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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

VERONICA GONZALEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

PRECISION HOSPITALITY &
DEVELOPMENT, LLC, a California
limited liability company; and DOES 1
through 100,

Defendants.

Case No. 30-2020-01127597-CU-OE-CXC

*[Assigned for all purposes to the Hon. Randall
J. Sherman, Dept. CX105]*

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR SETTLEMENT
APPROVAL OF CLAIMS BROUGHT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, REASONABLE
ATTORNEYS' FEES AND COSTS, AND
ENHANCEMENT AWARD**

Date: July 30, 2021
Time: 10:00 a.m.
Dept.: CX105
Reservation: 73562171

Action Filed: January 29, 2020
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on July 30, 2021 at 10:00 a.m., at the Orange County
3 Superior Court, located at 700 W Civic Center Dr, Santa Ana, California 92701, Plaintiffs
4 Veronica Gonzalez and Guadalupe Padilla (“Plaintiffs”), individually and on behalf of other
5 allegedly aggrieved employees, hereby moves this Court for entry of an Order as follows:

- 6 1. Granting approval pursuant to Labor Code § 2699(l) of the proposed Settlement
7 Agreement of claims brought by Plaintiffs pursuant to the Private Attorneys General
8 Act of 2004, California Labor Code § 2698 *et seq.*;
- 9 2. Appointing Phoenix Settlement Administrators as the third-party Settlement
10 Administrator, and approving an award of \$4,500.00 in anticipated costs to Phoenix
11 Settlement Administrators for its settlement administration services;
- 12 3. Approving as to form and content the proposed Notice of PAGA Settlement and
13 Release of Claims, and directing that it be distributed to the allegedly aggrieved
14 employees pursuant to the terms of the Settlement Agreement;
- 15 4. Directing the distribution of the Maximum Settlement Amount (\$351,000.00)
16 pursuant to the terms of the Settlement Agreement;
- 17 5. Approving an award of one-third of the Maximum Settlement Amount (\$117,000.00)
18 in attorneys’ fees (\$99,450.00 to Haines Law Group, APC and \$17,550.00 to James
19 Hawkins APLC), as Plaintiffs’ counsel;
- 20 6. Approving an award of \$25,958.07 in actual litigation costs reimbursement
21 (\$22,929.14 to Haines Law Group, APC and \$3,028.93 to James Hawkins APLC);
- 22 7. Approving an enhancement award of \$10,000.00 (\$5,000.00 to each Plaintiff) for
23 their service to the aggrieved employees and the State of California; and
- 24 8. Approving the payment of \$145,156.45 to the California Labor & Workforce
25 Development Agency for its share of PAGA civil penalties.

26 This Motion is based on this Notice, the attached Memorandum of Points and Authorities;
27 the declarations of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, James R.
28 Hawkins, Veronica Gonzalez, Guadalupe Padilla, and Jodey Lawrence of Phoenix Settlement

1 Administrators, and all exhibits attached thereto; the Settlement Agreement; all other pleadings
2 and papers on file in this action; and on any further oral or documentary evidence or argument
3 presented at the time of hearing.

4 Given the multiplicity of issues addressed herein, Plaintiffs' memorandum of points and
5 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court
6 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider
7 the entire Motion, which is 23 pages in length.

8
9 Dated: July 8, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

10
11 By:


Fletcher W. Schmidt
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Veronica Gonzalez and Guadalupe Padilla (“Plaintiffs”) allegedly “aggrieved
4 employees” under the Private Attorneys General Act of 2004, California Labor Code § 2698 *et*
5 *seq.* (“PAGA”), respectfully move this Court for an Order granting approval of the Settlement
6 Agreement (“Settlement Agreement” or “Settlement”)¹ with Defendant Precision Hospitality &
7 Development, LLC. (“Defendant”).² The proposed Settlement, under which Defendant has
8 agreed to pay a non-reversionary amount of \$351,000.00, will dispose of Plaintiffs’ representative
9 PAGA claim filed on behalf of the State of California and all “aggrieved employees” as defined
10 by Labor Code § 2699(c).

11 This PAGA action is predicated on Defendant’s alleged (i) failure to pay minimum wages;
12 (ii) failure to pay overtime wages; (iii) failure to reimburse all necessary business expenditures;
13 (iv) failure to provide all meal periods; (v) failure to authorize and permit all rest periods; (vi)
14 failure to maintain accurate records and issue accurate, itemized wage statements; (vii) failure to
15 pay all final wages at termination; and (viii) engagement in unfair business practices. This PAGA
16 action seeks civil penalties for Defendant’s Labor Code violations on behalf of the California
17 Labor & Workforce Development Agency (“LWDA”) and all allegedly “aggrieved employees,”
18 defined as “all current and former non-exempt employees who performed work for Defendant
19 Precision Hospitality & Development, LLC in California at any time between February 3, 2019
20 and January 10, 2021” (the “PAGA Period”). Notably, the relief provided under the Settlement,
21 and the claims released thereunder, are *solely* for the payment of civil penalties under the PAGA.
22 Based on the information provided by Defendant, the number of aggrieved employees, including
23 Plaintiffs, is estimated to be 635 individuals.

24
25 ¹ The Settlement Agreement is attached as Exhibit 1 to the Declaration of Fletcher W. Schmidt (“Schmidt
26 Decl.”), filed concurrently with this Motion. The Notice of PAGA Settlement and Release of Claims
27 (“Notice”) is attached as Exhibit A to the Settlement Agreement.

28 ² Concurrently with the filing of this motion, Plaintiffs provided notice of the proposed Settlement, as well
as copies of this motion and all papers filed in support hereof, to the LWDA. *See* Schmidt Decl., ¶ 32;
Exhibit 5.

1 In deciding whether to grant approval of the Settlement, the primary issue is whether the
2 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement
3 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it (1) is the
4 product of extensive arm's-length negotiations, (2) was negotiated by attorneys experienced in
5 wage-and-hour issues with the assistance of an experienced, neutral mediator, (3) was negotiated
6 after the parties undertook sufficient investigation to evaluate the relative strength and value of
7 the PAGA claim, and (4) reflects a reasoned compromise based directly on the relative strength
8 and value of the PAGA claim, the risks, expense, complexity and likely duration of further
9 litigation, and the risks that further litigation could result in a lesser recovery.

