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Attorneys for Plaintiffs Seth Taylor, Leonardo Ramirez,
and Justin Musick, on behalf of themselves and
all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

SETH TAYLOR, LEONARDO RAMIREZ,
and JAKE MUSICK, on behalf of themselves
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

A PLUS TREE, LLC, a California limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

Case No. CU24-03172

Assigned to the Hon. Stephen Gizzi, Dept. 3

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS’ FEES AND
COSTS, AND REIMBURSEMENT OF
SETTLEMENT ADMINISTRATION
EXPENSES, AND ENTERING JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: September 23, 2025

Time: 9:00 a.m.

Dept.: 3

Complaint Filed: April 26, 2024

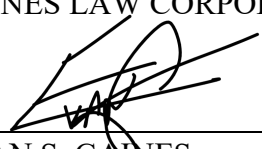
1 **PLEASE TAKE NOTICE THAT** on September 23, 2025 at 9:00 a.m. or as soon thereafter
2 as the matter may be heard, in Department 3 of the above-entitled Court, located at 600 Union Ave.,
3 Fairfield, CA 94533, Plaintiffs Seth Taylor, Leonardo Ramirez, and Justin Musick (incorrectly
4 named as Jake Musick) will and hereby do move unopposed for an Order: (1) granting approval of
5 the proposed settlement of claims brought pursuant to the Private Attorneys General Act of 2004
6 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”) set forth in the parties’ PAGA Settlement Agreement
7 (the “Settlement” or “Settlement Agreement”); (2) appointing ILYM Group, Inc. as the Settlement
8 Administrator and approving payment of its fees not to exceed \$4,000 from the PAGA Gross
9 Settlement Amount; (3) directing disbursement of the PAGA Gross Settlement Amount pursuant
10 to the terms of the Settlement Agreement; (4) directing payment of attorneys’ fees and litigation
11 costs from the PAGA Gross Settlement Amount not to exceed \$58,389.17 to Counsel for Plaintiffs;
12 and (5) entering Judgment consistent with the Settlement Agreement.¹

13 This motion will be based on this Notice, the supporting memorandum of points and
14 authorities, the parties’ PAGA Settlement Agreement, the Declaration of Evan S. Gaines,
15 Declaration of Lisa Mullins (of ILYM Group, Inc.), the documents and records on file in this
16 matter, and such additional arguments, authorities, evidence, and other matters as may be presented
17 by the Parties hereafter.

18 DATED: August 15, 2025

Respectfully submitted,

19 GAINES LAW CORPORATION

20 By: 

21 EVAN S. GAINES

22 Attorneys for Plaintiffs

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26
27 ¹ Plaintiffs are not seeking an enhancement/service payment.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Seth Taylor, Leonardo Ramirez, and Justin Musick (collectively referred to as
4 “Plaintiffs”), “aggrieved employees” under the Labor Code’s Private Attorneys General Act of
5 2004 (“PAGA”), respectfully move this Court for an Order granting approval of the proposed
6 Settlement of the above-captioned lawsuit against Defendant A Plus Tree, LLC (“Defendant”). The
7 proposed Settlement will dispose of the Released Claims asserted on behalf of Plaintiffs and
8 approximately 237 employees who worked approximately 11,603 pay periods for Defendant in
9 California between February 21, 2023 and approximately July 13, 2025 (the “PAGA Period”) (the
10 “Aggrieved Employees”).²

11 Plaintiffs’ complaint addresses claimed violations of employee protections embodied in the
12 California Labor Code and penalties stemming therefrom for the violation of PAGA. Plaintiffs
13 alleged that Defendant failed to (1) pay all prevailing wages due to Plaintiffs and certain Aggrieved
14 Employees, in violation of Labor Code §§ 510, 558 and 1194; (2) properly blend bonuses,
15 commissions, and other non-base hourly wages (including prevailing wages), earned by Plaintiffs
16 and other Aggrieved Employees into their regular rate of pay for purposes of paying them meal and
17 rest period premiums, overtime wages, vacation wages, and sick pay wages at the correct rates, in
18 violation of Labor Code §§ 226.7, 227.3, 246, 510, 512, 558, and 1194; (3) pay premium wages to
19 Aggrieved Employees who were denied meal periods, in violation of Labor Code §§ 226.7, 512,
20 558, and IWC Wage Order 4-2001; (4) pay premium wages to Aggrieved Employees who were
21 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001; (5) reimburse
22 all business-related expenses to Plaintiffs and Aggrieved Employees, in violation of Labor Code §
23 2802; (6) provide Plaintiffs and Aggrieved Employees with wage statements that fully and
24 accurately itemized the requirements set forth in Labor Code § 226(a); and (7) timely pay Plaintiff

25
26
27 ² This data was as of approximately April 11, 2025. Defendant will submit a response to this
28 motion that provides evidence of the current number of workweeks and confirm the final PAGA
Period based on the Escalator Clause in the Settlement Agreement.

1 Taylor and certain Aggrieved Employees all wages due at the separation of their employment based
2 on the time frames required by Labor Code §§ 201 and 202.

3 As a result of Defendant's alleged violations of the Labor Code, approximately 237
4 employees are claimed to have suffered Labor Code violations for up to 11,603 aggregate pay
5 periods³, with each pay period warranting a discretionary \$100 civil penalty based on PAGA's
6 penalty provisions. Defendant denies that any of the Aggrieved Employees suffered any Labor
7 Code violations and denies that Plaintiffs or the Aggrieved Employees are entitled to recover any
8 civil penalties under PAGA.

9 In deciding whether to grant approval of the proposed Settlement, the primary issue to be
10 decided is whether the Settlement is fair, adequate, and reasonable. As set forth herein, the proposed
11 Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is
12 the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and
13 hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative
14 strength and value of the PAGA claims, and (4) it reflects a reasoned compromise based directly
15 on the relative strength and value of the PAGA claim, as well as the risks, expense, complexity,
16 and likely duration of further litigation.

17 The value achieved by the Settlement may be gleaned from the fact that the Labor and
18 Workforce Development Agency ("LWDA") and the approximately 237 Aggrieved Employees
19 encompassed by the Settlement will receive no less than \$87,610.83 under the terms of the
20 Settlement, which, pursuant to the operative statute, shall be allocated "75 percent to the Labor and
21 Workforce Development Agency . . . and 25 percent to the aggrieved employees." *See Labor Code*
22 *§ 2699(i)*. This is a reasonable recovery, not only because further litigation may have resulted in a
23 net-zero recovery based on the defenses available to Defendant, but because the amount secured by
24 Plaintiffs is sizable and in line with similar settlements of these types of claims under PAGA. It is
25

26 ³ The PAGA Gross Settlement Amount will be \$150,000, subject to any increase by operation of
27 the escalator provisions. As noted above, Defendant will confirm the workweek count and PAGA
28 Period in a response to Plaintiff's motion. If the escalator clause is invoked, the impact on the final
settlement amount is not expected to be substantial. As such, the calculations and analysis in this
Motion are based on the data provided as of April 11, 2025.

