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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER

AYEBAINATON EKINE, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

BURBERRY LIMITED, a New York
corporation; and DOES 1 through 100,

Defendants.

CASE NO. S-CV-0045602

**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 AWARDS**

Date: October 28, 2021
Time: 8:30 a.m.
Dept.: 42

Action Filed: September 23, 2020
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on October 28, 2021, at 8:30 a.m. at the Placer County
3 Superior Court, located at 10820 Justice Center Drive, Roseville, California 95678, Plaintiffs
4 Ayebainaton Ekine and Edward Castillo ('Plaintiffs'), individually and on behalf of other
5 allegedly aggrieved employees, hereby move 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 up to \$3,350.00 in anticipated costs to
11 Phoenix 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 (\$455,000.00)
16 pursuant to the terms of the Settlement Agreement;
- 17 5. Approving an award of one-third of the Maximum Settlement Amount (\$151,666.67)
18 in attorneys' fees to Haines Law Group, APC as Plaintiffs' counsel;
- 19 6. Approving an award of \$10,048.09 in actual litigation costs reimbursement to Haines
20 Law Group, APC;
- 21 7. Approving enhancement awards of \$20,000.00 (\$10,000.00 to each Plaintiff) for their
22 service to the aggrieved employees and the State of California; and
- 23 8. Approving the payment of \$202,451.43 to the California Labor & Workforce
24 Development Agency for its share of PAGA civil penalties.

25 This Motion is based on this Notice, the attached Memorandum of Points and Authorities;
26 the declarations of Fletcher W. Schmidt, Paul K. Haines, Alexandra R. McIntosh, Ayebainaton
27 Ekine, Edward Castillo, and Jodey Lawrence of Phoenix Settlement Administrators, and all
28 exhibits attached thereto; the Settlement Agreement entered into between Plaintiffs and

1 Defendant Burberry Limited; all other pleadings and papers on file in this action; and on any
2 further oral or documentary evidence or argument presented at the time of hearing.

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

7
8 Dated: October 5, 2021

Respectfully Submitted,
HAINES LAW GROUP, APC

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10 By:



11 Fletcher W. Schmidt
12 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Ayebainaton Ekine (“Ekine”) and Edward Castillo (“Castillo”) (collectively,
4 “Plaintiffs”), allegedly “aggrieved employees” under the Private Attorneys General Act of 2004,
5 California Labor Code § 2698 *et seq.* (“PAGA”), respectfully move this Court for an Order
6 granting approval of the Settlement Agreement (“Settlement Agreement” or “Settlement”)¹ with
7 Defendant Burberry Limited (“Defendant”) (Plaintiffs and Defendant are referred to collectively
8 as the “Parties”).² The proposed Settlement, under which Defendant has agreed to pay a non-
9 reversionary amount of \$455,000.00, will dispose of Plaintiffs’ representative PAGA claim filed
10 on behalf of the State of California and all “aggrieved employees” as defined by Labor Code
11 § 2699(c). This PAGA action is predicated on Defendant’s alleged failure to (i) pay all minimum
12 wages; (ii) pay all overtime wages; (iii) provide all lawful meal periods and/or pay meal period
13 premiums at the correct rate; (iv) authorize and permit all lawful rest periods; (v) reimburse all
14 necessary business expenses; (vi) maintain accurate records and issue accurate, itemized wage
15 statements; (vii) timely pay all final wages upon separation; and (viii) pay all earned wages at
16 least twice per month. This PAGA action seeks civil penalties for Defendant’s Labor Code
17 violations on behalf of the California Labor & Workforce Development Agency (“LWDA”) and
18 all allegedly “aggrieved employees,” defined as “all non-exempt employees who worked for
19 Defendant in California during the period from March 30, 2019 through the date on which the
20 Court grants approval of the Parties’ settlement” (the “PAGA Period”). Notably, the relief
21 provided under the Settlement, and the claims released thereunder, are *solely* for the payment of
22 civil penalties under the PAGA. Based on the information provided by Defendant, the number of
23 aggrieved employees, including Plaintiffs, is estimated to be around 335 individuals as of May

24 _____
25 ¹ The Settlement Agreement is attached as Exhibit A 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. The operative First Amended Complaint
is attached as Exhibit B 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., ¶ 28;
Exhibit E.

2021.

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

Pursuant to the Settlement, Defendant will pay a Maximum Settlement Amount ("MSA") of \$455,000.00 on a non-reversionary basis. *See* Settlement, §§ 2.10, 4.1 and 4.9. After deducting amounts for requested attorneys' fees (\$151,666.67), attorney costs (\$10,048.09), enhancement awards for the named plaintiffs totaling (\$20,000.00), settlement administration costs (\$3,350.00), and the LWDA's share of the amount designated as civil penalties pursuant to Labor Code § 2699(i) (\$202,451.43), the Settlement provides for distribution of approximately \$67,483.81 in civil penalties to the aggrieved employees, an average of \$201.44 on a per capita basis. *Id.*, §§ 4.4, 4.5 and 4.8.