10 Pursuant to the Settlement, Defendant will pay a Maximum Settlement Amount ("MSA")
11 of \$351,000.00 on a non-reversionary basis. *See* Settlement, §§ I.8 and III.3. After deducting
12 amounts for requested attorneys' fees (\$117,000.00), attorney costs (\$25,958.07), enhancement
13 awards for the named plaintiffs totaling (\$10,000.00), settlement administration costs
14 (\$4,500.00), and the LWDA's share of the amount designated as civil penalties pursuant to Labor
15 Code § 2699(i) (\$145,156.45), the Settlement provides for distribution of approximately
16 \$48,385.48 in civil penalties to the aggrieved employees, an average of \$76.20 on a per capita
17 basis. *Id.*, §§ I.9, III.5.

18 The MSA represents a reasonable recovery for the State of California and aggrieved
19 employees when considering the limited release of only PAGA claims based on the factual
20 allegations in Plaintiffs' operative complaint. Further litigation may have resulted in a smaller
21 recovery, or even no recovery at all, based on the defenses asserted by Defendant and the
22 significant litigation risks involved. Moreover, the MSA results in individual payments that
23 exceed other PAGA penalty awards approved as reasonable throughout California. *See, e.g.,*
24 *Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A.
25 County, May 20, 2013) (average PAGA penalties of \$7.49); *Cabrera v. Advantage Sale &*
26 *Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12,
27 2013) (average PAGA penalties of \$3.33). Further, the amounts requested for attorneys' fees and
28 costs, Plaintiffs' enhancement awards, and settlement administration costs are fair, adequate, and

reasonable. In light of the foregoing, this Court should enter the [Proposed] Judgment and Order Granting Plaintiffs' Motion for Settlement Approval of Claims Brought Under the PAGA, Reasonable Attorneys' Fees and Costs, and Enhancement Awards, submitted herewith.

II. SUMMARY OF THE LITIGATION

A. The Parties

Defendant operates a chain of Dunkin' Donuts and Baskin-Robbins franchises in Southern California, with approximately 9 locations. Schmidt Decl., ¶ 8. Plaintiffs were both originally hired by Defendant as "Crew Members" and were later promoted to "Shift Leader" prior to their separation. Declaration of Veronica Gonzalez ("Gonzalez Dec."), ¶ 2; Declaration of Guadalupe Padilla ("Padilla Dec."), ¶ 2. Plaintiffs worked at multiple locations, including Lake Forest, San Clemente, Mission Viejo, Tustin, Foothill Ranch, and UC Irvine. *Id.* Plaintiffs, like all aggrieved employees, were employed by Defendant as non-exempt employees during the PAGA Period and were subject to Defendant's wage and hour policies and practices. *Id.*

B. Procedural History

On January 29, 2020, Plaintiff Gonzalez filed her class action complaint titled *Veronica Gonzalez v. Precision Hospitality & Development, LLC., et al.*, Orange County Superior Court, Case No. 30-2020-01127597-CU-OE-CXC. Schmidt Decl., ¶ 9. On February 3, 2020, and May 1, 2020, Plaintiffs provided written notice of their intent to file a claim for civil penalties under PAGA to the LWDA and Defendant. *Id.* On May 26, 2020, Plaintiff Padilla filed her class action complaint titled *Guadalupe Padilla v. Precision Hospitality & Development, LLC., et al.*, Orange County Superior Court, Case No. 30-2020-01140810-CU-OE-CXC.³ *Id.*

On November 2, 2020, the parties attended a full-day mediation session with Marc Feder, Esq. a respected wage and hour mediator. Schmidt Decl., ¶ 11. In connection with mediation Defendant produced its employee handbooks and related wage and hour policies as well as

³ On July 8, 2021, the Parties filed a stipulation to amend the *Gonzalez* complaint to dismiss class claims without prejudice and name Guadalupe Padilla as a named plaintiff. Schmidt Decl., ¶ 10; Exhibit 2. The Parties request that the class claims be dismissed due to the existence of arbitration agreements signed by employees as part of Defendant's standard new-hire process. *Id.* Once the operative amended complaint is filed, Plaintiff Padilla will request dismissal of her related lawsuit without prejudice and will pursue settlement approval through this matter. *Id.*

1 timekeeping and payroll records for approximately 15% of all employees who worked during the
2 relevant time period. *Id.* Plaintiffs' expert, who holds a Ph.D. in economics, analyzed the
3 employee records and created a comprehensive exposure analysis for the PAGA claim. *Id.* During
4 mediation, the parties debated the legal bases for their claims and defenses and their respective
5 data analyses. *Id.* At the conclusion of mediation, Mr. Feder crafted a mediator's proposal to fully
6 resolve Plaintiffs' PAGA claim, which the Parties ultimately accepted. *Id.* Over the following
7 months, the parties negotiated the final terms of the proposed Settlement now before this Court
8 for approval. *Id.*

9 **C. Plaintiffs' Claims and Defendant's Defenses**

10 Plaintiffs allege that Defendant maintained a company-wide practice of requiring
11 employees to delay or skip meal periods in order to maximize customer service and the guest
12 experience. Schmidt Decl., ¶ 12. Specifically, employees were not permitted to self-break and
13 could not take their meal periods until they were relieved of duty by a Manager, Assistant
14 Manager, or Shift Leader (collectively referred to as "Manager"). *See* Labor Code § 512(a);
15 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041 ("We conclude that,
16 absent waiver, section 512 requires a first meal period no later than the end of an employee's fifth
17 hour of work...") Furthermore, Defendant's policy required that at least one Manager be on duty
18 at all times, meaning they would also have to delay or skip meal periods if there was not another
19 Manager present at the store. Schmidt Decl., ¶ 12. Plaintiffs also contend that employees were
20 not provided second meal periods in practice in instances when they worked in excess of 10.0
21 hours. *Id.* Defendant contends that it provided all meal periods to employees in a legally-
22 compliant manner and that the policies Plaintiffs rely on were superseded by newer, compliant
23 policies and only appear in a Manager Addendum, which was not applicable to other non-exempt
24 employees. *Id.* Additionally, Defendant argues that employees waived second meal periods when
25 they worked shifts in excess of 10.0 hours but less than 12 hours. *Id.*

26 Plaintiffs allege that Defendant maintains a facially unlawful rest period policy which
27 requires employees to remain inside the restaurant during rest periods, and specifically advises
28 managers that they are permitted to confine employees to the restaurant during rest periods, all in

