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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ASHANTI BERRY, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PDS TECH, INC, a Washington corporation;
and DOES 1 through 100,

Defendants.

CASE NO. 20STCV18030

*[Case assigned for all purposes to the Hon.
Yvette M. Palazuelos, Dept. 09]*

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

Date: June 21, 2021
Time: 10:00 a.m.
Dept: 09

Action Filed: May 8, 2021
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on June 21, 2021 at 10:00 a.m., or as soon thereafter as the
3 matter may be heard in Department SSC-09 of the Los Angeles County Superior Court, located
4 at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Ashanti Berry (“Plaintiff”), as
5 an individual and on behalf of other aggrieved employees, will and hereby does move this Court
6 for entry of an Order as follows:

- 7 1. Granting approval pursuant to Labor Code section 2699(l) of the parties’ proposed
8 Settlement Agreement of claims brought by Plaintiff pursuant to the Private
9 Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*;
- 10 2. Appointing Phoenix Settlement Administrators as the third-party Settlement
11 Administrator, and approving an award of \$1,850.00 in anticipated costs to Phoenix
12 Settlement Administrators for its settlement administration services;
- 13 3. Approving as to form and content the proposed PAGA Notice, and directing that it
14 be distributed to the PAGA Settlement Group Members pursuant to the terms of the
15 Settlement Agreement;
- 16 4. Directing the distribution of the Total Settlement Amount pursuant to the terms of
17 the Settlement Agreement;
- 18 5. Approving an award of 33.33% of the Maximum Settlement Amount (\$105,000.00)
19 in attorneys’ fees to Plaintiff’s Counsel;
- 20 6. Approving an award of \$13,006.16 in actual litigation costs reimbursement to
21 Plaintiff’s Counsel;
- 22 7. Approving a representative enhancement payment of \$5,000.00 to Plaintiff for her
23 service to the PAGA Settlement Group Members and the State of California; and
- 24 8. Approving the payment of \$142,607.88 to the California Labor & Workforce
25 Development Agency for its share of PAGA civil penalties.

26 This Motion is based on this Notice, the attached Memorandum of Points and Authorities;
27 the declarations of Paul K. Haines, Fletcher W. Schmidt, Alexandra R. McIntosh, Ashanti Berry,
28 and Jodey Lawrence of Phoenix Settlement Administrators, and all exhibits attached thereto; the

1 Settlement Agreement; all other pleadings and papers on file in this action; and on any further
2 oral or documentary evidence or argument presented at the time of hearing.

3 Given the multiplicity of issues addressed in this Motion, Plaintiff believes there is good
4 cause to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and
5 respectfully requests that the Court consider Plaintiff's Memorandum of Points and Authorities
6 in its entirety, which is 23 pages in length.

7
8 Dated: March 25, 2021

Respectfully Submitted,
HAINES LAW GROUP, APC

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10 By:



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

2 **I. INTRODUCTION**

3 Plaintiff Ashanti Berry (“Plaintiff”) and aggrieved employees under the Private Attorneys
4 General Act of 2004, California Labor Code Section 2698 *et seq.* (“PAGA”), respectfully move
5 this Court for an Order granting approval of the Settlement Agreement (“Settlement”)¹ with
6 Defendant PDS Tech, Inc. (“PDS Tech” or “Defendant”). The proposed Settlement, under which
7 PDS Tech has agreed to pay a non-reversionary amount of \$315,000.00, will dispose of Plaintiff’s
8 representative PAGA claim filed on behalf of the State of California and all aggrieved employees
9 as defined by Labor Code Section 2699(c). This PAGA action is predicated on PDS Tech’s
10 alleged failures to: (i) pay all minimum wages; (ii) pay overtime wages; (iii) provide all lawful
11 meal periods or pay meal period premiums, in lieu thereof; (iv) authorize and permit all lawful
12 rest periods, or pay rest period premiums, in lieu thereof; (v) maintain accurate records of
13 employee hours worked; (vi) issue accurate and itemized wage statements; and (vii) timely pay
14 all final wages owed upon separation from employment.

15 This PAGA action seeks civil penalties for PDS Tech’s alleged Labor Code violations on
16 behalf of the California Labor & Workforce Development Agency (“LWDA”) and all “PAGA
17 Settlement Group Members” defined as, all current and former non-exempt employees of
18 Defendant in California at any time during the period from May 8, 2019 to September 30, 2019²
19 (the “Covered Period”) and who were assigned to work at the Toyota warehouse in Ontario,
20 California. Notably, the relief provided under the Settlement, and the claims released thereunder,
21 are *solely* for the payment of *civil penalties* under the PAGA. Based on the information provided
22 by Defendant, the number of PAGA Settlement Group Members, including Plaintiff, is estimated
23 to be 95 individuals.

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¹ The Settlement Agreement is attached as Exhibit 1 to the Declaration of Fletcher W. Schmidt
27 (“Schmidt Decl.”), filed concurrently with this Motion. The PAGA Notice (“Notice”) is attached as
Exhibit B to the Settlement Agreement.

28 ² PDS Tech ceased operations at Toyota’s warehouse in Ontario, California on September 30,
2019. Schmidt Decl., ¶ 8.

