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Electronically FILED by Superior Court of California, County of Los Angeles 11/05/2026 8:02 AM David W. Slayton, Executive Officer/Clerk of Court, By V. Sino-Cruz, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MONICA STEWART, individually and on behalf of the aggrieved employees,

Plaintiff,

v.

MAXIM HEALTHCARE STAFFING SERVICES, INC., a California corporation; **MAXIM HEALTHCARE SERVICES, INC.** a California corporation; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 24STCV09231

[Assigned for all purposes to the Honorable Cherol J. Nellon, Dept. 300]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF MONICA STEWART'S UNOPPOSED MOTION TO APPROVE THE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT PURSUANT TO CALIFORNIA LABOR CODE § 2698 *et seq*.

Date: January 19, 2027
Time: 8:30 a.m.
Dept.: 300
CRS Reservation No.: 726882105937

[Filed concurrently with the Notice of Motion and Unopposed Motion to Approve the PAGA Settlement Agreement; Declaration of Danny Yadidsion; Declaration of Monica Stewart; [Proposed] Order; and [Proposed] Judgment]

Complaint Filed: April 12, 2024
First Amended Complaint Filed: June 21, 2024

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Monica Stewart ("Plaintiff" or "PAGA Representative") and Defendant Maxim Healthcare Staffing Services, Inc. (n/k/a Amergis Healthcare Staffing, Inc.) ("Amergis" or "Defendant") (together with Plaintiffs, the "Parties") have reached a proposed settlement in this California PAGA representative action. The settlement has a significant total value of four million five hundred thousand dollars ($4,500,000.00). The proposed settlement is non-reversionary and will provide substantial monetary relief to approximately 41,322 Aggrieved Employees who worked a total of 981,988 pay periods during the PAGA Period. The proposed PAGA Settlement Agreement ("Settlement Agreement") entered into by the Parties, based on this Court's model PAGA Settlement Agreement, is attached as Exhibit A to the concurrently filed Declaration of Danny Yadidsion in Support of Plaintiff's Unopposed Motion for Approval of the PAGA Settlement Agreement ("Yadidsion Decl."). By this motion, Plaintiff seeks an order from the Court approving the proposed Settlement Agreement pursuant to Labor Code section 2698, *et seq*. Defendants do not oppose approval of Plaintiff's motion. (Yadidsion Decl., ¶ 2.)

The proposed Settlement Agreement is fair, reasonable, and adequate. The settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were conducted at arm's length and were facilitated by a highly respected and experienced neutral over the course of a full-day mediation session on May 6, 2026. All factors to be considered by the Court, including the strengths and weaknesses of Plaintiff's case, the risk, expense, complexity, and likely duration of further litigation, the amount of the proposed settlement, the stage of the proceedings, and the experience and views of counsel all weigh in favor of approval of the proposed Settlement Agreement.

Accordingly, Plaintiff respectfully requests that the Court grant Plaintiff's unopposed motion for approval of the proposed PAGA Settlement Agreement and enter the concurrently filed [Proposed] Order and [Proposed] Judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Defendant Amergis is a healthcare staffing company that provides healthcare professionals who temporarily work in Amergis's client facilities across the country, including throughout the State of California. Since April 15, 2023 (the start of the PAGA Period in this case), Amergis has assigned temporary employees to work at over 900 different locations in California. (Yadidsion Decl., ¶ 79.) These temporary employees work as nurses, special education teachers, behavioral technicians, behavioral psychologists, social workers, counselors, occupational therapists, and speech and language therapists. Defendant Amergis employed approximately 41,322 Aggrieved Employees during the PAGA Period. (Yadidsion Decl., ¶¶ 6, 17, 32.)

Plaintiff worked for Defendant Amergis as a Behavior Technician from on or about February 10, 2022 through approximately March 2024, when her final work assignment from Amergis ended. (Declaration of Monica Stewart in Support of Unopposed Motion for Approval of PAGA Settlement Agreement ("Stewart Decl."), filed concurrently herewith, ¶ 3.)

B. Plaintiff's Claims

On April 12, 2024, Plaintiff filed a Class Action Complaint against Defendant Amergis and Defendant Maxim Healthcare Services, Inc. ("MHSI") (together with Amergis, "Defendants") alleging the following causes of action: 1) Failure to Pay Wages for All Hours Worked, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Periods, (4) Failure to Provide Rest Periods, (5) Failure to Reimburse Business Expenses, (6) Failure to Furnish Timely and Accurate Wage Statements, (7) Failure to Pay All Compensation Due Upon Discharge, and (8) Unfair, Unlawful, or Fraudulent Business Practices. (Yadidsion Decl., ¶ 10.) On April 15, 2024, Plaintiff filed a claim notice with the California Labor and Workforce Development Agency ("LWDA") giving notice of Defendants' various Labor Code violations against Plaintiff and other Aggrieved Employees. (*Id*., ¶ 11, Exh. B.) On June 21, 2024, Plaintiff filed a First Amended Representative Action Complaint, adding a ninth cause of action under the Private Attorneys General Act

("PAGA"), Labor Code section 2698 *et seq*., seeking civil penalties on behalf of Plaintiff and other Aggrieved Employees. (*Id*., ¶ 12.) After Defendants produced an arbitration agreement signed by Plaintiff and containing a class action waiver, Plaintiff elected to dismiss her putative class allegations and proceed only with the representative PAGA claim. (*Id*., ¶ 13.) On July 1, 2024, Plaintiff filed a Request for Dismissal of Class Action pursuant to California Rules of Court, rule 3.770. (*Id*.) On July 16, 2024, the Court entered an order dismissing the class allegations without prejudice. (*Id*.) This action thereafter proceeded as a representative PAGA action. (*Id*.) (*Id*., ¶ 13.)

On May 12, 2025, Defendant Amergis filed a Motion to (1) Bifurcate Plaintiff's Individual and Non-Individual PAGA Claims and (2) Stay Discovery of Non-Individual PAGA claims. (*Id*., ¶ 15.) Amergis argued that bifurcation was warranted primarily because it anticipated bringing a successful motion for summary judgment based on its *Serrano* defense, which Defendants contended would render representative discovery unnecessary. *See Serrano v. Aerotek, Inc*. (2018) 21 Cal.App.5th 773. (*Id*.) Defendant further argued that proceeding with representative discovery before adjudicating Plaintiff's individual PAGA claim would impose an exorbitant burden on the parties and the court, given the then-estimated 32,869 aggrieved employees working across approximately 963 separate client facilities. (*Id*.) Plaintiff opposed Defendant's motion. (*Id*.) After full briefing and oral argument, on September 22, 2025, the Court denied Defendant's motion to bifurcate and stay in its entirety, allowing Plaintiff's individual and representative PAGA claims to continue to proceed together. (*Id*.)