1 direct violation of *Augustus*. See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257,
2 269 (“[O]ne cannot square the practice of compelling employees to remain at the ready, tethered
3 by time and policy to particular locations or communications devices, with the requirement to
4 relieve employees of all work duties and employer control during 10-minute rest periods.”);
5 Schmidt Decl., ¶ 13. As a result, Plaintiff contends that any rest periods, which were purportedly
6 authorized, were not valid and legally compliant rest periods. Schmidt Decl., ¶ 13. Furthermore,
7 as with meal periods, Defendant’s focus on customer service and the inability of employees to
8 self-break resulted in rampant missed rest periods, and Plaintiff maintains that employees
9 virtually never received more than one rest period per shift, regardless of shift length. *Id.*
10 Defendant asserts that it authorized and permitted aggrieved employees to take all lawful rest
11 periods and that employees are encouraged to leave the premises during rest breaks. *Id.*

12 Plaintiffs contend that Managers were required to perform certain managerial duties at
13 home, off the clock, for no compensation. Schmidt Decl., ¶ 14. Specifically, Managers were
14 expected to create “production lists” at home, which would designate the various numbers of
15 donuts that should be baked and sandwiches that should be prepared for each shift at the
16 restaurant. *Id.* Plaintiffs allege that Managers were reprimanded for performing this duty while
17 on the clock at work. *Id.* Managers would also be expected to remain on-call while off-duty and
18 would frequently be contacted to troubleshoot various issues with inventory, shipments, and other
19 problems as they arose. *Id.* Defendant denies that it requires any employees to work off the clock
20 and that employees are paid for all hours worked, regardless of whether they were performed at
21 the store or at home. *Id.* Additionally, Defendant contends that Managers are not expected to
22 perform any duties at home and that time is provided during the workday for all “managerial”
23 tasks that need to be completed. *Id.* Defendant contends that this claim would face significant
24 challenges at certification because it relies on unrecorded time worked by a subset of employees;
25 necessitating a series of mini trials to determine which Managers actually worked “off the clock,”
26 the reasons for doing so, and whether they were accurately paid for that work. *Id.*

27 Plaintiffs contend that Managers were not reimbursed for any portion of their cellular
28 phone bills even though they were required to use their personal cellular phones to communicate

1 with other managers and non-exempt employees and would frequently be called while off-duty.
2 See Labor Code § 2802 (“An employer shall indemnify his or her employee for all necessary
3 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
4 her duties.”); see also *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137,
5 1144 (requiring employers to reimburse a reasonable percentage of employees’ monthly cell
6 phone bill when employees are required to use their personal cell phone for business purposes).
7 Defendant argues that it has a policy to reimburse all reasonable and necessary business
8 expenditures and that phones are available at the stores should any employee need to make a
9 business call. Schmidt Decl., ¶ 15.

10 Beginning in January 2017, Defendant paid employees a monthly non-discretionary
11 bonus. Schmidt Decl., ¶ 16. However, when employees earned overtime wages during the time
12 period when the bonus was earned, Plaintiff contends that Defendant did not include the value of
13 the bonus in the regular rate of pay. See *Huntington Memorial Hosp. v. Sup. Ct.* (2005) 131
14 Cal.App.4th 893, 902-03 (“[I]n determining what payments are to be included in or excluded
15 from the calculation of the regular rate of pay, California will adhere to the standards adopted by
16 the U.S. Department of Labor.”); see also 29 U.S.C. §§ 207(a)(1) and (e); 29 C.F.R. §778.211(c)
17 (“Bonuses which are announced to employees to induce them to work more steadily or more
18 rapidly ... are regarded as part of the regular rate of pay. Most attendance bonuses, individual or
19 group production bonuses, bonuses for quality and accuracy of work ... must be included in the
20 regular rate of pay.”) As a result, Plaintiff alleges that Defendant underpaid a portion of overtime
21 wages during the relevant time period. Schmidt Decl., ¶ 16. Defendant contends that it has paid
22 all overtime wages owed to employees and that any bonuses paid were discretionary and therefore
23 not required to be included in the regular rate of pay. *Id.*

24 As a result of Defendant’s alleged failures to pay all overtime wages as well as meal and
25 rest period premiums, Plaintiffs assert that Defendant also failed to issue accurate and itemized
26 wage statements and failed to pay all wages owed. See Labor Code §§ 226(a), 201-203; Schmidt
27 Decl., ¶ 17. In response, Defendant argues that Plaintiffs’ underlying claims will fail and, as a
28 result, the derivative wage statement claim will also fail. See *Price v. Starbucks Corp.* (2011) 192

Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendant also maintains that given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties awarded. *See* Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming trial court’s reduction of PAGA penalties to 10% of calculated exposure after bench trial). Further, Defendant argues that Plaintiffs could only seek PAGA penalties at the \$100 “initial” violation rate, as opposed to the \$200 “subsequent” violation rate, since Defendant had never been put on notice by a court or the Labor Commissioner that its practices violated the Labor Code until Plaintiffs initiated this action. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (finding “initial” violation rate applies until employer has been notified that it is violating a Labor Code provision); Schmidt Decl., ¶ 17.

III. THE PROPOSED SETTLEMENT

A. “Aggrieved Employees” Defined

Aggrieved employees are defined as, “all current and former non-exempt employees who performed work for Defendant Precision Hospitality & Development, LLC in California at any time between February 3, 2019 and January 10, 2021.” *See* Settlement, § I.2.

B. Essential Terms of the Settlement

Defendant will pay a MSA of \$351,000.00. Settlement, §§ I.8, III.3. After deducting amounts for requested attorneys’ fees and costs, Plaintiffs’ enhancement awards, and settlement administration costs, the remaining Net Settlement Amount (“NSA”) distributable to the aggrieved employees and the LWDA is estimated to be \$193,541.93. *See* Settlement, §§ I.9, III.5 and 6. This non-reversionary Settlement does not require aggrieved employees to submit a claim form to reap the financial benefits of the Settlement. *Id.*, §§ I.8, III.3. The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	\$351,000.00
Minus Court-approved attorneys’ fees (1/3):	\$117,000.00
Minus Court-approved attorneys’ costs:	\$25,958.07
Minus Court-approved enhancement awards:	\$10,000.00
Minus settlement administrator costs:	\$4,500.00

Net Settlement Amount:	\$193,541.93
Minus LWDA's 75% Share:	\$145,156.45
Total Paid to Aggrieved Employees:	\$48,385.48

1. Attorneys' Fees and Costs

Plaintiffs' counsel requests one-third of the MSA (\$117,000.00) in attorneys' fees, and \$25,958.07 in actual litigation costs. Settlement, §§ III.5.a; Schmidt Decl., Exhibit 4; Declaration of James R. Hawkins ("Hawkins Decl."), ¶ 9; Exhibit 1.

