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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

AHMAD TEEBA and LARRY MINDHAM,
as individuals and on behalf of all others
similarly situated,

Plaintiffs,

vs.

BRILL, INC., a Delaware Corporation; and
DOES 1 through 100,

Defendants.

CASE NO. CIVDS1923242

*[Case assigned for all purposes to the Hon.
David Cohn, Dept. S26]*

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

Date: July 14, 2021
Time: 10:00 a.m.
Dept.: S26

Action Filed: August 5, 2019
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on July 14, 2021, at 10:00 a.m. at the San Bernardino
3 County Superior Court, located at 247 West Third Street, San Bernardino, California 92415,
4 Plaintiffs Ahmad Teeba and Larry Mindham (“Plaintiffs”), individually and on behalf of other
5 allegedly aggrieved employees, hereby moves this Court for entry of an Order as follows:

- 6 1. Granting approval pursuant to Labor Code § 2699(l) of the proposed Settlement
7 Agreement of claims brought by Plaintiffs pursuant to the Private Attorneys General
8 Act of 2004, California Labor Code § 2698 *et seq.*;
- 9 2. Appointing Phoenix Settlement Administrators as the third-party Settlement
10 Administrator, and approving an award of up to \$3,625.00 in anticipated costs to
11 Phoenix Settlement Administrators for its settlement administration services;
- 12 3. Approving as to form and content the proposed Notice of PAGA Settlement and
13 Release of Claims, and directing that it be distributed to the allegedly aggrieved
14 employees pursuant to the terms of the Settlement Agreement;
- 15 4. Directing the distribution of the Maximum Settlement Amount (\$615,000.00)
16 pursuant to the terms of the Settlement Agreement;
- 17 5. Approving an award of up to one-third of the Maximum Settlement Amount
18 (\$205,000.00) in attorneys’ fees to Haines Law Group, APC as Plaintiffs’ counsel;
- 19 6. Approving an award of up to \$20,536.44 in actual litigation costs reimbursement to
20 Haines Law Group, APC;
- 21 7. Approving an enhancement award of up to \$10,000.00 (\$5,000.00 to each Plaintiff)
22 for their service to the aggrieved employees and the State of California; and
- 23 8. Approving the payment of \$281,878.92 to the California Labor & Workforce
24 Development Agency for its share of PAGA civil penalties.

25 This Motion is based on this Notice, the attached Memorandum of Points and Authorities;
26 the declarations of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, Alma V.
27 Montenegro, Ahmad Teeba, Larry Mindham, and Jodey Lawrence of Phoenix Settlement
28 Administrators, and all exhibits attached thereto; the Settlement Agreement entered into between

1 Plaintiffs and Defendant Brill, Inc.; all other pleadings and papers on file in this action; and on
2 any further oral or documentary evidence or argument presented at the time of hearing.

3 Given the multiplicity of issues addressed herein, Plaintiffs' memorandum of points and
4 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court
5 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider
6 the entire Motion, which is 22 pages in length.

7
8 Dated: June 18, 2021

Respectfully Submitted,
HAINES LAW GROUP, APC

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10 By:



11 Fletcher W. Schmidt
12 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Ahmad Teeba and Larry Mindham (“Plaintiffs”), allegedly “aggrieved
4 employees” under the Private Attorneys General Act of 2004, California Labor Code § 2698 *et*
5 *seq.* (“PAGA”), respectfully move this Court for an Order granting approval of the Settlement
6 Agreement (“Settlement Agreement” or “Settlement”)¹ with Defendant Brill, Inc.
7 (“Defendant”).² The proposed Settlement, under which Defendant has agreed to pay a non-
8 reversionary amount of \$615,000.00, will dispose of Plaintiffs’ representative PAGA claim filed
9 on behalf of the State of California and all “aggrieved employees” as defined by Labor Code
10 § 2699(c). This PAGA action is predicated on Defendant’s alleged failure to (i) pay overtime
11 wages; (ii) provide all meal periods; (iii) authorize and permit all rest periods; (iv) maintain
12 accurate records and issue accurate, itemized wage statements; (v) pay all final wages at
13 termination; and (vi) pay all earned wages at least twice per month. This PAGA action seeks civil
14 penalties for Defendant’s Labor Code violations on behalf of the California Labor & Workforce
15 Development Agency (“LWDA”) and all allegedly “aggrieved employees,” defined as “all
16 current and former non-exempt employees of Brill, Inc. who worked in the State of California at
17 any time from May 31, 2018, through the date of the Court’s order approving the Settlement” (the
18 “PAGA Period”). Notably, the relief provided under the Settlement, and the claims released
19 thereunder, are *solely* for the payment of civil penalties under the PAGA. Based on the
20 information provided by Defendant, the number of aggrieved employees, including Plaintiffs, is
21 estimated to be 339 individuals.

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

25 ¹ The Settlement Agreement is attached as Exhibit 4 to the Declaration of Fletcher W. Schmidt (“Schmidt
26 Decl.”), filed concurrently with this Motion. The Notice of PAGA Settlement and Release of Claims
27 (“Notice”) is attached as Exhibit A to the Settlement Agreement.

28 ² Concurrently with the filing of this motion, Plaintiffs provided notice of the proposed Settlement, as well
as copies of this motion and all papers filed in support hereof, to the LWDA. See Schmidt Decl., ¶ 31;
Exhibit 7.

embodies all of the features of a settlement that is fair, reasonable, and adequate, as it (1) is the product of extensive arm's-length negotiations, (2) was negotiated by attorneys experienced in wage-and-hour issues with the assistance of an experienced, neutral mediator, (3) was negotiated after the parties undertook sufficient investigation to evaluate the relative strength and value of the PAGA claim, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claim, the risks, expense, complexity and likely duration of further litigation, and the risks that further litigation could result in a lesser recovery.

