

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
Jared C. Osborne (State Bar No. 335398)
josborne@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff JOSE MANUEL AMARO BERNAL,
individually, and on behalf of Aggrieved
Employees pursuant to the California Private
Attorneys General Act

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

JOSE MANUEL AMARO BERNAL,
individually, and on behalf of Aggrieved
Employees pursuant to the California Private
Attorneys General Act,

Plaintiff,

vs.

JOSEPH HOLT PLASTERING, INC.; and DOES
1 through 25, inclusive,

Defendants.

Case No. 24STCV15637

*Assigned for All Purposes to the Honorable
Tiana J. Murillo, Dept. 78*

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT
AND AWARD OF ATTORNEYS' FEES
AND COSTS, GENERAL RELEASE FEE,
AND SETTLEMENT ADMINISTRATION
COSTS**

Date: May 14, 2025
Time: 8:30 a.m.
Department: 78

Reservation ID: 359878987253

Complaint Filed: June 21, 2024
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE THAT** on May 14, 2025 at 8:30 a.m. in Department 78 of the
3 above-captioned Court located at the Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles,
4 California 90012, Plaintiff Jose Manuel Amaro Bernal (“Plaintiff”) will and hereby does move the
5 Court for an Order granting approval of the California Labor Code Private Attorneys General Act of
6 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) settlement. Specifically, Plaintiff
7 requests that the Court enter an Order:

- 8 1. Granting approval pursuant to California Labor Code section 2699(l)(2) of the Private
9 Attorneys General Act Settlement Agreement and Release (“Original Agreement”) and
10 Amendment No. 1 to Private Attorneys General Act Settlement Agreement and Release
11 (“Amendment No. 1”) attached as **Exhibit 2** and **Exhibit 3**, respectively, to the
12 Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Approval of
13 PAGA Settlement and Award of Attorneys’ Fees and Costs, General Release Fee, and
14 Settlement Administration Costs (“Genish Decl.”);
- 15 2. Directing the distribution of the Gross Settlement Amount of Four Hundred Thousand
16 Dollars and Zero Cents (\$400,000.00) pursuant to the terms of the Agreement;
- 17 3. Approving the Net Settlement Amount, estimated to be Two Hundred Six Thousand
18 Seven Hundred Nineteen Dollars and Ninety Cents (\$206,719.90), of which seventy-five
19 percent (75%) will be distributed to the California Labor and Workforce Development
20 Agency (“LWDA”) and twenty-five percent (25%) of which will be distributed to the
21 Aggrieved Employees;
- 22 4. Approving an award of reasonable attorneys’ fees of One Hundred Sixty Thousand
23 Dollars and Zero Cents (\$160,000.00) to Plaintiff’s Counsel;
- 24 5. Approving the amount of Eighteen Thousand Three Hundred Thirty Dollars and Ten
25 Cents (\$18,330.10) to Plaintiff’s Counsel for reimbursement of actual litigation costs and
26 expenses pursuant to California Labor Code section 2699(g)(1);
- 27 6. Approving the award of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff
28 as a General Release Fee;

7. Appointing ILYM Group, Inc. as the Settlement Administrator; and
8. Approving an award of up to Four Thousand Nine Hundred Fifty Dollars and Zero Cents (\$4,950.00) in anticipated costs to ILYM Group, Inc. for its settlement administration services.

In accordance with California Labor Code sections 2699 *et. seq.*, a copy of the Original Agreement was submitted to the LWDA via online submission through the LWDA's website on January 15, 2025. (Genish Decl., ¶ 19 & Exh. 4). Additionally, a copy of Amendment No. 1 was submitted to the LWDA via online submission through the LWDA's website on February 3, 2025. (Genish Decl., ¶ 20 & Exh. 5).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Jonathan M. Genish, Plaintiff Jose Manuel Amaro Bernal, and the Settlement Administrator (Lisa Mullins of ILYM Group, Inc.), the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: February 7, 2025

BLACKSTONE LAW, APC

By:

Jonathan M. Genish
Attorneys for Plaintiff
JOSE MANUEL AMARO BERNAL

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	2
III.	THE SETTLEMENT TERMS	4
	A. Definition of the Aggrieved Employees	4
	B. Amount of Settlement	4
	C. Allocation and Funding of the Gross Settlement Amount	4
IV.	STANDARD FOR APPROVAL OF PAGA SETTLEMENT	6
V.	THE AGREEMENT IS FAIR AND SHOULD BE APPROVED	8
	A. The Agreement is Presumed to Be Fair	8
	B. The Agreement is Fair, Adequate, and Reasonable in Light of the Parties’ Respective Legal Positions and Recovery Risks.....	8
	1. Strength of Plaintiff’s Cases	9
	2. Risk, Expense, Complexity, and Likely Duration of Further Litigation	11
	3. The Benefits Conferred by the Agreement Balance in Favor of Approval	12
	4. The Scope of the Release is Narrowly Tailored.....	13
	5. Experience and Views of Counsel Favor Approval	14
	6. The Extent of Discovery and Stage of Proceedings Favor Approval	14
VI.	THE REQUESTED ATTORNEYS’ FEES ARE FAIR AND REASONABLE.....	15
VII.	THE REQUESTED ATTORNEYS’ COSTS ARE FAIR AND REASONABLE.....	19
VIII.	THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE.....	19
IX.	THE REQUESTED GENERAL RELEASE FEE IS FAIR AND REASONABLE.....	20
X.	CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases

<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.</i> , 46 Cal.4th 993 (2009).....	8
<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	10
<i>Arias v. Sup. Ct.</i> , 46 Cal.4th 969 (2009)	8
<i>Arias</i> , 46 Cal. 4th, at 987	13
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> 480 F.Supp. 1195 (S.D.N.Y. 1979).....	17
<i>Bell v. Farmers Ins. Exch.</i> , 115 Cal.App.4th 715, 726 (2004).....	20
<i>Bernstein v. Virgin Am., Inc.</i> , 3 F.4th 1127, 1144 (9th Cir. 2021).....	11
<i>Casida v. Sears Holdings Corp.</i> , 2012 U.S. Dist. LEXIS 9302 (E.D. Cal. Jan. 25, 2012).....	7
<i>Cates v. Chiang</i> (2013) 213 Cal.App.4th 791, 822-823.....	18
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43, 66	18
<i>Chu v. Wells Fargo Investments, LLC</i> , 2011 U.S. Dist. LEXIS 15821 (N.D. Cal. Feb. 15, 2011)	13
<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448, 455 & n.2 (2nd Cir. 1974).....	12
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009).....	8, 20
<i>Consumer Privacy Cases</i> , 175 Cal.App.4th 545 (2009)	17
<i>Craft v. County of San Bernardino</i> (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125	18
<i>DCH Auto Wage and Hour Cases</i> , Los Angeles Superior Court, Case No. JCCP4833.....	13
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169 (C.D. Cal. 2008)	9
<i>Franco v. Ruiz Food Prods.</i> , 2012 U.S. Dist. LEXIS 169057 (E.D. Cal. Nov. 27, 2021)	13
<i>Garcia v. Gordon Trucking, Inc.</i> , 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. Oct. 29, 2012)	13
<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal.4th 553, 579.....	17
<i>In re Ampicillin Antitrust Litig.</i> , 526 F.Supp. 494 (D.D.C. 1981)	17
<i>In re Bluetooth Headset Prods. Liab. Litig.</i> , 654 F.3d 935, 942 (9th Cir. 2011).....	16
<i>In re TD Ameritrade Account Holder Litig.</i> , 2011 U.S. Dist. LEXIS 103222 (N.D. Cal. Sep. 12, 2011).....	6
<i>Ketchum v. Moses</i> , 24 Cal.4th 1122 (2001)	16, 18
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	9
<i>Laffitte v. Robert Half Int'l, Inc.</i> , 1 Cal.5th 480 (2016).....	15, 16

1	<i>Lealao v. Beneficial Cal., Inc.</i> , 82 Cal.App.4th 19 (2000)	16, 17
2	<i>Linney</i> , 151 F.3d at 1239	14
3	<i>Mallick v. Sup. Ct.</i> , 89 Cal.App.3d 434 (1979)	8
4	<i>Maria P. v. Riles</i> , 43 Cal.3d 1281 (1987)	15
5	<i>Mendez v. Tween Brands, Inc.</i> , 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010)	7
6	<i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i> , 2010 U.S. Dist. LEXIS 32774 (Apr. 2, 2010)	7
7	<i>Officers for Justice v. Civil Service Com.</i> , 688 F.2d 615 (9th Cir. 1982)	6, 12
8	<i>Sandoval v. Roadlink United States Pac., Inc.</i> , 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal. Nov.	
9	9, 2011)	14
10	<i>Schiller v. David’s Bridal, Inc.</i> , 2012 U.S. Dist. LEXIS 80776 (E.D. Cal. June 11, 2012)	13
11	<i>Serrano v. Priest</i> , 20 Cal.3d 25 (1977)	15
12	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112 (2012)	10
13	<i>Vizcaino v. Microsoft</i> (9th Cir. 2002) 290 F.3d 1043, 1051	17, 18
14	<i>Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.</i> (2d Cir. 2005) 396 F.3d 96, 123	18
15	<i>Westside Community for Independent Living, Inc. v. Obledo</i> , 33 Cal.3d 348 (1983)	15
16	<i>Williams v. Superior Court</i> , 3 Cal. 5th 531 (2017)	14
17	Statutes	
18	California Labor Code § 2699.3	2
19	California Labor Code sections 2698, <i>et seq.</i>	i, 1
20	Labor Code (“Lab. Code”) § 2699(l)	6, 12
21	Labor Code §§ 2698 <i>et seq.</i>	13
22	Other Authorities	
23	Weil and Brown, California Practice Guide, <i>Civil Procedure Before Trial</i>	16
24	Rules	
25	California Rules of Court Rule 3.769	7, 8
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Labor Code Private Attorneys General Act, California Labor Code
4 sections 2698, *et seq.* (“PAGA”), Plaintiff Jose Manuel Amaro Bernal (“Plaintiff”) seeks approval of
5 the Private Attorneys General Act Settlement Agreement and Release (“Original Agreement”) and
6 Amendment No. 1 to Private Attorneys General Act Settlement Agreement and Release (“Amendment
7 No. 1”) (together, the Original Agreement and Amendment No. 1 are referred to as the “Settlement,”
8 “Agreement,” or “Settlement Agreement”) entered into with Defendant Joseph Holt Plastering, Inc.
9 (“Defendant”) (together, with Plaintiff, the “Parties”), which are attached as Exhibit 2 and Exhibit 3,
10 respectively, to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Approval
11 of PAGA Settlement and Award of Attorneys’ Fees and Costs, General Release Fee, and Settlement
12 Administration Costs (“Genish Decl.”). The Agreement terms are outlined as follows:

- 13 • Gross Settlement Amount: Four Hundred Thousand Dollars and Zero Cents
14 (\$400,000.00).
- 15 • Attorneys’ Fees: One Hundred Sixty Thousand Dollars and Zero Cents (\$160,000.00)
16 (40% of the Gross Settlement Amount), to be paid from the Gross Settlement Amount.
- 17 • Attorneys’ Costs: Eighteen Thousand Three Hundred Thirty Dollars and Ten Cents
18 (\$18,330.10), to be paid from the Gross Settlement Amount.
- 19 • General Release Fee: Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, to
20 be paid from the Gross Settlement Amount.
- 21 • Settlement Administration Costs: Four Thousand Nine Hundred Fifty Dollars and Zero
22 Cents (\$4,950.00), to be paid from the Gross Settlement Amount.
- 23 • Estimated Net Settlement Amount: Two Hundred Six Thousand Seven Hundred Nineteen
24 Dollars and Ninety Cents (\$206,719.90), of which 75% (\$155,039.93) will be paid to the
25 California Labor and Workforce Development Agency (“LWDA”) and the remaining
26 25% (\$51,679.97) will be paid to the Aggrieved Employees.

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

the proposed Settlement Agreement, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a lath and plastering contractor based out of Corona, California. (Genish Decl., ¶ 7). Defendant employed Plaintiff as an hourly-paid, non-exempt Plaster Worker from approximately February 2021 through February 2024. (Genish Decl., ¶ 7; Declaration of Jose Manuel Amaro Bernal in Support of Plaintiff's Motion for Approval of PAGA Settlement and Award of Attorneys' Fees and Costs, General Release Fee, and Settlement Administration Costs ["Bernal Decl.,"] ¶ 2).

