

Justin Lo, Esq. (SBN 280102)
justin@caworklawyer.com
May T. To, Esq. (SBN 305268)
may@caworklawyer.com
WORK LAWYERS, PC
22939 Hawthorne Blvd., Suite 202
Torrance, CA 90505
Tel: (424) 355-8335
Facsimile: (424) 355-8335

Attorney for Plaintiff ALLAN CASTANETO, an individual, and on behalf of all aggrieved employees pursuant to the Labor Code Private Attorneys General Act

(Additional Counsel for Plaintiffs listed on following page)

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

ALLAN CASTANETO, an individual,
and on behalf of all aggrieved employees
pursuant to the Labor Code Private
Attorneys General Act.

Plaintiff,

v.

CALOP BUSINESS SYSTEMS, INC.,
and DOES 1 through 50, Inclusive,

Defendant.

CASE NO. **20STCV03772** (lead case and consolidated
with 20STCV21789, 20STCV22191)

*Assigned for All Purposes to the Hon. Theresa M.
Traber, Dept. 47*

UNLIMITED JURISDICTION

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

Hearing

Date: August 19, 2022

Time: 9:00 a.m.

Dept.: 47

Reservation ID: 149388572767

Michael H. Boyamian, SBN 256107

Alfred Movsesyan, SBN 278560

Heather M. Zermeno, SBN 334460

BOYAMIAN LAW, INC.

550 North Brand Boulevard, Suite 1500

Glendale, California 91203

T: (818) 547-5300 | F: (818) 547-5678

E-mail: michael@boyamianlaw.com, alfred@boyamianlaw.com, heather@boyamianlaw.com

Attorney for Plaintiff ANTUAN FERNANDEZ, an individual, and or behalf of all aggrieved employees pursuant to the Labor Code Private Attorneys General Act

Joel Glaser, Esq. (SBN 194442)

Email: joel@glaserlaw.org

JOEL GLASER APC

11500 West Olympic Boulevard, Suite 400

Los Angeles, California 90064

Tel: (310) 943-8005

Facsimile: (310) 295-1831

Darren Le Montree, Esq. (SBN 198715)

dlemontree@dbllawgroup.com

DBL LAW GROUP

21550 Oxnard St., Suite 300

Woodland Hills, CA 91367

Tel: (818) 274-3080

Facsimile: (818) 450-0806

Attorney for Plaintiff SAM KIMM an individual, and or behalf of all aggrieved employees pursuant to the Labor Code Private Attorneys General Act

1 **PLEASE TAKE NOTICE THAT** on August 19, 2022 at 9:00 a.m., or as soon thereafter
2 as the matter may be heard, in Department 47 of the above-entitled Court, located at Stanley
3 Mosk Courthouse 111 North Hill Street, Los Angeles, California 90021. Plaintiffs Allan
4 Castaneto, Antuan Fernandez, and Sam Kimm will and hereby do move unopposed for an Order:
5 (1) granting approval, pursuant to California Labor Code § 2698 *et seq.*, subpart 1, of the
6 proposed settlement of claims brought pursuant to the Private Attorneys General Act of 2004
7 (Cal. Labor Code § 2698 *et seq.*) set forth in the parties' Private Attorneys General Act (Labor
8 Code § 2698 *et seq.*) Settlement Agreement; (2) appointing Phoenix Class Action Administration
9 Solutions as the Settlement Administrator and approving payment of \$3,500 from the Settlement
10 Sum; (3) directing disbursement of the Settlement Sum pursuant to the terms of the Settlement
11 Agreement; (4) directing payment of attorneys' fees not to exceed \$100,000.00 and costs in the
12 amount of \$5,184.33 [not to exceed \$20,000.00] from the Settlement Sum; (5) directing payment
13 of an enhancement payment from the Settlement Sum in the amount of \$10,000.00 to each of the
14 Plaintiffs, totaling \$30,000.00; and (6) dismissing this action with prejudice.

15 This motion will be based on this Notice, the supporting memorandum of points and
16 authorities, the parties' Fully Executed Memorandum of Understanding (the "MOU"), the
17 Declarations of Michael H. Boyamian, Esq. ("Boyamian Decl."), the Declaration of Justin Lo,
18 Esq. ("Lo Decl."), the Declaration of Joel Glaser, Esq. ("Glaser Decl."), the Declaration of
19 Darren Le Montree, Esq. ("Le Montree Decl."), the Declaration of Plaintiff Allan Castaneto, the
20 Declaration of Plaintiff Antuan Fernandez, and the Declaration of Plaintiff Sam Kimm, the
21 documents and records on file in this matter, and such additional arguments, authorities, and
22 evidence and other matters as may be presented by the Parties hereafter.

23 DATED: July 15, 2022

Respectfully submitted,
BOYAMIAN LAW, INC.
WORK LAWYERS, PC
JOEL GLASER APC
DBL LAW GROUP

26
27 By: 
28 Michael H. Boyamian
Attorneys for Plaintiffs

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF the CASE AND THE SETTLEMENT	2
	A. The Parties.....	2
	B. The Claims Asserted	3
	C. Procedural Posture.....	3
	D. Plaintiff’s Counsel’s Investigation	5
	E. Settlement Negotiations.....	6
	F. The Proposed Settlement	6
III.	LEGAL ARGUMENT.....	8
	A. Standards For Approval Of A PAGA Settlement	8
	B. The Settlement Meets All The Criteria For Approval.....	10
	1. The Factors Giving Rise to a Presumption of Fairness Exist	10
	2. The Relative Strength Of The PAGA Claim, And the Realistic Range of Outcomes In The Litigation, Strongly Favor Approval of the Settlement.....	10
	3. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor of Approval of the Settlement.....	13
	4. The Benefits Conferred by the Settlement Balance in Favor of Approval	14
	5. The Scope of the Release is Appropriate.....	15
	6. The Experience and Views of Plaintiffs’ Counsel Favor Approval of the Settlement	16
	7. The Extent Of Discovery Completed And The Stage Of The Proceedings Favor Approval of the Settlement	16
IV.	PLAINTIFFS’ COUNSEL IS ENTITLED TO RECOVER THEIR REASONABLE	17
	FEES AND COSTS	17
	A. Plaintiffs’ Counsel Are Entitled To Recover Their Reasonable Fees And Costs As A Matter Of Right.....	17
	B. The Fee Amount Requested Is Reasonable	19

1	C. The Fee Amount Allocated By The Settlement Agreement Is Within the Zone of	
2	Reasonableness Under the “Percentage of the Fund” Method	20
3	D. A Lodestar Cross-Check Supports the Reasonableness of the Attorneys’ Fees	
4	Sought	21
5	E. Plaintiffs’ Counsel’s Request for Costs is Reasonable.....	23
6	V. THE ENHANCEMENT PAYMENTS SOUGHT BY THE NAMED PLAINTIFFS	
7	ARE.....	23
8	REASONABLE	23
9	VI. CONCLUSION.....	25

TABLE OF AUTHORITIES

CASES

Arias v. Superior Court

(2009) 46 Cal. 4th 969 7, 15

Bank of America v. Cory

(1985) 164 Cal.App.3d 66 18

Bell v. Farmers Ins. Exch.

(2004) 115 Cal.App.4th 715 24

Boeing Co. v. Van Gemert

(1980) 444 U.S. 472 17

City of Detroit v. Grinnell Corp.

(2nd Cir. 1974) 495 F.2d 448 14

Clark v. Am. Residential Servs., LLC

(2009) 175 Cal.App.4th 785 24

Dunk v. Ford Motor Co.

(1996) 48 Cal.App.4th 1794 18

Graham v. DaimlerChrysler Corp.

(2004) 34 Cal. 4th 553 21

Iskanian v. CLS Transp. Los Angeles, LLC

(2014) 59 Cal.4th 348 18

Jutkowitz v. Bourns, Inc.

(1981) 118 Cal.App.3d 102 18

Ketchum v. Moses

(2001) 24 Cal.4th 1122 22

Kim v. Reins Int'l California, Inc.