Pursuant to the Settlement, Defendant will pay a Maximum Settlement Amount ("MSA") of \$615,000.00 on a non-reversionary basis. *See* Settlement, §§ I.9 and III.2. After deducting amounts for requested attorneys' fees (\$205,000.00), attorney costs (\$20,536.44), enhancement awards for the named plaintiffs totaling (\$10,000.00), settlement administration costs (\$3,625.00), and the LWDA's share of the amount designated as civil penalties pursuant to Labor Code § 2699(i) (\$281,878.92), the Settlement provides for distribution of approximately \$93,959.64 in civil penalties to the aggrieved employees, an average of \$277.17 on a per capita basis. *Id.*, §§ I.10, III.4 and 5.

The MSA represents a reasonable recovery for the State of California and aggrieved employees when considering the limited release of only PAGA claims based on the factual allegations in Plaintiffs' operative complaint and prefiling LWDA letters. Further litigation may have resulted in a smaller recovery, or even no recovery at all, based on the defenses asserted by Defendant and the significant litigation risks involved. Moreover, the MSA results in individual payments that exceed 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) (average PAGA penalties of \$7.49); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (average PAGA penalties of \$3.33). Further, the amounts requested for attorneys' fees and costs, Plaintiffs' enhancement awards, and settlement administration costs are fair, adequate, and reasonable. In light of the foregoing, this Court should enter the [Proposed] Judgment and Order

Granting Plaintiffs' Motion for Settlement Approval of Claims Brought Under the PAGA, Reasonable Attorneys' Fees and Costs, and Enhancement Awards, submitted herewith.

II. SUMMARY OF THE LITIGATION

A. The Parties

Defendant operates as an international baking company that offers baking ingredients, baked goods, and other services for retail and foodservice markets, and artisan and industrial bakeries. Schmidt Decl., ¶ 8. Plaintiffs worked in the maintenance department and provided electrical and mechanical maintenance to Defendant's commercial baking ovens and other machinery. Declaration of Ahmad Teeba ("Teeba Dec."), ¶ 2; Declaration of Larry Mindham ("Mindham Dec."), ¶ 2. Plaintiffs, like all aggrieved employees, were employed by Defendant as non-exempt employees during the PAGA Period and were subject to Defendant's wage and hour policies and practices. *Id.*

B. Procedural History

On May 31, 2019, and April 10, 2020, Plaintiffs provided written notice of their intent to file a claim for civil penalties under PAGA to the LWDA and Defendant. Schmidt Decl., ¶ 9; Exhibits 1 & 2. On August 5, 2019, Plaintiff Teeba filed a representative action complaint titled *Ahmad Teeba v. Brill, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVDS1923242. Schmidt Decl., ¶ 9. On June 15, 2020, Plaintiffs filed the operative amended representative action complaint adding Plaintiff Mindham as a named plaintiff as well as adding the additional PAGA allegations related to Defendant failing to pay former employees all earned wages in cash, on demand, without discount at an established business in the State of California, at the time of their separation of employment in violation of Labor Code § 212. Schmidt Decl., ¶ 9; Exhibit 3.

On March 30, 2021, the parties attended a full-day mediation session with Jeffrey Krivis, Esq. a respected wage and hour mediator. Schmidt Decl., ¶ 10. In connection with mediation Defendant provided Plaintiffs' counsel with timekeeping and payroll records for all aggrieved employees who worked during the PAGA period. *Id.* Defendant also produced the relevant employee handbooks and policy documents in effect during the PAGA period. *Id.* Plaintiffs'

expert, who holds a Ph.D. in economics, analyzed the employee records and created a comprehensive exposure analysis for the PAGA claim. *Id.* During mediation, the parties debated the legal bases for their claims and defenses and their respective data analyses. *Id.* At the conclusion of mediation, the parties accepted Mr. Krivis' mediator's proposal to fully resolve Plaintiffs' PAGA claim. *Id.* Over the following months, the parties negotiated the final terms of the proposed Settlement now before this Court for approval. *Id.*

C. Plaintiffs' Claims and Defendant's Defenses

Plaintiffs alleged that Defendant issued facially non-compliant wage statements which fail to include shift differential rates and the number of applicable hours on aggrieved employees' wage statements. *See* Labor Code § 226(a)(9) ("An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing... (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..."); Schmidt Decl., ¶ 11. Defendant contends that at least 40% (if not more) of the pay periods at issue in this lawsuit do not include any shift differential pay and that Defendant is working with legal counsel to redesign Defendant's wage statements so that they are legally compliant. *Id.*

Plaintiffs allege that Defendant maintained an unlawful written rest period policy which requires employees to remain on premises during rest periods. Schmidt Decl., ¶ 12. Additionally, Plaintiffs contend that employees were required to keep walkie talkies on their person during rest periods so that they could respond to urgent issues, even if they occurred during their rest periods. *Id.* By prohibiting its non-exempt employees from leaving the work premises and by requiring employees to remain tethered to their walkie talkies during their rest periods, Plaintiffs contend that Defendant failed to relinquish its control over employees in violation of California law. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 ("[O]ne cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to relieve employees of all work duties

