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

JESSICA BURROLA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TRADEMARK COSMETICS, INC., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No. RIC2002311

*[Case assigned for all purposes to the Hon.
Sunshine Sykes, Dept. 6]*

**PLAINTIFF JESSICA BURROLA'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
SERVICE AWARD**

Date: February 9, 2022
Time: 8:30 a.m.
Dept.: 6

Reservation ID: 879777550605

Complaint Filed: June 30, 2020
Trial Date: None Set

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

3 PLEASE TAKE NOTICE that on February 9, 2022 at 8:30 a.m., or as soon thereafter as
4 the matter may be heard in Department 06 of the above-entitled Court, located at 4050 Main
5 Street, Riverside, California 92501, Plaintiff Jessica Burrola (“Plaintiff”), individually and on
6 behalf of the State of California and other Aggrieved Employees, will, and hereby does, move
7 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.*) and set forth in the parties’ Settlement Agreement,
11 a true and correct copy of which is attached to the Declaration of Fletcher W. Schmidt
12 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 Aggrieved Employees pursuant to
16 the terms of the Settlement Agreement;
- 17 4. Directing the funding and distribution of the Maximum Settlement Amount pursuant
18 to the terms of the Settlement Agreement;
- 19 5. Approving an award of attorneys’ fees to Plaintiff’s counsel of \$91,666.67 and an
20 award of litigation costs to Plaintiff’s counsel in the amount of \$20,369.16;
- 21 6. Approving an award of \$5,000 as Plaintiff’s Representative Enhancement Award; and
- 22 7. Approving \$2,150 in administration costs to Phoenix Settlement Administrators.

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This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the declaration of Fletcher W. Schmidt and all exhibits attached thereto; the declaration of Jodey Lawrence and all exhibits attached thereto; the declaration of Plaintiff Jessica Burrola; the Settlement Agreement; Plaintiff's Request for Judicial Notice and all exhibits attached thereto; all other pleadings and papers on file in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Respectfully submitted,

Dated: January 18, 2022

HAINES LAW GROUP, APC

By: Fletcher W. Schmidt
Attorneys for Plaintiff and Aggrieved
Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jessica Burrola (“Plaintiff”), an “aggrieved employee” under the Private
4 Attorneys’ General Act of 2004 (“PAGA”), respectfully moves this Court for an Order granting
5 approval of the Settlement Agreement (“Settlement”) with Defendant Trademark Cosmetics, Inc.
6 (“Defendant” or “TCI”).¹ This PAGA representative action seeks civil penalties predicated on
7 TCI’s alleged (1) failure to pay all overtime wages owed, (2) unlawful rounding policy and
8 practice, (3) failure to provide all legally compliant meal periods, (4) unlawful rest period policy,
9 which fails to authorize third rest periods, (5) failure to pay all wages upon separation of
10 employment, and (6) failure to issue accurate and itemized wage statements, from April 24, 2019
11 until the date the Court approves the Settlement (the “PAGA Period”). The proposed Settlement,
12 under which TCI has agreed to pay a non-reversionary Maximum Settlement Amount (“MSA”)
13 of \$275,000.00, will resolve Plaintiff’s representative claim filed on behalf of the State of
14 California and all “Aggrieved Employees,” which include all current and former non-exempt
15 employees who worked for TCI during the PAGA Period.

16 Notably, the relief provided for under the Settlement, and the claims released thereunder,
17 are *solely* for the payment of *civil penalties* under the PAGA, and not for any underlying Labor
18 Code violations. The release also encompasses only PAGA civil penalties that could have been
19 sought by the Labor Commissioner for the violations identified in Plaintiff’s April 24, 2020 pre-
20 filing PAGA letter to the Labor & Workforce Development Agency (“LWDA”).²

21 In deciding whether to grant approval of the Settlement, the primary issue is whether the
22 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement
23 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the
24 product of arm’s-length negotiations; (2) was negotiated by attorneys experienced in wage-and-
25 hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was

26 _____
27 ¹ The proposed Settlement is attached as Exhibit 1 to the Declaration of Fletcher W. Schmidt filed
herewith. The Explanatory Letter to Aggrieved Employees is attached as Exhibit A to the Settlement.

28 ² Plaintiff’s April 24, 2020 PAGA letter is attached as Exhibit 2 to the Declaration of Fletcher W.
Schmidt filed herewith.

1 negotiated after undertaking sufficient discovery and investigation to evaluate the relative
2 strength and value of Plaintiff's PAGA claim and Defendant's defenses thereto; and (4) reflects
3 a reasoned compromise based on the relative strength and value of the PAGA claim, as well as
4 the risks, expenses, complexity and likely duration of further litigation.

