

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Neil M. Larsen (SBN 276490)
nlarsen@haineslawgroup.com
Jaime Castaneda (SBN 344833)
jcastaneda@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

CAPSTONE LAW APC

Raul Perez (SBN 174687)
raul.perez@capstonelawyers.com
Mark A. Ozzello (SBN 116595)
mark.ozzello@capstonelawyers.com
Brandon K. Brouillette (SBN 273156)
brandon.brouillette@capstonelawyers.com
Joseph Hakakian (SBN 323011)
joseph.hakakian@capstonelawyers.com
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Tel: (310) 556-4811
Fax: (310) 943-0396

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

PEDRO URBINA, CARLOS TORRES, and
REBECCA MEDRANO, as individuals and
on behalf of all other aggrieved employees,

Plaintiffs,

vs.

MOSSY AUTOMOTIVE GROUP, INC., a
California corporation; MOSSY
AUTOMOTIVE GROUP II, LLC, a
California limited liability company; MOSSY
NISSAN, INC., a California corporation;
MOSSY FORD, INC., a California
corporation; MOSSY AUTOMOTIVE
GROUP EL CAJON INC., a California
corporation; MOSSY AUTOMOTIVE
GROUP LEMON GROVE INC., a California
corporation; MOSSY NISSAN CHULA

Lead Case No.: 37-2020-00022420-CU-OE-CTL

[Consolidated with
Case No. 37-2020-00042815-CU-OE-CTL]

[Assigned for all purposes to the Hon. Gregory
W. Pollack, Dept. C-71]

**PLAINTIFFS' 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
PAYMENTS**

Date: March 10, 2023
Time: 9:30 a.m.
Dept.: C-71
Reservation ID: 2890610

VISTA, a California corporation; MOSSY NISSAN EL CAJON, a California corporation; MOSSY NISSAN ESCONDIDO, a California corporation; MOSSY NISSAN KEARNY MESA, a California corporation; MOSSY NISSAN NATIONAL CITY, a California corporation; MOSSY NISSAN OCEANSIDE, a California corporation; MOSSY NISSAN POWAY, a California corporation; MAG WEST MOSSY FORD II, LP, a California limited partnership; MAG WEST MOSSY HONDA II, LP, a California limited partnership; MAG WEST MOSSY NISSAN II, LP, a California limited partnership; MAG WEST MOSSY TOYOTA II, LP, a California limited partnership; MAG WEST MOSSY VOLKSWAGEN II, LP, a California limited partnership; and DOES 1 through 100,

Defendants.

Complaint Filed: June 29, 2020
Trial Date: None Set.

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

3 PLEASE TAKE NOTICE that on March 10, 2023, at 9:30 a.m., or as soon thereafter as
4 the matter may be heard in Department C-71 of the above-entitled Court, located at 330 West
5 Broadway, San Diego, CA 92101, Plaintiffs Pedro Urbina, Carlos Torres, Rebecca Medrano, and
6 Oscar Santos Barrera (“Plaintiffs”), individually and on behalf of the State of California and other
7 Aggrieved Employees, will, and hereby do, 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.*) and as set forth in the Parties’ Settlement Agreement,
11 a true and correct copy of which is attached to the Declaration of Paul K. Haines filed
12 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 Gross Settlement Amount pursuant to the
18 terms of the Settlement Agreement;
- 19 5. Approving an award of attorneys’ fees to Plaintiffs’ counsel of \$126,864.00 and an
20 award of litigation costs to Plaintiffs’ counsel of \$28,648.72;
- 21 6. Approving an enhancement payment to each Plaintiff in the amount of \$5,000.00, for
22 a total of \$20,000.00, for their service to Aggrieved Employees and the State of
23 California;
- 24 7. Approving \$8,750.00 in administration costs to Phoenix Settlement Administrators;
25 and
- 26 8. Approving the payment of \$147,246.96 to the California Labor & Workforce
27 Development Agency for its share of PAGA civil penalties.

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 Raul Perez
3 and all exhibits attached thereto; the declaration of Jodey Lawrence of Phoenix Settlement
4 Administrators and all exhibits attached thereto; the declarations of Plaintiffs Pedro Urbina,
5 Carlos Torres, Rebecca Medrano, and Oscar Santos Barrera; the Settlement Agreement;
6 Plaintiffs' Request for Judicial Notice and all exhibits attached thereto; all other pleadings and
7 papers on file in this action; and on any further oral or documentary evidence or argument
8 presented at the time of hearing.

