FAIR AND SHOULD BE APPROVED	9
A.	The Agreement is Presumed to Be Fair	9
B.	The Agreement is Fair, Adequate, and Reasonable in Light of the Parties’ Respective Legal Positions and Recovery Risks.....	9
1.	Strength of Plaintiffs’ Case	10
2.	Risk, Expense, Complexity, and Likely Duration of Further Litigation	12
3.	The Benefits Conferred by the Agreement Balance in Favor of Approval	12
4.	The Scope of the Release is Narrowly Tailored.....	14
5.	Experience and Views of Counsel Favor Approval	14
6.	The Extent of Discovery and Stage of Proceedings Favor Approval	15
VI.	THE REQUESTED PAGA COUNSEL FEES PAYMENT IS FAIR AND REASONABLE	15
VII.	THE REQUESTED COST AWARD IS FAIR AND REASONABLE	18
VIII.	THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE	18
IX.	THE REQUESTED REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND REASONABLE	19
X.	CONCLUSION.....	20

TABLE OF AUTHORITIES

Cases

<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.</i> , 46 Cal.4th 993 (2009).....	8
<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	11
<i>Arias v. Sup. Ct.</i> , 46 Cal.4th 969 (2009)	8
<i>Arias</i> , 46 Cal. 4th, at 987	14
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> 480 F.Supp. 1195 (S.D.N.Y. 1979).....	17
<i>Bell v. Farmers Ins. Exch.</i> , 115 Cal.App.4th 715, 726 (2004).....	19
<i>Bernstein v. Virgin Am., Inc.</i> , 3 F.4th 1127, 1144 (9th Cir. 2021).....	11
<i>Casida v. Sears Holdings Corp.</i> , 2012 U.S. Dist. LEXIS 9302 (E.D. Cal. Jan. 25, 2012).....	7
<i>Chu v. Wells Fargo Investments, LLC</i> , 2011 U.S. Dist. LEXIS 15821 (N.D. Cal. Feb. 15, 2011)	14
<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448, 455 & n.2 (2nd Cir. 1974).....	12
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	9, 19
<i>Consumer Privacy Cases</i> , 175 Cal.App.4th 545 (2009)	17
<i>DCH Auto Wage and Hour Cases</i> , Los Angeles Superior Court, Case No. JCCP4833	13
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169 (C.D. Cal. 2008)	10
<i>Franco v. Ruiz Food Prods.</i> , 2012 U.S. Dist. LEXIS 169057 (E.D. Cal. Nov. 27, 2021)	14
<i>Garcia v. Gordon Trucking, Inc.</i> , 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. Oct. 29, 2012)	13
<i>In re Ampicillin Antitrust Litig.</i> , 526 F.Supp. 494 (D.D.C. 1981)	17
<i>In re Bluetooth Headset Prods. Liab. Litig.</i> , 654 F.3d 935, 942 (9th Cir. 2011).....	16
<i>In re TD Ameritrade Account Holder Litig.</i> , 2011 U.S. Dist. LEXIS 103222 (N.D. Cal. Sep. 12, 2011)	7
<i>Ketchum v. Moses</i> , 24 Cal.4th 1122 (2001)	16
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	10
<i>Laffitte v. Robert Half Int'l, Inc.</i> , 1 Cal.5th 480 (2016).....	16, 17
<i>Lealao v. Beneficial Cal., Inc.</i> , 82 Cal.App.4th 19 (2000)	16, 17
<i>Linney</i> , 151 F.3d at 1239.....	15
<i>Mallick v. Sup. Ct.</i> , 89 Cal.App.3d 434 (1979).....	9
<i>Maria P. v. Riles</i> , 43 Cal.3d 1281 (1987)	15

1	<i>Mendez v. Tween Brands, Inc.</i> , 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010)	8
2	<i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i> , 2010 U.S. Dist. LEXIS 32774 (Apr. 2, 2010).....	8
3	<i>Officers for Justice v. Civil Service Com.</i> , 688 F.2d 615 (9th Cir. 1982)	7, 12
4	<i>Sandoval v. Roadlink United States Pac., Inc.</i> , 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal. Nov.	
5	9, 2011)	15
6	<i>Schiller v. David’s Bridal, Inc.</i> , 2012 U.S. Dist. LEXIS 80776 (E.D. Cal. June 11, 2012).....	14
7	<i>Serrano v. Priest</i> , 20 Cal.3d 25 (1977)	15
8	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112 (2012)	11
9	<i>Westside Community for Independent Living, Inc. v. Obledo</i> , 33 Cal.3d 348 (1983).....	15
10	<i>Williams v. Superior Court</i> , 3 Cal. 5th 531 (2017)	14
11	Statutes	
12	Cal. Code Civ. Proc. § 1021.5.....	15
13	Cal. Code Civ. Proc. § 382.....	7
14	California Labor Code sections 2698, <i>et seq.</i>	vi, 1
15	Labor Code (“Lab. Code”) § 2699(l)	7, 13
16	Labor Code §§ 2698 <i>et seq</i>	14
17	Other Authorities	
18	Weil and Brown, California Practice Guide, <i>Civil Procedure Before Trial</i>	17
19	Rules	
20	California Rules of Court Rule 3.769	7, 8

