



FILED
San Francisco County Superior Court

FEB 23 2022

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

GUY BLAZ HANLEY, as an individual and
on behalf of all others similarly situated,

Plaintiff,

v.

SAMSARA NETWORKS, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CGC-20-584034

**ORDER APPROVING SETTLEMENT
AGREEMENT AND JUDGMENT
THEREON**

Plaintiff's Motion to Approve Settlement Agreement Pursuant to the Private Attorneys
General Act ("PAGA") is granted.

BACKGROUND

On April 3, 2020, Plaintiff Guy Blaz Hanley ("Plaintiff") initiated this action against
Defendant Samsara Networks, Inc. ("Defendant"). Plaintiff is employed by Defendant as a non-
exempt, salaried inside salesperson. (Complaint ¶ 8.) Plaintiff alleges eight causes of action for
Labor Code violations on behalf of a putative class: (1) failure to pay overtime wages; (2) failure
to pay minimum wages; (3) failure to provide meal and rest breaks; (4) failure to reimburse
business expenses; (5) failure to provide accurate, itemized wage statements; (6) failure to timely

1 pay all wages due; (7) unfair business practices; and (8) PAGA penalties. (*Id.* at ¶¶ 29-67.)

2 On August 11, 2020, this Court granted Defendant’s petition to compel arbitration,
3 dismissed Plaintiff’s class claims, and stayed this action pending arbitration. On November 8,
4 2021, this Court lifted the stay to allow Plaintiff to file a First Amended Complaint and Motion
5 for Approval of PAGA Settlement.

6 Plaintiff now moves for approval of a PAGA settlement. The Court set the initial hearing
7 for January 4, 2022. On January 4, 2022, the parties stipulated to continue the hearing to
8 February 4, 2022 for supplemental briefing. On January 24, 2022, Plaintiff filed a supplemental
9 brief and an Amendment to PAGA Settlement Agreement (“Amended Proposed Settlement”).¹
10 On February 3, 2022, this Court issued an order continuing the hearing to February 24, 2022 for
11 supplemental briefing. On February 14, 2022, Plaintiff timely filed a supplemental brief and a
12 Second Amendment to PAGA Settlement Agreement (“Second Amended Proposed
13 Settlement”).² The Court issued a tentative ruling prior to the February 24, 2022 hearing. On
14 February 22, 2022, the parties submitted on the tentative ruling.

15 **LEGAL STANDARD**

16 “Aside from the requirement that the court ‘review and approve’ a settlement in a civil
17 action filed under PAGA (§ 2699, subd. (l)(2)), PAGA itself does not provide a standard for this
18 review and approval in the majority of PAGA cases.” (*Moniz v. Adecco USA, Inc.* (2021) 72
19 Cal.App.5th 56, 75.)

20 “Despite the fact that a representative action under PAGA is not a class action, and is
21 instead a type of qui tam action, a standard requiring the trial court to determine independently
22 whether a PAGA settlement is fair and reasonable is appropriate.” (*Moniz*, 72 Cal.App.5th at 76
23 [quotations and citations omitted].) Moreover, it is “appropriate to review a PAGA settlement to
24 ascertain whether a settlement is fair in view of PAGA’s purposes and policies.” (*Id.* at 77.)

25
26 ¹ “Amended Proposed Settlement” refers to the Amendment to PAGA Settlement Agreement
attached as Exhibit A to the Declaration of Max W. Gavron filed January 24, 2022.

27 ² “Second Amended Proposed Settlement” refers to the Second Amendment to PAGA Settlement
28 Agreement attached as Exhibit A to the Supplemental Declaration of Max W. Gavron filed
February 14, 2022.

1 Accordingly, “a trial court should evaluate a PAGA settlement to determine whether it is fair,
2 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
3 deter future ones, and to maximize enforcement of state labor laws.” (*Ibid.*) The *Moniz* Court
4 explained that many of the same factors that can be used to evaluate the fairness of class action
5 settlements – the strength of the plaintiff’s case, the risk, the stage of the proceeding, the
6 complexity and likely duration of further litigation, and the settlement amount – can also be used
7 to evaluate the fairness of a PAGA settlement. (*Ibid.*) The trial court must also scrutinize
8 whether, in resolving the action, a PAGA plaintiff has adequately represented the state’s interest,
9 and hence the public interest. (*Id.* at 89.) The trial court’s review of PAGA settlements is
10 intended to protect against fraud, collusion, and unfairness; and to protect the interests of the
11 public and the LWDA in the enforcement of the state labor laws. (*Id.* at 77.)

12 **DISCUSSION**

13 **I. Notice to LWDA**

14 “The proposed settlement shall be submitted to the [LWDA] at the same time that it is
15 submitted to the court.” (Lab. Code, § 2699(1)(2).) The Court finds Plaintiff complied with this
16 requirement. (Gavron Decl. ¶ 52.)

