EVAN S. GAINES, ESQ. SBN 287668
GAINES LAW CORPORATION
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Telephone: (805) 892-8200
Facsimile: (805) 800-8928
Email: evan@gaines.law

Attorneys for Plaintiff Mohammad Gharremain

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

MOHAMMAD GHARREMAIN, on behalf of himself and all "PAGA Settlement Members" pursuant to Labor Code § 2698 *et seq.*, Plaintiff, v. GRIECO MOTORS WEST LLC, a California limited liability company, and DOES 1 through 10 inclusive, Defendants.	Case No. 2024CUOE023304 Assigned to Hon. Mark S. Borrell, Dept. 40 **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, COSTS, AND REIMBURSEMENT OF SETTLEMENT ADMINISTRATION EXPENSES, AND DISMISSING ACTION WITH PREJUDICE; MEMORANDUM OF POINTS AND AUTHORITIES** **Date: April 24, 2026** **Time: 8:30 a.m.** **Dept.: 40** Complaint Filed: April 9, 2024

PLEASE TAKE NOTICE THAT on April 24, 2026 at 8:30 a.m. or as soon thereafter as the matter may be heard, in Department 40 of the above-entitled Court, located at Hall of Justice, 800 South Victoria Avenue, Ventura, California 93009, Plaintiff Mohammad Gharremain ("Plaintiff") will and hereby does move unopposed for an Order: (1) granting approval of the proposed settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) ("PAGA") set forth in the Parties' Private Attorneys General Act (Labor Code § 2698 *et seq*.) Settlement Agreement (the "Settlement" or "Settlement Agreement"); (2) appointing Phoenix Class Action Administration Solutions as the Settlement Administrator and approving payment of its fees not to exceed $2,950 from the Gross Settlement Amount; (3) directing disbursement of the Gross Settlement Amount pursuant to the terms of the Settlement Agreement; (4) directing payment of attorneys' fees from the Gross Settlement Amount not to exceed one-third (33-1/3%) of the Gross Settlement Amount (projected to be $20,000) to Plaintiff's Counsel; (5) directing attorneys' litigation costs from the Gross Settlement Amount not to exceed $10,516.67; and (6) dismissing this action with prejudice.[1]

This motion will be based on this Notice, the supporting memorandum of points and authorities, the Parties' Settlement Agreement, the Declarations of Evan S. Gaines and Jarrod Salinas (of Phoenix Class Action Administration Solutions) the documents and records on file in this matter, and such additional arguments, authorities, and evidence and other matters as may be presented by the Parties hereafter.

Date: March 26, 2026

Respectfully submitted,

GAINES LAW CORPORATION

By: ______________________

EVAN S. GAINES
Attorney for Plaintiff
MOHAMMAD GHARREMAIN

[1] Plaintiff is not seeking an enhancement/service payment.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

FEDERAL CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

RULES AND REGULATIONS

OTHER AUTHORITIES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff, under the Labor Code's Private Attorneys General Act of 2004 ("PAGA"), respectfully move this Court for an Order granting approval of the proposed Settlement of the above-captioned lawsuit against Defendant Grieco Motors West LLC ("Defendant"). The proposed Settlement will dispose of the Released Claims asserted by Plaintiff, on behalf of the State and approximately 99 individuals who currently and/or formerly worked for Defendant in California as hourly and/or non-exempt employees at any time from June 7, 2023 through the date on which the Court approves the Settlement (the "PAGA Period") (the "PAGA Settlement Members"). *See* Settlement Agreement at ¶¶ 1.18-1.19.

This case addresses claimed violations of employee protections embodied in the California Labor Code and penalties stemming therefrom for the violation of PAGA. Plaintiff alleged on behalf of himself and all PAGA Settlement Members that Defendant (1) failed to pay all minimum and overtime wages due to Plaintiff and PAGA Settlement Members, in violation of Labor Code §§ 510, 558, and 1194; (2) failed to pay Plaintiff and PAGA Settlement Members for time when they were working, but could not earn a commission or piece-rate wage, in violation of Labor Code §§ 510, 558, and 1194; (3) failed to provide Plaintiff and PAGA Settlement Members with legally compliant meal periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7, 512, and 558; (4) failed to provide Plaintiff and PAGA Settlement Members with legally compliant rest periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7, 510, 558, and 1194; (5) failed to issue accurately itemized wage statements to Plaintiff and PAGA Settlement Members, in violation of Labor Code §§ 226(a) and 226.3; (6) failed to timely pay Plaintiff and PAGA Settlement Members all wages due at the separation of their employment, in violation of Labor Code §§ 201-202 and 227.3.

As a result of Defendant's alleged violations of the Labor Code, approximately 99 employees are claimed to have suffered Labor Code violations for up to 2,225 aggregate pay periods at the rate of $100 each based on PAGA's penalty provisions. Gaines Decl., ¶¶ 24, 28.

