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

ANTHONY IMPERATO, an individual;
CALVIN PENG aka TZU-I PENG, an
individual, on behalf of themselves and
other aggrieved employees,

Plaintiffs,

v.

CALIFORNIA COMMERCE CLUB, INC.
a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. 20STCV25314

BC644587 - Lead Case
[Related to 20STCV01232, 20STCV16584,
20STCV25314, and 19STCV41482]

Assigned for All Purposes to:
Hon. Carolyn B. Kuhl
Dept. SSC-12

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT AGREEMENT,
FOR ATTORNEYS' FEES AND COSTS
AND ADMINISTRATIVE FEES;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Declarations of Aaron A. Bartz, Ross E.
Shanberg, Anthony Imperato, Calvin Peng,
and [proposed] Order filed concurrently
herewith]

Date: August 21, 2023
Time: 1:45 p.m.
Dept.: SSC-12

1 PLEASE TAKE NOTICE that on August 21, 2023, at 1:45 p.m., or as soon thereafter as
2 the matter may be heard before the Honorable Carolyn B. Kuhl, Dept. SSC-12 of the Superior
3 Court of the State of California, County of Los Angeles, Spring Street Courthouse, 312 North
4 Spring Street, Los Angeles, California 90012, Plaintiffs Anthony Imperato and Calvin Peng aka
5 Tzu-I Peng (together, "Plaintiffs") will and hereby do move for entry of an order and judgment as
6 follows:

7 1. Granting approval, pursuant to California Labor Code section 2699, subd. (1)(2) of
8 the proposed settlement between Plaintiffs and Defendant California Commerce Club, Inc.
9 ("Defendant") of the claims brought pursuant to the Private Attorneys General Act of 2004
10 ("PAGA") as set forth in the Joint Stipulation of PAGA Settlement and Release ("Settlement
11 Agreement"), attached as Exhibit 1 to the Declaration of Aaron A. Bartz;

12 2. Approving the Net Settlement Amount payable to the State of California and
13 Aggrieved Employees as authorized by California Labor Code section 2699, subd. (i);

14 3. Appointing Rust Consulting, Inc. as the Settlement Administrator;

15 4. Directing Defendant to transmit settlement funds to the Settlement Administrator
16 in the total amount of Two Million Four Hundred Thousand Dollars (\$2,400,000.00) pursuant to
17 the Settlement Agreement;

18 5. Directing the Settlement Administrator to distribute the settlement funds to the
19 Aggrieved Employees, and distributing funds to the Labor and Workforce Development Agency
20 ("LWDA"), Plaintiffs' Counsel, and for Settlement Administration Costs, in accordance with the
21 terms of the Settlement Agreement;

22 6. Awarding to Plaintiffs' Counsel the amount of \$800,000 as compensation for
23 reasonable attorneys' fees, \$13,705.78 for reimbursement of litigation costs and expenses, and
24 \$14,950 for Settlement Administration Costs.

25 This motion is based on this Notice of Motion and Motion, the Memorandum of Points and
26 Authorities, the Settlement Agreement, the Declarations of Aaron A. Bartz, Ross E. Shanberg,
27 Anthony Imperato, Calvin Peng, the pleadings and other records on file with the Court in this
28 matter, and such evidence and oral argument as may be presented at the hearing on this Motion.

1
2 Dated: July 24, 2023

SHANBERG STAFFORD LLP
BARTZ LAW GROUP, APC

3
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5 By: /s/Aaron A. Bartz/s/
6 Ross E. Shanberg
7 Aaron A. Bartz
8 Attorneys for Plaintiffs ANTHONY
9 IMPERATO and CALVIN PENG aka TZU-
10 I PENG
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I.

INTRODUCTION AND SUMMARY OF MOTION

This is an action brought by Plaintiffs Anthony Imperato and Calvin Peng aka Tzu-I Peng (together, “Plaintiffs”), pursuant to the Private Attorneys General Act of 2004 (“PAGA”), to recover civil penalties for themselves, and other aggrieved employees and the State of California. Plaintiffs and the other aggrieved employees are non-exempt employees who worked for Defendant California Commerce Club, Inc. (“Defendant”), and allege California wage and hour violations including failure to pay wages, failure to authorize and permit meal and rest periods, and related Labor Code violations.

Plaintiffs have agreed to settle the PAGA penalties for a Gross Settlement Fund of **\$2.4 million**. The Gross Settlement Fund includes all attorneys’ fees and costs, settlement administration expenses, and penalties payments to the aggrieved employees and the Labor and Workforce Development Agency (LWDA). The Net Settlement Amount to be distributed to the aggrieved employees and the LWDA is approximately **\$1.57 million**. The Net Settlement Amount will be distributed 75% to the LWDA (\$1.178 million), and 25% to the aggrieved employees (\$392,500).

The approximate number of aggrieved employees is 4,538.¹ As such, each of the aggrieved employees will receive, on average, approximately \$86 in penalties. In exchange for such payment, the aggrieved employees are giving up no rights whatsoever to recover for underlying violations of the Labor Code other than for PAGA penalties. Any aggrieved employee may file a claim against Defendants for such violations.

This settlement is fair, reasonable and adequate, and therefore should be approved by this Court.

¹ The Settlement Agreement identifies 4,265 aggrieved employees, but that was through February 24, 2023, which was the available data provided by Defendant as of the signing of the Settlement Agreement. Through the end of the PAGA Period, there are 4,538 aggrieved employees.

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II.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant owns and operates Commerce Casino, which regularly operates over 270 gaming tables and employs thousands of workers. Plaintiffs and other aggrieved employees worked for Defendants as non-exempt employees working at Defendant's casino between April 6, 2019 and June 15, 2023. (Bartz Decl., ¶ 7, and Ex. 1 thereto.)