5 As noted, the Settlement provides for a MSA of \$275,000.00. After deducting amounts
6 for requested attorneys' fees (\$91,666.67), attorney costs (\$20,369.16), Plaintiff's Representative
7 Enhancement Award (\$5,000), and administration costs (\$2,150), the Settlement provides for
8 distribution of a Net Settlement Amount ("NSA") of approximately \$155,814.17 to be paid to
9 Aggrieved Employees and the California Labor & Workforce Development Agency ("LWDA").
10 Settlement, § III.2-5; *see also* Declaration of Fletcher W. Schmidt, ¶ 12 & Exh. 1; Declaration of
11 Jodey Lawrence, ¶ 16 & Exh. B.

12 The NSA shall be distributed 75% (approximately \$116,860.63) to the LWDA, and 25%
13 (approximately \$38,953.54) to Aggrieved Employees, pursuant to the requirements of the PAGA
14 as codified in Lab. Code § 2699(i). *See* Settlement, § III.5. There are approximately 40 Aggrieved
15 Employees, resulting in average payments of approximately \$973.84 to each Aggrieved
16 Employee. Schmidt Decl., ¶ 12.

17 The MSA of \$275,000.00 represents a positive result for the State of California and
18 Aggrieved Employees. Further litigation may have resulted in a smaller recovery or even no
19 recovery at all, based on the defenses asserted by TCI and significant ongoing litigation risks.
20 Moreover, the MSA is greater than other PAGA penalty awards that have been approved as
21 reasonable. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624
22 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-aside of \$5,000, or
23 \$7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013
24 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-aside of \$10,000, or
25 \$3.33 per employee). The amounts requested for attorneys' fees and costs, service award, and
26 administration costs are all fair, adequate, and reasonable. Thus, Plaintiff respectfully requests
27 that the Court enter the [Proposed] Judgment and Order submitted concurrently herewith.

28 ///

1 **II. SUMMARY OF THE LITIGATION**

2 **A. The Parties**

3 TCI is a manufacturer of beauty and health formulas, with a manufacturing facility located
4 in Riverside, California. *See* Schmidt Decl., ¶ 8. Plaintiff worked for TCI as a non-exempt
5 “Purchaser” from July 2016 to approximately November 2019. *Id.*; *see also* Declaration of Jessica
6 Burrola (“Burrola Decl.”), ¶ 2. Plaintiff, like all Aggrieved Employees, was employed by TCI as
7 non-exempt during the PAGA Period and were subject to TCI’s wage and hour policies and
8 practices. *Id.*

9 **B. Relevant Procedural History**

10 On April 24, 2020, Plaintiff submitted her notification letter to TCI and to the LWDA
11 regarding TCI’s alleged Labor Code violations as required by Labor Code § 2699.3. *See* Schmidt
12 Decl., ¶ 9 & Exh. 2. On June 30, 2020, after the 65-day waiting period under Labor Code §
13 2699.3(a)(2)(A), Plaintiff filed a Representative Action Complaint (“Complaint”) in this Court,
14 alleging a single cause of action for PAGA civil penalties. Schmidt Decl., ¶ 9.

15 The parties subsequently agreed to mediate with Marc Feder, Esq. in an effort to resolve
16 Plaintiff’s PAGA claim. Schmidt Decl., ¶ 10. In connection with mediation, TCI informally
17 produced information and documents pertaining to Plaintiff and other Aggrieved Employees,
18 including but not limited to payroll and timekeeping records for Plaintiff and the Aggrieved
19 Employees (including actual time punches and rounded time entries, so that Plaintiff’s expert
20 could perform a rounding analysis); several data points including the number of Aggrieved
21 Employees and the total number of pay periods worked during the PAGA Period; and relevant
22 wage and hour policy documents, in order for Plaintiff’s counsel to investigate Plaintiff’s
23 allegations and value the claims prior to mediation. *Id.* The parties attended mediation with Mr.
24 Feder on July 1, 2021. *Id.* at ¶ 11. During mediation, the parties vigorously debated the legal bases
25 for Plaintiff’s claims and TCI’s defenses, the manageability of the case as a representative action,
26 the potential amount of penalties, and the parties’ data analyses and conclusions based thereon.
27 *Id.* With the assistance of Mr. Feder, the Parties agreed to fully and finally resolve Plaintiff’s
28 PAGA claim. *Id.* The Parties subsequently negotiated and finalized the Settlement now before the