C. PAGA Counsel's Investigation and Discovery

Before filing this lawsuit, PAGA Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (Yadidsion Decl., ¶ 16.) This required thorough discussions and interviews between PAGA Counsel and Plaintiff, as well as preliminary research into various legal issues involved in the case. (*Id*.) After conducting this thorough initial investigation, PAGA Counsel determined that Plaintiff's claims were well-suited for representative adjudication owing to what appeared to be a common course of conduct

affecting a similarly situated group of employees. (*Id*.)

After filing the lawsuit, PAGA Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting informal discovery, propounding written discovery, and meeting and conferring with defense counsel about the same; (2) reviewing and analyzing time and pay records as well as employment handbooks, Plaintiff's personnel file and related documents, relevant company policies and other documentation; (3) researching the applicable law and potential defenses; (4) constructing damage models based on interpretations of California law; and (5) reviewing information provided by Defendant in the mediation. (Yadidsion Decl., ¶ 17.) This investigation revealed ultimately that there are approximately 41,322 Aggrieved Employees distributed amongst nearly 1,000 different worksites throughout California. (*Id*.)

Plaintiff propounded written discovery requests on Defendants, including form interrogatories, special interrogatories and requests for production of documents. (Yadidsion Decl., ¶ 18.) In response, Defendants produced voluminous documents and data, including Plaintiff's personnel files and related records, Amergis's employee handbook, Amergis's company policies and procedures relating to its employment practices, and time and payroll records for the Aggrieved Employees. (*Id*.) Plaintiff's counsel also noticed the depositions of Amergis's and Defendant MHSI's persons most knowledgeable on twenty-seven (27) separate topics each, before the Parties agreed to postpone depositions until after mediation. (*Id*.)

Discovery in this case involved multiple contentious disputes over the sufficiency of Defendants' written discovery responses and document production. (Yadidsion Decl., ¶ 19.) Those disputes required Plaintiff's Counsel to engage in repeated and extensive meet-and-confer correspondence and discussions with Defendants' Counsel, and on two occasions required Plaintiff's Counsel to initiate the process leading to motion practice by scheduling and preparing for Informal Discovery Conferences with the Court. (*Id*.)

After the Parties conducted significant discovery in this action, Plaintiff and Defendant Amergis agreed to participate in mediation. (Yadidsion Decl., ¶ 21.) To prepare for mediation,

Amergis informally produced additional information to Plaintiff, including a representative random sampling of time records for approximately 20% of Aggrieved Employees covering the time period from April 17, 2023 through March 3, 2026. (*Id*.) PAGA Counsel thoroughly reviewed, investigated, and analyzed this information, along with the relevant company policies and procedures previously produced by Amergis. (*Id*.) This informal discovery process occurred over a period of several months and involved significant meet and confer efforts between counsel for Plaintiff and Amergis. (*Id*.)

After reviewing and analyzing Defendants' documents and interrogatory responses, and thoroughly researching the applicable law regarding the claims and defenses asserted in this litigation, PAGA Counsel were able to evaluate the likelihood of success on the merits and Defendants' maximum monetary exposure for PAGA Penalties. (Yadidsion Decl., ¶¶ 22-23.)

D. Settlement Negotiations

On May 6, 2026, Plaintiff and Defendant Amergis participated in a full–day mediation before an experienced and well–regarded mediator, the Honorable Ronald M. Sabraw (Ret.). (Yadidsion Decl., ¶ 23.) In preparation for mediation, PAGA Counsel calculated Defendants' potential liability for PAGA penalties. (*Id*.) Plaintiff's PAGA penalty model assumed that Plaintiff prevailed in establishing liability on the merits of the underlying wage-and-hour violations alleged in the First Amended Complaint. (*Id*.) During mediation, the Parties discussed all aspects of the case, including the risks of litigation and the risks to both sides of proceeding, as well as the law relating to meal and rest break matters, wage statements, reimbursement of necessary business expenses, failure to pay wages, payment of all wages due during employment, payment of all wages due upon separation of employment, unfair and unlawful business practices, and the law relating to PAGA penalties. (*Id*.) Although mediation that day did not conclude with a settlement agreement, through a mediator's proposal presented shortly thereafter, the Parties reached an agreement to resolve Plaintiff's PAGA claims, subject to execution of a written settlement agreement and Court approval. (*Id*.) The settlement was thereafter memorialized in the fully

executed Settlement Agreement, which Plaintiff now submits for Court approval. On October 2, 2026, Plaintiff submitted an Amended PAGA Notice to Defendants and the LWDA supplementing the facts and theories supporting Plaintiff's alleged Labor Code violations. (*Id*., ¶ 98.)

From PAGA Counsel's review of the facts, strengths and weaknesses of the case, the risks and delays posed by further litigation, and PAGA Counsel's own prior employment and class action litigation experience, PAGA Counsel believes that the recovery offered by the proposed Settlement Agreement for the State of California and each Aggrieved Employee is fair, reasonable and adequate taking into consideration the amounts received in other PAGA cases, the risks inherent in litigation of this genre, and the reasonable tailoring of the number of pay periods each Aggrieved Employee worked to the share of PAGA penalties he or she will receive. (Yadidsion Decl., ¶ 24.) The information provided to PAGA Counsel included sufficient data, including time records and payroll data for a statistically significant representative sample of putative Aggrieved Employees to permit PAGA Counsel to reliably compile a reasonable model of potential PAGA penalties available. (*Id*.) PAGA Counsel subsequently used that penalty analysis to guide assessment of the strength of the claims and alleged violations. (*Id*.) Based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating PAGA and class actions and wage and hour cases, the Settlement Agreement was the product of a non-collusive settlement process in which Plaintiff and Defendant Amergis were forced to make significant and meaningful compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id*.)

Throughout the course of negotiations, the Parties recognized that the issues presented in this action are only likely to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation would lead to inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. (Yadidsion Decl., ¶ 25.) The Parties took into account the risk and uncertainty of the outcome inherent in any litigation in reaching this agreement. (*Id*.)

III. SUMMARY OF SETTLEMENT TERMS

A. The Aggrieved Employees

Pursuant to Section 1.4 of the Settlement Agreement, "Aggrieved Employees" are defined as all non-exempt employees who are or formerly were employed by Defendant Amergis within the State of California at any time during the PAGA Period, but excluding those non-exempt employees who were classified as "travelers." (Yadidsion Decl., ¶ 28.) The Settlement Agreement defines the PAGA Period as April 17, 2023 through June 19, 2026. (*Id*.) Pursuant to Section 1.20 of the Settlement Agreement, the "PAGA Period" is the period from April 17, 2023 through the date of the Approval Order, unless Amergis exercises the option in Paragraph 4.1 to end the PAGA Period on a date so as not to exceed 982,335 pay periods to avoid increasing the Gross Settlement Amount. Amergis exercised that option here, such that the PAGA Period ends on June 19, 2026. There are approximately 41,322 Aggrieved Employees who worked a total of 981,988 pay periods during the PAGA Period. (*Id*., ¶ 32.)