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

The value achieved by the Settlement may be gleaned from the fact that the Labor and Workforce Development Agency ("LWDA") and the approximately 99 PAGA Settlement Members encompassed by the Settlement will receive no less than $6,633.33 under the terms of the Settlement, which, pursuant to the operative statute, shall be allocated "75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the PAGA Settlement Members." *See* Cal. Lab. Code § 2699(i). This is a reasonable recovery, not only because further litigation may have resulted in a net-zero recovery based on the defenses available to Defendant, but because the amount secured by Plaintiff is sizable and in line with similar settlements of these types of claims under PAGA. It is also important to underscore that all penalty amounts paid to PAGA Settlement Members will be an unexpected windfall, as employees typically do not bring individual lawsuits asserting only PAGA penalties.

For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this Court enter the Order submitted herewith.

II. STATEMENT OF THE CASE AND THE SETTLEMENT

A. The Parties

Defendant operates a car dealership in Ventura County, where Plaintiff worked. Gaines Decl. at ¶ 6.

Defendant employed Plaintiff as a non-exempt "internet director" from November 2018 through August 2022 and again from October 2023 through December 2023. The PAGA Settlement Members are all current and former non-exempt employees who worked for Grieco Motors West LLC in the State of California from June 7, 2023 through the date on which the Court approves the

Settlement. Gaines Decl. at ¶ 7.

B. The Claims Asserted

Plaintiff asserts claims that Defendant failed to pay all wages earned by Plaintiff and PAGA Settlement Members, failed to provide Plaintiff and PAGA Settlement Members with legally compliant meal and rest periods, or compensation in lieu thereof, failed to issue accurately itemized wage statements to Plaintiff and PAGA Settlement Members, and failed to timely pay Plaintiff and PAGA Settlement Members all wages due at the separation of their employment. Plaintiff asserts these claims under PAGA, on behalf of himself, individually, and on behalf of the State of California and other PAGA Settlement Members, and civil penalties for the alleged Labor Code violations for Plaintiff and PAGA Settlement Members. Gaines Decl. at ¶ 8.

C. Procedural Posture

On February 1, 2024, pursuant to Labor Code section 2699.3, Plaintiff gave written notice by online filing with the LWDA and by certified mail, return receipt requested, to Defendant, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation. Gaines Decl., ¶ 9; **Exhibit B** (LWDA Letter).

Thereafter, on April 9, 2024, Plaintiff filed a Representative Action complaint in this Court alleging claims individually and pursuant to PAGA on behalf of himself and PAGA Settlement Members alleging the claims in the LWDA Letter. Gaines Decl., ¶ 10.

On June 6, 2024, Plaintiff filed a First Amended Complaint adding standalone class action claims. Gaines Decl., ¶ 11.

On June 7, 2024, Plaintiff sent a supplemental letter by online filing with the LWDA and by certified mail, return receipt requested, to Defendant, which corrected the spelling of Defendant's name. Gaines Decl., ¶ 12; **Exhibit C** (Supplemental LWDA Letter).

Thereafter, on August 26, 2024, pursuant to stipulation, Plaintiff filed a Second Amended Complaint that removed the class action allegations due to an arbitration agreement that precluded such claims. Gaines Decl., ¶ 13.

On or about September 30, 2024, Defendant filed a motion seeking to compel Plaintiff's individual claims to arbitration and staying Plaintiff's non-individual representative PAGA claims, which the Court granted. Plaintiff thereafter initiated arbitration. Gaines Decl., ¶ 14.

D. Plaintiff's Counsel's Investigation

Counsel for Plaintiff engaged in targeted, informal discovery of Defendant's alleged Labor Code violations, which specifically evaluated the strength and value of the PAGA claims in preparation for a resolution of this Action. Gaines Decl. at ¶ 15.

Plaintiff's Counsel obtained from Defendant and reviewed (i) relevant policy documents relating to the employment of Plaintiff and PAGA Settlement Members; and (ii) Excel payroll and time data relating to the number of alleged violations, including the Aggrieved Employee group size. Gaines Decl. at ¶ 16.

Based on the information received, as well as through discussions with Defendant's Counsel, Plaintiff's Counsel was able to (i) determine the total number of distinct individuals falling within the definition of "Aggrieved Employee" for the relevant statutory period and (ii) construct a damage model that calculated the maximum amount of PAGA penalties that could be levied against Defendant within the PAGA Period based on employee time and pay period data produced by Defendant. At all relevant times, Defendant has disputed Plaintiff's claims and contested both the existence of, and extent of liability as alleged by Plaintiff. Gaines Decl. at ¶ 17.