1 Court. *Id.*

2 **C. Plaintiff's Claims and Defendant's Defenses**

3 Plaintiff's PAGA claim is predicated primarily on allegations that she and other
4 employees were required to work pursuant to an unlawful 4/10 Alternative Workweek Schedule.
5 *See* Schmidt Decl., ¶ 13. Specifically, Plaintiff alleges that TCI's AWS is invalid because TCI
6 failed to comply with the proper election procedures for implementing a lawful AWS under Wage
7 Order 1 by failing to provide the required disclosures in Spanish and Tagalog, despite the fact
8 that over 5% of TCI's affected employees primary language is Spanish and/or Tagalog. *See* Wage
9 Order 1 §3(C)(2) ("[A]ny employer who proposed to institute an alternative workweek schedule
10 shall have made a disclosure in writing to the affected employees ... An employer shall provide
11 that disclosure in a non-English language, as well as in English, if at least five (5) percent of the
12 affected employees primarily speak that non-English language... Failure to comply with this
13 paragraph shall make the election null and void."); *see also* Schmidt Decl., ¶ 13. In response,
14 TCI maintains that it substantially complied with the requirements of Wage Order 1, § 3(c)(2)-
15 (3)³ to adopt a valid AWS by distributing written correspondence to Aggrieved Employees, that
16 a secret ballot election would be taking place where each Aggrieved Employee would be able to
17 vote in favor or against the proposed AWS. Schmidt Decl., ¶ X. TCI also contends that it complied
18 with the Wage Order's requirements for adopting a valid AWS by holding meetings with some
19 Aggrieved Employees either 13 or 14 days prior to the AWS election. *Id.* TCI further asserts that
20 the AWS is to the benefit of the employees who prefer to only work four days per week rather
21 than five, as evidenced by more than (2/3rds) of employees voting in favor of the AWS. *Id.*

22 Plaintiff further alleges that assuming *arguendo* that TCI's AWS is valid, TCI still failed
23 to pay employees for all overtime wages owed as TCI failed to pay its employees daily overtime
24 for their hours worked over 10 hours in a workday but less than 40 hours in a workweek in
25 violation of Labor Code section 511(a) ("Upon the proposal of an employer, the employees of an

26 ³ Pursuant to Wage Order 1, § 3(c)(3), "Prior to the secret ballot vote, any employer who proposed to
27 institute an alternative workweek schedule shall have made a disclosure in writing to the affected
28 employees, including the effects of the proposed arrangement on the employees' wages, hours, and
benefits. Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior to voting,
for the specific purpose of discussing the effects of the alternative workweek schedule... Failure to
comply with this paragraph shall make the election null and void."

1 employer may adopt a regularly scheduled alternative workweek that authorizes work by the
2 affected employees for no longer than 10 hours per day within a 40-hour workweek without the
3 payment to the affected employees of an overtime rate of compensation pursuant to this section.”).
4 *See* Schmidt Decl., ¶ 14. In response, TCI argues that its failure to allegedly pay any daily
5 overtime wages was inadvertent and merely a glitch in their payroll system and that regardless,
6 employees were rarely required to work more than 10 hours per workday and less than 40 hours
7 per workweek given their 4/10 AWS schedule. *Id.*

8 With regard to Plaintiff’s claim that TCI rounded its employees’ timekeeping entries to
9 quarter-hour increments in a manner that consistently favored TCI and resulted in employees’
10 being underpaid, TCI contends it utilizes an even-handed timekeeping system that, on balance,
11 results in employees being paid for all hours actually worked. Schmidt Decl., ¶ 15; *See*’s *Candy*
12 *Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 901 (holding rounding policies lawful if they are
13 consistently applied and, on average, favor neither overpayment nor underpayment of wages).
14 TCI further argues that just because an employee is clocked in does not mean they are *working*.
15 For example, much of the alleged unpaid time was pre-shift (i.e., employees clocked in before the
16 scheduled start of the shift), and TCI argues employees did not immediately start working but
17 instead engage in personal activities like reading or talking with co-workers before their shift.
18 Schmidt Decl., ¶ 15. Moreover, TCI asserts the amount of unpaid time per shift is *de minimis* and
19 thus non-compensable. *Id.* TCI also contends this claim is not manageable, since its rounding
20 policy is facially neutral and some employees were *overpaid* due to rounding, and individualized
21 inquiries would be necessary as to whether employees were in fact underpaid or overpaid for each
22 workday in question (including whether they were actually working when they were clocked in),
23 resulting in an unmanageable series of mini-trials. *Id.*

24 With regard to Plaintiff’s meal period allegations, Plaintiff alleges that TCI failed to
25 provide her and other aggrieved employees with a meal period before the completion of the fifth
26 hour of work and/or a second meal period when they worked shifts in excess of 10.0 hours. *See*
27 Schmidt Decl., ¶ 16. TCI contends that it has always maintained compliant written meal period
28 policies, including provision of both first and second meal periods. *Id.* Furthermore, TCI asserts

1 that any late meal periods were the result of employee choice rather than any policy or practice
2 of TCI. *Id.* TCI also contends that, in practice, it has always provided employees with the
3 *opportunity* to take second meal periods on shifts over 10.0 hours, but that employees choose to
4 waive second meal periods, as they are entitled to do under Labor Code section 512(a). *Id.* TCI
5 also maintains that Plaintiff's meal period claim would not be manageable on a representative
6 basis, as individual inquiries would be required to establish which Aggrieved Employees
7 experienced non-compliant meal periods, how many non-compliant meal periods each Aggrieve
8 Employee experienced, and why a particular Aggrieved Employee had a non-compliant meal
9 period during a particular shift. *Id.*