2. Settlement Administration Costs

The parties agree to engage Phoenix Settlement Administrators ("Phoenix") as the third-party settlement administrator. *See* Settlement, §§ I.16, IV.1. Phoenix will be responsible for translating the Notice into Spanish,⁴ calculating the settlement checks, and mailing the settlement checks and Notice to the aggrieved employees, among other duties. *Id.*, § IV. Phoenix estimates incurring \$4,500.00 in costs in connection with the administration of this settlement. *See* Declaration of Jodey Lawrence ("Lawrence Decl."), Exhibit B.

3. Plaintiffs' Enhancement Awards

Plaintiffs also request enhancement awards totaling \$10,000.00 (\$5,000.00 to each named plaintiff) in recognition of their efforts to initiate this case, their contributions to the prosecution of this case, and their efforts in bringing this case to a successful resolution. Settlement, § III.5.b; Gonzalez Decl., ¶¶ 3-4; Padilla Decl., ¶¶ 3-9.

4. Payment to the LWDA and Aggrieved Employees

From the NSA, 75% (\$145,156.45) will be distributed to the LWDA, and 25% (\$48,385.48) will be distributed to the aggrieved employees. Settlement, § III.6; *see also* Labor Code § 2699(i) ("[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the [LWDA]...and 25 percent to the aggrieved employees."). 100% of the individual payments to the aggrieved employees will be reported using IRS Form-1099s, since all funds received under Section 2699 are civil penalties that do not trigger payroll taxes or withholdings. *See* Settlement, § IV.7. Individual Settlement Payments will be apportioned based on the proportionate number of pay periods worked during the PAGA Period, by multiplying the

⁴ Based on Defendant's employees' demographics, Notices will be sent out in English and Spanish.

1 Net Settlement Amount by a fraction, the numerator of which is the aggrieved employees' total
2 pay periods worked during the PAGA Period, and the denominator of which is the total number
3 of pay periods worked by all aggrieved employees during the PAGA Period. *Id.*, § III.6. Further,
4 Plaintiffs' expert's data analysis determined that there were approximately 8,695 aggregate pay
5 periods worked by the aggrieved employees during the PAGA Period. Schmidt Decl., ¶ 24.
6 Therefore, average recovery is approximately \$76.20, the lowest possible recovery, should an
7 aggrieved employee have been employed for only a single pay period during the PAGA Period,
8 is approximately \$5.56, while the highest possible recovery, should an aggrieved employee have
9 been employed for the entirety of the PAGA Period, is approximately \$316.92. *Id.*

10 **5. Funding of the Settlement**

11 Defendant will fund the entire Maximum Settlement Amount in three equal installments
12 as follows: (1) Defendant will deposit \$117,000.00 no later than 30 days after the Court signs an
13 order granting PAGA Settlement approval; (2) Defendant will deposit \$117,000.00 no later than
14 6 months after the first installment; and (3) Defendant will deposit \$117,000.00 no later than 6
15 months after the second installment. Settlement, §§ III.3. This payment plan was part of the
16 mediator's proposal and Defendant's agreement to settle was contingent on agreement to this
17 payment schedule. Schmidt Decl., ¶ 25. Plaintiffs believe that such a payment plan is reasonable
18 and is justified by the circumstances. *Id.* Specifically, at the time that the settlement was reached
19 in November 2020, Defendant produced evidence showing that they had closed two stores in
20 2020, and had laid off 24 employees and furloughed 14 more. *Id.* Additionally, Defendant
21 produced its profit and loss statement for 2019 and 2020, showing significant losses in both years,
22 and limited cash available to fund a settlement. *Id.* Accordingly, Plaintiffs believe that the
23 proposed payment terms are fair and reasonable.

24 Within ten (10) business days after the date upon which the Court signs an Order
25 approving the Settlement (the "Effective Date"), Defendant will provide Phoenix with a list of
26 the aggrieved employees' full name, last known mailing address, last known telephone number,
27 pay period information, and Social Security numbers. *Id.* § IV.2. Within ten (10) business days
28 thereafter, Phoenix will circulate to counsel for both parties an anonymized spreadsheet

1 containing the Individual Settlement Payments and the data used to calculate said payments. *Id.*
2 Within ten (10) business days after Plaintiffs’ and Defendant’s counsel approve the information
3 contained in the anonymized spreadsheet and the Settlement is fully funded, Phoenix will mail
4 the Individual Settlement Payments to the aggrieved employees with the Notice, in English and
5 Spanish, via First-Class U.S. Mail.⁵ *Id.*, § IV.3. Before mailing, Phoenix will perform a search on
6 the National Change of Address database to update the aggrieved employees’ addresses. *Id.*

7 **IV. ARGUMENT**

8 **A. Standards for Approval of a PAGA Settlement**

9 The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699(l)
10 (stating, the “court shall review and approve any penalties sought as part of a proposed settlement
11 agreement pursuant to this part.”). The Court must be mindful that “[s]ettlement is a compromise,
12 which balances the possible recovery against the risks inherent in litigating further.” *In re TD*
13 *Ameritrade Account Holder Litig.*, Case Nos. C 07-2852 SBA, C 07-4903 SBA, 2011 WL
14 4079226, *9 (N.D. Cal. Sept. 13, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding
15 of absolutes and an abandoning of highest hopes,’” as “it is the very uncertainty of outcome in
16 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.”
17 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir., 1982). As such, “the
18 settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits,”
19 or “judged against a hypothetical or speculative measure of what might have been achieved.” *Id.*

20 Although the operative PAGA statute does not set forth the criteria by which a PAGA
21 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors
22 for review of a class action settlement. However, “a PAGA claim asserted on a non-class
23 representative basis...is not considered a class action but a law enforcement action, and therefore
24 does not have to meet the requirements of [a class action].” *See Casida v. Sears Holdings Corp.*,
25 2012 WL 253217 at *3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL
26 2650571 at *4 (E.D. Cal. Jul. 1, 2010). A court’s review of a PAGA settlement necessarily
27 implicates the following unique features that render the approval process distinct from approval

28 ⁵ For all intents and purposes this means that the Individual Settlement Payments will be mailed out
approximately 13 months after Court approval of the Settlement.