Plaintiffs served their PAGA letter on the Labor and Workforce Development Agency (LWDA) on April 29, 2020, and served an amended PAGA letter on May 8, 2023. (Bartz Decl., ¶ 9, and Ex. 2 thereto.) Plaintiffs filed their initial Complaint on July 6, 2020, and their First Amended Complaint on July 21, 2023, on behalf of themselves and other aggrieved employees for Civil Penalties under PAGA based on Defendants' wage and hour violations, including failure to pay all wages, meal period and rest break violations, and other wage violations. (Bartz Decl., ¶ 9, and Ex. 3 thereto.)

Plaintiffs aggressively pursued this action, and propounded substantial discovery, reviewed over 30,000 pages of payroll records and personnel files, conducted witness outreach to hundreds of aggrieved employees, and vigorously opposed Defendant's motion to compel arbitration two years into this case. Even after this Court compelled Plaintiffs to individual arbitration, Plaintiffs aggressively pursued their claims by filing individual arbitrations. Thereafter, Defendant expressed an interest in attending Mediation, Plaintiffs engaged an expert to calculate the total penalties exposure, and the parties attended a full-day Mediation before finally reaching a settlement. (Bartz Decl., ¶¶ 10-20.)

III.

SUMMARY OF SETTLEMENT

A. Aggrieved Employees

The Settlement covers the following aggrieved employees:

Any and all current and former hourly-paid, non-exempt employees who worked for Defendant in the State of California at any time from April 6, 2019 to June 15, 2023. (Bartz Decl., ¶ 7, Ex. 1).

1 Based upon Defendant's records, there are approximately 4,538 aggrieved employees as
2 of the date of signing of the Settlement Agreement on June 15, 2023. (Bartz Decl., ¶ 7).

3 **B. Settlement Fund Allocation**

4 Defendant will pay into a common fund the total amount of \$2.4 million to settle this
5 matter. The fund shall be allocated as follows: (1) 75% to the LWDA, or approximately \$1.178
6 million; (2) 25% to the aggrieved employees as follows: \$274,750 to casino dealers and
7 floorpersons (70% of the aggrieved employees share) and \$117,750 to the remaining non-exempt
8 aggrieved employees (30% of the aggrieved employees share). Based on Defendant's
9 employment records, there are 2,098 dealers and floorpersons, and 2,440 other non-exempt
10 hourly employees within the total group of aggrieved employees. (Bartz Decl., ¶ 7a., b.)
11 Moreover, during the PAGA Period, dealers and floorpersons worked a total number of 83,276
12 pay periods, and other non-exempt employees worked a total of 65,126 pay periods. (*Ibid.*)

13 In order to arrive at the settlement allocation, Plaintiffs' Counsel evaluated the claims of
14 casino dealers and floorpersons versus other aggrieved employees, and through diligent
15 investigation and discovery found that casino dealers and floorpersons were subjected to
16 unlawful policies and procedures that other aggrieved employees were not. (Bartz Decl., ¶ 11.)
17 For instance, casino dealers and floorpersons, as a condition of employment, are presented with
18 agreements waiving their rest periods. (Bartz Decl., ¶ 11, and Ex. 4 thereto.) Further, Plaintiffs'
19 counsel discovered that the meal periods provided to casino dealers and floorpersons were
20 always shortened due to their rotation schedules, and pre-Covid, casino dealers and floorpersons
21 did not clock in or out for meal periods, and Defendant automatically deducted 45 minutes from
22 their time, despite the fact that they were not receiving meal periods of that length. (Bartz Decl,
23 ¶¶ 12-13; Imperato Decl., ¶¶ 5, 8; Peng Decl., ¶¶ 5, 8.) Other aggrieved employees, however,
24 were not subject to the same policies, clocked in and out for their meal periods, and in general,
25 Defendant's policies and procedures were facially compliant as to them, so it would be much
26 more difficult to establish violations on a representative basis as to the other non-exempt
27 aggrieved employees. (Bartz Decl., ¶ 14.) Because of the substantially greater violations
28 affecting dealers and floorpersons and the differences in proving their respective claims, as well

as the fact that dealers and floorpersons' pay periods represent more than 56% of the total pay periods worked, Plaintiffs' counsel believes that the settlement allocation is more than justified and appropriate here. (Bartz Decl., ¶ 14).

The Net Settlement Amount shall be calculated by deducting the Attorneys' Fees and Costs and Settlement Administration Costs from the Gross Settlement Amount.

An approximate breakdown of the Gross Settlement Fund of **\$2,400,000** is provided below:

1. Individual Settlement Payment: \$392,500;
2. LWDA Settlement Payment: \$1.178 million;
3. Attorneys' Fees: \$800,000;
4. Costs: \$13,705.78;
5. Administration Expenses Payment: \$14,950.

C. Release

The "Released Parties" include:

Defendant its current and former parent, subsidiaries and/or related companies, affiliated and related corporations and other entities, their successors and assigns, and all of its current and former owners, shareholders, directors, officers, partners, principals, managers, members, employees, agents, attorneys, representatives, firms, associations, partnerships, joint ventures, and entities, and their agents, guardians, successors, assigns, heirs, executors, and administrators.

The "Released Claims" include:

All claims, rights, demands, and liabilities for civil penalties pursuant to the Private Attorneys General Act (Labor Code section 2699, et seq.) for alleged violations of the California Labor Code, arising at any time during the PAGA Period for the claims brought by Plaintiffs in the Action or that could have been brought against Released Parties in the Action based on the facts or theories alleged in Plaintiffs' PAGA letters (including their letters dated April 29, 2020 and May 8, 2023) or the Action.

(See Exhibit 1, ¶¶ 17-18).

IV.

LEGAL STANDARD FOR APPROVAL OF PAGA SETTLEMENT

The PAGA statute allows an "aggrieved employee" to bring a civil action on behalf of himself or herself and on behalf of other aggrieved employees and the State to recover civil

1 penalties which are specifically established by the PAGA with respect to provisions of the
2 California Labor Code which does not otherwise provide for civil penalties (Lab. Code § 2699(g)),
3 and also, civil penalties which, outside of PAGA, only the LWDA can assess upon and collect
4 from an employer (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee
5 must comply with California Labor Code section 2699.3. *See* Labor Code § 2699(a).