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

attorneys' fees and 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 luxury fashion brand with several retail stores throughout California. Schmidt Decl., ¶ 9. Plaintiff Castillo was employed by Defendants as a non-exempt Sales Associate from approximately November 2015 to May 9, 2019. Declaration of Edward Castillo ("Castillo Decl."), ¶ 2. Plaintiff Ekine was employed by Defendants as a non-exempt Sales Associate from approximately March 17, 2017 to August 2019. Declaration of Ayebainaton Ekine ("Ekine Decl."), ¶ 2. 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.*, ¶ 3; Castillo Decl., ¶ 3.

B. Procedural History

On March 26, 2020, Plaintiff Castillo filed a class action complaint titled *Edward Castillo v. Burberry Limited*, Orange County Superior Court, Case No. 30-2020-01139838-CU-OE-CXC (the "*Castillo Action*"). Schmidt Decl., 10. On March 30, 2020, Plaintiff Castillo provided written notice of his intent to file a claim for civil penalties under PAGA to the LWDA and Defendant. *Id.*, ¶ 10; Exhibit B. On June 4, 2020, Plaintiff Castillo amended his complaint to add a cause of action under PAGA. *Id.* On July 13, 2020, Defendant removed the *Castillo Action* to the United States District Court for the Central District of California, whereupon the *Castillo Action* was assigned the following case number: 8:20-cv-01244-CJC-JDE.

On July 20, 2020, Plaintiff Ekine provided written notice of his intent to file a claim for civil penalties under PAGA to the LWDA and Defendant. Schmidt Decl., ¶ 11; Exhibit C. On September 23, 2020, Plaintiff Ekine filed his representative action complaint in the instant action, titled *Ayebainaton Ekine v. Burberry Limited*, Placer County Superior Court, Case No. S-CV-

0045602 (the “*Ekine* Action”), alleging a sole cause of action under PAGA premised on the same and/or similar factual allegations as the *Castillo* Action. Schmidt Decl., ¶ 11.

On November 30, 2020, Plaintiffs and Defendant participated in a private mediation with wage and hour mediator, Lisa Klerman, Esq. Schmidt Decl., ¶ 12. In connection with mediation, Defendant produced the relevant portions from its employee handbook, as well as timekeeping and payroll records for a randomized sample group of allegedly aggrieved employees who worked during the PAGA period. *Id.* Plaintiffs analyzed the employee records and created a comprehensive exposure analysis for the PAGA claim. *Id.* During mediation, the parties debated the legal bases for their claims and defenses and their respective data analyses. *Id.* At the conclusion of mediation, the parties accepted Ms. Klerman’s mediator’s proposal for a PAGA-only settlement, therefore resolving Plaintiffs’ PAGA claims in the *Castillo* Action and the *Ekine* Action. *Id.* Over the following months, the parties negotiated the final terms of the proposed Settlement now before this Court for approval. *Id.*

On February 19, 2021, the Honorable Judge Cormac J. Carney dismissed the *Castillo* action without prejudice after being notified that the matter had settled on a PAGA-only basis and would be proceeding with settlement approval in Placer County Superior Court through the instant action. Schmidt Decl., ¶ 13. On May 24, 2021, Plaintiff Ekine filed the operative First Amended Complaint in the instant action adding Plaintiff Castillo as a PAGA representative in the *Ekine* Action. *Id.*

C. Plaintiffs’ Claims and Defendant’s Defenses

Plaintiffs allege that Defendant failed to pay Plaintiffs and other allegedly aggrieved employees for all hours worked as a result of its policy and practice of requiring its employees to respond to customer concerns and communicate with customers while off-the-clock. Schmidt Decl., ¶ 14. In response, Defendant contends that it paid all minimum and overtime wages owed to employees and that it does not have any formal or informal policy which requires employees to respond to customer calls while off-the-clock. *Id.* Instead, Defendant argues that its written policies expressly inform employees not to work off-the-clock. *Id.* Defendant further maintains that to the extent any employees were responding to customer calls after work hours without

1 recording their time worked, Defendant was not made aware of it and that this issue is not
2 manageable on a representative basis because each employee would need to be deposed to
3 determine whether they worked off-the-clock, why they worked off-the-clock, whether Defendant
4 had knowledge of any off-the-clock work, and during what pay periods the off-the-clock work
5 was performed, if at all. *Id.*

6 Plaintiffs allege that Defendant failed to provide Plaintiffs and other allegedly aggrieved
7 employees with full, uninterrupted 30-minute meal periods before the end of the fifth hour of
8 work and failed to provide second meal periods when employees worked in excess of 10.0 hours.
9 *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049 (holding that the
10 applicable wage orders and the California Labor Code require employers to provide a first meal
11 period before the end of the fifth hour of work and a second meal period “after no more than 10
12 hours of work”); Schmidt Decl., ¶ 15. Plaintiff further alleges that in instances where Defendant
13 paid its employees a meal period premium, Defendant incorrectly paid the meal period premium
14 at the employees’ base hourly rate of pay rather than the employees’ “regular rates of
15 compensation,” which were higher due to their receipt of commissions and non-discretionary
16 bonuses (hereinafter “incentive pay”). *See Labor Code Section 226.7(c)* (“if an employer fails to
17 provide an employee a meal or rest or recovery period in accordance with a state law..., the
18 employer shall pay the employee one additional hour of pay at the employee's *regular rate of*
19 *compensation* for each workday that the meal or rest or recovery period is not provided.”) (Italics
20 added.)