17 **II. Fairness**

18 **A. Arm’s-Length Bargaining**

19 On February 24, 2021, the parties participated in a full day mediation with the Honorable
20 Ronald M. Sabraw (Ret.). (Gavron Decl. ¶ 13; Proposed Settlement,³ § 1.5.) Following
21 mediation, the parties continued to engage in settlement negotiations with the assistance of Hon.
22 Ronald M. Sabraw (Ret.). (Gavron Decl. ¶ 14; Proposed Settlement, § 1.5.) On June 14, 2021,
23 the parties reached a settlement in principle. (*Ibid.*) On November 8, 2021, the parties settled the
24 entire action. (Gavron Decl. ¶ 15.) The Court finds this is indicative of arm’s-length bargaining.

25 //

26
27 ³ “Proposed Settlement” refers to the PAGA Settlement Agreement attached as Exhibit A to the
28 Declaration of Max W. Gavron filed December 9, 2021.

1 **B. Investigation and Discovery**

2 In preparation for mediation, Defendant informally produced documents and data such as
3 the number of current and former non-exempt employees in California during the relevant time
4 period, wage statements, and written policies. (Gavron Decl. ¶ 12.) Based on Defendant's
5 production, Plaintiff's counsel performed a comprehensive PAGA penalties analysis. (*Ibid.*) The
6 Court finds the parties conducted sufficient investigation and discovery to allow the parties to act
7 intelligently in reaching a settlement.

8 **C. Experience of Counsel**

9 The Court finds counsel is experienced. (Gavron Decl. ¶¶ 38-45; Lee Decl. ¶¶ 4-7; Lebe
10 Decl. ¶¶ 3-8, 11-12.)

11 **D. Claim Valuation**

12 Plaintiff's counsel estimates the maximum amount of PAGA penalties, without stacking,
13 is \$1,435,300. (Gavron Decl. ¶ 34.) The estimate is based on 14,353 pay periods multiplied by
14 \$100 per pay period. (*Ibid.*) Plaintiff's counsel used a \$100 penalty per pay period in the
15 estimate because courts have been hesitant to award higher PAGA penalties for subsequent
16 violations. (*Ibid.*) Plaintiff's counsel believes that a \$100 penalty per pay period is fair,
17 adequate, and reasonable. (*Ibid.*)

18 **E. Settlement Consideration**

19 The gross settlement amount is \$800,000. (Proposed Settlement, § 2.13.) This is
20 \$635,300 less than the maximum amount of PAGA penalties without stacking or a 44.27%
21 discount. (Gavron Decl. ¶ 34.)

22 Plaintiff argues that the settlement discount is reasonable because: (1) Defendant disputed
23 whether any Labor Code violations occurred; (2) Defendant provided employees with a company
24 telephone for work duties; (3) Defendant argued it properly calculated regular rates of pay and
25 only a few employees earned multiple rates of pay; (4) Defendant contended its wage statements
26 complied with Labor Code section 226 because the wage statements display the total hours
27 worked; (5) Defendant's asserted defenses of unintentional violations and unmanageable PAGA
28 claims presented a significant risk to Plaintiff's PAGA claims; (6) courts have the discretion to

1 reduce PAGA penalties or not award PAGA penalties at all; and (7) prosecution of the claims
2 through trial and possible appeal would have been time consuming and inherently risky. (Gavron
3 Decl. ¶¶ 26-33.)

4 The Court finds these are all reasonable bases for a settlement discount. (See *Thurman v.*
5 *Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 [disapproved of on other
6 grounds by *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175] [discussing standard for reduction of
7 civil penalties].)

8 **III. Release**

9 **A. PAGA Claims**

10 The amended release applicable to Aggrieved Employees, including Plaintiff, states:

11 Effective upon the Effective Date and remittance of the Settlement Fund Amount, the
12 State of California and all PAGA Group Members (including Plaintiff) shall be deemed to
13 have, and by operation of the Judgment shall have, expressly released, waived, and
14 discharged the Released Parties from the Released Claims, and they shall be bound by the
Approval Order and Judgment and be forever barred from pursuing any of the Released
Claims that accrued during the PAGA Period against any of the Released Parties.

15 (Amended Proposed Settlement, § 5.1.)

16 The revised released claims provision limits released claims to the PAGA period as
17 follows.

18 [A]ll claims under PAGA that are alleged in the Amended Complaint, or that could have
19 been alleged based on the facts alleged in the Amended Complaint, based on alleged
20 violations of Labor Code sections 201, 202, 203, 204, 226.7, 510, 512, 558, 1174, 1194,
21 1197, 1197.1, 2802, and 226, subdivision (a) and the applicable Wage Order(s)
22 promulgated by the Industrial Welfare Commission that arose during the PAGA Group
Members' employment with Defendant during the PAGA Period. The Released Claims
are released by both the State of California and the PAGA Group Members as part of this
Settlement.

23 (Amended Proposed Settlement, § 2.27.)

24 The amended release and released claims provision are consistent with the scope of the
25 claims in the case and only apply to the PAGA period.

