

David Mara, Esq. (230498)
Jill Vecchi, Esq. (299333)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Attorneys for MATTHEW BAUMANN, on behalf of
all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

MATTHEW BAUMANN on behalf of
all others similarly situated, and on
behalf of the general public,

Plaintiffs,

v.

ATP INVESTMENT COMPANY, LLC
DBA AUDI FLETCHER JONES; and
DOES 1-100,

Defendants.

Case No. 30-2024-01427099-CU-OE-CXC

*[Assigned for all purposes to the Honorable
William Claster, Dept. CX101]*

**PLAINTIFF MATTHEW BAUMANN'S
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Date: December 12, 2025

Time: 9:00 a.m.

Reservation No.: 74707309

Complaint Filed: September 23, 2024

Trial Date: None Set

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1 **I. INTRODUCTION**

2 Plaintiff Matthew Baumann (“Plaintiff” or “Mr. Baumann”) respectfully requests that the
3 Court approve the Joint Stipulation and Settlement Agreement (“Settlement Agreement”)¹ entered
4 into between Plaintiff and Defendant ATP Investment Company, LLC dba Audi Fletcher Jones
5 (“Audi Fletcher Jones” or “Defendant”) (collectively Plaintiff and Defendant are referred to as the
6 “Parties”) which resolves the claims raised against Defendant in exchange for a non-reversionary
7 \$135,500 Gross Settlement Amount.

8 This proposed settlement will settle the claims alleged in Plaintiff’s complaint under the
9 Private Attorney Generals Act of 2004 (“PAGA”) on behalf of the California Labor and
10 Workforce Development Agency (“LWDA”) and all non-exempt, hourly employees who worked
11 for Defendant in California at any time from June 25, 2023, to September 21, 2025 (“Aggrieved
12 Employees”). The relief provided for under the Settlement Agreement is solely for the payment
13 of penalties under the PAGA.

14 Pursuant to California Labor Code § 2699, subsection (l)(2), a superior court shall review
15 and approve any settlement of any civil action filed pursuant to the PAGA. *See* Cal. Lab. Code §
16 2699(l)(2).² In deciding whether to grant approval of the proposed settlement, the primary issue to
17 be decided is whether the settlement is fair, adequate, and reasonable. As set forth herein, the
18 proposed settlement embodies all of the features of a settlement that is fair, reasonable, and adequate,
19 as it is the product of (1) arms-length negotiations, employing a neutral mediator, (2) negotiations by
20 attorneys experienced in these issues, (3) sufficient investigation which was necessary to evaluate
21 the relative strength and value of Plaintiff’s claims, and (4) a reasoned compromise based on the
22 strength and value of the case, as well as, the risks, expense, complexity, and likely duration of further
23 litigation.

24 ///

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27 ¹ The Settlement Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as
Exhibit 1. Exhibit 1 herein refers to the Settlement Agreement.

28 ² Plaintiff will upload a copy of the Settlement Agreement to the LWDA’s website at the same time
this motion is filed with the Court.

1 **II. BACKGROUND**

2 Defendant is a car dealership. To provide services to its customers, Defendant employs
3 hourly, non-exempt employees in California.

4 **a. Procedural History**

5 Plaintiff sent his Notice of Labor Code Violations Pursuant to Labor Code § 2699.3 on
6 June 25, 2024. (Mara Dec. ¶ 11; *see also* Exhibit 6 attached thereto). On or about September 23,
7 2024, Plaintiff filed a complaint asserting claims for civil penalties under the Private Attorneys
8 General Act of 2004 (“PAGA”). (Mara Dec. ¶ 12).

9 **b. Discovery and Investigation**

10 After filing, the Parties conducted discovery. Defendant produced over a thousand pages
11 of documents. These documents included policy documents that covered Plaintiff’s and the
12 aggrieved employees’ employment with Defendant. Defendant also produced Excel files that
13 contained a sampling of time and wage records for aggrieved employees. Plaintiff had an expert
14 review and analyze the sampling of time and wage records for aggrieved employees. In addition,
15 Plaintiff provided his counsel with numerous documents he received during his employment,
16 including but not limited to his paycheck stubs; screen shots of his timecards; Defendant’s
17 employee handbooks; Defendant’s meal and rest period policies; and Defendant’s technician pay
18 plan. (Mara Dec. ¶ 13).

19 **c. Mediation**

20 The Parties attended mediation with wage and hour mediator Kevin Barnes on July 23,
21 2025. The mediation concluded with a mediator’s proposal that was ultimately accepted by the
22 Parties. Thereafter, the Parties negotiated the Settlement Agreement they now ask the Court to
23 approve. (Mara Dec. ¶ 14; *see also* Exhibit 1 attached thereto).

24 **III. THE PARTIES’ CONFLICTING POSITIONS**

25 **a. Unpaid Wages**

26 Plaintiff argues that Defendant does not pay employees for all hours worked. (Mara Dec.
27 ¶ 15). Plaintiff contends that employees cannot clock in until they arrive at their work area. Plaintiff
28 asserts that Defendant expects employees to walk through the dealership to their workstation which

1 contains their computers. Once at their computers, Plaintiff asserts that employees have to turn
2 them on before they can clock in and are not paid for this time. As such, Plaintiff contends that
3 employees cannot clock in when they arrive at the dealership but, rather, have to transit through
4 the dealership to their worksite prior to clocking in. Plaintiff asserts that this same process occurs
5 in reverse after employees clock out. (Mara Dec. ¶ 16).

6 In addition, as to technicians that work at Defendant's service center, Plaintiff contends
7 that technicians are only paid for their productive hours. Plaintiff asserts that these hours are
8 referred to by Defendant as "flag hours." Plaintiff contends that technicians accrue productive
9 ("flag") hours only when they are repairing or servicing a vehicle. Plaintiff alleges that there are
10 many hours technicians work when they are not accruing flag hours, for example, when a
11 technician is waiting for a vehicle to come in for repair. Plaintiff contends that Defendant's pay
12 system – which is a combination of hourly pay and bonuses – does not pay technicians for non-
13 productive hours. Plaintiff asserts that if an employee works a shift with no productive ("flag")
14 hours during a pay period, the payment for those non-productive hours comes from the payment
15 they earn for the productive hours worked during the same pay period. Plaintiff contends that this
16 can result in an employee working a full shift, or potentially multiple shifts, without being
17 paid any compensation at all. (Mara Dec. ¶ 17).

18 Defendant asserts that it pays employees for all hours worked. Defendant contends that
19 employees have multiple methods they can use to clock in, including an application on their cell
20 phones and a kiosk with an iPad at the front of the facility. As such, Defendant asserts that
21 employees do not have to transit through the facility before they can clock in. Rather, Defendant
22 contends that employees can clock in immediately upon arriving at the facility. Defendant
23 contends that most employees clock in using the kiosk or the application on their phones. (Mara
24 Dec. ¶ 18).

