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JORGE RIVERA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

UNLIMITED JURISDICTION

JORGE RIVERA, on behalf of himself and all others similarly situated, and the general public,

Plaintiff,

vs.

NATIONAL STEEL AND SHIPBUILDING COMPANY, a Nevada Corporation; GENERAL DYNAMICS LAND SYSTEMS INC., a Delaware Corporation; GENERAL DYNAMICS ORDNANCE AND TACTICAL SYSTEMS, INC., a Virginia Corporation; GENERAL DYNAMICS INFORMATION TECHNOLOGY, INC., a Virginia Corporation; GENERAL DYNAMICS MISSION SYSTEMS, INC., a Delaware Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 24CV443480

Assigned for All Purposes to the Honorable Theodore C. Zayner, Department 19

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT AND AWARD OF ATTORNEYS' FEES, ENHANCEMENT AWARD, AND REIMBURSEMENT OF LITIGATION COSTS; MEMORANDUM OF POINTS AND AUTHORITIES

[*Filed Concurrently with the Declarations of Shaun Setareh and Jorge Rivera; and [Proposed] Order*]

Date: February 25, 2026
Time: 1:30 p.m.
Place: Dept. 19

Complaint Filed: July 22, 2024

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 25, 2025, at 1:30 p.m. or as soon thereafter as the matter may be heard in Department 19 of the above-captioned Court located at 161 N. First Street, San Jose, California 95113, Plaintiff JORGE RIVERA ("Plaintiff") will and does hereby move this Court for an order approving settlement of Plaintiff's claims for civil penalties under the Private Attorneys General Act of 2004 ("PAGA") (Lab. Code §§ 2698 *et seq*.).

The parties have reached and fully executed a settlement of the above-entitled case that disposes of the matter entirely. However, and pursuant to statute, settlement of PAGA claims requires court approval. Lab. Code § 2699(l). Thus, Plaintiff seeks court approval of the PAGA settlement so that the matter may be dismissed once the parties have complied with all mutual terms and conditions of the settlement. In this Motion, Plaintiff also seeks an order awarding attorneys' fees, an enhancement award, and reimbursement of litigation costs.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Shaun Setareh and Jorge Rivera in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

DATED: November 4, 2025 SETAREH LAW GROUP

/s/ Shaun Setareh
SHAUN SETAREH
Attorneys for Plaintiff
JORGE RIVERA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff JORGE RIVERA ("Plaintiff") seeks approval of a settlement which provides for a non-reversionary fund of **$750,000** (the "Gross Settlement Amount" or "GSA") to settle the single claim for civil penalties under the Private Attorneys General Act of 2004 ("PAGA") (Lab. Code §§ 2698 *et seq*.) he brought, in a representative capacity, against Defendants NATIONAL STEEL AND SHIPBUILDING COMPANY, ("NASSCO" or "Defendant") (Plaintiff and Defendant, collectively, the "Parties").[1] The Settlement will result in the State of California and the Aggrieved Employees[2] sharing approximately **$233.21** on average for each Aggrieved Employee. The Aggrieved Employees will not have to make a claim in order to recover; instead, they will be mailed their share of the Settlement directly. No money will revert to the Defendant; instead, any uncashed checks will be paid to the California State Controller's office to be held as "unclaimed property" in the name of the Aggrieved Employees.

The Settlement is an excellent one in light of the risks of litigation. After a day-long mediation with David Rotman, an experienced wage and hour/PAGA mediator, and having reviewed data provided by Defendant, the Parties were able to reach a Settlement that is now before this Court. After all Court-approved deductions from the GSA common fund—i.e., (1) one-third (1/3) of the GSA, or **$250,000.00**, allocated to attorneys' fees, (2) **$15,013.40** in litigation expenses; (3) up to **$5,000.00** as a service award to Plaintiff for prosecuting this action; and (4) **$12,965.00** in estimated costs for settlement administration to be performed by Rust Consulting, Inc. ("Rust Consulting")—it is estimated that a PAGA Allocation of **$ 467,035** will remain, with 75% (**$350,266.20**) allocated to the California Labor and Workforce Development Agency ("LWDA"), and 25% (**$116,755.40**) allocated to the Aggrieved Employees.

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[1] A true and correct copy of the Joint Stipulation of PAGA Action Settlement ("Settlement") is attached to the Declaration of Shaun Setareh ("Setareh Decl.") as Exhibit 1.

[2] "Aggrieved Employees" is defined to mean (a) all individuals who were union-represented, non-exempt employees of Defendant in California at any time during the period from May 18, 2023, to the date of entry of the Judgment; and (b) all individuals who were non-union represented, non-exempt employees of Defendant in California at any time during the portion of the PAGA Period that began on May 20, 2024. (Settlement, ¶ 9(b).) "PAGA Period" means (a) for union-represented Aggrieved Employees, the period between May 18, 2023 and the entry of the Judgment; and (b) for non-union-represented Aggrieved Employees, the time period between May 20, 2024 and the entry of the Judgment. (*Id.*, ¶ 9(d).)

This Settlement guarantees a recovery for the State of California and the Aggrieved Employees and avoids the expense and uncertainty of litigation. Accordingly, the Court should grant approval of the Settlement.

Plaintiff also seeks an award of attorneys' fees to Plaintiff's Counsel, an enhancement award, and reimbursement of the litigation costs. Plaintiff's Counsel and Plaintiff have dedicated their time and energy to litigating this case on behalf of the State of California and the aggrieved employees. Plaintiff's counsel undertook such efforts on a pure contingency with no promise of payment. (Setareh Decl., ¶ 34.) Plaintiff's Counsel achieved a laudable result in the face of a strong defense asserted by Defendant. For their efforts in achieving the exceptional result of a **$750,000.00** GSA, Plaintiff's Counsel seek an award of attorneys' fees in the amount of **$250,000.00** (one-third of the GSA) as a percentage-of-the-fund and reimbursement of their actual out-of-pocket litigation expenses, which to date are **$15,013.40**.

By any measure, the result here is outstanding, particularly considering the task of litigating a complicated case in the face of contrary precedents, and the risk of non-payment involved in undertaking this litigation. The work performed by Plaintiff's Counsel for the Plaintiff was extensive. Among other things, Plaintiff's Counsel:

- Conducted initial investigations and developed the theories and facts to support Plaintiff's claims as to Defendant's alleged violations;
- Researched and drafted the complaint;
- Sought and obtained informal discovery, including, but not limited to, time records and payroll data for a sample of 160 employees during the relevant time period.
- Reviewed and analyzed hundreds of pages of written policy documents and handbooks, and time and payroll records produced by Defendant;
- Prepared a detailed brief in advance of the mediation that led to the Settlement;
- Drafted the settlement agreement, motion and proposed order for Court approval, form notice, and claims administration guidelines; and
- Incurred **$15,013.40** in costs. (Setareh Decl., ¶ 28.)

Despite the many risks faced by Plaintiff's Counsel and the difficulty in prosecuting this case, they nevertheless achieved an outstanding result for the aggrieved employees and the State of California.

Accordingly, Plaintiff's Counsel's request for attorneys' fees of one-third of the gross settlement amount is fair and reasonable. In fact, this amount is well-earned, supported by controlling case law, and is within the fee range awarded by courts.