26 **B. Individual Claims**

27 As part of the settlement, Plaintiff agreed to a general release of his individual claims in
28 consideration for \$20,000. (Proposed Settlement, §§ 2.12, 3.5.) In addition to the PAGA

1 Release, Plaintiff will also be bound by the following release:

2 [E]ffective upon the Effective Date and remittance of the Settlement Fund Amount,
3 Plaintiff hereby expressly releases and waives any and all claims, demands, rights,
4 liabilities, and causes of action he has or has ever had against any of the Released Parties,
5 whether for economic damages, noneconomic damages, exemplary damages, penalties,
6 restitution, injunctive or declaratory relief, interest, attorneys' fees, costs, or any other
7 form of monetary or non-monetary relief in any way arising out of or relating to any facts,
8 transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or
9 failures to act at any time up to and including the Approval Date, including but not limited
10 to any claim arising from or related to his employment with Defendant or the termination
11 of that employment. This general release by Plaintiff includes all statutory claims,
12 common law claims (including but not limited to those sounding in contract, tort, and
13 equity), and claims for compensation to the fullest extent permitted by law. Plaintiff
14 further agrees not to sue or otherwise make a claim against any of the Released Parties for
15 any of the claims that are released pursuant to this Section.

16 (Proposed Settlement, § 5.2.)

17 The Court finds that Plaintiff's individual release is reasonable.

18 **IV. Settlement Distribution**

19 The Proposed Settlement provides for distribution as follows. Within five business days
20 of the Effective Date, Defendant will transfer the settlement amount to the Settlement
21 Administrator. (Proposed Settlement, § 4.6.1.) Within ten business days of the Effective Date,
22 Defendant will provide the Settlement Administrator with the name, last known address, social
23 security number, dates of employment, and number of pay periods worked for each PAGA
24 Member. (*Id.* at § 4.2.)

25 Within ten business days of receiving the settlement amount, the Settlement Administrator
26 will create a settlement fund, provide all counsel with a report listing each PAGA Member and
27 corresponding settlement payment, and issue payments. (Proposed Settlement, § 4.6.2.)
28 Individual settlement payments will be calculated by determining the total number of pay periods
worked during the PAGA period. (*Id.* at § 4.4.2.) The Settlement Administrator will then divide
the total PAGA Member payment by the total number of pay periods worked during the PAGA
period to arrive at a per pay period value for each PAGA Member. (*Ibid.*) Lastly, the Settlement
Administrator will multiply the per pay period value for each PAGA Member by the number of
pay periods worked by each PAGA Member to arrive at the individual benefit payment amount.
(*Ibid.*)

1 Checks issued to PAGA Members will be valid for 180 days. (Proposed Settlement, §
2 4.6.3.) The Settlement Administrator will perform a skip trace search and “immediately” re-mail
3 any mailings returned as undeliverable. (*Id.* at § 4.3.) Checks not cashed after 180 days will be
4 automatically voided and “the PAGA Group Member’s right to participate in the Settlement shall
5 be extinguished, although the individual shall remain a PAGA Group Member bound by the
6 Judgment entered in the Action.” (*Ibid.*) After 180 days, the Settlement Administrator must
7 remit the balance of the uncashed checks to the LWDA. (*Ibid.*) Settlement administration must
8 be completed within 270 days of the Effective Date. (*Ibid.*)

9 The Court finds this approach reasonable. Apportionment based on an employee’s
10 proportional share of the number of pay periods worked during the claim period is a practical
11 mode of distribution commonly used in wage and hour cases because it allows for a distribution
12 that corresponds closely to the alleged damages. However, the Court requested the parties set a
13 firm re-mailing deadline for checks returned as undeliverable.

14 The Amended Proposed Settlement provides that the Settlement Administrator must re-
15 mail any checks returned as undeliverable no later than seventy-five days after the Effective Date.
16 (Amended Proposed Settlement, § 4.3.) The provision to “immediately” re-mail checks returned
17 as undeliverable combined with the seventy-five-day deadline is sufficient here. Re-mailing
18 returned checks within seventy-five days will also allow the Settlement Administrator to
19 complete settlement administration within the 270-day deadline.

20 The deadline for re-mailing is located under the heading “Settlement Administrator
21 Duties.” (Proposed Amended Settlement, § 4.3.) One of the Settlement Administrator’s duties is
22 to set up a toll-free number where PAGA Members can contact the Settlement Administrator with
23 any questions. (*Id.* at § 4.3(v).) The Court asked the parties to set a deadline for the Settlement
24 Administrator to establish a toll-free number.

25 The Second Amended Proposed Settlement provides that the Settlement Administrator
26 must establish a toll-free number “as soon as practicable after the Court approves the Settlement,
27 and no later than twenty-one (21 days) after the Court enters its order approving the Settlement.”
28 (Second Amended Proposed Settlement, § 4.3.) This is reasonable as Defendant must remit the

1 settlement amount to the Settlement Administrator within five business days of the Effective Date
2 and the Settlement Administrator must issue settlement payments within ten business days of
3 receiving the settlement amount. (Proposed Settlement, §§ 4.6.1, 4.6.2.) The Effective Date is
4 sixty days after entry of order and judgment. (*Id.* at § 2.10.)