1 and employer control during 10-minute rest periods.”); Schmidt Decl., ¶ 12. Defendant claims
2 that the “unlawful” rest period policy detailed by Plaintiffs is part of Defendant’s national
3 handbook and that Defendant’s California addendum affords greater protections to California
4 employees where California law requires. *Id.* Defendant also asserts that it authorized and
5 permitted aggrieved employees to take all lawful rest periods, that it never required employees to
6 keep walkie talkies on them during rest breaks, and that, in practice, employees are authorized
7 and even encouraged to leave the premises during rest breaks. *Id.*

8 Defendant pays employees a shift differential for working the second shift or the night
9 shift. Schmidt Decl. ¶ 13. Plaintiffs contend that Defendant failed to include the value of shift
10 differentials in the overtime rate calculation when employees earn both a shift differential and
11 work overtime hours in the same pay period, resulting in underpaid overtime wages. *See*
12 *Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 905 (confirming
13 that shift differentials “where an employee receives additional pay due to the nature of the work,
14 such as working a nightshift or performing undesirable tasks” must be included in the regular
15 rate); Schmidt Decl., ¶ 13. Defendant contends that it paid all wages, including overtime wages,
16 to aggrieved employees and that the value of shift differentials is included in the overtime rate
17 calculation as required by California law. *Id.* Defendant also contends Plaintiffs’ rest break
18 allegations are unmanageable since individual inquiries would be required to assess whether rest
19 breaks were authorized and permitted but nevertheless waived by the aggrieved employees. *Id.*

20 Plaintiffs allege that Defendant failed to provide Plaintiffs and other non-exempt
21 employees with all lawful meal periods to which they were entitled. Schmidt Decl., ¶ 14.
22 Specifically, Plaintiffs assert that Defendant routinely failed to provide the aggrieved employees
23 with timely first meal periods commencing prior to the conclusion of the fifth hour of work and
24 provided virtually no second meal periods whatsoever when employees worked shifts in excess
25 of 10.0 hours. *See* Labor Code § 512(a); *Brinker Restaurant Corp. v. Superior Court* (2012) 53
26 Cal.4th 1004, 1041 (“We conclude that, absent waiver, section 512 requires a first meal period
27 no later than the end of an employee’s fifth hour of work...”); *Benton v. Telecom Network*
28 *Specialists, Inc.* (2013) 220 Cal.App.4th 701, 728-29 (“[The wage order] imposes an affirmative

1 obligation on every employer to authorize and provide legally required meal and rest breaks; if it
2 fails to do so, it has violated the law and is liable.”). Defendant maintains that it provided all
3 legally compliant meal periods to aggrieved employees and that any missed or non-compliant
4 meal periods were the result of employee choice, not Defendant’s policy. *See Brinker, supra*, 53
5 Cal.4th at 1040 (holding that where employees were “provided” the opportunity to take compliant
6 breaks, whether they took a break or not was immaterial). Defendant also contends that aggrieved
7 employees waived their second meal periods on shifts in excess of 10.0 hours (but less than 12.0
8 hours). Schmidt Decl., ¶ 14. Defendant also contends Plaintiffs’ meal period allegations are
9 unmanageable, since individual inquiries would be required to assess whether meal periods were
10 waived, and the reasons why a particular employee recorded a non-compliant meal period or
11 missed a meal period on a particular shift. *Id.*

12 As a result of Defendant’s alleged failures to pay all overtime wages as well as meal and
13 rest period premiums, Plaintiffs assert that Defendant also failed to issue accurate and itemized
14 wage statements and failed to pay all wages owed, in cash, at separation. *See* Labor Code
15 §§ 226(a), 201-203; Schmidt Decl., ¶ 15. In response, Defendant argues that Plaintiffs’
16 underlying claims will fail and, as a result, the derivative wage statement claim will also fail. *See*
17 *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of
18 action fail, the derivative UCL and PAGA claims also fail.”). Defendant also maintains that given
19 its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA
20 penalties awarded. *See* Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.*
21 (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Carrington v.*
22 *Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming trial court’s reduction of PAGA
23 penalties to 10% of calculated exposure after bench trial).

24 Further, Defendant argues that Plaintiffs could only seek PAGA penalties at the \$100
25 “initial” violation rate, as opposed to the \$200 “subsequent” violation rate, since Defendant had
26 never been put on notice by a court or the Labor Commissioner that its practices violated the
27 Labor Code until Plaintiffs initiated this action. *See Amaral v. Cintas Corp. No. 2* (2008) 163
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Cal.App.4th 1157, 1209 (finding “initial” violation rate applies until employer has been notified that it is violating a Labor Code provision); Schmidt Decl., ¶ 16.

III. THE PROPOSED SETTLEMENT

A. “Aggrieved Employees” Defined

Aggrieved employees are defined as, “all current and former non-exempt employees of Brill, Inc. who worked in the State of California at any time from May 31, 2018, through the date of the Court’s order approving the Settlement.” *See* Settlement, § I.2.

B. Essential Terms of the Settlement

Defendants will pay a MSA of \$615,000.00. Settlement, §§ I.9, III.2. After deducting amounts for requested attorneys’ fees and costs, Plaintiffs’ enhancement awards, and settlement administration costs, the remaining Net Settlement Amount (“NSA”) distributable to the aggrieved employees and the LWDA is estimated to be \$375,838.56. *See* Settlement, §§ I.10, III.4 and 5. This non-reversionary Settlement does not require aggrieved employees to submit a claim form to reap the financial benefits of the Settlement. *Id.*, §§ I.9, III.2. The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	\$615,000.00
Minus Court-approved attorneys’ fees (1/3):	\$205,000.00
Minus Court-approved attorneys’ costs:	\$20,536.44
Minus Court-approved enhancement awards:	\$10,000.00
Minus settlement administrator costs:	\$3,625.00
Net Settlement Amount:	\$375,838.56
Minus LWDA’s 75% Share:	\$281,878.92
Total Paid to Aggrieved Employees:	\$93,959.64

1. Attorneys’ Fees and Costs

Plaintiffs’ counsel requests one-third of the MSA (\$205,000.00) in attorneys’ fees, and \$20,536.44 in actual litigation costs. Settlement, §§ I.10 and III.4.a; Schmidt Decl., Exhibit 6.