Likewise, it is fair that Plaintiff's Counsel be reimbursed for their expenses. All of the expenses incurred were reasonable and necessary to the prosecution of this action and administration of this Settlement and are of the kind that courts routinely approve. For the reasons set forth herein, Plaintiff respectfully requests for this Court to grant this Motion in its entirety.

II. OVERVIEW OF THE LITIGATION

Defendant is a shipbuilding company which designs, builds, and repairs ships in San Diego. (Setareh Decl., ¶ 6.) Plaintiff was first hired by NASSCO in November 2004 as a non-exempt journeyman shipfitter. He worked for NASSCO during several periods, and his employment with Defendant was last terminated on May 18, 2023 (Settlement, ¶ 1; Declaration of Jorge Rivera ("Rivera Decl."), ¶ 2.)

A. PROCEDURAL HISTORY

On May 16, 2024, Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") that gave notice of his intent to pursue a representative lawsuit under PAGA against Defendant on behalf of himself and the State of California, as well as on behalf of other aggrieved employees (the "LWDA Letter"). During the requisite sixty-five (65) day waiting period, the LWDA took no action to intervene.

On July 22, 2024, Plaintiff filed a complaint in Santa Clara County Superior Court entitled *Jorge Rivera, on behalf of himself and all others similarly situated, and the general public, v. National Steel and Shipbuilding Company, et al.*, Case No. 24CV443480 (the "Lawsuit"). In the Lawsuit, Plaintiff alleged a claim under PAGA based on the following alleged predicate violations of the California Labor Code: (1) that the Company failed to authorize and permit meal and rest breaks or properly pay premium wages for missed breaks; (2) that the Company failed to pay employees all wages, including minimum wages, due for all hours worked; (3) that the Company failed to pay employees overtime and double time wages at the correct rates; (4) that the Company failed to provide accurate wage statements; and (5) that the Company failed to properly pay employees all of their wages at the time of separation. (Complaint; Settlement, ¶ 3.)

Plaintiff filed the original complaint against the following additional defendants: GENERAL DYNAMICS LAND SYSTEMS INC., a Delaware Corporation; GENERAL DYNAMICS ORDNANCE AND TACTICAL SYSTEMS, INC., a Virginia Corporation; GENERAL DYNAMICS INFORMATION TECHNOLOGY, INC., a Virginia Corporation; GENERAL DYNAMICS MISSION SYSTEMS, INC. a Delaware Corporation. None of these entities ever employed Plaintiff. Pursuant to a stipulation of the parties, and subject to the terms and conditions of that stipulation, these additional defendants were dismissed without prejudice and those entities are no longer named in the operative First Amended Complaint. Setareh Decl., ¶ 10; Settlement, ¶ 4.)

On May 22, 2025, the Parties participated in an all-day mediation presided over by David Rotman, an experienced wage and hour/PAGA mediator (Setareh Decl., ¶ 11; Settlement, ¶ 5.) During the mediation, each party, represented by its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by the Settlement. (*Id*.)

In advance of the mediation, the Parties engaged in informal discovery and the voluntary production of documents and information including a production by Defendant of, among other things, Defendant's policies and procedures pertaining to the claims at issue; a representative sample of timekeeping and payroll records; and data reflecting the number of potentially Aggrieved Employees and the number of pay periods at issue. (Setareh Decl., ¶ 13; Settlement, ¶ 5.)

On June 10, 2025, the Parties entered into a Memorandum of Understanding and Term Sheet Settlement Agreement ("Term Sheet") that confirms the settlement of all claims asserted in the Lawsuit.

NASSCO previously settled another lawsuit, *Shakespeare vs Ameri-Force Craft Services Inc.*, San Diego Superior Court Case No. 37-2021-00013962-CU-OE-CTL (the "Shakespeare Settlement"), which resolved overlapping PAGA claims that are the same or substantially the same as those at issue in this case for non-union NASSCO employees who worked through May 20, 2024. Accordingly, the Parties agreed the Settlement would only encompass non-union employees for pay periods worked after the end of the Shakespeare Settlement preclusion period, i.e., after May 20, 2024. (*Id.*, ¶ 6.)

On or around August 20, 2025, the Parties fully executed the Settlement. (*Id.*, ¶ 14; Settlement.)

On November 4, 2025, Plaintiff submitted the Settlement to the LWDA. (Setareh Decl., ¶ 39, Ex. 5.) To date, the LWDA has not objected to or commented upon the Settlement. (*Id*.)

B. SUMMARY OF CLAIMS

The Settlement addresses claims for which Plaintiff seeks civil penalties under PAGA for Labor Code violations that the operative complaint alleges Defendant committed against Aggrieved Employees during the PAGA Period, as follows:

1. <u>Failure to Provide Proper Meal Periods or Rest Breaks</u>: Plaintiff alleges that Defendant had a policy and/or practice of requiring Plaintiff and the aggrieved employees to undergo a security check during a portion of their meal periods and rest breaks (Complaint, ¶¶ 18-21.) Furthermore, Defendant had a policy and practice of automatically deducting thirty minutes from Plaintiff's and the aggrieved employees' paychecks, regardless of whether Plaintiff and the aggrieved employees received a meal period or not. (*Id.*, ¶ 22.)

2. <u>Failure to Pay Hourly Wages and Overtime</u>: Plaintiff alleges that Defendant required Plaintiff and aggrieved employees to engage in unpaid, off-the-clock work, and otherwise failed to pay all wages due. For example, Plaintiff alleges that Defendants required Plaintiff and aggrieved employees to utilize the general entrance to the venues and were required to go through a bag check whenever entering or leaving the premises. (Complaint, ¶ 25.) Plaintiff also alleges that aggrieved employees were not properly compensated for donning and doffing their protective equipment or walking from the general entrance to their time clock where they were permitted to clock in. (*Id.*, ¶¶ 13–14.) Plaintiff further alleges that after clocking out, he and Aggrieved Employees would have to walk ten to fifteen minutes to arrive at the locker room where they would have to remove their protective gear and store it in the locker. (*Id.*) This process would take an additional five to ten minutes. (*Id.*) The time spent walking to the locker room, removing and storing their protective equipment, and going through a bag check could total up to thirty minutes, which was all unpaid by Defendant. (*Id.*, ¶ 26.)

3. <u>Inaccurate Wage Statements and Failure to Pay Final Wages</u>: Plaintiff also alleges derivative claims for failure to furnish compliant wage statements (Labor Code §§ 226) based on the forgoing violations. (Complaint, ¶¶ 27-31.)

III. <u>OVERVIEW OF THE SETTLEMENT</u>

The complete terms of the Settlement are set forth in Exhibit 1 to the Declaration of Shaun Setareh, filed concurrently herewith. (Setareh Decl., ¶ 26, Ex. 1.) The Settlement provides for a non-reversionary

GSA of **$750,000.00** to be paid by Defendant on behalf of the Aggrieved Employees. (Settlement, ¶ 15) The essential terms are summarized below. (*See* Setareh Decl., ¶ 16.)

