

PAYTON EMPLOYMENT LAW, PC
CHANTAL MCCOY PAYTON, ESQ. (SBN: 293215)
ROBERT V. TORRES, ESQ. (SBN 142752)
3807 W. Sierra Highway, Suite 206
Acton, California 93510
Telephone: (661) 434-1144
Facsimile: (661) 434-1144
CPayton@PaytonEmploymentLaw.com
RTorres@PaytonEmploymentLaw.com

DOGRA LAW GROUP PC
SHALINI DOGRA, ESQ. (SBN: 309024)
2219 Main Street, Unit 219
Santa Monica, CA 90405
Telephone: (747) 234-6673
Shalini@dogralawgroup.com

Attorneys for Plaintiff JOEL VILLALPANDO, individually and
on behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JOEL VILLALPANDO, individually and on behalf
of all other aggrieved employees;

Plaintiff,

vs.

RED SPARROW SERVICES, INC., a California
corporation; AVREK LAW FIRM, a Professional
Law Corporation; MARYAM PARMAN, an
Individual; DOES 1-10, business entities, forms
unknown; individuals; DOES 11-20, individual;
and DOES 21-30, inclusive,

Defendants.

Case No.: 30-2020-01140620-CU-OE-CXC

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS' FEES, COSTS,
ENHANCEMENT PAYMENT, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
DISMISSING ACTION WITH PREJUDICE;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: February 26, 2021

Time: 9:00 a.m.

Judge: William Cluster

Dept.: CX104

Reservation Number: 73457803

Action Filed: May 26, 2020

Trial Date: Not Set

1 **PLEASE TAKE NOTICE THAT** on February 26, 2021 at 9:00 a.m., or as soon thereafter as
2 the matter may be heard, in Department CX104 of the above-entitled Court, located at 751 West Santa
3 Ana Blvd., Santa Ana, CA 92701, Plaintiff Joel Villalpando will and hereby does move unopposed for
4 an Order: (1) granting approval of the proposed settlement of claims brought pursuant to the Private
5 Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”) set forth in the parties’ Private
6 Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement; (2) appointing Phoenix Class
7 Action Administration Solutions as the Settlement Administrator and approving payment of its fees not
8 to exceed \$1,500 from the Gross Settlement Amount; (3) directing disbursement of the Gross Settlement
9 Amount pursuant to the terms of the Settlement Agreement; (4) directing payment of attorneys’ fees and
10 litigation costs from the Gross Settlement not to exceed \$11,666.66 to Plaintiff’s counsel for its attorneys’
11 fees and \$6,980.00 for its costs; and (5) directing payment of an Enhancement Award from the Gross
12 Settlement Amount in an amount not to exceed \$1,000.00 to Plaintiff Joel Villalpando.

13 This motion will be based on this Notice, the supporting memorandum of points and authorities,
14 the parties’ Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (the
15 “Settlement Agreement”), the Declarations of Chantal Payton, and Plaintiff Joel Villalpando, the
16 documents and records on file in this matter, and such additional arguments, authorities, and evidence
17 and other matters as may be presented by the parties hereafter.

18
19 Date: January 26, 2021

Respectfully submitted,

20 **PAYTON EMPLOYMENT LAW, PC**

21
22 By: 
23 Chantal Payton, Esq.
24 Robert Torres, Esq.
25 Attorneys for Plaintiff
26 Joel Villalpando, individually and
27 on behalf of all other aggrieved employees
28

TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES - 1 -

I. INTRODUCTION	- 1 -
II. STATEMENT OF the CASE AND THE SETTLEMENT	- 2 -
A. The Parties	- 2 -
B. The Claims Asserted.....	- 3 -
C. Procedural Posture.....	- 3 -
D. Plaintiff's Counsel's Investigation	- 3 -
E. Settlement Negotiations.....	- 4 -
F. The Proposed Settlement.....	- 5 -
G. Settlement Payment to Plaintiff for Individual Claims	- 7 -
III.LEGAL ARGUMENT	- 9 -
A. Standards for Approval of A PAGA Settlement	- 9 -
B. The Settlement Meets All the Criteria For Approval	- 11 -
C. The Factors Giving Rise to a Presumption of Fairness Exist.....	- 11 -
D. The Relative Strength of The PAGA Claim, And the Realistic Range of Outcomes In The Litigation, Strongly Favor Approval of the Settlement	- 11 -
E. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor of Approval of the Settlement	- 13 -
F. The Benefits Conferred by the Settlement Balance in Favor of Approval..	- 13 -
G. The Scope of the Release is Narrowly Tailored.....	- 15 -
H. The Experience and Views of Plaintiff's Counsel Favor Approval of the Settlement	- 15 -
I. The Extent of Discovery Completed and The Stage Of The Proceedings Favor Approval of the Settlement.....	- 16 -
J. Additional Factors Weigh in Favor of Finding The Terms Of The Proposed Settlement To Be Fair, Adequate, And Reasonable	- 16 -
IV. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER THEIR REASONABLE FEES AND COSTS.....	- 17 -

1	A. Plaintiff’s Counsel Are Entitled To Recover Their Reasonable Fees And Costs As	
2	A Matter Of Right	- 17 -
3	B. The Fee Amount Requested Is Reasonable	- 20 -
4	C. The Fee Amount Allocated by The Settlement Agreement Is Within the Zone of	
5	Reasonableness Under the “Percentage of the Fund” Method	- 20 -
6	D. While the Requested Award of Attorneys’ Fees is Reasonable as a Percentage of	
7	the Common Fund, It is Further Confirmed by a Lodestar Cross-Check ...	- 21 -
8	E. Plaintiff’s Counsel’s Request for Costs is Reasonable.....	- 24 -
9	V. THE ENHANCEMENT PAYMENT SOUGHT BY THE NAMED PLAINTIFF	
10	IS REASONABLE.....	- 25 -
11	VI. CONCLUSION	- 26 -

TABLE OF AUTHORITIES

Cases

Anderson v. Nextel Retail Stores, LLC

2010 U.S. Dist. LEXIS 43377 - 11 -

Arias v. Superior Court (2009)

46 Cal. 4th 969 - 6 -, - 16 -

Bank of America v. Cory

(1985) 164 Cal.App.3d 66 - 20 -

Boeing Co. v. Van Gemert

(1980) 444 U.S. 472 - 18 -, - 19 -

Casida v. Sears Holdings Corp.

2012 U.S. Dist. LEXIS 9302 - 10 -

Chavez v. Netflix, Inc.

162 Cal.App.4th 43..... - 25 -

City and County of San Francisco v. Sweet

(1995) 12 Cal.4th 105..... - 20 -

City of Detroit v. Grinnell Corp.

495 F.2d 448..... - 14 -

City of Oakland v. Oakland Raiders

203 Cal.App.3d 78..... - 25 -

Clark v. American Residential Services LLC

(2009) 175 Cal.App.4th 785..... - 27 -

Crandall v. U-Haul International, Inc.

LASC Case No. BC178775..... - 23 -

D’Amico v. Board of Medical Examiners

(1974) 11 Cal.3d 1 - 18 -

Estate of Stauffer

(1959) 53 Cal.2d 124..... - 20 -

1	<i>Estrada v. FedEx Ground Package System, Inc.</i>	
2	(2007) 154 Cal. App. 4th 1	- 21 -
3	<i>Franco v. Ruiz Food Prods.</i>	
4	2012 U.S. Dist. LEXIS 169057	- 15 -
5	<i>Garcia v. Gordon Trucking, Inc.</i>	
6	2012 U.S. Dist. LEXIS 160052	- 15 -
7	<i>Glendale City Employees' Association v. City of Glendale</i>	
8	(1975) 15 Cal.3d 328	- 18 -, - 19 -
9	<i>Gong-Chun v. Aetna Inc.</i>	
10	2012 U.S. Dist. LEXIS 96828	- 15 -
11	<i>Graham v. DaimlerChrysler Corp.</i>	
12	(2004) 34 Cal. 4th 553	- 23 -
13	<i>In re GNC Shareholder Litigation</i>	
14	(W.D. Pa. 1987) 668 F.Supp. 450	- 27 -
15	<i>In re Rite Aid Corp. Securities Litigation</i>	
16	(3d Cir. 2005) 396 F.3d 294	- 24 -
17	<i>In re Sumitomo Copper Litigation</i>	
18	(S.D.N.Y. 1999) 74 F.Supp.2d 393	- 21 -
19	<i>In re TD Ameritrade Account Holder Litig.,</i>	
20	2011 U.S. Dist. LEXIS 103222	- 9 -
21	<i>In re United Energy Corp. Securities Litigation</i>	
22	(C.D. Cal. 1989) 1989 WL 7321 1	- 27 -
23	<i>Ketchum v. Moses</i>	
24	24 Cal.4th 1122	- 25 -
25	<i>Knoff v. City and County of San Francisco</i>	
26	(1969) 1 Cal.App.3d 184	- 20 -
27	<i>Laffitte v. Robert Half Int'l, Inc.</i>	
28	1 Cal.5th 480, 506 (2016)	- 23 -