2. Settlement Administration Costs

The parties agree to engage Phoenix Settlement Administrators (“Phoenix”) as the third-party settlement administrator. *See* Settlement, §§ I.17, IV.1. Phoenix shall be responsible for translating the Notice into Spanish,³ calculating the settlement checks, and mailing the settlement

³ Based on Defendant’s employees’ demographics, Notices will be sent out in English and Spanish.

1 checks and Notice to the aggrieved employees, among other duties. *Id.*, § IV. Phoenix estimates
2 incurring \$3,625.00 in costs in connection with the administration of this settlement. *See*
3 Declaration of Jodey Lawrence (“Lawrence Decl.”), Exhibit B.

4 **3. Plaintiffs’ Enhancement Awards**

5 Plaintiffs also request enhancement awards totaling \$10,000.00 (\$5,000.00 to each named
6 plaintiff) in recognition of their efforts to initiate this case, their contributions to the prosecution
7 of this case, and their efforts in bringing this case to a successful resolution. Settlement, § III.4.b;
8 Teeba Decl., ¶¶ 3-4; Mindham Decl., ¶¶ 3-4.

9 **4. Payment to the LWDA and Aggrieved Employees**

10 From the NSA, 75% (\$281,878.92) will be distributed to the LWDA, and 25%
11 (\$93,959.64) will be distributed to the aggrieved employees. Settlement, § III.5; *see also* Labor
12 Code § 2699(i) (“[C]ivil penalties recovered by aggrieved employees shall be distributed as
13 follows: 75 percent to the [LWDA]...and 25 percent to the aggrieved employees.”). 100% of the
14 individual payments to the aggrieved employees will be reported using IRS Form-1099s, since
15 all funds received under Section 2699 are civil penalties that do not trigger payroll taxes or
16 withholdings. *See* Settlement, § IV.7. Individual Settlement Payments shall be apportioned based
17 on the proportionate number of pay periods worked during the PAGA Period, by multiplying the
18 Net Settlement Amount by a fraction, the numerator of which is the aggrieved employees’ total
19 pay periods worked during the PAGA Period, and the denominator of which is the total number
20 of pay periods worked by all aggrieved employees during the PAGA Period. *Id.*, § III.5. Further,
21 Plaintiffs’ expert’s mediation data analysis determined that there were approximately 18,563
22 aggregate pay periods worked by the aggrieved employees during the PAGA Period. Schmidt
23 Decl., ¶ 19. Therefore, average recovery is approximately \$277.17, the lowest possible recovery,
24 should an aggrieved employee have been employed for only a single pay period during the PAGA
25 Period, is approximately \$5.06, while the highest possible recovery, should an aggrieved
26 employee have been employed for the entirety of the PAGA Period, is approximately \$824.78.
27 *Id.*

1 **5. Funding of the Settlement**

2 Defendant will fund the entire Maximum Settlement Amount within thirty (30) calendar
3 days after the date upon which the Court enters an Order approving the Settlement (the “Effective
4 Date”). Settlement, §§ I.6, III.2. Within ten (10) business days after the Effective Date, Defendant
5 will provide Phoenix with a list of the aggrieved employees’ full name, last known mailing
6 address, last known telephone number, pay period information, and Social Security numbers. *Id.*
7 § IV.2. Within ten (10) business days thereafter, Phoenix will circulate to counsel for both parties
8 an anonymized spreadsheet containing the Individual Settlement Payments and the data used to
9 calculate said payments. *Id.* Within five (5) business days after Plaintiffs’ and Defendant’s
10 counsel approve the information contained in the anonymized spreadsheet, Phoenix will mail the
11 Individual Settlement Payments to the aggrieved employees with the Notice, in English and
12 Spanish, via First-Class U.S. Mail.⁴ *Id.*, § IV.3. Before mailing, Phoenix will perform a search on
13 the National Change of Address database to update the aggrieved employees’ addresses. *Id.*

14 **IV. ARGUMENT**

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

16 The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699(l)
17 (stating, the “court shall review and approve any penalties sought as part of a proposed settlement
18 agreement pursuant to this part.”). The Court must be mindful that “[s]ettlement is a compromise,
19 which balances the possible recovery against the risks inherent in litigating further.” *In re TD*
20 *Ameritrade Account Holder Litig.*, Case Nos. C 07-2852 SBA, C 07-4903 SBA, 2011 WL
21 4079226, *9 (N.D. Cal. Sept. 13, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding
22 of absolutes and an abandoning of highest hopes,’” as “it is the very uncertainty of outcome in
23 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.”
24 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir., 1982). As such, “the
25 settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits,”
26 or “judged against a hypothetical or speculative measure of what might have been achieved.” *Id.*

27 Although the operative PAGA statute does not set forth the criteria by which a PAGA

28

⁴ For all intents and purposes this means that the Individual Settlement Payments will be mailed out
approximately 25 business days after Court approval of the Settlement.

1 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors
2 for review of a class action settlement. However, “a PAGA claim asserted on a non-class
3 representative basis...is not considered a class action but a law enforcement action, and therefore
4 does not have to meet the requirements of [a class action].” *See Casida v. Sears Holdings Corp.*,
5 2012 WL 253217 at *3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL
6 2650571 at *4 (E.D. Cal. Jul. 1, 2010). A court’s review of a PAGA settlement necessarily
7 implicates the following unique features that render the approval process distinct from approval
8 of a class action settlement under C.C.P. § 382 and C.R.C. Rule 3.769.