(a) "Aggrieved Employees" is defined to mean (a) all individuals who were union-represented, non-exempt employees of Defendant in California at any time during the period from May 18, 2023, to the date of entry of the Judgment; and (b) all individuals who were non-union represented, non-exempt employees of Defendant in California at any time during the portion of the PAGA Period that began on May 20, 2024. (Settlement, ¶ 9 (b).). "PAGA Period" means (a) for union-represented Aggrieved Employees, the period between May 18, 2023 and the entry of the Judgment; and (b) for non-union-represented Aggrieved Employees, the time period between May 20, 2024 and the entry of the Judgment. (*Id.*, ¶ 9 (d).).

(b) Defendant agrees to pay the GSA of **$750,000.00**, which includes Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Administrator's Expenses Payment, and the Representative Enhancement Payment. (Settlement, ¶¶ 9 (i); 15.)

(c) Defendant shall deposit the GSA with the Settlement Administrator. (*Id.*, ¶ 12.)

(d) Plaintiff will be paid up to **$5,000.00** as his enhancement payment for his efforts and time in prosecuting this Action resulting in the proposed Settlement and a general release of his individual claims. (*Id.*, ¶ (16)(d).).

(e) Plaintiff's Counsel will not seek an amount greater than 33% of the GSA (**$250,000.00**) for attorneys' fees. (*Id.*, ¶ 13(a).)

(f) Plaintiff's Counsel will not seek an amount greater than what was actually expended for which there is documentation for reimbursement of litigation costs up to a maximum of $25,000.00 with any amount below that maximum being added to the PAGA Allocation. (*Id.*) The actual costs incurred to date are **$15,013.40**. (Setareh Decl., ¶ 28.)

(g) Notice to Aggrieved Employees and administration of the Settlement will be accomplished through a third-party settlement administrator, Rust Consulting, with an estimated administration cost not to exceed **$12,965.00** (Settlement, ¶ (13)(d).)

(h) <u>PAGA Allocation</u>: Approximately **$467,021.60** will be available for distribution to the Aggrieved Employees and the LWDA. (*Id.*, ¶ (16)(a).) Of this amount, the LWDA will receive 75%, or approximately **$350,266.20**, and Aggrieved Employees will receive 25%, or approximately **$116,755.40**[3]. (*Id.*)

(i) In exchange for the above settlement consideration, Defendant shall be entitled to a *limited* release from all Aggrieved Employees, including Plaintiff. (*Id.*, ¶ 16.)

A. THE RELEASED CLAIMS

"Covered Period" or "PAGA Period" means (a) for union-represented Aggrieved Employees, the period between May 18, 2023 and the entry of the Judgment; and (b) for non-union-represented Aggrieved Employees, the time period between May 20, 2024 and the entry of the Judgment. (Settlement, ¶ 9(d).) "Released Parties" means "Defendant National Steel and Shipbuilding Company and its predecessors and successors, corporate parents, corporate subsidiaries, corporate affiliates and all of its and those entities' current and former officers, owners, directors, managing agents, members, shareholders, assigns, employees, agents, principals, heirs, representatives, attorneys, accountants, auditors, consultants, insurers and reinsurers." (*Id.*, ¶ 9(p).) "Released Claims" by Aggrieved Employees is narrowly tailored to civil penalties under the PAGA, as follows (*Id.*, ¶ 19):

> "Upon the entry of Judgment in accordance with this Settlement, Plaintiff, all of the Aggrieved Employees, the State of California, and the Labor and Workforce Development Agency (the "Releasing Parties") will be forever barred from pursuing, against Defendant and any of the Released Parties, any claim arising during the Covered Period, for relief of any kind under PAGA based on any claims that were or could have been asserted under PAGA based on the facts alleged in the Lawsuit or the LWDA Letter, and shall specifically include, without limitation, all claims for PAGA penalties based on any of the following alleged underlying violations of the California Labor Code or Industrial Wage Orders: (1) failure to pay regular, overtime, double time, or premium wages; (2) failure to compensate Aggrieved Employees for all hours worked; (3) failure to pay the appropriate regular rate of pay; (4) failure to comply with payroll or wage record-keeping documentation or wage statement itemization requirements; (5) failure to provide sufficient meal and/or rest periods or pay premiums in lieu thereof; (6) failure to timely pay wages due at termination or otherwise; (7) failure to furnish accurate or compliant wage statements; (8) failure to pay minimum wages; (9) violation of Labor Code section 203 by refusal to pay wages due and payable and/or denial of

[3] Pursuant to the operative version of Labor Code section 2699(i), awards of PAGA penalties are split with 25% going to the aggrieved employees and 75% going to the LWDA. These percentages were recently amended in 2024 such that PAGA penalties are now split with 35% going to aggrieved employees and 65% going to the LWDA; however, the PAGA reforms do not apply to Plaintiff's case because his PAGA notice was filed with the LWDA before June 19, 2024. Labor Code, § 2699(u)(2).

the validity of claims to wages due, including without limitation by reason of (allegedly) willfully, knowingly and intentionally failing to pay wages due and falsely representing that wages were properly denied; and (10) failure to keep accurate or complete payroll records showing, among other things, the hours worked daily by all non-exempt employees. The Released Claims include, but are not limited to, all PAGA claims based on alleged violations of Labor Code sections 201–204, 210, 212, 216, 218.6, 223, 225.5, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, and the applicable Wage Orders."

Additionally, Plaintiff has agreed to a general release of claims against Defendant, including a waiver of unknown claims under Civil Code § 1542. (Settlement, ¶ 20.)

B. ADMINISTRATION PROCESS

The Settlement provides for the Settlement Administrator to distribute the Settlement Fund. (Settlement, ¶ 24.) The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid along with the Notice of PAGA Representative Action Settlement. (*Id.* ¶ 30; Ex. 2.) Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (*Id.*, ¶ 30.) It will be conclusively presumed that an Aggrieved Employee's individual settlement payment check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. (*Id.*) The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Settlement Administrator.

Settlement checks shall remain valid and negotiable for 120 calendar days from the date of mailing and shall state that, if they are not cashed within 120 days from issuance, they will become void. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than 120 days after issuance will be tendered to the State Controller's Office, Unclaimed Property Division, in the name of the affected Aggrieved Employee, thereby leaving no "unpaid residue" and no reversion to Defendant. (*Id.*, ¶ 31.) In the event the Court instead requires parties to re-direct funds to a *cy pres* recipient, the Parties agree that they will disburse any funds from uncashed and undeliverable checks to the Legal Aid Society of San Diego. (*Id.*, ¶ 31(a).)

IV. ARGUMENT

A. STANDARD OF REVIEW

Labor Code section 2699(l)(2) states that "the superior court shall review and approve any settlement of any civil action filed pursuant to this part." Specifically, "a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.

Because the proposed Settlement reasonably and fairly advances each of the above factors, Plaintiff requests that this Court approve the Settlement.

B. THE SETTLEMENT SHOULD BE APPROVED

1. <u>The Settlement Falls Within the Range of Possible Approval</u>

"The PAGA is limited to the recovery of *civil* penalties." *Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 579. Under PAGA, the default civil penalty for an employer's initial violation is one hundred dollars ($100) per employee per pay period, and two hundred dollars ($200) per pay period for any subsequent violations. (Lab. Code § 2699(f)(2).) While courts have the discretion to reduce civil penalties under certain circumstances, there is no requirement to do so.