1 of a class action settlement under C.C.P. § 382 and C.R.C. Rule 3.769.

2 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
3 concerned with the amount(s) that “aggrieved employees” are to receive, but rather, must focus
4 on the total settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a
5 PAGA suit consists of civil penalties, not individual or class damages,” and while a “[PAGA]
6 action is ... designed to protect the public and penalize the employer for past illegal conduct,” a
7 reviewing Court must be mindful of the fact that settlement of a PAGA claim involves a
8 compromise. *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties
9 are not meant to compensate unnamed employees because the action is fundamentally a law
10 enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at *4 (N.D.
11 Cal. Apr. 2, 2010). The Court must not lose sight of the fact that “[u]nlike a class action seeking
12 damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private
13 parties to recover civil penalties for the government that otherwise may not have been assessed
14 and collected by overburdened state enforcement agencies.” *Id.*

15 Second, consistent with the fact that unnamed employees have no property interest in a
16 PAGA claim,⁶ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
17 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
18 1340777 at *5. This renders the approval process of a PAGA settlement distinct from a class
19 action settlement, as there is no need for the Court to employ the “two-step approval process”
20 required under F.R.C.P. Rule 23 (“Rule 23”) and C.R.C. Rule 3.769 (“Rule 3.769”).⁷

21 Finally, unlike class action settlements under Rule 23(e) and Rule 3.769, the scope of
22 release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is
23

24 ⁶ As held by the California Supreme Court, “[PAGA] does not create property rights or any other
25 substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employee to recover civil
26 penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement
agencies.” *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46 Cal.4th 993, 1003.

27 ⁷ The “two-step” approval process of Rule 23(e) is required to facilitate “notice” to absent class members,
28 as Rule 23(e) expressly requires notice and an opportunity for absent class members to exclude themselves
or object. See Fed. R. Civ. Proc. R. 23(e). Rule 3.769 contains similar rules for State court class actions.

1 binding not only on the named employee Plaintiffs but also on government agencies and any
2 aggrieved employee not a party to the proceeding...the non-party employees, because they were
3 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
4 judgment as to remedies other than civil penalties.” *See Arias v. Sup. Ct.* (2009) 46 Cal.4th 969,
5 986-87. Thus, the scope of a release in a PAGA settlement is confined to the PAGA penalties
6 alleged in the complaint and to the claims that were, or could have been, alleged pursuant to
7 PAGA based on the factual allegations in the complaint.⁸ In the case at hand, as the only claims
8 at issue are PAGA claims, those will be the only claims extinguished because of this Settlement.

9 **B. This Court Should Approve the Settlement Because It Is a Fair, Adequate,**
10 **and Reasonable Compromise of Disputed Claims**

11 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v.*
12 *Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class and
13 representative PAGA settlements involve a court approval process that exists to prevent fraud,
14 collusion, and unfairness to absent individuals. *See Malibu Outrigger Bd. of Governors v.*
15 *Superior Court* (1980) 103 Cal.App.3d 573, 578-79. California law generally follows the same
16 standards applicable under Rule 23. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
17 1998) (stating that Rule 23(e) requires the trial court to determine “whether a proposed settlement
18 is fundamentally fair, adequate, and reasonable”). To be approved, a settlement must be “fair,
19 reasonable and adequate to all concerned.” *Reed v. United Teachers Los Angeles* (2012) 208
20 Cal.App.4th 322, 337. Settlement is the preferred means of dispute resolution, particularly in
21 complex representative litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
22 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
23 agreement taken as a whole is fair and is not the product of fraud or collusion between the

24
25 ⁸ This is contrasted with the much broader release permitted in a class action context, which may release
26 all underlying Labor Code violations based on “any matter or fact” alleged in the complaint. *See In re*
27 *Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981) (“The weight of authority
28 establishes that ... a court may release not only those claims alleged in the complaint and before the court,
but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set
forth or referred to in’ the complaint.”); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir., 2010) (“we
have held that federal district courts properly released claims not alleged in the underlying complaint where
those claims depended on the same set of facts as the claims that gave rise to the settlement.”).

negotiating parties. *See, e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm's length by experienced counsel. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Because this Settlement is fair, adequate, and reasonable, Plaintiffs respectfully request that the Court grant approval.

1. Factors in Evaluating a Representative PAGA Settlement

A settlement is presumptively fair where it is reached through arm's-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, and counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; *see also Kullar, supra*, 168 Cal.App.4th at 130. In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup. Ct.* (1979) 89 Cal.App.3d 434, 438. In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited to:

[T]he strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Id. These factors require balancing and are non-exhaustive. Trial courts should therefore tailor the factors to each case and give due regard to "what is otherwise a private consensual agreement between the parties." *Id.* In the context of a PAGA settlement, the third and eighth factors (risk of maintaining class action status and reaction of class members to settlement) are inapplicable.

"In the context of a settlement agreement, the test is not the maximum amount Plaintiff might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250. Because settlements inherently involve compromise, settlements providing for narrower relief than can be obtained if the suit were successfully litigated can be reasonable because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Air Lines Stewards, etc., Local 550 v. Am. Airlines, Inc.*,

1 455 F.2d 101, 109 (7th Cir. 1972). Further, courts review the discovery conducted by the parties
2 to aid in assessing whether the parties sufficiently developed the claims and supporting factual
3 bases before reaching settlement. *See Kullar, supra*, 168 Cal.App.4th at 129-31. Information is
4 sufficient where it allows the parties and the court to form “an understanding of the amount that
5 is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential*
6 *Serv. LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that parties can provide
7 the trial court with “a meaningful and substantiated explanation of the manner in which the factual
8 and legal issues have been evaluated.” *Kullar, supra*, 168 Cal.App.4th at 132.

9 **a) The Strength of Plaintiffs’ Case**

10 Although they steadfastly maintain that this action is meritorious, Plaintiffs acknowledge
11 that there are substantial risks and uncertainty in proceeding to trial. Defendant presented
12 numerous defenses to Plaintiffs’ underlying allegations and arguments to why Plaintiffs’ damages
13 calculations were overstated; chief among them that the Court would utilize its discretion to
14 substantially reduce any award of PAGA penalties. While Plaintiffs were prepared to litigate their
15 claims through trial, they faced substantial challenges in prevailing in this matter and obtaining a
16 better result than will be provided through the Settlement. Thus, this factor supports approval.