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Labor Code Private Attorneys General Act, California Labor Code
4 sections 2698, *et seq.* (“PAGA”), Plaintiff Damon Siler (“Plaintiff Siler”) and Plaintiff Aristotle
5 Delpilar (“Plaintiff Delpilar”) (together, “Plaintiffs”) seek approval of the Settlement Agreement and
6 Release of PAGA Claims (“Settlement,” “Settlement Agreement,” or “Agreement”) entered into with
7 Defendant Call-The-Car *dba* Call the Car (“Defendant”) (collectively, with Plaintiffs, the “Parties”),
8 which is attached as Exhibit 3 to the Declaration of Alexandra Rose in Support of Plaintiffs’ Motion
9 for Approval of PAGA Settlement and Award of PAGA Counsel Fees Payment, PAGA Counsel
10 Litigation Expenses Payment, Representative Enhancement Payment, and Administration Expenses
11 Payment (“Rose Decl.”). The Agreement terms are outlined as follows:

- 12 • Gross Settlement Amount: Four Hundred Seventy-Five Thousand Dollars and Zero Cents
13 (\$475,000.00).
- 14 • PAGA Counsel Fees Payment: One-third (1/3) of the Gross Settlement Amount (i.e.,
15 \$158,333.33), to be paid from the Gross Settlement Amount.
- 16 • PAGA Counsel Litigation Expenses Payment: Fourteen Thousand One Hundred Twenty-
17 Seven Dollars and Nine Cents (\$14,127.09), to be paid from the Gross Settlement
18 Amount.
- 19 • Representative Enhancement Payment: Ten Thousand Dollars and Zero Cents
20 (\$10,000.00) to Plaintiff Siler, to be paid from the Gross Settlement Amount.
- 21 • Administration Expenses Payment: Up to Ten Thousand Dollars and Zero Cents
22 (\$10,000.00), to be paid from the Gross Settlement Amount.
- 23 • Estimated Net Settlement Amount: Two Hundred Eighty-Two Thousand Five Hundred
24 Thirty-Nine Dollars and Fifty-Eight Cents (\$282,539.58), of which 75% (\$211,904.68)
25 will be paid to the California Labor and Workforce Development Agency (“LWDA”) and
26 the remaining 25% (\$70,634.90) will be paid to the Aggrieved Employees.

27 As set forth herein, the Agreement is the product of informed discovery, arms-length
28 negotiations, and provides a fair, adequate, and reasonable recovery for the State of California and
Aggrieved Employees. Plaintiffs therefore respectfully request that the Court grant approval of the

1 proposed Agreement, among other requested relief.

2 II. FACTUAL AND PROCEDURAL BACKGROUND

3 Defendant provides non-emergency medical transportation services in Southern California.
4 (Rose Decl., ¶ 2). Defendant employed Plaintiff Siler as an hourly-paid, non-exempt Driver from
5 approximately January 2023 through August 2023. (Rose Decl., ¶ 2; Declaration of Damon Siler in
6 Support of Motion for Approval of PAGA Settlement and Award of PAGA Counsel Fees Payment,
7 PAGA Counsel Litigation Expenses Payment, Representative Enhancement Payment, Administration
8 Expenses Payment [“Siler Decl.”], ¶ 2). Defendant employed Plaintiff Delpilar as an hourly-paid,
9 non-exempt Customer Service Representative from approximately June 2023 through November
10 2024. (Rose Decl., ¶ 2; Declaration of Aristotle Delpilar in Support of Motion for Approval of PAGA
11 Settlement and Award of PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses
12 Payment, Representative Enhancement Payment, Administration Expenses Payment [“Delpilar
13 Decl.”], ¶ 2).

14 On January 18, 2024, Plaintiff Siler provided written notice by electronic submission to the
15 LWDA and by U.S. Certified Mail to Defendant, pursuant to California Labor Code § 2699.3, of the
16 specific provisions of the California Labor Code alleged to have been violated by Defendant. (*Id.*, ¶
17 3 and Exh. 1).

18 On January 25, 2024, Plaintiff Siler filed a Class Action Complaint in the action entitled
19 *Damon Siler v. Call-The-Car dba Call the Car, et al.*, Los Angeles County Superior Court Case No.
20 24STCV02074 (“Class Action”), thereby commencing a putative class action against Defendant and
21 Call-the-Car, LLC dba Call The Car. (*Id.*, ¶ 4).

22 On March 25, 2024, Plaintiff Siler filed a Complaint for Enforcement Action Under the Private
23 Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq.* in the action entitled *Damon Siler v. Call-*
24 *The-Car dba Call the Car, et al.*, Los Angeles County Superior Court Case No. 24STCV07514
25 (“Action”), thereby commencing a PAGA representative action against Defendant and Call-the-Car,
LLC dba Call The Car. (*Id.*, ¶ 5).

26 On May 8, 2024, pursuant to Plaintiff Siler’s request, the Court dismissed Call The-Car, LLC
27 dba Call The Car without prejudice from the Class Action. (*Id.*, ¶ 6).

1 On May 20, 2024, pursuant to Plaintiff Siler’s request, the Court dismissed Call-The-Car, LLC
2 dba Call The Car without prejudice from the Action. (*Id.*, ¶ 7).

3 On May 30, 2024, Plaintiffs submitted an amended written notice by electronic submission to
4 the LWDA and by U.S. Certified Mail to Defendant, pursuant to California Labor Code § 2699.3, of
5 the specific provisions of the California Labor Code alleged to have been violated by Defendant. (*Id.*,
6 ¶ 8 and Exh. 2).