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

9 Pursuant to the Settlement, PDS Tech will pay a Total Settlement Amount ("TSA") of
10 \$315,000.00 on a non-reversionary basis. *See* Settlement, § III.B. After deducting amounts for
11 requested attorneys' fees (\$105,000.00), attorney costs (\$13,006.16),³ enhancement award to
12 Plaintiff (\$5,000.00), settlement administration costs (\$1,850.00), and the LWDA's share of civil
13 penalties pursuant to Labor Code Section 2699(i) (\$142,607.88) the Settlement provides for
14 distribution of approximately \$47,535.96 to the PAGA Settlement Group Members. *Id.*, §§ I.L,
15 III.C. Thus, the average payment to approximately 95 PAGA Settlement Group Members is
16 estimated at \$500.38.

17 The TSA represents a reasonable recovery for the State of California and Aggrieved
18 Employees when considering the limited release of only PAGA claims based on the factual
19 allegations in Plaintiff's operative Second Amended Complaint. Further litigation may have
20 resulted in a smaller recovery, or even no recovery at all, based on the defenses asserted by
21 Defendants and the significant litigation risks involved. Moreover, the TSA results in individual
22 payments that *significantly* exceed other PAGA penalty awards approved as reasonable
23 throughout California. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL
24 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (average PAGA penalties of \$7.49);
25 *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super.
26

27 ³ Although the Settlement provides for reimbursement of Plaintiff's verified litigation costs and
28 expenses "up to \$20,000.00," Plaintiff's counsel has incurred \$13,006.16 in actual litigation costs, and respectfully requests reimbursement of only the amount actually incurred. *See* Settlement, § III.F; Declaration of Fletcher W. Schmidt Decl., Exhibit 5 (Expense Report).

1 Ct. L.A. County, March 12, 2013) (average PAGA penalties of \$3.33). Further, the amounts
2 requested for attorneys’ fees and costs, Plaintiff’s enhancement payment, and settlement
3 administration costs are fair, adequate, and reasonable. In light of the foregoing, this Court should
4 enter the [Proposed] Judgment and Order Granting Plaintiff’s Motion for Settlement Approval of
5 Claims Brought Under the PAGA, Reasonable Attorneys’ Fees and Costs, and Enhancement
6 Award, filed concurrently herewith.

7 **II. SUMMARY OF THE LITIGATION**

8 **A. The Parties**

9 PDS Tech operates a staffing agency, which places its employees at companies throughout
10 California. Declaration of Fletcher W Schmidt (“Schmidt Decl.”), ¶ 8. Plaintiff worked for PDS
11 Tech as a non-exempt employee from approximately June 18, 2019 until she began a medical
12 leave of absence on approximately July 19, 2019. *Id.*; Declaration of Ashanti Berry (“Berry
13 Decl.”), ¶ 2. Throughout the entirety of Plaintiff’s employment, PDS Tech staffed Plaintiff at
14 Toyota’s North American Parts Center (“Toyota”) as a “Material Handler”. *Id.*

15 **B. Procedural History**

16 On May 8, 2020 Plaintiff provided written notice of her intent to file a claim for civil
17 penalties under PAGA to the LWDA and Defendant, as required by Labor Code Section 2699.3,
18 alleging that PDS Tech engaged in unlawful rounding of employee time records, utilized a
19 practice of automatically deducting a set amount of time for meal periods rather than actually
20 recording employee meal periods, failing to list the complete employer name and address on wage
21 statements, and failing to pay employees at least twice per month. Schmidt Decl., ¶ 10, Exhibit 2
22 (PAGA Notice Letters). On May 8, 2020, Plaintiff filed the instant action, alleging class-wide
23 violations of the California Labor Code for: (1) minimum wage violations (Labor Code sections
24 1182.12, 1194, 1194.2, and 1197); (2) failure to pay all overtime wages (Labor Code sections
25 204, 510, 558, 1194, and 1198); (3) meal period violations (Labor Code sections 226.7, 512, and
26 558); (4) wage statement violations (Labor Code sections 226 et seq.); (5) unfair competition
27 (Business and Professions Code sections 17200 et seq.). *Id.*

1 On May 18, 2020, Plaintiff submitted a first amended PAGA notice to notify the LWDA
2 and PDS Tech of additional alleged violations of the California Labor Code, including violations
3 of Labor Code section 226(a) for failure to list the inclusive dates of the pay period on wage
4 statements. Schmidt Decl., ¶ 11, Exhibit 2. On June 10, 2020, PDS Tech submitted a response to
5 Plaintiff's initial and first amended PAGA notices, notifying the LWDA that it was taking
6 advantage of the cure provision contained in Labor Code §§ 2699(d) and 2699.3(c)(2)(A) to cure
7 the alleged violations of Labor Code 226(a) by reissuing corrected wage statements to all
8 employees in California for the time period from May 8, 2017 to the present. Schmidt Decl., ¶
9 12, Exhibit 3. Plaintiff did not dispute that PDS Tech had therefore validly cured the violations
10 of Section 226(a). *Id.* On July 10, 2020, Plaintiff submitted a second amended PAGA notice to
11 notify the LWDA and PDS Tech of additional alleged violations of the California Labor Code,
12 including violations of California Labor Code sections 226.7, 516, and 558 as a result of PDS
13 Tech's alleged failure to authorize and permit off-duty rest breaks. Schmidt Decl., ¶ 13, Exhibit
14 2.