10 As for Plaintiff's rest period claim, Plaintiff alleged that TCI failed to authorize and permit
11 Plaintiff and Aggrieved Employees to take all statutorily permitted rest periods during their shifts,
12 including third rest periods. *See* Schmidt Decl., ¶ 17. TCI contends that it has always maintained
13 lawful written rest period policies, including the number, duration, and frequency of rest periods,
14 and that it has always authorized and permitted rest periods in accordance with those policies. *Id.*
15 TCI further contends that Plaintiff and other Aggrieved Employees often worked independently,
16 and thus TCI contends that they had complete discretion regarding when and how to take their
17 rest breaks. *Id.*

18 As for Plaintiff's derivative claims that TCI violated its wage statement and final payment
19 obligations in violation of Labor Code §§ 226 and 203, respectively, TCI asserts it has strong,
20 good-faith defenses to Plaintiff's underlying claims, precluding a finding of a failure to pay all
21 final wages that would otherwise result in waiting time penalties. Schmidt Decl., ¶ 18; *see also* 8
22 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition
23 of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good
24 faith dispute" precluded imposition of waiting time penalties). TCI further contends Plaintiff's
25 meal and rest period claims cannot support a claim for violations of Labor Code §§ 226 or 203,
26 as Courts of Appeal recently held in *Naranjo v. Spectrum Security Servs., Inc.*, 40 Cal.App.5th
27 444, 473-75 (2019) (*review granted* Jan. 2, 2020) and *Betancourt v. OS Rest. Svcs., LLC*, 49
28 Cal.App.5th 240, 248 (2020) (*review granted* Aug. 19, 2020). TCI further contends that wage
statements always accurately reflected amounts paid to employees, and thus TCI cannot be found

1 liable for wage statement violations under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th
2 1308, 1336 (2018) (“The purpose of section 226 is to *document the paid wages* to ensure the
3 employee is fully informed regarding the calculation of those wages.”) (italics in original).
4 Schmidt Decl., ¶ 18.

5 TCI further maintains that even if the Court awarded PAGA penalties for any of the
6 alleged violations, the Court would substantially reduce the penalties based on the discretionary
7 factors in Labor Code § 2699(e)(2) (authorizing reduction in PAGA penalties “if, based on the
8 facts and circumstances of the particular case, to do otherwise would result in an award that is
9 unjust, arbitrary and oppressive, or confiscatory.”). Schmidt Decl., ¶ 19. TCI argues that this is
10 especially true in this case where TCI pays its employees weekly, and therefore, as a result, has a
11 potential liability that is much higher regardless of any wrongdoing by TCI (i.e if TCI paid its
12 employees bi-weekly there would be less pay periods). *Id.* TCI argues that many courts have
13 reduced PAGA penalties drastically where, as here, the employer presented good-faith defenses
14 and attempted to comply with the law. *See, e.g., Thurman v. Bayshore Transit Mgmt., Inc.*, 203
15 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because “defendants took
16 their obligations...seriously and attempted to comply with the law”); *Fleming v. Covidien, Inc.*,
17 No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA
18 penalties by over 82%, in part because employer was “not aware” of violations); *Carrington v.*
19 *Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay
20 period where employer made “good faith attempts” to comply with the law). *Id.*

21 **III. SUMMARY OF THE SETTLEMENT**

22 **A. “Aggrieved Employees” Defined**

23 As noted above, the “Aggrieved Employees” under the Settlement consist of all current or
24 former non-exempt employees who worked for TCI from April 24, 2019 until the date the Court
25 approves this Settlement. *See* Settlement, § I.2.

26 **B. Monetary Terms**

27 The Settlement provides for TCI’s payment of a non-reversionary Gross Settlement
28 Amount (“MSA”) of \$275,000.00. *See* Settlement, §§ I.10, III.2. After deducting attorneys’ fees,

1 litigation costs, Plaintiff's service award, and administration costs, the Settlement provides for
2 the Net Settlement Amount ("NSA") to be distributed 75% to the LWDA and 25% to Aggrieved
3 Employees, per Labor Code § 2699(i). *Id.*, §§ III.4-5. The Aggrieved Employees' portion of the
4 NSA is estimated to be \$38,953.54 and will be distributed to all Aggrieved Employees based on
5 the number of pay periods worked by each Aggrieved Employee during the PAGA Period. *See*
6 Settlement, § III.5.

