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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHRISTINE MARKLEY, as an individual and
on behalf of all other aggrieved employees,

Plaintiff,

vs.

EASTER SEALS, INC., an Ohio corporation;
EASTER SEALS SOUTHERN CALIFORNIA,
INC., a California corporation; EASTER SEALS
CENTRAL CALIFORNIA, a California
corporation; and DOES 1 through 100,

Defendants.

Case No. 20STCV18866

*[Assigned for all purposes to the Hon.
Steven J. Kleinfeld, Dept. 57]*

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

Date: November 5, 2021

Time: 8:30 a.m.

Dept.: 57

Reservation No.: 470378340928

Action Filed: May 18, 2020

Trial Date: None Set

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

3 PLEASE TAKE NOTICE that on November 5, 2021 at 8:30 a.m., or as soon thereafter
4 as the matter may be heard in Department 57 of the above-entitled Court, located at 111 North
5 Hill Street, Los Angeles, California 90012, Plaintiff Christine Markley (“Plaintiff”), individually
6 and on behalf of the State of California and other Aggrieved Employees, will, and hereby does,
7 move this Court for entry of an Order as follows:

- 8 1. Granting approval, pursuant to California Labor Code § 2699(l), of the proposed
9 settlement of claims brought pursuant to the Private Attorneys General Act of 2004
10 (Cal. Labor Code § 2698, *et seq.*) as set forth in the Parties’ Settlement Agreement, a
11 true and correct copy of which is attached as Exhibit 1 to the Declaration of Paul K.
12 Haines filed concurrently herewith;
- 13 2. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
- 14 3. Approving the proposed Explanatory Letter (attached as Exhibit A to the Settlement
15 Agreement), and directing that it be distributed to the PAGA Settlement Employees
16 pursuant to the terms of the Settlement Agreement;
- 17 4. Directing the distribution of the Gross Settlement Amount pursuant to the terms of
18 the Settlement Agreement;
- 19 5. Approving an award of one-third of the Gross Settlement Amount (\$58,333.33) in
20 attorneys’ fees to Plaintiff’s Counsel;
- 21 6. Approving an award of litigation costs to Plaintiff’s Counsel in the amount of
22 \$6,968.47;
- 23 7. Approving an award of \$5,000.00 as Plaintiff’s Enhancement Payment, and
24 8. Approving \$4,000.00 in administration costs to Phoenix Settlement Administrators.

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1 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
2 the declaration of Paul K. Haines and all exhibits attached thereto; the declaration of Sean M.
3 Blakely; the declaration of Jodey Lawrence and all exhibits attached thereto; the declaration of
4 Plaintiff Christine Markley; the Settlement Agreement; Plaintiff's Request for Judicial Notice
5 and all exhibits attached thereto; all other pleadings and papers on file in this action; and on any
6 further oral or documentary evidence or argument presented at the time of hearing.

7
8 Dated: October 14, 2021

HAINES LAW GROUP, APC

9
10 By:


Paul K. Haines

Sean M. Blakely

Attorneys for Plaintiff and Aggrieved
Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Christine Markley (“Plaintiff”), an “Aggrieved Employee” under the Private Attorneys General Act of 2004 (“PAGA”), respectfully moves this Court for an Order granting approval of the Settlement Agreement (“Settlement”) with Defendant Easter Seals Southern California, Inc. (“Defendant” or “Easter Seals”).¹ This PAGA action seeks civil penalties predicated on Easter Seals’ alleged failure to provide compliant meal and rest periods, alleged failure to pay all final wages, and alleged failure to issue accurate itemized wage statements. The proposed Settlement, under which Easter Seals has agreed to pay a non-reversionary Gross Settlement Amount of \$175,000.00, will resolve Plaintiff’s representative claim filed on behalf of the State of California and the following “PAGA Settlement Employees”:

All current and former non-exempt Direct Service Associates who worked for Easter Seals in California at any time from March 11, 2019 through the date of the Court Order granting approval of the PAGA Settlement (“PAGA Period”).

Notably, the relief provided for under the Settlement, and the claims released thereunder, are *solely* for the payment of *civil penalties* under the PAGA.