15 On July 27, 2020, after exhausting her pre-filing requirements as to her initial, and first
16 amended PAGA notices, Plaintiff filed a First Amended Complaint adding a cause of action for
17 civil penalties under the PAGA based on the same underlying Labor Code violations as those
18 contained in her first two PAGA notices. Schmidt Decl., ¶ 14. Shortly thereafter, PDS Tech
19 produced an arbitration agreement that Plaintiff had signed and, as a result, Plaintiff dismissed
20 her class-wide claims without prejudice. *Id.* On November 10, 2020, Plaintiff filed the operative
21 Second Amended Complaint alleging a single cause of action for civil penalties under the PAGA
22 based on the underlying Labor Code violations identified in all three PAGA notices. *Id.*

23 On November 16, 2020, the parties attended a full-day mediation session with mediator
24 Francis "Tripper" Ortman, Esq., an experienced wage and hour mediator. Schmidt Decl., ¶ 15.
25 Prior to attending mediation, PDS Tech provided Plaintiff with timekeeping and payroll records
26 for all of PDS Tech's non-exempt employees staffed at Toyota during the Covered Period. *Id.*
27 PDS Tech also produced employee handbooks, relevant policy documents, and data points
28 regarding the number of employees and number of workweeks worked during the relevant PAGA

1 period. *Id.* Using the data, Plaintiff's counsel conducted a comprehensive exposure analysis for
2 the claims at issue. *Id.*

3 During mediation, the parties debated the legal bases for their claims and defenses, their
4 respective data analyses, and their respective positions regarding the extent to which the Court
5 would likely reduce any PAGA penalties recovered. Schmidt Decl., ¶ 16. Although the parties
6 did not resolve the matter at mediation, they continued their settlement negotiations over the
7 following months and ultimately reached an agreement to resolve Plaintiff's PAGA claims by
8 way of a mediator's proposal. *Id.* After further months of negotiations, the parties executed the
9 Settlement Agreement now before the Court for approval. *Id.*

10 **C. Plaintiff's Claims And Defendant's Defenses**

11 Although she steadfastly maintains her claims are meritorious, Plaintiff acknowledges her
12 position included real risks and uncertainty. For example, with respect to Plaintiff's claim that
13 PDS Tech engaged in unlawful time-rounding, PDS Tech maintains that its timekeeping practices
14 are lawful and that it does not round employees' hours worked. Schmidt Decl., ¶ 18. Instead, PDS
15 Tech contends that Plaintiff and other PAGA Settlement Group Members manually recorded their
16 hours worked by inputting their hours into PDS Tech's third-party timekeeping system. *Id.* PDS
17 Tech then used the hours recorded by the PAGA Settlement Group Members for the purposes of
18 payroll and although PDS Tech acknowledged that Toyota utilized a timeclock, PDS Tech
19 maintained that Toyota's timeclock was used by Toyota solely to track who was inside the facility
20 and did not have any connection to payroll. *Id.* PDS Tech further argued that any discrepancy
21 between the timekeeping systems was minimal and that just because an employee had punched
22 in on Toyota's system, did not mean they were actually performing compensable work; for
23 example, PDS Tech obtained declarations from employees who contend that they punched in on
24 Toyota's system upon arrival a few minutes before their shift and engaged in purely personal
25 activities, such as talking to their co-workers in the break room, and didn't begin working until
26 the start of their shift. *Id.* Finally, PDS Tech maintains this claim would not be manageable on a
27 representative basis, since it would require individualized inquiries to determine whether an
28 employee was actually performing compensable work in any specific instance, rendering the

1 claim unmanageable. *Id.*

2 As for Plaintiff’s claim that PDS Tech failed to pay employees for time spent undergoing
3 pre- and post-shift security checks, PDS Tech alleges that it did not assert control over Plaintiff
4 and other PAGA Settlement Group Members until they actually clocked in, and therefore this time
5 is not compensable. Schmidt Decl., ¶ 19. PDS Tech further argues that because the “security
6 checks” consisted of only recording your name with a guard, any off-the-clock work was minimal
7 (under 2 minutes per day, on average), and was thus *de minimis* and not compensable. *Id.* While
8 Plaintiff pointed to *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018), where the California
9 Supreme Court held California’s labor laws generally do not recognize a *de minimis* defense, PDS
10 Tech argued *Troester* should be limited to its facts. (“[W]e decide only whether the *de minimis*
11 rule is applicable to the facts of this case as described by the Ninth Circuit.” *Troester*, 5 Cal.5th at
12 829.) *Id.*

13 With respect to Plaintiff’s claims that PDS Tech failed to provide employees with
14 compliant meal periods, PDS Tech contends it has always maintained compliant written meal
15 period policies, including provision of both first and second meal periods where applicable.
16 Schmidt Decl., ¶ 20. Furthermore, PDS Tech asserts that its employees staffed at Toyota were
17 always scheduled to take a 45-minute meal periods within the first 5 hours of employee shifts,
18 and thus any late or short meal periods were the result of employee choice rather than any policy
19 or practice of PDS Tech. *Id.* PDS Tech further argues that under *Brinker* it is only required to
20 “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, which PDS
21 Tech contends it has always done. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure”
22 standard). *Id.*