5 **V. Post-Approval Notice**

6 The proposed mail notice is attached as Exhibit C to the Second Amended Proposed
7 Settlement. The proposed email notice is attached as Exhibit D to the Second Amended Proposed
8 Settlement.

9 **A. Notice Method**

10 The Proposed Settlement only contemplated notice by first-class mail. (Proposed
11 Settlement, § 2.17.) The Court asked the parties to amend the settlement agreement to include a
12 provision that requires email notice where email addresses are available to Defendant or the
13 Settlement Administrator. The Court requested supplemental briefing on the amendment
14 requiring email notice, a firm deadline for sending email notice, a copy of the email notice, and a
15 revised invoice from the Settlement Administrator that includes any additional costs for email
16 notice.

17 The Second Amended Proposed Settlement includes a provision that requires the
18 Settlement Administrator to provide email notice to “PAGA Group Members whose email
19 addresses are available to Defendant or the Settlement Administrator, within ten (10) business
20 days after Defendant’s remittance to the Settlement Administrator of the Settlement Fund
21 Amount.” (Second Amended Proposed Settlement, §§ 2.17.) Defendant must provide the
22 Settlement Administrator with the last known personal email address of each PAGA Member, if
23 available to Defendant, within ten business days of the Effective Date. (*Id.* at § 4.2.) The Court
24 finds that the notice methods satisfy due process requirements.

25 Plaintiff included a proposed email notice and a revised invoice from the Settlement
26 Administrator. (Second Amended Proposed Settlement, Ex. D; Second Suppl. Gavron Decl.⁴ Ex.

27 _____
28 ⁴ The Second Supplemental Declaration of Max W. Gavron refers to the Supplemental
Declaration of Max W. Gavron filed February 14, 2022.

1 B.) Both documents will be addressed below.

2 **B. Notice Content**

3 **1. Mail Notice**

4 The Court asked the parties to correct two minor details in the plain language explanation
5 of the Release. The parties corrected the notice. (Second Amended Proposed Settlement, Ex. C.)

6 **2. Email Notice**

7 The proposed email notice is substantially identical to the mail notice. (Second Amended
8 Proposed Settlement, Ex. D.) The Court finds the email notice complies with due process
9 requirements and that there are no defects.

10 **VI. Settlement Administrator and Administration Costs**

11 The proposed Settlement Administrator is Phoenix Settlement Administrators. (Proposed
12 Settlement, § 2.32.) The Court requested a declaration from a representative of Phoenix
13 Settlement Administrators supporting Phoenix Settlement Administrators' adequacy as an
14 administrator along with an invoice.

15 Plaintiff filed the Declaration of Jodey Lawrence, President of Business Development at
16 Phoenix Settlement Administrators. (Lawrence Decl. ¶ 2.) Ms. Lawrence has twelve years of
17 experience in claims management and administration of class and collective action matters. (*Id.*
18 at ¶ 3.) Phoenix Settlement Administrators has extensive experience in administering PAGA
19 action approvals, notice, and settlement distribution. (*Id.* at ¶¶ 5-7.) Phoenix Settlement
20 Administrators has policies and procedures to safeguard information and funds. (*Id.* at ¶¶ 5, 11-
21 13.) Phoenix Settlement Administrators does not have any financial interest or affiliation with
22 any parties or counsel in this action. (*Id.* at ¶ 4.)

23 Plaintiff satisfies the Court's request as the Declaration of Jodey Lawrence demonstrates
24 Phoenix Settlement Administrators' adequacy as a settlement administrator.

25 As to settlement administration costs, Ms. Lawrence declares that settlement
26 administration costs will not exceed \$3,995. (Lawrence Decl. ¶ 17.) An invoice is attached to
27 Ms. Lawrence's Declaration as Exhibit B. The rates and time estimates appear reasonable.
28 However, the fees are based on 500 total PAGA members. The parties estimate that there are 570

1 PAGA members as stated in the proposed mail notice. (Amended Proposed Settlement, Ex. A.)
2 The Court asked Plaintiff to submit a declaration stating the estimated number of PAGA
3 Members and to include a revised invoice should the total number of PAGA members differ from
4 the 500 quoted in Phoenix Settlement Administrators' invoice.

5 Plaintiff included a revised invoice from Phoenix Settlement Administrators dated
6 February 8, 2022. (Second Suppl. Gavron Decl. Ex. B.) The revised invoice totals \$4,950 in
7 settlement administration costs for 570 PAGA Group Members and includes costs for email
8 notice. (*Id.* at ¶ 7, Ex. B.) The rates and time estimates appear reasonable. The total invoice is
9 also lower than the \$7,500 cap under the settlement agreement. (Proposed Settlement, § 2.31.)