(2020) 9 Cal.5th 73 9

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7 *New York Gaslight Club, Inc. v. Carey*

8 (1980) 447 U.S. 54, 62.) 22

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10 (9th Cir., 1982) 688 F.2d 615 8, 14

11 *Parker v. Los Angeles*

12 (1974) 44 Cal.App.3d 556 19

13 *Press v. Lucky Stores, Inc.*

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15 *Rider v. County of San Diego*

16 (1992) 11 Cal.App.4th 1410 19

17 *Sutter v. Health uninsured Pricing Cases*

18 (2009) 171 Cal.App.4th 495, 512.) 22

19 **FEDERL CASES**

20 *accord Ingram v. The Coca-Cola Co.*

21 (N.D. Ga. 2001) 200 F.R.D. 685, 694 24

22 *Anderson v. Nextel Retail Stores, LLC*

23 (C.D. Cal. Apr. 12, 2010) 2010 U.S. Dist. LEXIS 43377, 44 10

24 *Casida v. Sears Holdings Corp.*

25 (E.D. Cal. Jan. 25, 2012) 2012 U.S. Dist. LEXIS 9302 9

26 *Franco v. Ruiz Food Prods.*

27 (E.D. Cal. Nov. 27, 2012) 2012 U.S. Dist. LEXIS 169057, 41-42 14, 15

Garcia v. Gordon Trucking, Inc.

(E.D. Cal. Oct. 29, 2012) 2012 U.S. Dist. LEXIS 160052..... 15

Gong-Chun v. Aetna Inc.

(E.D. Cal. July 11, 2012) 2012 U.S. Dist. LEXIS 96828..... 15

Leverage v. Traeger Pellet Grills

(N.D. Cal. June 28, 2017) *LLC*, 2017 WL 2797811, at *7..... 12

Martin v. AmeriPride Servs.

(S.D. Cal. June 9, 2011) 2011 U.S. Dist. LEXIS 61796, 23 19, 21

McLeod v. Bank of Am., N.A.

(N.D. Cal. Nov. 14, 2018) 2018 WL 5982863, at *2, 4 12

Mendez v. Tween Brands, Inc.

(E.D. Cal. June 30, 2010) 2010 U.S. Dist. LEXIS 66454 9

Nat'l Rural Telcoms. Coop. v. DIRECTV, Inc.

(C.D. Cal. 2004) 221 F.R.D. 523, 525-526 9

Ramirez v. Benito Valley Farms, LLC

(N.D. Cal. 2017) 2017 WL 3670794, at *5 12

Rodriguez v. RCO Reforesting, Inc.

(E.D. Cal. 2019) 2019 WL 331159, at *5..... 12

Sandoval v. Roadlink United States Pac., Inc.

(C.D. Cal. Nov. 9, 2011) 2011 U.S. Dist. LEXIS 130378, 16

Schiller v. David's Bridal, Inc.

(E.D. Cal. June 11, 2012) 2012 U.S. Dist. LEXIS 80776 15, 19

TD Ameritrade Account Holder Litig.

(N.D. Cal. Sept. 12, 2011) 2011 U.S. Dist. LEXIS 103222 8

Thomas v. Aetna Health of Cal., Inc.

(E.D. Cal. June 2, 2011) 2011 U.S. Dist. LEXIS 59377 9

Vasquez v. Coast Valley Roofing, Inc.

(E.D. Cal. 2010) 266 F.R.D. 482 20

Viking River Cruises, Inc. v. Moriana

(U.S. Dec. 15, 2021) 142 S.Ct. 734 11

STATUTES

C.C.P. § 382 9

C.C.P. § 382 and Rule 3.769..... 8

Fed. R. Civ. P. 23 (“Rule 23”) 8

Lab. Code § 2699 2, 8, 14, 18

Labor Code §§ 2698..... 15

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I. INTRODUCTION

Plaintiffs Allan Castaneto (“Castaneto”), Antuan Fernandez (“Fernandez”), Sam Kimm (“Kimm”) (collectively “Plaintiffs”) and aggrieved employees of Defendant Calop Business Systems and Calop Aeroground Services, LLC (collectively “Defendants” or “Calop”) under the Labor Code’s Private Attorneys General Act of 2004 (“PAGA”) respectfully move this Court for an Order granting approval of the proposed Settlement of the above-captioned Lawsuit against Defendants. The proposed Settlement will dispose of the Released Claims asserted on behalf of Plaintiffs and all other persons employed by Defendants from November 21, 2018 through approval of the settlement or September 30, 2022, whichever occurs earlier (“PAGA Group”) (“PAGA Period”). The Settlement also dismisses the cross-complaints filed by Defendants against Plaintiff Antuan Fernandez and Allan Castaneto.¹

These collective cases address claimed violations of significant employee protections embodied in the California Labor Code and penalties stemming therefrom for violation of PAGA. More specifically, Plaintiffs allege Defendants failed to: pay them for all hours worked; provide them meal and rest breaks; failed to reimburse necessary business expenditures and failed to provide waiting time penalties. Plaintiffs also allege a derivate claim for failure to provide accurate itemized wage statements. Ultimately, based on formal and informal discovery and information provided during the mediation, Plaintiffs estimated that Defendants’ section 2699 penalty exposure would be between \$1,840,000 (\$100 x 92 pay periods x 200 Airport Employees) and \$3,660,000 [(\$100 for pay period #1 x 200 employees) + (\$2001 x 91 (pay periods #2-92)) x 200 Airport Employees), without stacking. Even giving Defendant the benefit of the “initial” \$100 per pay period violation rate (as opposed to the \$200 subsequent per violation rate), and further not including any type of stacking, Defendants are still starrng at seven-figure liability. (Boyamian Decl. at ¶ 19).

In deciding whether to grant approval of the proposed Settlement, the primary issue to be decided is whether the Settlement is fair, adequate, and reasonable. As set forth herein, the proposed Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is the

¹ The Cross-Complaint filed by Defendants against Plaintiff Alan Castaneto – venued in Department 31 - has already been dismissed with prejudice by way of this Settlement.

1 product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and hour
2 issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative
3 strengths and values of the PAGA claim, and (4) it reflects a reasoned compromise based directly on
4 the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and likely
5 duration of further litigation.

6 The value achieved by the Settlement may be gleaned from the fact that the LWDA and the
7 Aggrieved Employees encompassed by the Settlement will receive no less than \$146,500.00 under the
8 terms of the Settlement, which, pursuant to the operative statute, shall be allocated “75 percent to the
9 Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.” *See Cal.*
10 *Lab. Code* § 2699(i). This is a reasonable recovery, not only because further litigation may have
11 resulted in a lesser recovery based on the defenses asserted by Defendant, but because the amount
12 secured by Plaintiffs is sizable and in line with similar settlements of these types of claims under
13 PAGA. It is also important to underscore that all penalty amounts paid to Aggrieved Employees will
14 be an unexpected windfall, as employees typically do not bring individual lawsuits asserting only
15 PAGA penalties. (Boyamian Decl. at ¶¶ 17-23).

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

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

19 **A. The Parties**

20 Calop is a transportation logistics service provider that offers various airlines at the Los
21 Angeles International Airport with security, screening and cargo services. (Boyamian Decl. at ¶ 10).
22 Plaintiffs Castaneto and Kimm were warehouse screeners. Plaintiff Fernandez was a security guard.
23 More importantly, for purposes of these PAGA actions, all Plaintiffs were non-exempt, hourly
24 employees and seek to recover civil penalties for all non-exempt, hourly Airport Employees of
25 Defendants for the alleged Labor Code violations (hereinafter “Airport Employees” or “Aggrieved
26 Employees”). All three Plaintiffs alleged the same Labor Code violations committed by Calop —
27 overtime pay, meal and rest breaks, inaccurate itemized wage statements, waiting time penalties, and
28

1 reimbursement of business expenses. The relevant PAGA period is November 21, 2018 to the present
2 as *Castenato* is the earliest to file from all three actions. (Boyamian Decl. at ¶ 11; Lo Decl. ¶¶ at 9-10;
3 Glaser Decl. at ¶¶ 8-9 ; Le Montree Decl. at ¶¶ 6-8).