7 On August 16, 2024, Plaintiffs filed a First Amended Complaint for Enforcement Action Under
8 the Private Attorneys General Act, Cal. Labor Code §§ 2698 *et. seq.* (“Operative Complaint”) in the
9 Action, which added Plaintiff Delpilar as a named PAGA representative. (*Id.*, ¶ 9). The Operative
10 Complaint alleges PAGA penalties against Defendant for violations of the California Labor Code for
11 failure to pay for all time worked at correct rates of pay, including minimum wages, straight time
12 wages, and overtime compensation; meal break violations; rest break violations; failure to timely pay
13 wages during employment; failure to provide accurate itemized wage statements; failure to maintain
14 accurate records; failure to reimburse necessary business expenditures; and failure to timely pay all
15 wages upon termination; and engaged in other conduct that resulted in violations of the California
16 Labor Code, including but not limited to, violations of California Labor Code sections 201, 202, 203,
17 204, 226, 226(a), 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 2800, and 2802,
18 as well as violations of the applicable Industrial Welfare Commission Wage Order. (*Ibid.*).

19 On January 23, 2025, the Parties participated in an all-day mediation presided over by Hon.
20 Carl J. West (Ret.) (“Mediator”), a neutral and respected mediator with extensive experience in
21 complex wage and hour matters, and with the assistance of the Mediator’s evaluations, the Parties
22 were able to reach an agreement to resolve this dispute on a representative basis. (*Id.*, ¶ 10). The
23 Parties then worked diligently to negotiate and memorialize the terms in a long form settlement
24 agreement. (*Ibid.*).

25 On May 15, 2025, the Parties executed the Settlement Agreement. (*Id.*, ¶ 11 and Exh. 3).

26 During the course of informal discovery in the Action, PAGA Counsel conducted an intense
27 investigation into the facts of the Action. (*Id.*, ¶ 12). This included obtaining data, information, and
documents relating to the underlying alleged violations, including, but not limited to, Plaintiffs’

1 employee file, a sampling of the Aggrieved Employees’ time and payroll records for three months out
2 of each year from January 25, 2020 to the date of mediation, relevant wage and hour policies, and
3 Aggrieved Employees’ data points so that Plaintiffs could assess the number of alleged potential
4 violations and value of the recoverable penalties, as well as evaluate the strengths and weaknesses of
5 their claims. (Ibid). Additionally, for validation purposes, and in addition to what Defendant produced
6 prior to mediation, Defendant produced a random sampling of 25% of the time and payroll records of
7 the Aggrieved Employees for four months out of each year of the PAGA Period after mediation.
8 (Ibid). Further, Defendant confirmed that 92.9% of the putative class members signed enforceable
9 arbitration agreements with class action waivers, which is why this matter settled on a representative
10 basis. (Ibid).

11 Based on the data, information, and documents received, as well as thorough discussions with
12 Defendant’s counsel, PAGA Counsel was able to (i) determine the total number of distinct individuals
13 falling within the definition of “Aggrieved Employees” for the relevant statutory period, (ii) the
14 number of affected pay periods at issue among them, and (iii) construct a damages model that
15 calculated the maximum realistic amount of PAGA penalties that could be levied against Defendant
16 within the relevant statutory period. (*Id.*, ¶ 13). Defendant, however, disputed Plaintiffs’ claims and
17 disputed both the existence of and extent of liability as alleged by Plaintiffs, which allowed PAGA
18 Counsel to further assess the strength of Plaintiffs’ claims. (Ibid). PAGA Counsel’s experience in
19 litigating similar representative wage and hour claims, the degree of investigation that was conducted
20 here, and the amount of data, information, and documents that was obtained, was sufficient to
21 determine the potential value of the PAGA claims, and to evaluate the strength of these claims for
22 purposes of settlement. (Ibid).

23 The Parties believe the Agreement is fair, reasonable, and adequate. (*Id.*, ¶ 14). The Parties
24 understand, acknowledge, and agree that the Agreement constitutes a compromise of Plaintiffs’ PAGA
25 claims, and that it is the desire and intention of the Parties to affect a final and complete resolution of
the Action. (Ibid).

///

26 ///

Defendant denies all of the claims in the Action, and does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural, and factual grounds should the Agreement not become final. (*Id.*, ¶ 15). The Agreement reflects a compromise reached to end litigation in the Action. (*Ibid.*). Following significant investigation and extensive settlement negotiations, Plaintiffs now seek approval of the proposed Agreement, which will resolve all representative claims alleged in the Action. (*Ibid.*).

III. THE SETTLEMENT TERMS

A. Definition of the Aggrieved Employees

For purposes of settlement only, the Parties have agreed that the “Aggrieved Employees” shall be defined as “all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period.” (Rose Decl., ¶ 17; Settlement Agreement, ¶ I.4). The “PAGA Period” is the period from January 18, 2023 through January 31, 2025. (Rose Decl., ¶ 17; Settlement Agreement, ¶ I.20). There are approximately Five Hundred Forty-Two (542) Aggrieved Employees. (Rose Decl., ¶ 17)

B. Amount of Settlement

The Parties have agreed to settle the PAGA claims at issue in the Action for a non-reversionary Gross Settlement Amount of Four Hundred Seventy-Five Dollars and Zero Cents (\$475,000.00). (Rose Decl., ¶ 17; Settlement Agreement, ¶ I.11).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Rose Decl., ¶ 18). The Gross Settlement Amount includes: (1) PAGA Counsel’s fee award in the amount up to one-third (1/3) of the Gross Settlement Amount, equaling One Hundred Fifty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$158,333.33); (2) PAGA Counsel’s actual litigation costs and expenses in the amount Fourteen Thousand One Hundred Twenty-Seven Dollars and Nine Cents (\$14,127.09); (3) Representative Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00); and (4) Administration Expenses Payment, not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00). (Rose Decl., ¶ 18; Settlement Agreement, ¶¶ 3.2-3.3.3).