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

¹ The proposed Settlement Agreement is attached as Exhibit 1 to the Declaration of Paul K. Haines filed herewith. The Explanatory Letter to accompany PAGA Settlement Employees’ Individual PAGA Payments is attached as Exhibit A to the Settlement Agreement.

1 As noted, the Settlement provides for a Gross Settlement Amount (“GSA”) of
2 \$175,000.00. *See* Settlement, §§ I.9; III.2. After deducting amounts for requested attorneys’ fees
3 (one-third of the GSA, \$58,333.33), litigation costs (\$6,968.47), Plaintiff’s Enhancement
4 Payment (\$5,000.00), and administration costs (\$4,000.00), the Settlement provides for
5 distribution of a Net Settlement Amount (“NSA”) of approximately \$100,698.20 to PAGA
6 Settlement Employees and the California Labor & Workforce Development Agency (“LWDA”).
7 *See* Settlement, §§ I.10; III.4-5.

8 The Net Settlement Amount shall be distributed 75% (approximately \$75,523.65) to the
9 LWDA, and 25% (approximately \$25,174.55) to PAGA Settlement Employees, pursuant to the
10 requirements of the PAGA as codified in Lab. Code § 2699(i). *See* Settlement, § III.5. There are
11 approximately 289 PAGA Settlement Employees. *Id.*, at § I.2. Thus, the average Individual
12 PAGA Payment to PAGA Settlement Employees is estimated at approximately \$87.11.

13 The GSA of \$175,000.00 represents a positive result for the State of California and PAGA
14 Settlement Employees. Further litigation may have resulted in a smaller recovery or even no
15 recovery at all, based on the defenses asserted by Easter Seals and given the significant litigation
16 risks involved. Moreover, the GSA is greater than other PAGA penalty awards approved as
17 reasonable. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624
18 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-aside of \$5,000, or
19 \$7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013
20 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-aside of \$10,000,
21 or \$3.33 per employee). The amounts requested for attorneys’ fees and costs, enhancement
22 payment, and administration costs are all fair, adequate, and reasonable. Thus, Plaintiff
23 respectfully requests that the Court enter the [Proposed] Judgment and Order submitted
24 concurrently herewith.

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II. SUMMARY OF THE LITIGATION

A. Brief Factual Background and Summary of Claims

Easter Seals is a non-profit health care organization that serves individuals throughout Southern California with special needs related to autism spectrum disorders, learning disabilities, developmental disabilities, and various mental and emotional health issues. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 11. Plaintiff worked for Easter Seals as a non-exempt “Direct Service Associate” from approximately July 2014 to approximately May 2019. *Id.*; *see also* Declaration of Christine Markley (“Markley Decl.”), ¶ 2.

Plaintiff’s PAGA claim is predicated on Plaintiff’s allegations that Easter Seals failed to provide compliant meal and rest periods, failed to pay all final wages, and failed to issue accurate itemized wage statements.

B. Procedural History

On March 11, 2020, Plaintiff sent a letter by certified mail to Easter Seals, Inc., Easter Seals Southern California, and Easter Seals Central California, and online to the LWDA, describing Easter Seals’ alleged Labor Code violations, as required by Labor Code § 2699.3. Haines Decl., ¶ 12; Exh. 2; *see also* Settlement, § II.2. On May 18, 2020, after the prescribed 65-day waiting period under Labor Code § 2699.3(a)(2)(A), Plaintiff filed a representative action complaint titled *Christine Markley v. Easter Seals, Inc., et al.*, Los Angeles Superior Court Case No. 20STCV18866 (the “Action”), asserting a claim against Easter Seals for civil penalties pursuant to PAGA stemming from various purported violations of the Labor Code. Haines Decl., ¶ 13; Settlement, § II.3.

After confirming that Plaintiff was not an employee of Easter Seals, Inc. or Easter Seals Central California, Plaintiff filed a Request for Dismissal without prejudice as to those Defendants on July 21, 2020, and on July 24, 2020, the Court dismissed those two entities, leaving Easter Seals Southern California as the only named Defendant. Haines Decl., ¶ 14.