4 **B. The Claims Asserted**

5 Through their own lawsuits, Plaintiffs collectively alleged and asserted a singular claim under
6 California Private Attorneys General Act (“PAGA”) for civil penalties based on the underlying Labor
7 Code violations: Failed to Pay Minimum Wages and Designated Wage Rates (Labor Code §§ 223,
8 1194, 1197, 1197.1, 1198); Failed to Pay Overtime Compensation (Labor Code §§ 510(a), 1194 and
9 Wage Order No. 9-2001); Failed to Provide Meal Breaks and Rest Breaks (Labor Code §§ 512, and
10 226.7, and Wage Order Nos. 11, and 12); Failed to Reimburse Necessary Business Expenditures
11 (Labor Code §§ 2802, 201-203); Failed to Provide and Maintain Complaint Wage Statements (Labor
12 Code §§ 1174, and 226(a)); and Failed to Provide Waiting Time Penalties (Labor Code § 203).
13 (Boyamian Decl. at ¶ 12; Lo Decl. at ¶ 12, see also Exhibit ; Glaser Decl. at ¶ 6; Le Montree Decl. at ¶
14 6).

15 **C. Procedural Posture**

16 This is a representative wage and hour matter against Defendants pursuant to the Private
17 Attorneys General Act, Labor Code §2699 et seq. (“PAGA”) This coordinated and consolidated
18 collective action consists of three, separate actions entitled, *Castenato v. Calop Business Systems, Inc.*
19 (L.A.S.C. Case No. 20STCV03772), *Kimm v. Calop Business Systems, Inc.* (L.A.S.C. Case No.
20 20STCV22191), and *Antuan Fernandez v. Calop Business Systems, Inc.*, (L.A.S.C. Case No.
21 20STCV21789). (Boyamian Decl. at ¶ 9; Lo Decl. ¶¶ at 9-10; Glaser Decl. at ¶¶ 8-9; Le Montree Decl.
22 at ¶¶ 6-8).

23 On January 30, 2020, Justin Lo, WORK LAWYERS, PC, filed a PAGA complaint for civil
24 penalties on behalf of Plaintiff Allen Castenato (“Castenato”) and, all other aggrieved employees
25 against Defendant Calop Business Systems, Inc. dba Calop Aeroground Services. (Boyamian Decl. at
26 ¶ 8; Lo Decl. ¶ 6, see also PAGA Letter at **Exhibit B** to Lo Decl.).

27 On June 9, 2020, Michael H. Boyamian, et al., BOYAMIAN LAW, INC. filed a PAGA
28

1 complaint for civil penalties on behalf of Plaintiff Antuan Fernandez (“Fernandez”) and, all other
2 aggrieved employees against Calop. (Boyamian Decl. ¶ 8, see also PAGA Letter at **Exhibit A** to
3 Boyamian Decl.).

4 On June 11, 2020 Joel Glaser, JOEL GLASER APC and Darren Le Montree, DBL LAW
5 GROUP filed a PAGA complaint for civil penalties on behalf of Plaintiff Sam Kimm (“Kimm”) and,
6 all other aggrieved employees against Calop. (Boyamian Decl. at ¶ 8; Glaser Decl. at ¶ 5; Le Montree
7 Decl. at ¶ 5).

8 Juan Hong, A Law Corp., Law Office of Juan Hong, represents Calop in all three cases.
9 (Boyamian Decl. ¶ 8).

10 The Court related all of these matters on June 24, 2021. (Boyamian Decl. at ¶ 9; Lo Decl. at ¶
11 10; Glaser Decl. at ¶ 9; Le Montree Decl. at ¶ 8).

12 Following vigorous discovery disputes and motion practice and by Court Order, the Parties met
13 and conferred with respect to the potential settlement of the Litigation and agreed to participate in the
14 Los Angeles Superior Court Mandatory Settlement Conference. The parties scheduled a Settlement
15 Conference with the Honorable Zaven V. Sinanian and attended the Settlement Conference on June 3,
16 2022, whereby the Parties discussed resolution of the Litigation and ultimately reached an agreement.
17 Boyamian Decl. at ¶ 13; Lo Decl. at ¶ 14).

18 The Settlement Conference resulted in a proposal by the Honorable Judge Sinanian, which was
19 subsequently accepted by all the parties resulting in the drafting and execution of a formal
20 Memorandum of Understanding. The agreement, as discussed more fully hereinbelow, was largely
21 based and the parties’ interest in diverting funds to the Aggrieved Employees. The parties were in
22 receipt of a fully executed Memorandum of Understanding on June 6, 2022. The fully executed
23 (Memorandum of Understanding is attached as **Exhibit B** to Boyamian Decl., *See also* Boyamian
24 Decl. at ¶ 14). Plaintiffs submitted the Memorandum of Understanding, this Motion, and all
25 supporting documents to the LWDA via online upload on July 15, 2022 concurrently with the filing of
26 this Motion. (Proof of Submission to the LWDA is attached as **Exhibit C** to Boyamian Decl., *see also*
27 Boyamian Decl. at ¶ 16).

1 **D. Plaintiff's Counsel's Investigation**

2 Counsel for Plaintiffs engaged in targeted discovery of Defendants' alleged Labor Code
3 violations, which were specifically aimed at evaluating the strength and value of the PAGA claims in
4 preparation for a resolution of this Action. (Boyamian Decl. at ¶ 17; Lo Decl. at ¶¶ 15-20; Glaser
5 Decl. at ¶¶ 10-11; Le Montree Decl. at ¶¶ 10-11).

6 Following the grant of Plaintiff Fernandez's Motions to Compel Further Responses, Defendant
7 was ordered to produce responsive representative discovery over to the Transportation Security
8 Administration to determine the applicability of whether the documents in question qualified as
9 "Sensitive Security Information" under 49 C.F.R. §§ 1520.5. The TSA ultimately determined that
10 there was no SSI applicability and the Court subsequently ordered Defendant to produce the
11 responsive documents and representative discovery. Defendant then turned over approximately 54,000
12 pages of scanned documents primarily consisting of the following categories: (1) employee hours for
13 payroll; (2) check stubs; (3) electronic sign-in sheets; (4) attendance sheets. (Boyamian Decl. ¶ 17).

14 From those records, Plaintiffs were able to ascertain that during the Relevant Time Period,
15 Defendant had on average 200 Airport Employees in any given pay period. The Airport Employees
16 were internally classified by Defendant into two categories: "Cargo" and "Terminal." Plaintiff
17 estimates that there are 92 pay periods per employee during the Relevant Time Period, i.e., November
18 19, 2018 to June 3, 2022. Specifically, prior to the novel COVID-19 pandemic, Defendant had
19 approximately 300 employees on average in the "Terminal" subgroup and approximately 75 Airport
20 Employees on average in the "Cargo" department in any given pay period, pre-pandemic. However,
21 with the onset of COVID-19, Defendant's operations were essentially downsized, and the payroll
22 records reveal that Defendant had on average 82 Airport Employees in "Terminal" and 90 Airport
23 Employees in "Cargo". Based on a randomized review of various pay periods during the PAGA
24 Period, Plaintiffs estimate that 200 Airport Employees worked on any given time or pay period.
25 (Boyamian Decl. at ¶ 18).

26 With that in mind, Plaintiffs estimate that Defendant's section 2699 penalty exposure would be
27 between \$1,840,000 (\$100 x 92 pay periods x 200 Airport Employees) and \$3,660,000 [(\$100 for pay
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period #1 x 200 employees) + (\$2001 x 91 (pay periods #2-92)) x 200 Airport Employees), without stacking. Even giving Defendant the benefit of the “initial” \$100 per pay period violation rate (as opposed to the \$200 subsequent per violation rate). Defendant’s serious exposure to PAGA penalties increases each passing pay period, and should this matter proceed up to and through trial, Defendant’s liability would have far exceeded this amount. Defendants, however, disputed Plaintiffs’ claims and disputed both the existence of and extent of liability as alleged by Plaintiffs. (Boyamian Decl. at ¶ 19).

