

1 EVAN S. GAINES, ESQ. SBN 287668
2 **GAINES LAW CORPORATION**
3 4550 E. Thousand Oaks Blvd., Suite 100
4 Westlake Village, CA 91362
5 Telephone: (805) 892-8200
6 Facsimile: (805) 800-8928
7 evan@gaines.law

8 Attorneys for Plaintiffs Arthur Ponce and Shahlaa Raja,
9 on behalf of themselves and all “aggrieved employees”
10 pursuant to Labor Code § 2698 *et seq.*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ARTHUR PONCE, an individual,

Plaintiff,

v.

EXPRESS DRY, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendant.

CASE NO: 37-2024-00022921-CU-OE-CTL

Assigned to the Honorable Loren G. Freestone,
Dept. C-64

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

Date: January 30, 2026
Time: 10:30 a.m.
Dept.: C-64

Complaint Filed: May 16, 2024

1 **PLEASE TAKE NOTICE THAT** on January 30, 2026 at 10:30 a.m., or as soon thereafter
2 as the matter may be heard, in Department C-64 of the above-entitled Court, located at Hall of
3 Justice, Fourth Floor, 330 W Broadway, San Diego, California 92101, Plaintiffs Arthur Ponce
4 (“Ponce”) and Shahlaa Raja (“Raja”) (collectively, “Plaintiffs”) will and hereby do move
5 unopposed for an Order: (1) granting approval of the proposed settlement of claims brought
6 pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”)
7 set forth in the Parties’ Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement
8 Agreement (the “Settlement” or “Settlement Agreement”); (2) appointing Phoenix Settlement
9 Administrators as the Settlement Administrator and approving payment of its fees not to exceed
10 \$3,500.00 (projected to be \$2,950) from the PAGA Gross Settlement Amount; (3) directing
11 disbursement of the PAGA Gross Settlement Amount pursuant to the terms of the Settlement
12 Agreement; (4) directing payment of attorneys’ fees from the PAGA Gross Settlement Amount not
13 to exceed one-third (33-1/3%) of the PAGA Gross Settlement Amount (projected to be \$25,000) to
14 Plaintiffs’ Counsel; (5) directing attorneys’ litigation costs from the PAGA Gross Settlement
15 Amount not to exceed \$9,120.77; and (6) dismissing this action with prejudice.¹

16 This motion will be based on this Notice, the supporting memorandum of points and
17 authorities, the Parties’ Settlement Agreement, the Declaration of Evan S. Gaines, Declaration of
18 Jarrod Salinas of Phoenix Settlement Administrators, the documents and records on file in this
19 matter, and such additional arguments, authorities, and evidence and other matters as may be
20 presented by the Parties hereafter.

21 Date: December 19, 2025

Respectfully submitted,

GAINES LAW CORPORATION

23
24 By: 
25 EVAN S. GAINES
26 Attorneys for Plaintiffs
27 ARTHUR PONCE and SHAHLAA RAJA

28 ¹ Plaintiffs are not seeking an enhancement/service payment.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs, under the Labor Code's Private Attorneys General Act of 2004 ("PAGA"),
4 respectfully move this Court for an Order granting approval of the proposed Settlement of the
5 above-captioned lawsuit against Defendant Express Dry, Inc. ("Defendant"). The proposed
6 Settlement will dispose of the Released Claims asserted by Plaintiffs, on behalf of the State and
7 approximately 50 individuals who currently and/or formerly worked for Defendant in California as
8 hourly and/or non-exempt employees at any time from March 12, 2023 through March 20, 2025
9 (the "PAGA Release Period") (the "PAGA Settlement Employees" or "Aggrieved Employees").
10 *See* Settlement Agreement at I.13.

11 This case addresses claimed violations of employee protections embodied in the California
12 Labor Code and penalties stemming therefrom for the violation of the PAGA. Plaintiffs alleged
13 (individually on behalf of Ponce and) on behalf of all PAGA Settlement Employees that Defendant
14 (1) failed to pay all wages due to Plaintiffs and PAGA Settlement Employees, in violation of Labor
15 Code §§ 226.7, 246, 510, 512, 1174, 1174.5, 1194, and 1194.2; (2) failed to provide Plaintiffs and
16 PAGA Settlement Employees with legally compliant rest periods, or compensation in lieu thereof,
17 in violation of Labor Code § 226.7; (3) failed to provide Plaintiffs and PAGA Settlement
18 Employees with legally compliant meal periods, or compensation in lieu thereof, in violation of
19 Labor Code §§ 226.7 and 512; (4) failed to timely pay Plaintiffs and PAGA Settlement Employees
20 all wages due at the separation of their employment, in violation of Labor Code §§ 201-202; (5)
21 failed to issue accurately itemized wage statements to Plaintiffs and PAGA Settlement Employees,
22 in violation of Labor Code § 226(a); and (6) failure to reimburse business expenses, in violation of
23 Labor Code § 2802 (pursuant to PAGA and on behalf of Raja only). Plaintiffs also alleged
24 violations of Labor Code §§ 226.3 and 558 pursuant to PAGA only. As a result of Defendant's
25 alleged violations of the Labor Code, approximately 50 employees are claimed to have suffered
26 Labor Code violations for up to 1,317 aggregate pay periods at the rate of \$100 each based on
27 PAGA's penalty provisions. *Gaines Decl.*, ¶ 28.