9
10
11 Dated: October 6, 2022

Respectfully submitted,

HAINES LAW GROUP, APC

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13 By: 
14 Paul K. Haines
15 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Pedro Urbina, Carlos Torres, Rebecca Medrano, and Oscar Santos Barrera
4 (“Plaintiffs”), “Aggrieved Employees” under the Private Attorneys’ General Act of 2004
5 (“PAGA”), respectfully move this Court for an Order granting approval of the Settlement
6 Agreement (“Settlement”) with Defendants Mossy Nissan, Inc., Mossy Automotive Group
7 Lemon Grove, Inc., Mossy Automotive Group, Inc., Mossy Ford, Inc., Mossy Automotive Group,
8 II, Mossy Nissan Chula Vista, Mossy Auto Imports, MAG Infiniti OCN, LLC, MAG Infiniti KM,
9 LLC, MAG Infiniti ESC, LLC (“Defendants”).¹

10 This PAGA representative action seeks civil penalties predicated on Defendants’ alleged
11 violations of the California Labor Code from April 12, 2019 to June 30, 2022 (the “PAGA
12 Period”). The proposed Settlement, under which Defendants have agreed to pay a non-
13 reversionary Gross Settlement Amount (“GSA”) of \$380,592.00, will resolve Plaintiffs’
14 representative claims filed on behalf of the State of California and all “Aggrieved Employees,”
15 which includes all current and former non-exempt employees who worked for Defendants in
16 California at any time during the PAGA Period.

17 Notably, the relief provided for under the Settlement, and the claims released thereunder,
18 are *solely* for the payment of *civil penalties* under the PAGA, and not for any underlying Labor
19 Code violations. The release also encompasses only PAGA civil penalties based upon the factual
20 allegations and theories alleged by Plaintiffs in this Action, and only for claims arising during the
21 PAGA Period, which as noted above, ends on June 30, 2022.

22 In deciding whether to grant approval of the Settlement, the primary issue is whether the
23 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement
24 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the
25 product of arm’s-length negotiations; (2) was negotiated by attorneys experienced in wage-and-
26

27 ¹ The proposed Settlement Agreement is attached as Exhibit 1 to the Declaration of Paul K. Haines
28 filed herewith. The Explanatory Letter to Aggrieved Employees is attached as Exhibit A to the
Settlement.

hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was negotiated after undertaking sufficient discovery and investigation to evaluate the relative strength and value of Plaintiffs' PAGA claim and Defendants' defenses thereto; and (4) reflects a reasoned compromise based on the relative strength and value of the PAGA claim, as well as the risks, expenses, complexity and likely duration of further litigation.

As noted above, the Settlement provides for a GSA of \$380,592.00. After deducting amounts for requested attorneys' fees (\$126,864.00), attorneys' costs (\$28,648.72), Plaintiffs' enhancement payments (\$5,000.00 each, for a total of \$20,000.00), and administration costs (\$8,750.00), the Settlement provides for distribution of a Net Settlement Amount ("NSA") of approximately \$196,329.28 to be paid to Aggrieved Employees and the California Labor & Workforce Development Agency ("LWDA"). Settlement, §§ III.4-5; *see also* Declaration of Paul K. Haines ("Haines Decl."), ¶ 18 & Exhibit 1; Declaration of Jodey Lawrence ("Lawrence Decl."), ¶ 17 & Exhibit B.

The NSA shall be distributed 75% (approximately \$147,246.96) to the LWDA, and 25% (approximately \$49,082.32) to Aggrieved Employees, pursuant to the requirements of the PAGA as codified in Lab. Code § 2699(i). *See* Settlement, § III.5; Haines Decl., ¶ 18. There are approximately 1,920 Aggrieved Employees, resulting in average payments of approximately \$25.56 to each Aggrieved Employee. Haines Decl., ¶ 18.

This Settlement represents a reasonable recovery for the State of California and Aggrieved Employees. Of particular relevance here is the fact that on June 15, 2022, only a few months after this Settlement was reached, the United States Supreme Court issued its opinion in *Viking River Cruises, Inc. v. Moriana* ("Viking River") where it overruled the California Supreme Court's holding in *Iskanian v. CLS Transportation Los Angeles, LLC* which held that a representative PAGA claim could not be compelled to arbitration. *See Viking River Cruises, Inc. v. Moriana* (June 15, 2022, No. 20-1573) 596 U.S. ____ [____ S.Ct. ____, 2022 WL 2135491; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348. In effect, the U.S. Supreme Court's ruling in *Viking River* means that if this matter had not settled, Defendants would likely have been able to compel this case to individual arbitrations based on the arbitration agreements signed by

each Plaintiff, barring Plaintiffs from recovering PAGA civil penalties for violations suffered by other Aggrieved Employees. Therefore, this is a unique case where further litigation would almost certainly have resulted in a smaller recovery, or even no recovery at all. Moreover, notwithstanding these risks, the GSA exceeds other PAGA penalty awards approved as reasonable throughout California. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-aside of \$5,000, or \$7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-aside of \$10,000, or \$3.33 per employee). Further, the amounts requested for attorneys' fees and costs, Plaintiffs' enhancement payments, and settlement administration costs are fair, adequate, and reasonable. In light of the foregoing, this Court should enter the [Proposed] Judgment and Order submitted herewith.