23 As for Plaintiff’s rest period claim, which was based largely on PDS Tech’s alleged on-
24 premises rest period policy, PDS Tech contends that employees are always allowed to leave the
25 premises during rest periods, and that, in any event, the California Supreme Court rejected
26 Plaintiff’s theory in *Augustus v. ABM Security Svcs., Inc.*, 2 Cal.5th 257, 270 (2016), where it stated
27 that “during a rest period an employee generally can travel at most five minutes from a work post
28

1 before returning to make it back on time. Thus, one would expect that employees will ordinarily
2 have to remain on site or nearby. This constraint, which is of course common to all rest periods,
3 is not sufficient to establish employer control.” Schmidt Decl., ¶ 21. PDS Tech further contends
4 that it has always maintained lawful written rest period policies, including regarding the number,
5 duration, and frequency of rest periods, and that it has always authorized and permitted rest periods
6 in accordance with those policies. *Id.*

7 PDS Tech also maintains Plaintiff’s meal and rest period claims would not be manageable
8 on a representative basis, as individual inquiries would be required to establish which employees
9 missed meal or rest periods, how many each missed, and why a particular employee missed a
10 particular meal or rest period on a particular shift. Schmidt Decl., ¶ 22. This is particularly true
11 given that PDS Tech is a staffing agency, and therefore places employees in a wide variety of
12 locations and industries, each with their own unique settings and supervisors. *Id.*

13 As for Plaintiff’s derivative claims that PDS Tech violated its wage statement⁴ and final
14 payment obligations in violation of Labor Code §§ 226 and 203, respectively, PDS Tech asserts
15 it has strong, good-faith defenses to Plaintiff’s underlying claims, precluding a finding of a failure
16 to pay all final wages that would otherwise result in waiting time penalties. *See* 8 Cal. Code Regs.
17 § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time
18 penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute”
19 precluded imposition of waiting time penalties); Schmidt Decl., ¶ 23. PDS Tech further contends
20 Plaintiff’s meal and rest period claims cannot support a claim for violations of Labor Code §§ 226
21 or 203, as Courts of Appeal recently held in *Naranjo v. Spectrum Security Servs., Inc.*, 40
22 Cal.App.5th 444, 473-75 (2019) (*review granted* Jan. 2, 2020) and *Betancourt v. OS Rest. Svcs.,*
23 *LLC*, 49 Cal.App.5th 240, 248 (2020) (*review granted* Aug. 19, 2020). PDS Tech further contends
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25

26
27 ⁴ As discussed in Section II(B), *supra*, PDS Tech cured the non-derivative wage
28 statement violations by sending corrected wage statements to all employees for three years prior
to the letter to the LWDA pursuant to Labor Code §§ 2699(d) and 2699.3(c)(1). Schmidt Decl.,
¶ 12, Exhibit 3.

1 that wage statements always accurately reflected amounts paid to employees, and thus PDS Tech
2 could not be found liable for wage statement violations under *Maldonado v. Epsilon Plastics, Inc.*,
3 22 Cal.App.5th 1308, 1336 (2018) (“The purpose of section 226 is to *document the paid wages* to
4 ensure the employee is fully informed regarding the calculation of those wages.”) (italics in
5 original). Schmidt Decl., ¶ 23.

6 PDS Tech further maintains that even if the Court awarded PAGA penalties for any of the
7 alleged violations, the Court would substantially reduce the penalties based on the discretionary
8 factors in Labor Code § 2699(e)(2) (authorizing reduction in PAGA penalties “if, based on the
9 facts and circumstances of the particular case, to do otherwise would result in an award that is
10 unjust, arbitrary and oppressive, or confiscatory.”). Schmidt Decl., ¶ 24. Indeed, PDS Tech argues,
11 many courts have reduced PAGA penalties drastically where, as here, the employer presented
12 good-faith defenses and attempted to comply with the law. *See, e.g., Thurman v. Bayshore Transit*
13 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because
14 “defendants took their obligations...seriously and attempted to comply with the law”); *Fleming v.*
15 *Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011)
16 (reducing PAGA penalties by over 82%, in part because employer was “not aware” of violations);
17 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just
18 \$5 per pay period where employer made “good faith attempts” to comply with the law); *id.*.

20 **III. THE PROPOSED SETTLEMENT**

21 **A. “PAGA Settlement Group Members” Defined**

22 PAGA Settlement Group Members are defined as, “all current and former non-exempt
23 employees who worked for Defendants in California at any time during the period from May 8,
24 2019 to September 30, 2019 and who were assigned to work at the Toyota warehouse in Ontario,
25 California.” *See* Settlement, § I.P.