28 In deciding whether to grant approval of the proposed Settlement, the primary issue to be

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

8 The value achieved by the Settlement may be gleaned from the fact that the Labor and
9 Workforce Development Agency (“LWDA”) and the approximately 50 PAGA Settlement
10 Employees encompassed by the Settlement will receive no less than \$9,351.49 under the terms of
11 the Settlement, which, pursuant to the operative statute, shall be allocated “75 percent to the Labor
12 and Workforce Development Agency . . . and 25 percent to the aggrieved employees.” *See* Cal.
13 Lab. Code § 2699(i). This is a reasonable recovery, not only because further litigation may have
14 resulted in a net-zero recovery based on the defenses available to Defendant, but because the
15 amount secured by Plaintiffs is sizable and in line with similar settlements of these types of claims
16 under PAGA. It is also important to underscore that all penalty amounts paid to PAGA Settlement
17 Employees will be an unexpected windfall, as employees typically do not bring individual lawsuits
18 asserting only PAGA penalties.

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

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

22 **A. The Parties**

23 Defendant Express Dry, Inc. specializes in plumbing services and flood cleanup in
24 Riverside County and San Diego, where Plaintiffs worked. Gaines Decl. at ¶ 6.

25 Defendant employed Ponce as a non-exempt employee from approximately January 2023
26 through February 2024, and Raja as a non-exempt from approximately January 2024 through April
27 19, 2024. The PAGA Settlement Employees are all current and former non-exempt employees who
28 worked for Express Dry, Inc. in the State of California at any time from March 12, 2023 through

1 March 20, 2025. Gaines Decl. at ¶ 7.

2 **B. The Claims Asserted**

3 1. Plaintiffs allege claims that Defendant failed to pay all wages earned by Plaintiffs
4 and PAGA Settlement Employees, failed to provide Plaintiffs and PAGA Settlement Employees
5 with legally compliant meal and rest periods, or compensation in lieu thereof, failed to issue
6 accurately itemized wage statements to Plaintiffs and PAGA Settlement Employees, failure to
7 reimburse all business expenses incurred by Raja and PAGA Settlement Employees, and failed to
8 timely pay Plaintiffs and PAGA Settlement Employees all wages due at the separation of their
9 employment. Plaintiffs collectively assert these claims under PAGA, on behalf of themselves,
10 individually, and on behalf of the State of California and other PAGA Settlement Employees, for
11 civil penalties for the alleged Labor Code violations. Gaines Decl. at ¶ 8. Ponce also seeks damages
12 individually for Defendant's failure to pay all wages due, provide meal and rest periods, pay all
13 wages due upon separation of employment, and issue accurate and complete wage statements.
14 Gaines Decl. at ¶ 9.

15 **C. Procedural Posture**

16 On March 12, 2024, pursuant to Labor Code section 2699.3, Ponce gave written notice by
17 online filing with the LWDA and by certified mail, return receipt requested, to Defendant, of the
18 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
19 to support the alleged violation. Gaines Decl., ¶ 10; **Exhibit B** (LWDA Letter).

20 Thereafter, on May 16, 2024, Ponce filed an Individual and Representative Action
21 complaint in this Court alleging claims individually and pursuant to PAGA on behalf of himself
22 and PAGA Settlement Employees. Gaines Decl., ¶ 11.

23 That same day, on May 16, 2024, Plaintiffs filed a supplemental letter with the LWDA that
24 added Raja as an additional employee-complainant and alleged additional claims for failure to
25 reimburse business expenses. Gaines Decl., ¶ 12; **Exhibit C** (Supplemental LWDA Letter).

26 On September 20, 2024, and after the LWDA declined to take action within the statutorily
27 permissible time with respect to Plaintiffs' May 16, 2024 Supplemental LWDA Letter, Ponce filed
28 a First Amended Individual and Representative Action ("FAC") that added Raja as well as the

1 claims, allegations, and compliance with the May 16, 2024 Supplemental LWDA Letter. Gaines
2 Decl., ¶ 13.

3 Defendant answered the FAC on or about October 24, 2024. Gaines Decl., ¶ 14.

4 **D. Plaintiffs' Counsel's Investigation**

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

8 Plaintiffs' Counsel obtained and reviewed (i) relevant policy documents relating to the
9 employment of Plaintiffs and PAGA Settlement Employees; and (ii) excel payroll and time data
10 relating to the number of alleged violations, including the PAGA group size. Gaines Decl. at ¶ 16.