Plaintiffs’ Counsel’s experience in litigating similar “representative” wage and hour claims, the degree of investigation that was conducted, and the amount of data that was obtained, was sufficient to determine the potential value of the PAGA claim, and to evaluate the strengths and weaknesses of their claims for purposes of settlement. (Boyamian Decl. at ¶¶ 2-6; Lo Decl. at ¶¶ 2-5; Glaser Decl. at ¶¶ 2-4; Le Montree Decl. at ¶¶ 2-4).

E. Settlement Negotiations

On June 3, 2022, the Parties participated in a Mandatory Settlement Conference with the Honorable Zaven v. Sinanian. During the Settlement Conference, the parties engaged in arm’s-length negotiations. The mediation resulted in a proposal by the Honorable Sinanian, which was subsequently accepted by all the Parties resulting in the drafting of a Memorandum of Understanding. The parties were in receipt of a fully executed Memorandum of Understanding on June 6, 2022. (Boyamian Decl. at ¶ 20).

F. The Proposed Settlement

The Parties jointly prepared and executed the Memorandum of Understanding. (Boyamian Decl., at ¶ 14, **Exhibit B** (the “Agreement”)). The Agreement sets forth the terms of the Settlement reached by the Parties, including the following key points:

1. Defendants agree to settle this matter for the payment of Three Hundred Thousand Dollars (\$300,000) (hereinafter the “PAGA Fund”), which shall be all inclusive, encompassing (i) all payments to the Labor and Workforce Development Agency and Aggrieved Employees, (ii) any and all costs of third-party administration of the settlement, (iii) Plaintiff’s Counsel’s attorneys’ fees and costs of suit, and (iv) an enhancement payment to the named Plaintiff. See MOU, at § 4.

1 2. The total sum available for payment of PAGA penalties shall be calculated by
2 deducting an amount not to exceed \$100,000.00 for the payment of Plaintiff's Counsel's fees and an
3 additional \$20,000.00 for costs, \$30,000 total for the payment of Plaintiffs' Enhancement Payments-
4 \$10,000.00 each, and \$3,500 for the costs of administration, from the \$300,000 PAGA Fund, yielding
5 approximately \$146,500.00. Seventy-five percent (75%) of this amount, or \$109,875.00, shall be
6 distributed to the LWDA and the remaining twenty-five percent (25%) of this amount, or \$36,625.00,
7 shall be distributed to the Aggrieved Employees. See MOU, at § 4(a)-(d).

8 3. All non-exempt employees who worked for Defendant at any time during the PAGA
9 Period will receive a fixed proportional amount of the Net Settlement Amount per pay period. See
10 MOU, at § 8. Although these calculations will not be made until after approval, a rough estimation of
11 the value to the 350 individuals falling within the definition of "Aggrieved Employee" may be gleaned
12 from the fact that an equal division would provide about \$105.00 to each Aggrieved Employee, net of
13 payments to the LWDA, to the Settlement Administrator, attorney's fees, and costs. The LWDA will
14 be paid \$109,875.00.

15 4. In exchange for the above settlement consideration, Defendant shall be entitled to the
16 following release from each and every Aggrieved Employee, including Plaintiffs²:

17 "Each PAGA Member (including Plaintiff) shall, for the Covered Period, fully release
18 and forever discharge Defendants from claims for PAGA penalties asserted in the
19 PAGA and Class Lawsuit or any other claims under PAGA, that could have been
20 asserted in the PAGA and Class Lawsuit based on the facts alleged, including but not
21 limited to any and all claims for PAGA penalties for violations of the California Labor
Code governing: unpaid wages, including minimum wages, regular wages, meal and/or
rest periods, overtime and double time wages; wage statement violations; unreimbursed
business expense violations; waiting time violations; and violations for failure to timely
pay wages during employment."

22 See MOU, at § 9.

23 5. Named Plaintiffs and Defendant, through their respective counsel, have selected
24 Phoenix Class Action Administration Solutions as the Settlement Administrator to administer the

25 ² This comports with settled California Supreme Court authority. See *Arias v. Superior Court* (2009) 46 Cal. 4th
26 969, 986 (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the
27 government are bound by the judgment in an action brought under the act . . ."). Plaintiffs are also entering into a
28 separate release in favor of the Released Parties. See Settlement Agreement, at § V(B).

1 distribution of the Settlement. Charges and expenses of the Settlement Administrator are estimated to
2 be no more than Three Thousand Five Hundred Dollars (\$3,500.00). *See* MOU, at § 5(c). Indeed, the
3 bid received from Phoenix estimates the administration fee to be at \$3,500.00, attached to Boyamian
4 Decl. as **Exhibit F**.

5 6. As detailed herein, Plaintiffs' Counsel seek an award of attorneys' fees not to exceed
6 \$100,000.00, plus litigation costs not to exceed \$20,000.00 and Plaintiffs seek an enhancement
7 payment of \$10,000.00 each, totaling \$30,000, for their services and for executing a General Release
8 and a waiver of their rights under California Civil Code § 1542. *See* MOU, at § 5(d), and MOU, at §
9 9.

10 **III. LEGAL ARGUMENT**

11 **A. Standards For Approval Of A PAGA Settlement**

12 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
13 statute, which states “[t]he superior court shall review and approve any settlement of any civil action
14 filed pursuant to this part.” *See Labor Code* § 2699(l)(2).

15 As with any settlement, the Court must be mindful in conducting its inquiry that “[s]ettlement
16 is a compromise, which balances the possible recovery against the risks inherent in litigating further.”
17 *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222, 24 (N.D. Cal. Sept.
18 12, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes and an abandoning
19 of highest hopes’” [*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624 (9th Cir., 1982)], as
20 “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
21 that induce consensual settlements.” *See id.*, at 625. As such, “the settlement or fairness hearing is not
22 to be turned into a trial or rehearsal for trial on the merits” or “judged against a hypothetical or
23 speculative measure of what might have been achieved by the negotiators.” *See id.*

24 Although the operative PAGA statute does not set forth the criteria on which a PAGA
25 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for
26 review of a class action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. § 382 and Rule 3.769,
27 Cal. Rules of Court, as courts within California have approved settlements of PAGA claims
28

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

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

14 While “[a PAGA] action is ... designed to protect the public and penalize the employer for
15 past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take into
16 account the fact that settlement of a PAGA claim – like any settlement – involves a “compromise” that
17 stops short of rendering findings of liability and damages. Moreover, the Court must not lose sight of
18 the fact that “[u]nlike a class action seeking damages or injunctive relief for injured employees, the
19 purpose of PAGA is to incentivize private parties to recover civil penalties for the government that
20 otherwise may not have been assessed and collected by overburdened state enforcement agencies.”
21 *See Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS 32774, at 12. *See also Kim v. Reins Int’l California,*
22 *Inc.*, 9 Cal.5th 73, 86 (2020) (civil penalties are intended to “remediate present violations and deter
23

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

future ones, **not to redress employees' injuries**" (emphasis in original) (international quotation marks omitted)).

B. The Settlement Meets All The Criteria For Approval

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

1. The Factors Giving Rise to a Presumption of Fairness Exist

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

A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-length negotiations [Boyamian Decl. at ¶ 20], (2) that was negotiated by Counsel with significant experience in similar wage and hour litigation [*see id.*, at ¶¶ 2-6; Lo Decl. at ¶¶ 2-5; Glaser Decl. at ¶¶ 2-4; Le Montree Decl. at ¶¶ 2-4], (3) which occurred after Counsel had conducted sufficient investigation to evaluate the strength and potential value of the PAGA claims, as well as evaluating the risks of litigating this claim through trial. *See id.*, at ¶¶ 17-19; Lo Decl. ¶¶ at 15-20; Glaser Decl. at ¶¶ 10-11; Le Montree Decl. at ¶¶ 11-12). Based thereon, the Court should give considerable weight to the competency and integrity of counsel in assuring itself that the agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct.

2. The Relative Strength Of The PAGA Claim, And the Realistic Range of Outcomes In The Litigation, Strongly Favor Approval of the Settlement

The relative strength of the PAGA claim brought by Plaintiffs weighs in favor of the Court finding that the settlement is fair, adequate, and reasonable to the State of California, as Defendants maintained considerable defenses to the theories of penalty-liability and the stacking of civil penalties put forward by Plaintiffs which, if successful, had the potential to significantly reduce recovery.