10 Accordingly, the Court finds that the settlement administration costs are reasonable.

11 **VII. Service Award**

12 The Proposed Settlement provides for a service award of up to \$5,000 for Plaintiff.
13 (Proposed Settlement, § 3.6.)

14 The factors for consideration in fixing an appropriate service award include:

15 1) the risk to the class representative in commencing suit, both financial and otherwise; 2)
16 the notoriety and personal difficulties encountered by the class representative; 3) the
amount of time and effort spent by the class representative; 4) the duration of the litigation
and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result
of the litigation.

17 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395.) Additionally,
18 “‘incentive awards’ to class representatives must not be disproportionate to the amount of time
19 and energy expended in pursuit of the lawsuit.” (*Id.* at 1395 [approving \$10,000 incentive awards
20 to four class representatives who actively participated in litigation, including testifying in
21 deposition or at trial, in coordinated class actions that resulted in \$21 million nationwide
22 settlement].)

23 The moving papers included a declaration from Plaintiff wherein Plaintiff states that he
24 “actively contributed to this case” by “participating in numerous telephonic and in-person
25 meetings with [his] attorneys and their staff, providing [his] attorneys with information and
26 documents, making [him]self available for mediation, and reviewing and executing the settlement
27 agreement.” (Hanley Decl. ¶ 5.)
28

1 The Court found Plaintiff's initial declaration provided insufficient information to
2 determine whether a service award is appropriate. Plaintiff did not discuss any risks or
3 difficulties in bringing this action. Plaintiff also did not estimate how many hours he spent on
4 this case. The Court invited Plaintiff to file a supplemental declaration to provide the Court with
5 further information. Plaintiff timely filed a supplemental declaration. The Court finds Plaintiff's
6 initial and supplemental declarations do not support a \$5,000 service award. However, the Court
7 approves a \$2,000 service award for Plaintiff.

8 First, Plaintiff states that he assumed financial and professional risks by pursuing this
9 litigation. (Hanley Suppl. Decl. ¶¶ 5, 8(c).) Specifically, Plaintiff would be responsible for
10 attorneys' fees and costs, if unsuccessful in this case. (*Id.* at ¶ 5.) In addition, Plaintiff "could be
11 subject to stigma that is sometimes associated with those who bring class or PAGA actions
12 against employers, which could impact [his] ability to find future employment as a salesperson."
13 (*Id.* at ¶¶ 5, 8(c).)

14 However, contingency fees are predominant, therefore, plaintiffs bear a financial risk
15 when filing suit. As Plaintiff would have assumed the financial risk in either an individual or
16 PAGA action, Plaintiff's argument is unpersuasive.

17 Although Plaintiff invokes this lawsuit as a potential stigma on his record when he applies
18 for future employment, Plaintiff has not disclosed his employment status or whether he is or
19 intends to seek employment at any time in the future. (See *Clark v. American Residential*
20 *Services LLC* (2009) 175 Cal.App.4th 785, 805 ["the trial court is not bound to, and should not,
21 accept conclusory statements about 'potential stigma' and 'potential risk,' in the absence of
22 supporting evidence or reasoned argument explaining why, under the particular circumstances, an
23 actual—not negligible—risk existed, or why it might be difficult to get plaintiffs to come forward
24 to prosecute a particular case."].)

25 Second, Plaintiff does not articulate any notoriety or personal difficulties he encountered
26 by litigating this case. The only personal issue raised by Plaintiff is that the time he spent on this
27 case was time away from his family, friends, and work. (Hanley Suppl. Decl. ¶ 8.) This is
28 insufficient to support a \$5,000 service award.

1 Third, Plaintiff estimates he spent twenty to twenty-five hours on this case. (Hanley
2 Suppl. Decl. ¶ 8.) Plaintiff's supplemental declaration states that he located and reviewed
3 documents such as employment policies and paystubs. (*Id.* at ¶ 4.) Plaintiff answered follow up
4 questions from counsel. (*Ibid.*) Plaintiff "provided additional information to add to the mediation
5 brief and damages model." (*Id.* at ¶ 6.) Plaintiff made himself available to speak with counsel
6 during mediation, if needed. (*Ibid.*) Plaintiff also reviewed the settlement agreement and spoke
7 with his counsel about the settlement. (*Id.* at ¶ 7.)

8 If the PAGA Members' benefit payments consisted of equal shares of twenty-five percent
9 of the \$121,458.33 Net Settlement Amount⁵, each PAGA member would receive approximately
10 \$213.08. Plaintiff's requested service award would be twenty-three times an equal distribution of
11 the Net Settlement Amount to each PAGA Member. This is unreasonably high and supports a
12 reduction of the requested service award.

13 Fourth, this case is less than two years old.

14 Fifth, Plaintiff does not address any personal benefit or lack thereof from serving as the
15 PAGA representative in this case.

16 All five factors support a reduced service award for Plaintiff. The initial and supplemental
17 declarations of Plaintiff do not establish that Plaintiff took any risks or suffered any difficulties in
18 bringing this case in addition to the limited amount of hours Plaintiff put into this case. (See
19 *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272-1273 [affirming trial
20 court's decision to reduce requested incentive award from \$3,500 to \$500 where class
21 representative's declaration did not reveal that she undertook any particular risk, had any
22 unreimbursed expenses, or encountered any unusual difficulties in serving as class representative,
23 did not testify at trial, was not deposed, and spent about 16 hours assisting with the case].)