On April 15, 2024, Plaintiff provided written notice by electronic submission to the LWDA and by U.S. Certified Mail to Defendant, pursuant to California Labor Code § 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendant ("PAGA Notice"). (Genish Decl., ¶ 8 & Exh. 1).

On April 16, 2024, Plaintiff filed a Class Action Complaint in the action entitled *Jose Manuel Amaro Bernal v. Joseph Holt Plastering, Inc.*, Los Angeles County Superior Court Case No. 24STCV09665 ("Class Action"), thereby commencing a putative class action against Defendant. (*Id.*, ¶ 9).

On June 21, 2024, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq* ("Operative Complaint") in the action entitled *Jose Manuel Amaro Bernal v. Joseph Holt Plastering, Inc.*, Los Angeles County Superior Court Case No. 24STCV15637 ("Action") alleging one cause of action under PAGA. (*Id.*, ¶ 10).

On September 23, 2024, the Parties participated in a formal mediation conducted by Tagore Subramaniam, Esq., a neutral and respected mediator with extensive experience in complex wage and hour matters, during which the Parties were able to reach an agreement to resolve the Action in its entirety. (*Id.*, ¶ 11).

On November 4, 2024, pursuant to Plaintiff's request, the court in the Class Action entered an Order, which dismissed the class claims without prejudice and Plaintiff's individual claims with prejudice. (*Id.*, ¶ 12).

On December 27, 2024, the Parties executed the Original Agreement. (*Id.*, ¶ 13 & Exh. 2).

On January 30, 2025, the Parties executed Amendment No. 1. (*Id.*, ¶ 14 & Exh. 3).

1 During the course of informal discovery in the Action, Plaintiff's Counsel conducted an intense
2 investigation into the facts of the Action. (*Id.*, ¶ 15). This included obtaining data, information, and
3 documents relating to the underlying alleged violations, including, but not limited to, Plaintiff's
4 employee file, a sampling of Aggrieved Employees' time and payroll data, relevant wage and hour
5 policies, and Aggrieved Employees' data points so that Plaintiff could assess the number of alleged
6 potential violations and value of the recoverable penalties, as well as evaluate the strengths and
7 weaknesses of her claims. (*Ibid*).

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

20 The Parties believe the Settlement Agreement is fair, reasonable, and adequate. (*Id.*, ¶ 17).
21 The Parties understand, acknowledge, and agree that the Settlement Agreement constitutes a
22 compromise of Plaintiff's PAGA claims, and that it is the desire and intention of the Parties to affect
23 a final and complete resolution of the Action. (*Ibid*).

24 Defendant denies all of the claims in the Action, and does not waive, but rather expressly
25 reserves, all rights to challenge all such claims and allegations upon all legal, procedural, and factual
26 grounds should the Settlement Agreement not become final. (*Id.*, ¶ 18). The Settlement Agreement
27 reflects a compromise reached to end litigation in the Action. (*Ibid*). Following significant
28 investigation and extensive settlement negotiations, Plaintiff now seeks approval of the proposed

Settlement Agreement, which will resolve all representative claims alleged in the Action. (Ibid).

III. THE SETTLEMENT TERMS

A. Definition of the Aggrieved Employees

For purposes of settlement only, the Parties have agreed that the “Aggrieved Employees” shall be defined as “all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period. (Genish Decl., ¶ 21; Original Agreement, ¶ 3(a)(5)). The “PAGA Period” is the period from April 15, 2023 to September 30, 2024. (Genish Decl., ¶ 21; Original Agreement, ¶ 3(a)(5)). As of September 23, 2024, there are approximately two hundred and eighty-six (286) Aggrieved Employees. (Genish Decl., ¶ 21; Amendment No. 1, ¶ B).

B. Amount of Settlement

The Parties have agreed to settle the PAGA claims at issue in the Action for a non-reversionary Gross Settlement Amount of Four Hundred Thousand Dollars and Zero Cents (\$400,000.00). (Genish Decl., ¶ 22; Original Agreement, ¶ 3(a)).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Genish Decl., ¶ 22). The Gross Settlement Amount includes: (1) Plaintiff’s Counsel’s fees in the amount of forty percent (40%) of the Gross Settlement Amount, equaling One Hundred Sixty Thousand Dollars and Zero Cents (\$160,000.00); (2) Plaintiff’s Counsel’s actual litigation costs and expenses in the amount of Eighteen Thousand Three Hundred Thirty Dollars and Ten Cents (\$18,330.10); (3) General Release Fee in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff; and (4) Settlement Administration Costs, not to exceed Four Thousand Nine Hundred Fifty Dollars and Zero Cents (\$4,950.00). (Genish Decl., ¶ 22; Original Agreement, ¶¶ 3(a)(1)-(4); Amendment No. 1, ¶ A).

After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount will amount to approximately Two Hundred Six Thousand Seven Hundred Nineteen Dollars and Ninety Cents (\$206,719.90), of which 75% (\$155,039.93) will be paid to the LWDA and the remaining 25% (\$51,679.97), will be distributed and paid to Aggrieved Employees

1 (“Employees’ Portion”) on a *pro rata* basis based on the number of pay periods they each worked
2 during the PAGA Period (“Pay Periods”). (Genish Decl., ¶ 23; Original Agreement ¶¶ 3(a)(4)-(5) &
3 5(b)).

4 No later than twenty-one (21) calendar days after the Court’s order granting approval of the
5 Settlement, Defendant will provide the Settlement Administrator with a list of all Aggrieved
6 Employees, containing each Aggrieved Employee’s first and last name, last known address, last
7 known telephone number, Social Security number, dates worked during the PAGA Period, and other
8 such information as necessary for the Settlement Administrator to calculate Pay Periods (collectively,
9 “Aggrieved Employees List”). (Genish Decl., ¶ 24; Original Agreement, ¶ 5(e)).