26 **B. Essential Terms Of The Settlement**

27 Defendants will pay a TSA of \$315,000. Settlement, §§ I.X and III.B. After deducting
28 amounts for requested attorneys’ fees and costs, Plaintiff’s enhancement award, and settlement

administration costs, the remaining Net Settlement Amount (“NSA”) distributable to the PAGA Settlement Group Members and the LWDA is estimated to be \$190,143.84. *Id.*, §§ I.L, III.C. This non-reversionary Settlement does not require PAGA Settlement Group Members to submit a claim form to reap the financial benefits of the Settlement. *Id.*, §§ I.L and III.B. The monetary terms of the Settlement are:

Total Settlement Amount:	\$315,000.00
Minus Court-approved attorneys’ fees (33.33%):	\$105,000.00
Minus Court-approved attorneys’ costs:	\$13,006.16
Minus Court-approved enhancement payment:	\$5,000.00
Minus settlement administrator costs:	\$1,850.00
Net Settlement Amount:	\$190,143.84
Minus LWDA’s 75% Share:	\$142,607.88
Total Paid to PAGA Settlement Group Members:	\$47,535.96

1. Attorneys’ Fees and Costs

Plaintiff’s counsel requests 33.33% of the TSA (\$105,000.00) in attorneys’ fees, and \$13,006.16 in actual litigation costs. Settlement, § III.F.; Schmidt Decl., ¶¶ 30, Exhibit 5.

2. Settlement Administration Costs

The parties agree to engage Phoenix Settlement Administrators (“Phoenix”) as the third-party settlement administrator. *See* Settlement, §§ I.V. and III.I. Phoenix shall be responsible for calculating and mailing the settlement checks and Notice to the PAGA Settlement Group Members, among other duties. Phoenix estimates incurring \$1,850.00 in costs in connection with the administration of this settlement. Declaration of Jodey Lawrence (“Lawrence Decl.”), ¶ 9, Exhibit B; Settlement, § III.D.

3. Plaintiff’s Enhancement Award

Plaintiff also respectfully requests an enhancement awards of \$5,000.00 in recognition of her effort to initiate this case, her contributions to the prosecution of this case, and her efforts in bringing this case to a successful resolution. Settlement, § I.T.; Schmidt Decl., ¶ 31; Berry Decl., ¶¶ 4-5.

1 **4. Payment to the LWDA and PAGA Settlement Group Members**

2 The entire NSA shall be designated as PAGA civil penalties. Settlement, § I.L. From the
3 NSA, 75% (\$142,607.88) will be distributed to the LWDA, and 25% (\$47,535.96) will be
4 distributed to the PAGA Settlement Group Members. *Id.*, § III.E; *see also* Labor Code § 2699(i)
5 (“[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent
6 to the [LWDA]...and 25 percent to the aggrieved employees.”). 100% of the individual settlement
7 shares to the PAGA Settlement Group Members will be reported using IRS Form-1099s, since
8 all funds received under Section 2699 are civil penalties that do not trigger payroll taxes or
9 withholdings. *See* Settlement, § III.H. Settlement Shares shall be apportioned with each PAGA
10 Settlement Group Member receiving a share of the Net Settlement Amount based on the
11 proportionate number of pay periods worked by each PAGA Settlement Group Member during
12 the Covered Period. *Id.*

13 **5. Funding of the Settlement**

14 PDS Tech will deposit the Total Settlement Amount within fourteen (14) calendar days
15 after the Court enters an Order approving the Settlement. Settlement, § III.J.8. Within fourteen
16 (14) days after the Court Order is signed approving the Settlement, PDS Tech will provide to the
17 Settlement Administrator the names, last known addresses and telephone numbers, Social
18 Security numbers, and Covered Pay Periods of all PAGA Settlement Group Members. *Id.*, §
19 III.J.3.a. Within five (5) business days thereafter, Phoenix will circulate to counsel for both parties
20 an anonymized spreadsheet containing the Individual Settlement Payments and the data used to
21 calculate said payments. *Id.* Within five (5) business days after receiving the PAGA Settlement
22 Group Members’ data, Phoenix will mail copies of the Notice, along with the individual
23 Settlement Shares to the PAGA Settlement Group Members via First-Class U.S. Mail. *Id.*, §
24 III.J.3.b. If a Notice Packet is returned because of an incorrect address, the Settlement
25 Administrator will promptly, and not later than ten (10) days from receipt of the returned packet,
26 search for a more current address for the PAGA Settlement Group Member using Accurant and/or
27 other reasonable and cost-effective skip trace methods, and re-mail the Notice Packet to the
28 PAGA Settlement Group Member. *Id.*, § III.J.3.c.

1 **IV. ARGUMENT**

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

3 The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699(l)
4 (stating, the “court shall review and approve any penalties sought as part of a proposed settlement
5 agreement pursuant to this part.”). The Court must be mindful that “[s]ettlement is a compromise,
6 which balances the possible recovery against the risks inherent in litigating further.” *In re TD*
7 *Ameritrade Account Holder Litig.*, Case Nos. C 07-2852 SBA, C 07-4903 SBA, 2011 WL
8 4079226, *9 (N.D. Cal. Sept. 13, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding
9 of absolutes and an abandoning of highest hopes,’” as “it is the very uncertainty of outcome in
10 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.”
11 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir. 1982). As such, “the
12 settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits,”
13 or “judged against a hypothetical or speculative measure of what might have been achieved.” *Id.*

14 Although the operative PAGA statute does not set forth the criteria by which a PAGA
15 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors
16 for review of a class action settlement. However, “a PAGA claim asserted on a non-class
17 representative basis...is not considered a class action but a law enforcement action, and therefore
18 does not have to meet the requirements of [a class action].” *See Casida v. Sears Holdings Corp.*,
19 2012 WL 253217 at *3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL
20 2650571 at *4 (E.D. Cal. Jul. 1, 2010). A court’s review of a PAGA settlement necessarily
21 implicates the following unique features that render the approval process distinct from approval
22 of a class action settlement under C.C.P. § 382 and C.R.C. Rule 3.769.