C. Pre-Mediation Discovery And Mediation

After the Action was filed, the Parties ultimately agreed to participate in an early mediation before experienced wage and hour mediator Steve Pearl, Esq. Haines Decl., ¶ 15;

1 *see also* Settlement, § II.4. In response to Plaintiff’s Counsel’s informal discovery requests,
2 Easter Seals provided Plaintiff’s Counsel with information and documents pertaining to
3 Plaintiff and other PAGA Settlement Employees, including a list of PAGA Settlement
4 Employees with hire and termination dates, Easter Seal’s written wage and hour policies,
5 employee handbooks, and other information and documents. Haines Decl., ¶ 15; *see also*
6 Settlement, § II.4. This discovery allowed the Parties to assess the merits and value of
7 Plaintiff’s PAGA claim, and Easter Seals’ potential defenses. Haines Decl., ¶ 15.

8 The Parties attended mediation with mediator Steve Pearl, Esq. on May 17, 2021.
9 Haines Decl., ¶ 16; *see also* Settlement, § II.5. During mediation, the Parties vigorously debated
10 Plaintiff’s ability to proceed on a representative basis, the legal basis for Plaintiff’s claims and
11 Easter Seals’ defenses, the potential amount of PAGA civil penalties, and the Parties’ data
12 analyses and conclusions based thereon. Haines Decl., ¶ 16. With the assistance of Mr. Pearl,
13 the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff and
14 other PAGA Settlement Employees. Haines Decl., ¶ 16; *see also* Settlement, § II.5. Over the
15 following months, the Parties negotiated and finalized the Settlement Agreement. Haines Decl.,
16 ¶ 16.

17 **III. SUMMARY OF THE LITIGATION**

18 **A. “PAGA Settlement Employees” Defined**

19 PAGA Settlement Employees are defined as all current and former non-exempt Direct
20 Service Associates who worked for Easter Seals in California at any time during the PAGA
21 Period. *See* Settlement, § I.2. The PAGA Period is defined as March 11, 2019 through the date
22 of the Court Order granting approval of the PAGA Settlement. *Id.*, at § I.12.

23 **B. Monetary Terms**

24 As noted, the Settlement provides for Easter Seals’ payment of a non-reversionary GSA
25 of \$175,000.00. Settlement, §§ I.9; III.2. After deducting amounts for requested attorneys’ fees,
26 litigation costs, Plaintiff’s Enhancement Payment, and settlement administration costs, the
27 Settlement provides for the remaining Net Settlement Amount (“NSA”) to be distributed 75%
28 to the LWDA and 25% to PAGA Settlement Employees, pursuant to Lab. Code § 2699(i).

1 Haines Decl., ¶ 17; Settlement, at §§ I.10; III.5. The 25% portion to PAGA Settlement
2 Employees shall be distributed based on each PAGA Settlement Employee's proportional
3 number of pay periods worked for Easter Seals in California during the PAGA Period.
4 Settlement, at § III.5.

5 **1. Requested Attorneys' Fees and Costs, Administration Costs, and**
6 **Plaintiff's Enhancement Payment**

7 Plaintiff's Counsel requests one-third of the GSA (i.e., \$58,333.33) in attorneys' fees, and
8 \$6,968.47 in litigation costs. Haines Decl., ¶¶ 23-25; Settlement, § III.4(a). As discussed in detail
9 below, a fee award of one-third of the GSA is fair, adequate, and reasonable as a percentage of
10 the fund and is in line with fee awards in other PAGA settlements.

11 The Parties have agreed to engage Phoenix Settlement Administrators ("PSA") as the
12 third-party settlement administrator. *See* Settlement, §§ I.4; IV.1. PSA will update PAGA
13 Settlement Employee's addresses using the National Change of Address database, calculate and
14 distribute Individual PAGA Payments, mail payments to all PAGA Settlement Employees
15 together with the Explanatory Letter, and perform other duties that are integral to the effectuation
16 of the Settlement. *Id.*, at §§ IV.2-6. Plaintiff requests that the Court approve \$4,000.00 in
17 administration costs to PSA, which will cover all costs incurred by PSA in connection with the
18 Settlement. *Id.*, at §§ I.10; III.4(c); *see also* Declaration of Jodey Lawrence ("Lawrence Decl."),
19 Exh. B.

20 Finally, Plaintiff requests an enhancement payment of \$5,000, in recognition of Plaintiff's
21 contributions to this case and her efforts in bringing this case to successful resolution. *See* Haines
22 Decl., ¶ 26; Markley Decl., ¶¶ 6-7; Settlement, §§ I.10, III.4(b).