II. SUMMARY OF THE LITIGATION

A. Brief Factual Background and Summary of Claims

Defendants own and operate several car dealerships in Southern California including, but not limited to, Mossy Honda Lemon Grove, Mossy Infiniti, Mossy Mitsubishi Escondido, Mossy Nissan Chula Vista, Mossy Nissan El Cajon, Mossy Nissan Escondido, Mossy Nissan Kearny Mesa, Mossy Nissan National City, Mossy Nissan Poway, Mossy Nissan Oceanside, Mossy Toyota San Diego, Mossy Volkswagen Escondido, and Mossy Ford San Diego. Haines Decl., ¶ 11. Plaintiff Carlos Torres worked at Defendants' Mossy Volkswagen car dealership as a non-exempt Sales Consultant from approximately July 2018 to October 31, 2019. *See* Declaration of Carlos Torres ("Torres Decl."), ¶ 2. Plaintiff Pedro Urbina worked as a non-exempt Lube Technician at Defendants' Mossy Nissan Escondido car dealership from approximately November 2016 to January 22, 2020. *See* Declaration of Pedro Urbina ("Urbina Decl."), ¶ 2. Plaintiff Rebecca Medrano worked as a non-exempt Sales Representative at the Mossy Ford car dealership from approximately May 2019 to approximately August 2019. *See* Declaration of Rebecca Medrano ("Medrano Decl."), ¶ 2. Plaintiff Oscar Santos Barrera worked for Mossy Honda as a non-exempt "Detailer" from approximately March 2017 to February 2020. *See*

1 Declaration of Oscar Santos Barrera (“Barrera Decl.”), ¶ 2.

2 Plaintiffs’ PAGA claim is predicated primarily on allegations that they and other
3 employees were not paid all wages owed, were denied compliant meal and rest periods, were not
4 reimbursed for all necessary business expenses, did not receive accurate and compliant wage
5 statements, and were not paid all final wages owed at the time of separation of employment. As
6 explained below, Defendants deny Plaintiffs’ allegations and assert several affirmative defenses
7 to their claims.

8 **B. Relevant Procedural History**

9 On April 22, 2020, Plaintiffs Torres, Urbina, and Medrano, submitted their notification
10 letter to the LWDA giving notice of their intent to pursue a PAGA representative action for
11 alleged Labor Code violations, as required by Labor Code § 2699.3. See Haines Decl., ¶ 12 &
12 Exhibit 2.

13 On June 29, 2020, after the 65-day waiting period under Labor Code § 2699.3(a)(2)(A),
14 Plaintiffs Pedro Urbina, Carlos Torres, Rebecca Medrano filed a representative action complaint
15 titled *Urbina et al. v. Mossy Automotive Group, Inc. et al.*, San Diego County Superior Court
16 Case No. 37-2020-00022420-CU-OE-CTL (“Urbina Action”). Haines Decl., ¶ 12.

17 On September 14, 2020, Plaintiff Barrera, submitted his notification letter to the LWDA
18 giving notice of his intent to pursue a PAGA representative action for alleged Labor Code
19 violations, as required by Labor Code section § 2699.3. *Id.*, at ¶ 13 & Exhibit 3.

20 On November 20, 2020, after the 65-day waiting period under Labor Code §
21 2699.3(a)(2)(A), Plaintiff Oscar Barrera filed a representative action complaint titled *Barrera v.*
22 *Mossy Automotive Group Lemon Grove, Inc. et al.*, San Diego County Superior Court Case No.
23 37-2020-00042815-CU-OE-CTL (“Barrera Action”). *Id.*, at ¶ 13.

24 On September 2, 2022, the Court consolidated the *Barrera* and *Urbina* Actions, and
25 designated the *Urbina* Action as the lead case. Haines Decl., ¶ 14.

26 As part of the Settlement, the Parties stipulated to amend the operative Complaint to name
27 MAG Infiniti OCN, LLC, MAG Infiniti KM, LLC, MAG Infiniti ESC LLC as additional named
28 Defendants. Haines Decl., ¶ 15. On October 3, 2022, Plaintiffs amended the operative Complaint

to name MAG Infiniti OCN, LLC, MAG Infiniti KM, LLC, MAG Infiniti ESC LLC as additional named Defendants. *Id.*

C. Pre-Mediation Discovery and Mediation

In connection with mediation, Defendants informally produced information and documents pertaining to Plaintiffs and other Aggrieved Employees, including, but not limited to, Defendants’ commission and piece-rate pay plans, a sample of time and payroll records for Aggrieved Employees, and a list of Aggrieved Employees’ hire dates and termination dates in order for Plaintiffs’ counsel to investigate Plaintiffs’ allegations and value the claims prior to mediation. Haines Decl., ¶ 16. Plaintiffs also retained an expert economist to assist them in analyzing and extrapolating the timekeeping and other data produced by Defendants, and to assist Plaintiffs in creating a comprehensive damages model. *Id.*