6 The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699, subd.
7 (1)(2) (“The superior court shall review and approve any settlement of any civil action pursuant to
8 this part”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
9 considered a class action but a law enforcement action” and therefore one does not have to meet
10 the requirements of a class action. *Casida v. Sears Holding Corp.*, 2012 WL 253217, at *3 (E.D.
11 Cal. Jan. 26, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 WL 2173715, at * 11 (E.D. Cal.
12 June 2, 2011); *Arias v. Superior Court*, 46 Cal.4th 969, 980-88 (2009) (affirming lower court’s
13 holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim);
14 *Pedroza v. PetSmart, Inc.*, 2013 WL 1490667, at *15 (C.D. Cal. Jan. 28, 2013). As such, a court’s
15 review of a PAGA settlement involves analysis of several unique features that render the approval
16 process distinct from approval of a class action settlement. A court reviewing a PAGA settlement
17 need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams v. Superior*
18 *Court*, 3 Cal.5th 531, 549 (2017).

19 In a PAGA case, the Court’s focus is not the monetary amount which aggrieved employees
20 or the State are to receive, but instead, whether the total settlement amount achieves the PAGA’s
21 objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties
22 for the government that otherwise may not have been assessed and collected by overburdened state
23 enforcement agencies.” *See Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *4
24 (N.D. Cal. Apr. 2, 2010) (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the
25 PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for
26 education of employers and employees about their rights and responsibilities under this code, to
27 be continuously appropriated to supplement and not supplant the finding to the agency for those
28 purposes.” *See* Labor Code § 2699(j). The recovery of penalties on behalf of the state, by way of

1 a PAGA claim, is essentially a law enforcement action. *See Amalgamated Transit Union, Local*
2 *1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009) (stating that the PAGA is mechanism for
3 “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise
4 would be sought by state labor law enforcement agencies”).

5 V.

6 **THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE**

7 This Settlement resulted from Plaintiffs’ aggressive litigation stance to obtain a reasonable
8 recovery after making a full and fair evaluation of the case. This PAGA settlement should
9 therefore be approved.

10 **A. The Settlement Is Presumed Fair**

11 A representative settlement is presumed fair where: (1) the settlement is reached through
12 arm’s length bargaining, (2) investigation and discovery are sufficient to allow counsel and the
13 court to act intelligently, (3) [and] counsel is experienced in similar litigation. *See Dunk v. Ford*
14 *Motor Company*, 48 Cal. App. 4th 1794, 1802 (1996). Similar to class actions, PAGA settlements
15 are subject to a court’s approval under a fair, adequate and reasonable standard. *See Moniz v.*
16 *Adecco USA, Inc.*, 72 Cal.App.5th 56, 76-77 (2021). A court may also consider relevant factors
17 such as the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of
18 further litigation, the risk of maintaining class action status through trial, the amount offered in
19 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
20 views of counsel, [and] the presence of a governmental participant. . . . *See Officers of Justice v.*
21 *Civil Service Com’n of City and County of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1995). “This
22 list is not exhaustive and should be tailored to each case. Due regard should be given to what is
23 otherwise a private consensual agreement between the parties.” *Dunk, supra*, 48 Cal. App. 4th at
24 1801. Moreover, the trial court has broad powers to determine whether a proposed [representative
25 action] settlement is fair. *See Mallick v. Superior Court*, 89 Cal. App. 3d 434 (1979).

26 **B. The Settlement Is The Product of Arm’s Length Negotiations**

27 In this action, Defendant produced approximately 30,000 pages of time, payroll and
28 personnel records, responded to multiple sets of document requests and interrogatories, provided

1 a sampling of personnel and policy documents, exchanged detailed data regarding the aggrieved
2 employees' pay records and related employment information for aggrieved employees, and the
3 parties engaged in the *Belaire-West* notice process for hundreds of aggrieved employees. (Bartz
4 Decl., ¶ 13). As a part of the *Belaire-West* notice process, Plaintiffs spoke to a considerable
5 number of aggrieved employees, in support of Plaintiffs' alleged claims. Plaintiffs also hired
6 statistical expert James Toney to analyze the data on the aggrieved employees and to create models
7 reflecting the total exposure to PAGA penalties in this case. (Bartz Decl., ¶ 18).

8 After litigating this case for nearly two years, Defendant then filed a Motion to Compel
9 Arbitration based on the holding of *Viking River Cruises, Inc. v. Moriana*, 596 U.S. ___, 142 S.Ct.
10 1906 (2022) ("*Viking River*"). Thereafter, on November 4, 2022, this Court compelled Plaintiffs'
11 individual wage and hour claims to arbitration, and stayed the PAGA claims until the adjudication
12 of *Adolph v. Uber Technologies, Inc.*, Case No. S274671 by the California Supreme Court.

13 Plaintiffs thereafter filed their individual claims in arbitration with JAMS. Shortly after
14 filing their arbitrations, Defendant approached Plaintiffs about mediating the PAGA and individual
15 wage and hour claims. The parties attended Mediation before Michael Loeb on May 3, 2023. The
16 mediation was vigorously contested, and at all times, the settlement negotiations were non-
17 collusive, and involved considerable disputes over payment terms. After an all day mediation
18 before Mr. Loeb, the parties successfully reached a settlement. (Bartz Decl., ¶ 19).

19 Plaintiffs did not settle this case until they had conducted sufficient investigation into the
20 claims, interviewed current and former non-exempt employees, and reviewed sufficient data to
21 make a settlement determination. Plaintiffs believe that this is an excellent settlement of the PAGA
22 claims, which will not affect any aggrieved employee's right to pursue underlying Labor Code
23 violations against Defendant if he or she chooses to do so. (Bartz Decl., ¶ 20).