23 **2. Payment to LWDA and PAGA Settlement Employees**

24 As stated, the NSA will be distributed 75% to the LWDA and 25% to PAGA Settlement
25 Employees, pursuant to Labor Code § 2699(i). Settlement, § III.5. Based on the above requested
26 distributions, the NSA is estimated to be \$100,698.20, with \$75,523.65 paid to the LWDA and
27 \$25,174.55 distributed to PAGA Settlement Employees. Haines Decl., ¶ 17; Settlement, §§ I.10;
28 III. 4-5.

1 **3. *Funding of the Settlement***

2 Easter Seals will fund the settlement within thirty (30) days following a Court order
3 approving the Settlement. *See* Settlement, § III.2. Within twenty-one (21) calendar days after the
4 GSA has been fully funded, and after receiving approval from counsel of the payment
5 calculations, PSA will mail the Explanatory Letter and Individual PAGA Payments to PAGA
6 Settlement Employees via First-Class U.S. Mail. *See* Settlement, § IV.3.

7 Funds represented by undeliverable checks, or checks remaining uncashed after 180 days,
8 shall escheat to the California State Controller’s Office for deposit in the Unclaimed Property
9 Fund, in the name of the PAGA Settlement Employee. *See* Settlement, § IV.4.

10 **IV. LEGAL ARGUMENT**

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

12 The settlement of a PAGA claim requires court approval pursuant to the PAGA statute,
13 which states that the “court shall review and approve any settlement of any civil action filed
14 pursuant to this part.” Cal. Lab. Code § 2699(l). Of course, “[s]ettlement is a compromise, which
15 balances the possible recovery against the risks inherent in litigating further.” *See In re TD*
16 *Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13, 2011). “[T]he
17 very essence of a settlement is... ‘a yielding of absolutes and an abandoning of highest hopes,’”
18 as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
19 litigation that induce consensual settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d
20 615, 624 (9th Cir. 1982). As such, “the settlement or fairness hearing is not to be turned into a
21 trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure
22 of what might have been achieved by the negotiators.” *Id.*

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

Cal. Jul. 1, 2010) (“PAGA claims are law enforcement actions, not class actions”). A court’s review of a PAGA settlement implicates the following unique features that render the approval process distinct from approval of a class action settlement.

First, in evaluating the adequacy of the settlement, the court is not concerned with the amount(s) received by “aggrieved employees,”² but rather, must focus on the total settlement amount in achieving PAGA’s objective. “The remedy sought in a PAGA suit consists of civil penalties, not individual or class damages.” *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court recently confirmed, “PAGA claims are ‘representative’ actions in the sense that they are brought on the state’s behalf. The employee...‘represents the same legal right and interest as’ those agencies — ‘namely, recovery of civil penalties that otherwise would have been assessed and collected by the [LWDA].’” *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 380 (2014)).

Moreover, while “[a PAGA] action is ... designed to protect the public and penalize the employer for past illegal conduct” (*Mendez*, 2010 WL 2650571 at *4), a PAGA claim – like any settlement – involves a compromise that stops short of rendering findings of liability and damages. “Unlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” *Ochoa-Hernandez*, 2010 WL 1340777 at *4.

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim,³ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they

² Referred to here as “PAGA Settlement Employees.”

³ “The [PAGA] does not create property rights or any other substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies.” *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal. 4th 993, 1003 (2009).

1 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
2 1340777 at *5. This renders the approval process of a PAGA settlement distinct from a class
3 action settlement, as the Court need not employ the “two-step approval process” required for
4 class action settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

5 Finally, unlike a class action settlement under Rule 23(e) and Rule 3.769, the scope of
6 release in a PAGA settlement is limited to *civil penalties*. While “judgment in [a PAGA] action
7 is binding not only on the named employee plaintiff but also on government agencies and any
8 aggrieved employee not a party to the proceeding...the nonparty employees, because they were
9 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
10 judgment as to remedies other than civil penalties.” *Arias v. Sup. Ct.*, 46 Cal. 4th 969, 986-87
11 (2009). Thus, the scope of release in a PAGA settlement is strictly confined to PAGA penalties.