11 Based on the information received, as well as through discussions with Defendant's
12 Counsel, Plaintiffs' Counsel was able to (i) determine the total number of distinct individuals
13 employed by Defendant in non-exempt positions falling within PAGA's statutory period and (ii)
14 construct a damage model that calculated the maximum amount of PAGA penalties that could be
15 levied against Defendant within the PAGA Release Period based on employee pay period data
16 produced by Defendant. At all relevant times, Defendant have disputed Plaintiffs' claims and
17 contested both the existence of, and extent of liability as alleged by Plaintiffs. Gaines Decl. at ¶ 17.

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

24 **E. Settlement Negotiations**

25 On March 20, 2025, the Parties participated in a mediation session with an experienced and
26 reputable retired jurist and wage and hour and PAGA action mediator, Judge Amy Hogue (Ret.).
27 During the mediation, the Parties engaged in arm's-length negotiations and reached a resolution of
28

1 the PAGA claims asserted in this Action with the assistance of Judge Hogue.² Gaines Decl. at ¶
2 19.

3 **F. The Proposed Settlement**

4 The Parties jointly prepared and executed a Private Attorneys General Act (Labor Code §
5 2698 *et seq.*) Settlement Agreement (the “Settlement” or “Settlement Agreement”). Gaines Decl.,
6 ¶ 20; **Exhibit D**. The Settlement Agreement sets forth the terms of the Settlement reached by the
7 Parties, including the following key points:

8 1. Defendant agrees to settle the PAGA matter for the payment of \$75,000 (hereinafter
9 the “PAGA Gross Settlement Amount,” payable by Defendant (*see* Settlement at III.2), which shall
10 be all inclusive, encompassing (i) all payments to the LWDA and PAGA Settlement Employees,
11 (ii) any and all costs of third-party administration of the settlement, and (iii) Plaintiffs’ Counsel’s
12 attorneys’ fees and costs of suit. *See* Settlement Agreement at I.6; Gaines Decl., ¶ 21.

13 2. The total sum available for payment of PAGA penalties shall be calculated by
14 deducting from the \$75,000 PAGA Gross Settlement Amount, the projected \$25,000 for the
15 payment of Plaintiffs’ Counsel’s fees, \$9,120.77 for the payment of Plaintiffs’ Counsel’s costs, and
16 the costs of administration not to exceed \$3,500.00 (but projected to be \$2,950),³ which yields
17 \$37,379.23 and of which seventy-five percent (75%) or \$28,034.42, shall be distributed to the
18 LWDA, and the remaining twenty-five percent (25%) or \$9,344.81, shall be distributed to the
19 PAGA Settlement Employees. *See* Settlement Agreement at III.2-4; Gaines Decl., ¶ 24.

20 3. All PAGA Settlement Employees will receive a pro rata share of the \$9,344.81

21 ² The Parties also agreed to resolve Plaintiff Ponce’s alleged individual claims by way of separate
22 confidential agreement and in exchange for a general release. Plaintiff Raja also entered into a
23 separate confidential agreement in exchange for a general release. As stated above, neither
24 Plaintiff is seeking an enhancement payment through the PAGA Settlement. Gaines Decl., ¶¶ 22-
25 23.

26 ³ The Settlement Agreement has allocated the settlement administration fees up to \$2,950. *See*
27 Settlement at III.3.b. Phoenix’s not to exceed quote is \$2,950. *See* Salinas Decl. at ¶ 15; **Exhibit**
28 **B**. In Plaintiffs’ Counsel’s experience, during the disbursement and data gathering processes,
situations arise that may require a settlement administrator to increase its fees (for example, if an
escalator provision is invoked, and there are additional PAGA Settlement Employees, the
administrator may need to increase its fees). Accordingly, Plaintiffs are requesting the Court to
approve Phoenix’s costs to administer the settlement at \$3,500 in case Phoenix must increase its
fees due to the escalator provision being invoked. Gaines Decl. at ¶ 25.

1 allocated to them, which shall be distributed based on the number of pay periods each PAGA
2 Settlement Employee worked for Defendant in California during the PAGA Release Period. *See*
3 Settlement Agreement at I.7. Although these calculations will not be made until after approval, a
4 rough estimation of the value to the approximately 50 individuals falling within the definition of
5 “PAGA Settlement Employees” may be gleaned from the fact that an equal division would provide
6 about \$186.90 to each PAGA Settlement Employee, net of payments to the LWDA, the Settlement
7 Administrator, and attorney’s fees and costs. The LWDA will be paid a substantial \$28,034.42.
8 *See* Gaines Decl., at ¶ 26.