1 also important to underscore that all penalty amounts paid to Aggrieved Employees will be an
2 unexpected windfall, as employees typically do not bring individual lawsuits asserting only PAGA
3 penalties.

4 For these reasons, as set forth more fully herein, Plaintiffs respectfully request that this
5 Court enter the Order submitted herewith.

6 **II. STATEMENT OF THE CASE AND THE SETTLEMENT**

7 **A. The Parties**

8 Defendant operates an arborist service in Northern California, including in Solano County,
9 California, where it employed Plaintiffs. Declaration of Evan S. Gaines (“Gaines Decl.”) at ¶ 6.

10 Plaintiff Seth Taylor was employed by Defendant from December 2019 through September
11 2024 as a non-exempt employee in Vallejo, California. Gaines Decl. at ¶ 7.

12 Plaintiff Justin Musick has been employed by Defendant since June 2019 as a non-exempt
13 employee in Vallejo, California. Gaines Decl. at ¶ 8.

14 Plaintiff Leonardo Ramirez has been employed by Defendant since April 27, 2021 as a non-
15 exempt employee in Vallejo, California. Gaines Decl. at ¶ 9.

16 The Aggrieved Employees were employed by Defendant in California between February
17 21, 2023 and July 13, 2025. *See* Settlement Agreement, at ¶ 10.

18 **B. The Claims Asserted**

19 Plaintiffs alleged that Defendant failed to (1) pay all prevailing wages due to Plaintiffs and
20 certain Aggrieved Employees, in violation of Labor Code §§ 510, 558 and 1194; (2) properly blend
21 bonuses, commissions, and other non-base hourly wages (including prevailing wages), earned by
22 Plaintiffs and other Aggrieved Employees into their regular rate of pay for purposes of paying them
23 meal and rest period premiums, overtime wages, vacation wages, and sick pay wages at the correct
24 rates, in violation of Labor Code §§ 226.7, 227.3, 246, 510, 512, 558, and 1194; (3) pay premium
25 wages to Aggrieved Employees who were denied meal periods, in violation of Labor Code §§
26 226.7, 512, 558, and IWC Wage Order 4-2001; (4) pay premium wages to Aggrieved Employees
27 who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001;

1 (5) reimburse all business-related expenses to Plaintiffs and Aggrieved Employees, in violation of
2 Labor Code § 2802; (6) provide Plaintiffs and Aggrieved Employees with wage statements that
3 fully and accurately itemized the requirements set forth in Labor Code § 226(a); and (7) timely pay
4 Plaintiff Taylor and certain Aggrieved Employees all wages due at the separation of their
5 employment based on the time frames required by Labor Code §§ 201 and 202. Gaines Decl. at ¶
6 11.

7 **C. Procedural Posture**

8 Plaintiffs exhausted PAGA’s administrative notice requirements on or about February 21,
9 2024, when they submitted a letter by online submission to the LWDA and by certified mail to
10 Defendant outlining the facts and theories underlying their claims. Gaines Decl. at ¶ 12; **Exhibit B**
11 to Gaines Decl. Plaintiffs then filed their PAGA representative complaint on April 26, 2024 in the
12 Solano County Superior Court on behalf of themselves and other Aggrieved Employees seeking
13 penalties pursuant to PAGA for Defendant’s violations of Labor Code §§ 201, 202, 226(a), 226.3,
14 226.7, 227.3, 246, 510, 512, 558, 1194, and 2802. On or about June 7, 2024, Defendant filed its
15 Answer to Plaintiffs’ complaint. Gaines Decl. at ¶ 13.

16 Concurrently with the filing of this Motion, Plaintiffs submitted the Settlement Agreement,
17 together with this Motion and all supporting documents, to the LWDA via online upload on August
18 15, 2025. Service of the LWDA is reflected on the Declaration of Service submitted herewith.
19 Gaines Decl. at ¶ 14; **Exhibit C** to the Gaines Decl.

20 **D. Plaintiffs’ Counsel’s Investigation**

21 Counsel for Plaintiffs engaged in informal discovery of Defendant’s alleged Labor Code
22 violations, which specifically targeted evaluating the strength and value of the PAGA claims in
23 preparation for a resolution of this Action. Gaines Decl. at ¶ 15.

24 Plaintiffs’ Counsel obtained and reviewed multiple documents, including (i) Plaintiffs’
25 employee files and wage statements, (ii) policy documents relating to the employment of Plaintiffs
26 and other Aggrieved Employees, and (iii) data relating to the number of alleged violations and the
27 value of the recoverable penalties. Gaines Decl. at ¶ 16.

1 Based on the information received, as well as through discussions with Defendant's
2 Counsel, Plaintiffs' Counsel were able to (i) determine the total number of distinct individuals
3 falling within the definition of "Aggrieved Employee" for the relevant statutory period, and (ii)
4 construct a damage model that calculated the maximum realistic amount of PAGA penalties that
5 could be levied against Defendant within the PAGA Period. Defendant, however, disputed
6 Plaintiffs' claims and disputed both the existence of and extent of liability as alleged by Plaintiffs.
7 Gaines Decl. at ¶ 17.

8 Based on Plaintiffs' Counsel's experience in litigating similar "representative" wage and
9 hour claims, the degree of investigation that was conducted, and the amount of data that was
10 obtained, was sufficient to determine the potential value of the PAGA claim, and to evaluate the
11 strength of this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-5, 15-18

12 **E. Settlement Negotiations**

13 On May 14, 2025, the Parties participated in mediation session with respected mediator
14 Doug Leach, Esq. During the mediation, the parties engaged in arm's-length negotiations and
15 successfully reached an agreement on a resolution of the PAGA claims asserted in the Action as
16 well as Plaintiffs' individual claims in exchange for a general release by way of separate,
17 confidential agreements. Gaines Decl. at ¶ 19.

18 **F. The Proposed Settlement**

19 The Parties jointly prepared and executed the PAGA Settlement Agreement, attached to the
20 Gaines Decl. filed concurrently herewith as **Exhibit D** (the "Settlement Agreement," or
21 "Settlement"). The Settlement Agreement sets forth the terms of the Settlement reached by the
22 Parties, including the following key points:

23 1. Defendant agrees to settle this matter for the payment of One Hundred Fifty
24 Thousand Dollars (\$150,000) (the "PAGA Gross Settlement Amount"), which shall be all
25 inclusive, encompassing (i) all payments to the Labor and Workforce Development Agency and
26 Aggrieved Employees, (ii) any and all costs of third-party administration of the settlement, and (iii)
27 Plaintiffs' Counsel's attorneys' fees and costs of suit. See Settlement Agreement, at ¶ III.2-4.