Plaintiffs alleged that they and other aggrieved employees of Defendants were non-exempt

1 hourly employees who regularly worked a full-time schedule and regularly engaged in off-the-clock
2 work, which was not recorded by Defendant, and for which they received no pay at all. Additionally,
3 Plaintiffs alleged that Defendant's failed to reimburse Plaintiffs for necessary business expenses.
4 Approximately 350 employees are claimed to have suffered the Labor Code violations alleged during
5 the PAGA Period. (Boyamian Decl., at ¶ 21).

6 Defendant contends they acted within the requirements of California law at all times as to all
7 aggrieved employees. Specifically, Defendants contend that all aggrieved employees were paid hourly
8 wages for all hours worked. From Plaintiff's investigation, it was readily apparent from the data that
9 Defendant had a practice of not paying premium payments for meal and rest breaks violations and
10 Defendant's policies make no mention of a premium being paid for missed breaks. The substantial
11 data that was analyzed by Plaintiffs also showed that Defendants own policies explicitly asserted
12 direct control over aggrieved employees during purported breaks. (Boyamian Decl., at ¶ 22).

13 Despite this clear liability, Plaintiffs were cognizant that the pending *Viking River Cruises, Inc.*
14 *v. Moriana*, 142 S.Ct. 734 (U.S. Dec. 15, 2021) decision was set to be released in the coming weeks
15 and the impact it would have on the PAGA landscape would be significant. The United States
16 Supreme Court in *Viking River Cruises* would decide whether a PAGA action could proceed when the
17 purported aggrieved employee bringing the action has entered into an arbitration agreement that
18 includes a representative actions waiver. Plaintiffs were abreast of the fact that should the Supreme
19 Court reverse the lower court holding then Plaintiffs' claims in this matter would potentially be in
20 jeopardy as Plaintiffs – just like all other Aggrieved Employees in this matter - entered into such an
21 arbitration agreement. A ruling in favor of enforcing representative action waivers would be a
22 significant detriment in this case to the State of California, as the Real Party in Interest, and the
23 Aggrieved Employees, as they would get nothing instead of their share of the settlement. (Boyamian
24 Decl. ¶ 23).⁴ Despite this, Plaintiffs maintained that the arbitration agreements at issue in *Viking*
25 *Rivers* were markedly different to the ones executed by Plaintiffs and other Aggrieved Employees

26
27 ⁴ Indeed, Plaintiffs were correct in appreciating the potential impact that this decision by the High Court would have
28 as the United States Supreme Court subsequently on June 15, 2022 in *Viking River Cruises, Inc. v. Moriana* ruled in
favor of the employer's position thereby dismissing Moriana's non-individual PAGA claims.

1 rendering a possible conclusion that *Viking Rivers* was simply inapplicable to the present matter.

2 Nonetheless, comparing the Settlement recovery (\$300,000) to the total outstanding liability
3 warrants strong support towards approval. If Plaintiffs had proceeded to trial, they could expect a
4 maximum judgement of \$1,840,000.00 to \$3,660,000.00 in favor of the State. Therefore, the
5 Settlement represents between 16% and 8% of the full verdict value of the claims being released,
6 assuming that Plaintiffs were successful on all claims, with stacking. (Boyamian Decl., ¶ 24). *See, e.g.,*
7 *Leverage v. Traeger Pellet Grills, LLC*, 2017 WL 2797811, at *7 (N.D. Cal. June 28, 2017)
8 (Approving a California wage and hour settlement where the class received 18% of the estimated total
9 liability); *Rodriguez v. RCO Reforesting, Inc.*, 2019 WL 331159, at *5 (E.D. Cal. 2019) (approving
10 PAGA settlement totaling 6% of total estimated value); *McLeod v. Bank of Am., N.A.*, 2018 WL
11 5982863, at *2, 4 (N.D. Cal. Nov. 14, 2018) (approving PAGA settlement totaling 1.1% of total
12 estimated value); *Ramirez v. Benito Valley Farms, LLC*, 2017 WL 3670794, at *5 (N.D. Cal. 2017)
13 (approving PAGA settlement totaling 4.5% of total estimated value) *In re Newbridge Networks Sec.*
14 *Litig.*, 1998 WL 765724, at *2 (D.D.C. Oct. 23, 1998) (“Courts have not identified a precise numerical
15 range within which a settlement must fall in order to be deemed reasonable; but an agreement that
16 secures roughly six to twelve percent of a potential trial recovery, while preventing further
17 expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within
18 the targeted range of reasonableness.”).

19 As such, Plaintiffs’ Counsel has concluded, taking into account the sharply contested issues
20 involved, the expense and time necessary to pursue the Litigation through trial and any appeals, the
21 risks and costs of further prosecution of the Litigation, the risk of an adverse outcome, the
22 uncertainties of complex litigation, and the substantial benefits to be received by the State of
23 California, Named Plaintiffs and the members of the PAGA Group pursuant to the Memorandum of
24 Understanding, that a settlement with Defendants on the terms and conditions set forth therein is fair,
25 reasonable, adequate, and in the best interests of the State of California and PAGA Group. Similarly,
26 Defendants concluded that, because of the substantial expense of defending against the Litigation, the
27 length of time necessary to resolve the issues presented, and the inconvenience involved, it is in their
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1 best interests to accept the terms of the Memorandum of Understanding. (Boyamian Decl. at ¶ 25).

2 Thus, based on these disputes, which had the potential to significantly decrease Plaintiffs'
3 recovery, the range of realistic “litigation outcomes” on the Plaintiffs’ PAGA claim, and
4 notwithstanding the existence of the factors and real-life implications listed above, the Settlement
5 achieves a very significant benefit. (Boyamian Decl. at ¶ 26).

6 Accordingly, this factor weighs very heavily in favor of resolution by way of the compromise
7 set forth in the Settlement.

8 **3. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in**
9 **Favor of Approval of the Settlement**

10 Approval of the proposed Settlement is also appropriate in light of the risk, expense, and
11 complexity of further litigation. As discussed above, the proposed Settlement takes into consideration
12 the specific factual, legal, and “real-world” hurdles faced by the Plaintiffs in establishing Defendants’
13 penalty-liability in this case. In that regard, Plaintiffs were cognizant that even if the Court did award
14 overall penalties, the Court could and would substantially reduce the penalties awarded based on the
15 discretionary factors contained in Labor Code § 2699(e)(2) (“In action by an aggrieved employee . . . ,
16 a court may award a lesser amount than the maximum civil penalty amount specified by this part if,
17 based on the facts and circumstances of the particular case, to do otherwise would result in an award
18 that is unjust, arbitrary and oppressive, or confiscatory.”). See Boyamian Decl. at ¶ 27. For instance,
19 the California Court of Appeal upheld San Diego Superior Court Judge Katherine Bacal’s heavily
20 discounted award of only \$5 per pay period in *Carrington v. Starbucks*, 30 Cal.App.5th 504 (2018).
21 During the penalty phase of trial in Carrington, the plaintiff requested PAGA penalties in the amount
22 of approximately \$70 million. Carrington, Cal.App.5th at 528. The trial court instead awarded only
23 \$150,000 of the maximum (the equivalent of \$5 per pay period) and stated that this reduction was
24 warranted because imposing the maximum penalty would be “unjust, arbitrary, and oppressive” based
25 on Starbucks’ “good faith attempts” to comply with meal period obligations and because the court
26 found the violations were minimal. *Id.* at 517. The Court of Appeal affirmed the lower court’s
27 reduced award of a \$150,000 penalty under PAGA. *Id.* at 529. If the amount of \$5 per pay period
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1 from *Carrington v. Starbucks* were used, the potential recovery of civil penalties would only be
2 \$92,000, which is less than this settlement provides. *Id.* See Boyamian Decl. at ¶ 27.

3 These risks – when balanced with the fact that the settlement achieved a significant recovery
4 (as demonstrated), and that further litigation posed a risk of diminishing such recovery by increasing
5 litigation expenses – weigh strongly in favor of Settlement approval.