25 In addition, as to technicians, Defendant contends it pays technicians for all hours worked.
26 Defendant asserts that its pay system is lawful under *Oman v. Delta Air Lines, Inc.* (2020) 9 Cal.5th
27 762 and *Certified Tire & Service Centers Wage and Hour Cases* (2021) 66 Cal.App.5th 190.
28 Defendant contends that it pays technicians at far above the minimum wage for all hours worked

1 and then provides additional pay, above and beyond this amount, to technicians as a bonus based
2 upon their productive hours. (Mara Dec. ¶ 19).

3 Further, a case that came out after the Parties' mediation that supports Defendant's
4 argument that it properly pays technicians. On August 12, 2025, the Court of Appeal issued a
5 decision in *Williams v. J.B. Hunt Transp., Inc.* (2025) 151 F.4th 1020. In *Williams*, just as here,
6 the plaintiffs alleged the defendant's pay plan only paid employees for productive hours. There,
7 the defendant employer's pay plan "consists of two parts: hourly pay at a rate at or above the
8 minimum wage plus—where applicable—an activity-based bonus." *Id.* at 1030. The plaintiffs
9 alleged – as Plaintiff does here – that the pay plan "is really a piece-rate scheme improperly
10 masquerading as a hybrid scheme[.]" *Id.* The Court of Appeal stated that the defendant employer
11 "paid its employees an hourly wage for 'all hours worked,' whether or not those hours were
12 'productive' or 'nonproductive.' It then supplemented that pay—when employees were eligible—
13 with a piece-rate-based bonus." *Id.* at 1031. As such, the Court of Appeal determined that the
14 defendant employer "has satisfied its obligation to 'pay no less than the minimum wage for all
15 hours worked' while 'still keeping any promises it has made to provide particular amounts of
16 compensation for particular tasks or periods of work.'" *Id.* Defendant contends that its pay system
17 is the same as the pay system in *Williams* and if the case were to continue it would file a motion
18 for summary judgment as to this issue. (Mara Dec. ¶ 20).

19 **b. Wage Statements**

20 Plaintiff alleges that employees are not provided with accurate itemized wage statements.
21 Plaintiff alleges that the overtime rate of pay is incorrect on wage statements. Plaintiff contends
22 that there is no way for an employee to determine what overtime rate they are being paid from
23 looking at the wage statement. In addition, Plaintiff asserts the straight time hours are incorrect
24 because they include both straight time hours worked as well as overtime hours worked. (Mara
25 Dec. ¶ 21).

26 Defendant disputes this claim. Defendant contends that it provides employees with a pay
27 calculator that includes all of the information required under Section 226. In addition, Defendant
28 contends that it pays employees per the guidelines provided by the Department of Industrial

1 Relations in its Frequently Asked Questions. Defendant contends that its wage statements are
2 similar, if not the same, as the wage statements at issue in *General Atomics v. Green* (2021) 64
3 Cal.App.5th 987. Defendant contends that under *General Atomics*, the Court determined that wage
4 statements can list overtime at 0.5 times the regular rate of pay rather than 1.5 times the regular
5 rate. Defendant asserts that when dealing with blended overtime calculations, wage statements that
6 use this format this format are easier for employees to understand. In addition, Defendant argues
7 that employees can ascertain the required information, such as the overtime rate, using simple
8 math. Defendant relies on cases which hold that “[w]age statements comply with § 226(a) when a
9 plaintiff employee can ascertain the required information by performing simple math, using figures
10 on the face of the wage statement.” *Hernandez v. BCI Coca-Cola Bottling Co.*, 554 Fed. Appx.
11 661, 662 (9th Cir. 2014) (citing *Morgan v. United Retail Inc.*, 186 Cal.App.4th 1136 (2010)).
12 (Mara Dec. ¶ 22).

13 Further, Defendant also asserts that any violation of California Labor Code § 226 was not
14 “knowing and intentional.” See Cal. Lab. Code § 226(e) (“An employee suffering injury as a result
15 of a **knowing and intentional** failure by an employer” may recover damages”) (emphasis added);
16 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1195 (“Some statutory penalties are
17 imposed only if an employers’ violation was ‘willful’ or ‘knowing.’ . . . [S]ection 226, subdivision
18 (e) penalizes an employer’s ‘knowing and intentional’ failure to provide itemized wage statements
19 under section 226, subdivision (a)[.]”); *Naranjo v. Spectrum Security Services, Inc.* (2024) 15
20 Cal.5th 1056. Defendant maintains that it reasonably, and in good faith believes that it was
21 providing a complete and accurate wage statement in compliance with California law. Defendant
22 further contends that employees cannot show that they have suffered an injury because of any
23 potential violation of California Labor Code § 226. Defendant contends that employees knew to
24 talk to their manager or the Human Resources department if they had any questions or concerns
25 with their wage statements. As such, disputes exist as to whether Defendant’s wage statements
26 violated California Labor Code § 226(a)(8), whether any such violation was knowing and
27 intentional, and whether employees suffered an injury. (Mara Dec. ¶ 23).

28 ///

1 **c. Meal Periods**

2 Plaintiff contends that Defendant does not provide employees with meal periods that
3 conform with California law. Plaintiff contends that Defendant's time records show non-compliant
4 meal periods. (Mara Dec. ¶ 24).

5 In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision,
6 wherein it ruled that time records showing late, short, or missed meal periods raises a rebuttable
7 presumption that the meal periods were not provided: "If time records show missed, short, or
8 delayed meal periods with no indication of proper compensation, then a rebuttable presumption
9 arises" that the meal periods were not provided in accordance with California law. *Donohue v.*
10 *AMN Services, LLC* (2021) 11 Cal.5th 58, 74. Plaintiff contends that, here, the time records show
11 non-compliant meal periods. In these shifts, under *Donohue*, Plaintiff contends that it is presumed
12 that meal period violations occurred. (Mara Dec. ¶ 25).

13 Defendant asserts that its meal period policy is lawful and that it provides employees with
14 meal periods in compliance with California law. In addition, Defendant contends that it has a
15 system where meal period premiums are automatically paid when a meal period violation occurs
16 in the records. Further, Defendant alleges that if litigation continues it would be able to show that
17 it advised employees of the right to take a meal period in compliance with California law and paid
18 meal period premiums when non-complaint meal periods appear in its records. Thus, Defendant
19 contends that to the extent an employee was not provided the opportunity to take a legally
20 compliant meal period, they were provided a meal premium. Defendant contends that this evidence
21 would rebut the presumption under *Donohue v. AMN Services, LLC*. (Mara Dec. ¶ 26).

