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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN DIEGO**
12 **(UNLIMITED JURISDICTION)**

13 RAYMOND REED, on behalf of himself and all
14 others similarly situated, and the general public,
and as an “aggrieved employee” on behalf of
15 himself and other similarly situated “aggrieved
employees” under the Labor Code Private
16 Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 TRAVELER'S CONVENIENCE, INC., a
20 California corporation; and DOES 1–50,
21 inclusive,

22 *Defendant(s).*

Case No. 24CU011598C

**PLAINTIFF RAYMOND REED'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Hearing Date: July 10, 2026
Hearing Time: 10:15 a.m.
Hearing Dept.: C-66, The Honorable
Wendy M. Behan

Action filed: September 17, 2024



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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **APPROVAL OF PAGA SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiff Raymond Reed (“Plaintiff” or “Reed”) submits this memorandum of points and
5 authorities in support of his motion for approval of the PAGA Settlement Agreement (the
6 “Agreement” or “PAGA Settlement” or “Settlement”)² for the civil penalties claim he brought
7 against Defendant Traveler's Convenience, Inc. (“Defendant”) under the Labor Code Private
8 Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). Plaintiff brings this
9 motion because Labor Code section 2699(l) of the PAGA requires Court approval of any civil
10 penalties sought as part of a proposed settlement agreement. Based on Plaintiff’s and his attorneys’
11 investigation and evaluation, Plaintiff is of the opinion that the PAGA Settlement Agreement
12 represents a reasonable and adequate settlement of strongly disputed claims and is in the best
13 interest of the State of California, the Aggrieved Employees, and Plaintiff. Through this motion,
14 therefore, Plaintiff respectfully requests this Court to approve the PAGA Settlement Agreement
15 for resolution of the PAGA claim. Plaintiff seeks division of the \$60,000.00 Gross Settlement
Amount as follows:

Item	Amount
PAGA Counsel Fees Payment	\$20,000.00
PAGA Counsel Litigation Expenses Payment	Up to \$11,500.00
Administrator’s Expenses Payment	Up to \$5,000.00
PAGA civil penalties (Net Settlement Amount)	\$23,500.00
35% to Aggrieved Employees	\$8,225.00
65% to LWDA	\$15,275.00
Gross Settlement Amount	\$60,000.00

22 **II. FACTUAL AND PROCEDURAL BACKGROUND**

23 Defendant operates a restaurant located in San Diego and provides catering services to
24 several hotels that house refugees. DS, ¶ 3. Defendant employed Plaintiff as a delivery driver
25 from about July 31, 2023 until March 12, 2024. *Id.*

26
27
28 ² The PAGA Settlement Agreement is attached as **Exhibit** (“Ex.”) **1** to the Declaration of David Spivak (“DS”), which is submitted herewith under a separate cover.



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1 **A. Plaintiff's Written Notice to the State of California**

2 Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under
3 PAGA. By letter dated August 7, 2024, Plaintiff, on behalf of himself and other aggrieved hourly
4 employees gave written notice by certified mail to the Labor and Workforce Development
5 Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code alleged
6 to have been violated, including the facts and theories to support the alleged violations. DS, ¶ 4,
7 Ex. 3.

8 **B. Plaintiff's PAGA Claim**

9 Plaintiff and the Aggrieved Employees are subject to arbitration agreements with
10 Defendant. Plaintiff filed his lawsuit in San Diego County Superior Court on September 17, 2024.
11 DS, ¶ 5, Ex. 4. On October 15, 2024, Plaintiff filed a First Amended Complaint ("1AC") adding
12 a claim for civil penalties under PAGA. DS, ¶ 5, Ex. 5. Shortly after Plaintiff served his first set
13 of discovery requests, the Parties agreed to stay formal discovery and participate in mediation.
14 Defendant denies all of Plaintiff's allegations and strongly contends that its wage and hour
15 policies, practices, and procedures are fully compliant with all applicable laws. *Id.*

16 **C. Mediation**

17 On April 09, 2025, the Parties participated in mediation with mediator Ronald S. Prager
18 in an attempt to resolve the PAGA claim. The Parties engaged in arm's-length negotiations and
19 ultimately reached a resolution of the PAGA claims asserted in the Action. Plaintiff also agreed
20 to request a dismissal of the class allegations. The PAGA Settlement Agreement was reached
21 after exchanges of data, information, and documents, and is a result of extensive arms-length
22 negotiations. The Parties conducted informal discovery for purposes of potential resolution
23 through which they ascertained the size of the aggrieved employee group and the number of pay
24 periods worked by them during the PAGA Period to ascertain the total value of Plaintiff's PAGA
25 claim. Now that the parties have finalized the PAGA Settlement Agreement, Plaintiff submits it
26 to this Court for approval. DS, ¶ 6.

27 **III. OVERVIEW OF SETTLEMENT**

28 **A. "Aggrieved Employees" Definition**

 The Aggrieved Employees are all persons employed by Defendant in California and
classified as hourly, non-exempt employee who worked for Defendant during the PAGA Period



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1 of August 7, 2023 through Court approval of the Agreement. Agreement, ¶¶ 1.4 and 1.18.