B. Gross Settlement Amount

Pursuant to the terms of the Settlement, Defendant Amergis will pay a total settlement amount of $4,500,000.00, which is non-reversionary ("Gross Settlement Amount"). (Yadidsion Decl., ¶ 27.) The Gross Settlement Amount consists of the following components:

1. PAGA Penalties in the amount of $2,094,375.00 payable to the LWDA as its 75% share of the settlement of civil penalties for PAGA claims (*id*., ¶ 31);

2. PAGA Penalties in the amount of $698,125.00 to be divided amongst and distributed to individual Aggrieved Employees (the "Individual PAGA Payments") (*id*.);

3. A Representative Service Payment in the amount of $7,5000 to Plaintiff as the PAGA Representative to reward her for the risks she took and time and effort she contributed to this case as a PAGA Representative (*id*.);

4. The fees and expenses of the Parties' agreed-upon Settlement Administrator, Apex Class Action LLC, not to exceed $100,000.00 (*id*., ¶¶ 31, 40); and

5. Reasonable attorneys' fees to PAGA Counsel in an amount equivalent to 35% of the Gross Settlement Amount ($1,575,000.00), and PAGA Counsel's actual litigation costs in an amount not to exceed $25,000.00 (*id*., ¶ 31).

C. Payment of PAGA Penalties

Defendant Amergis shall provide the Gross Settlement Amount to the Settlement Administrator within fourteen (14) days after the Effective Date of the proposed Settlement Agreement. (Yadidsion Decl., ¶ 30.) Within 21 days of the Effective Date, Amergis also shall provide the Settlement Administrator with the Aggrieved Employee Data. (*Id*.) The Settlement Administrator shall have fourteen (14) days after its receipt of the Aggrieved Employee Data to complete the distribution of the Gross Settlement Amount to the State of California, the Aggrieved Employees, the Named Plaintiff, PAGA Counsel, and the Settlement Administrator. (*Id*.)

The Net Settlement Amount ($698,125.00) shall be divided amongst and distributed to individual Aggrieved Employees (the "Individual PAGA Payment"), calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Aggrieved Employees and (b) multiplying the result by the number of weeks worked by each Aggrieved Employee during the PAGA Period. (Yadidsion Decl., ¶ 33.) The Individual PAGA Payments shall be 100% allocated as non-wage payment of penalties and interest paid without tax withholdings and reported to each Aggrieved Employee on an IRS Form 1099. (*Id*.)

Each Aggrieved Employee shall receive a *pro rata* share of the PAGA Payment proportionate to the number of Individual Workweeks that he or she worked during the PAGA Period. (Yadidsion Decl., ¶ 34.) Each PAGA Class Member who was employed by Defendant Amergis during the PAGA Period will be issued a check for their share of the PAGA Payment regardless of whether they are currently employed by Defendant Amergis as of the Settlement's Effective Date. (*Id*.)

D. Release by Aggrieved Employees

The proposed release by Aggrieved Employees only releases claims for PAGA civil penalties based on the facts and claims asserted in this action and disclosed in the original and Amended PAGA Notices and does not require any Aggrieved Employee to waive claims not raised

therein. The Settlement Agreement requires that Aggrieved Employees shall provide the following release:

> All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts asserted in the PAGA Notice, the Amended PAGA Notice, and/or the Operative Complaint during the PAGA Period, including any claims for civil penalties arising from Amergis and/or Maxim's alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2900, 2802 and the corresponding provision under the applicable Industrial Welfare Commission wage order(s), including but not limited to claims for: (1) failing to pay minimum, regular, and overtime wages purportedly due; (2) failing to provide legally compliant meal periods and meal period premiums purportedly due; (3) failing to provide legally compliant rest periods and rest period premiums purportedly due; (4) failing to timely pay all wages purportedly due during employment; (5) failing to timely pay all wages purportedly due upon separation from employment; (6) failing to provide compliant wage statements; (7) failing to maintain accurate time and pay records; (8) failing to reimburse for all business expenses purportedly incurred; and (9) failing to provide compliant paid sick leave (the "Released PAGA Claims").

(Yadidsion Decl., ¶ 36.) The release is thus limited to PAGA civil penalties based on the facts asserted in the PAGA Notice, the Amended PAGA Notice, and/or the Operative Complaint.

E. Service Payment to the PAGA Representative

Subject to the Court's approval, the Parties propose to pay Plaintiff the amount of $7,500.00 for her service as PAGA Representative. (Yadidsion Decl., ¶ 31.) This Representative Service Payment is designed to compensate Plaintiff for her initiative in investigating her potential claims, bringing them to PAGA Counsel's attention, personally undertaking the obligations and risks associated with litigation, and the substantial time spent assisting PAGA Counsel with their investigation and litigation of this matter over the course of approximately two-and-a-half years. (*Id*., ¶¶ 82-86.) Plaintiff's work included seeking out and identifying legal counsel, being interviewed in detail by PAGA Counsel regarding working conditions at Amergis and the company's policies and practices, searching for and gathering relevant documents, helping to identify potential witnesses and other potentially relevant documents, communicating regularly with PAGA Counsel regarding various aspects of the case, assisting with the preparation of written discovery responses and providing information and documents requested by PAGA Counsel in

connection with discovery, and reviewing and approving the Parties' Settlement Agreement. (*Id*.; *see also* Stewart Decl., ¶¶ 12-15.)

In exchange for the additional consideration provided by the Representative Service Payment, Plaintiff will execute a broader release than the other Aggrieved Employees, including all known and unknown claims against Defendant and a waiver of her rights and benefits under California Civil Code section 1542. (Yadidsion Decl., Exh. A at §§ 5.1, 5.1.1.)

F. PAGA Counsel's Reasonable Fees and Costs

Pursuant to the terms of the Settlement Agreement and subject to the Court's approval, PAGA Counsel seeks reasonable attorneys' fees in an amount equal to 35% of the Gross Settlement Amount, or $1,575,000.00, along with reasonable litigation costs in an amount not to exceed $25,000.00. (Yadidsion Decl., ¶ 31.) The requested attorneys' fees in this case are fair, reasonable, and appropriate to compensate PAGA Counsel for the substantial work they have put into this case, the risk they assumed by taking it in the first place, and the outstanding results obtained. (*Id*., ¶ 87.) The attorneys' fees award is intended to reimburse PAGA Counsel for all uncompensated work that they already have done and for all the work they will continue to do in assisting in the administration of the settlement if it is approved by the Court. (*Id*.)