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

13 In deciding whether to approve a proposed settlement, a trial court has broad powers to
14 determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup.*
15 *Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to
16 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*,
17 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court
18 to consider include, but are not limited to:

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

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

Because settlements inherently involve compromise, even settlements providing for
substantially narrower relief than likely would be obtained if the suit were successfully litigated

1 can be reasonable because “the public interest may indeed be served by a voluntary settlement in
2 which each side gives ground in the interest of avoiding litigation.” *Wershba v. Apple Computer,*
3 *Inc.*, 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines,*
4 *Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). In addition, courts review the discovery process and
5 information received through it to aid them in assessing whether the parties sufficiently
6 developed the claims and their supporting factual bases before reaching settlement. *Kullar v.*
7 *Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129-31 (2008). Information is sufficient where it
8 allows the parties and the court to form “an understanding of the amount that is in controversy
9 and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential Serv. LLC*, 175
10 Cal.App.4th 785, 801 (2009). This requirement exists so that the parties can provide the court
11 with “a meaningful and substantiated explanation of the manner in which the factual and legal
12 issues have been evaluated.” *Kullar, supra*, 168 Cal.App.4th at 132.

13 **a. The Strength of Plaintiff’s Case**

14 Although she steadfastly maintains her claims are meritorious, Plaintiff acknowledges
15 her position included real risks and uncertainty. For example, with respect to Plaintiff’s meal
16 period claim, Plaintiff alleged that Easter Seals did not maintain a lawful meal period policy and
17 failed to provide compliant meal periods to PAGA Settlement Employees. Haines Decl., ¶ 18.
18 In response, Easter Seals contends that Plaintiff and other PAGA Settlement Employees entered
19 into lawful on-duty meal period agreements. *Id.* Easter Seals also argues, and Plaintiff does not
20 dispute, that the nature of Easter Seals’ employees’ work prevents them from being relieved of
21 all duties during their work shift. *Id.* Easter Seals also maintains that Plaintiff’s meal period
22 claim would not be manageable on a representative basis, as individual inquiries would be
23 required to establish which PAGA Settlement Employees experienced non-compliant meal
24 periods, how many non-compliant meal periods each PAGA Settlement Employee experienced,
25 and why a particular PAGA Settlement Employee had a non-compliant meal period during a
26 particular shift. *Id.*

27 With respect to Plaintiff’s rest period claim, Plaintiff alleged that Easter Seals failed to
28 authorize and permit Plaintiff and PAGA Settlement Employees from taking all statutorily

1 permitted off-duty rest periods during their shifts. Haines Decl., ¶ 19. Easter Seals contends that
2 it has always maintained lawful written rest period policies, including the number, duration, and
3 frequency of rest periods, and that it has always authorized and permitted rest periods in
4 accordance with those policies. *Id.* Easter Seals contends that in light of the nature of its
5 employees' work, Wage Order 5, § 12(c) authorizes the employees to take on-duty rest periods
6 without resulting in any penalties. *Id.* Notwithstanding its defense under Wage Order 5, § 12(c),
7 Easter Seals further contends that Plaintiff and other PAGA Settlement Employees often worked
8 on their own without direct supervision, and thus Easter Seals contends that they had complete
9 discretion regarding when and how to take their rest breaks. *Id.*

10 As for Plaintiff's derivative claims that Easter Seals violated its wage statement and final
11 payment obligations in violation of Labor Code §§ 226 and 203, respectively, Easter Seals asserts
12 it has strong, good-faith defenses to Plaintiff's underlying claims, precluding a finding of a failure
13 to pay all final wages that would otherwise result in waiting time penalties. Haines Decl., ¶ 20;
14 *see also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude
15 imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017)
16 (holding "good faith dispute" precluded imposition of waiting time penalties). Easter Seals
17 further contends Plaintiff's meal and rest period claims cannot support a claim for violations of
18 Labor Code §§ 226 or 203, as Courts of Appeal recently held in *Naranjo v. Spectrum Security*
19 *Servs., Inc.*, 40 Cal.App.5th 444, 473-75 (2019) (*review granted* Jan. 2, 2020) and *Betancourt v.*
20 *OS Rest. Svcs., LLC*, 49 Cal.App.5th 240, 248 (2020) (*review granted* Aug. 19, 2020). Easter
21 Seals further contends that wage statements always accurately reflected amounts paid to
22 employees, and thus Easter Seals cannot be found liable for wage statement violations under
23 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336 (2018) ("The purpose of section
24 226 is to *document the paid wages* to ensure the employee is fully informed regarding the
25 calculation of those wages.") (*italics in original*). Haines Decl., ¶ 20.