7 **1. Attorneys' Fees and Costs, Administration Costs, and Plaintiff's**
8 **Enhancement award**

9 Plaintiff's counsel request one-third of the MSA (i.e., \$91,666.67) in attorneys' fees, and
10 \$20,369.16 in litigation costs. *See* Settlement, § III.4(a); Schmidt Decl., ¶¶ 21-23 & Exhs. 3 & 5.⁴
11 As discussed in detail below, a fee award of one-third of the MSA is fair, adequate, and reasonable
12 as a percentage of the settlement fund and as confirmed by a lodestar cross-check, and is in line
13 with fee awards in other PAGA settlements.

14 The parties have agreed to engage Phoenix Settlement Administrators ("Phoenix") as the
15 third-party settlement administrator. *See* Settlement, § IV.1. Phoenix will update Aggrieved
16 Employee addresses using the National Change of Address database, calculate and distribute
17 Individual PAGA Payments, mail payments to all Aggrieved Employees together with the
18 Explanatory Letter, and perform other duties that are integral to the effectuation of the Settlement.
19 *Id.*, § IV.2. Plaintiff requests that the Court approve \$2,150 in administration costs to Phoenix,
20 which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.* at § III.4(b);
21 *see also* Declaration of Jodey Lawrence ("Lawrence Decl.") and attached exhibits.

22 Finally, Plaintiff requests a service award of \$5,000, in recognition of Plaintiff's
23 contributions to this case and her efforts in bringing this case to successful resolution. *See*
24 Settlement, § III.4(b); Schmidt Decl., ¶ 25; Declaration of Jessica Burrola ("Burrola Decl."), ¶¶
25 6,8. Plaintiff has also agreed to sign an individual settlement agreement that includes a general
26 release and therefore, will release her underlying Labor Code claims, among other potential
27

28 ⁴ Plaintiff's request for \$20,369.16 in litigation costs, includes a request for \$68.75 in anticipated costs for filing and serving the instant Motion. Schmidt Decl., ¶ 23, Exh. 5

claims. *See* Schmidt Decl., ¶ 24.

2. Payment to LWDA and Aggrieved Employees

The NSA will be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Labor Code § 2699(i). Based on the above requested distributions, the NSA is estimated to be \$38,953.54, with \$116,860.63 paid to the LWDA and \$38,953.54 distributed to Aggrieved Employees. Schmidt Decl., ¶ 12. As noted, there are approximately 40 total Aggrieved Employees. *Id.* Thus, it is anticipated that overall, Aggrieved Employees will receive average Settlement payments of approximately \$973.84. *Id.*

3. Funding of the Settlement

TCI will deposit the Maximum Settlement Amount with Phoenix, the Settlement Administrator, within ten (10) business days of Court approval. *See* Settlement. § III.2. Within fifteen (15) business days of Court approval, TCI shall provide the Settlement Administrator with information for Aggrieved Employees, including each Aggrieved Employee's full name, last known mailing address, last known telephone number, dates of employment, total pay periods worked, and social security numbers. *See* Settlement. § IV.2. Within fifteen (15) business days after receiving the information for the Aggrieved Employees and after receiving approval from counsel of the payment calculations, Phoenix will mail the Explanatory Letter and Individual PAGA Payments to Aggrieved Employees via First-Class U.S. Mail. *See* Settlement, § IV.3.

Funds from any settlement checks remaining uncashed after 180 days will be sent by Phoenix to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee. *See* Settlement, § IV.3.

IV. LEGAL ARGUMENT

A. Standards for Approval of a PAGA Settlement

The settlement of a PAGA claim requires court approval pursuant to the PAGA statute, which states that the "court shall review and approve any settlement of any civil action filed pursuant to this part." Labor Code § 2699(l). Of course, "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." *See In re TD Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13, 2011). "[T]he

1 very essence of a settlement is...‘a yielding of absolutes and an abandoning of highest hopes,’”
2 as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
3 litigation that induce consensual settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d
4 615, 624 (9th Cir. 1982). As such, “the settlement or fairness hearing is not to be turned into a
5 trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure
6 of what might have been achieved by the negotiators.” *Id.*

7 Although the PAGA statute does not set forth the criteria by which a PAGA settlement is
8 to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a
9 class action settlement. However, “a PAGA claim asserted on a non-class representative basis...is
10 not considered a class action but a law enforcement action, and therefore does not have to meet
11 the requirements of [a class action].” *Casida v. Sears Holdings Corp.*, 2012 WL 253217 at *3
12 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at *4 (E.D. Cal. Jul.
13 1, 2010) (“PAGA claims are law enforcement actions, not class actions”). A court’s review of a
14 PAGA settlement implicates the following unique features that render the approval process
15 distinct from approval of a class action settlement.