23 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
24 concerned with the amount(s) that “aggrieved employees” are to receive, but rather, must focus
25 on the total settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a
26 PAGA suit consists of civil penalties, not individual or class damages,” and while a “[PAGA]
27 action is ... designed to protect the public and penalize the employer for past illegal conduct,” a
28 reviewing Court must be mindful of the fact that settlement of a PAGA claim involves a
compromise. *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties

1 are not meant to compensate unnamed employees because the action is fundamentally a law
2 enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at *4 (N.D.
3 Cal. Apr. 2, 2010). The Court must not lose sight of the fact that “[u]nlike a class action seeking
4 damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private
5 parties to recover civil penalties for the government that otherwise may not have been assessed
6 and collected by overburdened state enforcement agencies.” *Id.*

7 Second, consistent with the fact that unnamed employees have no property interest in a
8 PAGA claim,⁵ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
9 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
10 1340777 at *5. This renders the approval process of a PAGA settlement distinct from a class
11 action settlement, as there is no need for the Court to employ the “two-step approval process”
12 required under F.R.C.P. Rule 23 (“Rule 23”) and C.R.C. Rule 3.769 (“Rule 3.769”).⁶

13 Finally, unlike class action settlements under Rule 23(e) and Rule 3.769, the scope of
14 release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is
15 binding not only on the named employee plaintiff but also on government agencies and any
16 aggrieved employee not a party to the proceeding...the non-party employees, because they were
17 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
18 judgment as to remedies other than civil penalties.” *See Arias v. Sup. Ct.* (2009) 46 Cal.4th 969,
19 986-87. Thus, the scope of a release in a PAGA settlement is confined to the PAGA penalties
20 alleged in the complaint and to the claims that were, or could have been, alleged pursuant to
21
22

23
24 ⁵ As held by the California Supreme Court, “[PAGA] does not create property rights or any other
25 substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employee to recover civil
26 penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement
27 agencies.” *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46 Cal.4th 993, 1003.

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

1 PAGA based on the factual allegations in the Complaint.⁷ In the case at hand, as the only claims
2 at issue are PAGA claims, only those claims will be extinguished because of this Settlement.

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

5 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v.*
6 *Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class and
7 representative PAGA settlements involve a court approval process that exists to prevent fraud,
8 collusion, and unfairness to absent individuals. *See Malibu Outrigger Bd. of Governors v.*
9 *Superior Court* (1980) 103 Cal.App.3d 573, 578-79. California law generally follows the same
10 standards applicable under Rule 23. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
11 1998) (stating that Rule 23(e) requires the trial court to determine “whether a proposed settlement
12 is fundamentally fair, adequate, and reasonable”). To be approved, a settlement must be “fair,
13 reasonable and adequate to all concerned.” *Reed v. United Teachers Los Angeles* (2012) 208
14 Cal.App.4th 322, 337. Settlement is the preferred means of dispute resolution, particularly in
15 complex representative litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
16 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
17 agreement taken as a whole is fair and is not the product of fraud or collusion between the
18 negotiating parties. *See, e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of
19 fairness when the settlement agreement was negotiated at arm’s length by experienced counsel.
20 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Because this Settlement is
21 fair, adequate, and reasonable, Plaintiff respectfully requests that the Court grant approval.
22
23
24

25 ⁷ This is contrasted with the much broader release permitted in a class action context, which may
26 release all underlying Labor Code violations based on “any matter or fact” alleged in the complaint. *See*
27 *In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981) (“The weight of
28 authority 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.”).

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

2 A settlement is presumptively fair where it is reached through arm's-length bargaining,
3 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
4 and counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
5 1794, 1802; *see also Kullar, supra*, 168 Cal.App.4th at 130. In deciding whether to approve a
6 proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair
7 under the circumstances of the case. *Mallick v. Sup. Ct.* (1979) 89 Cal.App.3d 434, 438. In
8 exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair,
9 adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant
10 factors for the Court to consider include, but are not limited to:

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

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

20 "In the context of a settlement agreement, the test is not the maximum amount Plaintiff
21 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
22 under all of the circumstances." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
23 250. Because settlements inherently involve compromise, settlements providing for narrower
24 relief than can be obtained if the suit were successfully litigated can be reasonable because "the
25 public interest may indeed be served by a voluntary settlement in which each side gives ground
26 in the interest of avoiding litigation." *Air Lines Stewards, etc., Local 550 v. Am. Airlines, Inc.*,
27 455 F.2d 101, 109 (7th Cir. 1972). Further, courts review the discovery conducted by the parties
28 to aid in assessing whether the parties sufficiently developed the claims and supporting factual
bases before reaching settlement. *See Kullar, supra*, 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

1 is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential*
2 *Serv. LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that parties can provide
3 the trial court with “a meaningful and substantiated explanation of the manner in which the factual
4 and legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132.