24
25 ⁵ The calculation of the Net Settlement Amount is based on the terms set forth in the Proposed
26 Settlement. \$800,000 Gross Settlement Amount - \$7,500 in settlement administration costs -
27 \$266,666.67 in attorneys' fees - \$15,000 litigation costs - \$20,000 for settlement of Plaintiff's
28 individual claims - \$5,000 service award for Plaintiff = \$485,833.33. Twenty-five percent of the
Net Settlement Amount is \$121,458.33. As discussed below, the actual Net Settlement Amount
will be somewhat higher due to the Court's reduction of the requested attorneys' fees award.

1 **VIII. First Amended Complaint**

2 As part of the settlement, Plaintiff must file a First Amended Complaint for settlement
3 purposes only. (Proposed Settlement, § 3.2.) The First Amended Complaint “shall assert an
4 individual claim on behalf of Plaintiff alleging failure to pay all commissions owed during his
5 employment, and . . . failure to pay all commissions owed as part of the PAGA allegations.”
6 (*Ibid.*) Plaintiff may not revive class claims dismissed by the Court. (*Ibid.*) The Proposed
7 Settlement provides that the First Amended Complaint will be deemed filed as of the Approval
8 Date. (*Ibid.*) Defendant will be deemed to deny the allegations and raise all defenses set forth in
9 the Answer without filing another answer. (*Ibid.*)

10 The First Amended Complaint attached as Exhibit C to the Second Supplemental
11 Declaration of Max W. Gavron filed February 14, 2022 complies with the terms of the Proposed
12 Settlement.

13 **IX. Attorneys’ Fees**

14 Plaintiff’s counsel seeks an award of \$266,666.67 in attorneys’ fees. (Opening Brief, 11;
15 Gavron Decl. ¶ 19; Proposed Settlement, § 3.4.) This is one-third of the total recovery and above
16 the claimed lodestar of \$190,015.00, representing the equivalent of a 1.4 multiplier. (Gavron
17 Decl. ¶ 51; Suppl. Gavron Decl. ¶ 16.)

18 There are two approaches to setting a reasonable fee in common fund cases: the
19 percentage of the recovery method and the lodestar-multiplier method. (*Laffite v. Robert Half*
20 *Intern. Inc.* (2016) 1 Cal.5th 480, 489.) The percentage method focuses on the results achieved
21 whereas the lodestar-multiplier method focuses on the work done. (*Ibid.*) The California
22 Supreme Court clarified in *Laffite* that either method may be used to apportion fees in common
23 fund cases in California and, whichever is used, the other method may be used to cross-check the
24 results. (*Id.* at 503-06.)

25 As discussed below, considering a percentage of the recovery approach cross-checked by
26 the lodestar-multiplier analysis, the Court awards \$237,518.75 in attorneys’ fees.

27 **A. Percentage of the Recovery**

28 One-third common fund awards are not uncommon in California. (See *Laffite*, 1 Cal.5th

1 at 486-88, 506 [affirming one-third fee award]; *Ha v. Google Inc.* (Cal. Super. Ct. Feb. 7, 2018)
2 2018 WL 1052448, at *2 [“1/3 of the gross settlement . . . is not an uncommon contingency fee
3 allocation”]; see also *Thomas v. Universal Home Care, Inc.* (Cal. Super. Ct. Jan. 11, 2018) 2018
4 WL 1751693, at *5 [“Empirical studies show that, regardless whether the percentage method or
5 the lodestar method is used, fee awards in class actions average around one-third of the
6 recovery”] [quoting *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13].)

7 In the initial briefing, Plaintiff’s counsel did not demonstrate that an attorneys’ fee award
8 of one-third is appropriate. Specifically, Plaintiff’s counsel did not discuss the time and labor
9 required, the necessary skill, the result achieved, and whether the fee arrangement was on a
10 contingency basis. The Court invited Plaintiff’s counsel to provide further information through
11 supplemental briefing.

12 Plaintiff’s supplemental briefing supports a somewhat reduced percentage of the recovery.
13 Other than opposing Defendant’s Motion to Compel Arbitration, Plaintiff’s counsel only
14 conducted limited discovery and “engaged in settlement negotiations over several months.”
15 (Gavron Decl. ¶ 12; Suppl. Brief, 5:12.) As to the skill required, Plaintiff’s counsel merely cites
16 to their experience in class and PAGA litigation as stated in their declarations. (*Id.* at 5:8-15.)
17 Plaintiff’s counsel does not address what skill was required to litigate this case or how this case
18 was particularly risky to accept on a contingency fee basis. (Suppl. Gavron Decl. ¶ 15.)
19 However, the gross settlement amount is discounted 44.27% from the maximum PAGA penalties
20 of \$1.4 million, which reflects a very good result achieved by counsel.