1 After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net
2 Settlement Amount will amount to approximately Two Hundred Eighty-Two Thousand Five Hundred
3 Thirty-Nine Dollars and Fifty-Eight Cents (\$282,539.58), of which seventy-five percent (75%), or
4 Two Hundred Eleven Thousand Nine Hundred Four Dollars and Sixty-Eight Cents (\$211,904.68), will
5 be paid to the LWDA (“LWDA PAGA Payment”), and twenty-five percent (25%), or Seventy
6 Thousand Six Hundred Thirty-Four Dollars and Ninety Cents (\$70,634.90). (Rose Decl., ¶ 19;
7 Settlement Agreement ¶ 3.3.4).

8 Within ten (10) business days after entry of the Judgment, Defendant will deliver to the
9 Administrator a list of the following information for each Aggrieved Employee: (1) full name; (2) last-
10 known mailing address; (3) Social Security number; (4) dates worked during the PAGA Period; (5)
11 and payroll schedules (collectively, “Aggrieved Employee Data”). (Rose Decl., ¶ 20; Settlement
12 Agreement, ¶¶ 1.5 and 4.1).

13 Within twenty (20) business days after entry of the Judgment, Defendant will fully fund the
14 Gross Settlement Amount by transmitting the funds to the Administrator. (Rose Decl., ¶ 22;
15 Settlement Agreement, ¶ 4.2).

16 Within ten (10) business days after Defendant funds the Gross Settlement Amount, the
17 Administrator will distribute the Individual PAGA Payments, Representative Enhancement Payment,
18 LWDA PAGA Payment, Administration Expenses Payment, PAGA Counsel Fees Payment, and
19 PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees Payment
20 and PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA
21 Payments. (Rose Decl., ¶ 22; Settlement Agreement, ¶ 4.3).

22 Aggrieved Employees must negotiate, cash, or deposit their Individual PAGA Payment checks
23 within one hundred and eighty (180) calendar days after the checks are mailed to them. (Rose Decl.,
24 ¶ 23; Settlement Agreement, ¶¶ 4.3.1 and 4.3.3). After the 180-day deadline, the checks will be
25 canceled and any funds associated with such canceled checks shall be transmitted by the Administrator
to the California Controller’s Office Unclaimed Property Fund in the name of the Aggrieved
Employee(s) at issue and in the amount of their respective Individual PAGA Payment(s). (Ibid).

26 ///

1 Defendant has represented that there are approximately 12,932 pay periods during the period
2 January 18, 2023 through November 27, 2024. (Rose Decl., ¶ 24; Settlement Agreement, ¶ 8). If the
3 actual number of PAGA Pay Periods in the PAGA Period increases by more than ten percent (10%),
4 the Gross Settlement Amount will increase proportionally by the percentage increase over ten percent
5 (10%). (Rose Decl., ¶ 24; Settlement Agreement, ¶ 8). For example, if the number of PAGA Pay
6 Periods increases by eleven percent (11%) (i.e., 14,355 PAGA Pay Periods), then the Gross Settlement
7 Amount will increase by one percent (1%). (Rose Decl., ¶ 24; Settlement Agreement, ¶ 8).

8 **IV. STANDARD FOR APPROVAL OF PAGA SETTLEMENT**

9 The settlement of a PAGA claim requires court approval. (California Labor Code (“Lab.
10 Code”) § 2699(l)). The Court must be mindful that a “[s]ettlement is a compromise, which balances
11 the possible recovery against the risks inherent in litigating further.” (*In re TD Ameritrade Account*
12 *Holder Litig.*, 2011 U.S. Dist. LEXIS 103222 at *24 (N.D. Cal. Sep. 12, 2011)). “[T]he very essence
13 of a settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes,’” as “it is the very
14 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
15 consensual settlements.” (*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-26 (9th Cir.
16 1982)). As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial
17 on the merits,” or “judged against a hypothetical or speculative measure of what might have been
18 achieved.” (Ibid).

19 Although the California Labor Code does not set forth the criteria by which a PAGA settlement
20 is to be evaluated, it is presumed that a reviewing court may take into consideration some of the factors
21 that courts use when reviewing a class action settlement. However, “a PAGA claim asserted on a non-
22 class representative basis...is not considered a class action but a law enforcement action, and therefore
23 does not have to meet the requirements of [a class action].” (*Casida v. Sears Holdings Corp.*, 2012
24 U.S. Dist. LEXIS 9302 at *8 (E.D. Cal. Jan. 25, 2012)).

25 A court’s review of a PAGA settlement necessarily implicates the following unique features
26 that render the approval process distinct from approval of a class action settlement under Code of Civil
27 Procedure Section 382 and California Rules of Court Rule 3.769. First, in evaluating the adequacy of
the settlement amount, the Court’s focus is not concerned with the amount aggrieved employees are

1 to receive, but rather, must focus on the total settlement amount in achieving PAGA’s objective.
2 Indeed, “[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class
3 damages,” and while a “[PAGA] action is ... designed to protect the public and penalize the employer
4 for past illegal conduct,” a reviewing court must be mindful of the fact that settlement of a PAGA
5 claim involves a compromise. (*Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 at *11
6 (E.D. Cal. June 30, 2010)). “Unlike class actions, these civil penalties are not meant to compensate
7 unnamed employees because the action is fundamentally a law enforcement action.” (*Ochoa-*
8 *Hernandez v. Cjaders Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774 at *12 (Apr. 2, 2010)). The Court
9 should not lose sight of the fact that, “[u]nlike a class action seeking damages or injunctive relief for
10 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for
11 the government that otherwise may not have been assessed and collected by overburdened state
12 enforcement agencies.” (Ibid).