2 **B. Monetary Terms Of The Settlement**

3 Defendant will pay \$60,000.00 and no more as the Gross Settlement Amount. None of
4 the Gross Settlement Amount will revert to Defendant. The Administrator will make and deduct
5 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
6 in the Court's Approval order:

7 **To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than 33.33%,
8 which is currently estimated to be \$20,000.00 and a PAGA Counsel Litigation Expenses Payment
9 of not more than \$11,500. Defendant will not oppose requests for these payments provided that
10 they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or
11 motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court
12 approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment
13 less than the amounts requested, the Administrator will allocate the remainder to the PAGA
14 Penalties. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's
15 Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA
16 Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees
17 Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA
18 Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees
19 Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless,
20 and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of
21 any of these Payments.

22 **To the Administrator:** An Administrator Expenses Payment not to
23 exceed \$5,000 except for a showing of good cause and as approved by the Court. To the extent
24 the Administration Expenses are less or the Court approves payment less than \$5,000, the
25 Administrator will retain the remainder to the PAGA Penalties.

26 **To LWDA and Aggrieved Employees:** "PAGA Penalties" means the total
27 amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 35% to
28 the Aggrieved Employees, and the 65% to LWDA in settlement of PAGA claims. The PAGA



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1 Penalties will be calculated by deducting PAGA Counsel Fees Payment, PAGA Counsel Litigation
2 Expenses Payment, and the Administration Expenses Payment from the Gross Settlement
3 Amount.

4 See Agreement, ¶¶ 1.21, 3.1 – 3.2.

5 **C. Timing of Payments**

6 Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the
7 Administrator no later than 14 days after the Effective Date. “Effective Date” means the date by
8 when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving
9 the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the day the Court
10 enters Judgment. Within 14 days after Defendant funds the Gross Settlement Amount, the
11 Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment,
12 the Administration Expenses Payment, PAGA Counsel Fees Payment and PAGA Litigation
13 Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and PAGA Litigation
14 Expenses Payment shall not precede disbursement of Individual PAGA Payments. The
15 Administrator will issue checks for the Individual PAGA Payments and send them to the
16 Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall
17 prominently state the date (not less than 180 days after the date of mailing) when the check will
18 be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing
19 any checks, the Administrator must update the recipients’ mailing addresses using the National
20 Change of Address Database. Agreement, ¶¶ 1.9, 4.3, 4.4.

21 **D. Calculation of Settlement Shares**

22 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
23 amount of the Aggrieved Employees’ 35% share of PAGA Penalties by the total number of PAGA
24 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
25 multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods. Aggrieved
26 Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
27 Payment. Agreement, ¶ 3.2.

28 **E. The Releases**

Effective on the date when Defendant fully funds the entire Gross Settlement Amount,



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1 Plaintiff, Aggrieved Employees, and PAGA Counsel will release claims against all Released
2 Parties as follows:

3 **Plaintiff's Release.** Plaintiff and his respective former and present spouses,
4 representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors,
5 and assigns generally, release and discharge Released Parties from all claims for PAGA penalties
6 that were, or reasonably could have been, alleged, based on the facts contained in the Operative
7 Complaint and the PAGA Notice and for the PAGA Period including, but not limited to, failure
8 to pay wages; failure to pay overtime; failure to pay minimum wages; failure to provide meal
9 breaks; failure to provide rest breaks; failure to provide accurate wage statements; failure to
10 provide timely pay; failure to pay all wages at termination; failure to reimburse; and
11 misclassification ("Plaintiff's Release"). Plaintiff's Release does not extend to Plaintiff's
12 individual non-PAGA claims, any claims or actions to enforce this Agreement, or to any claims
13 for vested benefits, unemployment benefits, disability benefits, social security benefits, workers'
14 compensation benefits that arose at any time, or based on occurrences outside the PAGA Period.
15 Plaintiff shall enter into a separate confidential individual Settlement Agreement and Release of All
16 Claims ("Individual Settlement Agreement") with Defendant for an additional payment of
17 \$10,000 to settle his individual wage and hour claims and a California Civil Code Section 1542
18 release. Should the Court require submission of the separate Individual Settlement Agreement for
19 review, Plaintiff shall be permitted to publicly file the Individual Settlement Agreement to obtain
20 approval of this Settlement based on the Court's instructions.

21 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
22 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
23 and benefits, if any, of section 1542 of the California Civil Code, which reads:

24
25 **A general release does not extend to claims that the creditor or**
26 **releasing party does not know or suspect to exist in his or her**
27 **favor at the time of executing the release, and that if known by**
28 **him or her would have materially affected his or her settlement**
with the debtor or Released Party.



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1 The Parties agree that Plaintiff's Release and Waiver of Rights under California Civil Code
2 Section 1542 is limited to his PAGA claims and excludes any claims covered by the Individual
3 Settlement Agreement that Plaintiff and Defendant will enter into. The Parties also agree that
4 nothing in the Individual Settlement Agreement deprives Plaintiff's standing to obtain approval
5 of this Settlement or prevent Plaintiff from or waives Plaintiff's rights to recover the Individual
6 PAGA Payment that he is entitled to under this Agreement.