6 **4. The Benefits Conferred by the Settlement Balance in Favor of Approval**

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

11 The proposed settlement is not to be judged against a hypothetical or speculative
12 measure of what might have been achieved by the negotiators.” *Officers for Justice v.*
13 *Civil Serv. Comm’n*, 688 F.2d at 625. Thus, “the very essence of a settlement is
14 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Id.* at 624
15 (citations omitted). As the Second Circuit has pointed out: “The fact that a proposed
16 settlement may only amount to a fraction of the potential recovery does not, in and of
itself, mean that the proposed settlement is grossly inadequate and should be
disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2 (2nd Cir.
1974).

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

18 Here, after all deductions are made for administration, a service payment, attorneys’ fees, and
19 costs, an estimated \$146,500.00 will be paid out, of which \$109,875.00, will go to the LWDA, and
20 \$36,625.00 (i.e. 25%) will go to the Aggrieved Employees, as required by Labor Code § 2699(i)
21 (“civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the
22 Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”).
23 Boyamian Decl., at ¶ 29.

24 This result is substantial, as settlements of PAGA claims impacting thousands of individuals
25 have been approved as reasonable for amounts far less than the payment in this case. See *Franco v.*
26 *Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012) (“Defendant has
27 agreed to pay \$10,000 as civil penalties pursuant to the PAGA . . . Of the \$10,000, 75 percent
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1 (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will benefit the class . . .
2 The Court finds that the PAGA payment is set at a reasonable amount, and it shall be approved.”);
3 *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal. Oct. 29, 2012)
4 (“GTI agrees to allocate \$10,000 to Plaintiff’s PAGA claims, and will pay \$7,500 to the LWDA, and
5 \$2,500 to participating Class Members on a pro-rata basis. This comports with settlement approval of
6 PAGA awards in other cases. . . . Therefore, the Court will approve the allocation of the Settlement to
7 Plaintiffs’ PAGA claim.”); *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, 40 (E.D.
8 Cal. June 11, 2012) (“Pursuant to the Settlement Agreement, the parties have agreed to pay \$7,500 to
9 the California Labor and Workforce Development Agency The Court finds that the PAGA
10 Payment is set at a reasonable amount and recommends that it be approved.”); *Gong-Chun v. Aetna*
11 *Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11, 2012) (“Pursuant to the Settlement
12 Agreement, Defendant has agreed to pay \$15,000 to the California Labor and Workforce Development
13 Agency The Court finds that the PAGA payment is set at a reasonable amount, and it shall be
14 approved.”).⁵

15 Thus, notwithstanding the existence of issues having the potential to significantly reduce
16 recovery on the PAGA claim, the Settlement not only achieves a recovery that exceeds typical PAGA
17 awards routinely approved by the courts, but it also recovers monies for Aggrieved Employees which
18 they otherwise would not receive. As such, this factor balances strongly in favor of approval of the
19 Settlement.

20 **5. The Scope of the Release is Appropriate**

21 As discussed above, the California Supreme Court has concluded that in the context of PAGA
22 “the nonparty employees, because they were not given notice of the action or afforded any opportunity
23 to be heard, would not be bound by the judgment as to remedies other than civil penalties.” *See Arias*,
24

25 ⁵ Significantly, each of the above-cited actions involved substantially more “aggrieved employees” than the
26 approximately 200 aggrieved employees in the instant Lawsuit. *See Franco*, 2012 U.S. Dist. LEXIS 169057, 14
27 (“2,055 Class Members were ultimately identified”); *Garcia*, 2012 U.S. Dist. LEXIS 160052, at 12 (class comprised
28 of “approximately 1,869 individuals”); *Schiller*, 2012 U.S. Dist. LEXIS 80776, 16 (“3,327 California Class
members were ultimately identified”); *Gong-Chun*, 2012 U.S. Dist. LEXIS 96828, 18 (“2,051 California Class
Members were ultimately identified”).

1 46 Cal. 4th, at 987. Thus, the scope of the release provided in exchange for the foregoing
2 consideration is limited to the civil penalties asserted in the Action under Labor Code §§ 2698 *et seq.*
3 See MOU, at § 9. As such, this factor balances strongly in favor of approval of the Settlement.

4 **6. The Experience and Views of Plaintiffs' Counsel Favor Approval of the**
5 **Settlement**

6 Plaintiffs' Counsel has a significant degree of experience in complex wage and hour litigation.
7 (See Boyamian Decl. at ¶¶ 2-6; See Lo Decl. at ¶¶ 2-5; See Glaser Decl. at ¶¶ 2-4; See Le Montree
8 Decl. at ¶¶ 2-4). In the view of Plaintiffs' Counsel, the benefit conferred by the proposed Settlement is
9 fair, reasonable, and adequate under the circumstances, as it reflects a reasoned compromise which
10 takes into consideration the risks inherent in this case which had the potential to significantly reduce
11 recovery. Boyamian Decl. at ¶¶ 13-28. As such, this factor balances in favor of approval of the
12 Settlement.

13 **7. The Extent Of Discovery Completed And The Stage Of The Proceedings Favor**
14 **Approval of the Settlement**

15 In evaluating this element, the Court should be mindful that “‘formal discovery is not a
16 necessary ticket to the bargaining table’” [*Linney*, 151 F.3d at 1239], as the relevant consideration is
17 “whether ‘the parties have sufficient information to make an informed decision about settlement.’” See
18 *Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal. Nov.
19 9, 2011).

20 Here, the extent of discovery conducted was sufficient to enable Plaintiffs' Counsel to evaluate
21 the strength and value of the claim for purposes of settlement. Boyamian Decl. at ¶¶ 17-20. As
22 discussed above, Plaintiffs' Counsel's investigation was sufficient to, among other things, tabulate
23 with precision the total number of alleged Labor Code violations for a sample of pay periods at issue
24 during the PAGA Period, make reasonable extrapolations, and likewise identify the total number of
25 individuals falling within the definition of “Aggrieved Employee” for the Settlement Period. *Id.*

26 Based on Plaintiff's Counsel's experience litigating wage and hour claims, such investigation
27 was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of this
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1 claim for purposes of settlement. (See Boyamian Decl. at ¶ 2-6, 17-27; Lo Decl. at ¶¶ 2-5; Glaser Decl.
2 at ¶¶ 2-4; Le Montree Decl. at ¶¶ 2-4).

3 **IV. PLAINTIFFS' COUNSEL IS ENTITLED TO RECOVER THEIR REASONABLE**
4 **FEES AND COSTS**

5 Pursuant to the terms of the Settlement, Plaintiffs' Counsel seeks attorneys' fees not to exceed
6 \$100,000.00 in addition to \$5,184.33 for reimbursement of litigation costs and expenses incurred in
7 the Action. See MOU, at § 5(a)-(b).

8 Plaintiffs' Counsel's entitlement to an award of attorneys' fees and costs is warranted on
9 multiple independent grounds. Further, the amount of fees requested falls well within the range of
10 reasonableness under applicable standards, as the amount requested constitutes a "percentage of the
11 fund" deemed reasonable in similar wage and hour settlements of this size and approved by California
12 courts, which is not only warranted based on the contingency risk Plaintiffs' Counsel have agreed to
13 incur for the benefit of the State of California and Aggrieved Employees, but also based on the results
14 achieved, as the Settlement obtains a recovery above the range approved as reasonable by California
15 state and federal courts. Based thereon, Plaintiffs' Counsel respectfully requests that the Court enter
16 an order approving the fee and cost amounts requested.

17 **A. Plaintiffs' Counsel Are Entitled To Recover Their Reasonable Fees And Costs As A**
18 **Matter Of Right**

19 Plaintiffs' Counsel are entitled to recover attorneys' fees and reimbursement of costs under the
20 "common fund" doctrine as a matter of right. As held by the U.S. Supreme Court, "a lawyer who
21 recovers a common fund for the benefit of persons other than himself or his client is entitled to a
22 reasonable attorney's fee from the fund as a whole." See *Boeing Co. v. Van Gemert* (1980) 444 U.S.
23 472, 478.