1	<i>Martin v. AmeriPride Servs.</i>	
2	2011 U.S. Dist. LEXIS 61796	- 21 -
3	<i>Mendez v. Tween Brands, Inc.</i>	
4	2010 U.S. Dist. LEXIS 66454	- 11 -
5	<i>Mills v. Electric Auto-Lite Co.</i>	
6	(1970) 396 U.S. 375	- 19 -
7	<i>Nat'l Rural Telcoms. Coop. v. DIRECTV, Inc.</i>	
8	221 F.R.D. 523	- 10 -
9	<i>Ochoa-Hernandez</i>	
10	2010 U.S. Dist. LEXIS 32774	- 11 -
11	<i>Officers for Justice v. Civil Service Com.</i>	
12	688 F.2d 615	- 10 -
13	<i>Parker v. Los Angeles</i>	
14	(1974) 44 Cal.App.3d 556	- 20 -
15	<i>Quinn v. State of California</i>	
16	(1995) 15 Cal.3d 162	- 18 -, - 20 -
17	<i>Rawlings v. Prudential-Bache Properties, Inc.</i>	
18	(6th Cir. 1993) 9 F.3d 513	- 24 -
19	<i>Rider v. County of San Diego</i>	
20	(1992) 11 Cal.App.4 th 1410	- 20 -
21	<i>Rodriguez v. West Publishing Corp.</i>	
22	563 F.3d 948	- 27 -
23	<i>Sandoval v. Roadlink United States Pac., Inc.</i>	
24	2011 U.S. Dist. LEXIS 130378	- 17 -
25	<i>Schiller v. David's Bridal, Inc.</i>	
26	2012 U.S. Dist. LEXIS 80776	- 15 -
27	<i>Serrano v. Priest</i>	
28	(1977) 20 Cal.3d 25	- 18 -, - 19 -, - 24 -

1	<i>Serrano v. Unruh</i>	
2	(1982) 32 Cal.3d 621	- 24 -
3	<i>Sprague v. Ticonic National Bank</i>	
4	(1939) 307 U.S. 161	- 20 -
5	<i>Thayer v. Wells Fargo Ban,</i>	
6	92 Cal.App.4th 819.....	- 25 -
7	<i>Thomas v. Aetna Health of Cal., Inc.</i>	
8	2011 U.S. Dist. LEXIS 59377	- 10 -
9	<i>Vasquez v. Coast Valley Roofing, Inc.</i>	
10	266 F.R.D. 482	- 22 -
11	Statutes	
12	C.C.P. § 382.....	- 10 -
13	Cal. Lab. Code § 2699(i)	- 2 -, - 9 -, - 14 -
14	Cal. Labor Code § 2698 <i>et seq.</i>	- 1 -, - 5 -, - 16 -
15	Fed. R. Civ. P. 23	- 10 -
16	Labor Code § 2699(e)(2)	- 13 -
17	<i>Labor Code</i> § 2699(l)(2)	- 17 -
18	Labor Code § 2699.3	- 3 -

Other Authorities

20	California Practice Guide: Civil Trials and Evidence (The Rutter Group) at § 17:172.3	- 18 -
----	---	--------

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Joel Villalpando (“Plaintiff”) and aggrieved employees under the Labor Code’s Private Attorneys General Act of 2004 (PAGA) respectfully move this Court for an Order granting approval of the proposed Settlement of the above-captioned Lawsuit against Defendants Red Sparrow Services, Inc., Avrek Law Firm and Maryam Parman (“Defendants”). The proposed Settlement will dispose of the Released Claims asserted on behalf of Plaintiff and approximately nine non-exempt employees who worked for Defendants in California at any time between April 7, 2019 and September 22, 2020 (the “PAGA Period”) (the “Aggrieved Employees”¹).

This case addresses claimed violations of significant employee protections embodied in the California Labor Code and penalties stemming therefrom for violation of PAGA. More specifically, Plaintiff alleged that Defendants failed to compensate the Aggrieved Employees for all hours worked, failed to comply with all obligations surrounding overtime pay, failed to pay a minimum wage for all hours worked, failed to pay the Aggrieved Employees the wage designated by contract for each and every hour or fraction thereof worked, failed to provide legally compliant meal and rest periods, failed to pay all earned wages at the conclusion of employment, failed to furnish timely wage statements accurately showing, among other things, the total hours the Aggrieved Employees worked during each pay period, and failed to reimburse necessary business expenses incurred in the course of their employment. Payton Decl. at ¶ 2.

In deciding whether to grant approval of the proposed Settlement, the primary issue to be decided is whether the Settlement is fair, adequate and reasonable. As set forth herein, the proposed Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and likely duration of further litigation.

¹ The individuals identified as “Aggrieved Employees” are “Aggrieved” solely for the purposes of this settlement only.

1 The value achieved by the Settlement may be gleaned from the fact that the LWDA and the
2 approximately 71 Aggrieved Employees encompassed by the Settlement will receive no less than
3 \$3,463.34 under the terms of the Settlement, which, pursuant to the operative statute, shall be allocated
4 “75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved
5 employees.” See Cal. Lab. Code § 2699(i). This is a reasonable recovery, not only because further
6 litigation may have resulted in a net-zero recovery based on the defenses asserted by Defendants, but
7 because the amount secured by Plaintiff is sizable and in line with similar settlements of these types of
8 claims under PAGA. It is also important to underscore that all penalty amounts paid to Aggrieved
9 Employees will be an unexpected windfall, as employees typically do not bring individual lawsuits
10 asserting only PAGA penalties. Declaration of Chantal Payton (“Payton Decl.”) at ¶ 21. Further, upon
11 sufficient investigation of the claims brought by Plaintiff on behalf of the Aggrieved Employees, it has
12 been discovered that Defendants are separate entities, serve different functions with their own respective
13 staff, and do not constitute a single enterprise or joint employer relationship. As such, the nature and
14 scope of Plaintiff’s claims are likely to apply only to similar intake specialists for Defendant Red Sparrow
15 Services, Inc. Payton Decl. at ¶ 21.

16 For these reasons, as set forth more fully herein, Plaintiff respectfully request that this Court enter
17 the Order submitted herewith.

18 **II. STATEMENT OF the CASE AND THE SETTLEMENT**

19 **A. The Parties**

20 Defendants are three distinct and separate entities that collectively altogether are in the business
21 of operating a law firm in Orange County, California, with Individual Defendant Maryam Parman as the
22 firm’s principal lawyer. Upon information and belief, while all Defendants operate out of the same office
23 building, Red Sparrow Services Inc. primarily handles the marketing for Defendants’ legal services.
24 Payton Decl. at ¶ 3

25 Defendants employed Plaintiff Joel Villalpando as a non-exempt employee between August 2015
26 through September 2019. During approximately the first three years of his tenure, Plaintiff worked for
27 Defendant Avrek, as reflected by his paystubs. In approximately August 2018, although Plaintiff worked
28 out of the same office and held the same duties, his employer changed to Defendant Red Sparrow. The

1 Aggrieved Employees are all current and former non-exempt employees that performed work for
2 Defendants at any California location during the PAGA period, at any time between April 7, 2019 and
3 September 22, 2020. Payton Decl. at ¶ 4.