7 **Release by Aggrieved Employees:** All Aggrieved Employees are deemed to
8 release, on behalf of themselves and their respective former and present representatives, agents,
9 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
10 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA
11 Period facts stated in the Operative Complaint and the PAGA Notice.

12 **Release by PAGA Counsel:** PAGA Counsel release on behalf of their present and
13 former attorneys, employees, agents, successors and assigns the Released Parties from all claims
14 for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts
15 stated in the Operative Complaint and the PAGA Notice.

16 *see* Agreement, ¶ 5.

17 **F. Uncashed Checks**

18 The face of each check shall prominently state the date (not less than 180 days after the
19 date of mailing) when the check will be voided. The Administrator will cancel all checks not
20 cashed by the void date. Before mailing any checks, the Administrator must update the recipients'
21 mailing addresses using the National Change of Address Database. For any Aggrieved Employee
22 whose Individual PAGA Payment check is uncashed and cancelled after the void date, the
23 Administrator shall transmit the funds represented by such check to the California Controller's
24 Unclaimed Property Fund in the name of the Aggrieved Employee. Agreement, ¶¶ 4.4.1 and 4.4.3.

25 **IV. ARGUMENT**

26 **A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

27 In 2003, the California Legislature, concerned that state labor laws were not being
28 adequately enforced, enacted PAGA to deputize "aggrieved employees" to pursue civil penalties.
Kim v. Reins International California, Inc. (2020) 9 Cal.5th 73, 81. An aggrieved employee is a



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1 person who was employed by the defendant employer and who suffered one or more of the alleged
2 Labor Code violations. Lab. Code § 2699(c).

3 The Settlement of a PAGA claim requires court approval. Lab. Code §2699(l)(2). The
4 Court necessarily has broad discretion in making the decision to approve or reject a settlement
5 for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain
6 circumstances, penalties should be assessed and, if so assessed, the appropriate amount of
7 penalties based on the facts and circumstances of the particular case. *See id.* at § 2699(e)(1)-(2),
8 Although the PAGA does not set forth the particular standards against which a PAGA settlement
9 should be evaluated, the LWDA has provided guidance for approval that mirrors the standards
10 for evaluating class action settlements. *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist.
11 LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the LWDA’s guidance, that approval
12 of PAGA settlements may be had where the statutory requirements of the PAGA are met and the
13 terms of the settlement are fundamentally fair, reasonable, and adequate). The established
14 standards for evaluating whether class action settlements are fair, reasonable, and adequate
15 provide a familiar, useful framework for the Court to evaluate PAGA settlements and have been
16 adopted by several courts. *Id.*, *See Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n.4 (E.D.
17 Cal. 2017) (*citing Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688
18 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS
19 137272, *8-9 (N.D. Cal. 2017) (*citing Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
20 1998)); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v.*
21 *H.F.D. No. 55, Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast*
22 *Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

23 PAGA penalties are in the nature of a law enforcement penalty and are designed to
24 penalize an employer for its failure to comply with California’s wage and hour laws and
25 regulations and are not designed to compensate employees. *Ochoa-Hernandez v. CJADERS*
26 *Foods, Inc.*, 2010 WL 1340777 *1, *5 (E.D. Cal. Apr. 2, 2010). (“Unnamed employees need not
27 be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative
28



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1 PAGA claim. There is no indication that the unnamed plaintiffs can contest a settlement, if any,
2 reached between the parties.”).

3 PAGA settlements are subject to trial court review and approval. Lab. Code § 2699(1)(2).
4 “[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable,
5 and adequate in view of PAGA's purposes to remediate present labor law violations, deter future
6 ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.* (2021) 72
7 Cal.App.5th 56, 77. Many of the same factors used to evaluate the fairness of a class action
8 settlement can be “useful” in evaluating the fairness of a PAGA settlement. *Id.* These include:

- 9 1. Strength of plaintiff's case. This is the most important factor.
- 10 2. Expense associated with taking the case to trial, *i.e.*, the avoided cost of further
11 litigation.
- 12 3. Amount or value offered in settlement.
- 13 4. Extent of discovery completed and state of proceedings.
- 14 5. Experience and views of counsel.
- 15 6. Presence of a governmental participant.
- 16 7. Reaction of class members to proposed settlement.

17 *Moniz* suggests items 1-6 from this list may provide guidance in the PAGA setting; obviously
18 item 7 does not apply, because the non-party aggrieved workers in a PAGA case are entitled to
19 no notice and have no opt out rights. *Arias v. Superior Court* (2009) 46 Cal.4th 969.

20 In making the determination whether a settlement taken as a whole is fair, reasonable, and
21 adequate, the Court should be careful to still give “proper deference to the private consensual
22 decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual
23 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
24 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
25 collusion between, the negotiating parties” *Hanlon*, 150 F.3d at 1027. The law favors
26 settlement of lawsuits, particularly complex litigation cases where substantial resources can be
27 conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*



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1 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *In re Synocor ERISA Litigation*, 516 F.3d 1095,
2 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32 Cal.App.4th 344, 382 (1995).