5 **a) The Strength of Plaintiff’s Case**

6 Although Plaintiff steadfastly maintains that this action is meritorious, Plaintiff
7 acknowledges that there are substantial risks and uncertainty in proceeding to trial. Defendants
8 presented numerous defenses and arguments as to why Plaintiff’s damages calculations were
9 overstated; chief among them that the Court would utilize its discretion to substantially reduce
10 any award of PAGA penalties. While Plaintiff was prepared to litigate her claims through trial,
11 Plaintiff faced substantial challenges in prevailing in this matter and obtaining a better result than
12 will be provided through the Settlement. Thus, this factor supports approval.

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

14 Although the parties engaged in substantial informal discovery and information exchange
15 prior to mediation, the parties agreed to postpone formal written and deposition discovery until
16 after exhausting their settlement efforts at mediation. Schmidt Decl., ¶ 15. Therefore, absent
17 settlement, the parties will be required to expend substantial time and resources conducting formal
18 written and deposition discovery. Preparation for trial remained, as well as the prospect of appeals
19 in the wake of an adverse summary judgment ruling for either party, as well as appeals after trial.
20 This settlement avoids these considerable costs, risks, and the accompanying burden of continued
21 litigation on the Court.

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

23 This proposed Settlement provides a fair and reasonable monetary recovery for the
24 LWDA and the PAGA Settlement Group Members in the face of significant litigation risks.
25 Plaintiff and her counsel analyzed Defendant’s produced data, and forecasted Defendant’s
26 realistic exposure for PAGA civil penalties as follows:

27 PAGA Civil Penalties: \$268,700

28 Plaintiff asserts that PAGA penalties would be recoverable for each of the 1,391 pay
periods in the Covered Period based on a failure to pay all wages owed (which was present in

every pay period since employees were always required to go through security checks off-the-clock and PDS Tech rounded employee time records on every shift) or a rest period violation (which also was present in every pay period since any shift in excess of 3.5 hours triggered potential liability under Plaintiff's theory that *all* rest periods were invalid because they were not duty-free). Schmidt Decl., ¶ 25. Labor Code section 2699(f)(2) provides for PAGA civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. *See* Labor Code § 2699(f)(2). Plaintiff therefore calculates PDS Tech's maximum possible PAGA exposure at \$268,700 ((95 initial violations x \$100 per violation) + (1,296 subsequent violations x \$200 per violation)). Schmidt Decl., ¶ 25.

Therefore, the proposed Settlement of \$315,000 represents approximately **117%** of Plaintiff's maximum recovery, ***with no discounts applied***, while avoiding the risks of proceeding through trial. Schmidt Decl., ¶ 25. Moreover, the Net Settlement Amount of \$190,143.84 represents approximately 70.76% of Plaintiff's ***maximum*** recovery. *Id.* "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (internal quotations omitted). Plaintiff acknowledges that there was substantial uncertainty and risk should she proceed through trial, and that even in the event that she prevailed, the Court still maintained discretion to reduce the penalties awarded. Therefore, approval is appropriate since the Settlement will provide significant monetary relief to PAGA Settlement Group Members and the State of California.

d) Discovery Completed and the Status of Proceedings

The parties engaged in substantial informal discovery and information exchange necessary to evaluate the value of the PAGA claims prior to engaging in settlement discussions. Schmidt Decl., ¶¶ 15-16. Defendant provided Plaintiff with all key data points, including the total number of PAGA Settlement Group Members and the number workweeks worked by PAGA Settlement Group Members during the Covered Period. *Id.* It was only after the completion of this informal discovery and Plaintiff's comprehensive data analysis that the parties attended

mediation, and ultimately reached the proposed settlement. *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, Plaintiff is represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions and PAGA representative actions, 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.”), ¶¶ 2-9; Declaration of Alexandra R. McIntosh (“McIntosh Decl.”), ¶¶ 2-4. Further, the proposed Settlement was reached by way of a mediator’s proposal after a full day of mediation with Francis “Tripper” Ortman, Esq., an experienced wage and hour mediator. Schmidt Decl., ¶¶ 15-16. 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 Awards for Attorneys’ Fees, Litigation Costs, and Settlement Administration Costs are Fair, Adequate, and Reasonable

As the prevailing party in settlement, Plaintiff is entitled to recover attorneys’ fees and costs for her claims. *See* Labor Code § 2699(g) (providing for attorneys’ fees and costs in PAGA actions); Cal. Code Civ. Proc. § 1021.5. A fee award is justified where the legal action has produced its benefits by way of settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Comty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627 (in awarding a fee from the common fund obtained

1 for the benefit of all parties, the trial court acts within its equitable power to prevent the other
2 parties' unjust enrichment); *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d
3 513, 516 (the percentage of the fund method for calculating attorneys' fees more accurately
4 reflects the results achieved for the putative class than the lodestar method and "establishes
5 reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it
6 encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Sec. Litig.*,
7 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in
8 common fund cases because it allows courts to award fees from the fund 'in a manner that rewards
9 counsel for success and penalizes it for failure.'").