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

11 Upon the Effective Date, Plaintiffs, as individuals, and as the
12 representative of the PAGA Settlement Employees, the LWDA and
13 the State of California, hereby forever and completely release and
14 discharge the Released Parties of and from all of the Released
15 Claims, and thus, Plaintiffs, the PAGA Settlement Employees,
16 LWDA and the State of California will be forever barred from
17 pursuing any of the Released Claims defined herein against Released
18 Parties which arose during periods of employment in a non-exempt
19 position in California during the PAGA Period. The Parties
20 understand and agree that this release is limited to the Released
21 Claims and does not otherwise impact the individual rights or claims
22 of the PAGA Settlement Employees. In accordance with *Arias v.*
23 *Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in “a
24 representative action brought by an aggrieved employee under the
25 Labor Code Private Attorneys General Act of 2004 . . . is binding not
26 only on the named employee Plaintiffs but also on government
27 agencies and any aggrieved employee not a party to the proceeding,”
28 which the Final Order shall so reflect. Pursuant to *Arias* and
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

26 ⁴ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*
27 (2009) 46 Cal. 4th 969, 986 (concluding that “with respect to the recovery of civil penalties,
28 nonparty employees as well as the government are bound by the judgment in an action brought
under the act . . .”).

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.

See Settlement Agreement at § III.5.

5. Settlement administration, which is to be paid from the PAGA Gross Settlement Amount, is projected to be \$2,950. See Declaration of Jarrod Salinas ("Salinas Decl."), ¶ 15; **Exhibit B** to Salinas Decl. This motion, however, seeks \$3,500 for claims administration to account for any potential overage due to invocation of the Escalator provision. Phoenix Settlement Administrators, a reputable settlement administration company, has agreed to administer the settlement for this amount, submitting a competitive bid. Salinas Decl. at ¶¶ 5-15; **Exhibit A**.

6. As detailed herein, Plaintiffs' counsel seeks an award of attorneys' fees and litigation costs projected to be \$9,120.77. See Settlement Agreement at III.3.a.

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 PAGA Settlement Employee. See Settlement Agreement at IV.4. Counsel for Plaintiffs attests that their office regularly receives calls from class members or aggrieved employees 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 Employees have a chance to receive their individual settlement payment after the check cashing deadline. Gaines Decl. at ¶ 27.

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 Employees to obtain their recoveries is to allow the uncashed checks to be remitted to

1 the Unclaimed Property Fund of the California State Controller’s Office to be held in the name
2 of the PAGA Settlement Employee.

3 **III. LEGAL ARGUMENT**

4 **A. Standards for Approval of a PAGA Settlement**

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

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

18 Although the operative PAGA statute does not set forth the criteria on which a PAGA
19 settlement is to be judged, California law does state that some of the factors for review of a class
20 action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. § 382 and Cal. Rules of Court, Rule
21 3.769, may be “useful in evaluating the fairness of a PAGA settlement” to the reviewing court. *See*
22 *Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56, 77 (“Thus, while PAGA does not require
23 the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for
24 settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public
25 and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors
26 used to evaluate class action settlements bear on a settlement's fairness—including the strength of
27 the Plaintiffs’ case, the risk, the stage of the proceeding, the complexity and likely duration of
28 further litigation, and the settlement amount—these factors can be useful in evaluating the fairness

1 of a PAGA settlement.”). Courts within California have continued to approve settlements of PAGA
2 claims using Rule 23 criteria.⁵ However, it is important to underscore that not all Rule 23 factors
3 can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered
4 a class action but a law enforcement action, and therefore does not have to meet the requirements
5 of Rule 23.” *See Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan.
6 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2,
7 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010).
8 Based thereon, a court’s review of a PAGA settlement necessarily implicates the following unique
9 features that render the approval process completely distinct from approval of a class action
10 settlement under Rule 23 or C.C.P. § 382 and Cal. Rules of Court, Rule 3.769.

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

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

22 ⁵ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
23 balancing of several factors which may include, among others, some or all of the following: [1] the
24 strength of plaintiffs’ case; [2] the risk, expense, complexity, and likely duration of further
25 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
26 in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the
27 experience and views of counsel; [7] the presence of a governmental participant; and [8] the
28 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).

32774, 12 (N.D. Cal. Apr. 2, 2010).

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, 34, 36 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 ¶¶ 10-14, 28-32. 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 Plaintiffs 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 Plaintiffs 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 wages due to Plaintiffs and

1 PAGA Settlement Employees, in violation of Labor Code §§ 226.7, 246, 510, 512, 1174, 1174.5,
2 1194, and 1194.2; (2) failed to provide Plaintiffs and PAGA Settlement Employees with legally
3 compliant rest periods, or compensation in lieu thereof, in violation of Labor Code § 226.7; (3)
4 failed to provide Plaintiffs and PAGA Settlement Employees with legally compliant meal periods,
5 or compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512; (4) failed to timely
6 pay Plaintiffs and PAGA Settlement Employees all wages due at the separation of their
7 employment, in violation of Labor Code §§ 201-202; (5) failed to issue accurately itemized wage
8 statements to Plaintiffs and PAGA Settlement Employees, in violation of Labor Code §§ 226(a)
9 and 226.3; and (6) failure to reimburse business expenses, in violation of Labor Code § 2802
10 (pursuant to PAGA and on behalf of Raja only). *See* Gaines Decl. at ¶ 28.