IV. THE PROPOSED PAGA SETTLEMENT SATISFIES THE REQUIREMENTS FOR COURT APPROVAL

The settlement of a PAGA claim requires court approval pursuant to Labor Code section 2699, subdivision (l), which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (Lab. Code § 2699(l).) In deciding whether to grant approval of a proposed settlement, the primary issue to be decided is whether the settlement is fair, adequate, and reasonable. Specifically, the issues are whether the PAGA penalties to which the Parties have agreed provide "genuine and meaningful" relief, "consistent with the underlying purpose of the statute to benefit the public" (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal. 2015) 2015 WL 12732709, at *5), and whether the penalties are reasonable in light of the case's potential verdict value (*O'Connor v. Uber Technologies, Inc.* (2016) 201 F.Supp.3d 1110, 1135). To be approved by the Court, a PAGA settlement must be fair,

reasonable, and adequate in view of PAGA's purposes — remediating present violations, deterring future violations, and maximizing enforcement of the Labor Code. *See*, *e.g.*, *Moniz v. Adecco USA* (2021) 72 Cal.App.5th 56 (overruled in part on other grounds by *Turrieta v. Lyft, Inc*. (2024) 16 Cal.5th 664).

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

A. The Relief Obtained Through the PAGA Settlement is Genuine, Meaningful, and Consistent with the Underlying Purpose of the Statute to Benefit the Public

Based on PAGA Counsel's analysis of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and PAGA Counsel's own extensive prior litigation experience, PAGA Counsel believes that the recovery for each Aggrieved Employee is fair, reasonable and adequate, especially taking into consideration the amounts received in other PAGA actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Aggrieved Employee's claim to the settlement award he or she could receive. (Yadidsion Decl., ¶ 24.) Defendants, for their part, vigorously contest liability and damages. (*Id*.) The settlement negotiations in this case were hard-fought and conducted in good faith and at arm's length between attorneys with substantial experience litigating PAGA actions. (*Id*.) The Settlement Agreement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id*.)

B. The Proposed Settlement is Entitled to a Presumption of Fairness

California courts recognize that a presumption of fairness exists where (1) the agreement is reached through arm's length bargaining; (2) the parties have sufficiently investigated the matter so as to allow the court and counsel to act intelligently; and (3) counsel is experienced in similar litigation. *See*, *e.g.*, *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723. Ultimately, though, "the court's determination is simply an amalgam of delicate balancing, gross approximations, and rough justice." *Id.*

1. The Settlement is the Result of Informed Arm's Length Negotiations

A presumption of fairness applies to a PAGA settlement that results from arm's length bargaining. *See Dunk*, 48 Cal. App. 4th at 1802; *In re Cellphone Termination Fee Cases* (2009) 180 Cal. App. 4th 1110, 1117-18. Indeed, courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. *See* NEWBERG ON CLASS ACTIONS § 11.51 (5th ed. 2011).

Here, the proposed settlement is the product of extensive arm's length negotiations conducted by the Parties in an adversarial context through formal mediation. (Yadidsion Decl., ¶¶ 23-24.) The Parties required months of preparation and a full-day mediation session before coming to a meeting of the minds regarding the basic terms of the Settlement Agreement. (*Id*., ¶¶ 16-24.) At mediation, counsel for the Parties zealously advocated on behalf of their client's best interests, and the negotiations were facilitated by a respected, skilled, and very experienced mediator specializing in wage-and-hour and representative cases like this one. (*Id*., ¶¶ 23-24.) The proposed settlement was only reached after a full day of mediation during which multiple settlement proposals were exchanged and rejected, and after a post-mediation mediator's proposal was made and accepted. (*Id*.) The lengthy and extensive arm's length negotiations in this case demonstrate the fairness of the Settlement and that it is not the product of collusion.

2. The Settlement is the Product of Informed Investigation and Discovery

Another factor reinforcing the presumption of fairness is that sufficient investigation and discovery have occurred to allow PAGA Counsel and the court to act based on adequate

information. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1802.

PAGA Counsel in this case engaged in more than sufficient investigation and discovery to exercise informed judgment in the Parties' settlement discussions. (Yadidsion Decl., ¶¶ 16-24.) Before reaching the proposed settlement, PAGA Counsel requested and obtained all of Defendant Amergis's relevant wage and hour policies, a statistically significant representative sample of Aggrieved Employees' time records and payroll data, and other documents necessary to analyze potential damages. (*Id*.) The Parties' negotiations were hard-fought and conducted at arms-length between experienced counsel who were fully informed of the relative strengths and weaknesses of the claims and defenses in this litigation. (*Id*., ¶¶ 23-24.)

The extent of the Parties' discovery and investigation demonstrates that all Parties were sufficiently informed prior to reaching the proposed settlement. *See 7-Eleven*, 85 Cal. App. 4th at 1150; *Dunk*, 48 Cal. App. 4th at 1802.

3. PAGA Counsel is Experienced and Supports Settlement Approval

Weighing further in favor of approval of the proposed settlement is PAGA Counsel's experience and success in similar class and PAGA representative actions. *See Wershba*, 91 Cal. App. 4th at 245. PAGA Counsel has extensive experience working on large, complex cases, with a particular focus on wage and hour claims and class action and PAGA litigation. (Yadidsion Decl., ¶¶ 3-5, 8.) PAGA Counsel has a track record of success in similar cases, which provides insight into the relative strengths of the claims and defenses asserted. (*Id.*) PAGA Counsel is familiar with the facts of this case and knowledgeable in the applicable laws. (*Id*.) PAGA Counsel had sufficient information to assess the Aggrieved Employees' claims, the likelihood of success on the merits at trial, and the benefits of the proposed settlement under the circumstances of this case, all of which allowed PAGA Counsel to make an informed judgment as to the fairness of the Settlement. (*Id*., ¶¶ 42-81.) Drawing on this extensive experience and knowledge, PAGA Counsel is confident that the Settlement constitutes a fair, reasonable and adequate outcome for the Aggrieved Employees. (*Id*., ¶¶ 39, 75, 81.)

C. The Proposed Settlement is Fair, Adequate, and Reasonable

California courts recognize several factors that bear on the fairness, adequacy, and reasonableness of a proposed PAGA settlement. *See*, *e.g.*, *Moniz*, 72 Cal.App.5th 56; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 128. In relevant part, these factors include: (1) the amount offered in settlement; (2) the strength of plaintiff's case; (3) the risk, expense, complexity, and likely duration of further litigation; and (4) the experience and views of counsel. *Id.* Analysis of these factors confirms that the proposed Settlement Agreement should be approved.

1. The Amount Offered in Settlement Supports Approval

Plaintiff believes that the PAGA claims in this action are legally meritorious and present a reasonable probability of a favorable determination on behalf of the Aggrieved Employees. At the same time, there is undeniably significant litigation risk avoided by the proposed settlement, both and trial as well as in the appellate courts. (Yadidsion Decl., ¶¶ 42-81.)