1 2. The total sum available for payment of PAGA penalties shall be calculated by
2 deducting \$50,000 for the payment of Plaintiffs' Counsel's fees, \$8,389.17 for the payment of
3 Plaintiffs' Counsels' costs⁴, and the costs of administration (up to \$4,000) from the PAGA Gross
4 Settlement Amount, yielding approximately \$87,610.83. Seventy-five percent (75%) of this
5 amount, or \$65,708.12, shall be distributed to the LWDA, and the remaining twenty-five percent
6 (25%) or \$21,902.71, shall be distributed to the Aggrieved Employees. *See* Settlement Agreement,
7 at III.2-4.

8 3. All Aggrieved Employees will receive a pro rata share of the \$21,902.71, which
9 shall be distributed based on the number of Pay Periods each Aggrieved Employee worked for
10 Defendant in California during the PAGA Period. *See* Gaines Decl. at ¶ 26; Settlement Agreement,
11 at ¶ I.7. Although these calculations will not be made until after approval, a rough estimation of the
12 value to the 237 individuals falling within the definition of "Aggrieved Employee" may be gleaned
13 from the fact that an equal division would provide about \$92.41 to each Aggrieved Employee, net
14 of payments to the LWDA, to the Settlement Administrator, attorneys' fees and costs. The amount
15 each Aggrieved Employee actually receives will vary depending on the number of pay periods he
16 or she worked during the PAGA Period. Settlement Agreement, at ¶ I.7. The LWDA will be paid
17 \$65,708.12. Gaines Decl. at ¶ 27.

18 4. In exchange for the above settlement consideration, Defendant and the Released
19 Parties shall be entitled to the following release from each and every Aggrieved Employee,
20 including Plaintiffs⁵:

21 Upon the Effective Date, Plaintiffs, as individuals, and as the
22 representative of the PAGA Settlement Employees, the LWDA and
23 the State of California, hereby forever and completely release and
24 discharge the Released Parties of and from all of the Released

25 ⁴ Plaintiffs' counsel's formal fee request is one-third (33-1/3%) of the PAGA Gross Settlement
26 Amount and combined total final costs of \$8,389.17, as discussed herein and set forth in **Exhibit F**
27 to the Gaines Decl. This cost request is less than the \$12,000 allocated in the Settlement.

28 ⁵ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*
(2009) 46 Cal. 4th 969, 986 (concluding that "with respect to the recovery of civil penalties,
nonparty employees as well as the government are bound by the judgment in an action brought
under the act . . .").

1 Claims, and thus, Plaintiffs, the PAGA Settlement Employees,
2 LWDA and the State of California will be forever barred from
3 pursuing any of the Released Claims defined herein against Released
4 Parties which arose during periods of employment in a non-exempt
5 position in California during the PAGA Period. The Parties
6 understand and agree that this release is limited to the Released
7 Claims and does not otherwise impact the individual rights or claims
8 of the PAGA Settlement Employees. In accordance with *Arias v.*
9 *Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in “a
10 representative action brought by an aggrieved employee under the
11 Labor Code Private Attorneys General Act of 2004 . . . is binding not
12 only on the named employee Plaintiffs but also on government
13 agencies and any aggrieved employee not a party to the proceeding,”
14 which the Final Order shall so reflect. Pursuant to *Arias* and
15 *Cardenas v. McLane Foodservice, Inc.*, 796 F.Supp.2d 1246 (2011),
the Final Order and judgment in this Action shall be binding on the
PAGA Settlement Employees, LWDA, State of California and its
agencies as to the Released Claims which arose during the PAGA
Period, regardless of whether their settlement checks are cashed or
not. The Parties further understand and agree that the continued
effectiveness of this PAGA Release is contingent upon Defendant’s
payment of the PAGA Gross Settlement Amount. If Defendant
defaults on any of its payment obligations under this Agreement, the
PAGA Release set forth in this paragraph shall become ineffective
until such default is cured in full.

16 The “Released Claims” means all claims, rights, demands, liabilities,
17 and causes of action for civil penalties recoverable under PAGA, that
18 were asserted or could have been asserted, assessed upon or collected
19 from the Released Parties by or on behalf of Plaintiffs, the PAGA
20 Settlement Employees, the LWDA, the State of California, or any of
21 its agencies, based on any of the facts or violations alleged in the
22 Complaint or LWDA Letter, including claims for PAGA civil
penalties under or based on any alleged violations of Labor Code
sections: 201, 202, 226(a), 226.3, 226.7, 227.3, 246, 510, 512, 558,
1194, 2699, *et seq.*, and 2802, the violation of any Industrial Welfare
Commission Order, and any other claims asserted in the Action and
operative Complaint.

23 See Settlement Agreement, at ¶¶ 7, 9, 26.

24 5. Settlement administration, which is to be paid from the PAGA Gross Settlement
25 Amount, will not exceed \$4,000. However, ILYM Group, Inc.’s not to exceed quote is \$3,850. In
26 Plaintiffs’ Counsel’s experience, during the disbursement and data gathering processes, situations
27 arise that may require a settlement administrator to increase its fees (for example, if an escalator
28

1 provision is invoked, and there are additional aggrieved employees, the administrator may need to
2 increase its fees). Accordingly, Plaintiffs are requesting the Court to approve ILYM Group, Inc.'s
3 costs to administer the settlement at \$4,000 (as originally allocated in the Settlement Agreement)
4 in case ILYM Group, Inc. must increase its fees due to the escalator provision being invoked. *See*
5 Declaration of Lisa Mullins ("Mullins Decl."), ¶ 6; **Exhibit C** to Mullins Decl. ILYM Group, Inc.,
6 a reputable settlement administration company, has agreed to administer the settlement for this
7 amount, submitting a competitive bid. Mullins Decl. at ¶¶ 1-5; **Exhibit A**. Gaines Decl. at ¶ 28.

8 6. As detailed herein, Plaintiffs' counsel seeks an award of attorneys' fees and
9 litigation costs of a combined \$58,389.17. *See* Settlement Agreement, at III.3.b.

10 7. Finally, under the terms of the Settlement, funds represented by uncashed checks
11 that remain outstanding 180 days after the mailing of the Settlement checks by the Settlement
12 Administrator will be tendered to the unclaimed property fund of the State Controller's
13 Unclaimed Office, to be held in the name of the respective Aggrieved Employee. *See* Settlement
14 Agreement, at IV.4.

15 Plaintiffs are also entering into a full general release against Defendant and its Released
16 Parties, which is far broader than the release by other Aggrieved Employees. Specifically,
17 Aggrieved Employees are releasing only limited PAGA civil penalty claims, while Plaintiffs are
18 releasing all claims that each of them asserts or could assert against Defendant, including viable
19 termination and retaliation-related claims (as well as in exchange for resignations from Plaintiffs
20 Ramirez and Musick). No other Aggrieved Employee is subject to this broad form of release.
21 This broad release by Plaintiffs was negotiated (and necessary) to resolve the Action. Plaintiffs
22 threatened to assert their individual claims and Defendant required that they be resolved in
23 connection with the resolution of the Action. Without the resolution and release of Plaintiffs'
24 individual claims, litigation would continue in a piecemeal fashion. Defendant is buying peace
25 with this settlement, such that its objectives would not be achieved absent the general releases.
26 Gaines Decl., ¶ 30.

