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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROSALIE WAYMAN, as an individual and
on behalf of all other aggrieved employees,

Plaintiff,

vs.

TERRY YORK MOTOR CARS, LTD., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No. 20STCV22528

*[Assigned for all purposes to the Hon.
Michelle Williams Court, Dept. 74]*

**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: October 3, 2022

Time: 8:30 a.m.

Dept.: 74

Reservation ID: 649532899470

Complaint filed: June 15, 2020

Trial Date: None Set.

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

3 PLEASE TAKE NOTICE that on October 3, 2022, at 8:30 a.m., or as soon thereafter as
4 the matter may be heard in Department 74 of the above-entitled Court, located at 111 North Hill
5 Street, Los Angeles, California 90012, Plaintiffs Rosalie Wayman, Riham Megally, and Sultan
6 Ahmad (“Plaintiffs”), individually and on behalf of the State of California and other Aggrieved
7 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
11 Agreement, a true and correct copy of which is attached to the Declaration of Paul K.
12 Haines filed concurrently herewith;
- 13 2. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
- 14 3. Approving the proposed Explanatory Letter (attached as Exhibit A to the Settlement
15 Agreement), and directing that it be distributed to 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
18 the terms of the Settlement Agreement;
- 19 5. Approving an award of attorneys’ fees to Plaintiffs’ counsel of \$403,091.33 and an
20 award of litigation costs to Plaintiffs’ counsel in the amount of \$17,555.37;
- 21 6. Approving an enhancement payment of \$5,000.00 to each Plaintiff, for a total of
22 \$15,000.00, for their service to aggrieved employees and the State of California;
- 23 7. Approving \$21,950.00 in administration costs to Phoenix Settlement Administrators;
24 and
- 25 8. Approving the payment of \$563,758.00 to the California Labor & Workforce
26 Development Agency for its share of PAGA civil penalties.

27 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
28 the declaration of Paul K. Haines and all exhibits attached thereto; the declaration of James

1 Hawkins and all exhibits attached thereto; the declaration of Jodey Lawrence and all exhibits
2 attached thereto; the declarations of Plaintiffs Rosalie Wayman, Riham Megally, and Sultan
3 Ahmad; the Settlement Agreement; Plaintiffs' Request for Judicial Notice; all other pleadings and
4 papers on file in this action; and on any further oral or documentary evidence or argument
5 presented at the time of hearing.

6 Respectfully submitted,

7 Dated: September 8, 2022

HAINES LAW GROUP, APC

8
9 By: 
10 Paul K. Haines
11 Attorneys for Plaintiffs and Aggrieved
12 Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Rosalie Wayman, Riham Megally, and Sultan Ahmad (“Plaintiffs”), “aggrieved
4 employees” under the Private Attorneys’ General Act of 2004 (“PAGA”), respectfully move this
5 Court for an Order granting approval of the Settlement Agreement (“Settlement”) with
6 Defendants Allison Bavarian, dba BMW of Mountain View; AN CJ Valencia, Inc.; AN Fremont
7 Luxury Imports, Inc., dba BMW of Fremont; AN Imports of Stevens Creek, Inc., dba MINI of
8 Stevens Creek; AN Luxury Imports of San Diego, Inc., dba BMW Encinitas; AN San Jose Luxury
9 Imports, Inc. (dba Mercedes-Benz of Stevens Creek; AutoNation Volvo Cars San Jose, and
10 AutoNation Collision Center Stevens Creek); AN Valencia Auto Imports, Inc., dba Mini of
11 Valencia; Auto Car, Inc. (dba AutoNation Honda Roseville, AutoNation Honda Roseville Pre-
12 Owned, and AutoNation Collision Center Sacramento); Auto Company XIX, Inc., dba Porsche
13 Irvine; Auto Company XXII, Inc. (dba Mercedes-Benz of San Jose and Smart Center San Jose);
14 Auto Company XXIII, Inc. (dba AutoNation Chrysler Dodge Jeep Ram Valencia); Auto Mission
15 Ltd., dba AutoNation Toyota Hayward; Auto West, Inc., dba AutoWest Chrysler Jeep Dodge
16 Fremont; Bargain Rent-A-Car (dba Lexus of Cerritos and Lexus Collision Center Cerritos);
17 Beach City Chevrolet Company, Inc.; Buena Park Luxury Imports, Inc., dba BMW Buena Park;
18 Carwell, LLC (dba Mercedes-Benz of South Bay, Jaguar Land Rover South Bay, and AutoNation
19 Collision Center South Bay); Costa Mesa Cars, Inc. (dba AutoNation Honda Costa Mesa and
20 AutoNation Collision Center Costa Mesa); Edgren Motor Company, Inc., dba AutoNation Honda
21 Fremont; Fit Kit, Inc., dba AutoNation Toyota Buena Park; House of Imports, Inc. (dba House of
22 Imports and AutoNation Collision Center Buena Park); Irvine Imports, Inc., dba AutoNation
23 Toyota Irvine); Joe MacPherson Ford, dba AutoNation Ford Tustin; Joe MacPherson Infiniti, dba
24 AutoNation Infiniti Tustin; Magic Acquisition Corp., dba AutoNation Ford Valencia; Mr.
25 Wheels, Inc., dba AutoNation Toyota Cerritos; Newport Beach Cars, LLC, (dba Newport Auto
26 Center, Porsche Newport Beach, and Bentley Newport Beach); Peyton Cramer Automotive (dba
27 AutoNation Acura South Bay); Peyton Cramer Ford, dba AutoNation Ford Torrance); Peyton
28 Cramer Infiniti; Peyton Cramer Jaguar; Prime Auto Cosmetics, Inc., dba AutoNation