21 In accordance with California law, the Court cross-checks the fee request against the
22 lodestar-multiplier analysis to determine whether the fee request is reasonable.

23 **B. Lodestar and Multiplier**

24 To conduct the lodestar analysis, the court multiplies the number of hours reasonably
25 expended by counsel by the reasonable hourly rate. (*Laffitte*, 1 Cal.5th at 489.) The court then
26 adjusts the lodestar by applying a multiplier that accounts for a variety of other factors, including
27 the quality of the representation, the novelty and complexity of the issues, the results obtained,
28 and the contingent risk presented. (*Ibid.*)

1 **1. Hourly Rates**

2 Four attorneys worked on this case with the following hourly rates:

3 (1) Max W. Gavron – an attorney with approximately eight years of experience, who bills
4 at a rate of \$500 per hour. (Gavron Decl. ¶¶ 39-43, 50.)

5 (2) Larry W. Lee – an attorney with approximately eighteen years of experience, who
6 billed at a rate of \$700 per hour from 2018 to 2020 and \$750 per hour from 2020 to
7 present. (Lee Decl. ¶¶ 1, 4-5, 11.)

8 (3) Jonathan M. Lebe – a managing attorney with nine years of experience, who billed at a
9 rate of \$550 per hour in 2019 and 2020 and \$650 per hour in 2021. (Lebe Decl. ¶ 10.)

10 (4) Zachary Gershman – an associate attorney with two years of experience, who billed at
11 a rate of \$250 per hour in 2020 and \$350 per hour in 2021. (*Id.* at ¶¶ 11-13.)

12 The Court finds that the hourly rates are reasonable based on the declarations of Max W.
13 Gavron and Larry W. Lee. (Gavron Decl. ¶ 50; Lee Decl. ¶¶ 10-11.) Although Jonathan M. Lebe
14 and Zachary Gershman did not declare that their rates are reasonable, the declarations of Max W.
15 Gavron and Larry W. Lee are persuasive in that the stated hourly rates for Jonathan M. Lebe and
16 Zachary Gershman are on par with those of the Bay Area.

17 **2. Hours Worked**

18 As stated in the initial briefing, Plaintiff's counsel spent a total of 312.70 hours working
19 on this action as supported by time records. (See Gavron Decl. ¶ 49, Ex. C; Lee Decl. ¶ 8, Ex. A;
20 Lebe Decl. ¶¶ 10, 13.) A breakdown of hours worked is as follows: (1) 121.9 hours by Max W.
21 Gavron; (2) 58.8 hours by Larry W. Lee; (3) 82.7 hours by Jonathan M. Lebe; and (4) 49.3 hours
22 by Zachary Gershman. (Gavron Decl. ¶ 49; Lee Decl. ¶ 8; Lebe Decl. ¶¶ 10, 13.) Max W.
23 Gavron and Larry W. Lee anticipate spending an additional five and fifteen hours, respectively,
24 attending the hearing and addressing post-approval matters. (Gavron Decl. ¶ 49; Lee Decl. ¶ 9.)

25 The Court finds the apportionment of labor and time spent on various tasks in this
26 litigation are reasonable. The Court requested a breakdown of hours worked and the
27 corresponding fees because Plaintiff's counsel charged different rates throughout this litigation.

28 Plaintiff's counsel complied with the Court's request by providing the following
breakdown of hours worked:

//

<u>Attorney</u>	<u>Hours</u> <u>(including anticipated</u> <u>hours)</u>	<u>Rate</u>	<u>Total</u>
Larry W. Lee	73.8	\$750.00	\$55,350.00
Max W. Gavron	126.9	\$550.00	\$69,795.00
Jonathan M. Lebe	43.3	\$550.00 (2020 rate)	\$23,815.00
Jonathan M. Lebe	39.4	\$650.00 (2021 rate)	\$25,610.00
Zachary Gershman	24.75	\$250.00 (2020 rate)	\$6,187.50
Zachary Gershman	26.45	\$350.00 (2021 rate)	\$9,257.50
Total	334.6	////////////////////////////////////	\$190,015.00

(Suppl. Gavron Decl. ¶ 16.) The breakdown of hours worked includes 21.9 hours more than in the original fee request. Although not explicitly stated in the supplemental briefing, the additional 21.9 hours are presumably hours Plaintiff's counsel anticipates working on approval and post-approval matters.

3. Multiplier

A multiplier may take into account a variety of factors, including the quality of representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented. (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26.) The multiplier may be used to adjust the fee upward or downward. (See *Laffitte*, 1 Cal.5th at 489.) Multipliers higher than the one requested by counsel here have been approved. (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 [affirming attorney fee award with 2.5 multiplier].)

Plaintiff's counsel took this case on a contingency fee basis. While the risk taken in a contingency fee case is often a reason for a positive multiplier, there is little else other than a successful settlement and motion to compel arbitration that would suggest a significant upward adjustment is reasonable here. (Gavron Decl. ¶¶ 3-8, 12-15.) This case presents straightforward PAGA claims for Labor Code violations. However, the results obtained warrant a positive multiplier.