24 **C. Plaintiffs' Counsel Is Experienced In Similar Litigation And Endorse The**
25 **Settlement**

26 The view of attorneys in representative litigation is "entitled to significant weight." *Fisher*
27 *Bros. v. Cambridge-Lee Industries, Inc.*, 630 F.Supp. 482, 488 (E.D. Pa. 1985); *see also Ellis v.*
28 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). Plaintiffs' counsel have significant

1 experience in complex representative and class action wage and hour litigation. (Bartz Decl., ¶¶
2 21-23; Shanberg Decl., ¶¶ 5-11.) As such, they are experienced and qualified to evaluate the
3 claims and defenses in this case, and unequivocally support the settlement reached herein.

4
5 **D. The Strength of Plaintiffs' Case, The Amount Offered In Settlement, and**
6 **The Risk, Expense, Complexity, and Duration of Further Litigation Favors Settlement**

7 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon*
8 *v. Chrysler Comm.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Moreover, “[t]he expense and possible
9 duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.”
10 *In re Mega Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000).

11 In this case, Plaintiffs seek PAGA penalties only. The sole PAGA claim that is at issue
12 in this settlement concerns Defendant’s: (1) failure to pay all wages owed and make unlawful
13 deductions from Plaintiffs’ pay; (2) failure to provide duty-free meal periods; (3) failure to
14 authorize and permit duty-free rest periods; (4) failure to pay all wages due upon termination; (5)
15 failure to properly maintain and submit accurate itemized wage statements; (6) failure to
16 reimburse expenses. (Bartz Decl., ¶ 24). Plaintiffs’ penalties exposure analysis for the PAGA
17 claims is set forth below.

18 1. **Unpaid wages**

19 Labor Code §221 provides: “It shall be unlawful for any employer to collect or receive
20 from any employee any part of wages theretofore paid by said employer to said employee.” Labor
21 Code §223 provides: “Where any statute or contract requires an employer to maintain the
22 designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay
23 the wage designated by statute or by contract.” Labor Code § 1194 states any employee receiving
24 less than the legal minimum wage is entitled to recover the unpaid balance of the full amount of
25 this minimum wage, including interest thereon, reasonable attorney’s fees, and costs of suit.

26 **First**, Plaintiffs allege that Defendant unlawfully collected, received and/or paid aggrieved
27 employees less than the required minimum wage due based on Defendant’s practice of
28 automatically deducting 45 minutes from the dealers and floorpersons time, even though

frequently, they did not receive meal periods that were 45 minutes in length. This resulted in substantially undercompensating dealers and floorpersons.²

Second, Plaintiffs alleged that Defendant unlawfully deducted tips from aggrieved employees' wages by violating Defendant's own tip pooling policies. Defendant's tip pooling policy provides that no more than \$15 per day should be pooled as tips, but Defendant regularly collected in excess of \$15 from aggrieved employees, particularly dealers and floorpersons, during their shifts.

Defendant contends that they have numerous defenses to Plaintiffs' unpaid wage claims, including that dealers and floorpersons received well in excess of 45 minutes per day in meal periods, because they received two 40 minute meal periods in lieu of their rest periods. Defendant further contends that the tip pooling policy that Plaintiffs refer to is outdated, and that during the PAGA period covered by this case, Defendant fully complied with California's tip pooling laws, and aggrieved employees were only required to contribute up to 15% of their tip earnings, which is fully compliant with California law.

The maximum potential PAGA penalties for the unpaid wage claim is approximately \$4.66 million, as calculated by Plaintiffs' expert. Based on the various issues raised above, including the fact that Plaintiffs verified that the tip pooling policy capping tips at \$15 was discontinued in 2017, and the fact that the automatic deductions were discontinued in March 2020, Plaintiffs believe they had a 20% chance of success on the various unpaid wage/deduction/tip pooling theories. Nevertheless, Labor Code section 2699(e)(2) also gives a trial court broad discretion to reduce PAGA penalties: "[A] court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Case law supports a trial court's discretion in downgrading penalties based on these factors. *See Thurman v. Bayshore Transit Management*,

² Based on counsel's research and investigation, the same was not true for other aggrieved employees, who clocked in and out for meal periods, and were not subject to automatic deductions from their pay.

1 *Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no abuse of discretion by reducing penalty by 30
2 percent). Thus, Plaintiffs believe that the real value of the unpaid wage penalties are \$652,400
3 (\$4,660,000 x .2 [chances of success] x .7 [court discretion] = \$652,400). (Bartz Decl., ¶ 24.a).

4 2. Meal period violations

5 Plaintiffs further allege that Defendant failed to provide Plaintiffs and the other aggrieved
6 employees with a duty-free 30-minute meal period for every five hours of work as is required by
7 Labor Code § 512 and the applicable IWC Wage Order(s) and in violation of *Brinker Restaurant*
8 *Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Failure to provide a meal in accordance with
9 the applicable Wage Order(s) results in payment by the employer of one additional hour of pay at
10 the employee's regular rate of pay for each workday that the rest or meal period is not provided.
11 (Labor Code § 226.7.)

12 In *Brinker, supra*, the California Supreme Court held that "under ... Labor Code § 512,
13 subdivision (a), an employer must relieve the employee of all duty for the designated period, but
14 need not ensure that the employee does no work" during the meal period. *Id.* at 1034. However,
15 "...an employer may not undermine a formal policy of providing meal breaks by pressuring
16 employees to perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.*,
17 133 Cal.App.4th 949, 962–63 (2005); *see also Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th
18 1286, 1304–05 (2010) [proof of common scheduling policy that made taking breaks extremely
19 difficult would show violation]; *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 638
20 (S.D.Cal.2010) [indicating informal anti-meal-break policy "enforced through 'ridicule' or
21 'reprimand'" would be illegal].) Defendant also cannot create "incentives to forego, or otherwise
22 encourage[] the skipping of legally protected breaks." *Brinker, supra*, 53 Cal.4th at 1040.

23 Moreover, in *Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 78 (2021), the Court held
24 that at both the class certification and summary judgment stage, when time records show short,
25 missed, and late meal periods, as they do here, there is a presumption that an employer violated
26 California's meal period requirements. *See Donohue, supra*, 11 Cal.5th at 78 ("If time records
27 show noncompliant meal periods, then a rebuttable presumption of liability arises.")