27 The separate individual settlement agreements provide an amount, separate from the
28 PAGA Gross Settlement Amount, to resolve Plaintiffs' individual termination and retaliation-

1 related claims against Defendant. It is not an amount that is part of the PAGA Gross Settlement
2 Amount to be approved. The aggregate settlement amount for all Settlement Agreements
3 (individual and PAGA) totals \$235,000. Gaines Decl., ¶ 31.

4 **III. LEGAL ARGUMENT**

5 **A. Standards For Approval Of A PAGA Settlement**

6 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
7 statute, which states that the “[t]he superior court shall review and approve any settlement of any
8 civil action filed pursuant to this part.” *See Labor Code* § 2699(1)(2).

9 As with any settlement, the Court must be mindful in conducting its inquiry that
10 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
11 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222,
12 24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is . . . ‘a yielding of
13 absolutes and an abandoning of highest hopes’” [*Officers for Justice v. Civil Service Com.*, 688
14 F.2d 615, 624 (9th Cir., 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
15 of wasteful and expensive litigation that induce consensual settlements.” *See id.*, at 625. As such,
16 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
17 or “judged against a hypothetical or speculative measure of what might have been achieved by the
18 negotiators.” *See id.*

19 Although the operative PAGA statute does not set forth the criteria on which a PAGA
20 settlement is to be judged, California law does state that some of the factors for review of a class
21 action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. § 382 and Cal. Rules of Court, Rule
22 3.769, may be “useful in evaluating the fairness of a PAGA settlement” to the reviewing court. *See*
23 *Moniz v. Adecco USA, Inc.*, (2021) 72 Cal. App. 5th 56, 77 (“Thus, while PAGA does not require
24 the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for
25 settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public
26 and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors
27 used to evaluate class action settlements bear on a settlement's fairness—including the strength of
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1 the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of
2 further litigation, and the settlement amount—these factors can be useful in evaluating the fairness
3 of a PAGA settlement.”) Courts within California have continued to approve settlements of PAGA
4 claims encompassed within class action settlements using Rule 23 criteria.⁶ However, it is
5 important to underscore that not all Rule 23 factors can be applied, as “a PAGA claim asserted on
6 a non-class representative basis . . . is not considered a class action but a law enforcement action,
7 and therefore does not have to meet the requirements of Rule 23.” *See Casida v. Sears Holdings*
8 *Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan. 25, 2012); *Thomas v. Aetna Health of Cal.,*
9 *Inc.*, 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2, 2011); *Mendez v. Tween Brands, Inc.*, 2010
10 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010). Based thereon, a court’s review of a PAGA
11 settlement necessarily implicates the following unique features that render the approval process
12 completely distinct from approval of a class action settlement under Rule 23 or C.C.P. § 382 and
13 Cal. Rules of Court, Rule 3.769.

14 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
15 concerned with the amount which “aggrieved employees” are to receive, but rather, must focus on
16 the total settlement amount in achieving PAGA’s objective

17 While “[a PAGA] action is . . . designed to protect the public and penalize the employer
18 for past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must
19 take into account the fact that settlement of a PAGA claim – like any settlement – involves a
20 “compromise” that stops short of rendering findings of liability and damages. Moreover, the Court
21 must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for
22

23 ⁶ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
24 balancing of several factors which may include, among others, some or all of the following: [1] the
25 strength of plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further
26 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
27 in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the
28 experience and views of counsel; [7] the presence of a governmental participant; and [8] the
reaction of the class members to the proposed settlement.” *See Linney v. Cellular Alaska P'ship*,
151 F.3d 1234, 1242 (9th Cir., 1998). “Not all of these factors will apply to every class action
settlement” and “[u]nder certain circumstances, one factor alone may prove determinative in
finding sufficient grounds for court approval.” *See Nat'l Rural Telcoms. Coop. v. DIRECTV, Inc.*,
221 F.R.D. 523, 525-526 (C.D. Cal., 2004).

1 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties
2 for the government that otherwise may not have been assessed and collected by overburdened state
3 enforcement agencies.” *See Ochoa-Hernandez v. CJADER Foods, Inc.*, 2010 U.S. Dist. LEXIS
4 32774, 12 (N.D. Cal. Apr. 2, 2010).

5 **B. The Settlement Meets All The Criteria For Approval**

6 Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA
7 considerations detailed above – the proposed Settlement embodies all of the key features of a
8 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for
9 approval.

10 **1. The Factors Giving Rise to a Presumption of Fairness Exist**

11 In conducting a review of a settlement, it is generally recognized that an “agreement . . .
12 reached through arms-length negotiation between experienced parties . . . is entitled to a
13 presumption of fairness.” *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377,
14 44 (C.D. Cal. Apr. 12, 2010).

15 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-
16 length negotiations brokered through a respected third party neutral [Gaines Decl. at ¶ 19], (2) that
17 was negotiated by Counsel with significant experience in similar representative action litigation
18 [see *id.*, at ¶¶ 2-5 and **Exhibit A**] [see also Gaines Decl. at ¶¶ 17-19], (3) which occurred after
19 Counsel had conducted sufficient investigation to evaluate the strength and potential value of the
20 PAGA claims, as well as evaluating the risks of litigating this claim through trial. *See id.*, at ¶¶ 17,
21 18, 21, 23, 29. Based thereon, the court should give considerable weight to the competency and
22 integrity of counsel in assuring itself that the Settlement Agreement represents an arm’s-length
23 transaction entered without self-dealing or other potential misconduct.

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1 **2. The Relative Strength Of The PAGA Claim, And the Realistic Range of**
2 **Outcomes In The Litigation, Strongly Favor Approval of the Settlement**

3 The relative strength of the PAGA claim brought by Plaintiffs weighs in favor of the Court
4 finding that the settlement is fair, adequate, and reasonable, as Defendant maintained numerous
5 defenses to the theories of penalty-liability put forward by Plaintiffs that, if successful, had the
6 potential to completely eliminate any recovery.

7 This case addresses alleged violations of important employee protections embodied in the
8 California Labor Code – namely, that Defendant failed to (1) pay all prevailing wages due to
9 Plaintiffs and certain Aggrieved Employees, in violation of Labor Code §§ 510, 558 and 1194; (2)
10 properly blend bonuses, commissions, and other non-base hourly wages (including prevailing
11 wages), earned by Plaintiffs and other Aggrieved Employees into their regular rate of pay for
12 purposes of paying them meal and rest period premiums, overtime wages, vacation wages, and sick
13 pay wages at the correct rates, in violation of Labor Code §§ 226.7, 227.3, 246, 510, 512, 558, and
14 1194; (3) pay premium wages to Aggrieved Employees who were denied meal periods, in violation
15 of Labor Code §§ 226.7, 512, 558, and IWC Wage Order 4-2001; (4) pay premium wages to
16 Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC
17 Wage Order 4-2001; (5) reimburse all business-related expenses to Plaintiffs and Aggrieved
18 Employees, in violation of Labor Code § 2802; (6) provide Plaintiffs and Aggrieved Employees
19 with wage statements that fully and accurately itemized the requirements set forth in Labor Code §
20 226(a); and (7) timely pay Plaintiff Taylor and certain Aggrieved Employees all wages due at the
21 separation of their employment based on the time frames required by Labor Code §§ 201 and 202.
22 See Gaines Decl. at ¶ 20.