24 Section 2699(g)(1) of the Labor Code, provides that, "[a]ny employee who prevails in any
25 action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee
26 paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of
27 paragraph (1) of subdivision (c) of Section 2699.3." As discussed below, in a qui tam action,
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1 reasonable attorney's fees and costs are typically awarded under the common fund doctrine where, as
2 here, the litigation creates a common fund of money in a specific amount for the benefit of others.

3 A PAGA action is a qui tam action because the statute allows the employee plaintiff, acting as
4 the proxy of the state's labor law enforcement agency, to sue his or her employer for Labor Code
5 violations and recover civil penalties that otherwise would have been assessed and collected by the
6 LWDA. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. “A PAGA
7 representative action is therefore a type of qui tam action.” *Id.* at 382. Indeed, the majority of the civil
8 penalties recovered in a PAGA action are paid to the state, with a smaller portion paid to the aggrieved
9 employees, (e.g., 75% paid to the state; 25% paid to the aggrieved employees). (Labor Code §
10 2699(i).)

11 As here, where a common fund is created in a qui tam action by the successful litigation of a
12 plaintiff and her attorneys, the plaintiffs’ attorneys are entitled to recover their fees from the common
13 fund. *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91. In *Bank of America*, attorneys were
14 awarded their fees from the common fund in a taxpayer action to enforce unclaimed property law.

15 Similarly, the California Supreme Court held in *Laffitte v. Robert Half Int’l, Inc.* when
16 litigation results in a monetary fund for the benefit of a group, the trial court may determine the
17 amount of a reasonable fee by choosing an appropriate percentage of the fund created. *Laffitte v.*
18 *Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503. In so doing, the California Supreme Court
19 recognized the advantages of using the percentage of the common fund method of awarding attorneys’
20 fees, including the “relative ease of calculation, alignment of incentives between counsel and the class,
21 a better approximation of market conditions in a contingency case, and the encouragement it provides
22 counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.” *Id.* Thus, the
23 common fund doctrine allows a court to award attorneys’ fees based upon a percentage of the total
24 fund that is created to the satisfaction of beneficiaries’ claims when the fund consists of a “certain or
25 easily calculable sum of money.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1809;
26 *Jutkowitz v. Bourns, Inc.* (1981) 118 Cal.App.3d 102, 110 [application of the percentage of the fund
27 recovery depended on “[t]he critical point” that “a fund was created from which attorneys' fees could
28

1 be paid”]; A. Conte & H. Newberg, Newberg on Class Actions, § 14:6 (4th Ed. 2002).)

2 Numerous appellate courts have found similarly. *See e.g., Knoff v. City and County of San*
3 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
4 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable powers);
5 *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and expenses
6 properly awarded from common benefit composed of illegally imposed sales and use tax); *Bank of*
7 *America v. Cory*, 164 Cal.App.3d at 89-92 (fees awarded from common benefit created by action
8 compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556,
9 567-568 (court upheld fee award equal to one-third of the damages to owners of residential property in
10 an inverse condemnation action).

11 Thus, as Plaintiffs’ Counsel has expended a significant amount of time and money to secure a
12 \$146,500.00 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S. Dist.
13 LEXIS 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees have
14 resulted in the preservation or recovery of a certain or easily calculable sum of money-out of which
15 sum or ‘fund’ the fees are to be paid.”)], and in doing so, have exclusively borne the risk of loss for
16 such expenditures of time and expenses (as the LWDA elected not to take the case after receiving the
17 PAGA Notices), Plaintiffs’ Counsel is entitled to claim reasonable fees from that fund under
18 applicable precedent.

19 **B. The Fee Amount Requested Is Reasonable**

20 In addition to the forgoing, Plaintiffs’ Counsel’s request for attorneys’ fees in the amount not
21 to exceed \$100,000.00 of the \$300,000.00 Settlement Sum falls well within the “zone of
22 reasonableness.”

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

Moreover, considering the contingency risk Plaintiffs' Counsel agreed to incur for the benefit of the State of California (which elected not to take the case after receiving the PAGA Notices), and the significant results achieved – facts which justify the requested fee – Plaintiffs' Counsel's requested fee is reasonable under all applicable standards. Boyamian decl. ¶¶ 30-35.

C. The Fee Amount Allocated By The Settlement Agreement Is Within the Zone of Reasonableness Under the “Percentage of the Fund” Method

The amount of fees requested by Plaintiffs' Counsel –33% of the Settlement Sum – is reasonable based on standards applicable to the “percentage of the fund” method. “When assessing whether the percentage requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in similar cases.” *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

First, the results achieved by Plaintiffs' Counsel are commendable, as Defendant has agreed to pay \$300,000 under the Settlement. (Boyamian Decl., ¶ 24). This is a reasonable recovery as the settlement of PAGA claims impacting much higher numbers of individuals have been approved as reasonable.

Second, such results were achieved in the face of significant risks. As explained above, Defendant maintained serious defenses to Plaintiffs' PAGA claims, and if this case were litigated through to trial, funds that could have benefited Aggrieved Employees would continue to be exhausted litigating this matter. (Boyamian Decl., ¶¶ 21-28).

Third, notwithstanding this risk of loss, Plaintiffs' Counsel undertook representation of the instant PAGA claim for the benefit of the State of California on a contingency basis. (Boyamian Decl. at ¶ 30; Lo Decl. at ¶ 25; Glaser Decl. at ¶ 12; Le Montree Decl. at ¶ 12). This not only required Plaintiffs' Counsel to personally assume the risk of nonpayment in securing the very substantial financial benefit the State of California stands to receive, but constitutes a “loan” on Plaintiffs' Counsel services – both of which are factors warranting fee enhancement under applicable California Supreme Court authority:

One of the most common fee enhancers ... is for contingency risk. We reaffirmed the

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

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

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

Attorneys’ fee awards in the amount sought here are well-established by California law and practice. Accordingly, Plaintiffs’ Counsel’s fee request is fair and reasonable and is consistent with the awards in California and the Ninth Circuit. It is also reasonable given the history of this action and the results obtained. (Boyamian Decl. ¶¶ 21-34; Lo Decl. at ¶ 22; Glaser Decl. at ¶ 12; Le Montree Decl. at ¶ 12).

D. A Lodestar Cross-Check Supports the Reasonableness of the Attorneys’ Fees Sought

While Plaintiff’s counsel makes this application on a percentage the common fund basis, using the lodestar cross-check further demonstrates that the requested fee is reasonable and should be awarded.

A lodestar cross-check...provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee. If a comparison between the percentage and lodestar calculations produces an imputed multiplier far outside the normal range, indicating that the percentage fee will reward counsel for their services at an extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage.

Laffitte, supra, 1 Cal.5th at p. 504. The court must first begin with the lodestar figure, which is calculated by multiplying the number of hours reasonably expended by the reasonable hourly rate of compensation to determine the reasonableness of a fee award. *Press v. Lucky Stores, Inc.*

1 (1983) 34 Cal.3d 311, 322, *citing Serrano III, supra*, 20 Cal.3d at p. 48. Reasonable hours include, in
2 addition to time spent during litigation, the time spent before the action is filed, including time spent
3 interviewing the clients, investigating the facts and law, and preparing the initial pleadings. *See New*
4 *York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.) In assessing the reasonableness of
5 counsel's fee request, the court considers "relevant factors such as ... [the level of skill necessary, time
6 limitations [imposed by the client or other limitations], the amount to be obtained in the litigation, the
7 attorney's reputation, and the undesirability of the case. *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
8 1139.

9 The court may then enhance the lodestar by a multiplier to account for (1) the results obtained;
10 (2) the risks presented by the case; (3) the extent to which the litigation precluded other employment
11 by the attorneys; (4) the experience, reputation, and ability of the attorneys and the skill they displayed
12 in dealing with the difficult issues in the case; and (5) the delay in awarding fees. *Laffitte, supra*, 1
13 Cal.5th at p. 489; *Graham, supra*, 34 Cal.4th at p. 582 [the results obtained factor can properly be used
14 to enhance a lodestar calculation where an exceptional effort produced an exceptional benefit].) In
15 cases such as this, which creates a common fund for the benefit of a group of individuals, courts have
16 routinely applied an upward multiplier to the lodestar where the percentage of the settlement amount is
17 reasonable. Multipliers typically range from 2 to 4 but can sometimes be higher. *Sutter v. Health*
18 *uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512.)