4 **B. The Claims Asserted**

5 Plaintiff asserts claims that Defendants failed to compensate the Aggrieved Employees for all
6 hours worked, failed to comply with all obligations surrounding overtime pay (despite the fact that
7 Plaintiff and the Aggrieved Employees regularly work[ed] overtime), failed to pay a minimum wage for
8 all hours worked, failed to pay the Aggrieved Employees the wage designated by contract for each and
9 every hour or fraction thereof worked, failed to provide legally compliant meal and rest periods, failed
10 to pay all earned wages at the conclusion of employment, failed to furnish timely wage statements
11 accurately showing, among other things, the total hours the Aggrieved Employees worked during each
12 pay period, and failed to reimburse necessary business expenses incurred in the course of their
13 employment. Payton Decl. at ¶ 2. Plaintiff asserts these claims under PAGA, seeking civil penalties for
14 the alleged Labor Code violations.

15 **C. Procedural Posture**

16 On February 13, 2020, pursuant to Labor Code § 2699.3, Plaintiff Joel Villalpando gave written
17 notice by online filing with the Labor and Workforce Development Agency (“LWDA”) and by certified
18 mail, return receipt requested, to Defendants of the specific provisions of the Labor Code alleged to have
19 been violated, including the facts and theories to support the alleged violation. Payton Decl., ¶ 5, **Exhibit**
20 **“A.”**

21 Plaintiff submitted the Settlement Agreement, this Motion, and all supporting documents to the
22 LWDA via online upload on January 26, 2021, concurrently with the filing of this Motion. Service of
23 the LWDA is reflected on the Declaration of Service submitted herewith.

24 Thereafter, on May 26, 2020, after the LWDA declined to take action within the statutorily
25 permissible time with respect to Plaintiff Joel Villalpando February 13, 2020 letter, Plaintiff filed his
26 class and representative action complaint in the Los Angeles Superior Court. Payton Decl. at ¶ 7.

27 **D. Plaintiff’s Counsel’s Investigation**

28 Counsel for Plaintiff engaged in targeted, informal discovery of Defendants’ alleged Labor Code

violations, which specifically targeted evaluating the strength and value of the PAGA claims in preparation for a resolution of this Action. Payton Decl. at ¶ 8. Additionally, Counsel for all parties participated in a number of telephone conferences, email exchanges and overall litigation related to the entirety of Plaintiff's claims, including informal discovery and exchange of documentation, including paystubs for aggrieved employees for analysis by Plaintiff's counsel. Plaintiff's Counsel obtained and reviewed multiple documents, including (i) Plaintiff's employee file and wage statements, (ii) policy documents relating to the employment of Plaintiff and other aggrieved employees, and (iii) data relating to the number of alleged violations and the value of the recoverable penalties. Payton Decl. at ¶ 8.

Based on Plaintiff's Counsel's experience in litigating similar "representative" wage and hour claims, the degree of investigation that was conducted, and the amount of data that was obtained, was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of this claim for purposes of settlement. To that end, Defendants maintain their position that Defendants are separate entities with separate functions, during the PAGA Period Plaintiff only worked for Defendant Red Sparrow, and Plaintiff's claims are only similar in scope and nature to those on Defendant Red Sparrow's intake team. Further, Plaintiff is the only employee of Defendant's intake team that did work remotely and worked a non-conventional schedule. Payton Decl. at ¶ 9

E. Settlement Negotiations

The proposed settlement was reached after an extensive full-day mediation (as well as a half-day mediation prior to that during which the case did not resolve) which involved extensive negotiation discussions between experienced counsels. Payton Decl. at ¶ 10. Based on the information received, as well as through discussions with Defendants' Counsel, Plaintiff's Counsel was able to (i) determine the total number of distinct individuals falling within the definition of "Aggrieved Employee" for the relevant statutory period, and (ii) construct a damage model that calculated the maximum realistic amount of PAGA penalties that could be levied against Defendants within the PAGA Period. Defendants, however, disputed Plaintiff's claims and disputed both the existence of, and extent of liability as alleged by Plaintiff. Payton Decl. at ¶ 10.

In preparation for mediation, Defendants' counsel provided necessary data and information to aid in the assessment of the claims. Payton Decl. at ¶ 11. Upon thorough review of the information,

1 Plaintiff's counsel was able to calculate a damages estimate and present an opening settlement demand.
2 *Id.* After months of negotiations between the Parties, which included two mediations, further
3 negotiations thereafter, and numerous discussions concerning the strengths and weaknesses of the claims
4 and Defendants' various employment positions and job structures, the Parties were able to agree on a
5 proposed settlement. Payton Decl. at ¶ 12.

6 **F. The Proposed Settlement**

7 The Parties jointly prepared and executed the Private Attorneys General Act (Labor Code § 2698
8 *et seq.*) Settlement Agreement. Payton Decl. at ¶ 13, **Exhibit "B"** (the "Settlement Agreement"). The
9 Settlement Agreement sets forth the terms of the Settlement reached by the Parties, including the
10 following key points:

11 1. Defendants agree to settle this matter for the payment of Thirty-five Thousand Dollars
12 (\$35,000.00) (hereinafter the "Gross Settlement Amount"), which shall be all inclusive, encompassing
13 (i) all payments to the Labor and Workforce Development Agency and Aggrieved Employees, (ii) any
14 and all costs of third party administration of the settlement, (iii) Plaintiff's Counsel's attorneys' fees and
15 costs of suit, and (iv) a modest enhancement award payment to Plaintiff. See Payton Decl. at ¶ 13(a)
16 and Settlement Agreement, at § 1.13a.

17 2. The total sum available for payment of PAGA penalties shall be calculated by deducting
18 up to \$18,646.66 for the payment of Plaintiff's Counsel's fees and costs (up to \$11,666.66 in fees and
19 \$6,980.00 in costs), up to \$1,000.00 for the payment of Plaintiff's Enhancement Award, and the costs of
20 administration (up to \$1,500.00) from the \$35,000.00 Gross Settlement Amount, yielding approximately
21 \$13,853.34. Seventy-five percent (75%) of this amount, or \$10,390.01, shall be distributed to the LWDA,
22 and the remaining twenty-five percent (25%) of this amount, or \$3,463.34, shall be distributed to the
23 Aggrieved Employees. See Payton Decl. at ¶ 13(b) and Settlement Agreement, at § 1.7.

24 3. All non-exempt employees that performed work at any California location for Defendants,
25 at any time during the PAGA Period will receive a pro rata share of the \$3,463.34 allocated to Aggrieved
26 Employees, which shall be distributed based on the number of pay periods each Aggrieved Employee
27 worked for Defendants in California during which shift differential wages were paid during the PAGA
28 Period. Although these calculations will not be made until after approval, a rough estimation of the value

1 to the 71 individuals falling within the definition of “Aggrieved Employee” may be gleaned from the fact
2 that an equal division would provide about \$48.78 to each Aggrieved Employee, net of payments to the
3 LWDA, to the Settlement Administrator, attorney’s fees and costs. The LWDA will be paid \$10,390.01.
4 See Payton Decl. at ¶ 13(c) and Settlement Agreement at ¶ 1.7.

5 4. In exchange for the above settlement consideration, Defendants shall be entitled to the
6 following release from each and every Aggrieved Employee, including Plaintiff²:

7 “Release of Claims by the State and Aggrieved Employees: Upon the approval by
8 the Court of this Settlement Agreement, and except as to such rights or claims as may be
9 created by this Settlement Agreement, the State of California and each and every
10 Aggrieved Employee (which includes any legal heirs and/or successors-in-interest of each
11 and every Aggrieved Employee), fully releases and discharges the Released Parties from
12 the Released Claims (as defined in paragraph 26) during the PAGA period. Aggrieved
13 Employees, other than Plaintiff, will not be deemed to have released any individual wage
14 and hour claims based on alleged violations of the Labor Code or of a California Wage
15 Order, for which they have a private right of action, by virtue of this Settlement Agreement
16 during the PAGA period. This release shall expressly exclude all claims for vested
17 benefits, wrongful termination, unemployment insurance, disability, social security,
18 workers’ compensation, claims while classified as exempt, and claims outside of the
19 PAGA Period.” [See Settlement Agreement, at § 41).]