9 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
10 concerned with the amount(s) that “aggrieved employees” are to receive, but rather, must focus
11 on the total settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a
12 PAGA suit consists of civil penalties, not individual or class damages,” and while a “[PAGA]
13 action is ... designed to protect the public and penalize the employer for past illegal conduct,” a
14 reviewing Court must be mindful of the fact that settlement of a PAGA claim involves a
15 compromise. *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties
16 are not meant to compensate unnamed employees because the action is fundamentally a law
17 enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at *4 (N.D.
18 Cal. Apr. 2, 2010). The Court must not lose sight of the fact that “[u]nlike a class action seeking
19 damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private
20 parties to recover civil penalties for the government that otherwise may not have been assessed
21 and collected by overburdened state enforcement agencies.” *Id.*

22 Second, consistent with the fact that unnamed employees have no property interest in a
23 PAGA claim,⁵ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
24 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
25

26 ⁵ As held by the California Supreme Court, “[PAGA] does not create property rights or any other
27 substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employee to recover civil
28 penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement
agencies.” *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46 Cal.4th 993, 1003.

1 1340777 at *5. This renders the approval process of a PAGA settlement distinct from a class
2 action settlement, as there is no need for the Court to employ the “two-step approval process”
3 required under F.R.C.P. Rule 23 (“Rule 23”) and C.R.C. Rule 3.769 (“Rule 3.769”).⁶

4 Finally, unlike class action settlements under Rule 23(e) and Rule 3.769, the scope of
5 release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is
6 binding not only on the named employee Plaintiffs but also on government agencies and any
7 aggrieved employee not a party to the proceeding...the non-party employees, because they were
8 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
9 judgment as to remedies other than civil penalties.” *See Arias v. Sup. Ct.* (2009) 46 Cal.4th 969,
10 986-87. Thus, the scope of a release in a PAGA settlement is confined to the PAGA penalties
11 alleged in the complaint (or the prefiling letters to the LWDA) and to the claims that were, or
12 could have been, alleged pursuant to PAGA based on the factual allegations in the complaint.⁷ In
13 the case at hand, as the only claims at issue are PAGA claims, those will be the only claims
14 extinguished because of this Settlement.

15 **B. This Court Should Approve the Settlement Because It Is a Fair, Adequate,**
16 **and Reasonable Compromise of Disputed Claims**

17 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v.*
18 *Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class and
19 representative PAGA settlements involve a court approval process that exists to prevent fraud,
20 collusion, and unfairness to absent individuals. *See Malibu Outrigger Bd. of Governors v.*
21 *Superior Court* (1980) 103 Cal.App.3d 573, 578-79. California law generally follows the same

22 ⁶ The “two-step” approval process of Rule 23(e) is required to facilitate “notice” to absent class members,
23 as Rule 23(e) expressly requires notice and an opportunity for absent class members to exclude themselves
24 or object. *See Fed. R. Civ. Proc. R. 23(e)*. Rule 3.769 contains similar rules for State court class actions.

25 ⁷ This is contrasted with the much broader release permitted in a class action context, which may release
26 all underlying Labor Code violations based on “any matter or fact” alleged in the complaint. *See In re*
27 *Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981) (“The weight of authority
28 establishes that ... a court may release not only those claims alleged in the complaint and before the court,
but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set
forth or referred to in’ the complaint.”); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir., 2010) (“we
have held that federal district courts properly released claims not alleged in the underlying complaint where
those claims depended on the same set of facts as the claims that gave rise to the settlement.”).

standards applicable under Rule 23. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (stating that Rule 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair, adequate, and reasonable”). To be approved, a settlement must be “fair, reasonable and adequate to all concerned.” *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337. Settlement is the preferred means of dispute resolution, particularly in complex representative litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product of fraud or collusion between the negotiating parties. *See, e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s length by experienced counsel. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Because this Settlement is fair, adequate, and reasonable, Plaintiffs respectfully request that the Court grant approval.

1. Factors in Evaluating a Representative PAGA Settlement

A settlement is presumptively fair where it is reached through arm’s-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, and counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; *see also Kullar, supra*, 168 Cal.App.4th at 130. In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup. Ct.* (1979) 89 Cal.App.3d 434, 438. In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited to:

[T]he strength of Plaintiff’s 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 and are non-exhaustive. Trial courts should therefore tailor the factors to each case and give due regard to “what is otherwise a private consensual agreement

1 between the parties.” *Id.* In the context of a PAGA settlement, the third and eighth factors (risk
2 of maintaining class action status and reaction of class members to settlement) are inapplicable.

3 “In the context of a settlement agreement, the test is not the maximum amount Plaintiff
4 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
5 under all of the circumstances.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
6 250. Because settlements inherently involve compromise, settlements providing for narrower
7 relief than can be obtained if the suit were successfully litigated can be reasonable because “the
8 public interest may indeed be served by a voluntary settlement in which each side gives ground
9 in the interest of avoiding litigation.” *Air Lines Stewards, etc., Local 550 v. Am. Airlines, Inc.*,
10 455 F.2d 101, 109 (7th Cir. 1972). Further, courts review the discovery conducted by the parties
11 to aid in assessing whether the parties sufficiently developed the claims and supporting factual
12 bases before reaching settlement. *See Kullar, supra*, 168 Cal.App.4th at 129-31. Information is
13 sufficient where it allows the parties and the court to form “an understanding of the amount that
14 is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential*
15 *Serv. LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that parties can provide
16 the trial court with “a meaningful and substantiated explanation of the manner in which the factual
17 and legal issues have been evaluated.” *Kullar, supra*, 168 Cal.App.4th at 132.