On April 12, 2022, the Parties attended a full-day mediation with experienced and highly regarded mediator Tripper Ortman, Esq., in an effort to resolve Plaintiffs’ PAGA claim. Haines Decl., ¶ 17. During mediation, the Parties vigorously argued the legal basis for Plaintiffs’ claims and Defendants’ defenses, the impact of *Viking River Cruises, Inc. v. Moriana* on this Action, the manageability of the case as a representative action, the potential amount of PAGA civil penalties, and the Parties’ data analyses and conclusions based thereon. *Id.* With Mr. Ortman’s assistance, the Parties agreed to fully and finally resolve Plaintiffs’ PAGA claim at mediation. *Id.* Over the following months, the Parties subsequently negotiated and finalized the Settlement now before the Court. *Id.*

III. SUMMARY OF THE SETTLEMENT

A. “Aggrieved Employees” Defined

As noted above, the “Aggrieved Employees” consist of all current and former non-exempt employees who worked for Defendants in California at any time during the PAGA Period. *See* Settlement, § I.2. The PAGA Period is defined as the time period from April 12, 2019 through June 30, 2022. Settlement, § I.12.

B. Monetary Terms

The Settlement provides for Defendants’ payment of a non-reversionary Gross Settlement

Amount (“GSA”) of \$380,592.00. *See* Settlement, §§ I.9, III.2. After deducting requested attorneys’ fees, litigation costs, Plaintiffs’ Enhancement Payments, and settlement administration costs, the Settlement provides for the Net Settlement Amount (“NSA”) to be distributed 75% to the LWDA and 25% to Aggrieved Employees, per Labor Code § 2699(i). Settlement, §§ III.4-5. The Aggrieved Employees’ portion of the NSA is estimated to be \$49,082.32 and will be distributed to all Aggrieved Employees based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period. *See* Settlement, § III.5.

1. Attorneys’ Fees and Costs, Administration Costs, and Plaintiffs’ Enhancement Payments

Plaintiffs’ counsel requests one-third of the GSA (i.e., \$126,864.00) in attorneys’ fees, and \$28,648.72 in total litigation costs. *See* Settlement, § III.4(a); Haines Decl., ¶¶ 26-28 & Exhibit 4; Declaration of Raul Perez (“Perez Decl.”), ¶ 12. As discussed in detail below, a fee award of one-third of the GSA is fair, adequate, and reasonable as a percentage of the settlement fund and as confirmed by a lodestar cross-check, is in line with fee awards in other PAGA settlements.

The Parties have agreed to engage Phoenix Settlement Administrators (“Phoenix”) as the third-party settlement administrator. *See* Settlement, § IV.1. Phoenix will update Aggrieved Employees’ addresses using the National Change of Address database, calculate and distribute Individual PAGA Payments, mail payments to all Aggrieved Employees together with the Explanatory Letter, and perform other duties that are integral to the effectuation of the Settlement. *Id.*, §§ IV.2-6. Plaintiffs request that the Court approve up to \$8,750.00 in administration costs to Phoenix, which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.* at § III.4(c); *see also* Declaration of Jodey Lawrence & Exhibits.

Finally, Plaintiffs request an enhancement payment of \$5,000.00 each, for a total of \$20,000.00, in recognition of Plaintiffs’ contributions to this case and their efforts in bringing this case to successful resolution. *See* Settlement, § III.4(b); Barrera Decl., ¶¶ 6-21; Medrano Decl., ¶¶ 7-8; Torres Decl., ¶¶ 7-8; Urbina Decl., ¶¶ 7-8.

///

1 **2. Payment to LWDA and Aggrieved Employees**

2 The NSA will be distributed 75% to the LWDA and 25% to Aggrieved Employees,
3 pursuant to Labor Code § 2699(i). Based on the above requested distributions, the NSA is
4 estimated to be \$196,329.28, with \$147,246.96 paid to the LWDA and \$49,082.32 distributed to
5 Aggrieved Employees. Haines Decl., ¶ 18. As noted, there are approximately 1,920 total
6 Aggrieved Employees. *Id.* Thus, it is anticipated that overall, Aggrieved Employees will receive
7 average Settlement payments of approximately \$25.56. *Id.*

8 **3. Funding of the Settlement**

9 Defendants shall deposit the Gross Settlement Amount into a Qualified Settlement
10 Account and agree to fund the settlement within ten (10) business days of the Court's Order
11 approving the PAGA settlement. *See* Settlement, § III.2. Within twenty-one (21) calendar days
12 after the Settlement has been fully funded and after receiving approval from Plaintiffs' counsel
13 and Defendants' counsel of the payment calculations as provided above, the Settlement
14 Administrator shall mail copies of the explanatory letter in English and Spanish, along with
15 Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail. *See*
16 Settlement, § IV.3. Funds from any settlement checks remaining uncashed after 180 days shall
17 escheat to the California State Controller's Office for deposit in the Unclaimed Property Fund, in
18 the name of the Aggrieved Employee. *See* Settlement, § IV.4.