There were approximately 3,216 Aggrieved Employees during the PAGA Period. (Setareh Decl., ¶ 23.) Based on the data provided by Defendant, there were approximately 227,260 Pay Periods during the PAGA Period. (Settlement, ¶ 15.)

The following chart provides the estimated potential recovery that Plaintiff believes he could reasonably achieve for all aggrieved employees *if he were to prevail on all of his claims*:

Plaintiff's Estimated Potential Recovery		
Assumptions During PAGA Period (based on time/payroll data provided by Defendant) Number of Aggrieved Employees: 3,216; Number of Former Aggrieved Employees: 519; Total Pay Periods: 227,260 <u>Note</u>*: All numbers and calculations based on data sampling provided by Defendant and analyzed by an expert retained by Plaintiff prior to mediation.*		
Claim (Labor Codes)	**Estimated Potential Civil Penalties**	**Calculations for Estimated Maximum Potential Recovery**

Off-the-Clock Work • Minimum Wage (1194, 1197, 1197.1, 1199)	$11,363,000	227,260 pay periods x $100/pay period x 50% reduction in penalties[4]
Meal and Rest Period Premiums (204, 512, 226.7, 1198)	$11,363,000	227,260 pay periods x $100/pay period x 50% reduction in penalties.
Waiting Time Penalties (201, 202, 203)	$51,900	519 separated employees x $100 per 1st (and only) violation
Wage Statements (226)	$11,363,000	227,260 pay periods x $100/pay period x 50% reduction in penalties.
TOTAL	**$34,140,900**	

(Setareh Decl., ¶ 23.)

Accordingly, a Gross Settlement Amount of **$750,000.00**, or 2.2% of the potential *maximum* penalties, and **8.8%** of the *risk-adjusted* exposure is more than fair and adequate.

The Settlement should be approved because it confers a substantial benefit on the State of California and the Aggrieved Employees, while proceeding with litigation would impose significant risk with no guarantee of increased benefits.

a. Risks of Continued Litigation and Discounts in Settlement

Despite a potential total maximum recovery of approximately $34 million in PAGA penalties, Plaintiff recognizes the challenge he faces in establishing liability on the underlying wage and hour claims. Plaintiff estimates that his likelihood of proving his underlying claims are low and thus his likelihood of recovering $34 million or anything close to that amount in civil penalties is very unlikely. This is

[4] This case was filed on July 22, 2024. Labor Code § 2699(o) provides that all penalties recovered under PAGA shall be reduced by one-half if the employer's pay period is weekly. *See Osuna v. Spectrum Sec. Services, Inc.*, 111 Cal.App.5th 516, 520 (2025). (Finding PAGA amendments apply to lawsuits filed on or after June 19, 2024.)

compounded with the fact that to continue litigation will drive up the costs for both sides possibly to amounts in excess of the potential recovery in relation to the number of Aggrieved Employees. In that respect, the GSA represents an excellent recovery of the potential civil penalties. (Setareh Decl. ¶ 24.)

In this case, Defendant also invoked a legal defense that could bar *any* recovery of potential civil penalties as a matter of law for union-represented employees. NASSCO argued that Labor Code section 2699.6 contains a statutory exemption from PAGA for construction employees who are paid "not less than 30 percent more than the state minimum wage rate" and whose employment is "performed under a valid collective bargaining agreement that expressly provides for the wages, hours of work, and working conditions of employees, [and] premium wage rates for all overtime hours worked" as long as the CBA includes a PAGA waiver and delegates authority to the arbitrator to issue remedies for wage and hour violations. *See* Lab. Code § 2699.6(a); *Oswald v. Murray Plumbing & Heating Corp.* (2022) 82 Cal.App.5th 938, 941, 947 [holding that a CBA that meets the requirements of section 2699.6 is an exception to the typical rule that PAGA claims cannot be waived by contract]. NASSCO argued that each of section 2699.6's requirements were met here. The operative collective bargaining agreement applicable to Plaintiff and the represented aggrieved employees provides that: "all claims arising out of [their] employment, including but not limited to wage & hour claims (e.g., the payment of wages, meals and rest periods, and breaks) . . . shall be resolved pursuant to the arbitration procedures" provided by the agreement, represented employees waive the right to bring class claims, and all disputes concerning violations of . . . the California Private Attorneys General Act (Labor Code section[s] 2698, et seq.) . . . shall be subject to" the grievance process. The GSA reflects an excellent outcome for the aggrieved employees especially considering the potential complete statutory and contractual bar to recovery for the union-represented employees.

Furthermore, even assuming Plaintiff could overcome this complete bar on recovery for the union represented employees, Plaintiff must prevail at a trial on the merits. In addition to having to prove that Plaintiff and the Aggrieved Employees were not paid for all hours worked, Plaintiff must establish willfulness with respect to their waiting time penalties claim under Labor Code Section 203 as well as a knowing and intentional violation under Labor Code Section 226 for wage statement penalties.

With respect to the claims asserted on behalf of the aggrieved employees in this case, there are additional significant risks that support the reduced compromise amount. These risks include, but are not limited to the following:

(i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid straight time and overtime wages. *See Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal.4th 1, 39 & fn. 33 (2014) ("*Duran*"), citing *Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial). Defendants contends, e.g., that straight time was paid and that overtime was properly paid or not due or owing to the Aggrieved Employees as alleged by Plaintiff.

(ii) The risk that Plaintiff would not be able to prove liability for alleged failure to provide compliant meal periods and rest breaks; or that to establish liability for the failure to provide compliant meal periods and rest breaks would require an individualized inquiry that would perhaps lead to inconsistent testimony.

(iii) The risk that Plaintiff would not recover waiting time and wage statement penalties pursuant to Labor Code sections 203 and 226. Section 203 requires that a plaintiff show the employer committed a "willful" violation of the law in withholding wages. "A good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." 8 Cal. Code Regs. § 13520. Similarly, penalties pursuant to section 226 require a "knowing and intentional" violation. Defendant contends that it would present several good faith defenses that would preclude a finding of willfulness under section 203. *See Choate v. Celite Corp*. (2013) 215 Cal. App.4th 1460 (reversing award of section 203 penalties based on good faith defense where underlying wage claim presented issue of first impression). Any such good faith dispute could preclude penalties.

(iv) The risk that any civil penalties award under PAGA could be reduced by the Court in its discretion, which would materially impact the recovery by the Aggrieved Employees. *See* Labor Code section 2699(e)(1).

(v) The risk that lengthy appellate litigation could ensue, with associated litigation risk and costs, further enhances the value of a confirmed settlement as opposed to unpredictable litigation.