21 In response, Defendant contends that it has always provided its employees with legally-
22 compliant first and second meal periods and that any meal periods that did not meet that standard
23 were solely the result of employee choice and not as a result of Defendant’s policies and/or
24 practices. Schmidt Decl., ¶ 16. Specifically, Defendant argues that employees, despite being
25 relieved for their meal periods, often chose to take their meal periods at a later time to complete
26 sales and earn commissions. *Id.* Defendant argues that under *Brinker* it is only required to
27 “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, which
28 Defendant contends it has always done. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure”

standard); *Id.* Moreover, Defendant contends that in instances where employees were not able to take a compliant meal period, its payroll system automatically paid the employee a meal period premium and that it was not required to include incentive pay in its calculation of the “regular rate of compensation” for the purposes of meal and rest period premiums. *Id.*,³ Schmidt Decl., ¶ 16. Finally, Defendant contends that Plaintiff’s meal period claim is not manageable on a representative basis because individual inquiries would be required to assess which employees received non-compliant meal periods or missed second meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular individual recorded a non-compliant meal period or failed to record a compliant meal period on a particular shift. *Id.*

Plaintiffs further allege that Defendant’s failed to authorize and permit Plaintiffs and other allegedly aggrieved employees to take all duty-free, 10-minute rest periods. Schmidt Decl., ¶ 17. Specifically, Plaintiffs contend that employees were required to assist customers at all times, even during the employees’ rest periods, and thus, Defendant failed to relinquish all control over its employees in violation of California law. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269; Schmidt Decl., ¶ 17. In response, Defendant asserts that it authorized and permitted aggrieved employees to take all lawful rest periods and that it never required employees to respond to customer requests during rest breaks. Schmidt Decl., ¶ 17. Defendant also contends Plaintiffs’ rest break allegations are unmanageable since individual inquiries would be required to assess whether rest periods were authorized and permitted but employees nevertheless chose to work during their rest periods for their own reasons. *Id.*

Plaintiffs further allege that Defendant required employees to utilize their personal cell phones to communicate with customers, without reimbursing the employees for any portion of

³ Although the question of whether Defendant is required to include incentive pay in its calculation of the regular rate for the purposes of meal and rest period premiums is no longer an open issue, at the time of mediation the California Supreme Court had not yet issued its ruling in *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858. Therefore, at the time of mediation the prevailing Court of Appeals’ decision was that employers are not required to include non-discretionary bonuses in its calculation of the “regular rate of compensation” for the purposes of meal and rest period premiums. *Ferra v. Loews Hollywood Hotel, LLC*, (2019) 40 Cal.App.5th 1239, 1243.

1 their cell phone bills, in violation of Labor Code section 2802. Schmidt Decl., ¶ 18. In response,
2 Defendant contends that it did not require personal cell phone use, and that in fact, Defendant
3 provided its employees with company owned cell phones beginning in 2018, which is well before
4 the relevant time period in this action. *Id.* Moreover, Defendant argues that to the extent any
5 employee used their personal cell phone rather than the company-provided cell phone, such an
6 expense was not reasonable and/or necessary. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007)
7 42 Cal.4th 554, 568 (“In calculating the reimbursement amount due under section 2802, the
8 employer may consider not only the actual expenses that the employee incurred, but also whether
9 each of those expenses was ‘necessary,’ which in turn depends on the reasonableness of the
10 employee's choices”); *Grissom v. Vons Cos., Inc.* (1991) 1 Cal.App.4th 52, 58 (“ascertaining what
11 was a necessary expenditure will require an inquiry into what was reasonable under the
12 circumstances.”); Schmidt Decl., ¶ 18.

13 As a result of these alleged substantive violations, Plaintiffs contend that Defendant failed
14 to issue accurate itemized wage statement violations and failed to timely pay its former employees
15 all owed wages during employment and all final wages at the time of their separation from
16 employment. Schmidt Decl., ¶ 19. Additionally, Plaintiffs allege that Defendant issued facially
17 deficient wage statements as a result of its failure to accurately list the hourly rate and
18 corresponding number of hours worked for payments denoted as “OT ON COMM.” *See* Labor
19 Code § 226(a) (“An employer...shall furnish to his or her employee...an accurate itemized
20 statement in writing showing... all applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly rate by the employee.”) In response,
22 Defendant contends that it did not violate section 226, subdivision (a)(9) because the “OT ON
23 COMM” line item represents overtime pay for work performed on a previous pay period, but
24 which could not be calculated because the nondiscretionary bonus had not yet been earned. *Id.*;
25 *see Canales v. Wells Fargo Bank, N.A.* (2018) 23 Cal.App.5th 1262, 1272 (affirming the lower
26 court’s grant of summary judgment in favor of the employer regarding wage statement claims
27 premised in part on retroactive overtime adjustments due to incentive compensation); *Ritenour v.*
28 *Carrington Mortgage Services, LLC* (C.D. Cal., Sept. 12, 2018, No. SACV1602011CJCDFMX)