19 **IV. LEGAL ARGUMENT**

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

21 The settlement of a PAGA claim requires court approval pursuant to the PAGA statute,
22 which states that the "court shall review and approve any settlement of any civil action filed
23 pursuant to this part." Labor Code § 2699(l). Of course, "[s]ettlement is a compromise, which
24 balances the possible recovery against the risks inherent in litigating further." *See In re TD*
25 *Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13, 2011). "[T]he
26 very essence of a settlement is... 'a yielding of absolutes and an abandoning of highest hopes,'"
27 as "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
28 litigation that induce consensual settlements." *Officers for Justice v. Civil Service Com.*, 688 F.2d

615, 624 (9th Cir. 1982). As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.*

Although the PAGA statute does not set forth the criteria by which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement. However, “a PAGA claim asserted on a non-class representative basis...is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of [a class action].” *Casida v. Sears Holdings Corp.*, 2012 WL 253217 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 a PAGA settlement, the court is not concerned with amount(s) received by “aggrieved employees,” 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*, 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.*, No. C-08-2073-MHP, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court 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 settlement – 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

1 purpose of PAGA is to incentivize private parties to recover civil penalties for the government
2 that otherwise may not have been assessed and collected by overburdened state enforcement
3 agencies.” *Ochoa-Hernandez*, 2010 WL 1340777 at *4.

4 Second, consistent with the fact that unnamed employees have no property interest in a
5 PAGA claim,² “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
6 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
7 1340777 at *5; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482 (2020)
8 (recognizing that “there is no mechanism for opting out of the judgment entered on the PAGA
9 claim.”). This renders the approval process of a PAGA settlement distinct from a class action
10 settlement, as the Court need not employ the “two-step approval process” required for class action
11 settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

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

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

20 In deciding whether to approve a proposed settlement, a trial court has broad powers to
21 determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup.*
22 *Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to
23 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*,
24 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court
25 to consider include, but are not limited to:

26
27 ² “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).

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

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

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

a. The Strength of Plaintiffs’ Case

Plaintiffs acknowledge that there are substantial risks and uncertainty in proceeding to trial. Haines Decl., ¶ 19. First and foremost was the risk that the United States Supreme Court would issue its opinion in *Viking River* which could result in the outright dismissal of Plaintiffs’ representative PAGA claim. *Id.* At the time that this settlement was reached, the U.S. Supreme Court had granted certiorari in *Viking River*. *Id.* Shortly after Plaintiffs entered into this Settlement, this risk became a reality and the Supreme Court issued its opinion in *Viking River*, which overturns the California Supreme Court’s holding in *Iskanian v. CLS Transportation Los*

1 *Angeles, LLC* which held that a representative PAGA claim could not be compelled to arbitration.
2 *See Viking River Cruises, Inc. v. Moriana* (June 15, 2022, No. 20-1573) 596 U.S. ____ [____ S.Ct.
3 ____, 2022 WL 2135491; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th
4 348. As a result, absent this settlement, it is likely that **no** representative PAGA recovery (i.e., a
5 recovery of PAGA civil penalties for violations suffered by other Aggrieved Employees) would
6 be possible at all. Haines Decl., ¶ 19.

7 Defendants also presented multiple defenses with respect to the merits of Plaintiffs’
8 claims. For example, with respect to Plaintiffs’ commission-based claim, Defendants argue that
9 its commission pay plans comply with California law and that they have always compensated its
10 commissioned-based employees for all required paid rest periods. Haines Decl., ¶ 20. Defendants
11 further argue that at all times throughout the PAGA Period they calculated separate rest period
12 compensation for their commissioned based employees in compliance with California law. *Id.*
13 Defendants also contend that employees experienced minimal (if any) uncompensated “non-
14 productive” time. *Id.* Additionally, Defendants maintain that any questions of non-productive
15 time would be highly individualized, as employees worked in a variety of locations, and there are
16 no records or other common evidence of time spent on potentially non-productive tasks, making
17 Plaintiffs’ unpaid wages claim unmanageable on a representative basis. *Id.*

18 With respect to Plaintiffs’ meal period claim, Defendants argue that they have maintained
19 compliant written meal period policies throughout the Class Period and have always provided
20 employees the *opportunity* to take legally compliant meal periods, and that they are not required
21 to “ensure” meal periods are taken. Haines Decl., ¶ 21; *see Brinker Restaurant Corp. v. Superior*
22 *Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard and holding employers only
23 have to “provide” employees the opportunity to take meal periods). Additionally, Defendants
24 maintain that employees voluntarily waived their second meal period when they worked shifts in
25 excess of 10.0 hours (but less than 12.0 hours), as they are entitled to do under Labor Code § 512.
26 Haines Decl., ¶ 21. Finally, Defendants argue that Plaintiffs’ meal period claim are not suited for
27 representative treatment, as individual inquiries would be needed to assess which employees took
28 non-compliant meal periods or missed meal periods, how many meal periods were non-compliant