28 ***First***, Plaintiffs contend that the dealer rotation schedules prevented Plaintiffs and other

dealers and floorpersons full duty-free meal periods, because a dealer could not leave his or her table until a new dealer came to the table, and closed out his or her last table. Thus, the process of closing down the prior table and moving to a new table took about 15-20 minutes, leaving the last dealer, who was to go on break with far less than a full 30-minute duty-free meal period.

Second, even for those aggrieved employees who may have clocked out during their meal periods, Plaintiffs uncovered evidence showing late and missed meal breaks, therefore creating a presumption of Labor Code violations. *See Donohue, supra*, 11 Cal.5th at 78.

Third, Plaintiffs contend that Defendant fails to maintain accurate and complete documentation regarding Plaintiffs' and dealers and floorpersons' meal periods, a prima facie violation of the Wage Orders. During extensive investigation and discovery, Plaintiffs discovered that Defendant's own time records and rotation schedules are entirely inconsistent and contradictory. As such, Plaintiffs rely upon the presumption that aggrieved employees were not relieved of duty and no meal periods were provided. *See Brinker, supra*, 53 Cal.4th at 1053 (conc. opn. of Werdegar, J.)

In response to such arguments, Defendant contends that it permits all aggrieved employees more than 30-minute meal periods, and the aggrieved employees will be unable to establish why certain aggrieved employees did not take their meal periods, and that in any event, Defendant had no duty to ensure that meal periods were taken, pursuant to *Brinker, supra*. Defendant further argues that individual issues will predominate because of the various scenarios affecting different classes of employees working for Defendant, and Defendant's meal period policy is compliant under California law. As such, Defendant claims that PAGA claims must meet a manageability requirement. *See Wesson v. Staples The Office Superstore, LLC*, 68 Cal.App.5th 746 (2021) (holding that courts have inherent authority to ensure the manageability of PAGA claims).

The maximum potential PAGA penalties recoverable for meal period violations, as calculated by Plaintiffs' expert, is \$13,827,300. Based on the various issues raised above regarding proving meal period violations, Plaintiffs believe that they have a 10% chance of proving all of those penalties. Thus, Plaintiffs believe that the real value of the meal period penalties are

1 \$967,911. (\$13,827,300 x .1 [chances of success] x .7 [court discretion] = \$967,911). (Bartz
2 Decl., ¶ 24.b).

3 3. Rest period claims

4 Section 12(A) of the IWC Wage Order(s) states: “Every employer shall authorize and
5 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
6 each work period. The authorized rest period time shall be based on the total hours worked daily
7 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
8 a rest period need not be authorized for employees whose total daily work time is less than three
9 and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
10 there shall be no deduction from wages.”

11 Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide an
12 employee a rest period in accordance with the applicable provisions of this order, the employer
13 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for
14 each workday that the rest period is not provided.” Moreover, during rest periods, “employees
15 must not only be relieved of work duties, but also be freed from employer control over how they
16 spend their time.” *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 270 (2016). Further, when
17 an employer adopts common policies that prevent employees from taking their rest breaks, it
18 presents a common factual issue by which liability may follow. *See Jaimez v. Daiohs USA, Inc.*,
19 181 Cal.App.4th 1286, 1304 (2010). Indeed, “[t]he wage orders and governing statute do not
20 countenance an employer’s exerting coercion against the taking of, creating incentives to forego,
21 or otherwise encouraging the skipping of legally protected breaks.” *Brinker, supra*, 53 Cal.4th at
22 1040.

23 Here, Defendant adopted an agreement which purports to provide casino dealers two 40-
24 minute meal periods if they agree to waive any and all rest periods, effectively resulting in the
25 waiver of their statutory right to take rest periods during their workday. (See Exhibit 4 to Bartz
26 Decl., Casino Dealer Break Procedures [“Dealer Break Agreement”].) The plain language of the
27 Dealer Break Agreement provides that unless aggrieved employees agree to waive their rest
28 periods, they may lose their spot in the dealer rotation, and they must take substantial steps just to

1 be entitled to take their statutorily required rest periods. Plaintiffs contend that the Dealer Break
2 Agreement is coercive, especially because 99% of aggrieved employees presented with the Dealer
3 Break Agreement have waived their right to receive rest periods, and those employees will testify
4 that they believed that they had no choice but to agree to such a waiver.

5 For other aggrieved employees, Plaintiffs contend that because of the fast paced work
6 environment, that they were not authorized or permitted to take their 10 minute duty-free rest
7 periods.

8 Defendant contends that it complied with California's rest period requirements, and
9 implemented rest period policies throughout the PAGA period that comply with California law,
10 and that the Dealer Break Agreement was voluntarily entered into and dealers agreed to waive
11 their rest periods in exchange for substantially longer meal periods. For other aggrieved
12 employees, Defendant argues that there is no way to prove, on a representative basis, that they
13 did not receive their duty-free rest periods, except on an individual basis, which would be
14 completely unmanageable.

15 Plaintiffs' damages expert calculates total penalties on the rest period claim of
16 \$13,827,300. Plaintiffs believe the dealers and floorpersons have a strong rest period claim in
17 light of the Agreement that in effect coerces them to waive their rest periods. On the other hand,
18 there is no evidence that other aggrieved employees entered into a similar agreement, and
19 Defendant has a facially valid rest period policy, and for them, there are substantial individual
20 issues relating to proving rest break violations. As such, and because of Plaintiffs' and dealers
21 and floorpersons strong rest period claims, overall Plaintiffs believe they had a 50% chance of
22 recovering all of the above penalties on the rest period claim, in the absence of other mitigating
23 factors. Given that a court has discretion regarding the amount of penalties to be assessed,
24 Plaintiffs therefore believe the real exposure of PAGA penalties on the rest period claim is
25 approximately \$4,839,555. ($\$13,827,300 \times .5$ [chances of success] $\times .7$ [court discretion] =
26 \$4,839,555.) (Bartz Decl., ¶ 24.c).