22 **d. Rest Periods**

23 Plaintiff contends that Defendant does not provide employees with rest periods that
24 conform with California law. Plaintiff asserts that Defendant does not provide employees with net
25 ten-minute meal periods at a suitable rest area. Plaintiff contends that the rest period time provided
26 to employees includes the time it takes them to get to and from a suitable rest area. (Mara Dec. ¶
27 27).

28 Defendant argues that it permits and authorizes lawful rest periods. Defendant contends

1 that its rest period policies are lawful and that employees are provided with a full ten-minute rest
2 period at a suitable rest area. Defendant further contends that it informs employees that they get at
3 least ten full, duty-free minutes of rest at a suitable rest area. Defendant asserts that managers are
4 expected to authorize and permit lawful rest periods that are a minimum of ten minutes in length,
5 and employees who believe they are being prevented or impeded from taking lawful rest periods
6 are required to report this to their manager or HR immediately. (Mara Dec. ¶ 28).

7 **e. Waiting Time Penalties**

8 Plaintiff's waiting time penalty claim is derivative of and is predicated on the same uniform
9 facts surrounding their claims for unpaid wages and meal and rest periods. Should these claims
10 fail, this claim would also fail. (Mara Dec. ¶ 29).

11 Defendant contends that even if Plaintiff is successful in his unpaid wages and meal and
12 rest period claims, he would have to prove Defendant "willfully" failed to pay employees the
13 appropriate wages due upon separation of employment. "A willful failure to pay wages within the
14 meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to
15 an employee when those wages are due. However, a good faith dispute that any wages are due will
16 preclude imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520.
17 "A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based
18 in law or fact, which would preclude any recovery on the part of the employee. The fact that a
19 defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist."
20 *Id.* Defendant contends that any failure to pay wages due or meal and rest period premiums at the
21 separation of employment was not willful. Defendant argues that it would not be liable for waiting
22 time penalties because a "good faith dispute" exists over the payment of those wages. *See* Cal.
23 Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201 and
24 *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056. (Mara Dec. ¶ 30).

25 **f. Manageability**

26 Defendant also argues that should litigation continue, it will bring a motion challenging the
27 manageability of trial as Defendant does not believe that this case can be tried manageably and
28 will require the testimony of every individual aggrieved employee. Furthermore, while Defendant

do not concede that any of its wage and hour policies are unlawful, Defendant claims that any challenges Plaintiff has posed to its policies are easily refuted by how they are implemented in practice; as a result, no aggrieved employee has suffered any damages. (Mara Dec. ¶ 31).

IV. THE PROPOSED SETTLEMENT

The Parties have agreed (subject to and contingent upon the Court’s approval) that this action be settled and compromised for the non-reversionary total sum of \$135,500 (“Gross Settlement Amount”), which includes, subject to Court approval: (a) attorneys’ fees of \$45,162 (33.33% of the Gross Settlement Amount) to compensate Plaintiff’s Counsel for work already performed and work remaining to be performed in securing Court approval and overseeing administration of the settlement; (b) litigation costs in the amount of \$22,152.97; (c) a PAGA Representative Payment to the named class representative in the sum of \$2,500 in consideration for prosecuting this action, work performed, and risks undertaken for the payment of attorneys’ fees and costs in the event he had been unsuccessful in the matter; and (c) administration fees and expenses to ILYM Group, Inc. (“ILYM”) in the amount of \$3,650.³

After all Court-approved deductions from the PAGA Settlement Sum, it is estimated that the Net Settlement Fund (“NSF”) will be \$62,035.03. California Labor Code § 2699(i) states that “civil penalties recovered by aggrieved employees shall be distributed in accordance with Labor Code § 2699 *et seq.* as follows: 75% to the LWDA for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25% to the aggrieved employees.” Therefore, of the Gross Settlement Amount, \$46,526.27 (75% of the Gross Settlement Amount) will go to the LWDA and \$15,508.76 (25% of the Gross Settlement Amount) will be distributed to Aggrieved Employees (this portion of the settlement funds is referred to as the “Net Settlement Amount”).

Aggrieved Employees are estimated to receive an average payment of approximately \$73.85. The pay period value is estimated to be approximately \$2.56.

///

³ See Declaration of Lisa Mullins (“Mullins Dec.”) ¶ 7.

1 **a. Calculation of the Settlement Payments to the Aggrieved Employees**

2 Subject to the terms and conditions of the Settlement Agreement, the Settlement
3 Administrator will calculate and issue Individual Settlement Shares to Aggrieved Employees
4 based on the following formula:

5 Each Aggrieved Employee will receive a proportionate share of the Aggrieved
6 Employee Net Settlement Amount that is equal to (i) the number of pay periods he
7 or she worked for Defendant in California during the PAGA Period based on the
8 Database provided by Defendant, divided by (ii) the total number of pay periods
9 worked by all Aggrieved Employees based on the same Database, which is then
10 multiplied by the NSA. One day worked in a given pay period will be credited as a
pay period for purposes of this calculation. Therefore, the value of each Aggrieved
Employee's Individual Settlement Share ties directly to the amount of pay periods
that he or she worked.

11 (Section III, Paragraph B(1)(a)(1), Page 6). Each Aggrieved Employee's gross settlement award
12 will be apportioned as 100% penalties and be subject to all authorized and required withholdings
13 other than the tax withholdings customarily made from employees' wages and shall be reported
14 by IRS 1099 forms. (Exhibit 1 at Section III, Paragraph B(2), Page 6).

15 **b. Funding and Disbursement**

16 Within fifteen (15) days after the Effective Date,⁴ Defendant shall deliver to the Settlement
17 Administrator an electronic database, which will list for each Aggrieved Employee: (1) first and
18 last name; (2) last known mailing address; (3) social security number; and (4) the total number of
19 pay periods during which the Aggrieved Employee performed work during the PAGA Period as
20 an Aggrieved Employee ("Database"). (Exhibit 1 at Section III, Paragraph E(2)(a), Page 9). The
21 Settlement Administrator will conduct a skip trace for the address of all Aggrieved Employees
22 who are former employees of Defendant and an NCOA search on all addresses. (*Id.*).

23 The Gross Settlement Amount will be wired by Defendant to the settlement administrator
24 within thirty (30) days of the Effective Date. (Exhibit 1 at Section I, Paragraph K, Page 2; *see also*
25 Section III, Paragraph E(2)(c), Page 9). The Settlement Administrator will disburse the GSA
26 within fifteen (15) days after funding. (Exhibit 1 at Section III, Paragraph E(2)(d), Page 9). A

27 _____
28 ⁴ The Effective Date is the date the Court grants approval of the settlement. (Exhibit 1 at Section
I, Paragraph J, Page 2).