Plaintiff's Counsel's experience in litigating similar "representative" wage and hour claims, the degree of investigation that was conducted here, the amount of data that was obtained, and the discussions guided by mediation was sufficient to determine the potential value of the PAGA claim and to evaluate the strength of this claim for purposes of settlement. Defendant, however, disputed Plaintiff's claims and disputed both the existence of and extent of liability as alleged by Plaintiff. Gaines Decl. at ¶¶ 2-5, 18.

E. Settlement Negotiations

On November 12, 2025, the Parties participated in a mediation session with an experienced and reputable retired jurist and wage and hour and PAGA action mediator, Mike Ludwig, Esq. During the mediation, the Parties engaged in arm's-length negotiations and reached a resolution of the PAGA claims asserted in this Action with the assistance of Mr. Ludwig following further informal discussions and a mediator's proposal. Gaines Decl. at ¶ 19.

F. The Proposed Settlement

The Parties jointly prepared and executed a PAGA Representative Action Settlement Agreement (the "Settlement" or "Settlement Agreement"). Gaines Decl., ¶ 20; **Exhibit D.** The Settlement Agreement sets forth the terms of the Settlement reached by the Parties, including the following key points:

1. Defendant agrees to settle the PAGA matter for the payment of $60,000 (hereinafter the "Gross Settlement Amount," payable by Defendant (*see* Settlement Agreement at ¶ 1.19), which shall be all inclusive, encompassing (i) all payments to the LWDA and PAGA Settlement Members, (ii) any and all costs of third-party administration of the settlement, and (iii) Plaintiff's Counsel's attorneys' fees and costs of suit.[2] *See* Settlement Agreement at ¶¶ 4.1-4.4; Gaines Decl., ¶ 21.

2. The total sum available for payment of PAGA penalties shall be calculated by deducting from the $60,000 Gross Settlement Amount, the projected $20,000 for the payment of Plaintiff's Counsel's fees, $10,516.67 for the payment of Plaintiff's Counsel's costs, and the costs of administration not to exceed $2,950, which yields $26,533.33, and of which seventy-five percent (75%) or $19,900.00, shall be distributed to the LWDA, and the remaining twenty-five percent (25%) or $6,633.33, shall be distributed to the PAGA Settlement Members. *See* Settlement Agreement at ¶ 4.4; Gaines Decl., ¶ 23.

3. All PAGA Settlement Members will receive a pro rata share of the $6,633.33 allocated to them, which shall be distributed based on the number of pay periods each Aggrieved Employee worked for Defendant in California during the PAGA Period. *See* Settlement Agreement at ¶ 4.5. Although these calculations will not be made until after approval, a rough estimation of the value to the approximately 99 individuals falling within the definition of "Aggrieved

---

[2] By a separate agreement, the Confidential Settlement Agreement and Release of All Claims, the Parties have resolved all of Plaintiff's individual claims through a comprehensive general release in favor of Defendant. The separate individual settlement agreement provides an amount, separate from the Gross Settlement Amount, to resolve Plaintiff's individual termination-related claims against Defendant. It is not an amount that is part of the Gross Settlement Amount to be approved. If requested, and due to the confidential nature of the agreement, Plaintiff will provide a copy of the unredacted agreement to the Court for *in camera* review at the time of the hearing. Gaines Decl., ¶ 22; **Exhibit E**.

Employee" may be gleaned from the fact that an equal division would provide about $67.00 to each Aggrieved Employee, net of payments to the LWDA, the Settlement Administrator, and attorney's fees and costs. The LWDA will be paid a substantial $19,900.00. *See* Gaines Decl., at ¶ 24.

4. In exchange for the above settlement consideration, Defendant and the Released Parties shall be entitled to a limited release as follows:[3]

> By operation of the entry of the Approval Order and Judgment, subject to Defendant's full payment of the Gross Settlement Amount into the Qualified Settlement Fund, Plaintiff, on behalf of the State of California and each PAGA Settlement Member, releases the Released Parties from all claims under PAGA asserted in the Action, as amended, and/or arising from or related to the facts and claims alleged in the Action, as amended, or the PAGA letters, or that could have been raised in the Action, as amended, or the PAGA letters based on the facts and claims alleged, including all claims under the PAGA that are derivative to claims for unpaid wages, including, but not limited to, failure to pay minimum wages, overtime, and interest; the calculation of the regular rate of pay; failure to provide meal periods; failure to authorize and permit rest periods; payment for all hours worked; failure to reimburse business expenses; wage statements; failure to pay all wages when due; failure to provide paid sick leave; failure to correct wages; as well as all claims for attorneys' fees and costs related to the above claims. This release excludes the release of claims not permitted by law.
>
> The Releases Parties refers to Defendant and any parent companies, subsidiaries, affiliates, current and former management companies, shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns.