Therefore, the Court uses a positive multiplier of 1.25 and awards \$237,518.75 in attorneys' fees. The award is equivalent to 29.65% of the gross settlement amount.

X. Litigation Costs

The Proposed Settlement provides that Plaintiff may seek up to \$15,000 in litigation costs. (Proposed Settlement, § 3.4.) Plaintiff's counsel seeks a total of \$13,781.15 in litigation costs.

(Gavron Decl. ¶ 48, Ex. B; Lebe Decl. ¶ 10, Ex. A.) Most of the cost entries reflect costs that should, as a matter of fairness, be reimbursed. (See *ibid.*) However, the Court requested further explanation of certain cost entries. Based on Plaintiff's supplemental briefing, the Court awards a total of \$13,648.63 in litigation costs.

ORDER AND JUDGMENT

IT IS HEREBY ORDERED that the Motion shall be and is granted and the settlement of this action is hereby approved, and

IT IS FURTHER ORDERED as follows:

1. Capitalized terms in this Order shall have the same meaning they are given in the Settlement Agreement attached as Exhibit A to the Declaration of Max W. Gavron filed December 9, 2021, Amended Settlement Agreement attached as Exhibit A to the Declaration of Max W. Gavron filed January 24, 2022, and Second Amended Settlement Agreement attached as Exhibit A to the Supplemental Declaration of Max W. Gavron filed February 14, 2022 (collectively "Settlement Agreement").

2. The Amended Complaint attached as Exhibit C to the Supplemental Declaration of Max W. Gavron filed February 14, 2022 is deemed filed as of the date of this Order and Defendant concurrently is deemed to deny all of the allegations contained in it without the need to file a formal answer.

3. Phoenix Settlement Administrators is approved to serve as the Settlement Administrator and is hereby authorized to perform all of the duties assigned to it in the Settlement Agreement and to disburse the following from the Settlement Fund Amount in accordance with the terms of the Settlement Agreement:

- a. The LWDA Payment in the amount of \$391,411.96;
- b. The Settlement Payments to PAGA Group Members in the aggregate amount of \$130,470.65;
- c. The Fee and Expense Award in the amount of \$237,518.75 in attorneys' fees, and \$13,648.64 in litigation costs;
- d. Plaintiff's settlement of individual claims in the amount of \$20,000.00;

1 e. A service award to Plaintiff in the amount of \$2,000.00; and

2 f. Settlement Administration Costs in the amount of \$4,950.00.

3 4. Phoenix Settlement Administrators shall send notice to the PAGA Group Members
4 in accordance with the Settlement Agreement. The approved mail notice is attached as Exhibit C
5 to the Second Amended Settlement Agreement, which is attached as Exhibit A to the
6 Supplemental Declaration of Max W. Gavron filed February 14, 2022. The approved email
7 notice is attached as Exhibit D to the Second Amended Settlement Agreement, which is attached
8 as Exhibit A to the Supplemental Declaration of Max W. Gavron filed February 14, 2022.

9 5. The State of California and all PAGA Group Members (including Plaintiff) are
10 hereby deemed to have, and by operation of this Order and Judgment shall have, expressly
11 released, waived, and discharged the Released Parties from the Released Claims, and they shall
12 be bound by this Order and Judgment and be forever barred from pursuing any of the Released
13 Claims that accrued during the PAGA Period against any of the Released Parties.

14 6. Pursuant to Labor Code section 2699, subdivision (l)(3), Plaintiff shall submit a
15 copy of this Order to the LWDA within 10 days after entry of order and judgment.

16 7. Plaintiff shall file a status report setting forth the final disposition of all settlement
17 proceeds on or before February 3, 2023. The final report shall be accompanied by an admissible
18 evidentiary declaration. To the extent there is any residual, the parties should meet and confer,
19 and the status report should propose a disposition of the residual. A hearing on the status report is
20 set for February 14, 2023 at 9:00 a.m. The Court may vacate the hearing after the status report is
21 submitted.

22 8. The Court will retain jurisdiction over this action as it relates to the interpretation
23 and enforcement of this Order, Judgment, and the Settlement Agreement pursuant to Code of
24 Civil Procedure section 664.6 and California Rules of Court, rule 3.769(h).

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9. Judgment shall be entered forthwith in accordance with the foregoing, with each side to pay its own attorneys' fees and costs except as expressly set forth in the Settlement Agreement. This document shall constitute a judgment for purposes of California Rules of Court, rule 3.769(h).

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: February 25, 2022


Ethan P. Schulman
Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

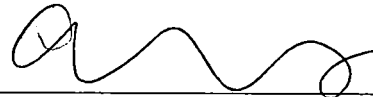
I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On February 23, 2022, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: February 23, 2022

T. Michael Yuen, Clerk

By: _____

A handwritten signature in black ink, appearing to read 'Ericka Larnauti', written over a horizontal line.

Ericka Larnauti, Deputy Clerk