20 Complete And General Release of Claims by Plaintiff: In consideration for
21 receiving the PAGA Service Award Payments described above, Plaintiff hereby
22 binds himself, and all of his respective heirs, beneficiaries, trustees, administrators,
23 executors, assigns, agents and legal representatives, and hereby releases, waives and
24 forever discharges Defendants and the Released Parties from, and hereby
25 acknowledges full accord and satisfaction of, any and all claims, demands, causes of
26 action, and liabilities of any kind whatsoever (upon any legal or equitable theory,
27 whether contractual, common law or statutory, under federal, state or local law or
28 otherwise), whether known or unknown, asserted or unasserted, by reason of any act,
omission, transaction, agreement or occurrence, that he has ever had, now has or
hereafter may have against Defendants and the Released Parties up to and including
the date the Court approves this Settlement (“Plaintiff’s Released Claims”).
Notwithstanding any other provision of this Settlement Agreement, this general
release does not release any claims that cannot lawfully be released. This
general release is not intended to limit Plaintiff from filing a charge with, or
participating in an investigation conducted by, the Equal Employment Opportunity

² This comports with settled California Supreme Court authority. See *Arias v. Superior Court*
(2009) 46 Cal. 4th 969, 986 (concluding that “with respect to the recovery of civil penalties, nonparty
employees as well as the government are bound by the judgment in an action brought under the act .
...”). Plaintiff are also entering into a separate release in favor of the Released Parties. See Settlement
Agreement, introductory paragraphs, ¶ 3.

Commission; provided, however, that Plaintiff expressly waives and relinquishes any rights he might have to recover damages, monetary or other relief, whether equitable or legal, in any such proceeding concerning events or actions that arose on or before the date that he signs this Settlement Agreement.” [See Settlement Agreement, at § 42).]

5. As noted above, the Settlement Agreement does not Release Civil Code section 1542 release for the aggrieved employees and only settles claims for civil penalties under PAGA alleged in the operative Complaint or that could have been alleged based on the asserted facts and legal theories raised in the operative Complaint for civil penalties under PAGA. See Payton Decl. at ¶ 13(e) and Settlement Agreement, at § 43).

6. Settlement administration, which is to be paid from the Gross Settlement Amount, will not exceed \$1,500.00. Phoenix Class Action Administration Solutions, a reputable settlement administration company, has agreed to administer the settlement within this amount. See Payton Decl. at ¶ 13(f), Exhibit “C” (Quote from Phoenix) and Settlement Agreement, at 29.

7. As detailed herein, Plaintiff’s Counsel seek an award of attorneys’ fees and litigation costs not to exceed a combined \$18,646.66 (\$11,666.66 in attorneys’ fees and no greater than \$6,980.00 in costs), and Plaintiff Joel Villalpando seeks an Enhancement Award of no more than \$1,000.00. See Payton Decl. at ¶ 13(g) Settlement Agreement, at 10.

8. Finally, under the terms of Settlement, the value of checks uncashed more than 180 days after issuance shall be remitted to the California State Controller’s Office. See Payton Decl. at ¶ 13(h) Settlement Agreement, at 35(b)(v)(2)(a).

G. Settlement Payment to Plaintiff for Individual Claims

Plaintiff was a case intake specialist of Defendants who was employed by Defendants for more than four years, from August 2015 to September 2019. See Payton Decl. at ¶ 14. In his role as an intake specialist, Plaintiff held a unique role and schedule within Defendants’ operations. Upon information and belief, only nine other employees fulfilled the same responsibility and work hours as Plaintiff. Hence, Plaintiff’s work conditions were not common to most intake specialists. On the contrary, upon information and belief, Plaintiff’s employment experience for Defendants was extremely unique to him and represented the circumstances of a small group of Defendants’ employees. Payton Decl. at ¶ 14

1 Additionally, in his role as an Intake Specialist, Plaintiff had access to confidential information that many
2 other non-exempt employees lacked. Given the specific duties and responsibilities that Plaintiff held, the
3 claims he alleged against Defendants represent an individual experience that is particular to him and
4 Plaintiff's core causes of action are appropriately alleged on an individual basis. Payton Decl. at ¶ 15.

5 Plaintiff had individual wage and hour claims for: overtime violations, failure to provide meal
6 and rest periods, failure to pay minimum wages, failure to provide accurate itemized wage statements,
7 failure to timely pay all wages upon separation of employment, failure to pay reimbursements, breach of
8 contract, and unfair competition. Payton Decl. at ¶ 16. Throughout his employment he worked a
9 substantial number of hours as a result of off-the-clock and on-call work that he performed without
10 compensation, entitling him to substantial overtime, double-time, and regular wage pay, and associated
11 derivative penalties and interest, and meal and rest period premiums. *Id.* Plaintiff's counsel estimated
12 that his damages from the wage and hour claims alone totaled to about \$823,038.63 (not including
13 attorneys' fees) shortly before his case was resolved. *Id.*

14 This was not a wage and hour case where PAGA penalties represented a significant portion of the
15 amount of damage in dispute. Payton Decl. at ¶ 17. Indeed, according to the evidence presented by
16 Defendants' counsel, no more than nine individuals from Defendants' workforce, which includes at least
17 100 individuals, held the same title as Plaintiff or had work hours similar to his. (*Id.*) Rather, Plaintiff's
18 claims are individual- basis labor claims that give rise to unpaid minimum, overtime, and double-time
19 wages, unpaid commissions and bonuses, liquidated damages, meal and rest break premiums, wage
20 statement penalties, waiting-time penalties, unreimbursed expenses, and statutory attorneys' fees. (*Id.*)

21 In light of the insignificant number of Aggrieved employees, especially in comparison to
22 Plaintiff's overwhelming estimated damages from the violations he was personally subjected to, it is
23 likely the Court would exercise discretion to reduce PAGA penalties awarded. Payton Decl. at ¶ 18. In
24 light of these circumstances, a significant recovery under PAGA was unlikely. (*Id.*)

25 The parties negotiated and resolved all of Plaintiff's individual non-representative claims in
26 exchange for a mutual generally release with a Civil Code section 1542 waiver. (Payton Decl. ¶ 19.)
27 The terms of this settlement agreement including the settlement amount is confidential, thus, the
28 agreement will be lodged with the court under seal at the time of filing this Motion. (*Id.*) The

1 consideration paid to Plaintiff pursuant to this settlement agreement was only for his individual
2 claims; no additional consideration was paid to Plaintiff for resolving the representative PAGA
3 claims and the PAGA claims were separately negotiated among counsel during the mediation. (*Id.*)

4 It is Plaintiff's counsel view that settlement payment for Plaintiff's individual wages was fair and
5 reasonable under the circumstances and constituted a significant discount from the true damages that he
6 suffered. Payton Decl. at ¶ 20. Plaintiff's core claims in this action alleged misclassification and
7 individual labor claims. (*Id.*) As a person who held the position of "Intake Specialist" for Defendants,
8 Plaintiff filled a unique role and had an employment experience that was markedly different and distinct
9 from other aggrieved employees. (*Id.*) As further detailed above, in his capacity as an Intake Specialist,
10 Plaintiff held an experience that was extremely different from other non-exempt employees that worked
11 for Defendants. (*Id.*) Unlike most of Defendants' hourly non-exempt employees, Plaintiff had to be on
12 call seven days per week, and regularly complete work obligations, included client intake calls, outside
13 of office hours. (*Id.*) Accordingly, the individual damages that Plaintiff contends he suffered would be
14 significantly higher than other non-exempt employees, and even other Intake Specialists. Plaintiff's
15 counsel estimated Plaintiff's damages to be approximately \$823,038.63). (*Id.*)

16 **III. LEGAL ARGUMENT**

17 **A. Standards for Approval of A PAGA Settlement**

18 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute,
19 which states that the "[t]he superior court shall review and approve any settlement of any civil action
20 filed pursuant to this part." See Labor Code § 2699(l)(2).

21 As with any settlement, the Court must be mindful in conducting its inquiry that "[s]ettlement is
22 a compromise, which balances the possible recovery against the risks inherent in litigating further." See
23 *In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222, 24 (N.D. Cal. Sept. 12,
24 2011). Indeed, "the very essence of a settlement is ... 'a yielding of absolutes and an abandoning of
25 highest hopes'" [*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624 (9th Cir., 1982)], as "it is
26 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that
27 induce consensual settlements." See *id.*, at 625. As such, "the settlement or fairness hearing is not to be
28 turned into a trial or rehearsal for trial on the merits" or "judged against a hypothetical or speculative

measure of what might have been achieved by the negotiators.” *See id.*

Although the operative PAGA statute does not set forth the criteria on which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. § 382 and Rule 3.769, Cal. Rules of Court, as courts within California have approved settlements of PAGA claims encompassed within class action settlements using Rule 23 criteria.³ However, it is important to underscore that not all Rule 23 factors can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of Rule 23.” *See Casida v. Sears Holdings Corp.* 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan. 25, 2012); *Thomas v. Aetna Health of Cal., Inc.* 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2, 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010). Based thereon, a court’s review of a PAGA settlement necessarily implicates the following unique features that render the approval process completely distinct from approval of a class action settlement under Rule 23 or C.C.P. § 382 and Rule 3.769, Cal. Rules of Court.