3 **B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF**
4 **PAGA.**

5 PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here.
6 First, any civil penalties recovered, whether by judgment or settlement, must be distributed as
7 follows: 65 percent to the LWDA, and the remaining 35 percent to the aggrieved employees. *See*
8 *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i).
9 The Parties' Settlement so provides. Second, the LWDA must be given notice of the settlement
10 so that it may be heard before the Court decides whether to grant approval. Cal. Lab. Code §
11 2699(1)(2). Under the Settlement, notice is being given to the LWDA concurrently with the filing
12 of this motion. DS, ¶ 7, Ex. 6. As a result, Plaintiff has met all procedural statutory requirements
13 for settling a PAGA action.

14 **C. THIS COURT SHOULD APPROVE THE PAGA SETTLEMENT**
15 **AGREEMENT BECAUSE IT IS A FAIR, REASONABLE AND**
16 **ADEQUATE IN VIEW OF PAGA'S PUBLIC POLICY GOALS.**

17 To make its determination that the PAGA Settlement Agreement is fair, reasonable, and
18 adequate, the Court may consider several factors, including:

19 the strength of the Plaintiff's case, the risk, expense, complexity
20 and likely duration of further litigation, the risk of maintaining class
21 action status through trial, the amount offered in settlement, the
22 extent of discovery completed and the stage of the proceedings, and
23 the experience and views of counsel.

24 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Juarez*, 2017 U.S. Dist. LEXIS
25 137205, *5 n.4; *Ramirez*, 2017 U.S. Dist. LEXIS 137272, *8-9; *Gutilla*, 2017 U.S. Dist. LEXIS
26 41655, *7, n.4; *Smith*, 2018 U.S. Dist. LEXIS 67192, *6; *Rincon*, 2018 U.S. Dist. LEXIS 22886,
27 *6. However, this Court should begin its analysis with a presumption that the proposed settlement
28 is fair. "A presumption of fairness exists where: (1) the settlement is reached through arm's length
bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
intelligently; (3) counsel is experienced in similar litigation" *Dunk*, 48 Cal. App. 4th at 1802.

The PAGA Settlement Agreement warrants a presumption of fairness for several reasons:

(1) The Parties reached the Settlement through arm's-length bargaining with the aid of a respected



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mediator; (2) The Parties conducted sufficient investigation and discovery to allow Counsel and the Court to act intelligently. Plaintiff requested and Defendant provided the number Aggrieved Employees, the number of total pay periods during the PAGA Period, and all policies in effect during the relevant time period; and (3) Counsel for the Parties are experienced with PAGA cases. DS, ¶ 8. For the reasons discussed below, this Court should approve the PAGA Settlement Agreement.

1. The Settlement Is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Costs of Further Litigation

A court has discretion under PAGA to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). Defendant has posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. The PAGA claims face significant uncertainty. DS, ¶ 14. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a significant discount for settlement purposes. For mediation purposes, Plaintiff's counsel estimated a maximum exposure of approximately \$648,000.00 in civil penalties. DS, ¶ 14, Ex. 7. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. Plaintiff's counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. Although two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. *Id.* This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. DS, ¶ 14.

In preparation for mediation and during the settlement negotiations that followed, Defendant disclosed that there were approximately 79 potentially aggrieved employees and 1,886 pay periods. The maximum possible civil penalties under the PAGA is the total number of pay periods with one or more violations multiplied by the maximum possible civil penalty amount



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1 per pay period. Unfortunately for the employees concerned, the potential for recovery of the
2 maximum possible civil penalties depends on circumstances that are extremely unlikely
3 independently and in combination. It would depend on the Court stacking the maximum
4 recoverable civil penalties for failure to pay employees all earned wages, failure to provide meal
5 periods, failure to authorize and permit rest periods, failure to issue proper wage statements,
6 failure to timely pay wages per pay period for all 1,886 pay periods for all 79 potentially aggrieved
7 employees during the PAGA Period. Plaintiff's counsel is not aware of any California State court
8 decision awarding a plaintiff and the other aggrieved employees he represents multiple civil
9 penalties for the same pay period under different Labor Code provisions. Plaintiff's counsel had
10 to substantially discount the value of these claims in the settlement negotiations for this and a
11 variety of other reasons (outlined below). DS, ¶ 15.