27 4. Failure to pay all wages on termination

28 Plaintiffs further allege that pursuant to Labor Code §203, aggrieved employees terminated

1 from Defendants' employment are entitled to a penalty pursuant to Labor Code §256, because
2 Defendant did not pay them all wages due upon separation. Such a claim is derivative, and for the
3 same reasons as stated above, Defendant contends no wages are due, and thus no penalties owed under
4 PAGA. Defendant further argues that its failure to pay wages upon separation was not "willful," in
5 that the law is uncertain as to claims asserted in this case or whether the failure to pay is due to a good
6 faith dispute. *See Barnhill v. Robert Saunders & Co.*, 125 Cal.App.3d 1, 8 (1981) (employer's failure
7 to pay is not willful if its failure is due to uncertainty in the law); *Road Sprinkler Fitters Local Union*
8 *No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal.App.4th 765, 782 (2002) (willfulness not met if
9 defendant's failure to pay a result of a "good faith mistaken belief that wages are not owed").
10 Defendant further argues that Labor Code § 256 only applies to seasonal laborers and therefore is
11 inapposite to the aggrieved employees in this case. *See Culley v. Lincare, Inc.*, 236 F.Supp.3d 1184
12 (E.D. Cal. 2017).

13 Plaintiffs' expert calculates PAGA penalties on this claim of \$7,032,027. Based on the
14 heightened willfulness standard, as well as the case law undermining Plaintiffs' ability to recover
15 waiting time penalties under Labor Code § 256, Plaintiffs estimate that the real exposure of this
16 claim is 5% of those total penalties. Moreover, Plaintiffs apply the same discounts as set forth
17 above in the above analysis as to the court's discretion to reduce penalties. As such, Plaintiffs
18 believe the real exposure on this claim to be \$246,121 ($\$7,032,027 \times .05$ [chances of success] $\times .7$
19 [court discretion] = \$246,121). (Bartz Decl., ¶ 24.d).

20 5. Improper pay stubs

21 Plaintiffs further allege that Defendants failed to provide proper pay statements that
22 complied with Labor Code § 226.

23 Plaintiffs allege similar theories of liability as above with respect to the paystub claim, i.e.
24 that the wage statements are defective because they do not reflect all wages owed, and fail to show
25 premium payments for missed meal and rest periods. *See Naranjo v. Spectrum Security Servs.,*
26 *Inc.*, 13 Cal.5th 93 (2022). Plaintiffs further allege that to obtain PAGA penalties for pay stub
27 violations, a plaintiff need not satisfy the "injury" or "knowing and intentional" requirements of
28

1 Labor Code section 226(e)(1). *See Raines v. Coastal Pacific Food Distributors, Inc.*, 23
2 Cal.App.5th 667 (2018).

3 On the other hand, Defendants argue derivative violations of Labor Code § 226 do not give
4 rise to pay stub violations upon which PAGA penalties arise. *See Maldonado v. Epsilon Plastics,*
5 *Inc.*, 22 Cal.App.5th 1308 (2018); *see also Culley v. Lincare Inc.*, 236 F.Supp.3d 1184, 1195-1196
6 (E.D. Cal. 2017). Defendants further argue that any such violations were inadvertent, and therefore
7 not actionable. *See Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement,*
8 192 Cal.App.4th 75 (2011).

9 Plaintiffs' expert calculates pay stub penalties to be approximately \$8,334,000. Plaintiffs
10 believe they had a 10% chance of recovering all of the potentially recoverable civil penalties.
11 Moreover, Plaintiffs apply the same discounts as set forth above in the analysis as to the court's
12 discretion to reduce penalties. As such, Plaintiffs believe the real exposure on this claim to be
13 \$583,380. ($\$8,334,000 \times .1$ [chances of success] $\times .7$ [court discretion] = \$583,380). (Bartz Decl.,
14 ¶ 24.e).

15 6. Reimbursement

16 Labor Code section 2802 provides, in pertinent part: "An employer shall indemnify his
17 or her employee for all necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
19 the employer. . ."

20 Plaintiffs contend that Defendant required Plaintiffs to use their personal cell phones to
21 respond to work calls and respond to text messages, and to purchase certain clothing and
22 footwear for the purpose of performing their work duties. Defendant contends that it had a
23 compliant reimbursement policy, and that Plaintiffs and other aggrieved employees did not have
24 to use their phones for work purposes, and that any required clothing was usable outside of work
25 and therefore not compensable. *See, e.g., Townley v. BJ's Restaurants, Inc.*, 37 Cal.App.5th 179
26 (2019).

27 Upon further investigation and discussions with witnesses, Plaintiffs value the
28 reimbursement claim very low, because Plaintiffs' counsel was unable to substantiate through

1 their investigation the cell phone reimbursement claim, and the clothing reimbursement claim is
2 at most a one-time violation per aggrieved employee. Because there are 4,538 aggrieved
3 employees, Plaintiffs value the reimbursement claim at no more than \$100 per aggrieved
4 employee, or \$453,800. Because of the tenuous nature of the claim, Plaintiffs believe their
5 likelihood of success on the claim is 10%, or at most, \$45,380. (Bartz Decl., ¶ 24.f).

6 7. Total exposure to PAGA penalties

7 Based upon the alleged Labor Code violations, Plaintiffs' believe the total actual PAGA
8 exposure is approximately \$7,334,747. Based on a settlement value of \$2,400,000, this amounts
9 to approximately 33% of the total exposure to PAGA penalties. Plaintiffs believe this to be an
10 excellent result, given that Defendants have valid defenses to Plaintiffs' claims, and that there is
11 a substantial question as to whether a trial court will even award cumulative penalties sought by
12 Plaintiffs for alleged multiple Labor Code violations because there is no precedent for such an
13 award.³ Moreover, even to the extent any violations are proven, Defendants argue that any
14 heightened penalties from subsequent violations are not warranted. *See Amaral v. Cintas Corp.*
15 *No. 2, 163 Cal.App.4th 1157, 1208-1209 (2008)* ("Until the employer has been notified that it is
16 violating a Labor Code provision. . . , the employer cannot be presumed to be aware that its
17 continuing underpayment of employees is a 'violation' subject to penalties"). (Bartz Decl., ¶
18 24.g).