First, in evaluating the adequacy of the settlement amount, the Court’s focus is not concerned with the amount which “aggrieved employees” are to receive, but rather, must focus on the total settlement amount in achieving PAGA’s objective.

While “[a PAGA] action is . . . designed to protect the public and penalize the employer for past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a “compromise” that stops short

³ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a balancing of several factors which may include, among others, some or all of the following: [1] the strength of Plaintiff’s case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a governmental participant; and [8] the reaction of the class members to the proposed settlement.” *See Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir., 1998). “Not all of these factors will apply to every class action settlement” and “[u]nder certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval.” *See Nat’l Rural Telcoms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-526 (C.D. Cal. 2004).

1 of rendering findings of liability and damages. Moreover, the Court must not lose sight of the fact that
2 “[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA
3 is to incentivize private parties to recover civil penalties for the government that otherwise may not have
4 been assessed and collected by overburdened state enforcement agencies.” *See Ochoa-Hernandez*, 2010
5 U.S. Dist. LEXIS 32774, at 12.

6 **B. The Settlement Meets All the Criteria For Approval**

7 Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA
8 considerations detailed above – the proposed Settlement embodies all of the key features of a settlement
9 that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

10 **C. The Factors Giving Rise to a Presumption of Fairness Exist**

11 In conducting a review of a settlement, it is generally recognized that an “agreement . . . reached
12 through arms-length negotiation between experienced parties . . . is entitled to a presumption of fairness.”
13 *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377, 44 (C.D. Cal. Apr. 12, 2010).

14 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-length
15 negotiations [P, (2) that was negotiated by Counsel with significant experience in similar wage and hour
16 litigation [*see id.*, at ¶ 3-7, (3) which occurred after Counsel had conducted sufficient investigation to
17 evaluate the strength and potential value of the PAGA claims, as well as evaluating the risks of litigating
18 this claim through trial. *See id.*, at ¶ 26. Based thereon, the court should give considerable weight to the
19 competency and integrity of counsel in assuring itself that the Settlement Agreement represents an arm’s-
20 length transaction entered without self-dealing or other potential misconduct.

21 **D. The Relative Strength of The PAGA Claim, And the Realistic Range of**
22 **Outcomes In The Litigation, Strongly Favor Approval of the Settlement**

23 The relative strength of the PAGA claim brought by Plaintiff weighs in favor of the Court finding
24 that the settlement is fair, adequate, and reasonable, as Defendants maintained numerous defenses to the
25 theories of penalty-liability put forward by Plaintiff that, if successful, had the potential to completely
26 eliminate any recovery.

27 This case addresses violations of important employee protections embodied in the California
28

1 Labor Code – namely, that Defendants failed to compensate the Aggrieved Employees for all hours
2 worked, failed to comply with all obligations surrounding overtime pay (despite the fact that Plaintiff and
3 the Aggrieved Employees regularly work[ed] overtime), failed to pay a minimum wage for all hours
4 worked, failed to pay the Aggrieved Employees the wage designated by contract for each and every hour
5 or fraction thereof worked, failed to provide legally compliant meal and rest periods, failed to pay all
6 earned wages at the conclusion of employment, failed to furnish timely wage statements accurately
7 showing, among other things, the total hours the Aggrieved Employees worked during each pay period,
8 and failed to reimburse necessary business expenses incurred in the course of their employment. Our
9 expert estimated that Defendant’s maximum theoretical exposure in this action totals between April 7,
10 2019 through September 22, 2020 (the date the mediation) for all Defendants combined was
11 approximately \$5,026,171.33 (only \$293,057.91 of which pertained to intake specialists) with stacking.
12 See Payton Decl., ¶ 22. This was computed by multiplying 3,318 aggregate wage statements in violation
13 of the Labor Code by the civil penalty for each pay period associated with every Labor Code violation.
14 *Id.* Without stacking, the maximum exposure to Defendants would be approximately \$283,548.26. *Id.*
15 A true and correct copy of the damages models prepared by our expert, which itemized the damages
16 amounts allocated to each entity with respect to each statutory violation, is attached to the Declaration of
17 Chantal Payton as **Exhibit “D”**. These numbers, however, assume that a violation occurred each and
18 every pay period, which Defendants have strongly disputed. *Id.*

19 Defendants contend they acted within the requirements of California law at all times as to all
20 Aggrieved Employees. Moreover, it maintained that even if the Court did award penalties, the Court
21 could and would *substantially* reduce the penalties awarded based on the discretionary factors contained
22 in Labor Code § 2699(e)(2) (“In action by an aggrieved employee . . . , a court may award a lesser amount
23 than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of
24 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
25 confiscatory.”). In summary, the parties believe that an award of the maximum penalties would be unjust,
26 arbitrary and oppressive, or confiscatory within the meaning of Labor Code section 2699 (e)(2) because
27 for the duration of the PAGA period, Plaintiff only worked for Defendant Red Sparrow as an intake
28 specialist. Red Sparrow’s intake specialists’ job duties differ significantly from all of Defendants’ other

1 non-exempt employees, thus potentially limiting the size of the potential pool of aggrieved employees.
2 Further, even within the small group of nine intake specialists, Plaintiff routinely worked a non-
3 conventional schedule consisting of remote work and make up hours that the other intake specialists did
4 not. Thus, an award of the maximum penalties would be unjust, arbitrary and oppressive, or confiscatory
5 because the scope and nature of Plaintiff's claims are not likely to apply to all of Defendants' non-exempt
6 employees employed during the PAGA period.

7 Based on these disputes, which had the potential to completely eliminate Plaintiff's recovery, the
8 range of realistic "litigation outcomes" on the Plaintiff's PAGA claim was defined by a "maximum
9 possible liability" amount of approximately \$5,026,171.33 [Payton Decl., ¶ 21], and a net-zero recovery
10 based on the defenses asserted by Defendants. *Id.* Notwithstanding the existence of such issues, the
11 Settlement achieves a significant benefit. As such, this factor weighs very heavily in favor of resolution
12 by way of the compromise set forth in the Settlement.

13 **E. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in**
14 **Favor of Approval of the Settlement**

15 Approval of the proposed Settlement Agreement is also appropriate in light of the risk, expense,
16 and complexity of further litigation. As discussed above, the proposed Settlement Agreement takes into
17 consideration the specific factual and legal hurdles faced by the Plaintiff in establishing Defendants'
18 penalty-liability in this case, which again, may have resulted in a net-zero recovery. These risks – when
19 balanced with the fact that the settlement achieved a very significant recovery (as demonstrated below),
20 and that further litigation posed a risk of diminishing such recovery by increasing litigation expenses –
21 weigh strongly in favor of settlement approval.

22 **F. The Benefits Conferred by the Settlement Balance in Favor of Approval**

23 The Settlement Agreement provides a significant monetary benefit that falls well within "the
24 range of an acceptable settlement" under the circumstances, which is the standard on which the instant
25 Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even
26 where it only provides a fraction of what could have been obtained at trial:

27 The proposed settlement is not to be judged against a hypothetical or speculative measure
28 of what might have been achieved by the negotiators." *Officers for Justice v. Civil Serv.*
Comm'n, 688 F.2d at 625 (emphasis in original). Thus, "the very essence of a settlement

1 is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Id.* at 624
2 (citations omitted). As the Second Circuit has pointed out: “The fact that a proposed
3 settlement may only amount to a fraction of the potential recovery does not, in and of
itself, mean that the proposed settlement is grossly inadequate and should be
disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2 (2nd Cir. 1974).

4 *See Linney*, 151 F.3d at 1242.