1 Notice of PAGA Settlement, substantially similar to the form attached to the Settlement
2 Agreement as Exhibit A, subject to Court approval, shall accompany each Individual Settlement
3 Share check. (Exhibit 1 at Section I, Paragraph S, Page 3). The notice will be mailed out in English
4 only as all of the Class Members speak English. (Declaration of Spencer Waldron (“Waldron
5 Dec.”) ¶ 5).

6 **c. Returned Notices and Checks**

7 If a Notice and Individual Settlement Check are returned because of an incorrect address,
8 within five (5) days from receipt of the returned Notice, the Settlement Administrator will conduct
9 a search for a more current address for the Aggrieved Employee and re-mail the Notice and
10 Individual Settlement Share check to the Aggrieved Employee. (Exhibit 1 at Section III, Paragraph
11 E(2)(e), Pages 9-10).

12 **d. Uncashed Checks**

13 Aggrieved Employees must cash or deposit their Individual Settlement Share checks within
14 one hundred and eighty (180) calendar days after the checks are mailed to them. All funds
15 associated with the Individual Settlement Share checks returned as undeliverable and funds
16 associated with those Individual Settlement Share checks remaining un-cashed, shall be
17 transmitted by the Settlement Administrator to the California Controller’s Unclaimed Property
18 Fund in the name of the Aggrieved Employee. (Exhibit 1 at Section III, Paragraph E(6), Pages
19 910-11).

20 **e. Release of Claims**

21 Each PAGA Aggrieved Employee shall fully release and discharge Defendant and the
22 Released Parties from any and all claims that were alleged or could have been alleged based on
23 the claims, facts, and/or allegations contained in operative Complaint and in the PAGA Notice
24 submitted by Plaintiff to the LDWA. The release shall be for the PAGA Period. (Section I,
25 Paragraph Y, Page 3).

26 The Parties are unaware of any other actions, including individual, class, and PAGA
27 actions, that may be affected by this settlement. (Mara Dec. ¶ 47, Waldron Dec. ¶ 4).

28 ///

1 **f. Number of Pay Periods**

2 It was estimated for purposes of mediation that there are approximately 5,646 pay periods
3 between the start of the PAGA Period and the mediation. As such, the settlement is estimated to
4 encompass approximately 5,646 pay periods. To the extent that the total number of pay periods
5 increases by more than ten percent (10%) of this estimate, or more than 6,210 pay periods, the
6 Escalator Provision would be triggered. (Exhibit 1 at Section III, Paragraph A(1), Pages 5-6).
7 Based upon Defendant's records, there are approximately 210 Aggrieved Employees that worked
8 approximately 6,059 pay periods included in the settlement. (Waldron Dec. ¶ 3). As such, the
9 escalator clause is not triggered.

10 **V. THE COURT SHOULD APPROVE THE SETTLEMENT**

11 The PAGA allows for the private enforcement of certain California Labor Code sections
12 relating to wage and hour violations. The settlement of a PAGA action requires court approval
13 pursuant to the operative PAGA statute, which states that a superior court shall review and
14 approve the settlement of any civil action filed pursuant to the PAGA. *See* Cal. Lab. Code §
15 2699(1)(2).

16 In evaluating the adequacy of the settlement amount, a court is not concerned with the
17 amount the aggrieved employees are to receive, but rather, a court must focus on the total
18 settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit
19 consists of civil penalties, not individual or class damages." *Mendez v. Tween Brands, Inc.* (E.D.
20 Cal. July 1, 2010) 2010 WL 2650571 *4. "Unlike class actions, these civil penalties are not meant
21 to compensate unnamed employees because the action is fundamentally a law enforcement
22 action." *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. April 2, 2010) 2010 WL 1340777
23 *4. Moreover, a court must not lose sight of the fact that "[u]nlike a class action seeking damages
24 or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties
25 to recover civil penalties for the government that otherwise may not have been assessed and
26 collected by overburdened state enforcement agencies." *Id.*

27 As with any settlement, a court must be mindful in conducting its inquiry that "[s]ettlement
28 is a compromise, which balances the possible recovery against the risks inherent in litigating

1 further.” See *In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) 2011 U.S.
2 Dist. LEXIS 103222, *24. Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes
3 and an abandoning of highest hopes” [*Officers for Justice v. Civil Service Com.* (9th Cir. 1982)
4 688 F.2d 615, 624], as “it is the very uncertainty of outcome in litigation and avoidance of
5 wasteful and expensive litigation that induce consensual settlements.” *Id.* at 625.

6 In analyzing PAGA settlements, it is important that “the relief provided for under the
7 PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit
8 the public[.]” *O’Connor v. Uber Techs., Inc.* (N.D. Cal. Aug. 18, 2016) 201 F.Supp.3d 1110,
9 1133. The court in *O’Connor* suggests that courts can look at the factors outlined in *Hanlon v.*
10 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, in evaluating a PAGA settlement. See *O’Connor*,
11 201 F.Supp.3d at 1134.

12 Under *Hanlon*, a court must conclude that a settlement is “fundamentally fair, adequate,
13 and reasonable” before it approves of the settlement. *Hanlon*, 150 F.3d at 1026. The analysis in
14 *Hanlon* is typically used in federal district courts to evaluate proposed class action settlements. In
15 California state courts, settlements are more typically evaluated under the standards set forth in
16 the cases *Dunk v. Ford Motor Co.* (“*Dunk*”) (1996) 48 Cal.App.4th 1794, and *Kullar v. Foot*
17 *Locker Retail, Inc.* (“*Kullar*”) (2008) 168 Cal.App.4th 116. Similar to *Hanlon*, *Dunk* found that
18 in deciding whether to approve a proposed class action settlement under California Code of Civil
19 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
20 *Dunk*, 48 Cal.App.4th at 1801.

21 A proposed settlement is presumed fair under the following circumstances: (1) the Parties
22 reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient
23 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
24 and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802. Here, as will be shown
25 herein, all of these elements bearing on the fairness of the proposed settlement—with the
26 exception of the percentage of objectors, which is not applicable in a PAGA action⁵—are present.

27 _____
28 ⁵ The PAGA provides no notice or claim procedures. Therefore, objections, other than the
potential objection of the LWDA, are not contemplated in PAGA actions. See *Baumann v. Chase*

1 *Kullar* instructs that an understanding of the amount in controversy is an important factor
2 into whether the settlement “of the class members’ claims is reasonable in light of the strengths
3 and weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker*
4 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *see also* *Munoz v. BCI Coca-Cola Bottling Co. of*
5 *Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the
6 strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”
7 *Id.* In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to “decide
8 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of
9 the attorneys.” *Kullar*, 168 Cal.App.4th at 133.

10 **a. The Settlement is Fair, Reasonable, and Adequate**

11 **i. The Settlement was Reached as a Result of Arm’s Length Negotiations**

12 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
13 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
14 nature. At the mediation, counsel for the Parties conducted extensive arm’s length settlement
15 negotiations until the settlement was reached.