1 or missed, and the reasons why a particular employee did not take a compliant meal period on a
2 particular shift. *Id.*

3 With respect to Plaintiffs’ reimbursement claim, Defendants maintain that Aggrieved
4 Employees were not required to use their personal cellular phones as part of their job. Haines
5 Decl., ¶ 22. Defendants further argue that any expenses incurred by employees were minimal,
6 given the wide availability of low-cost cellular phone plans. *Id.*

7 As a result of Defendants’ failures to pay all meal and rest period premiums, and all wages
8 owed, Plaintiffs allege derivative PAGA claims for failure to issue accurate and itemized wage
9 statements and failure to pay all wages owed at separation of employment. *See* Labor Code
10 §§ 226(a), 201-203; *see also* Haines Decl., ¶ 23. In response, Defendants argue that Plaintiffs’
11 underlying claims will fail and, as a result, the derivative claims will also fail. *See Price v.*
12 *Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action
13 fail, the derivative UCL and PAGA claims also fail.”). Defendants also maintain that any
14 “derivative” PAGA claims for violations of Labor Code Sections 226 or 203 would be entirely
15 duplicative and would be unlikely to be awarded in any significant manner by a Court. Haines
16 Decl., ¶ 23.

17 Defendants further maintain that even if the Court awarded PAGA penalties for any of the
18 alleged violations, it would substantially reduce the penalties based on the discretionary factors
19 in Labor Code § 2699(e)(2) (authorizing reduction in penalties “if, based on the facts and
20 circumstances of the particular case, to do otherwise would result in an award that is unjust,
21 arbitrary and oppressive, or confiscatory.”). Haines Decl., ¶ 24. Indeed, Defendants argue that
22 many courts have reduced PAGA penalties drastically where, as here, the employer presented
23 good-faith defenses and attempted to comply with the law. *See Thurman v. Bayshore Transit*
24 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because
25 “defendants took their obligations...seriously and attempted to comply with the law”); *Fleming*
26 *v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011)
27 (reducing PAGA penalties by over 82%, in part because employer “not aware” of violations);
28 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just

1 \$5 per pay period where employer made “good faith attempts” to comply with the law).

2 While Plaintiffs were prepared to litigate their claims through trial, they faced substantial
3 challenges in prevailing in this matter and obtaining a better result than will be provided through
4 the Settlement. Thus, this factor supports approval.

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

6 As discussed above, *Viking River* posed an existential threat to this case, and has since
7 become controlling precedent that would likely result in the dismissal of Plaintiffs’ representative
8 PAGA claim if it had not already been settled. Therefore, at the time the settlement was reached,
9 Plaintiffs faced tremendous risk that continued litigation would have resulted in the dismissal of
10 their representative PAGA claim. This factor therefore supports approval of the Settlement.

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

12 The proposed Settlement provides a fair and reasonable monetary recovery for the State
13 of California and Aggrieved Employees in the face of hotly disputed claims, when compared with
14 the potential realistic exposure. Based on data provided by Defendants, there were approximately
15 52,574 pay periods worked by the Aggrieved Employees during the PAGA Period. Haines Decl.,
16 ¶ 25; Settlement, § III.3.

17 Labor Code § 2699(f)(2) provides for PAGA civil penalties in the amount of \$100 for
18 each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved
19 employee per pay period for each subsequent violation. *See* Labor Code § 2699(f)(2). However,
20 courts have interpreted section 2699(f)(2) to only impose the \$200 subsequent penalty after an
21 employer has been notified that its conduct violates the Labor Code. *See, e.g., Amaral v. Cintas*
22 *Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until
23 employer is notified that it is violating a Labor Code provision); *Trang v. Turbine Engine*
24 *Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854, at *5 (C.D.
25 Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for
26 subsequent violations unless and until a court or commissioner notifies the employer that it is in
27 violation of the Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw*
28 *Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430, at *9 (S.D. Cal. 2009)

(finding that California law imposes the “subsequent violation penalty” only after an employer has been notified its conduct violates the Labor Code). Therefore, assuming that Plaintiffs could prove at least one Labor Code violation in each pay period, Plaintiffs calculated Defendants’ maximum PAGA exposure at \$5,257,400 (52,574 pay periods * \$100 per violation). Haines Decl., ¶ 25.

However, as discussed above, Defendants raised numerous defenses to the merits of Plaintiffs’ claims, and argued that even if found liable, the Court would exercise its discretion to reduce any potential PAGA penalties given Defendants’ good-faith defenses. *See Thurman, supra*, 203 Cal.App.4th at 1136 (affirming reduction of PAGA penalties); *Carrington, supra*, 30 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of maximum exposure). Additionally, at the time of mediation, there was a looming threat that a forthcoming decision in *Viking River* could preclude any representative PAGA recovery at all. Haines Decl., ¶¶ 19-24. In the face of Defendants’ defenses on the merits, the Court’s discretion to reduce PAGA penalties, and the threat (which has since become reality) of an adverse *Viking River* ruling, Plaintiffs felt that the negotiated settlement of \$380,592.00, was clearly in the best interests of the LWDA and the Aggrieved Employees and was well within the range of reasonableness. *See Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“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.”) (internal quotations omitted); Haines Decl., ¶¶ 19, 25.