18 **a) The Strength of Plaintiffs’ Case**

19 Although they steadfastly maintain that this action is meritorious, Plaintiffs acknowledge
20 that there are substantial risks and uncertainty in proceeding to trial. Defendant presented
21 numerous defenses to Plaintiffs’ underlying allegations and arguments to why Plaintiffs’ damages
22 calculations were overstated; chief among them that the Court would utilize its discretion to
23 substantially reduce any award of PAGA penalties. While Plaintiffs were prepared to litigate their
24 claims through trial, he faced substantial challenges in prevailing in this matter and obtaining a
25 better result than will be provided through the Settlement. Thus, this factor supports approval.

26 **b) Risk, Expense, Complexity, and Duration of Further Litigation**

27 Although the parties served initial formal discovery prior to mediation, the parties had not
28 yet conducted any depositions. Schmidt Decl., ¶ 20. Absent settlement, the parties will be required

1 to expend substantial time and resources completing formal written and deposition discovery. *Id.*
2 Preparation for trial remained, as well as the prospect of appeals in the wake of a summary
3 judgment ruling for either party, as well as appeals after trial. *Id.* This settlement avoids these
4 considerable costs, risks, and the accompanying burden of continued litigation on the Court.

5 **c) Amount Offered in Settlement Given Realistic Value of Claims**

6 This proposed Settlement provides a fair and reasonable monetary recovery for the
7 LWDA and aggrieved employees in the face of disputed claims. Plaintiffs analyzed Defendant's
8 produced data, and forecasted Defendant's realistic exposure for PAGA civil penalties as follows:

9 **PAGA Civil Penalties: \$742,520**

10 After reviewing and analyzing the relevant data, Plaintiffs reached the conclusion that
11 Defendant had not in fact miscalculated the regular rate of pay as a result of its payment of shift
12 differential, as Defendant was able to demonstrate that the overtime true-up amount was being
13 paid as part of the shift differential. Schmidt Decl., ¶ 21. Plaintiffs' analysis of the timekeeping
14 records also showed a **98%** compliance rate for first meal periods, and Defendant produced
15 written waivers of second meal periods for shifts in excess of 10.0 hours but less than 12.0 hours.
16 *Id.* There were only a negligible number of shifts in excess of 12.0 hours worked. *Id.* Therefore,
17 Plaintiffs' two most viable theories were their wage statement theory and their on-premises rest
18 period theory. *Id.*

19 Plaintiffs assert that they could theoretically prove a PAGA violation in each of the 18,563
20 pay periods in the PAGA Period due to Defendant's alleged rest period violations, as well as
21 Defendant's facially deficient wage statements. Schmidt Decl., ¶ 22. Labor Code § 2699(f)(2)
22 provides for PAGA civil penalties in the amount of \$100 for each aggrieved employee per pay
23 period for the initial violation, and \$200 for each aggrieved employee per pay period for each
24 subsequent violation. *See* Labor Code § 2699(f)(2). However, courts have interpreted section
25 2699(f)(2) to only impose the \$200 subsequent penalty after an employer has been notified that
26 its conduct violates the Labor Code. *See, e.g., Amaral, supra*, 163 Cal.App.4th at 1207 (finding
27 "initial" violation rate applies until employer is notified that it is violating a Labor Code
28 provision); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12-07658 DDP

(RZx), 2012 WL 6618854, at *5 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw 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). Plaintiffs therefore calculate Defendant’s maximum possible PAGA exposure at \$1,856,300 (18,563 pay periods x \$100 per violation). Schmidt Decl., ¶ 22.

However, as discussed above, Defendant raised numerous defenses to the merits of Plaintiffs’ underlying claims, and argued that even if found liable, the Court would exercise its discretion to drastically reduce any potential PAGA penalties given Defendant’s facially lawful meal period and rest period policies. Schmidt Decl., ¶ 23; *see also* Section II.C, *supra*. Notably, Plaintiffs’ maximum potential exposure valuation assumes that they would be able to prove at least one rest period violation and/or wage statement violation in each and every pay period. *Id.* However, the wage statement violations only occurred in up to a maximum of 11,527 pay periods (approximately 62% of pay periods), and there was a risk that Plaintiffs would be unable to prove that Defendant denied employees duty-free rest periods given Defendant’s facially lawful California addendum to its rest period policy, and the inherent manageability challenges in proving rest period violations on a representative basis.. Schmidt Decl., ¶ 23. Plaintiffs therefore discounted the total exposure figure by 20% to account for the risk of losing on the merits and/or for having overestimated Defendant’s potential maximum exposure, and by an additional 50% for the risk of the Court reducing the penalties, to arrive at a realistic recovery of \$742,520. *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).