1 Reconditioning Services; Prime Auto Resources, Inc. (dba AutoNation Auto Auction,
2 AutoNation Auto Auction Orlando, AutoNation Auto Auction Houston, and AutoNation Auto
3 Auction Atlanta); Roseville Motor Corporation, dba AutoNation Chrysler Dodge Jeep Ram
4 Roseville; Shamrock Ford, Inc., dba Ford of Dublin; Stevens Creek Luxury Imports, Inc. (dba
5 AutoNation Maserati Stevens Creek and AutoNation Alfa Romeo Stevens Creek); Stevens Creek
6 Motors, Inc., dba AutoNation Acura Stevens Creek; Valencia B. Imports, Inc. dba Valencia
7 BMW; Valencia Dodge; Vanderbeek Motors, Inc. (dba AutoNation Subaru Roseville, BMW of
8 Roseville, AutoNation Mazda Roseville, and AutoNation Collision Center Roseville);
9 Vanderbeek Olds/GMC Truck, Inc.; Vince Wiese Chevrolet, Inc. dba AutoNation Chevrolet
10 Valencia; VistaCal Luxury Imports, Inc., dba BMW of Vista; Prime Auto Cosmetics, Inc. dba
11 AN Reconditioning Services Roseville; AN Collision Center Roseville; AN Collision Center
12 Fremont; Prime Auto Resources, Inc. dba AN Auto Action Los Angeles; Prime Auto Cosmetics,
13 Inc. dba AN Reconditioning Services Gardenia; AN Collision Center South Bay; LA Collision
14 Center Long Beach; and AN Collision Center Costa Mesa (hereinafter referred to as
15 “Defendants”).

16 This PAGA representative action seeks civil penalties predicated on Defendants’ alleged
17 violations of the California Labor Code from November 15, 2019, through June 30, 2022 (the
18 “PAGA Period”). The proposed Settlement, under which Defendants have agreed to pay a non-
19 reversionary Gross Settlement Amount (“GSA”) of \$1,209,274.00, will resolve Plaintiffs’
20 representative claims filed on behalf of the State of California and all “Aggrieved Employees,”
21 which includes all current and former non-exempt employees who worked for Defendants in
22 California at any time during the PAGA Period.

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

28 In deciding whether to grant approval of the Settlement, the primary issue is whether the

1 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement
2 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the
3 product of arm's-length negotiations; (2) was negotiated by attorneys experienced in wage-and-
4 hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was
5 negotiated after undertaking sufficient discovery and investigation to evaluate the relative
6 strength and value of Plaintiffs' PAGA claim and Defendants' defenses thereto; and (4) reflects
7 a reasoned compromise based on the relative strength and value of the PAGA claim, as well as
8 the risks, expenses, complexity and likely duration of further litigation.

9 As noted, the Settlement provides for a GSA of \$1,209,274.00. After deducting amounts
10 for requested attorneys' fees (\$403,091.33), litigation costs (\$17,555.37), Plaintiffs'
11 Enhancement Payments (\$5,000 each, for a total of \$15,000), and settlement administration costs
12 (\$21,950.00), the Settlement provides for distribution of a Net Settlement Amount ("NSA") of
13 approximately \$751,677.33 to be paid to Aggrieved Employees and the California Labor &
14 Workforce Development Agency ("LWDA"). Settlement, § III.2-5; *see also* Declaration of Paul
15 K. Haines ("Haines Decl."), ¶ 17.