See Settlement Agreement at ¶¶ 1.24 and 5.1.

5. Settlement administration, which is to be paid from the Gross Settlement Amount, is projected to be $2,950. Gaines Decl. at ¶ 25; *See* Declaration of Jarrod Salinas ("Salinas Decl."), ¶ 6; **Exhibit C** to Salinas Decl. Phoenix Class Action Administration Solutions, a reputable

---

[3] 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 . . . .").

settlement administration company, has agreed to administer the settlement for this amount, submitting a competitive bid. Salinas Decl. at ¶¶ 1-5; **Exhibit A**. The Settlement Agreement has allocated the settlement administration fees up to $3,500 in the instance the escalator clause increases the total PAGA Settlement Members requiring additional administration costs to administer the Settlement. Gaines Decl. at ¶ 25.

6. As detailed herein, Plaintiff's counsel seeks an award of attorneys' fees of $20,000 (33 1/3% of the gross settlement amount) and litigation costs projected to be $10,516.67. *See* Settlement Agreement at ¶ 4.2.

7. Finally, under the terms of the Settlement Agreement, the value of checks uncashed more than 180 days after issuance shall be remitted to the Unclaimed Property Fund of the California State Controller's Office to be held in the name of the Aggrieved Employee. *See* Settlement Agreement at ¶ 4.7. Counsel for Plaintiff attests that his office regularly receives calls from class members or PAGA Settlement Members years after a case has settled to inquire about obtaining their settlement share because they did not cash their check in time, lost their check, or never received their check. By remitting the unclaimed checks to the State Controller, the PAGA Settlement Members have a chance to receive their individual settlement payment after the check cashing deadline. Gaines Decl. at ¶ 26.

Cy pres, expanded to its "full implication," is *cy pres comme possible*, which means "as near as possible." *Estate of Jackson* (1979) 92 Cal.App.3d 486, 489. *Cy pres* "is the doctrine that equity will, when a charity is originally or later becomes impossible, inexpedient, or impracticable of fulfillment, substitute another charitable object which is believed to approach the original purpose as closely as possible." *Id*. Here, the nearest possibility for the PAGA Settlement Members to obtain their recoveries is to allow the uncashed checks to be remitted to the Unclaimed Property Fund of the California State Controller's Office to be held in the name of the Aggrieved Employee.

As required by Labor Code § 2699(l)(2), concurrent with Plaintiff's submission of the Settlement to the Court, his counsel is transmitting it, together with this Motion, to the LWDA. Gaines Decl. at ¶ 42; **Exhibit H** to the Gaines Decl.

III. LEGAL ARGUMENT

A. Standards for Approval of a PAGA Settlement

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

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

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

While "[a PAGA] action is … designed to protect the public and penalize the employer for past illegal conduct" [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a "compromise" that stops short of rendering findings of liability and damages. Moreover, the Court must not lose sight of the fact that "[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." *See Ochoa-Hernandez v. CJADER Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774, 12 (N.D. Cal. Apr. 2, 2010).

---

[4] As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 "[involves] a balancing of several factors which may include, among others, some or all of the following: [1] the strength of Plaintiff's case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the 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).

B. The Settlement Meets All the Criteria For Approval

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

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

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

A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-length negotiations brokered through a respected third party neutral (Gaines Decl. at ¶ 19), (2) was negotiated by Counsel with significant experience in similar wage and hour litigation (Gaines Decl. at ¶¶ 2-5, 33-35 and **Exhibit A**), (3) occurred after Counsel had conducted sufficient investigation to evaluate the strength and potential value of the PAGA claim, as well as evaluating the risks of litigating this claim through trial. Gaines Decl. at ¶¶ 15-18, 28-30. Based thereon, the Court should give considerable weight to the competency and integrity of counsel in assuring itself that the Settlement Agreement represents an arms-length transaction entered without self-dealing or other potential misconduct.

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

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

This case addresses violations of important employee protections embodied in the California Labor Code – namely, that Defendant (1) failed to pay all minimum and overtime wages due to Plaintiff and PAGA Settlement Members, in violation of Labor Code §§ 510, 558, and 1194;

(2) failed to pay Plaintiff and PAGA Settlement Members for time when they were working, but could not earn a commission or piece-rate wage, in violation of Labor Code §§ 510, 558, and 1194; (3) failed to provide Plaintiff and PAGA Settlement Members with legally compliant meal periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7, 512, and 558; (4) failed to provide Plaintiff and PAGA Settlement Members with legally compliant rest periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7, 510, 558, and 1194; (5) failed to issue accurately itemized wage statements to Plaintiff and PAGA Settlement Members, in violation of Labor Code §§ 226(a) and 226.3; (6) failed to timely pay Plaintiff and PAGA Settlement Members all wages due at the separation of their employment, in violation of Labor Code §§ 201-202 and 227.3. *See* Gaines Decl. at ¶ 27.