(vi) Although the PAGA penalties recoverable could potentially amount to $34,140,900, that amount is not likely to bear fruit in this case. Most significantly, the ultimate decision as to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), 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." Subdivision (a) states, "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." Subdivision (f) specifies the penalties in instances where the underlying statute does not specify any civil penalty. In other words, where the facts and circumstances of the particular case demonstrate that an unreduced award would be "unjust, arbitrary and oppressive, or confiscatory," the court (or arbitrator) may reduce the award so as to ameliorate any such finding. Substantially reduced PAGA penalty awards are commonplace. *See, e.g.*, *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming trial court's 90% reduction of maximum penalty]; *Kaanaana v. Barrett Business Servs., Inc.* (2018) 29 Cal.App.5th 778, 788 [87% reduction]. That risk was especially high here, when NASSCO contends that it maintains compliant policies and procedures designed to comply with California law. Given the potential for the Court to reduce the amount of penalties awarded, Plaintiff discounted the maximum exposure by 50%. Coupled with a further discount of 50% to account for Defendant's good faith defenses, the risk-adjusted exposure is **$8,535,225**. The Settlement, thus, is roughly 8.8% of the risk-adjusted exposure.

(vii) The risk that Defendant would be unable to pay a higher amount than the GSA if so awarded.

(viii) Moreover, Plaintiff faced the risk of a potentially prolonged and expensive trial.

(ix) Plaintiff faced the risk of being held liable for Defendant's attorneys' fees and costs if this case had been unsuccessful. (*Id*. ¶ 24.)

Each of these factors bore heavily on the negotiations leading to the Settlement. (*Id*.) In view of these risks, the Settlement reflects a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. (*Id*.) Indeed, while the risks listed herein are far from exhaustive, they show that the Settlement is fair, adequate, and reasonable in view of them. (*Id.*)

Defendant strongly denies any liability and all allegations in the Operative Complaint. (*Id.*) Continued litigation of this lawsuit presented Plaintiff and Defendant with substantial legal risks that were (and continue to be) very difficult to assess. (*Id.*)

In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and reasonable recovery for the State of California and the Aggrieved Employees. (*Id.*) The Settlement amount is, of course, a compromise figure. (*Id.*) By necessity, it took into account risks related to liability, discretionary penalties, and all the defenses asserted by Defendant as to all such matters. (*Id.*)

2. <u>Although the Parties Dispute Whether Any Violations Occurred, the Settlement Achieves Compliance With, and Deters Violations of, State Labor Laws</u>

While the Parties dispute whether Defendant's employment practices violate the Labor Code, this litigation has undisputedly achieved compliance with Labor Code sections referenced in the Settlement due to the significant amount that Defendant has agreed to pay for these alleged violations. Moreover, the significant amount will also serve as a deterrent to similar violations. Accordingly, the proposed Settlement reasonably advances PAGA's purpose by achieving compliance with the Labor Code and deterring similar violations.

3. <u>The Settlement Serves to Enlist Private Citizens in Enforcement of PAGA</u>

Plaintiff also believes the proposed Settlement acts to encourage private enforcement of PAGA. Through the Settlement, Plaintiff may receive a modest incentive payment, Plaintiff's counsel will receive attorneys' fees and costs as determined by the Court, and all Aggrieved Employees will receive a 25% share of the PAGA Allocation, as well as notice of the claim.

4. <u>The Settlement Is "Just" and "In the Public Interest"</u>

The proposed Settlement is both just and in the public's interest.

First, this settlement reasonably values the PAGA claims as to Defendant. While Plaintiff believes the claims are meritorious and that he would have recovered unreduced penalties, Defendant denies all liability and asserted numerous defenses to the claims. Nevertheless, Defendant has agreed to pay a Gross Settlement Amount of **$750,000** in exchange for a PAGA release involving approximately 3,216 Aggrieved Employees who were subjected to similar working conditions during the applicable time frame. Accordingly, Defendant is paying an average of **$233.21** ($750,000.00 ÷ 3,216) per Aggrieved Employee. If the Court grants Plaintiff's application for fees, costs and incentive payments, the State and the Aggrieved Employees will still share approximately **$145.22** ($467,021.60 ÷ 3,216) per Aggrieved Employee for civil penalties—a significant and reasonable recovery.[5]

Second, the proposed Settlement, even with deductions, provides a substantial sum to the State: $350,266.20 ($467,021.60 x 75%). It also provides a sum to each employee (averaging **$36.30**) on a *pro-rata* basis ($467,021.60 x 25% = $116,755.40 ÷ 3,216 Aggrieved Employees). <u>However, the purpose of PAGA is not to compensate employees</u>, who retain any private right of action they may have under the applicable Labor Code provisions. In that respect, the Settlement also requires that each employee receive a notice that describes this litigation and the settlement sum. (*See* Setareh Decl., ¶ 27, Ex. 2.) Plaintiff contends this notice will educate Aggrieved Employees as to the requirements of the Labor Code, something that is in the public interest and consistent with PAGA's purpose. *See* Lab. Code § 2699(j)) (stating that civil penalties recovered under PAGA shall be distributed to the LWDA for [among other things] "education of employers and employees about their right and responsibilities under this code.").

Third, public policy strongly favors the settlement of litigation. *Consumer Advocacy Group v. Kintetsu, supra,* 141 Cal.App.4th at 63. Because the proposed Settlement is neither unjust nor ignores the public interest, it should be approved.

Fourth, the proposed method of distribution is fair and reasonable because each Aggrieved Employee's actual potential penalties vary proportionally based on his or her pay periods worked during the PAGA Period. (Setareh Decl., ¶ 25.) An Aggrieved Employee who worked a greater number of pay periods will have a larger potential claim than one who worked fewer pay periods during the PAGA Period and will likewise receive a proportionately greater share of the Net Settlement Amount allocated to the Aggrieved Employees. (*Id.*)

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[5] It is appropriate to consider the gross award (before deductions) in comparing the litigation value of a case against a settlement award. Among other things, it is appropriate to pay fees from a common fund, even in a fee-shifting case, "to avoid the unjust enrichment of those who benefit from the fund that is created, protected, or increased by litigation and who otherwise bear none of the litigation costs." *Sobel v. Hertz Corporation* (D. Nev. 2014) 53 F.Supp.3d 1319, 1326.

Finally, it should be noted that the Settlement was submitted to the LWDA on November 4, 2025. (Setareh Decl., ¶ 39, Ex. 4.) The LWDA has not raised any objection to the Settlement or made any comment about it.

C. THE PROPOSED AWARD OF ATTORNEYS' FEES AND COSTS IS FAIR, ADEQUATE AND REASONABLE TO PLAINTIFF'S COUNSEL AND SHOULD BE APPROVED

The Settlement requires that attorneys' fees, costs, and incentive payment be paid from the common fund. This is appropriate, even in the non-class action context. "California has long recognized, as an exception to the general American rule that parties bear the costs of their own attorneys, the propriety of awarding an attorney fee to a party who has recovered or preserved a monetary fund for the benefit of himself or herself and others. In awarding a fee from the fund or from the other benefitted parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment." *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 561 (approving percentage of recovery method in wage and hour class action); *Sobel,* 53 F. Supp. 3d at 1330 (approving plaintiff's right to seek fees from common fund in fee shifting case); *Fox v. Hale & Norcross Silver Min. Co.* (1895) 108 Cal. 475 (approving fee payment from common fund in early derivative case).