13 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
14 claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the
15 ability to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS
16 32774 at *13). Indeed, “[PAGA] does not create property rights or any other substantive rights” as
17 “[i]t is simply a procedural statute allowing an aggrieved employees to recover civil penalties – for
18 Labor Code violations – that otherwise would be sought by state labor law enforcement agencies.”
19 (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009)). This
20 renders the approval process of a PAGA settlement distinct from a class action settlement, as there is
21 no need for the Court to employ the “two-step approval process” required under California Rules of
22 Court Rule 3.769.

23 Finally, unlike class action settlements, the scope of release permitted in a PAGA settlement
24 is limited. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff
25 but also on government agencies and any aggrieved employee not a party to the proceeding...the
nonparty employees, because they were not given notice of the action or afforded any opportunity to
be heard, would not be bound by the judgment as to remedies other than civil penalties.” (*Arias v.*
26 *Sup. Ct.*, 46 Cal.4th 969, 985-87 (2009)). Thus, the scope of a release in a PAGA settlement is
27

1 confined to the PAGA penalties alleged in the complaint and/or the plaintiff's notice to the LWDA
2 and to the claims that were, or could have been, alleged pursuant to PAGA based on the factual
3 allegations in the complaint and/or the plaintiff's notice to the LWDA. In the case at hand, as the only
4 claims at issue are PAGA claims, those will be the only claims extinguished through the Settlement.

5 **V. THE AGREEMENT IS FAIR AND SHOULD BE APPROVED**

6 **A. The Agreement is Presumed to Be Fair**

7 California courts recognize that "a presumption of fairness exists where . . . [a] settlement is
8 reached through arm's-length bargaining." (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
9 245 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009)). Here,
10 the Agreement is presumptively fair because: (1) it occurred after counsel for the Parties engaged in
11 significant investigation to evaluate the strength and potential value of the PAGA claims, and the risks
12 of litigating these claims through trial; and (2) it was negotiated at great length and effort by counsel
13 with significant experience in similar complex labor and employment matters. (Rose Decl., ¶ 25).

14 **B. The Agreement is Fair, Adequate, and Reasonable in Light of the Parties' Respective**
15 **Legal Positions and Recovery Risks**

16 In deciding whether to approve a proposed settlement, a trial court has broad powers to
17 determine if it is fair given the circumstances of the case. (*Mallick v. Sup. Ct.*, 89 Cal.App.3d 434,
18 438 (1979)). In exercising these powers, the overriding concern is to ensure that a proposed settlement
19 is "fair, adequate, and reasonable." (*Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted)). A
20 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor
21 does the settlement have to obtain one hundred percent of the damages sought to be fair and reasonable.
22 (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court
23 must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
24 further litigation, the risk of maintaining class action status through trial, the amount offered in
25 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
views of counsel, the presence of a governmental participant, and the reaction of the class members to

1 the proposed settlement.”¹ (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).
2 Even though a *Kullar* analysis is not required for approval of a PAGA settlement, a brief analysis is
3 included to support approval of the Settlement Agreement. (*See* Rose Decl., ¶¶ 32-45).

4 These factors require balancing and are non-exhaustive. Trial courts should therefore tailor
5 the factors to each case and give due regard to “what is otherwise a private consensual agreement
6 between the parties.” (*Dunk, supra*, 48 Cal. App. 4th at 1801).

7 1. Strength of Plaintiffs’ Case

8 In order to prevail at trial, Plaintiffs would have to prove violations of the California Labor
9 Code underlying their PAGA claims, demonstrate that Aggrieved Employees suffered, and
10 demonstrate that Defendant’s conduct gives rise to penalties. (*See Elliot v. Spherion Pac. Work, LLC*,
11 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) [“Plaintiff’s claim under [PAGA] is wholly dependent
12 upon her other claims. Because all of Plaintiff’s other claims fail as a matter of law, so does her PAGA
13 claim.”]).

14 Here, Plaintiffs’ core allegations are that Defendant systematically violated the California
15 Labor Code by, *inter alia*, failing to pay overtime and minimum wages, provide compliant meal and
16 rest periods and associated premium payments, timely pay wages during employment and upon
17 termination, provide compliant wage statements, keep requisite payroll records, and reimburse
18 necessary business-related expenses. (Rose Decl., ¶ 26).

19 Defendant maintained several defenses to Plaintiffs’ theories of liability, which, if successfully
20 argued and proven, had the potential to eliminate or substantially reduce recovery. (*Id.*, ¶ 27).
21 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues
22 to have, compliant employment policies and practices throughout the time period at issue. (*Ibid*).
23 Defendant denies that it ever violated any provision of the California Labor Code, including, but not
24 limited to, those sections for which Plaintiffs seek penalties under PAGA. (*Ibid*). Defendant further
25 denied, and continues to deny, that the lawsuit is appropriate for representative treatment for any
purpose other than settlement. (*Ibid*). Defendant also challenged Plaintiffs’ standing as aggrieved

26 ¹ As this is not a class action, the *Kullar* factors pertaining to the risk of maintaining class action status through trial and
27 the reaction of class members to the proposed settlement are inapplicable.

1 employees and denied that any of Defendant’s other employees whom Plaintiffs seek to represent are
2 aggrieved. (Ibid).

3 Defendant also argued that an important feature of PAGA is that the Court retains discretion
4 to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise
5 would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (Ibid; Lab. Code
6 § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136
7 (2012) [holding that a court may reduce the amount of PAGA penalties awarded to an employee based
8 upon discretionary factors]).