16 First, in evaluating a PAGA settlement, the court is not concerned with amount(s) received
17 by “aggrieved employees,” but rather, must focus on the total settlement amount in achieving
18 PAGA’s objective. “The remedy sought in a PAGA suit consists of civil penalties, not individual
19 or class damages.” *Mendez*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties
20 are not meant to compensate unnamed employees because the action is fundamentally a law
21 enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, No. C-08-2073-MHP, 2010 WL
22 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court confirmed, “PAGA claims are
23 ‘representative’ actions in the sense that they are brought on the state’s behalf. The
24 employee...‘represents the same legal right and interest as’ those agencies — ‘namely, recovery
25 of civil penalties that otherwise would have been assessed and collected by the [LWDA].” *ZB,*
26 *N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian v. CLS Transp. Los Angeles, LLC*, 59
27 Cal.4th 348, 380 (2014)).

28 Moreover, while “[a PAGA] action is ... designed to protect the public and penalize the

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

7 Second, consistent with the fact that unnamed employees have no property interest in a
8 PAGA claim,⁵ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
9 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
10 1340777 at *5; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482 (2020)
11 (recognizing that “there is no mechanism for opting out of the judgment entered on the PAGA
12 claim.”). This renders the approval process of a PAGA settlement distinct from a class action
13 settlement, as the Court need not employ the “two-step approval process” required for class action
14 settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

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

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

23 In deciding whether to approve a proposed settlement, a trial court has broad powers to
24 determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup.*
25 *Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to
26

27 ⁵ “The [PAGA] does not create property rights or any other substantive rights” as “[i]t is simply
28 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 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*,
2 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court
3 to consider include, but are not limited to:

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

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

14 Because settlements inherently involve compromise, even a settlement providing for
15 substantially narrower relief than might be obtained if the suit were successfully litigated can be
16 reasonable because “the public interest may indeed be served by a voluntary settlement in which
17 each side gives ground in the interest of avoiding litigation.” *Wershba v. Apple Computer, Inc.*,
18 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*,
19 455 F.2d 101, 109 (7th Cir. 1972)). Courts also review the discovery process and information
20 received through it to aid them in assessing whether the parties sufficiently developed the claims
21 and their supporting factual bases before reaching settlement. *Kullar*, 168 Cal.App.4th at 129-31.
22 Information is sufficient where it allows the parties and the court to form “an understanding of
23 the amount that is in controversy and the realistic range of outcomes of the litigation.” *Clark v.*
24 *Am. Residential Serv. LLC*, 175 Cal.App.4th 785, 801 (2009). This requirement exists so that the
25 parties can provide the court with “a meaningful and substantiated explanation of the manner in
26 which the factual and legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132.

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

28 Although Plaintiff steadfastly maintains that this action is meritorious, Plaintiff
acknowledges there are substantial risks and uncertainty in proceeding to trial. As noted in
Section II.B., *supra*, TCI presented numerous defenses and arguments as to why Plaintiff’s
claims lacked merit and her damages calculations were overstated, including that the Court would

utilize its discretion to substantially reduce any award of PAGA penalties in light of TCI's good-faith defenses to Plaintiff's underlying claims. While Plaintiff was prepared to litigate her claims through trial, Plaintiff faced substantial challenges in prevailing in this matter and obtaining a better result than will be provided through the Settlement. Thus, this factor supports approval.

b. Risk, Expense, Complexity, and Duration of Further Litigation

Although the parties had engaged in significant informal discovery, the parties still had more formal discovery, including written and deposition discovery, to conduct if the case did not settle. Moreover, potential additional substantive motion work and trial preparation remained for the parties, as well as potential appeals. As a result, the parties would likely incur considerably more attorneys' fees and costs through trial and possible appeal. The Settlement avoids those risks and the accompanying expense.

c. Amount Offered in Settlement Given Value of Claims

The proposed Settlement provides a fair and reasonable monetary recovery for the State of California and Aggrieved Employees in the face of hotly disputed claims, when compared with the potential realistic exposure. Based on data provided by TCI, there were approximately 3,237 pay periods worked by the Aggrieved Employees through July 1, 2021. Schmidt Decl., ¶ 20; Settlement, § 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 by Labor Commissioner or a court that it violated Labor Code)), Plaintiff estimated a **maximum** potential PAGA exposure of \$323,700, assuming that Plaintiff could prove a violation in each and every pay period, without any reduction on the merits or for the risk of reduced penalties. *Id.* The proposed \$275,000 MSA thus represents 85% of Plaintiff's **maximum** potential recovery, while avoiding the risks of proceeding through trial. Schmidt Decl., ¶ 20. "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 claim. Approval of the Settlement is appropriate, as the Settlement

will provide tangible monetary relief to Aggrieved Employees and the State of California.