23 While the PAGA does provide the potential for a heightened penalty for subsequent
24 violations, courts are often hesitant to award a heightened penalty where there is no prior citation
25 by the Labor Commissioner. See *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021)
26 (holding no heightened penalty where defendant was not notified by Labor Commissioner or any
27 court that it was subject to the California Labor Code). The Ninth Circuit’s holding in *Bernstein*
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1 also supports that a settlement valuation that does not “stack” penalties. *Id.*

2 Defendant contends it acted within the requirements of California law at all times as to all
3 Aggrieved Employees. It further contends that not every pay period at issue involved an alleged
4 Labor Code violation subject to civil penalties. Moreover, it maintained that even if the Court did
5 award penalties, the Court could and would *substantially* reduce the penalties awarded based on
6 the discretionary factors contained in Labor Code § 2699(e)(2) (“In action by an aggrieved
7 employee . . . , a court may award a lesser amount than the maximum civil penalty amount specified
8 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
9 result in an award that is unjust, arbitrary and oppressive, or confiscatory.”). *See* Gaines Decl. at ¶
10 21. Defendant also argued that it had a valid and enforceable arbitration agreement, which could
11 preclude the litigation of PAGA claims on a representative basis altogether, given the United States
12 Supreme Court’s recent ruling in *Viking River Cruises v. Moriana*, 142 S.Ct. 734 (2022). *Id.*

13 Based on these disputes, which had the potential to completely eliminate Plaintiffs’
14 recovery, the range of realistic “litigation outcomes” on the Plaintiffs’ PAGA claim was defined
15 by a “maximum possible liability” amount of approximately \$1,160,300 based on 11,603 aggregate
16 pay periods in the Settlement Period, without stacking claims, at \$100 per violation, and a net-zero
17 recovery based on the defenses asserted by Defendant. *See* Gaines Decl. at ¶ 22.

18 Furthermore, a significant discount is warranted because every pay period did not exhibit a
19 claimed violation. Defendant did indeed pay the correct prevailing wages during the limitations
20 period, which was Plaintiffs’ primary claim. This claim also formed the basis for a failure to pay
21 regular rate of pay for various wages earned. Since the prevailing wage was indeed paid, that claim
22 does not have substantial value. Furthermore, the meal and rest period claims were plead on behalf
23 of other Aggrieved Employees only—Plaintiffs did not personally suffer these violations and after
24 a review of Defendant’s time records in advance of the mediation, Defendant was largely
25 compliant. Altogether, a significant discount is justified. Gaines Decl. at ¶ 23.

26 Notwithstanding the existence of such issues, the Settlement achieves a significant benefit.
27 As such, this factor weighs very heavily in favor of resolution by way of the compromise set forth
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1 in the Settlement. Gaines Decl. at ¶ 24.

2 **3. The Risk, Expense, and Complexity of Further Litigation Balances**
3 **Strongly in Favor of Approval of the Settlement**

4 Approval of the proposed Settlement is also appropriate in light of the risk, expense, and
5 complexity of further litigation. As discussed above, the proposed Settlement takes into
6 consideration the specific factual and legal hurdles faced by the Plaintiffs in establishing
7 Defendant's penalty-liability in this case, which again, may have resulted in a net-zero recovery.
8 These risks – when balanced with the fact that the settlement achieves a very significant recovery
9 (as demonstrated below), and that further litigation poses a risk of diminishing such recovery by
10 increasing litigation expenses – weigh strongly in favor of Settlement approval.

11 **4. The Benefits Conferred by the Settlement Balance in Favor of Approval**

12 The Settlement provides a significant monetary benefit that falls well within “the range of
13 an acceptable settlement” under the circumstances, which is the standard on which the instant
14 Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable
15 even where it only provides a fraction of what could have been obtained at trial:

16 The proposed settlement is not to be judged against a hypothetical or
17 speculative measure of what might have been achieved by the
18 negotiators." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d at
19 625 (emphasis in original). Thus, “the very essence of a settlement is
20 compromise, ‘a yielding of absolutes and an abandoning of highest
21 hopes.’” *Id.* at 624 (citations omitted). As the Second Circuit has
22 pointed out: “The fact that a proposed settlement may only amount
to a fraction of the potential recovery does not, in and of itself, mean
that the proposed settlement is grossly inadequate and should be
disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 &
n.2 (2nd Cir. 1974).

23 *See Linney*, 151 F.3d at 1242.

24 Here, after all deductions are made for administration, attorneys' fees and costs, \$87,610.83
25 will be paid out, of which \$65,708.12 (i.e. 75%) will go to the LWDA, and \$21,902.71 (i.e. 25%)
26 will go to the Aggrieved Employees, as required by Labor Code § 2699(i) (“civil penalties
27 recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and
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1 Workforce Development Agency . . . and 25 percent to the aggrieved employees.”). Gaines Decl.
2 at ¶¶ 26-27.

3 This result is remarkable, as settlements of PAGA claims impacting thousands of
4 individuals have been approved as reasonable for amounts far less than the payment in this case.
5 *See Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012)
6 (“Defendant has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the \$10,000,
7 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will benefit
8 the class The Court finds that the PAGA payment is set at a reasonable amount, and it shall be
9 approved.”); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal.
10 Oct. 29, 2012) (“GTI agrees to allocate \$10,000 to the plaintiff’s PAGA claims, and will pay \$7,500
11 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports with
12 settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
13 allocation of the Settlement to the plaintiff’s PAGA claim.”); *Schiller v. David's Bridal, Inc.*, 2012
14 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) (“Pursuant to the Settlement Agreement, the
15 parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .
16 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
17 be approved.”); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
18 2012) (“Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
19 California Labor and Workforce Development Agency The Court finds that the PAGA
20 payment is set at a reasonable amount, and it shall be approved.”).⁷

21 Thus, notwithstanding the existence of issues having the potential to completely eliminate
22 recovery on the PAGA claims, the Settlement Agreement not only achieves a recovery that exceeds
23 typical PAGA awards routinely approved by the courts, it recovers significant monies for
24

25 ⁷ Significantly, several of the above-cited actions involved substantially more “aggrieved
26 employees” than the approximately 237 aggrieved employees in the instant Lawsuit. *See Franco*,
27 2012 U.S. Dist. LEXIS 169057, 14 (“2,055 Class Members were ultimately identified”); *Garcia*,
28 2012 U.S. Dist. LEXIS 160052, at 12 (class comprised of “approximately 1,869 individuals”);
Schiller, 2012 U.S. Dist. LEXIS 80776, 16 (“3,327 California Class members were ultimately
identified”); *Gong-Chun*, 2012 U.S. Dist. LEXIS 96828, 18 (“2,051 California Class Members
were ultimately identified”).