11 Defendant's realistic maximum theoretical exposure in this Action, without stacking
12 penalties, totals approximately \$131,700 computed by multiplying 1,317 aggregate pay periods by
13 \$100 each. There is no California authority that expressly permits the practice of counting multiple
14 violations/penalties that occur within the same pay period, known as "stacking" penalties.
15 Plaintiffs' Counsel is aware of no court that has actually stacked such PAGA penalties for multiple
16 violations (meaning the "market" for PAGA settlements is based on no stacking of penalties) and
17 given the circumstances of this case, it is unlikely that this Court would impose a massive penalty
18 by stacking the PAGA penalty claims against Defendant. Although stacking penalties is not
19 unlawful, the majority of cases that address awards of PAGA penalties focus on the court's
20 discretion to reduce awards. *See Romo v. GMRI, Inc.*, 2014 WL 11320647, at *7 (C.D. Cal. Feb.
21 18, 2014) ("The court retains discretion over awards under a PAGA claim"); *Cardenas v.*
22 *McLane Foodservice, Inc.*, 2011 WL 379413, at *4 (C.D. Cal. Jan. 31, 2011) ("The PAGA text
23 also provides the Court with the discretion to limit the amount Plaintiffs may recover from the
24 employer."); *Bright v. 99c Only Stores* (2010) 189 Cal. App. 4th 1472, 1480 n.8 ("The trial court
25 has discretion to award less than the maximum amount of the civil penalty"). Based thereon,
26 the non-stacking/one penalty per pay period is an appropriate evaluation for maximum potential
27 exposure in this case. *See* Gaines Decl. at ¶ 29.

28 Additionally, the Ninth Circuit has held that heightened penalties are not appropriate where

1 the Defendant were not notified by the Labor Commissioner or any court that it was subject to the
2 California Labor Code. *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021). *See also*
3 *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 340 (reversing heightened penalties
4 awarded by trial court for Labor Code § 226.3 because “the plain language of the statute [Labor
5 Code § 226.3] provides that heightened penalties apply only where the employer fails to provide
6 wage statements or fails to keep required records.”) Further, courts are often hesitant to award a
7 heightened penalty where there is no prior citation by the Labor Commissioner. *See Bernstein,*
8 *supra*, 3 F.4th at 1144. *See also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209
9 (holding that “[u]ntil the employer has been notified that it is violating a Labor Code provision...the
10 employer cannot be presumed to be aware that its continuing underpayment of employee’s is a
11 violation subject to penalties.”) (internal quotations omitted). Defendant were not notified by the
12 Labor Commissioner or any court that it was subject to the California Labor Code, and have not
13 been previously cited by the Labor Commissioner for Labor Code violations. Therefore, any
14 violations prior to Plaintiffs’ March 12, 2024 and May 16, 2024 LWDA letters are not subject to
15 heightened penalties. Gaines Decl. at ¶ 30. *See also Naranja v. Spectrum Security Services* (2024)
16 15 Cal.5th 1056 (holding that (1) an employer’s good faith, but mistaken, belief that it provided
17 adequate wage statements precluded an award of civil penalties for a knowing an intentional failure
18 to provide accurate wage statements; and (2) an employer’s reasonable, good faith basis for
19 believing it was complying with California wage and hour law precluded the employer from being
20 held liable for civil penalties).

21 Furthermore, Defendant contends it acted within the requirements of California law at all
22 times as to all PAGA Settlement Employees. In particular, Defendant contend that it paid all
23 employees all wages due and all expense reimbursement due. Defendant also contends that it
24 maintains compliant meal and rest break practices. Defendant further contends that not every pay
25 period at issue involved an alleged Labor Code violation subject to civil penalties. Moreover,
26 Defendant maintained that even if the Court did award penalties, the Court could and would
27 *substantially* reduce the penalties awarded based on the discretionary factors contained in Labor
28 Code § 2699(e)(2) (“In any action by an aggrieved employee . . . , a court may award a lesser

1 amount than the maximum civil penalty amount specified by this part if, based on the facts and
2 circumstances of the particular case, to do otherwise would result in an award that is unjust,
3 arbitrary and oppressive, or confiscatory.”). *See* Gaines Decl., ¶ 31.

4 Based on these disputes, which had the potential to completely eliminate Plaintiffs’
5 recovery, the range of realistic “litigation outcomes” on the Plaintiffs’ PAGA claim was defined
6 by a “maximum possible liability” amount of approximately \$131,700, and a net-zero recovery
7 based on the defenses asserted by Defendant. Notwithstanding the existence of such issues, the
8 Settlement achieves a significant benefit – approximately 57% recovery of the maximum possible
9 liability. As such, this factor weighs very heavily in favor of resolution by way of the compromise
10 set forth in the Settlement Agreement. Gaines Decl., ¶ 32.