2018 WL 5858658, at *10 (“Plaintiffs have failed to show that CMS’ practice for documenting “OT on Bonus” in employees’ wage statements is unlawful under section 226. Section 226 only requires wage statements to include the hourly rates in effect “during the pay period.”). Moreover, Defendant argues that there were no applicable hourly rates in effect during the pay period that corresponded to “OT ON COMM” and therefore it did not have to provide such information on the wage statement. *Id.*

Additionally, with regard to Plaintiffs’ derivative allegations, Defendant contends that it possesses strong, good faith defenses to Plaintiffs’ underlying claims, thus precluding recovery of waiting time penalties (which are only available for the “willful” failure to pay wages) and/or wage statements violations (which require the violations to be “knowing and intentional”). *See* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203...A good-faith dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee.”); Schmidt Decl., ¶ 20. Defendant also maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiffs’ underlying claims and that at most Plaintiffs could only seek PAGA penalties at the \$100 “initial” violation rate, as opposed to the \$200 “subsequent” violation rate, since Defendant was not 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., ¶ 20.

III. THE PROPOSED SETTLEMENT

A. “Aggrieved Employees” Defined

Aggrieved employees are defined as, “all non-exempt employees who worked for Defendant in California during the period from March 30, 2019 through the date on which the Court grants approval of the Parties’ Settlement.” *See* Settlement, § 2.17.

1 **B. Essential Terms of the Settlement**

2 Defendant will pay a MSA of \$455,000.00. Settlement, §§ 2.10 and 4.1. After deducting
3 amounts for requested attorneys’ fees and costs, Plaintiffs’ enhancement awards, and settlement
4 administration costs, the remaining Net Settlement Amount (“NSA”) distributable to the
5 aggrieved employees and the LWDA is estimated to be \$269,935.24. *See* Settlement, §§ 4.1, 4.4,
6 4.5 and 4.8. This non-reversionary Settlement does not require aggrieved employees to submit a
7 claim form to reap the financial benefits of the Settlement. *Id.*, §§ 4.9. The monetary terms of the
8 Settlement are as follows:

9	Maximum Settlement Amount:	\$455,000.00
10	Minus Court-approved attorneys’ fees (1/3):	\$151,666.67
11	Minus Court-approved attorneys’ costs:	\$10,048.09
12	Minus Court-approved enhancement awards:	\$20,000.00
13	Minus settlement administrator costs:	\$3,350.00
14	Net Settlement Amount:	\$269,935.24
15	Minus LWDA’s 75% Share:	\$202,451.43
16	Total Paid to Aggrieved Employees:	\$67,483.81

17 **1. Attorneys’ Fees and Costs**

18 Plaintiffs’ counsel requests one-third of the MSA (\$151,666.67) in attorneys’ fees, and
19 \$10,048.09 in actual litigation costs. Settlement, § 4.8; Schmidt Decl., Exhibit A.

20 **2. Settlement Administration Costs**

21 The parties agree to engage Phoenix Settlement Administrators (“Phoenix”) as the third-
22 party settlement administrator. *See* Settlement, § 2.22. Phoenix shall be responsible for
23 calculating the settlement checks, and mailing the settlement checks and Notice to the aggrieved
24 employees, among other duties. *Id.*, §§ 4.3 and 4.7. Phoenix estimates incurring \$3,350.00 in costs
25 in connection with the administration of this settlement. *See* Declaration of Jodey Lawrence
26 (“Lawrence Decl.”), Exhibit B.

27 **3. Plaintiffs’ Enhancement Awards**

28 Plaintiffs also request enhancement awards totaling \$20,000.00 (\$10,000.00 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, §§ 2.8, 4.1 and 4.5; Schmidt Decl., ¶ 25; Castillo Decl., ¶¶ 4-5; Ekine Decl., ¶¶ 4-5.

1 **4. Payment to the LWDA and Aggrieved Employees**

2 From the NSA, 75% (\$202,451.43) will be distributed to the LWDA, and 25%
3 (\$67,483.81) will be distributed to the aggrieved employees. Settlement, § 2.13; *see also* Labor
4 Code § 2699(i) (“[C]ivil penalties recovered by aggrieved employees shall be distributed as
5 follows: 75 percent to the [LWDA]...and 25 percent to the aggrieved employees.”). One hundred
6 percent (100%) of the individual payments to the aggrieved employees will be reported using IRS
7 Form-1099s, since all funds received under Section 2699 are civil penalties that do not trigger
8 payroll taxes or withholdings. *See* Settlement, § 4.4.2. Individual PAGA Payments shall be
9 apportioned based on the proportionate number of pay periods worked during the PAGA Period,
10 by multiplying the Net Settlement Amount by a fraction, the numerator of which is the aggrieved
11 employees’ total pay periods worked during the PAGA Period, and the denominator of which is
12 the total number of pay periods worked by all aggrieved employees during the PAGA Period. *Id.*,
13 § 4.4.1(c).