Liability remains highly contested by Defendants, who deny engaging in any violations of the law, and further deny any liability or engagement in wrongdoing of any kind associated with the claims alleged in the action by the Named Plaintiff or any Aggrieved Employee. (*Id*.) Defendants contend that at all times they complied with all wage-and-hour laws in connection with the employment and/or retention of services of Plaintiff and the Aggrieved Employees. (*Id*.)

Defendants argue, among other things, that Plaintiff and the other Aggrieved Employees were paid for all reported hours worked, were instructed to accurately record all time worked, were provided opportunities to take compliant meal and rest periods, and were subject to policies providing for reimbursement of necessary business expenses. (*Id*.)

PAGA Counsel understood and appreciated Defendants' positions and defenses but believed Plaintiff would ultimately succeed on the merits at trial. (Yadidsion Decl., ¶¶ 42-81.) In light of their strongly divergent views, the Parties, with the assistance of the mediator, were able to negotiate a fair, reasonable and adequate settlement, considering the costs and risks of continued litigation. (*Id*., ¶¶ 76-81.) The negotiations were at all times conducted professionally and at arm's

length and have produced a result that the Parties believe to be in their respective best interests. (*Id*., ¶¶ 23-24, 76-81.)

The Parties have also considered the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. (Yadidsion Decl., ¶¶ 76-81.) Plaintiffs are aware of the burdens of proof necessary to establish liability for the claims asserted in the action, the defenses thereto, the difficulties in establishing PAGA penalties. (*Id*.)

In evaluating the proposed settlement, the Court will seek a reasonable estimate of the nature and amount of PAGA Penalties that each Aggrieved Employee could have obtained if Plaintiff had prevailed on the merits at trial. "The trial court has broad discretion to determine whether the settlement is fair." *In re Cellphone Fee Termination Cases*, 180 Cal. App. 4th at 1117-18 (quoting *Dunk,* 48 Cal.App.4th at 1801).

The court's consideration of relevant factors, however, does not transform the settlement approval process "into a trial or rehearsal for trial on the merits." *7-Eleven*, 85 Cal. App. 4th at 1145 (quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). The record need only provide the trial court with an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. Here, Defendants agreed to pay $4,500,000.00 as the Gross Settlement Amount, which is an excellent result and achieves a substantial benefit to the Aggrieved Employees. (Yadidsion Decl., ¶ 77.) Each Aggrieved Employee will receive their individual *pro rata* share of the Net Settlement Amount without having to take any affirmative action on their part.

The proposed settlement before the Court amounts to approximately 4.5% of Defendants' maximum total PAGA Penalty exposure, exclusive of interest. (Yadidsion Decl., ¶ 77.) Courts have determined that settlements are, of course, reasonable even where plaintiffs recover only a portion of their actual losses. *See Behrens v. Wometco Enters., Inc*., 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990) ("[T]he fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate.").

Indeed, "[a] settlement can be satisfying even if it amounts to a hundredth or even - a thousandth of a single percent of the potential recovery." *Id*.; *see also City of Detroit v. Grinnell Corp*., 356 F. Supp. 1380, 1386 (S.D.N.Y. 1972) (a recovery of 3.2% to 3.7% of the amount sought is "well within the ball park"), *aff'd in part*, *rev'd on other grounds*, 495 F.2d 448 (2d Cir. 1974); *Martel v. Valderamma*, 2015 U.S. Dist. LEXIS 49830, at * 17 (C.D. Cal. 2015) (approving a settlement of $75,000 when potential damages were $1.2 million); *In re Toys R US FACTA Litig*., 295 F.R.D. 438, 453 (C.D. Cal. 2014) (approving settlement with vouchers (not cash) potentially worth a maximum of three percent (3%) if all possible claims were actually made, or $391.5 million aggregate voucher potential where the class could have recovered $13.05 billion); *Ma v. Covidien Holding, Inc*., No. SACV 12-02161-DOC, 2014 WL 360196 at *5 (C.D. Cal. Jan. 31, 2014) (finding a settlement worth 9.1% of the total value of the action "within the range of reasonableness"); *Balderas v. Massage Envy Franchising, LLC*, No. 12-CV-06327 NC, 2014 WL 3610945 at *5 (N.D. Cal. July 21, 2014) (granting preliminary approval of a net settlement amount representing 5% of the projected maximum recovery at trial); *Glass v. UBS Fin. Servs., Inc*., No. C-06-4068 MMC, 2007 WL 221862, at *9 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving a settlement of an action claiming unpaid overtime wages where the settlement amount constituted approximately 25% to 35% of the estimated actual loss to the class); 4 WILLIAM B. RUBENSTEIN ET AL., NEWBERG ON CLASS ACTIONS (5th ed. 2016) § 13:15 (the range of reasonableness percentage could be as low as 1/100th or 1/1000th of 1%).

Case law supports the notion that it is inappropriate to "stack" penalties for multiple violations, particularly when those violations all stem from the same alleged "injury." *See*, *e.g*., *Aguirre v. Genesis Logistics,* 2015 U.S. Dist. LEXIS 78748 (C.D. Cal. 2015) (citing *Villacres v. ABM Indus., Inc.* (2010) 189 Cal.App.4th 562, 577 ("One injury gives rise to only one claim for relief ... The violation of one primary right constitutes a single cause of action."); *Crowley v. Katleman* (1994) 8 Cal. 4th 666, 681-82; *Li v. A Perfect Day Franchise, Inc.*, 2012 WL 2236752,

*17 (N.D. Cal. 2012) ("There is no authority that would permit double recovery of essentially the same penalties.").)

In addition, Defendants asserted that if PAGA penalties were mandatory, an employer's PAGA liability would be cripplingly massive because of the possibility of collecting multiple civil penalties for a single violation, and thus such penalties would almost always dwarf the damages available under the underlying predicate causes of action. PAGA penalties, of course, are not mandatory but permissive. Labor Code section 2699, subdivision (e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Lab. Code § 2699(e)(2); *see also Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 529 (affirming penalty reduction of 90% for practice that resulted in meal periods occasionally starting minutes after the fifth hour of work).

The settlement of $2,792,500.00 in PAGA Penalties represents a reasonable compromise in light of the maximum theoretical exposure, the substantial litigation risks faced by Plaintiff, including difficulties in proving the predicate violations, potential trial manageability issues, and the risk of trial loss, as well as the discretionary penalty-reduction authority under Labor Code section 2699(e)(2). Courts have consistently approved PAGA settlements representing only a small fraction of maximum potential penalties, demonstrating that such discounts are common and appropriate given the inherent uncertainties of litigation. The Settlement Agreement secures genuine and meaningful civil-penalty relief that serves PAGA's public-enforcement purpose and provides concrete public enforcement through the $2,094,375.00 allocation to the LWDA and $698,125.00 in PAGA penalties distributed to the Aggrieved Employees. The pay period *pro-rata* penalty distribution formula is an objective proxy for exposure and ensures similar treatment of similarly situated employees. *See Villalobos*, 2015 WL 12732709, at *5; *O'Connor*, 201 F. Supp. 3d at 1135.