The proposed Settlement is not contingent upon any particular fee, incentive payment, or cost award (other than with respect to the Settlement Administrator's costs) and should not serve as a basis for rejecting the proposed Settlement.

When attorneys' fees are awarded out of a common fund preserved or recovered by means of litigation, the award is not *per se* unreasonable merely because it is calculated as a percentage of the common fund. *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480 ("We join the overwhelming majority of federal and state courts in holding 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.")

Here, Plaintiff's Counsel request attorneys' fees of **$250,000.00** (33% of the GSA) and their actual costs currently at **$15,013.40**. In view of Plaintiff's Counsel's efforts and risks in pursuing this case, these amounts are well within the range of reasonableness and thus warrant this Court's approval.

Plaintiff and the aggrieved employees, as the prevailing party plaintiffs in settlement, are entitled to recover their attorneys' fees and costs for their wage claims, and the associated interest and penalties. *See* Lab. Code §§ 218.5, 226(e), 1194, 2699(g); Code Civ. Proc. § 1021.5(a); *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420. An attorneys' fees award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g.*, *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-1291; *Westside Cmty. For Indep. Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-353. California law provides that when a party is entitled to statutory fees, the party must be compensated for all time reasonably spent seeking to accomplish the desired result. *Serrano v. Unruh* (1982) 32 Cal.3d 621, 624.

This award is justified here because Plaintiff's Counsel achieved a strong result for the aggrieved employees in an extremely risky case while bearing the substantial burdens of contingency representation and the fees requested are within the market rate. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-1049. Plaintiff's Counsel have expended time, effort, and money that they could have expended on less risky cases against other defendants.

It is estimated that the average amount each aggrieved employee will receive based on their 25% share of the penalties is **$36.30**. (The aggregate sum provided to employees and the LWDA (assuming all deductions) is **$467,021.60**.) However, the purpose of PAGA is not to compensate employees, who retain any private right of action they may have under the applicable Labor Code provisions. In that respect, the Settlement also requires that each employee receive a notice that describes this litigation and the settlement sum. Plaintiff contends this notice will educate aggrieved employees as to the requirements of the Labor Code, something that is in the public interest and consistent with PAGA's purpose. *See* Lab. Code § 2699(j) (stating that civil penalties recovered under PAGA shall be distributed to the LWDA for [among other things] "education of employers and employees about their right and responsibilities under this code.") This is a substantial recovery – especially considering that some wage and hour class action settlements result in class members receiving coupons or vouchers in much smaller amounts instead of cash payments. *See, e.g.*, *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 590 (affirming final approval of wage and hour class action settlement where 20% of the fund allocated to the class was merchandise vouchers). Despite the extent of risk involved in this case, Plaintiff's Counsel skillfully navigated through it and negotiated a favorable result for aggrieved employees and the

State of California. The quality of Plaintiff's attorneys' work, and the efficacy and dedication with which it was performed, should be compensated. *See, e.g.*, *J.N. Futia Co. v. Phelps Dodge Indus., Inc.* (S.D.N.Y. 1982) 1982 U.S. Dist. LEXIS 15261.

Plaintiff's Counsel's previous experiences in litigating wage and hour class actions also support the reasonableness of the fee request, as does the caliber of opposing counsel. Plaintiff's Counsel's previous experiences in similar matters were integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law, state and federal, as well as the procedural law of class action and PAGA representative litigation. (Setareh Decl., ¶¶ 3-5.) Because it is reasonable to compensate Plaintiff's Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the gross settlement sum is reasonable. Likewise, the caliber and experience of opposing counsel Malcolm Heinicke and Andrew Delaplane of Munger, Tolles & Olson, LLP. in labor and employment litigation supports the fairness and reasonableness of the requested fee award. *See, e.g.*, *Vizcaino v. Microsoft Corp*. (W.D. Wash. 2001) 142 F. Supp. 2d 1299, 1303.

It is an accepted practice in wage and hour class action settlements to award attorneys' fees to class counsel based on a percentage of the total settlement value agreed upon by the parties. (Setareh Decl., ¶ 29.) California courts have long recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the common fund. *Serrano III*, 20 Cal.3d at pp. 48-49 ("when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund"); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.

Equitable considerations also dictate that Plaintiff's Counsel should be rewarded for achieving a valuable settlement without protracted litigation. Indeed, several courts have expressed frustration with the lodestar approach for deciding fee awards, which usually involves wading through voluminous, and often indecipherable, time records. Commenting on the lodestar approach, Judge Marilyn Hall Patel wrote in *In re Activision Securities Litigation*, 723 F. Supp. 1373, 1375 (N.D. Cal 1989),

> This court is compelled to ask, 'Is this process necessary?' Under a cost-benefit analysis, the answer would be a resounding, 'No!' Not only do the Lindy Kerr-Johnson analyses consume an undue amount of court time with little resulting advantage to anyone, but in fact, it may be to the detriment of the class members. They are forced to wait until the court has done a thorough, conscientious analysis of the attorneys' fee petition. Or, class members may suffer a further diminution of their fund when a special master is retained and paid from the fund. Most important, however, is the effect the process has on the litigation and the timing of settlement. Where attorneys must depend on a lodestar approach, there is little incentive to arrive at an early settlement.

The Ninth Circuit has similarly recognized that the lodestar method "creates incentives for counsel to spend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement." *Vizcaino v. Microsoft Corp.*, 290 F.3d at 1050, n.5. The Ninth Circuit has thus cautioned that, while a lodestar may be used as a crosscheck on the reasonableness of a percentage fee method if a district court in its discretion chooses to do so, a lodestar calculation is not required and "class counsel should [not] necessarily receive a lesser fee for settling a case quickly." *Id*. Thus, district courts in the Ninth Circuit recognize that a crosscheck need not be performed where counsel achieves a significant result through an early settlement. E.g., *Lewis v. Starbucks Corp.*, 2008 WL 4196690 (E.D. Cal. 2008) (favoring percentage method over lodestar for settlements achieved at relatively early litigation stages); *Glass v. UBS Fin. Servs.*, Inc., 2007 WL 221862 (N.D. Cal. 2007) (opining that lodestar crosscheck would unfairly penalize counsel for settling the case without protracted litigation). Accordingly, because this case presents considerable risks, coupled with the ensuing risks of lengthy appeals and risk of no recovery, the excellent result achieved by Plaintiff's Counsel shows that the amounts allocated to both attorneys' fees and costs under the Settlement warrant final approval. As such, the evidence shows that Plaintiff's Counsel's fee request is reasonable and warrants this Court's final approval.

1. The Requested Attorneys' Fees Are Also Justified by the Lodestar Method

The lodestar crosscheck "provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." *Laffitte*, 1 Cal.5th at 504. Only when the lodestar multiplier is "far outside the normal range" would the trial court "have reason to reexamine its choice of a percentage." *Id.* "[T]rial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *Id.* (internal quotations omitted).

Under the lodestar method, the court computes the "lodestar" amount by multiplying the number of hours reasonably extended by each attorney or legal staff member by their reasonable hourly rates. *Serrano v. Priest* (1977) 20 Cal.3d 25, 48 ("*Serrano III*"). The court then enhances this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1136; *Drexler*, 22 Cal.4th at p. 1096; *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 834 ("[t]here is no … rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar.").

Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See*, e.g., *Chavez*, 162 Cal. App. 4th at 49; *Wershba*, 91 Cal.App.4th at 255. In class and representative actions such as this one, where the value of the benefit conferred to the class "can be monetized with a reasonable degree of certainty," a court may "adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 557. In doing so, "the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." *Id.* at 556.

A lodestar crosscheck here confirms that the requested award is reasonable. Plaintiff's Counsel have already logged a combined total of **126.6** hours in billable time at their current standard hourly rates, resulting in a lodestar of **$76,430.00**. (Setareh Decl., ¶ 33.) This results in a lodestar multiplier of approximately **3.27**. The hours billed represent time spent on tasks that were essential to litigation and settlement. The standard hourly rates for Plaintiff's Counsel – ranging from $350 to $1,150 for attorneys – are reasonable. Plaintiff's Counsel's rates are in line with those charged by experienced class action lawyers who practice on a national scale and within the range of those approved by other courts in similar circumstances. *See, e.g., Spano v. Boeing Co.,* No. 06-CV-743-NJR-DGW, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31, 2016) (approving hourly rates of $460 to $998 for attorneys, $309 for paralegals, and $190 for legal assistants); *Laffey Matrix* http://www.laffeymatrix.com/see.html (last visited June 6, 2023) (setting forth hourly rates from $413 to $997 for attorneys of similar experience levels).

Plaintiff's Counsel's requested attorneys' fees will also be justified under the lodestar method since the value of the actual work performed is much higher than the requested Award of Attorneys' fees and applying a risk multiplier. (Setareh Decl., ¶ 33.) The lodestar calculation is as follows, which are based on our firm's records:

Attorney	Bar Year	Hourly Rate	Hours	Total Fees
Shaun Setareh	1999	$ 1,150.00	16.7	$ 19,205.00
Jose Maria D. Patino, Jr.	2010	$ 725.00	46.9	$ 35,175.00
Tyson Gibb	2021	$ 350.00	32.6	$ 11,410.00
Brian Louis	2023	$ 350.00	16.3	$ 5,705.00
Jose Ramirez-Gomez	2023	$ 350.00	14.1	$ 4,935.00
Total			126.6	$ 76,430.00
Fees Sought				$ 250,000.00
Multiplier				**3.27**

Finally, the request for Plaintiff's Counsel's actual litigation costs of **$15,013.40** is fair and reasonable. (Setareh Decl., ¶ 28.) These costs include but are not limited to filing fees, courier costs, process server costs, and mediation fees to name just a few. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. *Id*. Accordingly, they warrant approval.

D. THE PROPOSED ENHANCEMENT AWARD TO PLAINTIFF IS ALSO FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED

Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class and representative action litigation, often in much higher amounts than that sought here. *See, e.g.*, *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving $50,000 enhancement award).

1. <u>The Enhancement Award Is a Very Small Percentage of the Gross Settlement Amount</u>

Here, the Settlement provides that Plaintiff may seek an enhancement award of up to $5,000.

(Settlement, ¶ 13(c)) This amount is just over 0.66% of the GSA. (Setareh Decl., ¶ 37.)

2. <u>The Substantial Time and Effort Plaintiff Expended on This Lawsuit Justify the Representative Enhancement Award</u>

Awarding Plaintiff just over 0.66% of the GSA is entirely reasonable given Plaintiff's efforts in this case undertaken on behalf of absent aggrieved employees. (Setareh Decl., ¶ 37; Rivera Decl., ¶¶ 6-11.) In this case, Plaintiff has devoted over 25 hours of his time advancing the interests of the aggrieved employees and the State of California. (*Id.*) Plaintiff has done this by, among other things, retaining experienced counsel, providing Plaintiff's Counsel with extensive information about his work history with Defendant and Defendant's policies and practices with respect to the wage and hour claims at issue, foregoing pursuit of his individual claims in favor of a fair resolution, participating in a full-day mediation session, and being actively involved in the settlement process to ensure a fair result for the aggrieved employees and the State of California as a whole. (*Id.*)

3. <u>Plaintiff's Heavy Fiduciary Responsibility Justifies the Representative Enhancement Award</u>

As a representative, Plaintiff agreed to (1) consider the interests of the aggrieved employees and the State of California just as he would consider his own interests and, in some cases, to put the interests of the aggrieved employees and the State of California before his own interests; (2) actively participate in the lawsuit, as necessary, by among other things, answering interrogatories, producing documents to Defendant and giving deposition and trial testimony if requested; (3) travel to give such testimony; (4) recognize and accept that any resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be designed in the best interest of the aggrieved employees and the State of California as a whole; (5) follow the progress of the lawsuit and provide all relevant facts to Plaintiff's Counsel; (6) champion many other people with similar claims and injuries because of the importance of the case and the necessity that all aggrieved employees and the State of California benefit from the lawsuit; and (7) fight for a resolution in which the individual recoveries to each aggrieved employees and the State of California, including Plaintiff, may be relatively small. (Setareh Decl., ¶ 37; Rivera Decl., ¶ 11.) Plaintiff agreed to shoulder all of these responsibilities in exchange for a proportionate share of funds made available for distribution to the aggrieved employees and the State of California. (*Id.*) Plaintiff had no guarantee of an enhancement award. (*Id.*) This justifies the enhancement award sought on behalf of Plaintiff. (*Id.*)

4. <u>The Risks That Plaintiff Undertook Justify the Enhancement Award</u>

In taking the actions outlined above, Plaintiff exposed herself to significant risks. (Setareh Decl., ¶ 37; Rivera Decl., ¶¶ 10-11.) These include the risk that he could have been ordered to pay Defendant's attorneys' fees and costs if this action had been unsuccessful under Labor Code §§ 218.5 and 218.6, California's fee and cost shifting statutes applicable to wage disputes. (*Id.*) On many occasions, California courts have ordered wage and hour plaintiffs and would-be aggrieved employee representatives to pay outrageous fee and/or cost awards for unsuccessful claims. (Setareh Decl., ¶ 37.) A few examples are:

- *Zalewa v. Tempo Research Corp.* (CA 2nd Dist. March 1, 2013) No. B238142, 2013 WL 766535 (employer requested $2,210,360 in attorney's fees to be paid by employee for employee's unsuccessful suit for unpaid bonuses)
- *Cun v. Café Tiramisu LLC* (CA 1st Dist. Nov. 30, 2011) No. A131241, 2011 WL 5979937 (court ordered the employee to pay $36,612.50 in attorneys' fees and costs to employer for unsuccessful suit for unpaid wages)
- *Csaszi v. Sharp Healthcare* (CA 4th Dist. Feb. 18, 2003) No. D038558, 2003 WL 352422 (court ordered the employee to pay $20,269 in attorney's fees and costs to the employer for unsuccessful suit for unpaid wages and overtime)
- *Villalobos v. Guertin* (U.S.D.C. Eastern Dist. Dec. 3, 2009) No. CIV. S–07–2778 LKK/GGH, 2009 WL 4718721 (court ordered Plaintiff's counsel to pay $21,180 in attorneys' fees and $1,525.80 in costs to defense counsel for unpaid wages)
- *Wymore v. Minto* (CA 1st Dist. Sept. 22, 2010) No. A125476, 2010 WL 3687511 (court awarded employer $6,577.50 in attorneys' fees for employee's unsuccessful suit for unpaid salary and commissions)
- *Wagner v. Lim* (CA 4th Dist. March 18, 2005) No. D044086, 2005 WL 635059 (court awarded employer $4,500 in attorneys' fees for unsuccessful suit for wages)