14 **5. Funding of the Settlement**

15 Defendant will fund the entire Maximum Settlement Amount within 30 calendar days
16 after the date upon which the Court enters an Order approving the Settlement (the “Approval
17 Date”). Settlement, §§ 2.7 and 4.7.3. Within 21 calendar days after the Approval Date, Defendant
18 will provide Phoenix with a list of the aggrieved employees’ full name, last known mailing
19 address, and pay period information, and Social Security number as needed. *Id.* § 4.7.2. Within 3
20 calendar days after the Effective Date,⁴ Phoenix will mail a Notice and Individual PAGA Payment
21 to the aggrieved employees. *Id.*, § 4.7.4. Before mailing, Phoenix will perform a search on the
22 National Change of Address database to update the aggrieved employees’ addresses. *Id.*, § 4.7.5.
23
24
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27 ⁴ “‘Effective Date’ means the latest of: (i) if an appeal, review, or writ is not sought from the Approval
28 Order and Judgment, the 61st day after service of notice of entry of the Approval Order and Judgment; or
 (ii) if an appeal, review, or writ is sought from the Approval Order and Judgment, the day after the
 Approval Order and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the
 Approval Order and Judgment is no longer subject to further judicial review.” Settlement, § 2.7.

1 **IV. ARGUMENT**

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

3 The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699(l)
4 (stating, the “court shall review and approve any penalties sought as part of a proposed settlement
5 agreement pursuant to this part.”). The Court must be mindful that “[s]ettlement is a compromise,
6 which balances the possible recovery against the risks inherent in litigating further.” *In re TD*
7 *Ameritrade Account Holder Litig.*, Case Nos. C 07-2852 SBA, C 07-4903 SBA, 2011 WL
8 4079226, *9 (N.D. Cal. Sept. 13, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding
9 of absolutes and an abandoning of highest hopes,’” as “it is the very uncertainty of outcome in
10 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.”
11 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir., 1982). As such, “the
12 settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits,”
13 or “judged against a hypothetical or speculative measure of what might have been achieved.” *Id.*

14 Although the operative PAGA statute does not set forth the criteria by which a PAGA
15 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors
16 for review of a class action settlement. However, “a PAGA claim asserted on a non-class
17 representative basis...is not considered a class action but a law enforcement action, and therefore
18 does not have to meet the requirements of [a class action].” *See Casida v. Sears Holdings Corp.*,
19 2012 WL 253217 at *3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL
20 2650571 at *4 (E.D. Cal. Jul. 1, 2010). A court’s review of a PAGA settlement necessarily
21 implicates the following unique features that render the approval process distinct from approval
22 of a class action settlement under C.C.P. § 382 and C.R.C. Rule 3.769.

23 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
24 concerned with the amount(s) that “aggrieved employees” are to receive, but rather, must focus
25 on the total settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a
26 PAGA suit consists of civil penalties, not individual or class damages,” and while a “[PAGA]
27 action is ... designed to protect the public and penalize the employer for past illegal conduct,” a
28 reviewing Court must be mindful of the fact that settlement of a PAGA claim involves a

1 compromise. *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties
2 are not meant to compensate unnamed employees because the action is fundamentally a law
3 enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at *4 (N.D.
4 Cal. Apr. 2, 2010). The Court must not lose sight of the fact that “[u]nlike a class action seeking
5 damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private
6 parties to recover civil penalties for the government that otherwise may not have been assessed
7 and collected by overburdened state enforcement agencies.” *Id.*

8 Second, consistent with the fact that unnamed employees have no property interest in a
9 PAGA claim,⁵ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
10 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
11 1340777 at *5. This renders the approval process of a PAGA settlement distinct from a class
12 action settlement, as there is no need for the Court to employ the “two-step approval process”
13 required under F.R.C.P. Rule 23 (“Rule 23”) and C.R.C. Rule 3.769 (“Rule 3.769”).⁶

14 Finally, unlike class action settlements under Rule 23(e) and Rule 3.769, the scope of
15 release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is
16 binding not only on the named employee Plaintiffs but also on government agencies and any
17 aggrieved employee not a party to the proceeding...the non-party employees, because they were
18 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
19 judgment as to remedies other than civil penalties.” *See Arias v. Sup. Ct.* (2009) 46 Cal.4th 969,
20 986-87. Thus, the scope of a release in a PAGA settlement is confined to the PAGA penalties
21 alleged in the complaint (or the prefiling letters to the LWDA) and to the claims that were, or
22
23

24 ⁵ 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 ⁶ 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 could have been, alleged pursuant to PAGA based on the factual allegations in the complaint.⁷ In
2 the case at hand, as the only claims at issue are PAGA claims, those will be the only claims
3 extinguished because of this Settlement.