16 The NSA shall be distributed 75% (approximately \$563,758.00) to the LWDA, and 25%
17 (approximately \$187,919.33) to Aggrieved Employees, pursuant to the requirements of the PAGA
18 as codified in Lab. Code § 2699(i). *See* Settlement, § III.5. There are approximately 6,366
19 Aggrieved Employees, resulting in average payments of approximately \$29.52 to each Aggrieved
20 Employee. Haines Decl., ¶ 17.

21 This Settlement represents a reasonable recovery for the State of California and Aggrieved
22 Employees. Of particular relevance here is the fact that on June 15, 2022, only several months
23 after this Settlement was reached, the United States Supreme Court issued its opinion in *Viking*
24 *River Cruises, Inc. v. Moriana* ("Viking River") where it overruled the California Supreme Court's
25 holding in *Iskanian v. CLS Transportation Los Angeles, LLC* which held that a representative
26 PAGA claim could not be compelled to arbitration. *See Viking River Cruises, Inc. v. Moriana*
27 (June 15, 2022, No. 20-1573) 596 U.S. ____ [____ S.Ct. ____, 2022 WL 2135491; *Iskanian v. CLS*
28 *Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348. In effect, the U.S. Supreme Court's

1 ruling in *Viking River* means that if this matter had not settled, Defendants would likely be able
2 to compel this case (as well as the matters entitled *Riham Megally v. Carwell, LLC* and *Sultan*
3 *Ahmad v. Bargain Rent-A-Car, et al.*) to individual arbitrations based on the arbitration
4 agreements signed by each Plaintiff, precluding any PAGA recovery whatsoever. Therefore, this
5 is a unique case where further litigation would almost certainly have resulted in a smaller
6 recovery, or even no recovery at all. Moreover, notwithstanding these risks, the GSA exceeds
7 other PAGA penalty awards approved as reasonable throughout California. *See, e.g., Penaloza v.*
8 *PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May
9 20, 2013) (approving total PAGA set-aside of \$5,000, or \$7.49 per employee); *Cabrera v.*
10 *Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A.
11 County, Mar. 12, 2013) (approving PAGA set-aside of \$10,000, or \$3.33 per employee). Further,
12 the amounts requested for attorneys' fees and costs, Plaintiffs' enhancement payments, and
13 settlement administration costs are fair, adequate, and reasonable. In light of the foregoing, this
14 Court should enter the [Proposed] Judgment and Order submitted herewith.

15 **II. SUMMARY OF THE LITIGATION**

16 **A. Brief Factual Background and Summary of Claims**

17 Defendants own and operate car dealerships throughout California. Haines Decl., ¶ 11.
18 Plaintiffs worked for Defendants in California as non-exempt employees during the PAGA
19 Period.

20 Plaintiffs' PAGA claim is predicated primarily on allegations that they and other
21 employees were not paid all wages owed, were denied compliant meal and rest periods, were not
22 reimbursed for all necessary business expenses, did not receive accurate and compliant wage
23 statements, and were not paid all final wages owed at the time of separation of employment. As
24 explained below, Defendants deny Plaintiffs' allegations and asserted several affirmative
25 defenses to their claims.

26 **B. Relevant Procedural History**

27 On April 8, 2020, Plaintiff Rosalie Wayman submitted her notification letter to the LWDA
28 giving notice of her intent to pursue a PAGA representative action for alleged Labor Code

violations, as required by Labor Code § 2699.3. *See* Haines Decl., ¶ 12 & Exh. 1. On June 15, 2020, after the 65-day waiting period under Labor Code § 2699.3(a)(2)(A), Plaintiff Rosalie Wayman filed a Representative Action Complaint in this Court. *Id.*, at ¶ 12. Plaintiff Rosalie Wayman later amended her PAGA Notice on April 28, 2022. *Id.*, Exh. 2.

On November 30, 2020, Plaintiff Riham Megally submitted her notification letter to the LWDA giving notice of her intent to pursue a PAGA representative action for alleged Labor Code violations, as required by Labor Code § 2699.3. *See* Haines Decl., ¶ 13 & Exh. 3. On February 4, 2021, after the 65-day waiting period under Labor Code § 2699.3(a)(2)(A), Plaintiff Riham Megally filed a Representative Action Complaint in this Court in the matter entitled *Riham Megally v. Carwell, LLC*, Los Angeles Superior Court Case No. 21STCV04424. Haines Decl., ¶ 13.