9 Even if violations of the California Labor Code occurred, which Defendant denies, Defendant
10 contended that said violations would only be considered “initial violations” and thus heightened
11 “subsequent violation” penalties were not warranted. (Rose Decl., ¶ 28; Lab. Code § 2699(f)(2); *see*
12 *also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) [“Until the employer has
13 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.”]).

15 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess
16 cumulative penalties for the maximum number of possible, separate California Labor Code violations,
17 because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct
18 may be regulated by multiple provisions of the California Labor Code that are interrelated and work
19 in tandem. (Rose Decl., ¶ 29). While the PAGA does provide the potential for a heightened penalty
20 for subsequent violations, courts are often hesitant to award a heightened penalty where there is no
21 prior citation by the Labor Commissioner, as is the case here. (*See Bernstein v. Virgin Am., Inc.*, 3
22 F.4th 1127, 1144 (9th Cir. 2021) (holding no heightened penalty where defendant was not notified by
23 Labor Commissioner or any court that it was subject to the California Labor Code)). The Ninth
24 Circuit’s holding in *Bernstein* also supports that a settlement valuation that does not “stack” penalties.
25 (Ibid).

While Plaintiffs maintain that their PAGA claims have merit, in reaching the Agreement,
Plaintiffs and their counsel took into account the strengths and weaknesses of each side’s position, and
26 the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon
27

1 appeal. (Rose Decl., ¶ 30). Based on these disputes, which had the potential to completely eliminate
2 Plaintiffs’ recovery, the range of realistic “litigation outcomes” on Plaintiffs’ PAGA claims was
3 defined by a “maximum possible liability” amount of approximately \$1,293,200 and a “risk-adjusted
4 realistic value” amount of approximately \$543,144. (*Id.*, ¶ 45). In light thereof, the Gross Settlement
5 Amount of \$475,000 is a significant settlement. (*Ibid.*).

6 2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

7 Approval of the Agreement is also appropriate in light of the risk, expense, and complexity of
8 further litigation. As discussed above, the Agreement takes into consideration the specific factual and
9 legal hurdles faced by Plaintiffs in establishing Defendant’s penalty-liability in this case, which may
10 have resulted in a net-zero recovery. Any recovery on these claims is not certain. And even when
11 liability is found, PAGA claims are discretionary, such that the Court could decline to award their full
12 value. Some of Plaintiffs’ claims are also derivative, and as such, Plaintiffs must prevail on their
13 underlying California Labor Code claims in order to prevail on the derivative claims. These risks –
14 when balanced with the fact that the Agreement achieved a very significant recovery (as demonstrated
15 below), and that further litigation posed a risk of diminishing such recovery by increasing litigation
16 expenses – weigh strongly in favor of settlement approval.

17 3. The Benefits Conferred by the Agreement Balance in Favor of Approval

18 The Agreement provides a *significant* monetary benefit that falls well within the range of an
19 acceptable settlement under the circumstances, which is the standard on which the instant Agreement
20 must be judged. As held by the Ninth Circuit: “The proposed settlement is not to be judged against a
21 hypothetical or speculative measure of what might have been achieved by the negotiators.” (*Officers*
22 *for Justice v. Civil Serv. Comm’n*, 688 F.2d at 625 (emphasis in original)). As the Second Circuit has
23 pointed out: “The fact that a proposed settlement may only amount to a fraction of the potential
24 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should
25 be disapproved.” (*City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2 (2nd Cir. 1974)).

The Net Settlement Amount is currently estimated to be Two Hundred Eighty-Two Thousand
Five Hundred Thirty-Nine Dollars and Fifty-Eight Cents (\$282,539.58. After all deductions are made
26 from the Gross Settlement Amount for the PAGA Counsel Fees Payment, PAGA Counsel Litigation
27

1 Expenses Payment, Representative Enhancement Payment, and Administration Expenses Payment,
2 Two Hundred Eleven Thousand Nine Hundred Four Dollars and Sixty-Eight Cents (\$211,904.68) (i.e.
3 75% of the Net Settlement Amount) will go to the LWDA, and Seventy Thousand Six Hundred Thirty-
4 Four Dollars and Ninety Cents (\$70,634.90) (i.e. 25% of the Net Settlement Amount) will go to the
5 Aggrieved Employees, as required by California Labor Code § 2699(i) in effect at the time of this
6 matter (“civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent
7 to the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”).
8 (Rose Decl., ¶ 46). There is no reason to doubt the fairness of the proposed plan of allocation of the
9 Net Settlement Amount as it fully complies with California Labor Code section 2699(i). (Ibid).

10 The Agreement is a compromise of highly disputed claims. (*Id.*, ¶ 47). Plaintiffs and their
11 counsel recognize the expense and length of continued proceedings necessary to litigate the matter
12 through trial and any possible appeals. (Ibid). Plaintiffs and their counsel have also taken into account
13 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
14 such litigation. (Ibid). Plaintiffs and their counsel are also aware of the burdens of proof necessary to
15 establish liability, both generally and in response to Defendant’s defenses thereto, and the difficulties
16 in establishing Defendant’s liability for, and the right to recover, penalties on behalf of Plaintiffs, the
17 State of California, and other Aggrieved Employees. (Ibid). Plaintiffs and their counsel have also
18 taken into account Defendant’s agreement to enter into a settlement that confers significant relief upon
19 the Aggrieved Employees and the State of California. (Ibid). Considering all of the facts in this case,
20 Plaintiffs and their counsel have determined that the Agreement represents a fair, adequate, and
21 reasonable resolution of the PAGA claims, and that it is in the best interests of the Aggrieved
22 Employees and the State of California. (Ibid).