2. The Relative Strengths and Weaknesses of Plaintiff's Case Justify Approval

Because settlements are inherently a compromise, once the parties have provided it with the requisite "basic information," the trial court must only "satisfy itself that the [PAGA] settlement is within the 'ballpark' of reasonableness." *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc*. (1985) 38 Cal.3d 488, 499-500. Here, in preparation for mediation, Plaintiff calculated Defendants' liability for PAGA Penalties to be in excess of the settlement amount. Plaintiff's valuation assumed that Plaintiff prevailed in establishing liability on the merits. (Yadidsion Decl., ¶ 23.)

The realistic range of outcomes for this litigation was significantly discounted due to the present state of the law regarding alleged "off-the-clock" work, meal and rest break claims, stacking of PAGA penalties, and the other predicate causes of action on which Plaintiff's PAGA claim relied, Defendants' defenses to Plaintiff's PAGA claims and their predicate causes of action, and the likelihood of prevailing at trial and on any appeals. (Yadidsion Decl., ¶¶ 77-81.) Where both sides face significant uncertainty, the attendant risks favor settlement. *See Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998).

PAGA Counsel believes the proposed settlement is a very good one for the Aggrieved Employees and the State of California. In this case, Plaintiff sought civil PAGA Penalties. Plaintiff reviewed all relevant facts and legal authority in advance of mediation and prepared an informed and reasonable penalty model for this action. If Plaintiff were to prevail on the merits of each of her PAGA claims and their predicate causes of action, total recoverable PAGA Penalties would be approximately $98,198,800.00. (Yadidsion Decl., ¶ 46.)

PAGA Counsel analyzed available penalties based on the predicate causes of action as follows:

Meal and Rest Break Claims

PAGA Counsel conducted an analysis of Defendants' records, which indicated that there were approximately 41,322 Aggrieved Employees who worked 981,988 PAGA pay periods. (Yadidsion Decl., ¶ 74.) After evaluating the information provided to PAGA Counsel by

Defendants, including reviewing and analyzing representative sample time records provided for the putative Aggrieved Employees, the information provided by Defendants appeared to disclose numerous potential violations. (*Id*., ¶ 54.) Defendant Amergis's timekeeping records revealed that clock-out and clock-in times for meals were not recorded for significant portions of the PAGA Period, giving rise to a presumption (rebuttable) that no compliant meal periods were provided. (*Id*.) The same records also showed that Amergis routinely auto-deducted 30 minutes per day from time worked by Aggrieved Employees. (*Id*.) Based on the records provided, PAGA Counsel estimated the rate of unique meal period violations to be approximately 80% for all meal period-eligible shifts worked by Aggrieved Employees during the PAGA Period. (*Id*.)

Unpaid Minimum, Straight-Time and Overtime Wages

PAGA Counsel also analyzed the documents and information provided by Defendants to estimate PAGA penalties based on unpaid minimum, straight-time and overtime wages due and owed to Plaintiff and Aggrieved Employees during the PAGA Period. (Yadidsion Decl., ¶¶ 48-52.) Plaintiff alleged that Defendants failed to pay Plaintiff and other Aggrieved Employees minimum and/or straight-time wages for all hours worked and overtime premium wages for all overtime hours worked as a result of a combination of Defendants' company policies and practices in effect during the PAGA Period. (*Id*.) There are three (3) components of unpaid (or underpaid) wages at issue, based on review of the records provided: (1) unpaid working time resulting from Defendants' systematic rounding down of Aggrieved Employees' time entries and hours worked; (2) unpaid off-the-clock work performed by Aggrieved Employees before and after scheduled shifts and recorded working hours; and (3) time spent working during unpaid rest periods. (*Id*., ¶¶ 48-49.) PAGA Counsel analyzed the documentation provided by Defendants during formal and informal discovery. (*Id*., ¶ 51.) Based on that analysis, PAGA Counsel found apparent rounding of time entries in approximately 70% of the representative sample provided by Amergis. (*Id*.)

Unreimbursed Business Expenses

PAGA Counsel additionally analyzed the documents provided by Defendants to evaluate

Plaintiff's predicate claim for unreimbursed business expenses due and owed to Plaintiff and Aggrieved Employees during the PAGA Period. Plaintiff alleges that Defendants failed to reimburse her and other Aggrieved Employees for all mileage and cell phone expenses they incurred in the course of performing their job duties for Defendants. Defendants denied these allegations, arguing that Aggrieved Employees were at all times properly reimbursed for mileage and other necessary business expenses. (Yadidsion Decl., ¶¶ 60-62.)

Waiting Time Penalties

Plaintiff's predicate cause of action for waiting time penalties is derivative of her predicate claims for unpaid wages. Therefore, Defendants will likely assert the same defenses to this cause of action as to its underlying claims. Plaintiff's predicate cause of action for waiting time penalties also requires a showing that Defendants' violations were "willful," a difficult standard to meet. Plaintiff discounted this claim because a good faith dispute arguably exists as to whether wages were due at the time of some of the Aggrieved Employees' separation. *See Nordstrom Commission Cases* (2010) 186 Cal. App. 4th 576, 584 ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether and when the wages were due."). Plaintiff also had to discount this claim based on the rulings in *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444 and *Ling v. P.F. Chang's China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242, which held that workers who prevail on their claims for meal and rest periods are not entitled to recover waiting time penalties. (Yadidsion Decl., ¶¶ 63-66.)

Failure to Provide Timely and Accurate Itemized Wage Statements

Plaintiff's predicate cause of action for failure to provide accurate wage statements is a derivative claim subject to the same defenses as its underlying principal claims. Accordingly, Defendants would likely assert additional defenses based on the additional requirements to establish injury under Labor Code § 226. *See, e.g., Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant's motion for summary judgment on claim for failure to provide accurate itemized wage statements "because a good faith dispute

exists... [therefore, defendant] was not 'knowing and intentional' in failing to provide [Section 226] statements"). When evaluating the proposed settlement, Plaintiff also had to take into account the ruling in *Naranjo*, 40 Cal. App. 5th at 474, finding that meal and rest penalties are not wages for purposes of establishing a wage statement claim. After reviewing the information provided by Defendants, PAGA Counsel assumed 100% liability for this predicate cause of action. (Yadidsion Decl., ¶¶ 67-70.)