Approval of the Settlement is appropriate, as the Settlement will provide tangible monetary relief to Aggrieved Employees and the State of California while avoiding the risks and costs of continued litigation and trial.

d. Discovery Completed and the Status of Proceedings

As noted above, the Parties engaged in substantial informal discovery to evaluate the PAGA claim. Haines Decl., ¶ 16. Defendants provided Plaintiffs with, *inter alia*, Defendants’ commission and piece-rate pay plans, a sample of time and payroll records for Aggrieved Employees, and a list of Aggrieved Employees’ hire dates and termination dates, additional

relevant data points and information and its relevant written policies. *Id.* 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.

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). Plaintiffs are represented by experienced counsel with decades of combined experience, who believe this Settlement to be fair and adequate for all involved. Haines Decl., ¶¶ 3-9; Perez Decl., ¶¶ 13-25. 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 Confirmed by a Lodestar Cross-Check

Plaintiffs are entitled to attorneys’ 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, Plaintiffs have 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 of the benefit the parties sought in bringing suit.” (internal citation omitted)).

A fee award is justified where the legal action has produced its benefits by way of settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Comty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest* (1977) 20

Cal.3d 25, 34 (“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties’ unjust enrichment); *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 (the percentage of the fund method for calculating attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid 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 Plaintiffs’ counsel’s experience in similar wage-and-hour class and PAGA matters. Haines Decl., ¶ 26.

1 Here, Plaintiffs' fee request of one-third of the GSA (estimated to be \$126,864.00), which
2 is the same percentage approved by the California Supreme Court in *Laffitte*, is fair and
3 reasonable based on the percentage of the recovery method, as confirmed by a lodestar cross-
4 check.

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

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

25 In this case, Plaintiffs' counsel has a collective lodestar of approximately \$204,595.00
26 without the use of any multiplier, resulting in a *negative* multiplier compared to the \$126,864.00
27 fee request. Haines Decl., ¶ 29; Perez Decl., ¶ 8. Respectively, Haines Law Group, APC has a
28 total lodestar of approximately \$107,620, and Capstone Law APC has a total lodestar of
approximately \$96,975.00. *Id.* Plaintiffs' counsel submits that the billing rates used are reasonable

1 in view of the market rates and the rates at which Plaintiffs’ counsel has been approved at in other
2 California and State courts. Haines Decl., ¶¶ 29-30; Exhibit 5 (Laffey Matrix); Perez Decl., ¶¶ 9-
3 11; Exhibit 2 (Laffey Matrix).

4 Critically, Plaintiffs’ recovery for the State of California and Aggrieved Employees of
5 approximately \$196,329.28 (NSA) significantly exceeds other PAGA awards approved by
6 California courts. *See, e.g., Aguirre v. DSW, Inc.*, No. DCV-11-01522-GW (SPx), 2012 WL
7 11875296 at *3 (C.D. Cal. Nov. 29, 2012) (approving \$10,000 PAGA payment); *Jamil, supra*,
8 2020 WL 6544660 at *6 (S.D. Cal. Nov. 5, 2020) (approving \$10,000 total PAGA payment,
9 finding the amount “fair and adequate in view of the purposes and policies of PAGA”); *Garcia v.*
10 *Gordon Trucking, Inc.*, No. 1:10-cv-0324-AWI-SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct.
11 31, 2012) (“approving \$10,000 total PAGA payment, finding that “[t]his comports with
12 settlement approval of PAGA awards in other cases. [Citations.]”); *Boyd v. Bank of Am. Corp.*,
13 No. SACV-13-0561-DOC (JPRx), 2014 WL 6473804 at *8 (C.D. Cal. Nov. 18, 2014) (approving
14 \$18,750 PAGA payment); *Franco v. Ruiz Food Prods.*, No. 1:10-cv-02354-SKO, 2012 WL
15 5941801 at *14 (E.D. Cal. Nov. 27, 2012) (approving \$10,000 PAGA payment); *Chu v. Wells*
16 *Fargo Inv., LLC*, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (\$10,000 PAGA payment).