19 Here, Plaintiffs' Counsel is requesting an award of \$100,000.00 – which would effectively be
20 employing a *negative* multiplier of approximately -0.56. Plaintiffs' counsel assumed representation in
21 this case on a purely contingency basis. (Boyamian Decl., ¶ 30; Lo Decl. at ¶ 25; Glaser Decl. at ¶ 12;
22 Le Montree Decl. at ¶ 12). They have received no compensation for time or expenses invested in this
23 case thus far and would have received no compensation whatsoever if the case had been unsuccessful.
24 In assuming representation in this case on a contingent basis, Plaintiffs' Counsel necessarily assumed
25 significant risks. Throughout the course of this suit, Defendant has contested liability, the scope and
26 amount of the claimed damages, and the propriety of manageability. While Plaintiffs and their
27 attorneys believe that they should ultimately prevail on the merits in this litigation, resolution of these
28

1 issues through motion practice, at trial and/or on appeal present a risk at each juncture that the State of
2 California and Aggrieved Employees would not recover. (Boyamian Decl., ¶¶ 21-28).

3 For these reasons, the requested fee is eminently reasonable, as it is well above the collective
4 lodestar in light of two and a half years of hard work and time spent litigating, the skill and experience
5 of class counsel, the preclusion of counsel from pursuing other employment, and the obstacles and
6 risks faced and overcome in achieving this settlement.

7 **E. Plaintiffs' Counsel's Request for Costs is Reasonable**

8 In the course of this litigation, Plaintiffs' Counsel had to incur out-of-pocket costs of
9 \$5,184.33. See Boyamian Decl. at ¶ 34, **Exhibit D**; See Lo Decl. at ¶ 31, **Exhibit C**; See Glaser Decl.
10 at ¶ 13 and Le Montree Decl. at ¶ 13.

11 As demonstrated in the Boyamian Declaration and the supporting declarations of counsel
12 concurrently submitted herewith, the incurred costs included filing fees, mediation fees, photocopy
13 charges, service of process fees, travel expenses, research expenses, and mailing charges. *Id.* at
14 Boyamian Decl., **Exhibit C**; *Id.* at Lo Decl. **Exhibit C**; *Id.* at Glaser Decl. and *Id.* at Le Montree Decl.
15 Such costs are appropriate for cost reimbursement in these types of cases. See e.g., *In re United*
16 *Energy Corp. Sec. Litig.* 1989 WL 7321 1, *6 (C.D. Cal. 1989) (quoting *Newberg*, Attorney Fee
17 Awards, § 2.19 (1987)); see also, *In re GNC Shareholder Litigation* (W.D. Pa. 1987) 668 F. Supp.
18 450, 452. The costs incurred by Plaintiffs' Counsel in this litigation benefited Plaintiffs, Aggrieved
19 Employees, and the State. In light of the litigation costs that Plaintiffs' Counsel was required to incur
20 to prosecute this action, Plaintiffs' cost request is reasonable and should be granted.

21 **V. THE ENHANCEMENT PAYMENTS SOUGHT BY THE NAMED PLAINTIFFS ARE**
22 **REASONABLE**

23 Plaintiffs seek an enhancement payment in the amount of \$10,000, per named Plaintiff, totaling
24 \$30,000.00. This payment is intended to both recognize the time and effort that the named Plaintiffs
25 spent on behalf of other Aggrieved Employees and the State. See Declaration of Allan Castaneto
26 ("Castaneto Decl."), Declaration of Antuan Fernandez ("Fernandez Decl."), and Declaration of Sam
27 Kimm ("Kimm Decl.") submitted herewith.
28

1 The purpose of such an award is to incentivize Aggrieved Employees to step into the shoes of
2 the state labor agency and undertake the risks associated with initiating a lawsuit and serving in a
3 representative capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service
4 payments” compensate named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am.*
5 *Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is
6 necessary to induce an individual to participate in the suit’”); *accord Ingram v. The Coca-Cola Co.*
7 (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) (“Courts routinely approve
8 incentive awards to compensate named plaintiffs for the services they provided and the risks they
9 incurred during the course of the [...] litigation.”); *See also, e.g., Resendez v. Bridgestone Retail*
10 *Operations, LLC*, Los Angeles Sup. Ct., Case No. BC596892 (June 2016) (approving enhancement
11 award in a PAGA action).

12 Without Plaintiffs’ efforts, there would be no recovery at all. An incentive award is
13 appropriate to compensate Plaintiff Castaneto, Plaintiff Fernandez, and Plaintiff Kimm for the risk and
14 expense they incurred in conferring a benefit on State of California and Defendant’s employees.

15 In this case, the named Plaintiffs performed the following tasks, among others: (1) assisted
16 Counsel in investigating and substantiating the claims alleged in this action, including multiple
17 conversations with counsel to review facts, documents, and Defendant’s policies; (2) assisted in the
18 preparation of the complaints in this action; (3) produced evidentiary documents to Counsel; (4)
19 provided deposition testimony; and (4) assisted in the settlement of this litigation. *See generally,*
20 *Plaintiffs’ Declarations.* Moreover, as with any Plaintiff who files a civil action, the named Plaintiffs
21 undertook the financial risk that, in the event of a judgment in favor of Defendant in this action, they
22 could have been personally responsible for any attorneys’ fees and costs awarded in its favor. *See*
23 *generally, Plaintiffs’ Declarations.*

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1 The award of such payments to the named Plaintiffs are especially warranted in a case like this
2 one. It is necessary to ensure that employees, like Plaintiffs, continue to bring claims like those
3 brought here to enforce the rights of their fellow employees. This is especially true since both Mr.
4 Castenato and Mr. Fernandez also faced the real prospect of owing money to Defendant by way of
5 Defendants' cross-complaints – if adjudicated in Calop's favor. Individuals like the named Plaintiffs
6 (and most Aggrieved Employees) would have little, if any, recourse without the class action or
7 representative device. Most Aggrieved Employees – like the named Plaintiffs – would be fearful of
8 retaliation in response to filing any lawsuit, much less a class action or representative lawsuit. *See*
9 *generally*, Plaintiffs' Declarations. Finally, as a part of the Settlement, Plaintiffs have agreed to a
10 broader release of claims than the release of claims that applies to Aggrieved Employees. Plaintiffs
11 must be commended for pursuing their claim, and enhancement payments like the ones sought here are
12 an appropriate means of doing so.

13 **VI. CONCLUSION**

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

- 18 1. Grant approval of the Settlement, pursuant to California Labor Code §2699, subpart I;
- 19 2. Appoint Phoenix Class Action Administration Solutions as the Settlement
20 Administrator and approve payment of \$3,500.00 from the Settlement Sum;
- 21 3. Direct disbursement of the Settlement Sum pursuant to the terms of the Settlement;
- 22 4. Dismiss, with prejudice, the Cross-Complaints filed by Defendants against Plaintiff
23 Antuan Fernandez and Allan Castaneto;
- 24 5. Approve the award of attorneys' fees to Plaintiffs' Counsel in the amount not to exceed
25 \$100,000.00, payment of which shall come from the Settlement Sum;
- 26 6. Approve the reimbursement of costs to Plaintiffs' Counsel in the amount of \$5,184.33
27 which shall come from the Settlement Sum; and
28

1 7. Approve the award of an enhancement payment to Plaintiff Allan Castaneto in the
2 amount of \$10,000.00, Plaintiff Antuan Fernandez in the amount of \$10,000, and Plaintiff Sam Kimm
3 in the amount of \$10,000.00 from the Settlement Sum.

4 Dated: July 15, 2022

Respectfully submitted,

5 **BOYAMIAN LAW, INC.**
6 **WORK LAWYERS, PC**
7 **JOEL GLASER APC**
8 **DBL LAW GROUP**

9 By: _____

10 Michael H. Boyamian
11 Attorneys for Plaintiffs ALLAN
12 CASTANETO, ANTUAN FERNANDEZ,
13 SAM KIMM, Other Aggrieved Employees,
14 and the General Public
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