12 **a. Risks Associated with Defendant's Financial Condition**

13 Defendant's financial condition was the key factor in reaching this Settlement. At the
14 mediation Defendant provided proof that it had lost its main government catering contract, its
15 main source of income, and owed large amounts to the State Board of Equalization. DS, ¶ 16.
16 Due to Defendant's financial condition, even if Plaintiff prevailed on all claims at trial, he may
17 never recover the damages due to the risk of insolvency. A very large civil penalties judgment
18 would almost certainly put the Defendant out of business and/or would interfere with the
19 company's ability to carry out its contractual obligations. *Id.* In short, the "poor financial health
20 of [the defendant will] seriously increase [] the chance that Plaintiffs would be left with nothing
21 if they continued to litigate their claims." *Torrise v. Tucson Elec. Power Co.* (9th Cir. 1993) 8
22 F.3d 1370, 1376 (the financial condition of defendant predominated in assessing the
23 reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244,
24 1256 (uncertainty concerning defendant's financial stability "strongly supports the
25 reasonableness of the settlement"); *Laguna v. Coverall N. Am., Inc.* (9th Cir. 2014) 2014 U.S.
26 App. LEXIS 10259 at *11 (finding potential insolvency to be additional risk that favors approval
27 of a class action settlement). Accordingly, Defendant's financial distress supports this settlement.
28 *Id.*



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b. **Risks Associated with Plaintiff's Claim That Defendant Failed To Pay All Earned Wages at the Correct Rates of Pay**

There is a risk that Plaintiff's claim that Defendant did not pay all wages at the correct rates of pay would be extremely limited at best, largely because Defendant's written policies throughout the relevant time period prohibited off-the-clock work. DS, ¶ 17. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). In its written employment policies, Defendant mandates that employees must record all time worked accurately on its time records and strictly prohibit employees from performing any work off-the-clock. DS, ¶ 17. Moreover, while Defendant disputes that off-the-clock work occurred, it contends that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable (stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendant contends that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of civil penalties seems unlikely with respect to this claim. DS, ¶ 17.

The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim. Generally, a court will not certify a class unless it can determine an appropriate methodology for all aggrieved employees. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a methodology for all aggrieved employees. DS, ¶ 18.

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c. Risks Associated with Plaintiff's Claim That Defendant Failed To Provide All Meal Periods

There are risks to Plaintiff's claims that defendant filed to provide all meal periods. DS, ¶ 19. Defendant contends that, to establish a violation of the meal period law, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641.

Defendant contends it did not impede or discourage Plaintiff, or any other employees, from taking their meal periods. DS, ¶ 19. Defendant's policies mandate that employees take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal breaks each day on their time records. *Id.* The time records that comprise the random sample Defendant produced to Plaintiff for purposes of mediation show that compliant meal periods were often taken. Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendant or each of the employees concerned. Accordingly, there is a significant risk that the recoverable amount of civil penalties for unprovided meal periods would be substantially reduced at trial. DS, ¶ 19.

d. Risks Associated with Plaintiff's Claim That Defendant Failed To Authorize or Permit Rest Breaks

There are risks to Plaintiff's claims that Defendant failed to authorize or permit rest breaks. DS, ¶ 20. Employers are not required to record rest periods and such periods are paid. *Id.* Defendant contends it provided non-exempt employees the opportunity to take rest periods in accordance with California law. Further, Defendant's written policies on meal and rest periods are consistent with the Wage Order. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. Managing such claims at trial



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1 has become exceedingly difficult.. Plaintiff will depend on sample witness testimony and surveys
2 to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw
3 makes such claims risky from a trial management and due process perspective. *See Duran v. U.S.*
4 *Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist
5 to support class certification, it may be possible to manage individual issues through the use of
6 surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382;
7 *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426; DS, ¶ 20.

8 **e. The Absence of Large Civil Penalty Awards under PAGA**

9 The sole source of money recoverable for the Aggrieved Employees and the State is civil
10 penalties available under PAGA. It allows employees to seek civil penalties for certain violations
11 of the Labor Code so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory.
12 As discussed above, Plaintiff’s maximum estimated liability exposure is based on the theories
13 that: (1) Every paycheck that Defendant issued to employees during the PAGA Period represents
14 a pay period in which every Aggrieved Employee suffered a minimum wage violation; (2) Every
15 paycheck that Defendant issued to employees during the PAGA Period represents a pay period in
16 which every Aggrieved Employee suffered an overtime wage violation; (3) Every paycheck that
17 Defendant issued to employees during the PAGA Period represents a pay period in which every
18 Aggrieved Employee suffered a meal period violation; and (4) Every paycheck that Defendant
19 issued to employees during the PAGA Period represents a pay period in which every Aggrieved
20 Employee suffered a rest period violation. There are no California state court decisions under the
21 PAGA to date with substantial awards of civil penalties. Plaintiff’s counsel is aware of only two
22 significant awards under the PAGA in a contested proceeding, both issued by federal district
23 courts, one of which was overturned on May 28, 2021.³ DS, ¶ 21.

24 ³ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
25 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were \$18,695,692.58.
26 In this regard, the district court stated:

27 The plain language of PAGA provides that “a court may award a lesser amount
28 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.” Cal. Lab. Code s



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1 Additionally, PAGA states a court has discretion to award a lesser amount than the
2 maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
3 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the
4 Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's
5 evidence of willful and intentional conduct. *Carrington v. Starbucks (2018) 30 Cal.App.5th 504*
6 (*"Carrington"*) illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
7 discounted award of only \$5 per violation because it was within the Court's discretion to
8 significantly reduce PAGA penalties even when there is a finding that a violation of the California
9 Labor Code occurred. Under *Carrington*, assuming 6 violations for each pay period for all 79
10 Aggrieved Employees, will result in a recovery of \$56,580 (6 x 1,886 x \$5 = \$56,580). DS, ¶ 22.