17 As discussed above, this case presented significant risks to Plaintiffs, including the risk that
18 an adverse *Viking River* decision could have effectively concluded the case. It is fair and
19 reasonable to account for these risks in compensating Plaintiffs’ counsel, as well as the risks
20 involved in undertaking this litigation and expending considerable effort while working on a pure
21 contingency basis. Since undertaking representation of Plaintiffs, Plaintiffs’ counsel dedicated
22 substantial resources to this litigation, including expending \$28,648.72 in litigation costs, without
23 receiving any compensation to date. Haines Decl., ¶¶ 26-27; Perez Decl., ¶ 12. Plaintiffs’ counsel
24 conducted extensive research regarding the merits of Plaintiffs’ claims, their ability to recover
25 PAGA civil penalties, and Defendants’ potential defenses. Plaintiffs’ counsel conducted informal
26 discovery, and also performed extensive analysis of data and information produced by
27 Defendants, used this analysis to evaluate Plaintiffs’ claims, and drafted a comprehensive
28 mediation brief. Plaintiffs’ counsel also attended a private mediation, and expended significant

1 effort in preparing settlement documents, this Motion and supporting documents, and will oversee
2 the settlement administration process. Given the considerable potential for adverse outcomes in
3 this case, the contingent risk borne by Plaintiffs' counsel was great. Haines Decl., ¶ 27. The
4 quality of Plaintiffs' counsel's work, and the efficacy and dedication with which it was performed,
5 should be compensated. Thus, Plaintiffs submit the requested fee award is fair, reasonable and
6 adequate and should be approved.

7 Plaintiffs' counsel's previous experience in litigating wage and hour class and
8 representative actions also supports the reasonableness of the fee request. Plaintiffs' counsel is
9 well-versed in plaintiff and defense-side wage and hour class and representative action litigation,
10 and collectively brings over three decades worth of wage-and-hour class and representative action
11 litigation experience. *See* Haines Decl., ¶¶ 3-9; Perez Decl., ¶¶ 13-25. Plaintiffs' counsel has also
12 been certified as class counsel in numerous class action cases alleging wage and hour claims. *Id.*
13 Plaintiffs' counsel's experience in similar matters was integral in evaluating the strengths and
14 weaknesses of this case and the reasonableness of the Settlement. Because it is reasonable to
15 compensate Plaintiffs' counsel commensurate with their skill, reputation, and experience, the
16 requested fee award is fair, reasonable and adequate, and should therefore be approved.

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

19 Plaintiffs' request for reimbursement of litigation costs of \$28,648.72 is also fair and
20 reasonable. All of Plaintiffs' litigation costs are reasonably incurred. *See* Haines Decl., ¶¶ 26, 28
21 & Exhibit 4; Perez Decl., ¶ 12. Moreover, the costs Plaintiffs seek are the types of costs routinely
22 approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should
23 recover "those out-of-pocket expenses that would normally be charged to a fee paying client");
24 *Ashker v. Sayre*, 2011 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing
25 pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and
26 are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland*
27 *Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs reimbursable); *In re*
28 *Immune Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation

1 expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and
2 overnight delivery costs are reimbursable). Likewise, the request for administration costs of up to
3 \$8,750.00 is also fair and reasonable. Phoenix was selected because it is an experienced settlement
4 administrator and returned a reasonable bid. *See* Declaration of Jodey Lawrence & Exhibits.
5 Moreover, Phoenix will perform several important functions that are integral to the
6 implementation of the Settlement. *Id.* Its modest requested fee is therefore reasonable.

7 **D. The Court Should Approve Plaintiffs’ Requested Enhancement Payments**
8 **Because They Are Fair, Adequate, and Reasonable in View of Plaintiffs’**
9 **Efforts and the Risks They Assumed in This Litigation**

10 Courts routinely approve enhancement awards to compensate named plaintiffs for the
11 services they provide and the risks they incur during representative litigation. *See, e.g., Bell v.*
12 *Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named
13 plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
14 \$50,000 incentive payment); *see also* Plaintiffs’ Request for Judicial Notice, Exhibits 1-7 (PAGA
15 settlement approval orders awarding incentive payments to representative PAGA plaintiffs
16 ranging from \$5,000 to \$20,000). Here, Plaintiffs seek an enhancement payment of \$5,000.00
17 each, for a total of \$20,000.00. *See* Settlement, § III.4.b. This request is reasonable given
18 Plaintiffs’ efforts in this case and the risks they undertook on behalf of Aggrieved Employees.
19 Urbina Decl., ¶¶ 8-10; Torres Decl., ¶¶ 8-10; Medrano Decl., ¶¶ 8-10; Barrera Decl., ¶¶ 6-21.
20 Plaintiffs provided substantial factual information and documents to counsel, assisted in
21 identifying potential witnesses, and participated in numerous discussions with Plaintiffs’ counsel
22 regarding the case. *Id.*; *see also* Haines Decl., ¶ 31. Accordingly, Plaintiffs’ requested
23 enhancement payments are appropriate and justified as part of the Settlement.

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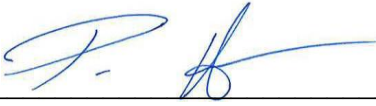
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1 **V. CONCLUSION**

2 For the reasons stated herein, Plaintiffs respectfully request that this Court grant Plaintiffs'
3 Motion and adopt the [Proposed] Judgment and Order Granting Settlement Approval submitted
4 concurrently herewith.

5 Dated: October 6, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

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7 By: 
8 Paul K. Haines
9 Attorneys for Plaintiffs
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