Defendant's realistic maximum theoretical exposure in this Action, without stacking penalties, totals approximately $222,500 computed by multiplying 2,225 aggregate pay periods by $100 each. There is no California authority that expressly permits the practice of counting multiple violations/penalties that occur within the same pay period, known as "stacking" penalties. Plaintiff's Counsel is aware of no court that has actually stacked such PAGA penalties for multiple violations (meaning the "market" for PAGA settlements is based on no stacking of penalties) and given the circumstances of this case, it is unlikely that this Court would impose a massive penalty by stacking the PAGA penalty claims against Defendant. Although stacking penalties is not unlawful, the majority of cases that address awards of PAGA penalties focus on the court's discretion to reduce awards. *See Romo v. GMRI, Inc.*, 2014 WL 11320647, at *7 (C.D. Cal. Feb. 18, 2014) ("The court retains discretion over awards under a PAGA claim . . . ."); *Bright v. 99c Only Stores* (2010) 189 Cal. App. 4th 1472, 1480 n.8 ("The trial court has discretion to award less than the maximum amount of the civil penalty . . . ."). Based thereon, the non-stacking/one penalty per pay period is an appropriate evaluation for maximum potential exposure in this case. *See* Gaines Decl. at ¶ 28.

Additionally, the Ninth Circuit has held that heightened penalties are not appropriate where the Defendant was not notified by the Labor Commissioner or any court that it was subject to the California Labor Code. *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021). *See also*

Gunther v. Alaska Airlines, Inc. (2021) 72 Cal.App.5th 334, 340 (reversing heightened penalties awarded by trial court for Labor Code § 226.3 because "the plain language of the statute [Labor Code § 226.3] provides that heightened penalties apply only where the employer fails to provide wage statements or fails to keep required records.") Further, courts are often hesitant to award a heightened penalty where there is no prior citation by the Labor Commissioner. *See Bernstein* at 1144. *See also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (holding that "[u]ntil the employer has been notified that it is violating a Labor Code provision…the employer cannot be presumed to be aware that its continuing underpayment of employee's is a violation subject to penalties.") (internal quotations omitted). Defendant was not notified by the Labor Commissioner or any court that it was subject to the California Labor Code, and has not been previously cited by the Labor Commissioner for Labor Code violations. Therefore, any violations prior to Plaintiff's February 1, 2024 LWDA letter are not subject to heightened penalties. Gaines Decl. at ¶ 29. *See also Naranjo v. Spectrum Security Services* (2024) 15 Cal.5th 1056 (holding that (1) an employer's good faith, but mistaken, belief that it provided adequate wage statements precluded an award of civil penalties for a knowing an intentional failure to provide accurate wage statements; and (2) an employer's reasonable, good faith basis for believing it was complying with California wage and hour law precluded the employer from being held liable for civil penalties).

Furthermore, Defendant contends it acted within the requirements of California law at all times as to all PAGA Settlement Members. In particular, Defendant contends that it paid all employees all wages due. Defendant also contends that it maintains compliant meal and rest break practices. Defendant further contends that not every pay period at issue involved an alleged Labor Code violation subject to civil penalties. Moreover, Defendant maintained that even if the Court did award penalties, the Court could and would *substantially* reduce the penalties awarded based on the discretionary factors contained in Labor Code § 2699(e)(2) ("In any action by an aggrieved employee . . . , a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."). Defendant also argued that it had a valid and enforceable arbitration agreement, which could preclude the litigation of

PAGA claims on a representative basis altogether, given the United States Supreme Court's recent ruling in *Viking River Cruises v. Moriana,* 142 S.Ct. 734 (2022). Gaines Decl. at ¶ 30.

Based on these disputes, which had the potential to completely eliminate Plaintiff's recovery, the range of realistic "litigation outcomes" on the Plaintiff's PAGA claim was defined by a "maximum possible liability" amount of approximately $222,500, and a net-zero recovery based on the defenses asserted by Defendant. Notwithstanding the existence of such issues, the Settlement achieves a significant benefit – approximately 27% recovery of the maximum possible liability. As such, this factor weighs very heavily in favor of resolution by way of the compromise set forth in the Settlement Agreement. Furthermore, and simply stated, Defendant was generally in compliant with the Labor Code such that the settlement value of the matter largely represents a fair compromise on the maximum possibly liability. Gaines Decl., ¶ 31.

3. <u>The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor of Approval of the Settlement</u>

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

4. <u>The Benefits Conferred by the Settlement Balance in Favor of Approval</u>

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

> The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d at 625 (emphasis in original). Thus, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Id.* at 624 (citations omitted). As the Second Circuit has 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).

See Linney, supra, 151 F.3d at 1242.