10 If the Court approves the Settlement Agreement prior to June 23, 2025, Defendant shall pay
11 the Gross Settlement Amount in two installments: Defendant shall transmit the first half of the Gross
12 Settlement Amount (i.e., \$200,000.00) within fourteen (14) calendar days of the Court’s approval of
13 the Settlement Agreement and Defendant shall transmit the second half of the Gross Settlement
14 Amount (i.e. \$200,000.00) on June 23, 2025. If the Court approves the Settlement Agreement after
15 June 23, 2025, Defendant shall transmit the full Gross Settlement Amount (i.e., \$400,000.00) within
16 fourteen (14) calendar days of the Court’s approval of the Settlement Agreement. (Genish Decl., ¶ 25;
17 Original Agreement, ¶¶ 5(f) and 5(g)).

18 No later than seven (7) calendar days after the Settlement Administrator receives the Aggrieved
19 Employees List and the full funding of the Gross Settlement Amount, the Settlement Administrator
20 will distribute the Individual PAGA Payments to Aggrieved Employees (along with a cover letter
21 “Cover Letter”), the LWDA Payment to the LWDA, the General Release Fee to Plaintiff, the
22 Attorneys’ Fees and Costs to Plaintiff’s Counsel, and the Settlement Administration Costs to itself.
23 (Genish Decl., ¶ 26; Original Agreement, ¶ 5(h)).

24 Prior to mailing the Individual PAGA Payment checks, the Settlement Administrator will
25 update the Aggrieved Employees’ mailing addresses using the National Change of Address Database.
26 (Genish Decl., ¶ 27; Original Agreement, ¶ 5(e)(1)). Additionally, for all Individual PAGA Payment
27 checks that are returned as undeliverable within thirty (30) calendar days of the initial mailing, the
28 Settlement Administrator will promptly attempt to locate an alternative, updated address for the

1 Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the
2 Individual PAGA Payment check. (Genish Decl., ¶ 27; Original Agreement, ¶ 5(c)).

3 The Individual PAGA Payment checks that are issued to Aggrieved Employees will remain
4 valid and negotiable for up to one hundred and eighty (180) calendar days, and thereafter, will be
5 canceled. (Genish Decl., ¶ 28; Original Agreement, ¶ 5(d)). Any funds associated with such canceled
6 checks will be distributed to the State Controller's Office Unclaimed Property Division in the name
7 of the Aggrieved Employee at issue and in the amount of their respective Individual PAGA
8 Payment(s). (Genish Decl., ¶ 28; Original Agreement, ¶ 5(d)).

9 Defendant has represented that the Aggrieved Employees worked approximately 15,482 pay
10 periods during the period April 15, 2023 to September 23, 2024. (Genish Decl., ¶ 29; Amendment
11 No. 1, ¶ B). If the actual number of Pay Periods worked by the Aggrieved Employees during the
12 PAGA Period increases by more than ten percent (10%) above 15,482, the Gross Settlement Amount
13 will be increased by the percentage that the actual number exceeds 17,030 Pay Periods. (Genish Decl.,
14 ¶ 29; Amendment No. 1, ¶ B). For example, if the number of Pay Periods increases by eleven percent
15 (11%) (i.e., 17,185 Pay Periods), the Gross Settlement Amount will increase by one percent (1%).
16 (Genish Decl., ¶ 29; Amendment No. 1, ¶ B).

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

18 The settlement of a PAGA claim requires court approval. (California Labor Code ("Lab.
19 Code") § 2699(l)). The Court must be mindful that a "[s]ettlement is a compromise, which balances
20 the possible recovery against the risks inherent in litigating further." (*In re TD Ameritrade Account*
21 *Holder Litig.*, 2011 U.S. Dist. LEXIS 103222 at *24 (N.D. Cal. Sep. 12, 2011)). "[T]he very essence
22 of a settlement is ... 'a yielding of absolutes and an abandoning of highest hopes,'" as "it is the very
23 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
24 consensual settlements." (*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-26 (9th Cir.
25 1982)). As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial
26 on the merits," or "judged against a hypothetical or speculative measure of what might have been
27 achieved." (Ibid).

28 ///

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

7 A court’s review of a PAGA settlement necessarily implicates the following unique features
8 that render the approval process distinct from approval of a class action settlement under Code of Civil
9 Procedure Section 382 and California Rules of Court Rule 3.769. First, in evaluating the adequacy of
10 the settlement amount, the Court’s focus is not concerned with the amount aggrieved employees are
11 to receive, but rather, must focus on the total settlement amount in achieving PAGA’s objective.
12 Indeed, “[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class
13 damages,” and while a “[PAGA] action is ... designed to protect the public and penalize the employer
14 for past illegal conduct,” a reviewing court must be mindful of the fact that settlement of a PAGA
15 claim involves a compromise. (*Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 at *11
16 (E.D. Cal. June 30, 2010)). “Unlike class actions, these civil penalties are not meant to compensate
17 unnamed employees because the action is fundamentally a law enforcement action.” (*Ochoa-
18 Hernandez v. Cjaders Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774 at *12 (Apr. 2, 2010)). The Court
19 should not lose sight of the fact that, “[u]nlike a class action seeking damages or injunctive relief for
20 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for
21 the government that otherwise may not have been assessed and collected by overburdened state
22 enforcement agencies.” (*Ibid*).

23 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
24 claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the
25 ability to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS
26 32774 at *13). Indeed, “[PAGA] does not create property rights or any other substantive rights” as
27 “[i]t is simply a procedural statute allowing an aggrieved employees to recover civil penalties – for
28 Labor Code violations – that otherwise would be sought by state labor law enforcement agencies.”

1 (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009)). This
2 renders the approval process of a PAGA settlement distinct from a class action settlement, as there is
3 no need for the Court to employ the “two-step approval process” required under California Rules of
4 Court Rule 3.769.

5 Finally, unlike class action settlements, the scope of release permitted in a PAGA settlement
6 is limited. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff
7 but also on government agencies and any aggrieved employee not a party to the proceeding...the
8 nonparty employees, because they were not given notice of the action or afforded any opportunity to
9 be heard, would not be bound by the judgment as to remedies other than civil penalties.” (*Arias v.*
10 *Sup. Ct.*, 46 Cal.4th 969, 985-87 (2009)). Thus, the scope of a release in a PAGA settlement is
11 confined to the PAGA penalties alleged in the complaint and/or the plaintiff’s notice to the LWDA
12 and to the claims that were, or could have been, alleged pursuant to PAGA based on the factual
13 allegations in the complaint and/or the plaintiff’s notice to the LWDA. In the case at hand, as the only
14 claims at issue are PAGA claims, those will be the only claims extinguished through the Settlement.