23 The result achieved in this case is well within the range of what is considered an acceptable
24 settlement under the circumstances, especially when compared to the settlement of PAGA claims in
25 other cases. (*Id.*, ¶ 48). (*See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court,
Case No. JCCP4833 (May 2017) [approving \$15,000 out of \$4 million toward settlement of PAGA
claims]; *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal. Oct. 29,
26 2012) [approving \$10,000 out of \$3.7 million toward settlement of PAGA claims]; *Schiller v. David’s*
27

1 *Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving \$7,500 out of
2 \$518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC*, 2011 U.S. Dist.
3 LEXIS 15821, at *4 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 out of \$6.9 million toward
4 settlement of PAGA claims]; *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, at *14
5 (E.D. Cal. Nov. 27, 2021) [approving \$10,000 out of \$2.5 million toward settlement of PAGA
6 claims]]. Here, the value obtained for settlement of the PAGA claims is significant, and it will be
7 distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

8 4. The Scope of the Release is Narrowly Tailored

9 As discussed above, the California Supreme Court has concluded that in the context of PAGA
10 “the nonparty employees, because they were not given notice of the action or afforded any opportunity
11 to be heard, would not be bound by the judgment as to remedies other than civil penalties.” (*See Arias*,
12 46 Cal. 4th, at 987). Thus, the scope of the limited release provided in exchange for the foregoing
13 consideration is limited to the civil penalties asserted in the Operative Complaint and the LWDA
14 notices, under California Labor Code §§ 2698 *et seq.* (*See Settlement Agreement*, at ¶ 5.2).

15 As such, this factor balances strongly in favor of approval of the Agreement.

16 5. Experience and Views of Counsel Favor Approval

17 PAGA Counsel is experienced in complex representative and class action wage-and-hour
18 litigation. (Rose Decl., ¶ 54). In the view of PAGA Counsel, the benefits conferred by the Agreement
19 are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved
20 Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial
21 monetary benefits provided for by the Agreement. (*Id.*, ¶ 49). Furthermore, courts have acknowledged
22 that “the interests of a plaintiff, counsel, and other potentially aggrieved employees are largely aligned.
23 All stand to gain from proving as convincingly as possible as many Labor Code violations as the
24 evidence will sustain[.]” (*Williams v. Superior Court*, 3 Cal. 5th 531, 548 (2017) [citing Labor Code
25 § 2699(g)(1)(i)]).

///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

- 2
- 3
- 4
- 5
- 6

7
8
9
10
11
12
13

14
15

16
17
18
19
20
21
22
23
24
25

26

1 In *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016), the California Supreme Court
2 confirmed that “[t]he percentage of fund method survives in California class action cases.”
3 Specifically, the *Laffitte* Court held:

4 The recognized advantages of the percentage method—including relative ease of calculation,
5 alignment of incentives between counsel and the class, a better approximation of market
6 conditions in a contingency case, and the encouragement it provides counsel to seek an early
7 settlement and avoid unnecessarily prolonging the litigation—convince us the percentage
8 method is a valuable tool that should not be denied our trial courts.

9 (*Id.*, at 503 [internal citation omitted]).

10 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
11 method, the California Supreme Court has taken the position that trial courts also “retain the discretion
12 to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested
13 percentage fee.” (*Lafitte*, 1 Cal.5th at 506; *see also Wershba*, 91 Cal.App. 4th at 253). Courts award
14 fees to serve as an economic incentive for lawyers to undertake litigation, and thereby enhance and
15 facilitate access to the judicial system for adjudication of meritorious claims, and to deter wrongdoing.
16 This is especially true in situations where multiple similar alleged wrongs would not be economically
17 feasible to pursue individually, such as here. Trial courts have “wide latitude” in assessing the value
18 of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of
19 discretion.” (*Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000); *see also Laffitte*, 1 Cal.5th
20 at 506 [holding that “trial court did not abuse its discretion in using [the percentage of fund method],
21 in part to approve the fee request”]). Indeed, it is long settled that the “experienced trial judge is the
22 best judge of the value of professional services rendered in his court.” (*Ketchum v. Moses*, 24 Cal.4th
23 1122, 1132 (2001)).

24 The percentage method is particularly appropriate where a monetary settlement has been
25 recovered and “the benefit [recovered can be] easily quantified.” (*In re Bluetooth Headset Prods.*
Liab. Litig., 654 F.3d 935, 942 (9th Cir. 2011)). Where the amount of a settlement is a “certain or
easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
26 percentage of the settlement created. (Weil and Brown, California Practice Guide, *Civil Procedure*
27

1 *Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808). The percentage fee
2 method is preferred in representative actions because “it better approximates the workings of the
3 marketplace than the lodestar approach.” (*Lealao, supra*, 82 Cal.App.4th at 49). California law
4 provides that the award for attorneys’ fees should be equivalent to fees freely negotiated in the legal
5 marketplace and paid in comparable litigation based on the result achieved and risk incurred. (*See*
6 *Lealao*, 82 Cal.App.4th at 47-50; *Laffitte*, 1 Cal.5th 480 at 503). In cases where the settlement
7 agreement provides that the defendant will pay the plaintiffs’ attorneys a percentage of the fund created
8 by the settlement, use of that percentage method is appropriate. (*Lealao*, 82 Cal.App.4th at 32). Fee
9 awards that are too small will “chill the private enforcement essential to the vindication of many legal
10 rights and obstruct the representative actions that often relieve the courts of the need to separately
11 adjudicate numerous claims.” (*Id.* at 53). Therefore, fees in representative actions should approximate
12 the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in
13 comparable litigation. (*Id.* at 48). “The ultimate goal ... is the award of a ‘reasonable’ fee to
14 compensate counsel for their efforts, irrespective of the method of calculation.” (*Consumer Privacy*
15 *Cases*, 175 Cal.App.4th 545, 557-58 (2009) [quoting *Apple Computer, Inc. v. Superior Court, supra*,
16 126 Cal.App.4th at 1270]).