16 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

17 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
18 before reaching the proposed settlement, and engaged in sufficient investigation, research and
19 discovery to support the settlement. The significant amount of discovery, the production and
20 analysis of hundreds of documents and thousands of lines of data, and protracted settlement
21 negotiations through the mediations and in the discussions that followed were the substantial
22 bases upon which the Parties’ “clear view of the strengths and weaknesses of their cases” was
23 made possible. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

24 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

25 Both Plaintiff’s Counsel and Defendant’s Counsel are particularly experienced in wage
26

27 *Inv. Servs. Corp.* (2014) 747 F.3d 1117, 1122 (“Unlike *Rule 23(c)(2)*, PAGA has no notice
28 requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA
action.”).

1 and hour employment law and class actions. Plaintiff's Counsel has significant experience in
2 litigating unpaid wages, unprovided meal and rest periods, and overtime claims. Indeed,
3 Plaintiff's Counsel was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which
4 is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court* (2012)
5 53 Cal.4th 1004. (Mara Dec. ¶¶ 2-10). Plaintiff's Counsel has prosecuted numerous wage and
6 hour cases on behalf of employees for California Labor Code violations and thus are experienced
7 and qualified to evaluate the claims and to evaluate settlement versus trial on a fully informed
8 basis, and to evaluate the viability of the defenses. This experience instructed Plaintiff's Counsel
9 on the risks and uncertainties of further litigation and guided their determination to endorse the
10 proposed settlement. Defendant's Counsel practices labor and employment law and have
11 represented numerous employers in similar types of claims. Accordingly, both Parties' Counsel
12 are experienced in wage and hour employment law and class actions.

13 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

14 An understanding of the amount in controversy is an important factor into whether the
15 settlement of the Aggrieved Employees' "claims is reasonable in light of the strengths and
16 weaknesses of the claims and the risks of the particular litigation." *Kullar*, 168 Cal.App.4th 116,
17 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
18 409. The most important factor in this regard is "the strength of the case for plaintiffs on the
19 merits, balanced against the amount offered in settlement." *Id.*

20 In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to
21 "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
22 that of the attorneys." *Kullar*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit
23 statement of the maximum amount the Aggrieved Employees could recover if it prevailed on all
24 its claims, provided there is a record which allows "an understanding of the amount that is in
25 controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409.
26 Put differently, "as the court does when it approves a settlement as in good faith under *Code of*
27 *Civil Procedure* section 877.6, the court must at least satisfy itself that the [PAGA] settlement is
28 within the 'ballpark' of reasonableness." *Kullar*, 168 Cal.App.4th at 133, citing *Tech-Bilt v.*

1 *Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.

2 As the following subsections show, the Parties' investigation and discovery revealed a
3 healthy discount was needed in order to reach a settlement.

4 **1. The Settlement is Fair and Reasonable Based on the Strengths**
5 **of Plaintiff's Case and the Risks and Costs of Further**
6 **Litigation**

7 There are approximately 210 Aggrieved Employees who worked approximately 6,059 pay
8 periods. (Exhibit 1 at Section III, Paragraph A(1), Pages 5-6; *see also* Waldron Dec. ¶ 5).

9 Plaintiff claims that there are five (5) potential violations under § 2699(f)(2) – failure to
10 provide lawful meal breaks, failure to provide lawful rest breaks, failure to pay all wages owed,
11 failure to provide accurate itemized wage statements, and failure to pay wages owed at the time
12 of termination – of the Labor Code sections which give rise to PAGA penalties. (Mara Dec. ¶ 32).

13 The PAGA allows the private enforcement of certain California Labor Code sections
14 relating to wage and hour violations. PAGA Section 2699(f)(2) reads, in part, as follows:

15 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per
16 pay period for the initial violation and two hundred dollars (\$200) for each
17 aggrieved employee per pay period for each subsequent violation.

18 California courts have interpreted this language to require notice to the employer that an initial
19 violation occurred before penalties for subsequent violations could be assessed. *See Amaral v.*
20 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1210. Under *Amaral*, “subsequent” has a
21 special meaning within the California Labor Code that triggers heightened statutory penalties only
22 after an employer has learned that its conduct violates the Labor Code—that is, pursuant to
23 *Amaral*, courts may reject a purely chronological understanding of the term “subsequent” and
24 interpret its use in California Labor Code to require that “the employer has been notified that it is
25 violated a Labor Code provision” before higher penalties are triggered. *Amaral*, 163 Cal.App.4th
26 at 1157, 1207–09. Each of Plaintiff's claims, with the exception of Plaintiff's claims waiting time
27 penalties, occurred at least once in every pay period. Plaintiff's claims for waiting time penalties
28 only occurred in approximately 86 pay periods. Thus, Defendant's maximum exposure under
§2699(f)(2) is \$2,432,200:

1 \$100 x 4 PAGA violations x 6,059 pay periods = \$2,423,600

2 \$100 x 1 PAGA violations x 86 pay periods = \$8,600

3 Maximum Exposure: \$2,432,200

4 (Mara Dec. ¶ 33).

5 Defendant contends that Plaintiff would not be allowed to “stack” PAGA penalties. If the
6 Court were to agree with this and only award one PAGA penalty per pay period, Defendant’s
7 exposure would be \$605,900 (6,059 pay periods x \$100 = \$605,900). (Mara Dec. ¶ 34).

8 In exploring the settlement of any PAGA action, the critical fact that the Court is permitted
9 discretion to award a “lesser amount than the maximum penalty amount” must be heavily taken
10 into consideration. *Lab. Code*. § (e)(2). Unlike the underlying violations upon which the plaintiffs
11 seek to impose PAGA civil penalties, there is no set amount the Court must levy on an employer
12 Defendant it finds to have violated the underlying claims. Under “the facts and circumstances of
13 the particular case,” the Court is permitted wide discretion to slash civil penalty amounts. This
14 discretion and how a particular court will exercise it is always an unknown variable in predicting
15 the dollar outcome of any PAGA action when evaluating settlement. Under its wide discretion to
16 award lesser amounts, a Court could side with Plaintiff on his claims and find that the underlying
17 Labor Code rights were violated but decide to substantially moderate the imposition of PAGA
18 penalties for those violations.