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

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

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

24 The Settlement Agreement provides a significant monetary benefit that falls well within
25 “the range of an acceptable settlement” under the circumstances, which is the standard on which
26 the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and
27 reasonable even where it only provides a fraction of what could have been obtained at trial:
28

1 The proposed settlement is not to be judged against a hypothetical or
2 speculative measure of what might have been achieved by the
3 negotiators." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d at
4 625 (emphasis in original). Thus, "the very essence of a settlement is
5 compromise, 'a yielding of absolutes and an abandoning of highest
6 hopes.'" *Id.* at 624 (citations omitted). As the Second Circuit has
7 pointed out: "The fact that a proposed settlement may only amount
8 to a fraction of the potential recovery does not, in and of itself, mean
9 that the proposed settlement is grossly inadequate and should be
10 disapproved." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 &
11 n.2 (2nd Cir. 1974).

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

13 Here, after all deductions are made for administration and attorneys' fees and costs,
14 \$37,379.23 will be paid out, of which \$28,034.42 (i.e. 75%) will go to the LWDA, and \$9,344.81
15 (i.e. 25%) will go to the PAGA Settlement Employees, as required by Labor Code § 2699(i) ("civil
16 penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor
17 and Workforce Development Agency . . . and 25 percent to the aggrieved employees."). *See*
18 Settlement Agreement at III.4.

19 This result is exceptional, as settlements of PAGA claims impacting thousands of
20 individuals have been approved as reasonable for amounts far less than the payment in this case.
21 *See e.g., Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27,
22 2012) ("Defendant has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the
23 \$10,000, 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will
24 benefit the class The Court finds that the PAGA payment is set at a reasonable amount, and it
25 shall be approved."); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D.
26 Cal. Oct. 29, 2012) ("GTI agrees to allocate \$10,000 to Plaintiffs' PAGA claims, and will pay
27 \$7,500 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports
28 with settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
allocation of the Settlement to Plaintiffs' 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

1 be approved.”); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
2 2012) (“Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
3 California Labor and Workforce Development Agency The Court finds that the PAGA
4 payment is set at a reasonable amount, and it shall be approved.”).⁶

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

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

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

17 **6. The Experience and Views of Plaintiffs’ Counsel Favor Approval of the** 18 **Settlement**

19 Plaintiffs’ Counsel has a significant degree of experience in complex wage and hour
20 litigation. *See* Gaines Decl., ¶¶ 2-5, 34-41, Gaines Decl. at **Exhibit A**. In the view of Plaintiffs’
21 Counsel, the benefit conferred by the proposed Settlement is fair, reasonable, and adequate under
22 the circumstances, as it reflects a reasoned compromise which takes into consideration the risks
23 inherent in this case, which had the potential to completely eliminate recovery. Gaines Decl., ¶¶
24 15-19, 28-32. As such, this factor balances in favor of approval of the Settlement.

25 ⁶ Significantly, each of the above-cited actions involved a *higher* number of “aggrieved employees”
26 than at issue here. *See Franco*, 2012 U.S. Dist. LEXIS 169057, 14 (“2,055 Class Members were
27 ultimately identified”); *Garcia*, 2012 U.S. Dist. LEXIS 160052, at 12 (class comprised of
28 “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 **7. The Extent of Discovery Completed And The Stage Of The Proceedings**
2 **Favor Approval of the Settlement**

3 In evaluating this element, the Court should be mindful that “formal discovery is not a
4 necessary ticket to the bargaining table” (*Linney*, 151 F.3d at 1239), as the relevant consideration
5 is “whether ‘the parties have sufficient information to make an informed decision about
6 settlement.’” *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at
7 26 (C.D. Cal. Nov. 9, 2011).

8 Here, the extent of discovery conducted was sufficient to enable Plaintiffs’ Counsel to
9 evaluate the strength and value of the claim for purposes of settlement. *Gaines Decl.* at ¶¶ 15-19.
10 As discussed above, Plaintiffs’ Counsel’s investigation was sufficient to, among other things,
11 tabulate with precision the maximum number of alleged PAGA penalty violations at issue during
12 the PAGA Release Period and identify the total number of individuals falling within the definition
13 of a “PAGA Settlement Employee” for the PAGA Release Period.

14 Based on Plaintiffs’ Counsel’s experience litigating wage and hour claims, such
15 investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate
16 the strength of this claim for purposes of settlement. *See Gaines Decl.*, ¶¶ 2-5; 15-19, 29-32.

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

19 In addition to the factors presented above, the proposed Settlement does not possess any obvious
20 deficiencies. The Settlement contemplates entry of an Order (submitted concurrently herewith)
21 which approves the Settlement and dismisses the Action with prejudice. Section V.9 of the
22 Settlement Agreement and paragraph 8 of the Proposed Order authorize the Court to retain
23 jurisdiction to enforce the Settlement Agreement. This procedure effectively disposes of the Action
24 in its entirety, documents the Court’s approval of the Settlement as required by PAGA, and allows
25 for Court intervention if necessary to enforce the terms of the Settlement Agreement. In sum, under
26 the applicable standards for approval of PAGA settlements in California, the settlement in this case
27 meets the standards for approval.