d. Discovery Completed and the Status of Proceedings

As noted, the parties engaged in substantial informal discovery to evaluate the PAGA claim. TCI provided Plaintiff with, *inter alia*, timekeeping and payroll records for non-exempt employees, additional relevant data, and its relevant written policies. Schmidt Decl., ¶ 10. Only after engaging in mediation and in adversarial discussions about the likelihood of prevailing on the merits, did the parties reach the proposed Settlement. Thus, this factor supports settlement approval. *Id.*

e. The Experience and Views of Counsel

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

B. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the Settlement Fund, as Cross-Checked Against Counsel’s Lodestar

Plaintiff is entitled to attorney fees in this PAGA action under Labor Code § 2699(g)(1), which provides that “[a]ny employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorneys’ fees and costs.” *See also Gouskos v. Aptos Village Garage, Inc.*, 94 Cal.App.4th 754, 765 (2001) (holding that attorneys’ fees to prevailing party are mandatory when the statute uses the word “shall”). It is undisputed that by obtaining PAGA penalties for the LWDA and Aggrieved Employees, Plaintiff has prevailed. *See Graciano v. Robinson Ford Sales*, 144 Cal.App.4th 140, 153 (2006) (“[P]laintiffs may be considered ‘prevailing parties’ for attorney’s fee purposes if they succeed on any significant issue in the litigation that achieves some

1 of the benefit the parties sought in bringing suit.” (internal citation omitted)).

2 A fee award is justified where the legal action has produced its benefits by way of
3 settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Comty. for*
4 *Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest* (1977) 20
5 Cal.3d 25, 34 (“when a number of persons are entitled in common to a specific fund, and an action
6 brought by a plaintiff...for the benefit of all results in the creation or preservation of that fund,
7 such plaintiff...may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32
8 Cal.3d 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties,
9 the trial court acts within its equitable power to prevent the other parties’ unjust enrichment);
10 *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 (the percentage of
11 the fund method for calculating attorneys’ fees more accurately reflects the results achieved for
12 the putative class than the lodestar method and “establishes reasonable expectations on the part
13 of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
14 avoids protracted litigation.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005)
15 (“The percentage-of-recovery method is generally favored in common fund cases because it
16 allows courts to award fees from the fund ‘in a manner that rewards counsel for success and
17 penalizes it for failure.’”).

18 Fee awards of one-third of the settlement fund are routinely awarded in California courts
19 in class and representative PAGA actions. The California Supreme Court confirmed its approval
20 of the use of the “percentage of fund” method in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480,
21 506 (2016), where it announced “the percentage of fund method survives in California class action
22 cases...” Specifically, the *Laffitte* Court held:

23 The recognized advantages of the percentage method—including relative
24 ease of calculation, alignment of incentives between counsel and the class, a
25 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.

26 *Id.*, at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-
27 third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also*
28 *Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)

1 (approving attorneys' fees of one-third of settlement fund in PAGA settlement); *Clavel v. Lupe's*
2 *Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25,
3 2016) (same). This is also consistent with Plaintiff's counsel's experience in similar wage-and-
4 hour class and PAGA matters. Schmidt Decl., ¶ 21.

5 Here, Plaintiff's fee request of one-third of the MSA (estimated to be \$91,666.67), which
6 is the same percentage approved by the California Supreme Court in *Laffitte*, is fair and reasonable
7 based on the percentage of the recovery method, as confirmed by a lodestar cross-check.

8 In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the
9 reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial court
10 calculates counsel's lodestar and determines whether the "lodestar multiplier" needed to bring the
11 lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. Under
12 the lodestar method, the court multiplies the number of hours reasonably expended by each
13 attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure
14 by a "multiplier" to account for a range of factors, such as the contingent nature of the case and
15 the degree of success achieved. *See Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977); *Ketchum v.*
16 *Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834
17 (2001) ("There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial
18 discretion to increase or decrease a lodestar calculation").

19 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
20 *Chavez*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L.*
21 *County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving
22 multiplier of approximately 12.8). In class and representative actions, where the value of the
23 benefit conferred "can be monetized with a reasonable degree of certainty," a court may "adjust
24 the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
25 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
26 litigation." *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009).

27 In this case, Counsel has a lodestar of approximately \$109,648.75, without the use of any
28 multiplier, resulting in a *negative multiplier* of approximately 0.85 compared to the \$91,666.67

fee request. Schmidt Decl., ¶ 22, Exh. 3. A general summary showing the number of hours of work performed by each attorney and firm paralegal is set forth below. Counsel submits that the billing rates used are reasonable in view of the market rates and the rates at which Class Counsel has been approved at in other California and State courts. *Id.* Exhibit 4 (Laffey Matrix).