5 Here, after all deductions are made for administration, a service payment, attorneys’ fees and
6 costs, \$13,853.34 will be paid out [Payton Decl., ¶ 13(b)], of which \$10,390.01 (i.e. 75%) will go to the
7 LWDA, and \$3,463.34 (i.e. 25%) will go to the Aggrieved Employees, as required by Labor Code §
8 2699(i) (“civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to
9 the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”). (*Id.*)

10 This result is exceptional, as settlements of PAGA claims impacting thousands of individuals
11 have been approved as reasonable for amounts far less than the payment in this case. *See Franco v. Ruiz*
12 *Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012) (“Defendant has agreed
13 to pay \$10,000 as civil penalties pursuant to the PAGA Of the \$10,000, 75 percent (\$7,500) will be
14 paid to the State of California, and the remainder (\$2,500) will benefit the class The Court finds that
15 the PAGA payment is set at a reasonable amount, and it shall be approved.”); *Garcia v. Gordon Trucking,*
16 *Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal. Oct. 29, 2012) (“GTI agrees to allocate \$10,000
17 to Plaintiff’s PAGA claims, and will pay \$7,500 to the LWDA, and \$2,500 to participating Class
18 Members on a pro-rata basis. This comports with settlement approval of PAGA awards in other cases. .
19 . . Therefore, the Court will approve the allocation of the Settlement to Plaintiff’s PAGA claim.”); *Schiller*
20 *v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) (“Pursuant to the
21 Settlement Agreement, the parties have agreed to pay \$7,500 to the California Labor and Workforce
22 Development Agency The Court finds that the PAGA Payment is set at a reasonable amount, and
23 recommends that it be approved.”); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D.
24 Cal. July 11, 2012) (“Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
25 California Labor and Workforce Development Agency The Court finds that the PAGA payment is
26 set at a reasonable amount, and it shall be approved.”).⁴

27
28 ⁴ Significantly, each of the above-cited actions involved substantially more “aggrieved
employees” than the approximately 1,100 aggrieved employees in the instant Lawsuit. *See Franco*,

1 Thus, notwithstanding the existence of issues having the potential to completely eliminate
2 recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds typical
3 PAGA awards routinely approved by the courts, it recovers significant monies for Aggrieved Employees
4 which they otherwise would not receive. As such, this factor balances strongly in favor of approval of
5 the Settlement. Payton Decl., ¶ 23.

6 **G. The Scope of the Release is Narrowly Tailored**

7 As discussed above, the California Supreme Court has concluded that in the context of PAGA
8 “the nonparty employees, because they were not given notice of the action or afforded any opportunity
9 to be heard, would not be bound by the judgment as to remedies other than civil penalties.” *See Arias*,
10 46 Cal. 4th, at 987. Thus, the scope of the release provided in exchange for the foregoing consideration
11 is limited to the civil penalties asserted in the Action under Labor Code §§ 2698 *et seq.* *See Settlement*
12 *Agreement*, at 6.1.

13 As such, this factor balances strongly in favor of approval of the Settlement.

14 **H. The Experience and Views of Plaintiff’s Counsel Favor Approval of the**
15 **Settlement**

16 Plaintiff’s Counsel has a significant degree of experience in complex wage and hour litigation.
17 *See Payton Decl.*, ¶¶ 26-33. In the view of Plaintiff’s Counsel, the benefit conferred by the proposed
18 Settlement is fair, reasonable, and adequate under the circumstances, as it reflects a reasoned compromise
19 which takes into consideration the risks inherent in this case which had the potential to completely
20 eliminate recovery. *Payton Decl.*, ¶ 25. As such, this factor balances in favor of approval of the
21 Settlement.
22
23
24
25

26 2012 U.S. Dist. LEXIS 169057, 14 (“2,055 Class Members were ultimately identified”); *Garcia*, 2012
27 U.S. Dist. LEXIS 160052, at 12 (class comprised of “approximately 1,869 individuals”); *Schiller*,
2012 U.S. Dist. LEXIS 80776, 16 (“3,327 California Class members were ultimately identified”);
28 *Gong-Chun*, 2012 U.S. Dist. LEXIS 96828, 18 (“2,051 California Class Members were ultimately
identified”).

I. The Extent of Discovery Completed and The Stage Of The Proceedings Favor Approval of the Settlement

In evaluating this element, the Court should be mindful that “‘formal discovery is not a necessary ticket to the bargaining table’” [*Linney*, 151 F.3d at 1239], as the relevant consideration is “whether ‘the parties have sufficient information to make an informed decision about settlement.’” *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal. Nov. 9, 2011).

Here, the extent of informal discovery conducted, as well as documents and information exchanged during extensive discussions at mediation, was sufficient to enable Plaintiff’s Counsel to evaluate the strength and value of the claim for purposes of settlement. Payton Decl., ¶ 8. As discussed above, Plaintiff’s Counsel’s investigation was sufficient to, among other things, tabulate with precision the total number of alleged Labor Code violations at issue during the PAGA Period, and identify the total number of individuals falling within the definition of “Aggrieved Employee” for the PAGA Period.

Based on Plaintiff’s Counsel’s experience litigating wage and hour claims, such investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of this claim for purposes of settlement. *See* Payton Decl. at ¶ 9.

J. Additional Factors Weigh in Favor of Finding The Terms Of The Proposed Settlement To Be Fair, Adequate, And Reasonable

In addition to the factors presented above, the proposed Settlement does not possess any obvious deficiencies.

With regard to settlement administration, Phoenix Class Action Administration Solutions was selected because they returned a competitive bid, not to exceed \$1,500. This falls within the allocated amount in the Settlement Agreement, at III.5.

Moreover, Plaintiff have complied with PAGA’s notice requirements [*see Labor Code* § 2699(1)(2)]; Plaintiff transmitted the Settlement Agreement to the LWDA by online submission concurrently with its submission to the Court on January 26, 2021. *See* Payton Decl., ¶ 6.

In sum, under the applicable standards for approval of PAGA settlements in California, the settlement in this case meets the standards for approval.

1
2 **IV. PLAINTIFF’S COUNSEL ARE ENTITLED TO RECOVER THEIR REASONABLE**
3 **FEES AND COSTS**

4 Pursuant to the terms of the Settlement, Plaintiff’s Counsel seeks attorneys’ fees of up to
5 \$11,666.66 and reimbursement of litigation costs of \$6,980.00. See Settlement Agreement, at 1.10.
6 Plaintiff’s Counsel’s entitlement to an award of attorneys’ fees and costs is warranted on multiple
7 independent grounds. Further, the amount of fees requested falls well within the range of reasonableness
8 under applicable standards, as the amount requested constitutes a “percentage of the fund” deemed
9 reasonable in similar wage and hour settlements of this size and approved by California courts, which is
10 not only warranted based on the contingency risk Plaintiff’s Counsel have agreed to incur for the benefit
11 of the State of California and Aggrieved Employees, but also based on the significant results achieved,
12 as the Settlement obtains a recovery substantially above the range approved as reasonable by California
13 state and federal courts. Based thereon, Plaintiff’s Counsel respectfully requests that the Court enter an
14 order approving the fee and cost amounts requested.

15 **A. Plaintiff’s Counsel Are Entitled To Recover Their Reasonable Fees And Costs**
16 **As A Matter Of Right**

17 Plaintiff’s Counsel are entitled to recover attorneys’ fees and costs under the “common fund”
18 doctrine as a matter of right. As held by the U.S. Supreme Court, “a lawyer who recovers a common
19 fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee
20 from the fund as a whole.” See *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.

21 Courts have long recognized the “common fund” or “common benefit” doctrine, under which
22 attorneys who create a common fund or benefit for a group of persons may be awarded their fees and
23 costs to be paid out of the fund. *Serrano v. Priest* (“*Serrano III*”) (1977) 20 Cal.3d 25, 34, quoting
24 *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees’ Association v.*
25 *City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162,
26 167; see also *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric Auto-Lite Co.* (1970)
27 396 U.S. 375, 391-392.