11 Moreover, judges have awarded extremely small sums to PAGA claimants in the past. In
12 *Ghrdilyan v. RJ Financial, Inc., Los Angeles Superior Court*, case number BC430633, the
13 employer underpaid commission overtime wages. The plaintiff sought in excess of \$9 million in
14 civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian
15 awarded approximately \$325,000 in civil penalties under the PAGA. In a similar PAGA case
16

17 2699(e)(2) (emphasis added). The relationship between the amount of total
18 damages and the amount of maximum PAGA penalties is certainly a
19 "circumstance" of the case under the term's ordinary meaning. The weight given
20 to that circumstance is greater in this case because Plaintiffs' PAGA penalties are
21 based on PAGA claims that are all derivative of Plaintiffs' individual claims except
22 for one. As a general matter, it would be excessively punitive for the penalty
imposed as a consequence of a discrete injury or set of injuries to exceed the
damages caused by that injury or set of injuries.

23 *Id.*, fnnt. 9. The district court further stated, "Virgin "has not presented any evidence that the full
24 penalty would be excessive in relation to its ability to pay," the weight of this factor is lessened."
Id.

25 In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
26 awarded approximately \$102 million in damages, primarily based on the Defendant's failures to
27 comply with the requirements of California Labor Code section 226. On May 28, 2021, the United
28 States Court of appeals for the Ninth Circuit overturned the decision finding that there is no
technical wage statement violation for a failure to list the rates and hours of pay associated with
adjustments to overtime pay. *Magadia v. Wal-Mart Assocs.*, No. 19-16184, 2021 U.S. App.
LEXIS 16070 (9th Cir. May 28, 2021).



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1 before the Los Angeles Superior Court, *Shields v. Security Paving Company, Inc.*, LA Superior
2 Court case no. BC492828, on October 24, 2017, the court awarded the prevailing PAGA plaintiff
3 civil penalties totaling only \$50.00. DS, ¶ 23, Exs. 8-11. A similar result could occur here. DS, ¶
4 23.

5 Defendant could also convince the Court to dismiss the claims due to unmanageability
6 because determining whether each Aggrieved Employee worked off the clock or why each
7 employee missed a meal or rest period would require separate mini-trials. *Id*; see *Mendiola v.*
8 *CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*, the court
9 dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D. Cal.
10 2014). The *Ortiz* court cited the “multitude of individualized assessments” that case would have
11 required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed
12 PAGA claims where, there are a large number of allegedly aggrieved individuals whose claims
13 require individual assessments. See, e.g., *Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at *3
14 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015); see
15 also *Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014) (bifurcating
16 trial of plaintiff’s claim from representative claims: “in light of the number of potential aggrieved
17 employees, judicial economy favors deferring the representative portion of the PAGA claim”);
18 *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015). Further, on
19 September 9, 2021, the California Court of Appeal issued a decision in *Wesson v. Staples The*
20 *Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), reh’g denied (Sept. 27, 2021) holding that
21 trial courts have authority to ensure that claims under PAGA are manageable, and that courts may
22 limit or strike unmanageable PAGA claims. DS, ¶ 24.

23 While the evidence gathered through Plaintiff’s discovery supports the merits of the
24 claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the risks
25 associated with the merits of Plaintiff’s claims, the uncertainties of complex litigation, the cost of
26 pretrial and trial proceedings, the Court’s discretion to lower the amount of penalties ultimately
27 awarded, and the secured benefit to the Aggrieved Employees and the LWDA promoting
28 compliance with the Labor Code. DS, ¶ 27.



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1 **2. Plaintiff's Counsel's Estimate of the Expense of Taking This Case To**
2 **Trial Also Favors This Settlement**

3 Plaintiff's counsel estimates that the cost of taking this case to trial will exceed \$500,000
4 in attorney fees and costs alone. DS, ¶ 25.

5 **3. Amount or Value Offered in Settlement.**

6 As stated above, Defendant offers \$60,000.00. The Parties have also agreed to a separate
7 payment to Plaintiff of \$10,000 for a general release of her individual (non-PAGA) claims
8 pursuant to a separate confidential settlement agreement. DS, ¶ 26. Plaintiff will present the
9 confidential agreement to the Court if requested. *Id.*

10 **4. The Extent of Investigation and Discovery Completed Provided Ample**
11 **Information to Enter into an Informed and Reasonable Settlement**

12 Plaintiff considered various sources of information in the lead-up to, during and after the
13 mediation that enabled him to achieve the PAGA Settlement Agreement at issue. Among other
14 things, Plaintiff considered the following:

- 15 • Defendant produced and Plaintiff reviewed his personnel file.
- 16 • Defendant produced and Plaintiff reviewed and analyzed time and payroll
17 records for over 10 Aggrieved Employees.
- 18 • Plaintiff requested that Defendant produce any and all relevant policies
19 regarding Plaintiff's claims and Defendant produced those policies in
20 effect during the relevant time period.
- 21 • Plaintiff analyzed the state of caselaw on PAGA claims for failure to pay
22 employees all earned wages, failure to provide meal periods, failure to
23 authorize and permit rest periods, failure to issue proper wage statements,
24 failure to timely pay wages, and related claims.
- 25 • Plaintiff surveyed the outcomes of PAGA cases that went to trial or
26 otherwise concluded before trial.