Here, after all deductions are made for administration and attorneys' fees and costs, approximately $26,533.33 will be paid out, of which $19,900.00 (i.e. 75%) will go to the LWDA, and $6,633.33 (i.e. 25%) will go to the PAGA Settlement Members, as required by Labor Code § 2699(i) ("civil penalties recovered by PAGA Settlement Members shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the PAGA Settlement Members."). *See* Settlement Agreement at ¶ 4.4.

This result is exceptional, as settlements of PAGA claims impacting thousands of individuals have been approved as reasonable for amounts far less than the payment in this case. *See e.g., Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012) ("Defendant has agreed to pay $10,000 as civil penalties pursuant to the PAGA . . . . Of the $10,000, 75 percent ($7,500) will be paid to the State of California, and the remainder ($2,500) will benefit the class . . . . The Court finds that the PAGA payment is set at a reasonable amount, and it shall be approved."); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal. Oct. 29, 2012) ("GTI agrees to allocate $10,000 to Plaintiff's PAGA claims, and will pay $7,500 to the LWDA, and $2,500 to participating Class Members on a pro-rata basis. This comports with settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the allocation of the Settlement to Plaintiff's PAGA claim."); *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) ("Pursuant to the Settlement Agreement, the parties have agreed to pay $7,500 to the California Labor and Workforce Development Agency . .

. . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it be approved."); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11, 2012) ("Pursuant to the Settlement Agreement, Defendant has agreed to pay $15,000 to the California Labor and Workforce Development Agency . . . . The Court finds that the PAGA payment is set at a reasonable amount, and it shall be approved.").[5]

Thus, notwithstanding the existence of issues having the potential to completely eliminate recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds typical PAGA awards routinely approved by the courts, but it also recovers monies for PAGA Settlement Members which they otherwise would not receive. As such, this factor balances strongly in favor of approval of the Settlement.

5. The Scope of the Release is Narrowly Tailored

As discussed above, the California Supreme Court has concluded that in the context of PAGA "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." *See Arias, supra,* 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in exchange for the foregoing consideration is limited to the civil penalties asserted in the Action under Labor Code §§ 2698 *et seq.* *See* Settlement Agreement at ¶ 5.1.

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

Plaintiff's Counsel has a significant degree of experience in complex wage and hour litigation. *See* Gaines Decl., ¶¶ 2-5, 33-37, Gaines Decl. at **Exhibit A**. In the view of Plaintiff's Counsel, the benefit conferred by the proposed Settlement is fair, reasonable, and adequate under the circumstances, as it reflects a reasoned compromise which takes into consideration the risks inherent in this case, which had the potential to completely eliminate recovery. Gaines Decl., ¶¶

[5] Significantly, each of the above-cited actions involved a *higher* number of "PAGA Settlement Members" than at issue here. *See Franco*, 2012 U.S. Dist. LEXIS 169057, 14 ("2,055 Class Members were ultimately identified"); *Garcia*, 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").

15-18, 28-31. As such, this factor balances in favor of approval of the Settlement.

7. <u>The Extent of Discovery Completed And The Stage Of The Proceedings Favor Approval of the Settlement</u>

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

Here, the extent of discovery conducted was sufficient to enable Plaintiff's Counsel to evaluate the strength and value of the claim for purposes of settlement. Gaines Decl. at ¶¶ 15-18. As discussed above, Plaintiff's Counsel's investigation was sufficient to, among other things, tabulate with precision the maximum number of alleged PAGA penalty violations at issue during the PAGA Period and identify the total number of individuals falling within the definition of "Aggrieved Employee" for the PAGA Period.

Based on Plaintiff's Counsel's experience litigating wage and hour claims, such investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of this claim for purposes of settlement. *See* Gaines Decl., ¶¶ 2-5; 15-18, 27-31, 35-40.

8. <u>Additional Factors Weigh In Favor Of Finding The Terms Of The Proposed Settlement To Be Fair, Adequate, And Reasonable</u>

In addition to the factors presented above, the proposed Settlement does not possess any obvious deficiencies. The Settlement contemplates entry of an Order (submitted concurrently herewith) which approves the Settlement. Settlement Agreement at ¶ 6.1.1 of the Settlement Agreement and paragraph 8 of the Proposed Order authorize the Court to retain jurisdiction to enforce the Settlement Agreement. This procedure effectively disposes of the Action in its entirety, documents the Court's approval of the Settlement as required by PAGA, and allows for Court intervention if necessary to enforce the terms of the Settlement Agreement. In sum, under the applicable standards for approval of PAGA settlements in California, the settlement in this case meets the standards for approval.