26
27 Easter Seals further maintains that even if the Court awarded PAGA civil penalties for
28 any of the alleged violations, the Court would substantially reduce the civil penalties based on

1 the discretionary factors in Labor Code § 2699(e)(2) (authorizing reduction in PAGA penalties
2 “if, based on the facts and circumstances of the particular case, to do otherwise would result in
3 an award that is unjust, arbitrary and oppressive, or confiscatory.”). Haines Decl., ¶ 21. Indeed,
4 Easter Seals argues that many courts have reduced PAGA civil penalties drastically where, as
5 here, the employer presented good-faith defenses and attempted to comply with the law. *See*,
6 *e.g.*, *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming
7 reduction of PAGA penalties because “defendants took their obligations...seriously and
8 attempted to comply with the law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011
9 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%, in part
10 because employer was “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th
11 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period where employer made “good
12 faith attempts” to comply with the law). *Id.*

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

15 Although the Parties had engaged in significant informal discovery, the Parties still had
16 much written and deposition discovery to conduct if the case did not settle. Substantive motion
17 work and trial preparation also remained for the Parties, as well as potential appeals. As a result,
18 the Parties would likely incur considerably more attorneys’ fees and costs through trial and
19 possible appeal. The Settlement avoids those risks and the accompanying expense.

20 **c. Amount Offered in Settlement Given Realistic Value of Claims**

21 This proposed Settlement provides a fair and reasonable monetary recovery for the PAGA
22 Settlement Employees and the State of California in the face of hotly disputed claims. Plaintiff
23 estimated Easter Seals’ realistic exposure for PAGA civil penalties as follows:

24 Based on the above-described violations, Plaintiff asserts that she would be able to seek
25 PAGA civil penalties for each PAGA Settlement Employee for each pay period in the PAGA
26 limitations period. Haines Decl., ¶ 22. Based on data provided by Easter Seals, there were
27 approximately 11,589 pay periods during the PAGA limitations period. *Id.*; *see also* Settlement,
28 § III.3. Assuming an initial violation rate of \$100 per pay period under Labor Code § 2699(f)

(see *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (holding “initial” violation rate applies to PAGA penalties until employer is notified it violated Labor Code)), Plaintiff estimated a total potential PAGA exposure of \$1,158,900.00. Haines Decl., ¶ 22. However, because the Court maintains discretion to reduce these penalties, and in light of Easter Seals’ arguments and defenses described above, Plaintiff discounted that figure by 50% for a risk of losing on the merits, and by an additional 65% for risk of the Court reducing penalties, to arrive at a realistic exposure of \$202,807. Haines Decl., ¶ 22; see also, e.g., *Thurman*, 203 Cal.App.4th at 1136 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047 at *5 (reducing PAGA penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

The proposed \$175,000.00 GSA therefore represents approximately 86.3% of Plaintiff’s reasonably forecasted total recovery, while avoiding the risks of proceeding through trial. Haines Decl., ¶ 22. “The fact that a proposed 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.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). Plaintiff acknowledges there was substantial uncertainty and risk as to her claims. Approval of the Settlement is appropriate, as the Settlement will provide tangible monetary relief to PAGA Settlement Employees and the State of California.

d. Discovery Completed and the Status of Proceedings

As noted above, the Parties engaged in substantial informal discovery required to evaluate the value of Plaintiff’s PAGA claim. Easter Seals provided Plaintiff with information and documents pertaining to Plaintiff and PAGA Settlement Employees including a list of PAGA Settlement Employees with hire and termination dates, Easter Seal’s written wage and hour policies, and employee handbooks in effect during the PAGA Period. Haines Decl., ¶ 15. Only after the completion of this comprehensive discovery, and significant discussions about the likelihood of prevailing on the merits, did the Parties reach the proposed Settlement. Thus, this factor supports settlement approval.