15 V. THE AGREEMENT IS FAIR AND SHOULD BE APPROVED

16 A. The Agreement is Presumed to Be Fair

17 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
18 reached through arm’s-length bargaining.” (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
19 245 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009)). Here,
20 the Agreement is presumptively fair because: (1) it occurred after counsel for the Parties engaged in
21 significant investigation to evaluate the strength and potential value of the PAGA claims, and the risks
22 of litigating these claims through trial; and (2) it was negotiated at great length and effort by counsel
23 with significant experience in similar complex labor and employment matters. (Genish Decl., ¶ 30).

24 B. The Agreement is Fair, Adequate, and Reasonable in Light of the Parties’ Respective 25 Legal Positions and Recovery Risks

26 In deciding whether to approve a proposed settlement, a trial court has broad powers to
27 determine if it is fair given the circumstances of the case. (*Mallick v. Sup. Ct.*, 89 Cal.App.3d 434,
28 438 (1979)). In exercising these powers, the overriding concern is to ensure that a proposed settlement

1 is “fair, adequate, and reasonable.” (*Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted)). A
2 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor
3 does the settlement have to obtain one hundred percent of the damages sought to be fair and reasonable.
4 (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court
5 must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
6 further litigation, the risk of maintaining class action status through trial, the amount offered in
7 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
8 views of counsel, the presence of a governmental participant, and the reaction of the class members to
9 the proposed settlement.”¹ (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).
10 Even though a *Kullar* analysis is not required for approval of a PAGA settlement, a brief analysis is
11 included to support approval of the Settlement Agreement. (*See* Genish Decl., ¶¶ 38-51).

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

15 1. Strength of Plaintiff’s Cases

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

22 Here, Plaintiff’s core allegations are that Defendant systematically violated the California
23 Labor Code by, *inter alia*, failing to properly pay wages for all hours worked, failing to pay overtime
24 at the correct rate, failing to provide compliant meal and rest periods, failing to pay premiums at the
25 correct rate of pay, failing to timely pay wages during employment and upon termination, failing to
26 maintain accurate payroll records, failing to provide accurate wage statements, and failing to reimburse

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

1 necessary business expenses. (Genish Decl., ¶ 31).

2 Defendant maintained several defenses to Plaintiff’s theories of liability, which, if successfully
3 argued and proven, had the potential to eliminate or substantially reduce recovery. (*Id.*, ¶ 32).
4 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues
5 to have, compliant employment policies and practices throughout the time period at issue. (*Ibid.*).
6 Defendant denies that it ever violated any provision of the California Labor Code, including, but not
7 limited to, those sections for which Plaintiff seeks penalties under PAGA. (*Ibid.*). Defendant further
8 denied, and continues to deny, that the lawsuit is appropriate for representative treatment for any
9 purpose other than settlement. (*Ibid.*). Defendant also challenged Plaintiff’s standing as an aggrieved
10 employee and denied that any of Defendant’s other employees whom Plaintiff seeks to represent are
11 aggrieved. (*Ibid.*).

12 Defendant also argued that an important feature of PAGA is that the Court retains discretion
13 to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise
14 would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (*Ibid.*; Lab. Code
15 § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136
16 (2012) [holding that a court may reduce the amount of PAGA penalties awarded to an employee based
17 upon discretionary factors]).

18 Even if violations of the California Labor Code occurred, which Defendant denies, Defendant
19 contended that said violations would only be considered “initial violations” and thus heightened
20 “subsequent violation” penalties were not warranted. (Genish Decl., ¶ 33; Lab. Code § 2699(f)(2);
21 *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) [“Until the employer
22 has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed
23 to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”]).

24 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess
25 cumulative penalties for the maximum number of possible, separate California Labor Code violations,
26 because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct
27 may be regulated by multiple provisions of the California Labor Code that are interrelated and work
28 in tandem. (Genish Decl., ¶ 34). While the PAGA does provide the potential for a heightened penalty

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

7 While Plaintiff maintains that his PAGA claims have merit, in reaching the Agreement,
8 Plaintiff and his counsel took into account the strengths and weaknesses of each side’s position, and
9 the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon
10 appeal. (Genish Decl., ¶ 35). Based on these disputes, which had the potential to completely eliminate
11 Plaintiff’s recovery, the range of realistic “litigation outcomes” on Plaintiff’s PAGA claims was
12 defined by a “maximum possible liability” amount of approximately \$1,548,200 and a “risk-adjusted
13 realistic value” amount of approximately \$464,460 (*Id.*, ¶ 51). In light thereof, the Gross Settlement
14 Amount of \$400,000 is a significant settlement. (Ibid).

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

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

26 ///

27 ///

28 ///

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

2 The Settlement Agreement provides a *significant* monetary benefit that falls well within the
3 range of an acceptable settlement under the circumstances, which is the standard on which the instant
4 Agreement must be judged. As held by the Ninth Circuit: “The proposed settlement is not to be judged
5 against a hypothetical or speculative measure of what might have been achieved by the negotiators.”
6 (*Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d at 625 (emphasis in original)). As the Second
7 Circuit has pointed out: “The fact that a proposed settlement may only amount to a fraction of the
8 potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate
9 and should be disapproved.” (*City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2 (2nd Cir.
10 1974)).

11 The Net Settlement Amount is currently estimated to be Two Hundred Six Thousand Seven
12 Hundred Nineteen Dollars and Ninety Cents (\$206,719.90). After all deductions are made from the
13 Gross Settlement Amount for the Attorneys’ Fees and Costs, General Release Fee, and Settlement
14 Administration Costs, One Hundred Fifty-Five Thousand Thirty-Nine Dollars and Ninety-Three Cents
15 (\$155,039.93) (i.e. 75% of the Net Settlement Amount) will go to the LWDA, and Fifty-One Thousand
16 Six Hundred Seventy-Nine Dollars and Ninety-Seven Cents (\$51,679.97) (i.e. 25% of the Net
17 Settlement Amount) will go to the Aggrieved Employees, as required by California Labor Code §
18 2699(i) in effect at the time of this matter (“civil penalties recovered by aggrieved employees shall be
19 distributed as follows: 75 percent to the Labor and Workforce Development Agency . . . and 25 percent
20 to the aggrieved employees.”). (Genish Decl., ¶ 52). There is no reason to doubt the fairness of the
21 proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor
22 Code section 2699(i). (Ibid).