Thus, the mediator’s proposal for a \$615,000.00 MSA represents approximately 82.8% of Plaintiffs’ reasonably forecasted recovery, which is well within the range approved by courts as being fair, reasonable and adequate, while also avoiding further expense and risk of further

litigation. *See Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, *9 (N.D. Cal. 2015) (“Although 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval...”); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of “roughly one-sixth of the potential recovery”); *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); Schmidt Decl., ¶ 24.

d) Discovery Completed and the Status of Proceedings

The parties engaged in a significant exchange of documents and data necessary to evaluate the value of the PAGA claim prior to mediation. *See* Schmidt Decl., ¶ 10. Defendant provided Plaintiffs with a timekeeping and payroll records for the aggrieved employees, and relevant policy documents in effect. *Id.* It was only after the completion of this discovery and Plaintiffs’ expert’s comprehensive data analysis that the parties attended mediation. *Id.* 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 Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented by competent and experienced wage and hour class action counsel, who pressed Plaintiffs’ PAGA claim forward, and who believe this Settlement to be fair and adequate for all involved. *See* Schmidt Decl., ¶¶ 2-7; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; Declaration of Andrew J. Rowbotham (“Rowbotham Decl.”), ¶¶ 2-7; Declaration of Alma V. Montenegro (“Montenegro Decl.”), ¶¶ 2-4. Further, the proposed Settlement was reached with the input and assistance of mediator Jeffrey Krivis, who made a mediator’s proposal that he determined represented a fair and reasonable settlement. Schmidt Decl., ¶ 10. Thus, this factor strongly supports settlement approval. *See, Kullar, supra*, 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.”).

C. The Requested Award for Attorneys’ Fees is Reasonable as a Percentage of the MSA and Confirmed by a Lodestar Crosscheck

Plaintiffs, as the prevailing party in settlement, are entitled to recover attorneys’ fees and costs for bringing this PAGA claim. *See* Cal. Labor Code § 2699(g) (“Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”); Code of Civil Procedure § 1021.5(a). A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53; *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.”).

California state and federal courts routinely award fee awards of one-third of the settlement fund in class actions. *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, fn. 11; *see also Wershba, supra*, 91 Cal. App. 4th at 254 (recognizing the “percentage of recovery” method); *In re Pacific Enterprises Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (affirming 33% fee award). Indeed, the California Supreme Court approved the use of the “percentage of fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (“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). This is consistent with Plaintiffs’ counsel’s experience in similar wage-and-hour class and representative action matters. Schmidt Decl., ¶ 25. Here, Plaintiffs’ counsel’s fee request of up to \$205,000.00 (one-third of the MSA) is the same percentage sought in *Laffitte* and is fair and reasonable based on the percentage of the recovery

1 method. *Id.*

2 The California Supreme Court in *Laffitte* also held that trial courts have discretion to
3 assess the reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby
4 the trial court calculates counsel’s lodestar and determines whether the “lodestar multiplier”
5 needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1
6 Cal.5th at 503-06. Under the lodestar method, the court multiplies the number of hours reasonably
7 expended by each attorney or legal staff member by their reasonable hourly rates, then enhances
8 this lodestar figure by a “multiplier” to account for a range of factors, such as the contingent
9 nature of the case and the degree of success achieved. *See Serrano v. Priest* (1977) 20 Cal.3d 25,
10 48-49; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank, N.A.*
11 (2001) 92 Cal.App.4th 819, 833, *as modified* (Oct. 25, 2001) (“There is no hard-and-fast rule
12 limiting the factors that may justify an exercise of judicial discretion to increase or decrease a
13 lodestar calculation.”).

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

23 In this case, Plaintiff’s counsel has a lodestar of approximately \$136,788.00, which results
24 in a modest 1.50 multiplier compared to the \$205,000.00 fee request. Schmidt Decl., ¶ 26. A
25 general summary showing the number of hours of work performed by each attorney and firm
26 paralegal is set forth below. Plaintiffs’ counsel submits that the billing rates used are reasonable
27 in view of the market rates and the rates at which Class Counsel has been approved at in other
28 California and State courts. *Id.* Exhibit 5 (Laffey Matrix).

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (15th Year Attorney)	\$650	61.3	\$39,845.00
Fletcher W. Schmidt (9th Year Attorney)	\$595	75.9	\$45,160.50
Andrew J. Rowbotham (7th Year Attorney)	\$425	92.4	\$39,270.00
Alma V. Montenegro (3rd Year Attorney)	\$350	31.0	\$10,850.00
Firm Paralegals	\$175	9.5	\$1,662.50
Total Lodestar			\$136,788.00

The fee award requested here is justified because Plaintiffs' counsel achieved a significant monetary recovery for the aggrieved employees and the State of California in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis. Schmidt Decl., ¶ 25. Additionally, Plaintiffs' recovery for the State of California and aggrieved employees exceeds other PAGA awards approved by courts in California. *See, e.g., Penaloza, supra*, 2013 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average PAGA penalties of \$3.33). That Plaintiffs' counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed, this case presented significant risks both on the merits and with respect to the Court's authority to reduce an award of PAGA penalties. It is fair and reasonable to account for these risks in compensating Plaintiffs' counsel, as well as the risks involved in undertaking this litigation and expending considerable effort while working on a pure contingency basis. Since undertaking representation of Plaintiffs, Plaintiffs' counsel dedicated substantial resources to this litigation, including expending \$20,536.44 in litigation costs, without receiving any compensation to date. Schmidt Decl., ¶ 27; Exhibit 6. Plaintiffs' counsel's efforts include conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting extensive legal research regarding the merits and legal bases of Plaintiffs' claims, drafting and filing Plaintiffs' initial and consolidated complaints and LWDA notice letters, preparing initial written discovery and meeting and conferring with Defendant on responses, attending various court hearings, reviewing substantial

documents and data produced by Defendant, meeting and conferring with Defendant's counsel regarding Defendant's informal document production, extensively evaluating the timekeeping and payroll data with a retained expert prior to mediation, preparing for and attending mediation, drafting a mediation brief, negotiating and drafting the long-form Settlement Agreement and Notice, preparing this Motion for settlement approval and all supporting documents hereto, and otherwise litigating the case. Schmidt Decl., ¶ 27. Plaintiffs' counsel will spend additional time attending the hearing on this Motion and overseeing the settlement administration process. *Id.* Given the potential for adverse outcomes, the contingent risk borne by Plaintiffs' counsel was great. The quality of Plaintiffs' counsel's work, and the efficacy and dedication with which it was performed, should be compensated.