19 Courts have used this discretion to massively discount PAGA penalties imposed where it
20 found the defendant employer took its Labor Code obligations seriously, even if the employer fell
21 short of complying with them. In *Thurman v. Bayshore Transit Management, Inc.* (“*Thurman*”)
22 (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum penalty
23 allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the
24 maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th
25 1112, 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has
26 taken its obligations to comply with the law seriously. *Id.* In *Kaanaana v. Barrett Business*
27 *Services, Inc.* (2018) 29 Cal.App.5th 778, 788 & 809, the Court of Appeals took no issue with the
28 trial court exercising its discretion in slashing PAGA civil penalties for violations of Labor Code

1 section 512 to 13% of the total recoverable penalties. In *Carrington v. Starbucks* (2018) 30
2 Cal.App.5th 504, the plaintiff requested penalties in excess of \$70 million, based on a \$25 to \$75
3 penalty per violation. The court reduced the award, stating that awarding the maximum penalty
4 would be unjust, arbitrary, and oppressive based on Starbucks's good faith attempts to comply with
5 the law. The lower court's reduced award of \$150,000 was affirmed on appeal, which reflects .2%
6 of the total recoverable penalties sought.⁶

7 Thus, the projected value of PAGA claims is a variable value of two predictive indexes:
8 (1) the likelihood that Plaintiff will succeed in proving the underlying claims were violated, and
9 (2) the extent to which the Court will impose Civil Penalties permitted under PAGA. This is to be
10 distinguished from the projected values of class claims of Labor Code and Wage Order violations.
11 For instance, and relevant to the underlying claims in this action, class claims alleging California's
12 meal and rest break, minimum wage, and wage statement laws were violated, the predictive value
13 for purposes of determining whether settlement values are fair and reasonable rests only on the
14 likelihood of prevailing on the merits and the exposure related thereto, as there is no judicial
15 discretion to award lesser amounts owed for adjudged violations. It is for these reasons that, in
16 assessing and judging the reasonableness of PAGA settlements, the touchstone feature is the
17 "remedial purpose" achieved in the settlement amount, which takes into account the defendant
18 employer's "good faith" belief that it complied with the laws claimed to be violated. *Bernstein*,
19 365 F. Supp. 3d at 991.

20 Based on this blind spot of how the Court would exercise its discretion in addition to the
21 likelihood the Court would side with Plaintiff on the underlying Labor Code violations, Plaintiff
22 necessarily had to discount the settlement value off of the full PAGA penalty amounts. As
23 discussed earlier, Defendant argues its meal and rest policies and practices track the Labor Code
24 and Wage Order requirements and the standards articulated in *Brinker* and *Augustus*. Likewise,

26 ⁶ These instances of judicial discretion imposing massive reductions in recoverable penalties is to
27 be contrasted with *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) 365 F.Supp. 3d 980, 992, where
28 the trial court reduced the recoverable PAGA penalties by only 25%. *Bernstein*, however, only
amplifies the predictive blind spot of how a court can exercise its wide-discretion to reduce full
PAGA exposure.

1 Defendant argues that it pays employees for all hours worked and provides accurate itemized
2 wage statements. Thus, even if Defendant were proven wrong on these fronts and ultimately found
3 to have violated the underlying Labor Code claims, the Court could find a good faith reliance on
4 California case law justifiably instructed Defendant's actions and thereby impose a massive
5 reduction of PAGA penalties akin to the Courts in *Kaanaana* and *Carrington*.

6 Good faith settlement negotiations, after discovery and investigation, necessarily had to
7 focus on amounts less than the potential exposure. The proposed PAGA settlement here of
8 \$135,500, which takes into account the realistic exposure, the very real impediments of
9 succeeding on the merits, the risk of further litigation, and, even if Plaintiff succeeded on the
10 merits, persuading against a robust discount, reflects an appropriate, balanced, and reasonable
11 settlement value of the PAGA claims. The settlement amount fits within the "remedial purpose"
12 of PAGA of enforcing compliance with important employee protections in the Labor Code and
13 Wage Order.

14 **b. The Court Should Approve the Requested Attorneys' Fees and Costs**

15 The PAGA provides that any employee who prevails is entitled to an award of reasonable
16 attorneys' fees and costs. Cal. Lab. Code § 2699(g)(1). The PAGA statute provides for approval
17 of the settlement but does not specifically provide that the amount or reasonableness of attorneys'
18 fees and costs is subject to court approval. Cal. Lab. Code §§ 2699(g)(1) and (l)(2). A reasonable
19 interpretation of the PAGA is that the amount of attorneys' fees need only be addressed by a court
20 when the LWDA objects because there is no need to provide absent employees' due process rights
21 in a PAGA settlement since the aggrieved employees do not have their own substantive rights.
22 *See Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 436. And, the
23 LWDA, as the real party in interest and the primary beneficiary of the settlement, has an
24 opportunity to review the settlement before it is approved. Cal. Lab. Code § 2699(l)(2). Unlike a
25 class action, where the purpose of court approval is to protect absent class members, in a PAGA
26 settlement the real party in interest, the LWDA, has the opportunity to review and consider the
27 reasonableness of the fees and object before the court hears the approval motion. If a court
28 considers the reasonableness of the attorneys' fees requested, it should be guided by the common

1 fund doctrine typically applied in class action cases.

2 **i. The Requested Attorneys' Fee and Cost Award is Within the Range**
3 **of Fees Approved in Comparable Common Fund Cases**

4 California state and federal courts have recognized that an appropriate method for
5 determining an award of attorneys' fees is based on a percentage of the total value of benefits to
6 class members by a settlement, also known as the "common fund" method. *Serrano v. Priest*
7 (1977) 20 Cal.3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478;
8 *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. "Despite its primacy, the
9 lodestar method is not necessarily utilized in common fund cases." *Lealao v. Beneficial*
10 *California, Inc.* (2000) 82 Cal.App.4th 19, 27 [*Lealao*]; *Dunk*, 48 Cal. App. 4th at 1808 (the
11 percentage method calculates attorney fees as a reasonable percentage of the common fund and
12 may be used where the amount of the settlement is a certain or easily calculable sum of money).
13 The purpose of the common fund/percentage approach is to "spread litigation costs proportionally
14 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone."
15 *Vincent*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court
16 stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which
17 others derive benefits may require those passive beneficiaries to bear a fair share of the litigation
18 costs."

19 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105/, 110, the
20 California Supreme Court recognized that the common fund doctrine has been applied
21 "consistently in California when an action brought by one party creates a fund in which other
22 persons are entitled to share." The reasons for applying the common fund doctrine include:
23 "...fairness to the successful litigant, who might otherwise receive no benefit because his recovery
24 might be consumed by the expenses; correlative prevention of an unfair advantage to the others
25 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
26 encouragement of the attorney for the successful litigant, who will be more willing to undertake
27 and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured
28 that he will be properly and directly compensated should his efforts be successful." *Id.*

Assessing an appropriate fee based on a percentage of the fund involves taking into

1 account “all of the circumstances of the case.” There is sparse case law addressing the evaluation
2 of reasonable attorneys’ fees in employee representative or class actions as appellate cases
3 addressing fees arise almost exclusively where awards were challenged by defendants or objectors
4 – the only parties with standing to appeal. *Wershba*, 91 Cal.App.4th at 236. Several studies of
5 class action fee awards have found that the median common fund fee award is approximately one-
6 third of the total settlement fund. *See, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43,
7 66, n.11 (numerous studies have shown that “fee awards in class actions average around one-third
8 of the recovery.”); Reagan W. Silber and Frank E. Goodrich, *Common Funds and Common*
9 *Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 546 ; T. Willging,
10 L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final*
11 *Report to the Advisory Committee on Civil Rules*, 90 (1996) (finding that attorneys’ fees in class
12 litigation “were generally in the traditional range of approximately one-third of the total
13 settlement”).