On September 1, 2021, Plaintiff Sultan Ahmad submitted his notification letter to the LWDA giving notice of his intent to pursue a PAGA representative action for alleged Labor Code violations, as required by Labor Code § 2699.3. *See* Haines Decl., ¶ 14 & Exh. 4. On November 9, 2021, after the 65-day waiting period under Labor Code § 2699.3(a)(2)(A), Plaintiff Sultan Ahmad filed a Representative Action Complaint in this Court in the matter entitled *Sultan Ahmad v. Bargain Rent-A-Car, et al.*, Los Angeles Superior Court Case No. 21STCV41319. Haines Decl., ¶ 14.

As part of the Settlement, the Parties stipulated to the filing of a First Amended Representative Action Complaint (“FAC”) which added Plaintiffs Megally and Ahmad as named Plaintiffs, added factual allegations, and added additional Defendants to this Action. Haines Decl., ¶ 16. On July 19, 2022, the FAC was filed in this Action. *Id.*

The Parties attended two mediation sessions with experienced wage and hour mediator Marc Feder, Esq. Haines Decl., ¶ 15. In connection with mediation, Defendants informally produced information and documents pertaining to Plaintiffs and other Aggrieved Employees, including, but not limited to, payroll and timekeeping records for Plaintiffs and a representative sample of Aggrieved Employees; several data points including the number of Aggrieved Employees and the number of pay periods worked by Aggrieved Employees during the PAGA

Period; and relevant wage and hour policy documents, in order for Plaintiffs’ counsel to investigate Plaintiffs’ allegations and value the claims prior to mediation. *Id.*

The parties attended a first mediation on April 19, 2021, with Mr. Feder, however, the parties were not able to reach a settlement. Haines Decl., ¶ 16. The parties attended a second mediation with Mr. Feder on February 7, 2022. *Id.* During this second mediation, the parties vigorously debated the impact of *Viking River Cruises, Inc. v. Moriana* on this Action, the legal bases for Plaintiffs’ claims and Defendants’ defenses, 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 the assistance of Mr. Feder, the Parties agreed to fully and finally resolve Plaintiffs’ PAGA claim. *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” under the Settlement 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.

B. Monetary Terms

The Settlement provides for Defendants’ payment of a non-reversionary Gross Settlement Amount (“GSA”) of \$1,209,274.00. *See* Settlement, §§ I.9, III.2. After deducting requested attorneys’ fees, litigation costs, Plaintiffs’ enhancement payments, and 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 \$187,919.33 and will be distributed to all Aggrieved Employees based on the number of Affected 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 request one-third of the GSA (i.e., \$403,091.33) in attorneys’ fees, and

1 \$17,555.37 in litigation costs. *See* Settlement, § III.4(a); Haines Decl., ¶ 27 & Exh. 6; Declaration
2 of James Hawkins (“Hawkins Decl.”), ¶ 8; Exh.1. As discussed in detail below, a fee award of
3 one-third of the GSA is fair, adequate, and reasonable as a percentage of the settlement fund and
4 as confirmed by a lodestar cross-check and is in line with fee awards in other PAGA settlements.

5 The parties have agreed to engage Phoenix Settlement Administrators (“Phoenix”) as the
6 third-party settlement administrator. *See* Settlement, § IV.1. Phoenix will update Aggrieved
7 Employee addresses using the National Change of Address database, calculate and distribute
8 Individual PAGA Payments, mail payments to all Aggrieved Employees together with the
9 Explanatory Letter, and perform other duties that are integral to the effectuation of the Settlement.
10 *Id.*, §§ IV.2-4. Plaintiff requests that the Court approve \$21,950.00 in administration costs to
11 Phoenix, which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.*,
12 at § III.4(c); *see also* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached exhibits.

13 Finally, Plaintiffs request an enhancement payment of \$5,000.00 each, for a total of
14 \$15,000.00, in recognition of Plaintiffs’ contributions to this case and their efforts in bringing this
15 case to successful resolution. *See* Settlement, § III.4(b); Declaration of Rosalie Wayman
16 (“Wayman Decl.”), ¶¶ 6-9; Declaration of Riham Megally (“Megally Decl.”), ¶¶ 6-9; Declaration
17 of Sultan Ahmad (“Ahmad Decl.”), ¶¶ 7-10.