28 ///

1 **IV. PLAINTIFFS' COUNSEL IS ENTITLED TO RECOVER THEIR**
2 **REASONABLE FEES AND COSTS**

3 Pursuant to the terms of the Settlement, Plaintiffs' Counsel seeks attorneys' fees of one-
4 third (33-1/3%) of the PAGA Gross Settlement Amount (projected to be \$25,000) and
5 reimbursement of litigation costs in the amount of \$9,120.77, falling within the bounds authorized
6 by the Settlement Agreement. *See* Settlement Agreement at III.3.a. Plaintiffs' Counsel's entitlement
7 to an award of attorneys' fees and costs is warranted on multiple independent grounds. Further,
8 the amount of fees requested falls well within the range of reasonableness under applicable
9 standards, as the amount requested constitutes a "percentage of the fund" deemed reasonable in
10 similar wage and hour settlements of this size and approved by California courts, which is not only
11 warranted based on the contingency risk Plaintiffs' Counsel has agreed to incur for the benefit of
12 the State of California and PAGA Settlement Employees, but also based on the significant results
13 achieved, as the Settlement obtains a recovery substantially above the range approved as reasonable
14 by California state and federal courts. Based thereon, Plaintiffs' Counsel respectfully requests that
15 the Court enter an order approving the fee and cost amounts requested.

16 **A. Plaintiffs' Counsel Is Entitled To Recover Their Reasonable Fees And**
17 **Costs As A Matter Of Right**

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

22 Courts have long recognized the "common fund" or "common benefit" doctrine, under
23 which attorneys who create a common fund or benefit for a group of persons may be awarded their
24 fees and costs to be paid out of the fund. *Serrano v. Priest* ("Serrano I") (1977) 20 Cal.3d 25, 34,
25 quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
26 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
27 15 Cal.3d 162, 167; *see also Boeing, supra*, 444 U.S. at 478; *Mills v. Electric Auto-Lite Co.* (1970)
28 396 U.S. 375, 391-392.

 The California Supreme Court has held that, "when a number of persons are entitled in

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

9 Where the lawsuit results in the recovery of a fund or property
10 benefiting others as well as Plaintiffs (e.g., a class action), the court
11 has inherent equitable power to order Plaintiffs' attorney fees paid
12 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.

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

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

20 It is not necessary to find this suit a proper class action in order to
21 uphold the portion of the judgment awarding counsel for Plaintiffs
22 25 percent of all retroactive salaries and wages received. That award
23 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. (Citations omitted).

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

1 when an action brought by one party creates a fund in which other persons are entitled to share.”

2 Numerous appellate courts have ruled similarly. *See e.g., Knoff v. City and County of San*
3 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
4 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable
5 powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and
6 expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
7 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit
8 created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974)
9 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners
10 of residential property in an inverse condemnation action).

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

17 Thus, as Plaintiffs’ Counsel has expended a significant amount of time and money to secure
18 a \$75,000 settlement fund for the LWDA and PAGA Settlement Employees [*Schiller*, 2012 U.S.
19 Dist. LEXIS 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees
20 have resulted in the preservation or recovery of a certain or easily calculable sum of money-out of
21 which sum or ‘fund’ the fees are to be paid.”)], and in doing so, has exclusively borne the risk of
22 loss for such expenditures of time and expenses (as the LWDA elected not to take the case after
23 receiving the PAGA Notice), Plaintiffs’ Counsel is entitled to claim reasonable fees from that fund
24 under applicable precedent.⁷

25 ⁷ Plaintiffs’ Counsel is also entitled to recover attorney’s fees and costs as a matter of right under
26 the PAGA statute [*Labor Code* § 2699(g)(1) (“Any employee who prevails in any action shall be
27 entitled to an award of reasonable attorney’s fees and costs.”)], and under *C.C.P.* § 1021.5, as the
28 instant PAGA action was by definition “for the public benefit” and secured monetary awards for
approximately 300 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.*

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 one-third (33-1/3%) of the \$75,000 PAGA Gross Settlement Amount falls well within the "zone
4 of reasonableness." It is important to highlight at the outset that the fee amount presently sought is
5 not extraordinary, but actually falls at the "average" fee deemed reasonable under California State
6 court authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in
7 wage and hour class actions that result in recovery of a common fund under \$10 million." *See e.g.,*
8 *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). This fee
9 falls directly within that range.

10 Moreover, Plaintiffs' Counsel agreed to incur the contingency risk for the benefit of the
11 State of California (which elected not to take the case after receiving the PAGA Notices). Gaines
12 Decl., ¶¶ 33-41. The significant results achieved, and the underlying facts therefrom, justify
13 Plaintiffs' Counsel's requested fee as reasonable under all applicable standards.

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

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

22 First, the results achieved by Plaintiffs' Counsel are significant as Defendant have agreed
23 to pay \$75,000 under the Settlement. This is a significant recovery given the risks associated with
24 obtaining any recoverable penalties. Gaines Decl., ¶¶ 15-19, 28-41. Further, the settlement of
25 PAGA claims impacting a comparable number of individuals have been approved as reasonable for

26 (2007) 154 Cal.App.4th 1, 16-17 (2007) ("Estrada's personal motivation does not diminish the fact
27 that he pursued this public interest class action not only for himself but on behalf of a class
28 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 between \$7,500.00 and \$15,000.00. *See* Section III.B.4., *supra*.