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

6 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v.*
7 *Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class and
8 representative PAGA settlements involve a court approval process that exists to prevent fraud,
9 collusion, and unfairness to absent individuals. *See Malibu Outrigger Bd. of Governors v.*
10 *Superior Court* (1980) 103 Cal.App.3d 573, 578-79. California law generally follows the same
11 standards applicable under Rule 23. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
12 1998) (stating that Rule 23(e) requires the trial court to determine “whether a proposed settlement
13 is fundamentally fair, adequate, and reasonable”). To be approved, a settlement must be “fair,
14 reasonable and adequate to all concerned.” *Reed v. United Teachers Los Angeles* (2012) 208
15 Cal.App.4th 322, 337. Settlement is the preferred means of dispute resolution, particularly in
16 complex representative litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
17 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
18 agreement taken as a whole is fair and is not the product of fraud or collusion between the
19 negotiating parties. *See, e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of
20 fairness when the settlement agreement was negotiated at arm’s length by experienced counsel.
21 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Because this Settlement is
22 fair, adequate, and reasonable, Plaintiffs respectfully request that the Court grant approval.
23

24
25 ⁷ 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.”).

1 **1. Factors in Evaluating a Representative PAGA Settlement**

2 A settlement is presumptively fair where it is reached through arm's-length bargaining,
3 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
4 and counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
5 1794, 1802; *see also Kullar, supra*, 168 Cal.App.4th at 130. In deciding whether to approve a
6 proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair
7 under the circumstances of the case. *Mallick v. Sup. Ct.* (1979) 89 Cal.App.3d 434, 438. In
8 exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair,
9 adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant
10 factors for the Court to consider include, but are not limited to:

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

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

20 "In the context of a settlement agreement, the test is not the maximum amount Plaintiff
21 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
22 under all of the circumstances." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
23 250. Because settlements inherently involve compromise, settlements providing for narrower
24 relief than can be obtained if the suit were successfully litigated can be reasonable because "the
25 public interest may indeed be served by a voluntary settlement in which each side gives ground
26 in the interest of avoiding litigation." *Air Lines Stewards, etc., Local 550 v. Am. Airlines, Inc.*,
27 455 F.2d 101, 109 (7th Cir. 1972). Further, courts review the discovery conducted by the parties
28 to aid in assessing whether the parties sufficiently developed the claims and supporting factual
bases before reaching settlement. *See Kullar, supra*, 168 Cal.App.4th at 129-31. Information is
sufficient where it allows the parties and the court to form "an understanding of the amount that

1 is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential*
2 *Serv. LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that parties can provide
3 the trial court with “a meaningful and substantiated explanation of the manner in which the factual
4 and legal issues have been evaluated.” *Kullar, supra*, 168 Cal.App.4th at 132.

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

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

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

14 Although the Parties engaged in substantial informal discovery and information exchange
15 prior to mediation, the Parties agreed to refrain from engaging in formal written and deposition
16 discovery until after exhausting their settlement efforts at mediation. Schmidt Decl., ¶ 12. Absent
17 settlement, the parties will be required to expend substantial time and resources completing formal
18 written and deposition discovery. Preparation for trial remained, as well as the prospect of appeals
19 in the wake of a summary judgment ruling for either party, as well as appeals after trial. This
20 settlement avoids these considerable costs, risks, and the accompanying burden of continued
21 litigation on the Court.

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

23 This proposed Settlement provides a fair and reasonable monetary recovery for the
24 LWDA and aggrieved employees in the face of disputed claims. Plaintiffs analysed Defendant’s
25 produced data, and forecasted Defendant’s realistic exposure for PAGA civil penalties as follows:

26 **PAGA Penalties for Wage and Hour Violations Under Lab. Code § 2699: \$553,112**

27 Based on the alleged violations described above, Plaintiffs maintain that they would be
28 able to seek PAGA penalties for the Aggrieved Employees for each pay period in the PAGA

1 Period. Schmidt Decl., ¶ 21. Based on the data provided by Defendant, the Aggrieved Employees
2 worked a combined total of approximately 8,939 pay periods as of May 2021. Thus, assuming
3 that Plaintiffs could prove at least one underlying Labor Code violation in each pay period within
4 the PAGA period, Plaintiffs estimate a maximum PAGA exposure of \$893,900 for Defendant
5 (calculated as \$100 per violation). *Id.*; see *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157,
6 1207 (2008) (finding “initial” violation rate applies until employer is notified that it is violating a
7 Labor Code provision). However, these penalties derive from the underlying wage and hour
8 violations discussed above, for which, as discussed above, Defendant presents several viable
9 defenses, including the Court’s discretion to reduce any PAGA award where it views them as
10 duplicative. See e.g., *Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5,
11 n.5 (explaining that a PAGA claim’s success was determined by the merits of its underlying
12 claims); see also *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112,
13 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corp.* (2018) 30
14 Cal.App.5th 504, 529 (affirming reduction of PAGA penalties to \$5 per initial violation); *Fleming*
15 *v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011 WL
16 7563047 at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Plaintiffs therefore
17 discounted the maximum figure by 30% for the risk of being unable to proceed on a representative
18 basis and an additional 15% to account for the risk of losing on the merits and/or of this Court
19 reducing penalties, to arrive at an estimated exposure of \$531,871. Schmidt Decl., ¶ 21.