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

19 The NSA will be distributed 75% to the LWDA and 25% to Aggrieved Employees,
20 pursuant to Labor Code § 2699(i). Based on the above requested distributions, the NSA is
21 estimated to be \$751,677.33, with \$563,758.00 paid to the LWDA and \$187,919.33 distributed
22 to Aggrieved Employees. Haines Decl., ¶ 17. As noted, there are approximately 6,366 total
23 Aggrieved Employees. *Id.* Thus, it is anticipated that overall, Aggrieved Employees will receive
24 average Settlement payments of approximately \$29.52. *Id.*

25 **3. Funding of the Settlement**

26 Defendants will deposit the Gross Settlement Amount with Phoenix, the Settlement
27 Administrator, within fifteen (15) calendar days of Court approval of the Settlement. *See*
28 Settlement, § III.2. Within twenty-one (21) calendar days after the Settlement has been fully

1 funded and after receiving approval from counsel of the payment calculations, Phoenix will mail
2 the Explanatory Letter in English and Spanish, and Individual PAGA Payments, to Aggrieved
3 Employees via First-Class U.S. Mail. *See* Settlement, § IV.3.

4 Funds from any settlement checks remaining uncashed after 180 days will be sent by
5 Phoenix to the California State Controller’s Office for deposit in the Unclaimed Property Fund,
6 in the name of the Aggrieved Employee. *See* Settlement, § IV.4.

7 **IV. LEGAL ARGUMENT**

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

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

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

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

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

20 Second, consistent with the fact that unnamed employees have no property interest in a
21 PAGA claim,¹ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
22 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
23 1340777 at *5; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482 (2020)
24 (recognizing that “there is no mechanism for opting out of the judgment entered on the PAGA
25 claim.”). This renders the approval process of a PAGA settlement distinct from a class action
26

27 ¹ “The [PAGA] does not create property rights or any other substantive rights” as “[i]t is simply
28 a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code
violations—that otherwise would be sought by state labor law enforcement agencies.” *See*
Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct., 46 Cal.4th 993, 1003 (2009).

1 settlement, as the Court need not employ the “two-step approval process” required for class action
2 settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

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

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

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

17 [T]he strength of plaintiffs’ case, the risk, expense, complexity and
18 likely duration of further litigation, the risk of maintaining class action
19 status through trial, the amount offered in settlement, the extent of
20 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.

21 *Id.* These factors require balancing, are non-exhaustive, and trial courts should tailor the factors
22 to each case and give due regard to “what is otherwise a private consensual agreement between
23 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.

24 Because settlements inherently involve compromise, even a settlement providing for
25 substantially narrower relief than might be obtained if the suit were successfully litigated can be
26 reasonable because “the public interest may indeed be served by a voluntary settlement in which
27 each side gives ground in the interest of avoiding litigation.” *Wershba v. Apple Computer, Inc.*,
28 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. 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. See Haines Decl., ¶ 18. At the time that this settlement was reached, the U.S. Supreme Court had granted certiorari in *Viking River*. 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 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. As a result, absent this settlement, it is likely that **no** representative PAGA recovery would be possible at all.

Defendants also presented multiple defenses with respect to the merits of Plaintiffs’ claims. For example, with respect to Plaintiffs’ commission-based claims, Defendants argue that its commission pay plans comply with California law and that they have always compensated its commissioned-based employees for all required paid rest periods. Haines Decl., ¶ 19. Defendants further argue that at all times throughout the PAGA Period it has calculated separate rest period compensation for its commissioned based employees in compliance with California law. *Id.* Defendants also contend that employees experienced minimal (if any) uncompensated “non-

1 productive” time. *Id.* Additionally, Defendants maintain that any questions of non-productive
2 time would be highly individualized, as employees worked in a variety of locations, and there are
3 no records or other common evidence of time spent on potentially non-productive tasks, making
4 this claim unmanageable on a representative basis. *Id.*

5 With respect to Plaintiffs’ meal period claims, Defendants argue that they have maintained
6 compliant written meal period policies throughout the Class Period and have always provided
7 employees the *opportunity* to take legally compliant meal periods, and that they are not required
8 to “ensure” meal periods are taken. Haines Decl., ¶ 20; *see Brinker Restaurant Corp. v. Superior*
9 *Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard and holding employers only
10 have to “provide” employees the opportunity to take meal periods). Additionally, Defendants
11 maintain that employees voluntarily waived their second meal period when they worked shifts in
12 excess of 10.0 hours (but less than 12.0 hours), as they are entitled to do under Labor Code § 512.
13 Haines Decl., ¶ 20. Finally, Defendants argue that Plaintiffs’ meal period claims are not suited
14 for representative treatment, as individual inquiries would be needed to assess which employees
15 took non-compliant meal periods or missed meal periods, how many meal periods were non-
16 compliant or missed, and the reasons why a particular employee did not take a compliant meal
17 period on a particular shift. *Id.*