23 The Settlement Agreement is a compromise of highly disputed claims. (*Id.*, ¶ 53). Plaintiff
24 and his counsel recognize the expense and length of continued proceedings necessary to litigate the
25 matter through trial and any possible appeals. (Ibid). Plaintiff and his counsel have also taken into
26 account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
27 inherent in such litigation. (Ibid). Plaintiff and his counsel are also aware of the burdens of proof
28 necessary to establish liability, both generally and in response to Defendant’s defenses thereto, and

1 the difficulties in establishing Defendant’s liability for, and the right to recover, penalties on behalf of
2 Plaintiff, the State of California, and other Aggrieved Employees. (Ibid). Plaintiff and his counsel
3 have also taken into account Defendant’s agreement to enter into a settlement that confers significant
4 relief upon the Aggrieved Employees and the State of California. (Ibid). Considering all of the facts
5 in this case, Plaintiff and his counsel have determined that the Agreement represents a fair, adequate,
6 and reasonable resolution of the PAGA claims, and that it is in the best interests of the Aggrieved
7 Employees and the State of California. (Ibid).

8 The result achieved in this case is well within the range of what is considered an acceptable
9 settlement under the circumstances, especially when compared to the settlement of PAGA claims in
10 other cases. (*Id.*, ¶ 54). (*See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court,
11 Case No. JCCP4833 (May 2017) [approving \$15,000 out of \$4 million toward settlement of PAGA
12 claims]; *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal. Oct. 29,
13 2012) [approving \$10,000 out of \$3.7 million toward settlement of PAGA claims]; *Schiller v. David’s*
14 *Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving \$7,500 out of
15 \$518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC*, 2011 U.S. Dist.
16 LEXIS 15821, at *4 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 out of \$6.9 million toward
17 settlement of PAGA claims]; *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, at *14
18 (E.D. Cal. Nov. 27, 2021) [approving \$10,000 out of \$2.5 million toward settlement of PAGA
19 claims]). Here, the value obtained for settlement of the PAGA claims is significant, and it will be
20 distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

21 4. The Scope of the Release is Narrowly Tailored

22 As discussed above, the California Supreme Court has concluded that in the context of PAGA
23 “the nonparty employees, because they were not given notice of the action or afforded any opportunity
24 to be heard, would not be bound by the judgment as to remedies other than civil penalties.” (*See Arias*,
25 46 Cal. 4th, at 987). Thus, the scope of the limited release provided in exchange for the foregoing
26 consideration is limited to the civil penalties asserted in the Operative Complaint and the PAGA
27 Notice, under California Labor Code §§ 2698 *et seq.* (*See Original Agreement*, at ¶ 6(a)).

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

1 5. Experience and Views of Counsel Favor Approval

2 Plaintiff’s Counsel is experienced in complex representative and class action wage-and-hour
3 litigation. (Genish Decl., ¶¶ 2-6 & 59). In the view of Plaintiff’s Counsel, the benefits conferred by
4 the Agreement are eminently fair and reasonable, and in the best interests of the State of California
5 and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and
6 the substantial monetary benefits provided for by the Agreement. (Genish Decl., ¶ 55). Furthermore,
7 courts have acknowledged that “the interests of a plaintiff, counsel, and other potentially aggrieved
8 employees are largely aligned. All stand to gain from proving as convincingly as possible as many
9 Labor Code violations as the evidence will sustain[.]” (*Williams v. Superior Court*, 3 Cal. 5th 531,
10 548 (2017) [citing Labor Code § 2699(g)(l)(i)]).

11 6. The Extent of Discovery and Stage of Proceedings Favor Approval

12 In evaluating this element, the Court should be mindful that “‘formal discovery is not a
13 necessary ticket to the bargaining table’” [*Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239], as
14 the relevant consideration is “whether ‘the parties have sufficient information to make an informed
15 decision about settlement.’” (*See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist.
16 LEXIS 130378, at 26 (C.D. Cal. Nov. 9, 2011)).

17 Here, the extent of informal discovery conducted was sufficient to enable Plaintiff’s Counsel
18 to evaluate the strength and value of the PAGA claims for purposes of settlement. (Genish Decl., ¶
19 56). Prior to settling, Defendant provided Plaintiff with data, information, and documents relating to
20 the underlying alleged violations, including, but not limited to, Plaintiff’s employee file, a sampling
21 of Aggrieved Employees’ time and payroll data, relevant wage and hour policies, and Aggrieved
22 Employees’ data points. (*Id.*, ¶ 15). As discussed above, Plaintiff’s Counsel’s investigation was
23 sufficient to, among other things, tabulate with precision the total number of alleged California Labor
24 Code violations at issue during the relevant statutory period and identify the total number of
25 individuals falling within the definition of “Aggrieved Employees” for the relevant statutory period.
26 (*Id.*, ¶ 16).

27 ///

28 ///

1 Based on Plaintiff's Counsel's experience litigating wage and hour claims, such investigation
2 was sufficient to determine the potential value of the PAGA claims, and to evaluate the strength of
3 these claims for purposes of settlement. (Ibid).

4 **VI. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE**

5 As the prevailing party in settlement, Plaintiff is entitled to recover attorneys' fees and costs
6 for bringing his PAGA claims. (Lab. Code § 2699(k) ["Any employee who prevails in any action
7 shall be entitled to an award of reasonable attorney's fees and costs."]). Plaintiff's Counsel is also
8 entitled to attorneys' fees pursuant to Code of Civil Procedure section 1021.5(a), as the instant action
9 has resulted in the enforcement of important rights benefitting the public and secures monetary
10 recovery for the State of California as well as the Aggrieved Employees. A fee award is justified
11 where the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P.*
12 *v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*,
13 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ["when a number of persons
14 are entitled in common to a specific fund, and an action brought by a plaintiff ... for the benefit of all
15 results in the creation or preservation of that fund, such plaintiff ... may be awarded attorney's fees out
16 of the fund."]).