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1 **e. The Experience and Views of Counsel**

2 “Parties represented by competent counsel are better positioned than courts to produce a
3 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec.*
4 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel, who
5 believe this Settlement to be fair and adequate for all involved. Haines Decl., ¶¶ 3-9, 23-24;
6 Declaration of Sean M. Blakely (“Blakely Decl.”), ¶¶ 2-6. This factor strongly supports
7 settlement approval. *Kullar, supra*, 168 Cal.App.4th at 130 (“The court undoubtedly should give
8 considerable weight to the competency and integrity of counsel and the involvement of a neutral
9 mediator in assuring itself that a settlement agreement represents an arm’s length transaction
10 entered without self-dealing or other potential misconduct.”).

11 **B. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of**
12 **the Settlement Fund**

13 As the prevailing party in settlement, Plaintiff is entitled to recover attorneys’ fees and
14 costs for her PAGA claims. *See* Labor Code § 2699(g) (providing for attorney fees and costs in
15 PAGA actions); Cal. Code Civ. Proc. § 1021.5. A fee award is justified where the legal action
16 has produced its benefits by way of settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-
17 91 (1987); *Westside Comty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53
18 (1983); *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when a number of persons are entitled in
19 common to a specific fund, and an action brought by a plaintiff...for the benefit of all results in
20 the creation or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of
21 the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627 (in awarding a fee from the common
22 fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent
23 the other parties’ unjust enrichment); *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir.
24 1993) 9 F.3d 513, 516 (the percentage of the fund method for calculating attorneys’ fees more
25 accurately reflects the results achieved for the putative class than the lodestar method and
26 “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected
27 recovery; and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid*
28 *Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is

generally favored in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’”).

Fee awards of one-third of the settlement fund are routinely awarded in California courts in class and representative PAGA actions. The California Supreme Court recently confirmed its approval of the use of the “percentage of fund” method. *See Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (“the percentage of fund method survives in California class action cases...”)

 Specifically, the *Laffitte* Court held:

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

Id., at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015) (approving attorneys’ fees of one-third of settlement fund in PAGA settlement); *Clavel v. Lupe’s Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25, 2016) (same). This is also consistent with Plaintiff’s counsel’s experience in similar wage-and-hour class and PAGA matters. Haines Decl., ¶ 23. Here, Plaintiff’s fee request of one-third of the GSA (estimated to be \$58,333.33) is fair and reasonable based on the percentage of the recovery method. *Id.*

The requested fee award is also justified because Plaintiff’s counsel achieved a significant monetary recovery in an uncertain and risky case, while bearing the substantial burden of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys’ fees). Here, counsel expended significant time and resources in litigating this case, which resulted in a favorable result for Plaintiff, the State of California, and PAGA Settlement Employees in the face of significant defenses. Counsel also

1 bore the contingency risk of this litigation for the benefit of the PAGA Settlement Employees, as
2 well as the State of California (which elected not to take the case after receiving Plaintiff's PAGA
3 notice).

4 Critically, Plaintiff's recovery in this case significantly exceeds other PAGA awards
5 approved by California courts. *See, e.g., Aguirre v. DSW, Inc.*, 2012 WL 11875296, *3 (C.D.
6 Cal. Nov. 29, 2012) (approving \$10,000 PAGA payment); *Garcia v. Gordon Trucking, Inc.*, 2012
7 WL 5364575, *7 (E.D. Cal. Oct. 31, 2012) (approving \$10,000 PAGA payment, finding it
8 "comports with settlement approval of PAGA awards in other cases. [Citations.]"); *Boyd v. Bank*
9 *of Am. Corp.*, 2014 WL 6473804, *8 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA
10 payment); *Franco v. Ruiz Food Prods.*, 2012 WL 5941801, *14 (E.D. Cal. Nov. 27, 2012)
11 (\$10,000 PAGA payment); *Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645, *1 (N.D. Cal. Feb.
12 16, 2011) (\$10,000 PAGA payment). That counsel achieved these results without engaging in a
13 protracted legal battle, in the face of serious defense challenges, confirms the strength of the
14 results achieved.