1 Aggrieved Employees which they otherwise would not receive. As such, this factor balances
2 strongly in favor of approval of the Settlement. Gaines Decl., ¶¶ 21-24.

3 **5. The Scope of the Release is Narrowly Tailored**

4 As discussed above, the California Supreme Court has concluded that in the context of
5 PAGA “the nonparty employees, because they were not given notice of the action or afforded any
6 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
7 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the release provided in exchange for
8 the foregoing consideration is limited to the civil penalties asserted in the Action under Labor Code
9 §§ 2698 *et seq.* *See* Settlement Agreement, at I.18 and III.5.

10 As such, this factor balances strongly in favor of approval of the Settlement.

11 **6. The Experience and Views of Plaintiffs’ Counsel Favor Approval of the**
12 **Settlement**

13 Plaintiffs’ Counsel has a significant degree of experience in complex wage and hour
14 litigation. *See* Gaines Decl., ¶¶ 2-5, Gaines Decl. at **Exhibit A**. *See also* Gaines Decl., ¶¶ 15-19.
15 In Plaintiffs’ Counsel’s view, the benefit conferred by the proposed Settlement is fair, reasonable,
16 and adequate under the circumstances, as it reflects a reasoned compromise which takes into
17 consideration the risks inherent in this case which had the potential to completely eliminate
18 recovery. Gaines Decl., ¶¶ 21-24. As such, this factor balances in favor of approval of the
19 Settlement.

20 **7. The Extent Of Discovery Completed And The Stage Of The Proceedings**
21 **Favor Approval of the Settlement**

22 In evaluating this element, the Court should be mindful that “‘formal discovery is not a
23 necessary ticket to the bargaining table’” [*Linney*, 151 F.3d at 1239], as the relevant consideration
24 is “whether ‘the parties have sufficient information to make an informed decision about
25 settlement.’” *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at
26 26 (C.D. Cal. Nov. 9, 2011).

27 Here, the extent of discovery conducted was sufficient to enable Plaintiffs’ Counsel to
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1 evaluate the strength and value of the claim for purposes of settlement. Gaines Decl. at ¶¶ 15-19.
2 As discussed above, Plaintiffs' Counsel's investigation was sufficient to, among other things,
3 tabulate with precision the total number of alleged Labor Code violations at issue during the PAGA
4 Period, identify the total number of individuals falling within the definition of "Aggrieved
5 Employee" for the PAGA Period, and assess the strength of the claims alleged.

6 Based on Plaintiffs' Counsel's experience litigating wage and hour claims, such
7 investigation was sufficient to determine the potential value of the PAGA claims, and to evaluate
8 the strength of these claims for purposes of settlement. See Gaines Decl. at ¶ 18.

9 **8. Additional Factors Weigh In Favor Of Finding The Terms Of The Proposed**
10 **Settlement To Be Fair, Adequate, And Reasonable**

11 In addition to the factors presented above, the proposed Settlement Agreement does not
12 possess any obvious deficiencies. The Settlement contemplates entry of an order and judgment
13 (submitted concurrently herewith) which approves the Settlement and enters Judgment. Section
14 V.9 of the Settlement Agreement and paragraph 7 of the proposed order authorize the Court to
15 retain jurisdiction over the Action. This procedure effectively disposes of the Action in its entirety,
16 documents the Court's approval of the Settlement Agreement as required by PAGA, and allows for
17 Court intervention if necessary to enforce the terms of the Settlement Agreement. In sum, under
18 the applicable standards for approval of PAGA settlements in California, the settlement in this case
19 meets the standards for approval.

20 **IV. PLAINTIFFS' COUNSEL ARE ENTITLED TO RECOVER THEIR**
21 **REASONABLE FEES AND COSTS**

22 Pursuant to the terms of the Settlement, Plaintiffs' Counsel seeks attorneys' fees of \$50,000
23 and reimbursement of total litigation costs of \$8,389.17, falling within the bounds authorized by
24 the Settlement Agreement. See Settlement Agreement, at III.3.a-b. Plaintiffs' Counsel's entitlement
25 to an award of attorneys' fees and costs is warranted on multiple independent grounds. Further, the
26 amount of fees requested falls well within the range of reasonableness under applicable standards,
27 as the amount requested constitutes a "percentage of the fund" deemed reasonable in similar wage
28 and hour settlements of this size and approved by California courts, which is not only warranted

1 based on the contingency risk Plaintiffs' Counsel has agreed to incur for the benefit of the State of
2 California and Aggrieved Employees, but also based on the significant results achieved, as the
3 Settlement obtains a recovery substantially above the range approved as reasonable by California
4 state and federal courts. Based thereon, Plaintiffs' Counsel respectfully request that the Court enter
5 an order approving the fee and cost amounts requested.

6 **A. Plaintiffs' Counsel Are Entitled To Recover Their Reasonable Fees And**
7 **Costs As A Matter Of Right**

8 Plaintiffs' Counsel are entitled to recover attorneys' fees and costs under the "common
9 fund" doctrine as a matter of right. As held by the U.S. Supreme Court, "a lawyer who recovers a
10 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
11 attorney's fee from the fund as a whole." *See Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.

12 Courts have long recognized the "common fund" or "common benefit" doctrine, under
13 which attorneys who create a common fund or benefit for a group of persons may be awarded their
14 fees and costs to be paid out of the fund. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ("*Serrano I*"),
15 quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
16 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
17 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
18 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

19 The California Supreme Court has held that, "when a number of
20 persons are entitled in common to a specific fund, and an action
21 brought by a Plaintiff or Plaintiffs for the benefit of all results in the
22 creation or preservation of that fund, such Plaintiff or Plaintiffs may
23 be awarded attorneys' fees out of the fund." *Serrano I, supra*, 20
24 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d 1; *see also Boeing, supra*,
25 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the
26 benefit of persons other than himself or his client is entitled to a
27 reasonable attorney's fee from the fund as a whole."); *Mills, supra*,
28 396 U.S. at 391-392 (United States Supreme Court endorsing the
common fund approach in class actions). California Practice Guide:
Civil Trials and Evidence (The Rutter Group) at § 17:172.3 explains
the common fund doctrine as follows:

Where the lawsuit results in the recovery of a fund or property
benefiting others as well as Plaintiffs (e.g., a class action), the court
has inherent equitable power to order Plaintiffs' attorney fees paid

1 out of the common fund or property [citations]. Such fee spreading
2 assures that all of those benefited by the litigation pay their fair share
of obtaining the recovery.