17 **b) Risk, Expense, Complexity, and Duration of Further Litigation**

18 Although the parties engaged in a significant exchange of documents and information as
19 part of the informal mediation production, no formal written, or deposition discovery had been
20 conducted prior to mediation. *See Schmidt Decl.*, ¶ 11. Absent settlement, the parties will be
21 required to expend substantial time and resources completing formal discovery. Preparation for
22 trial remained, as well as the prospect of appeals in the wake of a summary judgment ruling for
23 either party, as well as appeals after trial. *Id.* This settlement avoids these considerable costs,
24 risks, and the accompanying burden of continued litigation on the Court.

25 **c) Amount Offered in Settlement Given Realistic Value of Claims**

26 This proposed Settlement provides a fair and reasonable monetary recovery for the
27 LWDA and aggrieved employees in the face of disputed claims. Plaintiffs, with the help of their
28 retained expert, analyzed Defendant’s produced data, and forecasted Defendant’s realistic
exposure for PAGA civil penalties as follows:

1 PAGA Civil Penalties: \$391,275

2 After reviewing and analyzing the relevant data, Plaintiffs reached the conclusion that
3 Defendant's miscalculation of the regular rate of pay due to its payment of bonuses, would only
4 potentially affect 16% of the aggrieved employees at issue in the lawsuit. Schmidt Decl., ¶ 16.
5 Plaintiffs' analysis of the timekeeping records showed that Defendant paid a significant number
6 of meal period premium payments for missed meal periods and that there were only a negligible
7 number of shifts in excess of 12.0 hours worked, bolstering Defendant's waiver argument. *Id.*,
8 ¶ 12. Defendant confirmed that inventory lists and label machines are housed at the stores and
9 that Managers would be unable to perform work outside of their shift without them. *Id.*, ¶ 14.
10 Therefore, Plaintiffs' two most viable theories were their on-premises rest period theory and
11 unreimbursed expenses theories. *Id.*, ¶ 19.

12 Plaintiffs assert that they could theoretically prove a PAGA violation in each of the 8,695
13 pay periods in the PAGA Period due to Defendant's alleged rest period violations, as well as
14 Defendant's failure to reimburse for necessary cell phone use. Schmidt Decl., ¶ 19. Labor Code
15 § 2699(f)(2) provides for PAGA civil penalties in the amount of \$100 for each aggrieved
16 employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay
17 period for each subsequent violation. *See* Labor Code § 2699(f)(2). However, courts have
18 interpreted section 2699(f)(2) to only impose the \$200 subsequent penalty after an employer has
19 been notified that its conduct violates the Labor Code. *See, e.g., Amaral, supra*, 163 Cal.App.4th
20 at 1207 (finding "initial" violation rate applies until employer is notified that it is violating a
21 Labor Code provision); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–
22 07658 DDP (RZx), 2012 WL 6618854, at *5 (C.D. Cal. Dec. 19, 2012) ("courts have held that
23 employers are not subject to heightened penalties for subsequent violations unless and until a
24 court or commissioner notifies the employer that it is in violation of the Labor Code");
25 *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No.
26 05cv1199–IEG–CAB, 2009 WL 2448430, at *9 (S.D. Cal. 2009) (finding that California law
27 imposes the "subsequent violation penalty" only after an employer has been notified its conduct
28 violates the Labor Code). Plaintiffs therefore calculate Defendant's maximum possible PAGA

1 exposure at \$869,500 (8,695 pay periods x \$100 per violation). Schmidt Decl., ¶ 19.

2 However, as discussed above, Defendant raised numerous defenses to the merits of
3 Plaintiffs' underlying claims, and argued that even if found liable, the Court would exercise its
4 discretion to drastically reduce any potential PAGA penalties. Schmidt Decl., ¶ 20; *see also*
5 Section II.C, *supra*. Notably, Plaintiffs' maximum potential exposure valuation assumes that they
6 would be able to prove at least one rest period violation and/or reimbursement violation in each
7 and every pay period. Schmidt Decl., ¶ 20. However, the reimbursement violations only
8 potentially occurred once every two pay periods and there was a risk that Plaintiffs would be
9 unable to prove that Defendant denied employees duty-free rest periods given Defendant's ability
10 to show, in practice employees left the stores for breaks, and the inherent manageability
11 challenges in proving rest period violations on a representative basis. *Id.* Plaintiffs therefore
12 discounted the total exposure figure by 10% to account for the risk of losing on the merits and/or
13 for having overestimated Defendant's potential maximum exposure, and by an additional 50%
14 for the risk of the Court reducing the penalties, to arrive at a realistic recovery of \$391,275. *See*
15 *Thurman, supra*, 203 Cal.App.4th at 1136 (affirming reduction of PAGA penalties); *Carrington,*
16 *supra*, 30 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of maximum
17 exposure).

18 Thus, the mediator's proposal for a \$351,000.00 MSA represents approximately 90% of
19 Plaintiffs' reasonably forecasted recovery, which is well within the range approved by courts as
20 being fair, reasonable and adequate, while also avoiding further expense and risk of further
21 litigation. *See Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, *9 (N.D. Cal. 2015)
22 ("Although 15% represents a modest fraction of the hypothetical maximum recovery estimated
23 by Plaintiff, that figure is sufficient for the Court to grant preliminary approval..."); *Dunleavy v.*
24 *Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of "roughly one-sixth of the
25 potential recovery"); *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998)
26 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does
27 not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
28 disapproved.") (internal quotations omitted); Schmidt Decl., ¶ 21.

1 **d) Discovery Completed and the Status of Proceedings**

2 The parties engaged in a significant exchange of documents and data necessary to evaluate
3 the value of the PAGA claim prior to mediation. *See* Schmidt Decl., ¶ 11. Defendant provided
4 Plaintiffs with its employee handbooks and related wage and hour policies as well as timekeeping
5 and payroll records for approximately 15% of all employees who worked during the relevant time
6 period. *Id.* It was only after Plaintiffs’ expert’s comprehensive data analysis that the parties
7 attended mediation. *Id.* Thus, this factor supports settlement approval.