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

5 Third, notwithstanding this risk of loss, Plaintiffs' Counsel undertook representation of the
6 instant PAGA claim for the benefit of the State of California on a contingency basis. *See* Gaines
7 Decl. at ¶¶ 33-37. This required Plaintiffs' Counsel to personally assume the risk of nonpayment
8 in securing the substantial financial benefit the State of California stands to receive, and also
9 constitutes a "loan" on Plaintiffs' Counsel services – both of which are factors that warrant fee
10 enhancement under applicable California Supreme Court authority:

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

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

27 Finally, the percentage requested by Plaintiffs' Counsel falls within a typical range,
28 particularly in light of the modest settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796,
29 23 ("[C]ourts may award attorney's fees in the 30-40% range in wage and hour class actions that
30 result in recovery of a common fund under \$10 million." *See also Crandall v. U-Haul International,*
31 *Inc.*, LASC Case No. BC178775 (awarding attorneys' fees of 40% of a common fund).

32 Attorneys' fee awards in the amount sought here are well-established by California law and
33 practice. Accordingly, Plaintiffs' Counsel's fee request is fair and reasonable, and is consistent with
34

1 the awards in California and the Ninth Circuit. It is also reasonable given the history of this action
2 and the results obtained.

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

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

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

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

29 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with
30 tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar
31 (hours worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed

1 to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-
2 06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold
3 further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the
4 court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to
5 evaluate the reasonableness of a requested percentage fee.”)

6 Here, Plaintiffs’ Counsel’s fee request of one-third (33-1/3%) of the PAGA Gross
7 Settlement Amount is fair and reasonable based on a percentage of the recovery, and as well as
8 when confirmed with a lodestar cross-check. First, “regardless whether the percentage method or
9 the lodestar method is used, fee awards in class actions average around one-third of the recovery.”
10 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11. This is also consistent with Plaintiffs’
11 Counsel’s experience in similar wage and hour class action matters. *Gaines Decl.*, ¶¶ 2-5; 33-41.
12 Thus, the percentage sought by Plaintiffs’ Counsel here is reasonable.

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

21 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
22 *Chavez, supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of*
23 *Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (approving multiplier of ~2.34); *Coalition*
24 *for L. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving
25 multiplier of ~2.04). In representative actions such as this one, where the value of the benefit
26 conferred to the class “can be monetized with a reasonable degree of certainty,” a court may “adjust
27 the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
28 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, Plaintiffs’ Counsel is submitting an attorney fee request equaling \$25,000. Based on a projected final lodestar of \$38,570, this yields a “negative multiplier” of approximately 0.65 under the \$25,000 fee request. Gaines Decl., ¶ 33; **Exhibit E** to Gaines Decl. The billing rates used to compute the lodestar are reasonable in view of the evidence submitted herewith. Gaines Decl., ¶¶ 2-5; 33-41; **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 Plaintiffs’ Counsel; and the value obtained by Plaintiffs’ Counsel for the PAGA Settlement Employees), it is fair and reasonable to account for these risks and compensate Plaintiffs’ Counsel with a fee award of one-third of the PAGA Gross Settlement Amount, projected to be \$25,000.

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

In the course of this litigation, Plaintiffs’ Counsel incurred out-of-pocket costs of \$9,120.77. *See* Gaines Decl. at ¶ 42, **Exhibit F**. As demonstrated in the Gaines Declaration submitted herewith, the incurred costs included filing fees, future costs, postage, 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 Plaintiffs’ Counsel in this litigation benefited Plaintiff, PAGA Settlement Employees, and the State. Plaintiffs’ cost request is reasonable and represents the costs that Plaintiffs’ Counsel was required to incur to prosecute this action and should therefore 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 requests that this Court, as set forth in the proposed Order Approving
5 Settlement, do the following:

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

8 2. Appoint Phoenix Settlement Administrators as the Settlement Administrator and
9 approve its administration fees up to \$3,500 for payment out of the PAGA Gross Settlement
10 Amount;

11 3. Approve the award of attorneys' fees of one-third of the PAGA Gross Settlement
12 Amount (projected to be \$25,000), and costs of \$9,020.77, to Plaintiffs' Counsel, payment of which
13 shall come from the PAGA Gross Settlement Amount;

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

16 5. Dismiss the Action with prejudice, subject to the Court's retention of jurisdiction
17 pursuant to California Labor Code, including section 664.6.

18 Date: December 19, 2025

19 Respectfully submitted,

20 GAINES LAW CORPORATION

21 By: 

22 _____
23 EVAN S. GAINES

24 Attorneys for Plaintiffs

25 ARTHUR PONCE and SHAHLAA RAJA