27 DS, ¶ 13.

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1 **5. The Experience and Views of Counsel Favor This Settlement**

2 As Plaintiff's counsel explains in his declaration, this settlement makes good sense based on his
3 experience litigating wage and hour actions, including claims seeking civil penalties under
4 PAGA. DS, generally.

5 **6. The Presence of a Governmental Participant Favors This Settlement.**

6 Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under
7 PAGA. By letters dated August 07, 2024, Plaintiff, on behalf of himself and other "aggrieved
8 employees" gave written notice by certified mail to the Labor and Workforce Development
9 Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code alleged
10 to have been violated, including the facts and theories to support the alleged violations. DS ¶ 4,
11 **Exhibit 3.** Plaintiff also notified this LWDA of this settlement. DS ¶ 7, **Exhibit 6.**

12 **7. The PAGA Settlement Agreement Is A Result of Extensive, Non-
13 Collusive Arm's Length Negotiations Between The Parties.**

14 The PAGA Settlement Agreement was reached only after litigation and arms' length
15 negotiations between experienced attorneys, which included a full day mediation with Ronald S.
16 Prager, a respected mediator. At all times, the negotiations were adversarial and contentious,
17 although still professional in nature. DS, ¶¶ 6 and 8.

18 **8. The Gross Settlement Amount Fairly, Reasonably, and Adequately
19 Awards Shares To Aggrieved Employees Because Each Aggrieved
20 Employee Will Be Paid Based on the Potential Extent of His or Her
21 Injury Compared to Other Aggrieved Employees**

22 Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis
23 depending on the number of pay periods Defendant employed them for during the PAGA Period.
24 Agreement, ¶ 28. With a total of approximately 79 Aggrieved Employees, the average estimated
25 individual Settlement Payment for each Aggrieved Employee is approximately \$104.11
26 (\$8,225/79) Aggrieved Employees). Although an average payment of \$104.11 per Aggrieved
27 Employee is not an enormous sum of money, it is an excellent result given the uncertainties this
28 lawsuit entails. It is also reasonable given the structure and purpose of the PAGA. The PAGA is
not a restitution statute with a traditional damages provision designed to restore victims to the
position they would have been in had the Labor Code violations not taken place. Rather, it is at
best a punishment statute designed to reduce future Labor Code violations. It provides for civil



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1 penalties only. DS, ¶¶ 28-29.

2 **9. Plaintiff's Counsel is Experienced in Similar Litigation.**

3 Plaintiff's counsel have considerable experience in class actions and wage and hour
4 litigation and is qualified to evaluate the PAGA claims, the value of settlement versus moving
5 forward with litigation, and viability of possible affirmative defenses. *See* DS, ¶¶ 9-12.
6 Declaration of Walter L. Haines ("Haines Decl.") ¶ 2.

7 **10. The Proposed Attorneys' Fees and Costs Are Fair, Adequate, and**
8 **Reasonable and Should Be Approved.**

9 "The law empowers the court to set the amount of fees independently without
10 disapproving the entire settlement." *Garabedian v. Los Angeles Cellular Telephone Co.* (2004)
11 118 Cal.App.4th 123, 129. The benchmark for determining attorney fees is reasonableness.
12 *Karton v. Ari Design & Construction, Inc.* (2021) 61 Cal.App.5th 734, 744. The determination
13 of what constitutes a reasonable fee generally begins with the lodestar, i.e., the number of hours
14 reasonably expended multiplied by the reasonable hourly rate. *Graciano v. Robinson Ford Sales,*
15 *Inc.* (2006) 144 Cal.App.4th 140, 154. The lodestar figure may then be adjusted, based on factors
16 specific to the case, to fix the fee at the fair market value for the legal services provided. *PLCM*
Group v. Drexler (2000) 22 Cal.4th 1084, 1095.

17 Of the \$60,000.00 Gross Settlement Amount, Plaintiff's counsel requests \$20,000.00 (1/3
18 of the Gross Settlement Amount) in attorney's fees and up to \$11,500.00 in litigation expenses.
19 DS, ¶ 30. The written retainer agreement Plaintiff's counsel entered into with Plaintiff provided
20 that his counsel may elect to recover either (a) statutorily awarded attorney fees or (b) up to 40%
21 of any recovery. *Id.*

22 It is an accepted practice in wage and hour class action settlements to award attorneys'
23 fees to Plaintiff's counsel based on a percentage of the total settlement value agreed upon by the
24 parties. California courts have long recognized that an appropriate method for awarding attorneys'
25 fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest* (1977) 20
26 Cal.3d 25, 48-49 ["when a number of persons are entitled in common to a specific fund, and an
27 action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation
28 of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund"]; *Wershba*



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1 v. *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc.*
2 (2000) 82 Cal.App.4th 19, 26-30.)