IV. PLAINTIFF'S COUNSEL IS ENTITLED TO RECOVER THEIR REASONABLE FEES AND COSTS

Pursuant to the terms of the Settlement, Plaintiff's Counsel seeks attorneys' fees of one-third (33-1/3%) of the Gross Settlement Amount (projected to be $20,000) and reimbursement of litigation costs in the amount of $10,516.67, falling within the bounds authorized by the Settlement Agreement. *See* Settlement Agreement at ¶ 4.2. Plaintiff's Counsel's entitlement to an award of attorneys' fees and costs is warranted on multiple independent grounds. Further, the amount of fees requested falls well within the range of reasonableness under applicable standards, as the amount requested constitutes a "percentage of the fund" deemed reasonable in similar wage and hour settlements of this size and approved by California courts, which is not only warranted based on the contingency risk Plaintiff's Counsel has agreed to incur for the benefit of the State of California and PAGA Settlement Members, but also based on the significant results achieved, as the Settlement obtains a recovery substantially above the range approved as reasonable by California state and federal courts. Based thereon, Plaintiff's Counsel respectfully requests that the Court enter an order approving the fee and cost amounts requested.

A. Plaintiff's Counsel Is Entitled To Recover Their Reasonable Fees And Costs As A Matter Of Right

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

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

The California Supreme Court has held that, "when a number of persons are entitled in common to a specific fund, and an action brought by a Plaintiff or Plaintiff for the benefit of all results in the creation or preservation of that fund, such Plaintiff or Plaintiff may be awarded attorneys' fees out of the fund." *Serrano III*, *supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d 1; *see also Boeing*, *supra*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit of persons other than herself or his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Mills*, *supra*, 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 Plaintiff (e.g., a class action), the court has inherent equitable power to order Plaintiff's attorney fees paid out of the common fund or property [citations]. Such fee spreading assures that all of those benefited by the litigation pay their fair share of obtaining the recovery.

The percentage-of-the-fund approach appears to be the preferred method of awarding fees in traditional common fund cases, such as this case. Where the settlement amount is a "certain or easily calculable sum of money," use of the percentage-of-the-fund method is appropriate. *Serrano III*, 20 Cal. 3d at 35.

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

> It is not necessary to find this suit a proper class action in order to uphold the portion of the judgment awarding counsel for Plaintiff 25 percent of all retroactive salaries and wages received. That award may be sustained under the rule that a litigant who creates a fund in which others enjoy beneficial rights may require those beneficiaries to pay their fair share of the expense of litigation.

(internal citations omitted)

In *Quinn, supra,* 15 Cal.3d at 167, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the California Supreme

Court recognized that the common benefit doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share."

Numerous appellate courts have ruled similarly. *See e.g.*, *Knoff v. City and County of San Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a "contingent percentage" award of attorneys' fees in a representative action as the proper exercise of the court's broad equitable powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys' fees and expenses properly awarded from common benefit composed of illegally imposed sales and use tax); *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners of residential property in an inverse condemnation action).

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

Thus, as Plaintiff's Counsel has expended a significant amount of time and money to secure a $25,983.33 settlement fund for the LWDA and PAGA Settlement Members [*Schiller*, 2012 U.S. Dist. LEXIS 80776, at 43 ("A common fund results when 'the activities of the party awarded fees have resulted in the preservation or recovery of a certain or easily calculable sum of money-out of which sum or 'fund' the fees are to be paid.'")], and in doing so, has exclusively borne the risk of loss for such expenditures of time and expenses (as the LWDA elected not to take the case after receiving the PAGA Notice), Plaintiff's Counsel is entitled to claim reasonable fees from that fund under applicable precedent.[6]

[6] Plaintiff's Counsel is also entitled to recover attorney's fees and costs as a matter of right under the PAGA statute [*Labor Code* § 2699(g)(1) ("Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.")], and under *C.C.P.* § 1021.5, as the

B. The Fee Amount Requested Is Reasonable

In addition to the forgoing, Plaintiff's Counsel's request for attorneys' fees in the amount of one-third (33-1/3%) of the $60,000 Gross Settlement Amount falls well within the "zone of reasonableness." It is important to highlight at the outset that the fee amount presently sought is not extraordinary, but actually falls at the "average" fee deemed reasonable under California State court authority, as it is recognized that "courts 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 e.g., Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). This fee falls directly within that range.

Moreover, Plaintiff's Counsel agreed to incur the contingency risk for the benefit of the State of California (which elected not to take the case after receiving the PAGA Notices). Gaines Decl., ¶¶ 32-40. The significant results achieved, and the underlying facts therefrom, justify Plaintiff's Counsel's requested fee as reasonable under all applicable standards.