18 With respect to Plaintiffs’ reimbursement claims, Defendants maintain that aggrieved
19 employees were not required to use their personal cellular phones as part of their job. Haines
20 Decl., ¶ 21. Defendants further argue that any expenses incurred by employees were minimal,
21 given the wide availability of low-cost cellular phone plans. *Id.*

22 As a result of Defendants’ failures to pay all meal and rest period premiums, and all wages
23 owed, Plaintiffs allege derivative PAGA claims for failure to issue accurate and itemized wage
24 statements and failure to pay all wages owed at separation. *See* Labor Code §§ 226(a), 201-203;
25 Haines Decl., ¶ 22. In response, Defendants argue that Plaintiffs’ underlying claims will fail and,
26 as a result, the derivative claims will also fail. *See Price v. Starbucks Corp.*, 192 Cal.App.4th
27 1136, 1147 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA
28 claims also fail.”). Defendants also maintain that any “derivative” PAGA claims for violations of

1 Labor Code Sections 226 or 203 would be entirely duplicative and would be unlikely to be
2 awarded in any significant manner by a Court. Haines Decl., ¶ 22.

3 Defendants further maintain that even if the Court awarded PAGA penalties for any of the
4 alleged violations, it would substantially reduce the penalties based on the discretionary factors
5 in Labor Code § 2699(e)(2) (authorizing reduction in penalties “if, based on the facts and
6 circumstances of the particular case, to do otherwise would result in an award that is unjust,
7 arbitrary and oppressive, or confiscatory.”). Haines Decl., ¶ 23. Indeed, Defendants argue, many
8 courts have reduced PAGA penalties drastically where, as here, the employer presented good-
9 faith defenses and attempted to comply with the law. *See Thurman v. Bayshore Transit Mgmt.,*
10 *Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because
11 “defendants took their obligations...seriously and attempted to comply with the law”); *Fleming*
12 *v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011)
13 (reducing PAGA penalties by over 82%, in part because employer “not aware” of violations);
14 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just
15 \$5 per pay period where employer made “good faith attempts” to comply with the law).

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

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

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

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

27 The proposed Settlement provides a fair and reasonable monetary recovery for the State
28 of California and Aggrieved Employees in the face of hotly disputed claims. Based on data

1 provided by Defendants, there were approximately 219,868 Pay Periods worked by the Aggrieved
2 Employees during the PAGA Period. Haines Decl., ¶ 24; Settlement, § III.3. Labor Code
3 § 2699(f)(2) provides for PAGA civil penalties in the amount of \$100 for each aggrieved
4 employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay
5 period for each subsequent violation. *See* Labor Code § 2699(f)(2). However, courts have
6 interpreted section 2699(f)(2) to only impose the \$200 subsequent penalty after an employer has
7 been notified that its conduct violates the Labor Code. *See, e.g., Amaral v. Cintas Corp. No. 2,*
8 *163 Cal.App.4th 1157, 1207 (2008)* (finding “initial” violation rate applies until employer is
9 notified that it is violating a Labor Code provision); *Trang v. Turbine Engine Components*
10 *Technologies Corp., No. CV 12–07658 DDP (RZx), 2012 WL 6618854, at *5 (C.D. Cal. Dec.*
11 *19, 2012)* (“courts have held that employers are not subject to heightened penalties for subsequent
12 violations unless and until a court or commissioner notifies the employer that it is in violation of
13 the Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit*
14 *Services, Inc., No. 05cv1199–IEG–CAB, 2009 WL 2448430, at *9 (S.D. Cal. 2009)* (finding that
15 California law imposes the “subsequent violation penalty” only after an employer has been
16 notified its conduct violates the Labor Code). Therefore, assuming that Plaintiffs could prove at
17 least one Labor Code violation in each pay period, Plaintiffs calculated Defendants’ maximum
18 PAGA exposure at \$21,986,800 (219,868 pay periods * \$100 per violation). Haines Decl., ¶ 24.

19 However, as discussed above, Defendants raised numerous defenses to the merits of
20 Plaintiffs’ claims, and argued that even if found liable, the Court would exercise its discretion to
21 reduce any potential PAGA penalties given Defendants’ good-faith defenses. *See Thurman,*
22 *supra*, 203 Cal.App.4th at 1136 (affirming reduction of PAGA penalties); *Carrington, supra*, 30
23 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of maximum exposure).
24 Additionally, at the time of mediation, there was a looming threat that a forthcoming decision in
25 *Viking River* could preclude any representative PAGA recovery at all. Haines Decl., ¶ 24. In the
26 face of Defendants’ defenses on the merits, the Court’s discretion to reduce PAGA penalties, and
27 the threat (which has since become reality) of an adverse *Viking River* ruling, Plaintiffs felt that
28 the negotiated settlement of \$1,209,274, 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., ¶ 24.