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (15th Year Attorney)	\$675	25.8	\$17,448.75
Fletcher W. Schmidt (9th Year Attorney)	\$650	65.9	\$42,835.00
Alexandra R. McIntosh (4th Year Attorney)	\$400	118.95	\$47,580.00
Firm Paralegals	\$175	10.2	\$1,785.00
Total Lodestar			\$109,648.75

Critically, Plaintiff’s recovery for the State of California and Aggrieved Employees of approximately \$275,000 significantly exceeds other PAGA awards approved by California courts. *See, e.g., Aguirre v. DSW, Inc.*, No. DCV-11-01522-GW (SPx), 2012 WL 11875296 at *3 (C.D. Cal. Nov. 29, 2012) (approving \$10,000 PAGA payment); *Jamil, supra*, 2020 WL 6544660 at *6 (S.D. Cal. Nov. 5, 2020) (approving \$10,000 total PAGA payment, finding the amount “fair and adequate in view of the purposes and policies of PAGA”); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-cv-0324-AWI-SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (“approving \$10,000 total PAGA payment, finding that “[t]his comports with settlement approval of PAGA awards in other cases. [Citations.]”); *Boyd v. Bank of Am. Corp.*, No. SACV-13-0561-DOC (JPRx), 2014 WL 6473804 at *8 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Franco v. Ruiz Food Prods.*, No. 1:10-cv-02354-SKO, 2012 WL 5941801 at *14 (E.D. Cal. Nov. 27, 2012) (approving \$10,000 PAGA payment); *Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (\$10,000 PAGA payment).

Counsel conducted extensive research regarding the merits of Plaintiff’s claims, her ability to recover PAGA civil penalties, and TCI’s potential defenses. Counsel also performed extensive analysis of data and information produced by TCI, used this analysis to evaluate Plaintiff’s claims, and drafted a comprehensive mediation brief. Counsel also attended a private

1 mediation, and expended significant effort in preparing settlement documents, this Motion and
2 supporting documents, and will oversee the settlement administration process. Given the
3 considerable potential for adverse outcomes in this case, the contingent risk borne by Plaintiff's
4 counsel was great. Schmidt Decl., ¶ 23. The quality of Plaintiff's counsel's work, and the efficacy
5 and dedication with which it was performed, should be compensated. Thus, Plaintiff submits the
6 requested fee award is fair, reasonable and adequate and should be approved.

7 Other factors show the requested amount of fees is reasonable. This case involved nuanced
8 legal issues, including but not limited to the legality of TCI's alternative workweek schedule and
9 the availability and amount of PAGA penalties for alleged Labor Code violations. TCI was also
10 represented by experienced wage-and-hour litigation counsel. Thus, Plaintiff submits that the
11 requested fee award is fair, reasonable and adequate and should be approved.

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

14 Plaintiff's request for reimbursement of litigation costs of \$20,368.91 is also fair and
15 reasonable. All of Plaintiff's litigation costs are reasonably incurred. *See* Schmidt Decl., ¶ 23 &
16 Exh. 5. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts.
17 *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-
18 of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, 2011
19 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings, motions and exhibits
20 are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of*
21 *Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-
22 59 (9th Cir. 2006) (legal research costs reimbursable); *In re Immune Response Sec. Litig.*, 497
23 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
24 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

25 Likewise, the request for administration costs of \$2,150 is also fair and reasonable.
26 Phoenix was selected because it is an experienced settlement administrator and returned the
27 lowest bid. *See* Declaration of Jodey Lawrence & Exhibits; *see also* Schmidt Decl., ¶ 26.
28 Moreover, Phoenix will perform several important functions that are integral to the

1 implementation of the Settlement. *Id.* Its modest requested fee is therefore reasonable.

2 **D. The Court Should Approve Plaintiff's Requested Enhancement**
3 **Award Because It Is Fair, Adequate, and Reasonable in View of**
4 **Plaintiff's Efforts and the Risks She Assumed in This Litigation.**

5 Courts routinely approve enhancement awards to compensate named plaintiffs for the
6 services they provide and the risks they incur during representative litigation. *See, e.g., Bell v.*
7 *Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named
8 plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
9 \$50,000 incentive payment); *see also* Plaintiff's Request for Judicial Notice, Exhs. 1-7 (PAGA
10 settlement approval orders awarding incentive payments to representative PAGA plaintiffs
11 ranging from \$5,000 to \$20,000). Here, Plaintiff seeks an enhancement award of \$5,000. *See*
12 Settlement, § III.4.a. This request is reasonable given Plaintiff's efforts in this case and the risks
13 she undertook on behalf of Aggrieved Employees. Burrola Decl., ¶¶ 2-7. Plaintiff provided
14 substantial factual information and documents to counsel, assisted in identifying potential
15 witnesses, and participated in numerous discussions with Plaintiff's counsel regarding the case.
16 *Id.*; *see also* Schmidt Decl., ¶ 25. Accordingly, Plaintiff's requested service award is appropriate
17 and justified as part of the Settlement.

18 **V. CONCLUSION**

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

22
23 Dated: January 18, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

24 By: 
25 Fletcher W. Schmidt
26 Attorneys for Plaintiff and
27 Aggrieved Employees
28