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

20 The recognized advantages of the percentage method-including relative ease of calculation,
21 alignment of incentives between counsel and the class, a better approximation of market
22 conditions in a contingency case, and the encouragement it provides counsel to seek an early
23 settlement and avoid unnecessarily prolonging the litigation-convince us the percentage
24 method is a valuable tool that should not be denied our trial courts.
25 (*Id.*, at 503 [internal citation omitted]).

26 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
27 method, the California Supreme Court has taken the position that trial courts also "retain the discretion
28 to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested

percentage fee.” (*Laffitte*, 1 Cal.5th at 506; *see also Wershba*, 91 Cal.App. 4th at 253). Courts award fees to serve as an economic incentive for lawyers to undertake litigation, and thereby enhance and facilitate access to the judicial system for adjudication of meritorious claims, and to deter wrongdoing. This is especially true in situations where multiple similar alleged wrongs would not be economically feasible to pursue individually, such as here. Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000); *see also Laffitte*, 1 Cal.5th at 506 [holding that “trial court did not abuse its discretion in using [the percentage of fund method], in part to approve the fee request”]). Indeed, it is long settled that the “experienced trial judge is the best judge of the value of professional services rendered in his court.” (*Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001)).

The percentage method is particularly appropriate where a monetary settlement has been recovered and “the benefit [recovered can be] easily quantified.” (*In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)). Where the amount of a settlement is a “certain or easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable percentage of the settlement created. (Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808). The percentage fee method is preferred in representative actions because “it better approximates the workings of the marketplace than the lodestar approach.” (*Lealao, supra*, 82 Cal.App.4th at 49). California law provides that the award for attorneys’ fees should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. (*See Lealao*, 82 Cal.App.4th at 47-50; *Laffitte*, 1 Cal.5th 480 at 503). In cases where the settlement agreement provides that the defendant will pay the plaintiffs’ attorneys a percentage of the fund created by the settlement, use of that percentage method is appropriate. (*Lealao*, 82 Cal.App.4th at 32). Fee awards that are too small will “chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims.” (*Id.* at 53). Therefore, fees in representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in

1 comparable litigation. (*Id.* at 48). “The ultimate goal ... is the award of a ‘reasonable’ fee to
2 compensate counsel for their efforts, irrespective of the method of calculation.” (*Consumer Privacy*
3 *Cases*, 175 Cal.App.4th 545, 557-58 (2009) [quoting *Apple Computer, Inc. v. Superior Court, supra*,
4 126 Cal.App.4th at 1270]).

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

12 Here, Plaintiff’s Counsel’s fee request of forty percent (40%) of the Gross Settlement Amount
13 (i.e., \$160,000.00) is fair and reasonable based on the percentage of the recovery method. Plaintiff’s
14 Counsel has vigorously litigated this case since it was commenced, with the very real possibility of an
15 unsuccessful outcome and no fee recovery of any kind. (Genish Decl., ¶ 58). Counsel for Plaintiff
16 undertook significant investigation and invested a significant amount of time analyzing relevant
17 documents and data to evaluate the nature and extent of the alleged underlying California Labor Code
18 violations and calculation of the potential monetary recovery as they relate to Plaintiff’s PAGA claims
19 under PAGA. (Genish Decl., ¶¶ 59-60). Plaintiff’s Counsel possesses combined extensive experience
20 litigating wage and hour and other complex litigation matters, and the attorneys who worked on this
21 matter have been approved as class counsel and/or have had their billable rates approved in the
22 settlement of other class and PAGA actions, numerous times. (Genish Decl., ¶ 59-61).

23 Even when courts have opted to award fees in settlement fund cases based on time reasonably
24 expended on the action, courts frequently apply multipliers to enhance the lodestar to reflect the risks
25 involved, the complexity of the litigation, and the other relevant facts. (*Vizcaino v. Microsoft* (9th Cir.
26 2002) 290 F.3d 1043, 1051; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of
27 the most common fee enhancers [...] is for contingency risk.”). Such an enhancement “mirrors the
28 established practice in the private legal market of rewarding attorneys for taking the risk of

1 nonpayment by paying them a premium over their normal hourly rates for winning contingency cases.”
2 (*Vizcaino*, 290 F.3d at 1051). A risk multiplier also serves to bring the financial incentives for
3 enforcing important rights “into line with incentives [attorneys] have to undertake claims for which
4 they are paid on a fee-for-services basis.” (*Ketchum* at 1132).

5 In determining whether or not to enhance the lodestar, California courts take into account
6 multiple factors. (*Cates v. Chiang* (2013) 213 Cal.App.4th 791, 822-823). Multiple factors warrant
7 enhancement in this case, including the following: the time and labor required; the skill requisite to
8 perform the legal services properly; the preclusion of other employment by the attorneys due to the
9 acceptance of the case; the contingent nature of the fee; the amount involved and results obtained; the
10 experience, reputation, and ability of the attorneys; and awards in similar cases. (*Ketchum* at 1134).

11 Based on the reasonable hourly rates of Plaintiff’s Counsel, the requested fee award would
12 represent a multiplier of about 1.18 in which the total enhanced lodestar fees are \$160,957.90.
13 Plaintiff’s Counsel seeks an attorneys’ fee award of \$160,000 (40% of the Gross Settlement Amount).
14 Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by
15 Plaintiff’s Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely
16 enhance lodestar amounts based on multipliers that “range from 2 to 4 or even higher.” (*Wershba* 91
17 Cal.App.4th at 224, 255; see also, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66
18 (approving multiplier of 2.5); *Vizcaino*, 290 F.3d at 1051 (approving multiplier of 3.65); *Wal-Mart*
19 *Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving multiplier of 3.5); *Craft v.*
20 *County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding multiplier of 5.2
21 and referring to other cases with cross-check multipliers ranging from 4.5 to 19.6)).

22 Therefore, application of a modest multiplier of 1.18 is warranted, and the lodestar as a cross-
23 check to the percentage figure sought herein, strongly supports the reasonableness of the requested
24 attorneys’ fees award.