PAGA Penalties

With regard to PAGA penalties, Plaintiff recognizes that they are subject to various defenses, including that Aggrieved Employees may not be able to recover subsequent penalties until, at a minimum, Plaintiff provided PAGA notice. In addition, Plaintiff recognizes that PAGA penalties bear a high risk of significant reduction by the Court if Defendants are able to prove a good faith attempt to comply with the law. *See Carrington v. Starbucks Corp.* (2008) 30 Cal. App. 5th 504, 517 (reducing the PAGA penalty amount by 90%). Based on approximately 41,322 Aggrieved Employees, PAGA Counsel valued Defendants' maximum exposure for alleged civil penalties under the PAGA, assuming 100% liability, to be approximately $98,198,800.00. (Yadidsion Decl., ¶ 74.)

Considering the risks of litigation, burdens of proof necessary to establish liability, probability of appeal of a favorable judgment, and substantial delay and reduction in any recovery by the Aggrieved Employees that would result from a full-blown litigation, the settlement amount of $4,500,000 is not only within the range of reasonableness, but is also an excellent result. Accordingly, the Court should grant approval of the proposed PAGA Settlement Agreement. (Yadidsion Decl., ¶¶ 71-81.)

3. The Risks, Expense, Complexity, and Likely Duration of Further Litigation Weigh in Favor of Approval

In determining the reasonable settlement value of the asserted claims, PAGA Counsel considered a number of issues necessitating deductions to be taken from their maximum potential value, including:

Defenses to Claims of Willful Violations: Defendants have asserted a number of defenses to Plaintiff's predicate claims that allege willful violations of the Labor Code. Initially, waiting time penalties under Labor Code section 203 may not be recoverable in this instance in light of the fact that an employer's good faith mistaken belief that no wages are owed may negate a finding of willfulness. A good faith dispute that *any* wages are due "will preclude imposition of waiting time penalties under Section 203," and an employer's good faith mistaken belief that wages are owed may negate a finding of willfulness. 8 C.C.R. § 13520; *see also*, *e.g.*, *Road Sprinkler Fitters Local 669 v. G & G Fire Sprinklers, Inc.* (2002) 102 Cal. App. 4th 765, 782.

Plaintiff also asserts a predicate claim under Labor Code section 226(e), which provides that an employee suffering injury as the result of a knowing and intentional failure to comply with section 226 is subject to a penalty of up to $100.00 per pay period up to a maximum limit of $4,000.00 per employee. Similar defenses appear to exist in response to that claim, however, because Plaintiff may not be able to establish that Defendants' alleged violations were "knowing and intentional" as the statute requires. In *Arroyo v. International Paper Co.*, 611 F.Supp.3d 824, 842-43 (N.D. Cal. 2020), the district court held that an employer's good faith belief that it is in compliance with section 226 precludes liability for the statutory penalty provided by section 226(e).

Trial and Manageability Issues: While Plaintiff was confident in the strength of her claims, as is always the case with a trial, Plaintiff needed to accept that there was a possibility that she would not prevail at trial on the merits. (Yadidsion Decl., ¶¶ 79-82, 90.)

Compromise is inherent and necessary in the settlement process. Thus, even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a representative PAGA settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Wershba*, 91 Cal. App. 4th at 241 (quoting *Air Line Stewards, Loc. 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972). The Ninth Circuit observed "the

very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Serv. Commission*, 688 F.2d 615, 624 (9th Cir.1982) (citation omitted). Thus, when analyzing the amount offered in settlement, the Court should examine "the complete package taken as a whole," and the amount is "not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625, 628.

Given the difficulties Plaintiff and the Aggrieved Employees faced in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiff are reasonable and the proposed Settlement is fair, reasonable and adequate. In the present case, it is clear that the proposed Settlement Agreement before this Court is the best course of action as it ensures fair, reasonable and adequate recovery for the Aggrieved Employees and the State of California. Thus, it was clearly reasonable for Plaintiff to negotiate a smaller certain award rather than seek full recovery but risk recovering nothing.

4. The Settlement Provides for Reasonable Attorneys' Fees

Public policy promotes approval of reasonable attorneys' fee requests since "[t]he function of an award of attorney's fees is to encourage the bringing of meritorious ... claims which might otherwise be abandoned because of the financial imperatives surrounding the hiring of competent counsel." *City of Riverside v. Rivera*, 477 U.S. 561, 578 (1986). In this case, Defendants have agreed not to oppose a request by PAGA Counsel for attorneys' fees and costs in the amount of 35% of the Gross Settlement Amount, or $1,575,000.00. (Yadidsion Decl., ¶¶ 87-97.) Additionally, the proposed Settlement Agreement provides that PAGA Counsel is eligible for reasonable litigation costs in an amount not to exceed $25,000.00. (*Id*.) The attorneys' fees and litigation costs requested by PAGA Counsel are supported by the significant amount of work performed by PAGA Counsel, the costs invested and the risks of failure involved, the size of the proposed settlement and benefits to Aggrieved Employees and the State of California, and PAGA Counsel's future commitment to ensure that the terms of the proposed Settlement Agreement are fulfilled. (*Id*.) The California Supreme Court recently held that "when class action litigation

establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal. 5th 480, 503.

Indeed, courts may use the "percentage method for its primary calculation of the fee award. The choice of a fee calculation method is generally one within the discretion of the trial court, the goal under either the percentage or lodestar approach being the award of a reasonable fee to compensate counsel for their efforts." *Id*. at 504.

PAGA Counsel took this case on a contingent-fee basis against a business represented by a reputable defense firm. (Yadidsion Decl., ¶ 88.) PAGA Counsel is well acquainted with the contingent-fee market throughout California, particularly as it pertains to PAGA and class-action litigation. (*Id*.) In taking contingent fee cases, PAGA Counsel must pay careful attention to the economics involved or one bad case can destroy years of work. (*Id*.) Accordingly, when PAGA Counsel accepts contingency cases, it is with the expectation that successful results will result in a fee that exceeds PAGA Counsel's normal hourly rate; otherwise, the risk is often too great to bear. (*Id*.) In taking on this case, PAGA Counsel was unable to take on other matters. (*Id*.) This litigation claimed a significant portion of PAGA Counsel's time and attention throughout its two-and-a-half-year lifespan. (*Id*.)

Contingent-fee cases present the very real risk of working hundreds if not thousands of hours that may never be entirely compensated. Moreover, while the case is being litigated, counsel must pay overhead (salaries, rent, etc.), provide for their own expenses, and in most cases pay the out-of-pocket expenses incurred on their client's behalf. The prospect of a court-awarded fee does not eliminate the risk posed by these cases. In many cases, the prospect is nothing more than a potential that never materializes. The attorney must first win the case to recover any fees, and even for those cases that appear strong at the outset, there are almost always pitfalls and unforeseen obstacles that arise along the way. Finally, there is the inherent risk in advancing tens if not

hundreds of thousands of dollars in out-of-pocket expenses. If that money were to be invested in some sort of financial investment, one would expect a reasonable rate of return on that investment.