15 Counsel conducted extensive research regarding the merits of Plaintiff's claims, her
16 ability to recover PAGA civil penalties, and Easter Seals' potential defenses. Haines Decl., ¶¶
17 15-16, 24. Counsel also conducted significant analysis of data and information produced by
18 Easter Seals, and used this data and analysis to draft a comprehensive mediation brief and
19 exposure analysis. *Id.* Counsel attended a full-day mediation, and expended significant effort in
20 preparing subsequent settlement documents, this Motion and supporting documents, and will
21 oversee the settlement administration process. *Id.* Given the considerable potential for adverse
22 outcomes in this case, the contingent risk borne by Plaintiff's counsel was great. *Id.* The quality
23 of Plaintiff's Counsel's work, and the efficacy and dedication with which it was performed,
24 should be compensated.

25 Plaintiff's counsel have over two decades of combined wage-and-hour class and
26 representative action experience and have been certified as class counsel in numerous wage and
27 hour class actions. Haines Decl., ¶¶ 3-8; Blakely Decl., ¶¶ 2-6. Because it is reasonable to
28 compensate counsel commensurate with their skill, reputation, and experience, a fee award of

one-third of the GSA is reasonable. Other factors show the requested fee is reasonable. This case involved nuanced legal issues, including Easter Seals’ obligations to “provide” meal periods and “authorize and permit” rest periods, as well as the availability and amount of PAGA civil penalties for the alleged Labor Code violations. Haines Decl., ¶¶ 18-22. Easter Seals was also represented by experienced wage-and-hour litigation counsel. *Id.* Thus, Plaintiff submits the requested fee award is fair, reasonable and adequate and should be approved.

C. The Requested Litigation Costs and Settlement Administration Costs Are Fair, Reasonable, and Adequate

Plaintiff’s request for reimbursement of litigation costs of \$6,968.47 is also fair and reasonable. All of Plaintiff’s litigation costs are documented and reasonably incurred. *See* Haines Decl., ¶ 25 & Exh. 3. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*, 2011 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) (“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

The request for administration costs of \$4,000.00 is also fair and reasonable. PSA was selected because it is an experienced settlement administrator, and because it returned a competitive bid. *See* Settlement, § I.10, III.4(c); *see also* Declaration of Jodey Lawrence & Exhibit B. Moreover, PSA will perform several important functions that are integral to the implementation of the Settlement. Its modest requested fee is therefore reasonable.

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Courts routinely approve enhancement payments to compensate named plaintiffs for the services they provide and the risks they incur during representative litigation. *See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000 incentive payment); *see also* Plaintiff’s Request for Judicial Notice, Exhs. 1-7 (PAGA settlement approval orders awarding incentive payments to representative PAGA plaintiffs ranging from \$5,000 to \$20,000). Here, Plaintiff seeks an enhancement payment of \$5,000. This request is reasonable given Plaintiff’s efforts in this case and the risks she undertook on behalf of PAGA Settlement Employees and the State of California. Plaintiff provided substantial factual information and documents to counsel, assisted in identifying potential witnesses, and attended numerous meetings with Plaintiff’s counsel. *See* Markley Decl., ¶ 7. Accordingly, Plaintiff’s requested enhancement payment is appropriate and justified as part of the Settlement.

For the reasons stated herein, Plaintiff respectfully requests that this Court grant Plaintiff's Motion and adopt the [Proposed] Judgment and Order Granting Settlement Approval submitted concurrently herewith.

Respectfully submitted,
HAINES LAW GROUP, APC

Paul K. Heines

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff and
Aggrieved Employees



Make a Reservation

CHRISTINE MARKLEY vs EASTER SEALS, INC., AN OHIO CORPORATION, et al.

Case Number: 20STCV18866 Case Type: Civil Unlimited Category: Other Employment Complaint Case

Date Filed: 2020-05-18 Location: Stanley Mosk Courthouse - Department 57

Reservation

Case Name:

CHRISTINE MARKLEY vs EASTER SEALS, INC., AN
OHIO CORPORATION, et al.

Case Number:

20STCV18866

Type:

Motion re: (Approval of PAGA Settlement)

Status:

RESERVED

Filing Party:

Christine Markley (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 57

Date/Time:

11/05/2021 8:30 AM

Number of Motions:

1

Reservation ID:

470378340928

Confirmation Code:

CR-DHQMWXCDGPJKHMSNJ

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:

\$61.65

Type:

Visa

Account Number:

XXXX6940

Authorization:

04146G

Print Receipt

[+ Reserve Another Hearing](#)