14 Here, PAGA Counsel applies for an award of attorneys’ fees in the sum of \$45,162 (which
15 is 33.33% of the Gross Settlement Amount). The requested fee falls in the mid-range of percentage
16 class fee awards, which commonly range from 20% to 50% of a common fund, and constitutes
17 fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
18 contingent basis and compensates PAGA Counsel for their efforts, as well as the result achieved
19 for the benefit of the State of California and the Aggrieved Employees. (Mara Dec. ¶ 35).

20 Numerous state and federal courts in California routinely approve fee requests equal to or
21 greater than 33.33% of the common fund. In short, PAGA Counsel’s fee request of \$45,162 is in
22 line with awards in California and nationwide and demonstrates that PAGA Counsel’s fee request
23 is consistent with market rates and is reasonable.

24 **ii. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee**

25 PAGA Counsel’s fee request is reasonable when calculated using the lodestar method.
26 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
27 spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977)
28 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a “multiplier” to account for a

1 range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree
2 of success achieved. *Id.* at 49; *see also Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM*
3 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92
4 Cal.App.4th 819, 834, (“[t]here is no ... rule limiting the factors that may justify an exercise of
5 judicial discretion to [adjust the] lodestar”).

6 PAGA Counsel has worked 146.5 hours to date on this case and have calculated the
7 lodestar fee on those hours at \$108,245 at rates reflecting those currently earned in the
8 marketplace. (Mara Dec. ¶ 36; Exhibit 5, Summary of Time and Costs). All of the work and tasks
9 performed by PAGA Counsel were reasonable and necessary to the prosecution of this case and
10 are reflected in the result achieved.

11 PAGA Counsel respectfully requests a fee of \$45,162, which, based on the total attorney
12 hours expended (146.5) and applicable hourly rates would result in a lodestar fee of \$108,245. As
13 Class Counsel’s lodestar fee is in excess of their fee request, a multiplier on their lodestar fee is
14 not sought herein. (Mara Dec. ¶ 39). In fact, the requested fee results in a so-called “negative
15 multiplier” which suggests the percentage of the fund amount is reasonable and fair. *See Chun-*
16 *Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software,*
17 *Inc. Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at
18 *16.

19 **iii. PAGA Counsel’s Hourly Rates are Reasonable**

20 PAGA Counsel’s hourly rates are between \$650 and \$850 and are in line with rates
21 typically approved in wage and hour class action and PAGA litigation and which rates have been
22 approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda,
23 Orange and San Diego County Superior Courts. (Mara Dec. ¶ 40; Exhibit 2, Westlaw Court
24 Express’s Legal Billing Report, Volume 14, Number 3, California Region for December 2012;
25 Exhibit 3, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC
26 GIC834348; Exhibit 4, 2012 National Law Journal Survey of Hourly Billing Rates for Partners
and Associates)).

27 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
28

1 experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson*
2 *v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining
3 a reasonable hourly rate, courts may consider factors such as the attorney’s skill and experience,
4 the nature of the work performed, the relevant area of expertise and the attorney’s customary
5 billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.

6 PAGA Counsel’s skill and experience support their hourly rates. Their practice is limited
7 exclusively to litigation, focusing on the representation of employees in wage and hour class
8 action and PAGA matters. As prominent attorneys in the field of wage and hour employment
9 litigation, Plaintiff’s counsel continually monitors the prevailing market rates charged by both
10 defense and plaintiff law firms and set the billing rates of their attorneys and paralegals/law clerks
11 to be consistent with the prevailing market rates in the private sector for attorneys and staff of
12 comparable skill, qualifications and experience. Other wage and hour attorneys working as class
counsel before California courts charge comparable if not higher rates.

13 **iv. PAGA Counsel’s Total Hours are Reasonable**

14 In determining a lodestar fee, reasonable hours include, in addition to time spent during
15 litigation, the time spent before the action was filed, including time spent interviewing clients,
16 investigating the facts and the law, and preparing the initial pleadings.⁷ Further, the fee award
17 should include fees incurred to establish and defend the attorneys’ fee claim. *Serrano v. Priest*
18 (1982) 32 Cal.3d 621, 639 (“*Serrano IV*”). PAGA Counsel has expended a total of 146.5 hours
19 on this case. The work performed by PAGA Counsel in order to achieve a settlement that will
20 provide valuable consideration to the State of California and the Aggrieved Employees is
21 summarized by PAGA Counsel in the declarations submitted herewith. (Mara Dec. ¶¶ 41, 44; *see*
22 *also* Exhibit 5). All of the tasks and work performed were reasonable and necessary to the
23 prosecution of this case.

24 **v. Costs of Litigation**

25 PAGA Counsel seeks reimbursement of the litigation costs and expenses of \$22,152.97.
26 These costs were all reasonable and necessary to the prosecution of this case and the results
27

28 ⁷ *See New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.

1 achieved, and are fair, reasonable, and unopposed by Defendant. (Mara Dec. ¶ 46; Exhibit 5).

2 **c. The Court Should Approve the Requested PAGA Representative Payment**

3 Plaintiff's Counsel seeks approval of a PAGA Representative Payment for the named
4 Plaintiff in the sum of \$2,500. Case law supports the award of incentive payments in private
5 attorney general actions. The Ninth Circuit has recognized that a named Plaintiff's "willingness
6 to act as a private attorney general" may justify the award of an incentive payment. *Rodriguez v.*
7 *West Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management*
8 *Sub LLC*, 2013 WL 12415482 (E.D. Cal., Sep. 6, 2013), the United States District Court for the
9 Eastern District of California approved a similar PAGA-only settlement and awarded a service
10 payment to the representative plaintiff in recognition of his efforts.

11 The traditional bases for awarding incentive awards in class settlements support the award
12 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
13 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive
14 awards and held that "the rationale for making enhancement or incentive awards to named
15 Plaintiffs is that he or she should be compensated for the expense or risk he has incurred in
16 conferring a benefit" on others. *Id.* at 806. That rationale applies synonymously in this action.
17 Without Plaintiff's efforts, there would be no recovery at all. The requested PAGA Representative
18 Payment is reasonable in light of the benefits Plaintiff has conferred upon the LWDA and
19 Aggrieved Employees.