19 The purpose of the PAGA is to "achieve maximum compliance with [California's] labor
20 laws." *See Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). The penalties
21 recovered here on behalf of the State and aggrieved employees achieve that purpose.

22 VI.

23 NOTICE OF THE SETTLEMENT IS NOT REQUIRED

24 "[A] PAGA action is a statutory action for penalties brought as a proxy for the State," and
25

26 ³ While there are cases allowing for the "stacking" of penalties when it comes to evaluating the
27 "amount in controversy" where a case has been removed to federal court (*see Schiller v. David's*
28 *Bridal, Inc.*, 2010 WL 2793650 (E.D. Cal. July 14, 2010)), it appears to be an open question
whether such "stacked" penalties may be awarded when they potentially overlap and "double
count" remedies for similar violations.

as such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior Court*, 3 Cal.5th 531, 546 (2017). “Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *5 (N.D. Cal. Apr. 2, 2010). A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are “nonparty aggrieved employees who are not given notice if, and an opportunity to be heard in, a representative action that is not brought a class action.” *Arias v. Sup. Ct.*, 46 Cal.4th 969, 984 (2009). “PAGA does not make other potentially aggrieved employees parties” to the action and no “due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and whatever personal claims the absent employees might have for a relief are not at stake.” *Williams, supra*, 3 Cal. 5th at 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46th Cal.4th 993, 1003 (2009) and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014).)

Nonetheless, the parties are providing a one-page Notice of Settlement to be included with the aggrieved employees’ payments so that aggrieved employees are apprised of the nature of the payment and the release of penalties, and the Notice of Settlement clearly states that “No wage claims are released by this settlement.” The Notice of Settlement will also include translations for various languages that are most used by the aggrieved employees, including Mandarin, Vietnamese, and Tagalog. (See Ex. 8 to Bartz Decl.)

VII.

ATTORNEYS’ FEES AND COSTS

A. Fees Can Be Awarded As A Percentage of the Common Fund

When a common fund is created, attorneys who secured the fund are entitled to a percentage of the fund. (See *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 [“the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created”]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 [“percentage fees have traditionally been allowed in . . . common fund cases”]). “[F]ee awards in class actions

1 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11
2 (2008); *Laffitte*, 1 Cal.5th at 488 (award of one-third of the common fund within the appropriate
3 range of attorneys’ fees awards for class action lawsuits in California); *see also* Rubinstein,
4 Conte and Newberg, *Newberg on Class Actions* at § 14:6 (surveying cases, and finding that 30-
5 50% of fees awarded in cases in which the common fund is relatively small); *see also In re*
6 *Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494 (court approved attorney fee
7 award equal to 45% of the settlement fund).

8 Under the common fund doctrine, “a litigant or a lawyer who recovers a common fund
9 for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee
10 from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S.Ct. 745, 750, 62
11 L.Ed.2d 676 (1980). The Supreme Court explained:

12 The doctrine rests on the perception that persons who obtain the benefit of a
13 lawsuit without contributing to its cost are unjustly enriched at the successful
14 litigant’s expense. Jurisdiction over the fund involved in litigation allows a court
15 to prevent this inequity by assessing attorney’s fees against the entire fund, thus
16 spreading fees proportionately among those benefitted by the suit.” (Citations
17 omitted.)

18 (*Id.*; *see also Laffitte, supra*, 1 Cal.5th at 503 [“the percentage method is a valuable tool that
19 should not be denied our trial courts”]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [“one who
20 expends attorneys’ fees in winning a suit which creates a fund from which other derive benefits,
21 may require those passive beneficiaries to bear a fair share of the litigation costs”].)

22 Thus, the common fund doctrine ensures that each member of the class contributes
23 proportionately to the payment of attorney’s fees recovered from monetary payments that the
24 prevailing party recovered in the lawsuit. “Put another way, in common fund cases, a variant of
25 the usual rule applies and the winning party pays his or her own attorneys fees. . .” *Stanton v.*
26 *Boeing*, 327 F.3d 938, 967 (9th Cir. 2003), citing *Wininger v. SI Mgmt L.P.*, 301 F.3d 1115 (9th
27 Cir. 2002).

28 Because Plaintiffs’ attorneys secured a fund for Plaintiffs and the other aggrieved
employees, they are entitled to a reasonable percentage of that fund.

1 **B. Plaintiffs’ Attorneys Fees Are Also Recoverable Under The Lodestar**
2 **Adjustment Approach**

3 Fees in representative cases are also appropriate under the lodestar method, whereby the
4 number of hours reasonably expended is multiplied by a reasonable hourly rate. *See Lealao*,
5 *supra*, 82 Cal.App.4th at 26. Under PAGA, moreover, attorneys’ fees and costs are statutorily
6 recoverable. *See* Cal. Labor Code § 2699, subd. (g)(1). Once a lodestar has been established, it
7 may “be adjusted, based on consideration of factors specific to the case, in order to fix the fee at
8 the fair market value for the legal services provided.” *PLCM Group, Inc. v. Drexler*, 22 Cal.4th
9 1084, 1095 (2000). In evaluating the lodestar, and whether an upward adjustment is appropriate,
10 courts look to the qualifications of counsel, the reasonableness of the rates charged, the novelty
11 and difficulty of the case, the contingent nature of the case, the results achieved, and related
12 matters. *See, e.g., Serrano, supra*, 20 Cal.3d 25, 49; *see also Press v. Lucky Stores, Inc.*, 34
13 Cal.3d 311, 321-322 (1983). All such factors support the fee award here.

14 **1. Plaintiffs’ Counsel Are Well-Qualified To Represent The Aggrieved**
15 **Employees And Their Rates Are Reasonable**

16 Counsel for Plaintiffs are experienced employment lawyers, and have extensive
17 experience in the specific subcategory of wage and hour claims. (Bartz Decl. ¶¶ 21-23;
18 Shanberg Decl., ¶¶ 5-11). Moreover, counsel for Plaintiffs have hourly rates that are reasonable
19 in the relevant market, and below that found with other class action employment lawyers with
20 similar expertise. (Bartz Decl., ¶ 25).