17 PAGA Counsel’s application for attorneys’ fees in light of the facts and circumstances
18 surrounding the matter is within the range of reasonableness. Historically, courts have awarded fees
19 as high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances
20 of the case. (*See In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) [awarding attorneys’
21 fees in the amount of 45% of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v.*
22 *Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195 (S.D.N.Y. 1979) [awarding approximately 53%
23 of the settlement as attorneys’ fees]).

24 Here, PAGA Counsel’s fee request of one-third (1/3) of the Gross Settlement Amount (i.e.,
25 \$158,333.33) is fair and reasonable based on the percentage of the recovery method. PAGA Counsel
has vigorously litigated this matter since it was commenced, with the very real possibility of an
unsuccessful outcome and no fee recovery of any kind. (Rose Decl., ¶ 51). Counsel for Plaintiffs
26 undertook significant investigation and invested a significant amount of time analyzing relevant
27

documents and data to evaluate the nature and extent of the alleged underlying California Labor Code violations and calculation of the potential monetary recovery as they relate to Plaintiffs' PAGA claims under PAGA. (Rose Decl., ¶ 55). PAGA Counsel possesses combined extensive experience litigating wage and hour and other complex litigation matters, and the attorneys who worked on this matter have been approved as class counsel and/or have had their billable rates approved in the settlement of other class and PAGA actions, numerous times. (*Id.*, ¶ 54).

In the present case, PAGA Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained. (*Id.*, ¶ 52). PAGA Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a favorable result for Plaintiffs, the Aggrieved Employees, and the State of California. (*Ibid.*). Considering the amount of fees requested, work performed, risks incurred, and experience of PAGA Counsel in handling similar matters, Plaintiffs maintain that the requested attorneys' fees of one-third (1/3) of the Gross Settlement Amount (i.e., \$158,333.33) are reasonable and should be awarded. (*Ibid.*).

VII. THE REQUESTED COST AWARD IS FAIR AND REASONABLE

The Agreement provides for reimbursement of actual litigation costs and expenses up to the amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00). (Rose Decl., ¶ 57; Settlement Agreement, ¶ 3.3.1). PAGA Counsel only seeks reimbursement of a total of Fourteen Thousand One Hundred Twenty-Seven Dollars and Nine Cents (\$14,127.09) in litigation costs and expenses. (Rose Decl., ¶ 57 & Exh. 6). Accordingly, PAGA Counsel respectfully requests that the Court reimburse it for actual litigation costs and expenses in the amount of Fourteen Thousand One Hundred Twenty-Seven Dollars and Nine Cents (\$14,127.09).

VIII. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE

As set forth in the Agreement, the Parties have agreed to retain, subject to approval by the Court, ILYM Group, Inc. to handle the administration of the Agreement. (Rose Decl., ¶ 58; Settlement Agreement, ¶ 7.1). The fees and expenses of the Administrator are estimated not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00). (Rose Decl., ¶ 59; Agreement, ¶ 3.3.3). These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual PAGA Payment checks to the Aggrieved Employees, re-mailing the returned Individual

1 PAGA Payment checks to any new addresses obtained, and handling inquiries from Aggrieved
2 Employees regarding the Agreement, among other things. (Rose Decl., ¶ 58). Accordingly, the Court
3 should grant approval of the Administration Expenses Payment in the amount of *up to* Ten Thousand
4 Dollars and Zero Cents (\$10,000.00) to ILYM Group, Inc. a necessary third-party for handling the
5 settlement process. (Ibid).

6 **IX. THE REQUESTED REPRESENTATIVE ENHANCEMENT PAYMENT IS**
7 **FAIR AND REASONABLE**

8 The purpose of an enhancement award is to incentivize aggrieved employees to step into the
9 shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit
10 and serving in a representative capacity. (*See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715,
11 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the action);
12 *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) (“an incentive award is
13 appropriate ‘if it is necessary to induce an individual to participate in the suit’”). Plaintiff Siler initiated
14 this litigation on behalf of the State of California and his former co-workers who will now be entitled
15 to receive payment from the Agreement. By initiating and pursuing the Action, Plaintiff Siler stepped
16 into the shoes of the State of California and undertook the responsibilities of serving in a representative
17 capacity. (Rose Decl., ¶ 61; Siler Decl., ¶¶ 3-5). Plaintiff Siler was available whenever PAGA
18 Counsel needed him and actively tried to obtain information that would benefit the prosecution of the
19 Action. (Rose Decl., ¶ 61; Siler Decl., ¶¶ 4-5). The Representative Enhancement Payment for Plaintiff
20 Siler is eminently reasonable given the time and effort Plaintiff Siler spent on this matter, his services
21 on behalf of the State of California and the Aggrieved Employees, and his broader, general release of
22 claims. (Rose Decl., ¶ 59).

23 Accordingly, Plaintiff Siler respectfully submits that it is appropriate and just for Plaintiff Siler
24 to receive a Representative Enhancement Payment in the amount of Ten Thousand Dollars and Zero
25 Cents (\$10,000.00) in addition to the Individual PAGA Payment he will receive as an Aggrieved
Employee, for his services on behalf of the State of California and the other Aggrieved Employees, as
well as for the broader, general release of claims. (Rose Decl., ¶ 62).

26 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5

6

7

8

9

0
1
2
3
4
5
6
7
8
9
20
21
22
23
24
25
26