Such cost awards are substantially higher than the shares of the gross settlement amount that

Plaintiff stands to receive as an aggrieved employee. (*Id.*) It is unfair in view of the substantial risk of an adverse fee or cost award of several thousand dollars that Plaintiff receives less as a reward for taking such a risk. (*Id.*) Moreover, we cannot lose sight of the fact that Plaintiff is not a high-wage earner. (*Id.*) Even the lowest of the cost awards listed above would have devastating consequences for Plaintiff in view of his modest earnings. (*Id.*)

5. Plaintiff's Share of the Gross Settlement Amount Will Likely Be Less Than Absent Aggrieved Employees For Greater Portions Of The Aggrieved Employee Period

Plaintiff's individual share of the recovery will likely be less than that of some absent aggrieved employees. (*Id.*) Under the Settlement, each Aggrieved employee will receive a share of the Settlement proceeds based upon his or her Individual number of pay periods. (*Id.*; Settlement, ¶ 14.) Some Aggrieved Employees who worked during more of the PAGA Period - will receive more, and some less. (Setareh Decl., ¶ 37.) There will likely be Settlement Class members who worked more pay periods than Plaintiff and, as a result, will receive larger shares of the recovery – *even though they did not actively participate in the lawsuit.* (*Id.*) While this is a risk that Plaintiff assumed when he brought the lawsuit, it seems unfair to limit Plaintiff's enhancement award to an amount not much greater than an absent class member's share of the recovery. (*Id.*) To encourage employees like Plaintiff to assume the helm of representative champions (and thereby advance the important public policies behind class and representative actions), the Court should award something substantial to Plaintiff for his readiness to receive less than absent aggrieved employees. (*Id.*)

6. The Public Policy Behind Class and Representative Actions Justifies the Representative Enhancement Award

The public policy behind class and representative actions that seek an aggregate recovery of otherwise small amounts of money is equally important and has been recognized by the courts. "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor." *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591 quoting

Mace v. Van Ru Credit Corp. (1997) 109 F.3d 338, 344. "Frequently numerous consumers are exposed to the same dubious practice by the same seller so that proof of the prevalence of the practice as to one consumer would provide proof for all. Individual actions by each of the defrauded consumers are often impracticable because the amount of individual recovery would be insufficient to justify bringing a separate action; thus, an unscrupulous seller retains the benefits of its wrongful conduct." *Vasquez v. Superior Court* (1971) 4 Cal.3d 800. "A company which wrongfully exacts a dollar from each of millions of customers will reap a handsome profit; the class action is often the only effective way to halt and redress such exploitation." *Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381. "A current employee who individually sues his or her employer is at greater risk of retaliation. We have recognized that retaining one's employment while bringing formal legal action against one's employer is not a viable option for many employees." *Gentry v. Superior Court* (2007) 42 Cal.4th 443. If would-be class action plaintiffs are not adequately incentivized to assume the risk of a substantial cost award, it is unlikely that they will bring such lawsuits in the first place.

The average aggrieved employee in this case would be unlikely to pursue his or her individual claims against Defendant because such a claim would be too small to justify the cost and the risk. An aggrieved employee will be unlikely to find an attorney who is willing to pursue an individual's claims because the claims are too small to justify the hundreds of hours of legal work necessary to prove each claim. Only the class and representative action vehicle, which allows for the aggregation of hundreds of risky small dollar value claims, makes such claims advantageous for an attorney to pursue on a contingency basis and there can be no class or representative action without a class member or representative member assuming the great fiduciary responsibilities inherent in class or representative litigation. *Id.* This Court should allow the enhancement award requested because to do otherwise would discourage employees (and attorneys) from bringing class and representative actions in the first place.

If would-be class and representative action plaintiffs are not adequately incentivized to advance the public policy behind class and representative actions in court in light of the time and risk they will entail, it is unlikely that they will bring class and representative action lawsuits in the first place. Once employers realize that such lawsuits are unlikely, they will have no incentive to comply with wage and hour laws. (*Id.*)

7. The Risk of Impairment to Plaintiff's Job Prospects Justifies the Enhancement Award

Plaintiff faced the risk that he could face worsened career prospects for suing a former employer for wage and hour violations and serving as the named plaintiff in a representative action lawsuit. (Setareh Decl., ¶ 37; Rivera Decl., ¶ 11.) Because he filed a lawsuit in California Superior Court, a public record now exists that Plaintiff sued his employer for Labor Code violations—a fact that would not be lost on prospective employers considering his for a job, especially in the same industry. (*Id.*) Common sense dictates that an employer will think twice about hiring someone who sued their last employer. California even has laws to address this risk: Labor Code section 1102.5 prohibits retaliation against employees who speak up about Labor Code violations and Labor Code section 98.6 prohibits discrimination against employees who bring Labor Code violations to the attention of the Labor Commissioner. If the case were lost, Plaintiff could have been ordered to pay Defendant's costs and even attorneys' fees in this case, which could have been thousands of dollars by the end. (*Id.*) Thus, the risks to Plaintiff's future jobs and job prospects show that the enhancement award sought is fair, adequate and reasonable, and warrants approval by the Court. (*Id.*)

8. The Low Individual Burden on Each Aggrieved Employee Justifies the Representative Enhancement Award

The burden on each aggrieved employee to pay Plaintiff's enhancement award is extremely modest. There are approximately 3,216 aggrieved employees. (Setareh Decl., ¶ 37(g).) Dividing the $5,000 enhancement award to Plaintiff evenly among the aggrieved employees yields a per person payment of only $1.55, an amount approximately 0.66% of the average aggrieved employee's share of the gross settlement amount. For an average aggrieved employee, this is an extremely small price to pay to have someone else prosecute the absent aggrieved employee's claims and bear the absent aggrieved employee's risk of an adverse cost award while the absent aggrieved employee simply waits to receive his or her share of the winnings. (Setareh Decl., ¶ 37.)

9. Plaintiff's Counsel's Dependence on Plaintiff Justifies the Enhancement Award

Plaintiff's Counsel depended heavily on Plaintiff's input. Plaintiff made this case possible for a number of reasons. First, Plaintiff challenged his employers on allegedly unlawful practices. Second, Plaintiff provided Plaintiff's Counsel with detailed descriptions of how Defendant's business operates, the hours and scheduling of employees, and the nature of the work they performed. (*Id.*; Rivera Decl., ¶ 9.)

V. **CONCLUSION**

For all the reasons discussed above, Plaintiff respectfully requests that this Court approve the motion in its entirety and approve the proposed Settlement.

DATED: November 4, 2025 SETAREH LAW GROUP

/s/ Shaun Setareh
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