25 In the present case, Plaintiff’s Counsel has borne all of the risks and costs of litigation and will
26 not receive any compensation until recovery is obtained. (Genish Decl., ¶ 58). Plaintiff’s Counsel is
27 experienced in complex wage-and-hour litigation and used that experience to obtain a favorable result
28 for Plaintiff, the Aggrieved Employees, and the State of California. (*Ibid*). Considering the amount

1 of fees requested, work performed, risks incurred, and experience of Plaintiff's Counsel in handling
2 similar matters, Plaintiff maintains that the requested attorneys' fees of forty percent (40%) of the
3 Gross Settlement Amount (i.e., \$160,00.00) are reasonable and should be awarded. (Genish Decl., ¶
4 58).

5 **VII. THE REQUESTED ATTORNEYS' COSTS ARE FAIR AND REASONABLE**

6 The Agreement provides for reimbursement of actual litigation costs and expenses up to the
7 amount of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). (Genish Decl., ¶ 62; Original
8 Agreement, ¶ 3(a)(1)). Plaintiff's Counsel only seeks reimbursement of a total of Eighteen Thousand
9 Three Hundred Thirty Dollars and Ten Cents (\$18,330.10) in litigation costs and expenses. (Genish
10 Decl., ¶ 62 & Exh. 6). Accordingly, Plaintiff's Counsel respectfully requests that the Court reimburse
11 it for actual litigation costs and expenses in the amount of Eighteen Thousand Three Hundred Thirty
12 Dollars and Ten Cents (\$18,330.10).

13 **VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND**
14 **REASONABLE**

15 As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval
16 by the Court, ILYM Group, Inc. to handle the administration of the Agreement. (Genish Decl., ¶ 63;
17 Original Agreement, ¶ 3(a)(3)). The fees and expenses of the Administrator are estimated not to
18 exceed Four Thousand Nine Hundred Fifty Dollars and Zero Cents (\$4,950.00). (Genish Decl., ¶ 63;
19 Amendment No. 1, ¶ A). These costs include, but are not limited to, expenses for preparing,
20 translating, printing, and mailing the Cover Letter and Individual PAGA Payment checks to the
21 Aggrieved Employees, re-mailing the returned Individual PAGA Payment checks to any new
22 addresses obtained, and handling inquiries from Aggrieved Employees regarding the Agreement,
23 among other things. (Genish Decl., ¶ 63). Accordingly, the Court should grant approval of the
24 Settlement Administration Costs in the amount of up to Four Thousand Nine Hundred Fifty Dollars
25 and Zero Cents (\$4,950.00) to ILYM Group, Inc., a necessary third-party for handling the settlement
26 process. (Ibid).

27 ///

28 ///

1 **IX. THE REQUESTED GENERAL RELEASE FEE IS FAIR AND REASONABLE**

2 The purpose of an enhancement award is to incentivize aggrieved employees to step into the
3 shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit
4 and serving in a representative capacity. (*See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715,
5 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the action);
6 *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) (“an incentive award is
7 appropriate ‘if it is necessary to induce an individual to participate in the suit’”). Plaintiff initiated
8 this litigation on behalf of the State of California and her former co-workers who will now be entitled
9 to receive payment from the Agreement. By initiating and pursuing the Action, Plaintiff stepped into
10 the shoes of the State of California and undertook the responsibilities of serving in a representative
11 capacity. (Genish Decl., ¶ 65; Bernal Decl., ¶¶ 4-6). Plaintiff was available whenever Plaintiff’s
12 counsel needed him and actively tried to obtain information that would benefit the prosecution of the
13 Action. (Genish Decl., ¶ 65; Bernal Decl., ¶¶ 5-6). The General Release Fee for Plaintiff is eminently
14 reasonable given the time and effort Plaintiff spent on this matter, his services on behalf of the State
15 of California and the Aggrieved Employees, and his broader, general release of claims. (Genish Decl.,
16 ¶ 64).

17 Accordingly, Plaintiff respectfully submits that it is appropriate and just for Plaintiff to receive
18 a General Release Fee in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) in addition
19 to the Individual PAGA Payment he will receive as an Aggrieved Employee, for his services on behalf
20 of the State of California and the other Aggrieved Employees, as well as for the broader, general
21 release of claims. (Genish Decl., ¶ 66).

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **X. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
3 Motion for Approval of PAGA Settlement and Award of Attorneys' Fees and Costs, General Release
4 Fee, and Settlement Administration Costs and grant the relief requested herein.

5 Respectfully submitted,

6 Dated: February 7, 2025

BLACKSTONE LAW, APC

7
8 By:  _____

9 Jonathan M. Genish
10 Attorneys for Plaintiff
11 JOSE MANUEL AMARO BERNAL
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

Bernal v. JOSEPH HOLT PLASTERING, INC
Los Angeles County Superior Court, Case No. 24STCV15637

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Daina Lindsey, certify and declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On February 7, 2025, I served a copy of the following document(s): **NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT AND AWARD OF ATTORNEYS' FEES AND COSTS, GENERAL RELEASE FEE, AND SETTLEMENT ADMINISTRATION COSTS**

on the interested parties as follows:

Boris Sorsher
Lisa L. Peterson

Fawn F. Bekam
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, CA 92614

*Attorneys for Defendant JOSEPH HOLT
PLASTERING, INC.*

Emails: bsorsher@fisherphillips.com
lpeterson@fisherphillips.com
fbekam@fisherphillips.com.com

☒ **BY ELECTRONIC MAIL (E-MAIL):** I caused said document(s) to be delivered electronically to be delivered to the addressee(s) listed above via email from email address dlindsey@blackstonepc.com pursuant to California Code of Civil Procedure section 1010.6(e)(1). I did not receive any electronic message or other indication that the transmission was unsuccessful.

State of California, Labor & Workforce Development Agency

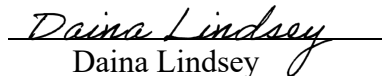
Web URL:

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

☒ **BY ONLINE SUBMISSION:** The foregoing documents were transmitted to the California Labor and Workforce Development Agency through the online system established for the submission of notices and documents, in conformity with California Labor Code section 2699(l). I did not receive any electronic message or other indication that the transmission was unsuccessful.

☒ **STATE** – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 7, 2025 at Beverly Hills, California.


Daina Lindsey