28 The California Supreme Court has held that, “when a number of persons are entitled in common

1 to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all results in the
2 creation or preservation of that fund, such Plaintiff or Plaintiffs may be awarded attorneys' fees out of
3 the fund." *Serrano III, supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d 1; *see also Boeing, supra*,
4 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit of persons other than himself
5 or his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Mills, supra*, 396 U.S.
6 at 391-392 (United States Supreme Court endorsing the common fund approach in class actions).
7 California Practice Guide: Civil Trials and Evidence (The Rutter Group) at § 17:172.3 explains the
8 common fund doctrine as follows:

9 Where the lawsuit results in the recovery of a fund or property benefiting others as well
10 as Plaintiff (e.g., a class action), the court has inherent equitable power to order Plaintiff's
11 attorney fees paid out of the common fund or property [citations]. Such fee spreading
12 assures that all of those benefited by the litigation pay their fair share of obtaining the
13 recovery.

14 The percentage-of-the-fund approach appears to be the preferred method of awarding fees in
15 traditional common fund cases, such as this case. Where the settlement amount is a "certain or easily
16 calculable sum of money," use of the percentage-of-the-fund method is appropriate. *Serrano III*, 20 Cal.
17 3d at 35.

18 In *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19,
19 the California Supreme Court upheld an attorneys' fee award based on a percentage of the common
20 benefit obtained in a lawsuit by a city employees' association for retroactive wages:

21 It is not necessary to find this suit a proper class action in order to uphold the portion of
22 the judgment awarding counsel for Plaintiff 25 percent of all retroactive salaries and
23 wages received. That award may be sustained under the rule that a litigant who creates a
24 fund in which others enjoy beneficial rights may require those beneficiaries to pay their
25 fair share of the expense of litigation. (*See Sprague v. Ticonic National Bank* (1939) 307
26 U.S. 161, 159; *Estate of Stauffer* (1959) 53 Cal.2d 124, 132).

27 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court stated:
28 "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive
benefits may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in
City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105, 110-111, the California Supreme Court
recognized that the common benefit doctrine has been applied "consistently in California when an action
brought by one party creates a fund in which other persons are entitled to share."

Numerous appellate courts have similarly found. *See e.g., Knoff v. City and County of San Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and expenses properly awarded from common benefit composed of illegally imposed sales and use tax); *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners of residential property in an inverse condemnation action).

Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth, Tenth, Eleventh and the D.C. Circuit—have endorsed the “percentage fee” method for determining reasonable attorneys’ fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.* (S.D.N.Y. 1999) 74 F. Supp. 2d 393, 396-398 (describing the overwhelming weight of federal authority in favor of the percentage fee method); *see also, Lealao, supra*, 82 Cal.App.4th at 30-31 (describing same).

Thus, as Plaintiff’s Counsel has expended a significant amount of time and money to secure a \$13,853.34 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S. Dist. LEXIS 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees have resulted in the preservation or recovery of a certain or easily calculable sum of money—out of which sum or ‘fund’ the fees are to be paid.’”)], and in doing so, have exclusively borne the risk of loss for such expenditures of time and expenses (as the LWDA elected not to take the case after receiving the PAGA Notice), Plaintiff’s Counsel is entitled to claim reasonable fees from that fund under applicable precedent.⁵

⁵ Plaintiff’s Counsel is also entitled to recover attorney’s fees and costs as a matter of right under the PAGA statute [*Labor Code* § 2699(g)(1) (“Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”)], and under *C.C.P.* § 1021.5, as the instant PAGA action was by definition “for the public benefit” and secured monetary awards for approximately 188 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal. App. 4th 1, 16-17 (2007) (“Estrada’s personal motivation does not diminish the fact that he pursued this public interest class action not only for himself but on behalf of a class comprised of FedEx’s past and present drivers and ultimately obtained awards for 209 drivers. [] No more is required to satisfy the ‘significant benefit,’ ‘public interest,’ and ‘large class of persons’ requirements of Code of Civil Procedure section 1021.5.”).

B. The Fee Amount Requested Is Reasonable

In addition to the forgoing, Plaintiff's Counsel's request for attorneys' fees in the amount of \$11,666.66 Gross Settlement Amount falls well within the "zone of reasonableness."

It is important to highlight at the outset that the fee amount presently sought is not extraordinary, but actually falls at the "average" fee deemed reasonable under California State court authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million." *See e.g. Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011).

Moreover, taking into account the contingency risk Plaintiff's Counsel agreed to incur for the benefit of the State of California (which elected not to take the case after receiving the PAGA Notice), and the significant results achieved – facts which justify the requested fee – Plaintiff's Counsel's requested fee is reasonable under all applicable standards.

C. The Fee Amount Allocated by The Settlement Agreement Is Within the Zone of Reasonableness Under the "Percentage of the Fund" Method

The amount of fees requested by Plaintiff's Counsel – 33.33% of the Gross Settlement Amount – is reasonable based on standards applicable to the "percentage of the fund" method. "When assessing whether the percentage requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in similar cases." *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

First, the results achieved by Plaintiff's Counsel are significant, as Defendants have agreed to pay a minimum of \$13,853.34 to the LWDA and the Aggrieved Employees under the Settlement. This is a substantial recovery given the risk of success in obtaining any recoverable penalties. Payton Decl. at ¶ 13(b).

Second, such results were achieved in the face of significant risks. As explained above, Defendants maintained defenses to Plaintiff's PAGA claims that very well could have resulted in a net-zero recovery at trial.

1 Third, notwithstanding this risk of loss, Plaintiff's Counsel undertook representation of the instant
2 PAGA claim for the benefit of the State of California on a contingency basis. This not only required
3 Plaintiff's Counsel to personally assume the risk of nonpayment in securing the very substantial financial
4 benefit the State of California stands to receive, but constitutes a "loan" on Plaintiff's Counsel services
5 – both of which are factors warranting fee enhancement under applicable California Supreme Court
6 authority:

7 One of the most common fee enhancers . . . is for contingency risk. We reaffirmed the
8 propriety of a contingency risk enhancement in *Ketchum*: "The economic rationale for fee
9 enhancement in contingency cases has been explained as follows: 'A contingent fee must
10 be higher than a fee for the same legal services paid as they are performed. The contingent
11 fee compensates the lawyer not only for the legal services he renders but for the loan of
12 those services. The implicit interest rate on such a loan is higher because the risk of default
13 (the loss of the case, which cancels the debt of the client to the lawyer) is much higher
14 than that of conventional loans.' (Posner, *Economic Analysis of Law* (4th ed. 1992) pp.
15 534, 567.) 'A lawyer who both bears the risk of not being paid and provides legal services
16 is not receiving the fair market value of his work if he is paid only for the second of these
17 functions. If he is paid no more, competent counsel will be reluctant to accept fee award
18 cases.'

19 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, 579-580.

20 Finally, the percentage requested by Plaintiff's Counsel falls within a typical range, particularly
21 in light of the modest settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796, 23 ("[C]ourts may
22 award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a
23 common fund under \$10 million." See also *Crandall v. U-Haul International, Inc.*, LASC Case No.
24 BC178775 (awarding attorneys' fees of 40% of a common fund).

25 Attorneys' fee awards in the amount sought here are well-established by California law and
26 practice. Accordingly, Plaintiff's Counsel's fee request is fair and reasonable and is consistent with the
27 awards in California and the Ninth Circuit. It is also reasonable given the history of this action and the
28 results obtained.

**D. While the Requested Award of Attorneys' Fees is Reasonable as a Percentage of
the Common Fund, It is Further Confirmed by a Lodestar Cross-Check**

The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
480, 506, that "[t]he percentage of fund method survives in California class action cases." Specifically,

1 the *Laffitte* Court held:

2 The recognized advantages of the percentage method—including relative ease of
3 calculation, alignment of incentives between counsel and the class, a better approximation
4 of market conditions in a contingency case, and the encouragement it provides counsel to
seek an early settlement and avoid unnecessarily prolonging the litigation—convince us
the percentage method is a valuable tool that should not be denied our trial courts.

5 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when a
6 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
7 Plaintiff for the benefit of all results in the creation or preservation of that fund, such plaintiff or Plaintiff
8 may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627 (in
9 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its
10 equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache*
11 *Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 (the percentage of the fund method for calculating
12 attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method
13 and “establishes reasonable expectations on the part of Plaintiff’s attorneys as to their expected recovery;
14 and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities*
15 *Litigation* (3d Cir. 2005) 396 F.3d 294, 300 (“The percentage-of-recovery method is generally favored
16 in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards
17 counsel for success and penalizes it for failure.’”).