20 Therefore, the proposed Settlement of \$455,000 represents approximately **86%** of
21 Plaintiffs’ projected potential recovery, while avoiding the risks of proceeding through trial.
22 Schmidt Decl., ¶ 22. “The fact that a proposed settlement may only amount to a fraction of the
23 potential recovery does not, in and of itself, mean that the proposed settlement is grossly
24 inadequate and should be disapproved.” *Linney v. Cellular Alaska Partnership* (9th Cir. 1998)
25 151 F.3d 1234, 1242 (internal quotations omitted). Plaintiff acknowledges that there was
26 substantial uncertainty and risk should she proceed through trial, and that even in the event that
27 she prevailed, the Court still maintained discretion to reduce the penalties awarded. Therefore,
28

1 approval is appropriate since the Settlement will provide significant monetary relief to PAGA
2 Settlement Group Members and the State of California.

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

4 The parties engaged in a significant exchange of documents and data necessary to evaluate
5 the value of the PAGA claim prior to mediation. *See* Schmidt Decl., ¶ 12. Defendant provided
6 Plaintiffs with timekeeping and payroll records for a sample group of allegedly aggrieved
7 employees and relevant policy documents in effect. *Id.* It was only after the completion of this
8 discovery and Plaintiffs' comprehensive data analysis that the parties attended mediation. *Id.*
9 Thus, this factor supports settlement approval.

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

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

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

25 Plaintiffs, as the prevailing party in settlement, are entitled to recover attorneys' fees and
26 costs for bringing this PAGA claim. *See* Cal. Labor Code § 2699(g) ("Any employee who prevails
27 in any action shall be entitled to an award of reasonable attorney's fees and costs."); Code of Civil
28 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., ¶ 22. Here,
20 Plaintiffs’ counsel’s fee request of up to \$151,666.67 (one-third of the MSA) is the same
21 percentage sought in *Laffitte* and is fair and reasonable based on the percentage of the recovery
22 method. *Id.*

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

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

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

16 The fee award requested here is justified because Plaintiffs’ counsel achieved a significant
17 monetary recovery for the aggrieved employees and the State of California in an uncertain and
18 risky case, while bearing the substantial burdens of representation on a contingency basis.
19 Schmidt Decl., ¶ 22. Additionally, Plaintiffs’ recovery for the State of California and aggrieved
20 employees greatly exceeds other PAGA awards approved by courts in California. *See, e.g.,*
21 *Penaloza, supra*, 2013 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013
22 WL 1182822 (average PAGA penalties of \$3.33). That Plaintiffs’ counsel achieved these results
23 without engaging in a protracted legal battle, in the face of serious defense challenges and an
24 uncertain legal landscape, confirms the strength of the results achieved.

25 As discussed, this case presented significant risks both on the merits and with respect to
26 the Court’s authority to reduce an award of PAGA penalties. It is fair and reasonable to account
27 for these risks in compensating Plaintiffs’ counsel, as well as the risks involved in undertaking
28 this litigation and expending considerable effort while working on a pure contingency basis. Since

1 undertaking representation of Plaintiffs, Plaintiffs' counsel dedicated substantial resources to this
2 litigation, including expending \$10,048.09 in litigation costs, without receiving any compensation
3 to date. Schmidt Decl., ¶ 23; Exhibit D. Plaintiffs' counsel's efforts include conducting pre-filing
4 investigation, analyzing Plaintiffs' claims, conducting extensive legal research regarding the
5 merits and legal bases of Plaintiffs' claims, drafting and filing Plaintiffs' initial and consolidated
6 complaints and LWDA notice letters, attending various court hearings, reviewing substantial
7 documents and data produced by Defendant, meeting and conferring with Defendant's counsel
8 regarding Defendant's informal document production, extensively evaluating the timekeeping
9 and payroll data prior to mediation, preparing for and attending mediation, drafting a mediation
10 brief, negotiating and drafting the PAGA Settlement Agreement and Notice, preparing this
11 Motion for settlement approval and all supporting documents hereto, and otherwise litigating the
12 case. Schmidt Decl., ¶ 24. Plaintiffs' counsel will spend additional time attending the hearing on
13 this Motion and overseeing the settlement administration process. *Id.* Given the potential for
14 adverse outcomes, the contingent risk borne by Plaintiffs' counsel was great. The quality of
15 Plaintiffs' counsel's work, and the efficacy and dedication with which it was performed, should
16 be compensated.

17 Plaintiffs' counsel's previous experience in litigating wage and hour class and
18 representative actions also supports the reasonableness of the fee request. Plaintiffs' counsel is
19 well-versed in plaintiff and defense-side wage and hour class and representative action litigation,
20 and collectively brings three decades worth of wage-and-hour class and representative action
21 litigation experience. *See* Schmidt Decl., ¶¶ 2-6. Plaintiffs' counsel has also been certified as class
22 counsel in numerous class action cases alleging wage and hour claims. *Id.* Plaintiffs' counsel's
23 experience in similar matters was integral in evaluating the strengths and weaknesses of this case
24 and the reasonableness of the Settlement. Because it is reasonable to compensate Plaintiffs'
25 counsel commensurate with their skill, reputation, and experience, the requested fee award of
26 \$151,666.66 is fair, reasonable and adequate, and should therefore be approved.