3 California courts have the discretion to employ (or decline to employ) a “lodestar cross-
4 check” on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern, Inc.* (2016)
5 1 Cal. 5th 480, 505 (“*Laffitte*”). However, the California Supreme Court in *Laffitte* has now made
6 clear that this cross-check is not required and approved one-third of the class action settlement
7 fund as reasonable attorney fees as “[t]he percentage of the fund method survives in California
8 class action cases....” *Id.* at 574. As other courts have acknowledged since *Laffitte*, “California
9 courts routinely award attorneys’ fees of one-third of the common fund.” *Lopez v. Mgmt. &*
10 *Training Corp.*, 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need not “engage
11 in a full-blown lodestar analysis when the primary basis remains the percentage method...” The
12 lodestar calculation is merely a “useful perspective on the reasonableness of a given percentage
13 award.” *Id.* See also *Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638 (“Trial courts ‘also
14 retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
15 reasonableness of a requested percentage fee.’”⁴ *Id.* (citing *Laffitte*)).

16 “[R]egardless whether the percentage method or the lodestar method is used, fee awards
17 in class actions average around one-third of the recovery.” (See *Chavez v. Netflix, Inc.* (2008) 162
18 Cal.App.4th 43, 66, fn.11 (“*Chavez*”)); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d
19 373, 379 (“*Pacific*”) [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.*
20 (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund amount).) This is also
21 consistent with Plaintiff’s Counsel’s experience in wage and hour class and PAGA settlements.
22 DS, ¶ 32.

23 Should the Court elect to use Plaintiff’s Counsel’s lodestar as the method for awarding
24

25 ⁴ The prohibition on citing unpublished California decisions (Cal. Rules of Court, rule 8.1115(a))
26 does not apply to unpublished decisions from the lower federal courts. (*Farm Raised Salmon*
27 *Cases* (2008) 42 Cal.4th 1077, 1096, fn. 18 [“Citing unpublished federal opinions does not violate
28 our rules.”].) Like published decisions of the lower federal courts, unpublished decisions are not
binding on us even on questions of federal law, but they are persuasive authority. (*Western*
Heritage Ins. Co. v. Frances Todd, Inc. (2019) 33 Cal.App.5th 976, 989, fn. 6.)



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1 fees, notwithstanding courts' clear preference for the percentage method, Plaintiff's Counsel's
2 fee request of \$20,000.00 (one-third of the Gross Settlement Amount) is fair and reasonable based
3 on their lodestar as cross-checked against the percentage of the recovery. DS, ¶ 31, Ex. 12.
4 Plaintiff's counsel's previous experience in litigating wage and hour class actions and the caliber
5 of opposing counsel also support the reasonableness of the fee request. DS, ¶¶ 33-34.

6 In addition, Plaintiff's Counsel incurred substantial costs, \$10,482.07 to date, including
7 the costs of a mediator to aid in the representation of the Aggrieved Employees.⁵ DS, ¶ 32, Ex.
8 13; Haines Decl. ¶ 11. Plaintiff's Counsel anticipate that Plaintiff will incur an additional \$83.80
9 in costs, which consist of filing fees and attorney service fees for filing this motion and notice of
10 entry of order. Plaintiff's Counsel anticipate that litigation costs will total approximately
11 \$10,567.09 through final accounting of the Settlement. *Id.* As the evidence submitted herewith
12 shows, all of these costs are documented and reasonably incurred. DS, ¶ 32. Accordingly, they
13 warrant the Court's approval.

14 **11. The Proposed Administrator's Expenses Payment Are Fair and**
Reasonable and Should Be Approved.

15 With regard to the Administrator's Expenses Payment provision, it is reasonable. Before
16 agreeing to Phoenix Class Action Administration Solutions ("Phoenix"), the Parties sought and
17 reviewed bids from other reputable third-party administrators which provided higher bids. DS, ¶
18 34-35, Exs. 14-17. Thus, the Administrator's Expenses Payment provision should be given
19 approval.

20 ///

21 ///

22 ///

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26 _____

27 ⁵ Plaintiff's counsel do not seek reimbursement for the wages they paid to the attorneys,
28 paralegals, and legal assistants to aid in the representation of the Aggrieved Employees and the
State. Plaintiff's Counsel bore these expenses over the lengthy since they began work on this
matter without reimbursement.



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1 **V. CONCLUSION**

2 For the reasons stated above, this Court should grant the Plaintiff's Motion in its entirety
3 and adopt the proposed order submitted concurrently herewith.

4 Respectfully submitted,

5 THE SPIVAK LAW FIRM

6
7 Dated: October 31, 2025

By:



8 DAVID G. SPIVAK
9 CAROLINE TAHMASSIAN
10 Attorneys for Plaintiff, RAYMOND
11 REED, and all others similarly situated
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