18 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with tools
19 such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar (hours
20 worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed to bring the
21 lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may
22 utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold further that trial courts have
23 discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain
24 the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
25 requested percentage fee.”)

26 Here, Plaintiff’s Counsel’s fee request of \$11,666.66 (thirty-three and one-third percent [33.33%]
27 of the Gross Settlement Amount) is fair and reasonable based on a percentage of the recovery, and as
28 well as confirmed with a lodestar cross-check. First, “regardless whether the percentage method or the

lodestar method is used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008). This is also consistent with Class Counsel’s experience in similar wage and hour class action matters. See Payton Decl., ¶ 9. Thus, the percentage sought by Plaintiff’s Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

Next, as stated, under the lodestar method the court computes the “lodestar” amount by multiplying the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates. See, e.g., *Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation”).

Under California law, lodestar multipliers can range from 2 to 4 or even higher,⁶ however, Plaintiff’s counsel requests no multiplier here.

In this case, Plaintiff’s Counsel has a lodestar of approximately \$104,607.00, which is far greater than the \$11,666.66 fee request. Payton Decl., ¶ 44. The fees requested represent a negative 0.11 multiplier. The billing rates used are reasonable in view of the background and experience of the attorneys and paralegals performing work on this matter as shown in the Declaration of Chantal Payton submitted herewith. Payton Decl., ¶¶ 26-35. Further, the attorneys’ fees were reasonably and necessarily incurred as demonstrated by the evidence of work performed and time spent on this matter submitted

⁶ See, e.g., *Chavez, supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland Raiders* 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In class actions such as this one, where the value of the benefit conferred to the class “can be monetized with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market for such services.” *Id.* at 556; see also *Laffitte, supra*, 1 Cal.5th at 503-05.

1 herewith. *Id.* at ¶ 38, **Exhibit “E.”** Plaintiff’s counsel will also receive 45% of the individual settlement
2 payment to Plaintiff as attorneys’ fees (the settlement agreement will be lodged with the court under seal
3 at the time of filing this Motion). Payton Decl., ¶ 44. However, even after accounting for this payment,
4 the lodestar still significantly exceeds the total fees Plaintiff’s counsel will receive in this matter. (*Id.*)

5 Based thereon, and for the reasons discussed above (the significant risk in continuing to litigate
6 this matter and in seeking to obtain penalties based on the claims asserted; the risks and burden involved
7 in representation on a contingency basis; the knowledge and experience of Plaintiff’s Counsel; and the
8 value obtained by Plaintiff’s Counsel for the Aggrieved Employees), it is fair and reasonable to account
9 for these risks and compensate Plaintiff’s Counsel with a fee award of thirty-three and one-third percent
10 (33.33%) percent of the Gross Settlement Amount.

11 **E. Plaintiff’s Counsel’s Request for Costs is Reasonable**

12 In the course of this litigation, Plaintiff’s Counsel collectively incurred out-of-pocket expenses of
13 approximately \$6,883.73 to date. Plaintiff’s Counsel expects to incur an additional \$200.00 in costs
14 associated with filing fees, service and mailing charges, and motion reservation and hearing appearance
15 fees, and administering the settlement through its conclusion. However, consistent with Settlement
16 Agreement, Plaintiff requests costs in the amount of \$6,980.00.. See Payton Decl. at ¶ 46-47, Exhibit
17 “F”.

18 As demonstrated in the Payton Declaration submitted herewith, the incurred costs include filing
19 fees, mediation fees for the two mediations that the parties attended in an effort to resolve this matter,
20 service and mailing charges, and motion reservation and hearing fees. *Id.* Such costs are appropriate for
21 cost reimbursement in these types of cases. See *e.g.*, *In re United Energy Corp. Sec. Litig.* (C.D. Cal.
22 1989) 1989 WL 7321 1, *6 (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); see also, *In re GNC*
23 *Shareholder Litigation* (W.D. Pa. 1987) 668 F. Supp. 450, 452.

24 The costs incurred by Plaintiff’s Counsel in this litigation benefited Plaintiff, Aggrieved
25 Employees, and the State. In light of the litigation costs that Plaintiff’s Counsel was required to incur to
26 prosecute this action, Plaintiff’s cost request is reasonable and should be granted.

V. THE ENHANCEMENT PAYMENT SOUGHT BY THE NAMED PLAINTIFF IS REASONABLE

Plaintiff Joel Villalpando seeks a Service Payment in the amount of no greater than \$1,000.00. This payment is intended to both recognize the time and effort that the named Plaintiff spent on behalf of other Aggrieved Employees and the State. *See* Declaration of Joel Villalpando (“Villalpando Dec.”) submitted herewith.

Case law supports the award of incentive payments in private attorney general actions. The Ninth Circuit has recognized that a named Plaintiff’s “willingness to act as a private attorney general” may justify the award of an incentive payment. *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub LLC*, no. 2:12-CV-02716-TLN-CKD (E.D. Cal., Sep. 6, 2013), the United States District Court for the Eastern District of California approved a similar PAGA-only settlement and awarded a service payment to the representative Plaintiff in recognition of their efforts.

The traditional bases for awarding incentive awards in class settlements support the award of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive awards and held that “the rationale for making enhancement or incentive awards to named Plaintiff is that he or she should be compensated for the expense or risk he has incurred in conferring a benefit” on others. *Id.* at 806. This rationale applies in this Action exactly the same it would in a traditional class action.

Without Plaintiff’s efforts, there would be no recovery at all. An incentive award is appropriate to compensate Plaintiff Villalpando for the risk and expense they incurred in conferring a benefit on other of Defendants’ employees and the State of California.

As a result of the named Plaintiff’s efforts, Aggrieved Employees will receive monetary settlement payments totaling to \$3,463.34 and the State of California will receive \$11,625.00 to be put toward education about and enforcement of California’s labor laws.

In this case, the named Plaintiff performed the following tasks, among others: (1) assisted Counsel in investigating and substantiating the claims alleged in this action, including multiple interviews with counsel to review facts, documents, and Defendants’ policies; (2) assisted in the preparation of the

1 complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the
2 settlement of this litigation. *See generally*, Villalpando Declaration. Moreover, as with any Plaintiff who
3 files a civil action, the named Plaintiff undertook the financial risk that, in the event of a judgment in
4 favor of Defendants in this action, they could have been personally responsible for any attorneys' fees
5 and costs awarded in its favor.

6 The award of such payment to each of the named Plaintiff is especially warranted in a case like
7 this one. It is necessary to ensure that employees, like Plaintiff, continue to bring claims like those
8 brought here to enforce the rights of employees. Individuals like the named Plaintiff (and most Aggrieved
9 Employees) would have little, if any, recourse without the class action device. Most Aggrieved
10 Employees – like the named Plaintiff – would be fearful of retaliation in response to filing any lawsuit,
11 much less a class action suit. Plaintiff must be commended for pursuing their claims; modest payments
12 like those sought here are an appropriate means of doing so.

13 VI. CONCLUSION

14 As shown herein, the Settlement Agreement is fair, adequate and reasonable, as it represents a
15 reasoned compromise obtained through arms-length negotiations. For all the reasons set forth above,
16 Plaintiff respectfully request that this Court, as set forth in the proposed Order Approving Settlement, do
17 the following:

- 18 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
19 2699, subpart l;
- 20 2. Appoint Phoenix Class Action Administration Solutions as the Settlement Administrator
21 and approve its administration fees up to \$1,500 for payment out of the Gross Settlement Amount;
- 22 3. Approve the award of attorneys' fees and costs to Plaintiff's Counsel not to exceed
23 \$18,646.66, payment of which shall come from the Gross Settlement Amount;
- 24 4. Approve the payment of an Enhancement Award to Plaintiff Joel Villalpando in the
25 amount of \$1,000.00 from the Gross Settlement Amount; and

26
27 ///

28 //

1 5. Direct disbursement of the remaining Gross Settlement Amount to the LWDA and all
2 Aggrieved Employees as provided for in the Settlement Agreement.

3
4 Respectfully submitted,

5 Dated: January 26, 2021

PAYTON EMPLOYMENT LAW, PC

6
7 By: 
8 Chantal McCoy Payton, Esq.
9 Robert V. Torres, Esq.
10 Attorney for Plaintiff Joel Villalpando,
11 individually and on behalf of all other Aggrieved
12 Employees
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28