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, the parties engaged in substantial informal and formal discovery to evaluate the PAGA claim. Defendants provided Plaintiff with, *inter alia*, a sampling of timekeeping and payroll records for non-exempt employees, additional relevant data points, and its relevant written policies. Haines Decl., ¶ 15. Only after engaging in mediation and in adversarial discussions about the likelihood of proceeding on a representative basis and 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; Hawkins Decl., ¶¶ 3-5. 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.”).

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

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

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

1 Fee awards of one-third of the settlement fund are routinely awarded in California courts
2 in class and representative PAGA actions. The California Supreme Court confirmed its approval
3 of the use of the “percentage of fund” method in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480,
4 506 (2016), where it announced “the percentage of fund method survives in California class action
5 cases...” Specifically, the *Laffitte* Court held:

6 The recognized advantages of the percentage method—including relative
7 ease of calculation, alignment of incentives between counsel and the class, a
8 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.

9 *Id.*, at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-
10 third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also*
11 *Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)
12 (approving attorneys’ fees of one-third of settlement fund in PAGA settlement); *Clavel v. Lupe’s*
13 *Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25,
14 2016) (same). This is also consistent with Plaintiffs’ counsel’s experience in similar wage-and-
15 hour class and PAGA matters. Haines Decl., ¶ 25.

16 Here, Plaintiffs’ fee request of one-third of the GSA (estimated to be \$403,091.33), which
17 is the same percentage approved by the California Supreme Court in *Laffitte*, is fair and reasonable
18 based on the percentage of the recovery method, as confirmed by a lodestar cross-check.

19 In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the
20 reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court
21 calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring the
22 lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. Under
23 the lodestar method, the court multiplies the number of hours reasonably expended by each
24 attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure
25 by a “multiplier” to account for a range of factors, such as the contingent nature of the case and
26 the degree of success achieved. *See Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977); *Ketchum v.*
27 *Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834
28 (2001) (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial

1 discretion to increase or decrease a lodestar calculation”).

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

11 In this case, Counsel has a lodestar of approximately \$206,307.50, which results in a 1.95
12 multiplier compared to the \$403,091.33 fee request. Haines Decl., ¶ 28; Hawkins Decl., ¶ 7.
13 Haines Law Group, APC has a total lodestar of approximately \$191,307.50, and James R.
14 Hawkins APLC has a total lodestar of approximately \$15,000.00. *Id.* Counsel submits that the
15 billing rates used are reasonable in view of the market rates and the rates at which Plaintiffs’
16 counsel has been approved at in other California and State courts. Haines Decl., ¶¶ 28-29; Exh. 7
17 (Laffey Matrix).

18 Critically, Plaintiffs’ recovery for the State of California and Aggrieved Employees of
19 approximately \$751,677.33 significantly exceeds other PAGA awards approved by California
20 courts. *See, e.g., Aguirre v. DSW, Inc.*, No. DCV-11-01522-GW (SPx), 2012 WL 11875296 at *3
21 (C.D. Cal. Nov. 29, 2012) (approving \$10,000 PAGA payment); *Jamil, supra*, 2020 WL 6544660
22 at *6 (S.D. Cal. Nov. 5, 2020) (approving \$10,000 total PAGA payment, finding the amount “fair
23 and adequate in view of the purposes and policies of PAGA”); *Garcia v. Gordon Trucking, Inc.*,
24 No. 1:10-cv-0324-AWI-SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (“approving
25 \$10,000 total PAGA payment, finding that “[t]his comports with settlement approval of PAGA
26 awards in other cases. [Citations.]”); *Boyd v. Bank of Am. Corp.*, No. SACV-13-0561-DOC
27 (JPRx), 2014 WL 6473804 at *8 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment);
28 *Franco v. Ruiz Food Prods.*, No. 1:10-cv-02354-SKO, 2012 WL 5941801 at *14 (E.D. Cal. Nov.

27, 2012) (approving \$10,000 PAGA payment); *Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (\$10,000 PAGA payment).