20 There are also other factors supporting the request that Plaintiff receive \$2,500. The
21 requested award is appropriate and reasonable based upon Plaintiff's time and effort expended on
22 this case, the risks he faced, and the outcome of this case. Plaintiff has submitted a declaration
23 detailing the efforts and time he expended on behalf of the LWDA and Aggrieved Employees in
24 order to advance this case to its successful conclusion. There is no question that this case would
25 not have reached the same result but for Plaintiff's involvement and input at all stages of the
26 litigation.

27 Moreover, here, Plaintiff was a current employee when he decided to file this case and pursue
28 claims against Defendant. Plaintiff took on the risk that his employment may be affected by filing

1 this case and decided to file his case anyway to remedy issues he perceived as affecting not only
2 himself by other employees. He put the interests of the LWDA and Aggrieved Employees ahead
3 of his own in filing this lawsuit.

4 Plaintiff has spent approximately 50 hours on this case. Plaintiff searched for and provided
5 his attorneys with documents from his employment with Defendant. These documents included
6 Plaintiff's paycheck stubs; screen shots of Plaintiff's timecards; documents showing Plaintiff's
7 flag hours; Audi's employee handbooks; Audi's alcohol and drug policy; Audi's cellular phone
8 policy; Audi's computer, e-mail, voicemail, and internet policy; Audi's confidentiality agreement;
9 Audi's meal and rest period policies; Audi's paid vacation and sick leave policy; Audi's personal
10 appearance and behavior policy; Audi's parking policy; Audi's social media policy; Audi's
11 dealership trade secrets and confidential information policy; and Audi's technician pay plan.
12 Plaintiff was in constant communication with his counsel and was apprised of and involved in
13 every aspect of this lawsuit. Plaintiff's efforts in pursuing this case are evident by the significant
14 recovery he obtained for the LWDA and Aggrieved Employees.

15 It should be noted that service awards are particularly important to plaintiffs in wage and
16 hour cases because they promote the important public policies underlying the wage and hour laws.
17 This strong policy is codified in California Labor Code section 90.5 which provides that "[i]t is
18 the policy of this state to vigorously enforce minimum labor standards in order to ensure
19 employees are not required or permitted to work under substandard unlawful conditions . . ." Cal.
20 Lab. Code § 90.5. Nonetheless, the California Supreme Court has noted that "retaliation against
21 employees for asserting statutory rights under the Labor Code is widespread," despite anti-
22 retaliation statutes designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443,
23 460–61. In this context, class representatives should be rewarded for assuming the risk of
24 retaliation for the sake of class members. *See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228
25 F.R.D. 174, 187.

26 In addition, there are few individuals that are willing to act as a PAGA representative and
27 provide the work, diligence, and willingness to assume a substantial financial risk should
28 Defendant have prevailed in this case. Plaintiff's willingness to assume the financial risk is

1 significant. Plaintiff risked a potential judgment taken against him for attorneys' fees and costs if
2 this matter had not been successfully concluded. Case law holds that a losing party is liable for
3 the prevailing party's costs, *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000), and in
4 some wage and hour actions, such as this case, pursuant to California Labor Code § 218.5, for
5 attorneys' fees as well. Though the fee agreement provides that Class Counsel would pay such
6 costs, Plaintiff would nevertheless have had a cost bill entered against him leaving him ultimately
7 liable for potentially hundreds of thousands of dollars in the unexpected possibility that Class
8 Counsel did not meet their obligation to cover those costs. Unfortunately, there have been several
9 judgments entered against class representatives, e.g. *Koehl v. Verio, Inc.* (2006) 142 Cal.App.4th
10 1313, 1328 (a wage and hour class action where Defendant prevailed at trial, the named plaintiffs
11 were held liable, jointly and severally for the Defendant's attorneys' fees); *Whiteway v. Fedex*
12 *Kinkos Office & Print Services, Inc.*, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. 2007) (a wage and
13 hour misclassification case lost on summary judgment, after the case was certified, the named
14 Plaintiff was assessed costs in the sum of \$56,788.). The risk of payment of Defendant's costs,
15 alone, is a sufficient basis for an award of the requested enhancement sum. Few individuals are
16 willing to take this risk, and it is clear that Plaintiff, here, championed a cause on behalf of others
17 with potentially huge monetary risks.

18 Moreover, the modern-day work force is mobile, with employees holding several jobs
19 over the span of their career. It is also true that prospective employers in this computer, high-tech
20 age "Google" and/or do extensive background checks and have access to court databases to see if
21 applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiff's conduct will not be
22 lost on a prospective employer who has to choose between an applicant who has never sued an
23 employer and one who has done so. The requested award far from compensates Plaintiff for
24 opportunities he may lose in the future because of the exercise of a Constitutional right to Petition
25 the Courts for redress of a grievance.

26 Based on the foregoing, the \$2,500 PAGA Representative Payment to the named Plaintiff
27 is fair, appropriate, and justified in light of the work performed, risks undertaken for payment of
28

1 fees and costs if this case had not been successfully concluded, stigma on future employment
2 opportunities, and the benefits to the LWDA and Aggrieved Employees.

3 **d. The Administration Costs are Reasonable**

4 The Parties agreed to hire ILYM as the Administrator.⁸ ILYM will be responsible for
5 formatting, printing, and mailing an agreed upon Notice of Settlement of PAGA Action to be sent
6 along with the Individual Settlement Shares. It will also be responsible for updating addresses and
7 re-mailing checks returned as undeliverable, responding to Aggrieved Employee inquiries, and
8 answering questions from the Parties. ILYM also provided a declaration for filing with the
9 settlement motion. ILYM seeks a fee of \$3,650 for the services it will provide in conjunction with
10 this settlement. (*See* Mullins Dec. ¶ 7). Plaintiff now requests that the Court approve a fee of
11 \$3,650 to ILYM for services to be rendered. Following the grant of approval, ILYM will calculate
12 and mail the Individual Settlement Share checks to the Aggrieved Employees, disburse other
13 payments as ordered by the Court, and perform such other duties as set forth in the Settlement
14 Agreement. ILYM's fee of \$3,650 for services rendered and to be rendered is fair and reasonable
15 and should be granted.

16 **VI. CONCLUSION**

17 For the reasons stated herein, the Court should grant Plaintiff's motion in its entirety.

18
19 Dated: November 18, 2025

MARA LAW FIRM, PC

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21 

David Mara, Esq.

Jill Vecchi, Esq.

22 Representing Plaintiff MATTHEW BAUMANN on
23 behalf of all others similarly situated, and on behalf
24 of the general public.

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26
27
28 ⁸ *See* Mullins Dec., which outlines ILYM's qualifications and experience.