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

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

First, the results achieved by Plaintiff's Counsel are significant as Defendant have agreed to pay $60,000 under the Settlement. This is a significant recovery given the risks associated with

---

instant PAGA action was by definition "for the public benefit" and secured monetary awards for approximately 300 PAGA Settlement Members. *See e.g. Estrada v. FedEx Ground Package System, Inc.* (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.").

obtaining any recoverable penalties. Gaines Decl., ¶¶ 15-18, 23-31. Further, the settlement of PAGA claims impacting a comparable number of individuals have been approved as reasonable for between $7,500.00 and $15,000.00. *See* Section III.B.4., *supra.*

Second, such results were achieved in the face of significant risks. As explained above, Defendant maintained defenses to Plaintiff's PAGA claims that very well could have resulted in a net-zero recovery at trial.

Third, notwithstanding this risk of loss, Plaintiff's Counsel undertook representation of the instant PAGA claim for the benefit of the State of California on a contingency basis. *See* Gaines Decl. at ¶¶ 35-37. This required Plaintiff's Counsel to personally assume the risk of nonpayment in securing the substantial financial benefit the State of California stands to receive, and also constitutes a "loan" on Plaintiff's Counsel services – both of which are factors that warrant fee enhancement under applicable California Supreme Court authority:

> One of the most common fee enhancers . . . is for contingency risk. We reaffirmed the propriety of a contingency risk enhancement in *Ketchum*: "The economic rationale for fee enhancement in contingency cases has been explained as follows: 'A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.' (Posner, Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) 'A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases."

Graham v. DaimlerChrysler Corp. (2004) 34 Cal.4th 553, 579-580.

Finally, the percentage requested by Plaintiff's Counsel falls within a typical range, particularly in light of the modest settlement size. *Martin, supra,* 2011 U.S. Dist. LEXIS 61796, 23 ("[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, Plaintiff's 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 and the results obtained.

D. **<u>While the Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common Fund, It is Further Confirmed by a Lodestar Cross-Check</u>**

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

> The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a 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.

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

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

Here, Plaintiff's Counsel's fee request of one-third (33-1/3%) of the Gross Settlement Amount is fair and reasonable based on a percentage of the recovery, and as well as when confirmed with a lodestar cross-check. First, "regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11. This is also consistent with Plaintiff's Counsel's experience in similar wage and hour class action matters. Gaines Decl., ¶¶ 2-5; 32-40. Thus, the percentage sought by Plaintiff's Counsel here is reasonable.

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

Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*, *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (approving multiplier of ~2.34); *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving multiplier of ~2.04). In representative actions such as this one, where the value of the benefit conferred to the class "can be monetized with a reasonable degree of certainty," a court may "adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable 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 $20,000. Based on a projected final lodestar of $51,590, this yields a negative "multiplier" of 2.58 *over* the $20,000 fee request. Gaines Decl., ¶ 28; **Exhibit F** to Gaines Decl. The billing rate used to compute the lodestar is reasonable in view of the evidence submitted herewith. Gaines Decl*.,* ¶¶ 2-5; 32-40; **Exhibit F**.

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 PAGA Settlement Members), it is fair and reasonable to account for these risks and compensate Plaintiff's Counsel with a fee award of one-third of the Gross Settlement Amount, projected to be $20,000.

E. Plaintiff's Counsel's Request for Costs is Reasonable

In the course of this litigation, Plaintiff's Counsel incurred out-of-pocket costs of $10,516.67. *See* Gaines Decl. at ¶ 41, **Exhibit G**. As demonstrated in the Gaines Declaration submitted herewith, the incurred costs included filing fees, service fees, future costs, postage, expert fees, and mediation fees. *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 (C.D. Cal. 1989) (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); *see also*, *In re GNC Shareholder Litigation* 668 F.Supp. 450, 452 (W.D. Pa. 1987).

The costs incurred by Plaintiff's Counsel in this litigation benefited Plaintiff, PAGA Settlement Members, and the State. Plaintiff's cost request is reasonable and represents the costs that Plaintiff's Counsel was required to incur to prosecute this action and should therefore be granted.

V. CONCLUSION

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

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

2. Appoint Phoenix Class Action Administration Solutions as the Settlement Administrator and approve its administration fees up to $2,950 for payment out of the Gross Settlement Amount;

3. Approve the award of attorneys' fees of one-third of the Gross Settlement Amount (projected to be $20,000), and costs of $10,516.67 to Plaintiff's Counsel, payment of which shall come from the Gross Settlement Amount;

4. Direct disbursement of the Net Settlement Fund to the LWDA and all PAGA Settlement Members as provided for in the Settlement Agreement; and

5. Dismiss the Action with prejudice, subject to the Court's retention of jurisdiction pursuant to California Labor Code, including section 664.6 and California Rules of Court 3.769(h).

Date: March 26, 2026

Respectfully submitted,

GAINES LAW CORPORATION

By:______________________________
EVAN S. GAINES
Attorney for Plaintiff
MOHAMMAD GHARREMAIN