As discussed, this case presented significant risks to Plaintiffs, including the risk that an adverse *Viking River* decision could effectively conclude the case. 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 \$17,555.57 in litigation costs, without receiving any compensation to date. Haines Decl., ¶¶ 25, 27; Hawkins Decl., ¶ 8. Plaintiffs' counsel conducted extensive research regarding the merits of Plaintiffs' claims, their ability to recover PAGA civil penalties, and Defendants' potential defenses. Plaintiffs' counsel conducted informal and formal discovery, and also performed extensive analysis of data and information produced by Defendants, used this analysis to evaluate Plaintiffs' claims, and drafted a comprehensive mediation brief. Plaintiffs' counsel also attended two private mediations, and expended significant effort in preparing settlement documents, this Motion and supporting documents, and will oversee the settlement administration process. Given the considerable potential for adverse outcomes in this case, the contingent risk borne by Plaintiffs' counsel was great. Haines Decl., ¶ 26. The quality of Plaintiffs' counsel's work, and the efficacy and dedication with which it was performed, should be compensated. Thus, Plaintiffs submit the requested fee award is fair, reasonable, and adequate and should be approved.

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 over three decades worth of wage-and-hour class and representative action litigation experience. *See* Haines Decl., ¶¶ 3-9; Hawkins Decl., ¶¶ 3-5. 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

1 compensate Plaintiffs' counsel commensurate with their skill, reputation, and experience, the
2 requested fee award is fair, reasonable, and adequate, and should therefore be approved.

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

5 Plaintiffs' request for reimbursement of litigation costs of \$17,555.37 is also fair and
6 reasonable. All of Plaintiffs' litigation costs are reasonably incurred. *See* Haines Decl., ¶ 27 &
7 Exh. 6; Hawkins Decl., ¶ 8 & Exh. 1. Moreover, the costs Plaintiffs seek are the types of costs
8 routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)
9 (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee
10 paying client"); *Ashker v. Sayre*, 2011 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of
11 reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying
12 clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust*
13 *v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs reimbursable);
14 *In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation
15 expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and
16 overnight delivery costs are reimbursable).

17 Likewise, the request for administration costs of \$21,950.00 is also fair and reasonable.
18 Phoenix was selected because it is an experienced settlement administrator and returned a
19 reasonable bid. *See* Declaration of Jodey Lawrence & Exhibits. Moreover, Phoenix will perform
20 several important functions that are integral to the implementation of the Settlement. *Id.* Its
21 requested fee is therefore reasonable.

22 **D. The Court Should Approve Plaintiffs' Requested Enhancement Payments**
23 **Because They Are Fair, Adequate, and Reasonable in View of Plaintiffs'**
24 **Efforts and the Risks They Assumed in This Litigation.**

25 Courts routinely approve service awards to compensate named plaintiffs for the services
26 they provide and the risks they incur during representative litigation. *See, e.g., Bell v. Farmers*
27 *Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs);
28 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000

1 incentive payment); *see also* Plaintiffs' Request for Judicial Notice, Exhs. 1-7 (PAGA settlement
2 approval orders awarding incentive payments to representative PAGA plaintiffs ranging from
3 \$5,000 to \$20,000). Here, Plaintiffs seek an enhancement payment of \$5,000 each, for a total of
4 \$15,000. *See* Settlement, § III.4.b. This request is reasonable given Plaintiffs' efforts in this case
5 and the risks they undertook on behalf of Aggrieved Employees. *See* Wayman Decl.; Megally
6 Decl.; Ahmad Decl. Plaintiffs provided substantial factual information and documents to counsel,
7 assisted in identifying potential witnesses, and participated in numerous discussions with
8 Plaintiffs' counsel regarding the case. *Id.*; *see also* Haines Decl., ¶ 30. Accordingly, Plaintiffs'
9 requested enhancement payments are appropriate and justified as part of the Settlement.

10 **V. CONCLUSION**

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

14 Dated: September 8, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

15 By: 
16 Paul K. Haines
17 Attorneys for Plaintiffs and
18 Aggrieved Employees
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Make a Reservation

ROSALIE WAYMAN vs TERRY YORK MOTOR CARS, LTD., A CALIFORNIA CORPORATION

Case Number: 20STCV22528 Case Type: Civil Unlimited Category: Other Employment Complaint Case

Date Filed: 2020-06-15 Location: Stanley Mosk Courthouse - Department 74

Reservation

Case Name:

ROSALIE WAYMAN vs TERRY YORK MOTOR CARS, LTD., A CALIFORNIA CORPORATION

Case Number:

20STCV22528

Type:

Motion re: (PAGA Settlement Approval)

Status:

RESERVED

Filing Party:

Rosalie Wayman (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 74

Date/Time:

10/03/2022 8:30 AM

Number of Motions:

1

Reservation ID:

649532899470

Confirmation Code:

CR-HYDCLVOO38XYBGSTQ

Fees

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

Payment

Amount:

\$61.65

Type:

MasterCard

Account Number:

XXXX0763

Authorization:

93711B

Print Receipt

[Reserve Another Hearing](#)