27 ///

28 ///

1 **D. The Requested Cost Reimbursement Warrants Approval as Fair, Adequate,**
2 **and Reasonable**

3 Plaintiffs’ counsel incurred and respectfully requests reimbursement of \$10,048.09 in
4 actual litigation costs. Schmidt Decl., ¶ 23; Exhibit D.⁸ Plaintiffs’ counsel’s request is fair,
5 adequate, and reasonable, as all of these costs are documented and reasonably incurred. *Id.*
6 Moreover, the costs Plaintiffs seek are the types of costs routinely approved by courts. *See, e.g.,*
7 *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel should recover “those out-of-pocket
8 expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759
9 CW, 2011 WL 825713, * 3 (N.D. Cal. 2011) (“costs of reproducing pleadings, motions and
10 exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *In re*
11 *Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation
12 expenses, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
13 Because the expense reimbursements requested by Plaintiffs’ counsel were reasonably incurred,
14 the Court should grant Plaintiffs’ counsel’s request for reimbursement of \$10,048.09 in actual
15 litigation costs incurred.

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

17 Plaintiffs also requests that the Court approve up to \$3,350.00 in administration costs to
18 the Settlement Administrator, Phoenix Settlement Administrators. Schmidt Decl., ¶ 26; Lawrence
19 Decl., Exhibit B; Settlement, §§ 2.21 and 4.1. As detailed in the Settlement Agreement and
20 declaration of Jodey Lawrence, submitted concurrently with this Motion, Phoenix will perform
21 duties in connection with this Settlement that are integral in effectuating the Settlement and the
22 Notice process. Among other things, Phoenix will calculate each aggrieved employee’s Individual
23 PAGA Payment, update addresses contained in the employee data supplied by Defendant, format
24 the Notice Packets for mailing, mail Notice Packets to all aggrieved employees, and otherwise
25

26 ⁸ Plaintiffs’ counsel’s costs records reflect Plaintiffs’ actual costs as of the date of the filing (\$9,888.09).
27 Schmidt Decl., ¶ 23. However, the total amount that Plaintiffs’ counsel is requesting for expense
28 reimbursements includes an additional \$160 in anticipated future costs for the filing and service of this
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.*

1 administer the Settlement. *See generally*, Lawrence Decl.; *see also* Settlement, § 4.4 and 4.7.
2 Phoenix was selected to administer this Settlement because it is an experienced and well-
3 respected settlement administrator and returned a bid at a competitive rate. Schmidt Decl., ¶ 26;
4 *see generally*, Lawrence Decl. For these reasons, Phoenix’s requested costs are fair, reasonable,
5 and adequate, and should be approved.

6 **F. This Court Should Approve Plaintiffs’ Requested Enhancement Awards**
7 **Because They Are Fair, Adequate, and Reasonable in View of Plaintiffs’**
8 **Efforts and the Risks Assumed on Behalf of the Aggrieved Employees**

9 Courts routinely approve enhancement awards to compensate named plaintiffs for the
10 services they provide and the risks they incur during class and representative litigation. *See, e.g.,*
11 *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to
12 named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*
13 (N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 enhancement award). Here, pursuant to
14 the Settlement, Plaintiffs seek total enhancement awards of \$20,000.00 (\$10,000.00 to each
15 named plaintiff). *See* Settlement, §§ 2.8, 4.1 and 4.5. This request is reasonable given Plaintiffs’
16 efforts in this case and the risks they undertook on behalf of the aggrieved employees. Schmidt
17 Decl., ¶ 25. Among other things, Plaintiffs searched for and gathered relevant documents for use
18 in the lawsuit and provided factual information to Plaintiffs’ counsel, had regular discussions with
19 Plaintiffs’ counsel regarding the claims in the lawsuit, the facts and legal theories at issue in the
20 case, and Defendant’s timekeeping as well as meal and rest period practices, discussed the status
21 of the case and general case strategy with their attorneys on many occasions, and helped their
22 attorneys prepare for mediation. Castillo Decl., ¶ 5; Ekine Decl., ¶ 5. Plaintiffs each estimate
23 having spent at least 15 hours on activities that ultimately led to the Settlement. *Id.* Accordingly,
24 Plaintiffs’ enhancement awards are appropriate and justified as part of the Settlement.

25 **V. CONCLUSION**

26 For the reasons stated herein, this Court should grant Plaintiffs’ Motion in its entirety and
27 adopt the Proposed Judgment and Order Granting Plaintiffs’ Motion for Settlement Approval of
28 Claims Brought Under the PAGA, Reasonable Attorneys’ Fees and Costs, and Enhancement

1 Awards, submitted concurrently herewith.

2 Dated: October 5, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

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4 By:


Fletcher W. Schmidt
Attorneys for Plaintiffs