21 **2. Plaintiffs’ Counsel’s Lodestar Is Well Documented**

22 A properly supported motion for attorney's fees is prima facie evidence that the expenses
23 and services were necessarily incurred. *Hadley v. Krepel*, 167 Cal.App.3d 677, 682 (1985).
24 Here, counsel provide appropriately detailed declarations and detailed, contemporaneous billing
25 statements in support of the lodestar amounts. (Bartz Decl., ¶ 25-26, Ex. 6; Shanberg Decl., ¶ 12,
26 Ex. 1).

27 Based on Plaintiffs’ counsel’s lodestar here results in a 1.6 multiplier. A multiplier is
28 appropriate when “(1) attorneys take a case with the expectation they will receive a risk

enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence the case was risky.” *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016). Here, Plaintiffs’ counsel took this case on a full contingency basis, and there was a substantial risk both at the beginning of the case and after *Viking River* that this case could not move forward as a PAGA action. Plaintiffs’ hourly rates are also similar to market rates for hourly defense counsel and do not reflect the risk with this being a contingency case. (Bartz Decl., ¶ 25).

The multiplier requested here is in line and well below other wage and hour complex actions. Multipliers between 1 and 4 are common in California and within the Ninth Circuit. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051, n.6 (9th Cir. 2002); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1217-1218 (2008) (multiplier of 1.65 affirmed after summary judgment granted in wage case); *Uschold v. NSMG Shared Servs., LLC*, 2020 WL 3035776, at *16 (N.D. Cal. June 5, 2020) (applying multiplier of 4 in wage and hour class action); *Ridgeway v. Wal-Mart Stores, Inc.* 269 F.Supp.3d 975, 999 (N.D. Cal. 2017) (applying multiplier of 2 after wage and hour litigation).

3. Novelty And Difficulty Of The Case

Plaintiffs and their counsel were able to secure a favorable settlement only after investigating the claims and researching the theories of potential liability in this case, despite being compelled to arbitrate their individual claims. Plaintiffs pushed forward nevertheless and secured an excellent PAGA settlement.

The claims alleged also were not assured. Plaintiffs litigated this case for over two years before Defendant filed a motion to compel arbitration pursuant to the holding in *Viking River*, which this Court granted in November 2022. Despite this adverse ruling, Plaintiffs pressed ahead with their individual arbitration claims, forcing Defendant’s hand.

Significantly, moreover, prior to settling this matter, the California Supreme Court had yet to decide *Adolph v. Uber Technologies, Inc.*, Case No. S274671, which could have eliminated Plaintiffs’ PAGA claims. Just days ago, the California Supreme Court departed from *Viking River*, holding that PAGA plaintiffs do not lose standing to pursue PAGA penalties despite an order to compel individual arbitration. *See Adolph v. Uber Technologies, Inc.*, ---

1 P.3d ---, 2023 WL 4553702 (July 17, 2023). Even though the decision in *Adolph* was uncertain
2 when Plaintiffs settled this matter, Plaintiffs took aggressive settlement positions at every turn,
3 and achieved an excellent result for the aggrieved employees and the State of California.

4 **4. Plaintiffs' Counsel Worked Efficiently And Skillfully**

5 Plaintiffs propounded significant representative discovery, conducted extensive witness
6 outreach, and obtained voluminous informal discovery to evaluate and investigate the alleged
7 wage and hour violations. Plaintiffs and their counsel resolved the case only after challenging
8 Defendant at every turn to obtain the highest and best settlement possible from Defendants.

9 **5. Plaintiffs' Counsel Worked Entirely On A Contingency Basis**

10 Plaintiffs' counsel worked on a complete contingency and advanced all expenses and
11 costs. The contingent risk included liability issues, damage issues, and evolving changes under
12 PAGA. According to the California Supreme Court:

13 A contingent fee must be higher than a fee for the same legal services paid as they
14 are performed. The contingent fee compensates the lawyer not only for the legal
15 services he renders but for the loan of those services. The implicit interest rate on
16 such a loan is higher because the risk of default (the loss of the case, which
cancels the debt of the client to the lawyer) is much higher than that of
conventional loans.

17 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, *Economic Analysis of*
18 *Law* (4th ed. 1992) pp. 534, 567.)

19 **6. Plaintiffs' Counsel Achieved An Excellent Result**

20 Plaintiffs' counsel obtained a \$2.4 million settlement, which would not have been
21 achieved but for Plaintiffs' and their attorneys' ability to efficiently prosecute the case to a
22 successful conclusion. Significantly, moreover, Plaintiffs achieved the same payout as a prior
23 class action against Defendant, except that here, the release period is shorter, and aggrieved
24 employees are not releasing any of their wage claims. *Compare Shum v. California Commerce*
25 *Club, Inc.*, LASC Case No. BC656681 (class settlement of \$2.4 million for a release of wage
26 claims for a more than 5-year class period).

C. Plaintiffs' Counsel's Costs Are Documented and Reasonable

Plaintiffs' counsel are also entitled to their reasonable out-of-pocket costs incurred in prosecuting this action, in the amount of \$13,705.78, which includes mediation and expert witness fees, and other costs necessary to the prosecution of this case. (Bartz Decl., ¶ 26, Ex. 7; Shanberg Decl., ¶ 13, Ex. 2). Moreover, Rust Consulting, Inc. has agreed to provide settlement administration services in the amount of \$14,950, including preparing and mailing the notices to the aggrieved employees, distributing the payments, and performing other administration duties for this PAGA settlement. (Bartz Decl., ¶ 27, Ex. 8).

VIII.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court grant its Motion to Approve the PAGA Settlement.

Dated: July 24, 2023

SHANBERG STAFFORD LLP
BARTZ LAW GROUP, APC

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