8 **e) The Experience and Views of Counsel**

9 “Parties represented by competent counsel are better positioned than courts to produce a
10 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
11 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are
12 represented by competent and experienced wage and hour class action counsel, who pressed
13 Plaintiffs’ PAGA claim forward, and who believe this Settlement to be fair and adequate for all
14 involved. *See* Schmidt Decl., ¶¶ 2-7; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8;
15 Declaration of Andrew J. Rowbotham (“Rowbotham Decl.”), ¶¶ 2-7; Declaration of Alma V.
16 Montenegro (“Montenegro Decl.”), ¶¶ 2-4; Hawkins Decl., ¶¶ 2-6. Further, the proposed
17 Settlement was reached with the input and assistance of mediator Marc Feder, who made a
18 mediator’s proposal that he determined represented a fair and reasonable settlement. Schmidt
19 Decl., ¶ 11. Thus, this factor strongly supports settlement approval. *See, Kullar, supra*, 168
20 Cal.App.4th at 130 (“The court undoubtedly should give considerable weight to the competency
21 and integrity of counsel and the involvement of a neutral mediator in assuring itself that a
22 settlement agreement represents an arm’s length transaction entered without self-dealing or other
23 potential misconduct.”).

24 **C. The Requested Award for Attorneys’ Fees is Reasonable as a Percentage of**
25 **the MSA and Confirmed by a Lodestar Crosscheck**

26 Plaintiffs, as the prevailing party in settlement, are entitled to recover attorneys’ fees and
27 costs for bringing this PAGA claim. *See* Cal. Labor Code § 2699(g) (“Any employee who prevails
28 in any action shall be entitled to an award of reasonable attorney’s fees and costs.”); Code of Civil
Procedure § 1021.5(a). A fee award is justified where the legal action has produced its benefits

1 by way of a voluntary settlement. *See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91;
2 *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53;
3 *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when a number of persons are entitled in common to
4 a specific fund, and an action brought by a Plaintiff...for the benefit of all results in the creation
5 or preservation of that fund, such Plaintiff...may be awarded attorney’s fees out of the fund.”).

6 California state and federal courts routinely award fee awards of one-third of the
7 settlement fund in class actions. *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, fn. 11;
8 *see also Wershba, supra*, 91 Cal. App. 4th at 254 (recognizing the “percentage of recovery”
9 method); *In re Pacific Enterprises Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (affirming
10 33% fee award). Indeed, the California Supreme Court approved the use of the “percentage of
11 fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (“the
12 percentage of fund method survives in California class action cases...”.) Specifically, the *Laffitte*
13 Court held:

14 The recognized advantages of the percentage method—including relative
15 ease of calculation, alignment of incentives between counsel and the class, a
16 better approximation of market conditions in a contingency case, and the
17 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.

18 *Id.*, at 503 (internal citation omitted). This is consistent with Plaintiffs’ counsel’s experience in
19 similar wage-and-hour class and representative action matters. Schmidt Decl., ¶ 26. Here,
20 Plaintiffs’ counsel’s fee request of \$117,000.00 (one-third of the MSA) is the same percentage
21 sought in *Laffitte* and is fair and reasonable based on the percentage of the recovery method. *Id.*

22 The California Supreme Court in *Laffitte* also held that trial courts have discretion to
23 assess the reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby
24 the trial court calculates counsel’s lodestar and determines whether the “lodestar multiplier”
25 needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1
26 Cal.5th at 503-06. Under the lodestar method, the court multiplies the number of hours reasonably
27 expended by each attorney or legal staff member by their reasonable hourly rates, then enhances
28 this lodestar figure by a “multiplier” to account for a range of factors, such as the contingent

1 nature of the case and the degree of success achieved. *See Serrano v. Priest* (1977) 20 Cal.3d 25,
2 48-49; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank, N.A.*
3 (2001) 92 Cal.App.4th 819, 833, *as modified* (Oct. 25, 2001) (“There is no hard-and-fast rule
4 limiting the factors that may justify an exercise of judicial discretion to increase or decrease a
5 lodestar calculation.”).

6 Lodestar multipliers can range considerably. *See, e.g., Chavez, supra*, 162 Cal. App. 4th
7 at 49-50 (approving multiplier of approximately 2.5); *Coalition for L. County Planning etc.*
8 *Interest v. Bd. of Supervisors* (1977) 76 Cal. App. 3d 241, 251 (approving multiplier of
9 approximately 12.8). In class actions such as this one, where Plaintiffs’ counsel efficiently
10 protected the rights of the aggrieved employees and where the value of the benefit conferred to
11 the group “can be monetized with a reasonable degree of certainty,” the Court may “adjust the
12 lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
13 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
14 litigation.” *Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 557.

15 In this case, Plaintiffs’ counsel has a lodestar of approximately \$164,680.00, which results
16 in a negative 1.41 multiplier compared to the \$117,000.00 fee request. Schmidt Decl., ¶ 27. A
17 general summary showing the number of hours of work performed by each attorney and firm
18 paralegal is set forth below. Plaintiffs’ counsel submits that the billing rates used are reasonable
19 in view of the market rates and the rates at which Class Counsel has been approved at in other
20 California and State courts. *Id.* Exhibit 3 (Laffey Matrix).

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (15th Year Attorney)	\$650	44.4	\$28,860.00
Fletcher W. Schmidt (9th Year Attorney)	\$625	78.9	\$49,312.50
Andrew J. Rowbotham (7th Year Attorney)	\$450	95.6	\$43,020.00
Alma V. Montenegro (3rd Year Attorney)	\$325	16.6	\$5,395.00
James R. Hawkins (24th Year Attorney)	\$900	15.0	\$13,500.00
Isandra Fernandez (26th Year Attorney)	\$800	25.0	\$20,000.00
Hawkins Firm Paralegal	\$200	15.0	\$3,000.00
HLG Firm Paralegals	\$175	9.1	\$1,592.50
Total Lodestar			\$164,680.00

The fee award requested here is justified because Plaintiffs' counsel achieved a monetary recovery for the aggrieved employees and the State of California in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis. Schmidt Decl., ¶ 26. Additionally, Plaintiffs' recovery for the State of California and aggrieved employees exceeds other PAGA awards approved by courts in California. *See, e.g., Penaloza, supra*, 2013 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average PAGA penalties of \$3.33). That Plaintiffs' counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed, this case presented significant risks both on the merits and with respect to the Court's authority to reduce an award of PAGA penalties. It is fair and reasonable to account for these risks in compensating Plaintiffs' counsel, as well as the risks involved in undertaking this litigation and expending considerable effort while working on a pure contingency basis. Since undertaking representation of Plaintiffs, Plaintiffs' counsel dedicated substantial resources to this litigation, including expending \$25,958.07 in litigation costs, without receiving any compensation to date. Schmidt Decl., ¶ 28; Exhibit 4. Plaintiffs' counsel's efforts include conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting extensive legal research regarding the