Plaintiffs' counsel's previous experience in litigating wage and hour class and representative actions also supports the reasonableness of the fee request. Plaintiffs' counsel is well-versed in plaintiff and defense-side wage and hour class and representative action litigation, and collectively brings three decades worth of wage-and-hour class and representative action litigation experience. *See* Schmidt Decl., ¶¶ 2-6; *see also generally* Declarations of Haines, Rowbotham, and Montenegro. Plaintiffs' counsel has also been certified as class counsel in numerous class action cases alleging wage and hour claims. *Id.* Plaintiffs' counsel's experience in similar matters was integral in evaluating the strengths and weaknesses of this case and the reasonableness of the Settlement. Because it is reasonable to compensate Plaintiffs' counsel commensurate with their skill, reputation, and experience, the requested fee award of \$205,000.00 is fair, reasonable and adequate, and should therefore be approved.

D. The Requested Cost Reimbursement Warrants Approval as Fair, Adequate, and Reasonable

Plaintiffs' counsel incurred and respectfully requests reimbursement of up to \$20,536.44 in actual litigation costs. Schmidt Decl., ¶ 28; Exhibit 6.⁸ Plaintiffs' counsel's request is fair,

⁸ Plaintiff's counsel's costs records reflect Plaintiff's actual costs as of the date of the filing (\$20,346.44). Schmidt Decl., ¶ 28. However, the total amount that Plaintiffs' counsel is requesting for expense reimbursements, \$20,536.44, includes an additional \$190.00 in anticipated future costs for the filing and service of the Motion for PAGA Settlement Approval, as well as the CourtCall costs for Plaintiffs' counsel to attend the hearing on this Motion, which will be incurred by the time the motion is heard. *Id.*

adequate, and reasonable, as all of these costs are documented and reasonably incurred. *Id.* Moreover, the costs Plaintiffs seek are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel should recover “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, * 3 (N.D. Cal. 2011) (“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *In re Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation expenses, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because the expense reimbursements requested by Plaintiffs’ counsel were reasonably incurred, the Court should grant Plaintiffs’ counsel’s request for reimbursement of \$20,536.44 in actual litigation costs incurred.

E. The Court Should Approve the Requested Administration Costs

Plaintiffs also requests that the Court approve up to \$3,625.00 in administration costs to the Settlement Administrator, Phoenix Settlement Administrators. Schmidt Decl., ¶ 29; Lawrence Decl., Exhibit B; Settlement, § III.4.c. As detailed in the Settlement Agreement and declaration of Jodey Lawrence, submitted concurrently with this Motion, Phoenix will perform duties in connection with this Settlement that are integral in effectuating the Settlement and the Notice process. Among other things, Phoenix will calculate each aggrieved employee’s Individual Settlement Payment, update addresses contained in the employee data supplied by Defendant, format the Notice Packets for mailing and translate them into Spanish, mail Notice Packets to all aggrieved employees, and otherwise administer the Settlement. *See generally*, Lawrence Decl.; Settlement, § IV. Phoenix was selected to administer this Settlement because it is an experienced and well-respected settlement administrator and returned a bid at a competitive rate. Schmidt Decl., ¶ 29; *see generally*, Lawrence Decl. For these reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should be approved.

F. This Court Should Approve Plaintiffs’ Requested Enhancement Awards Because They Are Fair, Adequate, and Reasonable in View of Plaintiffs’ Efforts and the Risks Assumed on Behalf of the Aggrieved Employees

Courts routinely approve enhancement awards to compensate named plaintiffs for the

1 services they provide and the risks they incur during class and representative litigation. *See, e.g.,*
2 *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to
3 named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*
4 (N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 enhancement award). Here, pursuant to
5 the Settlement, Plaintiffs seek a total enhancement award of up to \$10,000.00 (\$5,000.00 to each
6 named plaintiff). *See* Settlement, §§ I.10 and III.4.b. This request is reasonable given Plaintiffs’
7 efforts in this case and the risks they undertook on behalf of the aggrieved employees. Schmidt
8 Decl., ¶ 30. Among other things, Plaintiffs searched for and gathered relevant documents for use
9 in the lawsuit and provided factual information to Plaintiff’s counsel, had regular discussions with
10 Plaintiff’s counsel both in person and over the phone regarding the claims in the lawsuit, the facts
11 and legal theories at issue in the case, and Defendant’s timekeeping as well as meal and rest period
12 practices, discussed the status of the case and general case strategy with their attorneys on many
13 occasions, and helped their attorneys prepare for mediation. Teeba Decl., ¶ 4; Mindham Decl.,
14 ¶ 4. Plaintiffs estimate spending at least 15 hours each on activities that ultimately lead to the
15 Settlement. *Id.* Accordingly, Plaintiffs’ enhancement awards are appropriate and justified as part
16 of the Settlement.

17 **V. CONCLUSION**

18 For the reasons stated herein, this Court should grant Plaintiffs’ Motion in its entirety and
19 adopt the [Proposed] Judgment and Order Granting Plaintiffs’ Motion for Settlement Approval
20 of Claims Brought Under the PAGA, Reasonable Attorneys’ Fees and Costs, and Enhancement
21 Awards, submitted concurrently herewith.

22 Dated: June 18, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

23
24 By:


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