PAGA counsel in contingency-fee cases typically receive attorneys' fees equal to or greater than thirty-five percent of the gross settlement amount. *See, e.g., Cesena v. Jym Enters*., 2022 Cal. Super. LEXIS 67143 (approving a 40% award of attorney's fees); *Shakir v. Waterton Residential, LLC*, 2025 Cal. Super. LEXIS 24548 (award of attorneys' fees in the amount of 35% granted); *Leong-Call v. Mrb Foods*, 2022 Cal. Super. LEXIS 44261 (35% fee award); *Martin v. Ameripride Servs,.* 2011 U.S. Dist. LEXIS 61796, at * 23 (S.D. Cal. June 9, 2011) ("courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million."). The amount requested here by PAGA Counsel, 35%, is well within the bounds that have been established by precedent and is a reasonable benchmark for complex, contingent-fee wage-and-hour litigation.

The amount of attorneys' fees requested by the proposed Settlement Agreement will fairly compensate PAGA Counsel for their successful vindication of the Aggrieved Employees' rights, taking into account the quality, nature, and extent of counsel's efforts, and the fact that the amount of fees for which approval is sought is consistent with legal precedent. (Yadidsion Decl., ¶ 90.) PAGA Counsel's diligent, efficient, and creative pursuit of this matter over a period of two-and-a-half years positioned Plaintiff to settle this action successfully, affording redress to the Aggrieved Employees, providing substantial and immediate benefit to the State of California, and avoiding the inevitable expense and risk inherent in protracted litigation. (*Id*.) In sum, it was through the efforts of Plaintiff and PAGA Counsel that the considerable benefits of the settlement were obtained. (*Id*.)

PAGA Counsel devoted substantial time and resources to this matter. (Yadidsion Decl., ¶ 91.) Among other things, PAGA Counsel investigated Plaintiff's allegations; prepared the original Complaint, the First Amended Complaint, and the original and Amended PAGA Notice; analyzed and met and conferred with defense counsel regarding the arbitration agreement signed by Plaintiff

and addressed the dismissal of the putative class allegations; conducted and responded to formal and informal discovery; participated in discovery-related proceedings, including extensive and protracted meet-and-confer discussions and work-intensive and time-consuming preparation for Informal Discovery Conferences and eventual discovery motion practice on two separate occasions; reviewed and analyzed time and pay records, personnel records, employment handbooks and policies, and other relevant documents; researched applicable law and potential defenses, including Defendants' proposed *Serrano* defense; analyzed potentially available PAGA penalties; researched and successfully opposed Defendant Amergis's Motion to Bifurcate and Stay; prepared for and participated in mediation; engaged in extensive arms-length settlement negotiations; and devoted substantial amounts of time to drafting and revising the proposed Settlement Agreement and approval papers. (*Id*.) PAGA Counsel conservatively invested nearly 500 total hours of attorney time in this matter. The combined attorney lodestar for PAGA Counsel is $563,769.00. PAGA Counsel's requested attorneys' fees in the amount of $1,575,000.00 is calculated by applying a multiplier of 2.79 to PAGA Counsel's combined attorney lodestar. (Yadidsion Decl., ¶ 94.)

In light of the foregoing, the fee request in an amount equal to 35% of the settlement in this case is well within the bounds that have been established by the above-cited authority, and Defendants have no objection to an award of fees in the amount requested.

5. The Settlement Provides for Reasonable Litigation Costs

Plaintiff requests reimbursement for reasonable litigation costs not to exceed $25,000.00. The total costs incurred as of the filing of this motion by PAGA Counsel are $19,577.35. (Yadidsion Decl., ¶ 97, Exh. D.) The litigation expenses incurred by PAGA Counsel are and were reasonable and necessary in the prosecution of this action for the benefit of both the State and the Aggrieved Employees. (*Id*.) In addition, PAGA Counsel anticipates at least some additional litigation costs to finalize this matter, but for final total costs to remain within the $25,000.00 limit.

The costs incurred by PAGA Counsel include filing fees, mediation fees, legal research costs, copying, postage, and similar items necessary for the prosecution of this action. The expenses for which reimbursement is sought are recoverable in common fund cases. *See*, *e.g.*, *In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Secs. Litig*., 1989 U.S. Dist. LEXIS 19146, 16 (C.D. Cal. 1989) ("[Reimbursement of ... filing fees, postage, telephone bills, photocopying, legal research assistance, deposition costs, witness fees, and similar items ... [are] appropriate for cost reimbursement in common fund cases."); *Bond v. Ferguson Enters. Inc*., 2011 U.S. Dist. LEXIS 70390, at 36-37 (E.D. Cal. 2011) (finding that the incurred costs, including payment to court reporters for depositions, mediation costs, legal research, and in-house copies of documents, are routinely reimbursed); *Vasquez v. Coast Valley Roofing, Inc*., 266 F.R.D. 482, at 493 (E.D. Cal. 2010) ("The costs billed, which include ground transportation, copy and scanning costs, computer research, and expert witness fees, are reasonable.").

Accordingly, Plaintiff respectfully requests that the Court approve PAGA Counsel's request for reimbursement of reasonable litigation costs.

6. The Settlement Provides for a Reasonable Service Enhancement Award to Plaintiff

As part of the Settlement Agreement, Plaintiff will seek a Representative Service Award of $7,500.00 in addition to her Individual PAGA Penalty Payment. Plaintiff is entitled to a reasonable service payment for her effort and initiative in bringing and helping to prosecute this action. (Yadidsion Decl., ¶ 82.) Plaintiff spent a considerable amount of time better apprising herself of her rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and finally contacting PAGA Counsel, who spent many hours with Plaintiff discussing this case and the applicable law. (*Id*.) In the end, Plaintiff decided to vindicate not only her own rights but also those of her co-workers by filing a PAGA lawsuit. (*Id*.)

Plaintiff fully participated in the analysis and planning of this action throughout the pendency of the litigation. (Yadidsion Decl., ¶¶ 82-86; Stewart Decl., ¶¶ 11-15.) She was kept well informed of the nature and extent of settlement discussions and approved the same. (*Id*.)

Plaintiff assisted counsel in evaluating the claims, participated in discovery, assisted counsel in preparing for the mediation on May 6, 2026 before Hon. Ronald M. Sabraw (Ret.), and participated in evaluating the settlement terms. (*Id*.) By bringing this action, Plaintiff risked workplace retaliation and potential reputational harm associated with suing her former employer. (*Id*.)

The Service Award sought for Plaintiff is entirely reasonable, consistent with similar service awards approved by this Court, and represents just a fraction of a percent of the Gross Settlement Amount. Absent the actions taken by Plaintiff, none of the Aggrieved Employees would have reaped the rewards of this proposed settlement.

V. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's Motion and enter an order approving the proposed PAGA Settlement Agreement.

Respectfully Submitted,

DATED: November 5, 2026

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individually and on behalf of the aggrieved employees