3 The percentage-of-the-fund approach appears to be the preferred method of awarding fees
4 in traditional common fund cases, such as this case. Where the settlement amount is a “certain or
5 easily calculable sum of money,” use of the percentage-of-the-fund method is appropriate. *Serrano*
6 *I*, 20 Cal. 3d at 35; *see also Laffitte v. Robert Half Int’l*, (2016) 1 Cal.5th 480, 503 (“We join the
7 overwhelming majority of federal and state courts in holding that when class action litigation
8 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
9 powers awards class counsel a fee out of that fund, the court may determine the amount of a
10 reasonable fee by choosing an appropriate percentage of the fund created.”).

11 In *Glendale City Employees’ Association*, *supra*, 15 Cal.3d at 341 fn.19, the California
12 Supreme Court upheld an attorneys’ fee award based on a percentage of the common benefit
13 obtained in a lawsuit by a city employees’ association for retroactive wages:

14 It is not necessary to find this suit a proper class action in order to
15 uphold the portion of the judgment awarding counsel for Plaintiffs
16 25 percent of all retroactive salaries and wages received. That award
17 may be sustained under the rule that a litigant who creates a fund in
18 which others enjoy beneficial rights may require those beneficiaries
to pay their fair share of the expense of litigation. (*See Sprague v.*
Ticonic National Bank (1939) 307 U.S. 161, 159; *Estate of Stauffer*
(1959) 53 Cal.2d 124, 132).

19 In *Quinn*, *supra*, 15 Cal.3d at 167, the California Supreme Court stated: “[O]ne who
20 expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits
21 may require those passive beneficiaries to bear a fair share of the litigation costs.” Similarly, in
22 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the California Supreme
23 Court recognized that the common benefit doctrine has been applied “consistently in California
24 when an action brought by one party creates a fund in which other persons are entitled to share.”

25 Numerous appellate courts have similarly found. *See e.g., Knoff v. City and County of San*
26 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
27 attorneys’ fees in a representative action as the proper exercise of the court's broad equitable
28 powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and

1 expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
2 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit
3 created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974)
4 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners
5 of residential property in an inverse condemnation action).

6 Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth,
7 Tenth, Eleventh and the D.C. Circuit-have endorsed the “percentage fee” method for determining
8 reasonable attorneys’ fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.*
9 (S.D.N.Y. 1999) 74 F. Supp. 2d 393, 396-398 (describing the overwhelming weight of federal
10 authority in favor of the percentage fee method); *see also, Lealao v. Beneficial California, Inc.*
11 (2000) 82 Cal.App.4th 19, 30-31 (describing same).

12 Thus, as Plaintiffs’ Counsel have expended a significant amount of time and money to
13 secure a \$150,000 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S.
14 Dist. LEXIS 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees
15 have resulted in the preservation or recovery of a certain or easily calculable sum of money-out of
16 which sum or ‘fund’ the fees are to be paid.’”)], and in doing so, have exclusively borne the risk of
17 loss for such expenditures of time and expenses (as the LWDA elected not to take the case after
18 receiving the PAGA Notices), Plaintiffs’ Counsel are entitled to claim reasonable fees from that
19 fund under applicable precedent.⁸

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23 ⁸ Plaintiffs’ Counsel is also entitled to recover attorney’s fees and costs as a matter of right under
24 the PAGA statute [*Labor Code* § 2699(g)(1) (“Any employee who prevails in any action shall be
25 entitled to an award of reasonable attorney’s fees and costs.”)], and under *C.C.P.* § 1021.5, as the
26 instant PAGA action was by definition “for the public benefit” and secured monetary awards for
27 approximately 188 aggrieved employees. *See e.g., Estrada v. FedEx Ground Package System, Inc.*
28 (2007) 154 Cal. App. 4th 1, 16-17 (2007) (“Estrada’s personal motivation does not diminish the
fact that he pursued this public interest class action not only for himself but on behalf of a class
comprised of FedEx’s past and present drivers and ultimately obtained awards for 209 drivers. []
No more is required to satisfy the ‘significant benefit,’ ‘public interest,’ and ‘large class of persons’
requirements of Code of Civil Procedure section 1021.5.”).

1 **B. The Fee Amount Requested Is Reasonable**

2 In addition to the forgoing, Plaintiffs' Counsel's request for attorneys' fees in the amount
3 of \$50,000, or one-third (33-1/3%)) of the \$150,000 PAGA Gross Settlement Amount, falls well
4 within the "zone of reasonableness."

5 It is important to highlight at the outset that the fee amount presently sought is not
6 extraordinary, but actually falls at the "average" fee deemed reasonable under California State court
7 authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in wage
8 and hour class actions that result in recovery of a common fund under \$10 million." *See e.g. Martin*
9 *v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). In fact, this fee
10 request falls right in the middle of that range.

11 Moreover, taking into account the contingency risk Plaintiffs' Counsel agreed to incur for
12 the benefit of the State of California (which elected not to take the case after receiving the PAGA
13 Notice), and the significant results achieved – facts which justify the requested fee – Plaintiffs'
14 Counsel's requested fee is reasonable under all applicable standards.

15 **C. The Fee Amount Allocated by The Settlement Agreement Is Within the**
16 **Zone of Reasonableness Under the "Percentage of the Fund" Method;**

17 The amount of fees requested by Plaintiffs' Counsel is also reasonable based on standards
18 applicable to the "percentage of the fund" method. "When assessing whether the percentage
19 requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of
20 litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the
21 financial burden; and (f) the awards made in similar cases." *See Vasquez v. Coast Valley Roofing,*
22 *Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

23 First, the results achieved by Plaintiffs' Counsel are significant, as Defendant shall pay
24 \$150,000 pursuant to the Settlement. This is a significant recovery given the risk of success in
25 obtaining any recoverable penalties [Gaines Decl. at ¶¶ 21-24, 32], and further, as the settlement of
26 PAGA claims impacting much higher numbers of individuals have been approved as reasonable
27 for between \$7,500 and \$15,000. *See* Section III.B.4., *supra*.

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1 Second, such results were achieved in the face of significant risks. As explained above,
2 Defendant maintained defenses to Plaintiffs' PAGA claims that very well could have resulted in a
3 net-zero recovery at trial. Gaines Decl. at ¶¶ 21-24, 33.

4 Third, notwithstanding this risk of loss, Plaintiffs' Counsel undertook representation of the
5 instant PAGA claims for the benefit of the State of California on a contingency basis. This not only
6 required Plaintiffs' Counsel to personally assume the risk of nonpayment in securing the very
7 substantial financial benefit the State of California stands to receive, but constitutes a "loan" on
8 Plaintiffs' Counsel services – both of which are factors warranting fee enhancement under
9 applicable California Supreme Court authority:

10 One of the most common fee enhancers . . . is for contingency risk.
11 We reaffirmed the propriety of a contingency risk enhancement in
12 Ketchum: The economic rationale for fee enhancement in
13 contingency cases has been explained as follows: A contingent fee
14 must be higher than a fee for the same legal services paid as they are
15 performed. The contingent fee compensates the lawyer not only for
16 the legal services he renders but for the loan of those services. The
17 implicit interest rate on such a loan is higher because the risk of
18 default (the loss of the case, which cancels the debt of the client to
19 the lawyer) is much higher than that of conventional loans. A lawyer
20 who both bears the risk of not being paid and provides legal services
21 is not receiving the fair market value of his work if he is paid only
22 for the second of these functions. If he is paid no more, competent
23 counsel will be reluctant to accept fee award cases.