1 merits and legal bases of Plaintiffs' claims, drafting and filing Plaintiffs' initial and amended
2 complaints and LWDA notice letters, attending various court hearings, reviewing substantial
3 documents and data produced by Defendant, meeting and conferring with Defendant's counsel
4 regarding Defendant's informal document production, extensively evaluating the timekeeping
5 and payroll data with a retained expert prior to mediation, preparing for and attending mediation,
6 drafting a mediation brief, negotiating and drafting the long-form Settlement Agreement and
7 Notice, preparing this Motion for settlement approval and all supporting documents hereto, and
8 otherwise litigating the case. Schmidt Decl., ¶ 28. Plaintiffs' counsel will spend additional time
9 attending the hearing on this Motion and overseeing the settlement administration process. *Id.*
10 Given the potential for adverse outcomes, the contingent risk borne by Plaintiffs' counsel was
11 great. The quality of Plaintiffs' counsel's work, and the efficacy and dedication with which it was
12 performed, should be compensated.

13 Plaintiffs' counsel's previous experience in litigating wage and hour class and
14 representative actions also supports the reasonableness of the fee request. Plaintiffs' counsel is
15 well-versed in plaintiff and defense-side wage and hour class and representative action litigation,
16 and collectively brings three decades worth of wage-and-hour class and representative action
17 litigation experience. *See* Schmidt Decl., ¶¶ 2-6; *see also generally* Declarations of Haines,
18 Rowbotham, Montenegro, and Hawkins. Plaintiffs' counsel has also been certified as class
19 counsel in numerous class action cases alleging wage and hour claims. *Id.* Plaintiffs' counsel's
20 experience in similar matters was integral in evaluating the strengths and weaknesses of this case
21 and the reasonableness of the Settlement. Because it is reasonable to compensate Plaintiffs'
22 counsel commensurate with their skill, reputation, and experience, the requested fee award of
23 \$117,000.00 is fair, reasonable and adequate, and should therefore be approved.

24 **D. The Requested Cost Reimbursement Warrants Approval as Fair, Adequate,**
25 **and Reasonable**

26 Plaintiffs' counsel incurred and respectfully requests reimbursement of \$25,958.07 in
27 actual litigation costs. Schmidt Decl., ¶ 29; Exhibit 4. Plaintiffs' counsel's request is fair,
28 adequate, and reasonable, as all of these costs are documented and reasonably incurred. *Id.*
Moreover, the costs Plaintiffs seek are the types of costs routinely approved by courts. *See, e.g.,*

1 *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel should recover “those out-of-pocket
2 expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759
3 CW, 2011 WL 825713, * 3 (N.D. Cal. 2011) (“costs of reproducing pleadings, motions and
4 exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *In re*
5 *Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation
6 expenses, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
7 Because the expense reimbursements requested by Plaintiffs’ counsel were reasonably incurred,
8 the Court should grant Plaintiffs’ counsel’s request for reimbursement of \$25,958.07 in actual
9 litigation costs incurred.⁹

10 **E. The Court Should Approve the Requested Administration Costs**

11 Plaintiffs also requests that the Court approve \$4,500.00 in administration costs to the
12 Settlement Administrator, Phoenix Settlement Administrators. Schmidt Decl., ¶ 30; Lawrence
13 Decl., Exhibit B; Settlement, § III.4.c. As detailed in the Settlement Agreement and declaration
14 of Jodey Lawrence, submitted concurrently with this Motion, Phoenix will perform duties in
15 connection with this Settlement that are integral in effectuating the Settlement and the Notice
16 process. Among other things, Phoenix will calculate each aggrieved employee’s Individual
17 Settlement Payment, update addresses contained in the employee data supplied by Defendant,
18 format the Notice Packets for mailing and translate them into Spanish, mail Notice Packets to all
19 aggrieved employees, and otherwise administer the Settlement. *See generally*, Lawrence Decl.;
20 Settlement, § IV. Phoenix was selected to administer this Settlement because it is an experienced
21 and well-respected settlement administrator and returned a bid at a competitive rate. Schmidt
22 Decl., ¶ 30; *see generally*, Lawrence Decl. For these reasons, Phoenix’s requested costs are fair,
23 reasonable, and adequate, and should be approved.

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26 ⁹ Plaintiffs’ counsel’s combined costs records reflect Plaintiffs’ actual costs as of the date of the filing
27 (\$25,768.07). Schmidt Decl., ¶ 29. However, the total amount that Plaintiffs’ counsel is requesting for
28 expense reimbursements, \$25,958.07, includes an additional \$190.00 in anticipated future costs for the
filing and service of the Motion for PAGA Settlement Approval, as well as the CourtCall costs for
Plaintiffs’ counsel to attend the hearing on this Motion, which will be incurred by the time the motion is
heard. *Id.*

Courts routinely approve enhancement awards to compensate named plaintiffs for the services they provide and the risks they incur during class and representative litigation. *See, e.g., Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 enhancement award). Here, pursuant to the Settlement, Plaintiffs seek a total enhancement award of \$10,000.00 (\$5,000.00 to each named plaintiff). *See* Settlement, §§ I.9 and III.5.b. This request is reasonable given Plaintiffs’ efforts in this case and the risks they undertook on behalf of the aggrieved employees. Schmidt Decl., ¶ 31. Among other things, Plaintiffs searched for and gathered relevant documents for use in the lawsuit and provided factual information to Plaintiffs’ counsel, had regular discussions with Plaintiffs’ counsel both in person and over the phone regarding the claims in the lawsuit, the facts and legal theories at issue in the case, and Defendant’s timekeeping as well as meal and rest period practices, discussed the status of the case and general case strategy with their attorneys on many occasions, and helped their attorneys prepare for mediation. Gonzalez Decl., ¶ 4; Padilla Decl., ¶ 5. Plaintiffs estimate spending at least 15 hours each on activities that ultimately lead to the Settlement. *Id.* Accordingly, Plaintiffs’ enhancement awards are appropriate and justified.

For the reasons stated herein, this Court should grant Plaintiffs' Motion in its entirety and adopt the [Proposed] Judgment and Order Granting Plaintiffs' Motion for Settlement Approval of Claims Brought Under the PAGA, Reasonable Attorneys' Fees and Costs, and Enhancement Awards, submitted concurrently herewith.

Respectfully submitted,
HAINES LAW GROUP, APC


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