24 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, 579-580 (internal citations and
25 quotations omitted). Gaines Decl. at ¶ 34.

26 Finally, the percentage requested by Plaintiffs' Counsel falls within a typical range,
27 particularly in light of the settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796, 23
28 ("[C]ourts may award attorney's fees in the 30-40% range in wage and hour class actions that result
in recovery of a common fund under \$10 million." See also *Crandall v. U-Haul International, Inc.*,
LASC Case No. BC178775 (awarding attorneys' fees of 40% of a common fund).

Attorneys' fee awards in the amount sought here are well-established by California law and
practice. Accordingly, Plaintiffs' Counsel's fee request is fair and reasonable and is consistent with
the awards in California and the Ninth Circuit. It is also reasonable given the history of this action

1 and the results obtained.

2 **D. While the Requested Award of Attorneys' Fees is Reasonable as a**
3 **Percentage of the Common Fund, It is Further Confirmed by a**
4 **Lodestar Cross-Check**

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

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

10 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano I*, 20 Cal.3d at 34 (“when a number of
11 persons are entitled in common to a specific fund, and an action brought by a Plaintiff or Plaintiff
12 for the benefit of all results in the creation or preservation of that fund, such Plaintiff or Plaintiff
13 may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627
14 (“*Serrano II*”) (in awarding a fee from the common fund obtained for the benefit of all parties, the
15 trial court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings*
16 *v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
17 method for calculating attorneys’ fees more accurately reflects the results achieved for the putative
18 class than the lodestar method and “establishes reasonable expectations on the part of Plaintiff’s
19 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
20 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
21 percentage-of-recovery method is generally favored in common fund cases because it allows courts
22 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
23 failure.’”).

24 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with
25 tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar
26 (hours worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed
27 to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-
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1 06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold
2 further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the
3 court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to
4 evaluate the reasonableness of a requested percentage fee.”)

5 Here, Plaintiff’s Counsel’s fee request of one-third (33-1/3%) of the PAGA Gross
6 Settlement Amount is fair and reasonable based on a percentage of the recovery, and as well as
7 when confirmed with a lodestar cross-check. First, “regardless whether the percentage method or
8 the lodestar method is used, fee awards in class actions average around one-third of the recovery.”
9 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11. This is also consistent with Plaintiff’s
10 Counsel’s experience in similar wage and hour class action matters. *Gaines Decl.*, ¶¶ 2-5; 32-37.
11 Thus, the percentage sought by Plaintiff’s Counsel here is reasonable.

12 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
13 multiplying the number of hours reasonably expended by each attorney or legal staff member by
14 their reasonable hourly rates. *See, e.g., Serrano I*, 20 Cal.3d at 48. The court then enhances this
15 lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty
16 of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*
17 (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 834
18 (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion
19 to increase or decrease a lodestar calculation”).

20 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
21 *Chavez, supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of*
22 *Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (approving multiplier of ~2.34); *Coalition*
23 *for L. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving
24 multiplier of ~2.04). In representative actions such as this one, where the value of the benefit
25 conferred to the class “can be monetized with a reasonable degree of certainty,” a court may “adjust
26 the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
27 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
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litigation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557. In doing so, “the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at 503-05.

In this case, Plaintiff’s Counsel is submitting an attorney fee request equaling \$50,000. Based on a projected final lodestar of \$45,710 this yields a “multiplier” of approximately 1.09 under the \$50,000 fee request. The billing rate used to compute the lodestar is reasonable in view of the evidence submitted herewith. Gaines Decl., ¶¶ 2-5; 32-38; **Exhibit E**.

Based thereon, and for the reasons discussed above (the significant risk in continuing to litigate this matter and in seeking to obtain penalties based on the claims asserted; the risks and burden involved in representation on a contingency basis; the knowledge and experience of Plaintiff’s Counsel; and the value obtained by Plaintiff’s Counsel for the Aggrieved Employees), it is fair and reasonable to account for these risks and compensate Plaintiff’s Counsel with a fee award of one-third of the PAGA Gross Settlement Amount, projected to be \$50,000.

E. Plaintiffs’ Counsel’s Request for Costs is Reasonable

In the course of this litigation, Plaintiffs’ Counsel collectively incurred out-of-pocket costs of \$8,389.17 through the conclusion of this matter. *See* Gaines Decl. at ¶ 39; **Exhibit F**.

As demonstrated in the Gaines Declaration submitted herewith, the incurred costs included filing fees, mediation fees, expert analysis fees, service of process fees, mailing charges, and other charges typical of litigation of this nature. *Id.* Such costs are appropriate for cost reimbursement in these types of cases. *See e.g., In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (quoting 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, Attorney Fee Awards, § 2.19 (1987)); *In re GNC Shareholder Litigation* (W.D. Pa. 1987) 668 F. Supp. 450, 452.

The costs incurred by Plaintiffs’ Counsel in this litigation benefited Plaintiffs, Aggrieved Employees, and the State. In light of the litigation costs that Plaintiffs’ Counsel were required to incur to prosecute this action, Plaintiffs’ Counsel’s cost request is reasonable and should be granted.

1 **V. CONCLUSION**

2 As shown herein, the Settlement Agreement is fair, adequate and reasonable, as it represents
3 a reasoned compromise obtained through arms-length negotiations. For all the reasons set forth
4 above, Plaintiffs respectfully request that this Court, as set forth in the proposed Order and
5 Judgment Approving Settlement, do the following:

6 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
7 2699, subpart 1;

8 2. Appoint ILYM Group, Inc. as the Settlement Administrator and approve its
9 administration fees up to \$4,000 for payment out of the PAGA Gross Settlement Amount;

10 3. Approve the award of attorneys' fees to Plaintiffs' Counsel in the amount of \$50,000
11 from the PAGA Gross Settlement Amount;

12 4. Approve the award of attorneys' costs to Plaintiffs' Counsel in the amount not to
13 exceed \$8,389.17 from the PAGA Gross Settlement Amount;

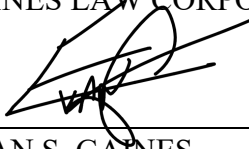
14 5. Direct disbursement of the remaining PAGA Gross Settlement Amount to the
15 LWDA and all Aggrieved Employees as provided for in the Settlement Agreement; and

16 6. Enter judgment consistent with the Settlement Agreement.

17
18 DATED: August 15, 2025

Respectfully submitted,

19 GAINES LAW CORPORATION

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21 By: _____
22 EVAN S. GAINES
23 Attorney for Plaintiffs
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