10 Attorneys' fees awards of one-third of the settlement fund are routinely awarded in
11 California courts in class and representative PAGA actions. The California Supreme Court
12 recently confirmed its approval of the use of the "percentage of fund" method. *See Laffitte v.*
13 *Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016) ("the percentage of fund method survives in
14 California class action cases...") Specifically, the *Laffitte* Court held:

15 The recognized advantages of the percentage method—including relative
16 ease of calculation, alignment of incentives between counsel and the class, a
17 better approximation of market conditions in a contingency case, and the
18 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.

19 *Id.*, at 503 (internal citation omitted). Indeed, "[F]ee awards in class actions average around one-
20 third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also*
21 *Chavez v. Saticoy Lemon Ass'n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)
22 (approving attorneys' fees of one-third of settlement fund in PAGA settlement); *Clavel v. Lupe's*
23 *Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25,
24 2016) (same). This is also consistent with Plaintiff's counsel's experience in similar wage-and-
25 hour class and PAGA matters. Schmidt Decl., ¶ 28. Here, Plaintiff's fee request of one-third of
26 the TSA (estimated to be \$105,000) is fair and reasonable based on the percentage of the recovery
27 method, as confirmed by a lodestar cross-check.

28 In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the
reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial court

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

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

In this case, Plaintiff's counsel have a lodestar of approximately \$98,944.50, which results in a nominal multiplier of 1.06 compared to the \$105,000 fee request. Schmidt Decl., ¶ 27. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below. The billing rates used are reasonable in view of the evidence submitted herewith. *See* Schmidt Decl., ¶¶ 27-28 & Exh. 4 (*Laffey Matrix*).

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (15th Year Attorney)	\$650	38.2	\$24,830.00
Fletcher W. Schmidt (8th Year Attorney)	\$595	69.6	\$41,412.00
Alexandra R. McIntosh (3rd Year Attorney)	\$375	83.1	\$31,162.50
Firm Paralegals	\$175	8.8	\$1,540.00
Total Lodestar			\$98,944.50

1 The fee award requested here is justified because Plaintiff's counsel achieved an excellent
2 monetary recovery for the PAGA Settlement Group Members and the State of California (who
3 did not take this case after receiving Plaintiff's PAGA notice) in an uncertain and risky case while
4 bearing the substantial burdens of representation on a contingency basis. Schmidt Decl., ¶ 26; *see*
5 *also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002). Additionally,
6 Plaintiff's recovery for the State of California and PAGA Settlement Group Members exceeds
7 other PAGA awards approved by courts in California. *See, e.g., Boyd v. Bank of Am. Corp.*, 2014
8 WL 6473804 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Penaloza, supra*,
9 2013 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822
10 (average PAGA penalties of \$3.33). That Plaintiff's counsel achieved these results in the face of
11 serious defense challenges and an uncertain legal landscape, confirms the strength of the results
12 achieved.

13 As discussed above, this case presented significant risks on the merits and with respect to
14 the Court's authority to reduce an award of PAGA penalties. It is fair and reasonable to account
15 for these risks in compensating Plaintiff's counsel, as well as the risks involved in undertaking
16 this litigation and expending considerable effort while working on a pure contingency basis.
17 Since undertaking representation of Plaintiff, Plaintiff's counsel dedicated substantial resources
18 to this litigation, including expending \$13,006.16 in costs, without receiving any compensation
19 to date. Schmidt Decl., ¶ 30, Exhibit 5. Plaintiff's counsel's efforts include conducting pre-filing
20 investigation, legal research and analysis regarding the merits of Plaintiff's claims, Plaintiff's
21 ability to recover penalties under the PAGA, and Defendant's potential defenses, drafting
22 pleading and law and motion papers, drafting informal discovery requests, reviewing Defendant's
23 purported cure of Plaintiff's facial wage statement violation allegations, reviewing documents
24 and data provided by Defendant prior to mediation, building a comprehensive damages model,
25 drafting a mediation brief, preparing for and attending mediation, communicating and meeting
26 with the parties and counsel, negotiating and drafting the long-form Settlement Agreement and
27 Notice documents, preparing this Motion for settlement approval and supporting declarations,
28 and otherwise litigating the case. Schmidt Decl., ¶ 29. Plaintiff's counsel will also oversee the

1 settlement administration process and work with the administrator to prepare a post-disbursement
2 declaration. *Id.* Given the considerable potential for adverse outcomes in this case, the contingent
3 risk borne by Plaintiff's counsel was great. The quality of Plaintiff's counsel's work, and the
4 efficacy with which it was performed, should be compensated.

5 Plaintiff's counsel's previous experience in litigating wage and hour class actions and
6 representative PAGA actions also supports the reasonableness of the fee request. Plaintiff's
7 counsel are well-versed in plaintiff- and defense-side wage and hour litigation, and collectively
8 bring decades of wage-and-hour class and representative action litigation experience. *See* Schmidt
9 Decl., ¶¶ 2-6; Haines Decl., ¶¶ 2-8; McIntosh Decl., ¶¶ 2-4. Plaintiff's counsel have also been
10 certified as class counsel in numerous wage and hour class action lawsuits. *See id.* Plaintiff's
11 counsel's experience in similar matters was integral in evaluating the strengths and weaknesses
12 of Plaintiff's case and the reasonableness of the Settlement. Practice in the narrow field of wage
13 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state
14 and federal law, as well as the procedural law of representative litigation. Schmidt Decl., ¶¶ 2-6.
15 Because it is reasonable to compensate Plaintiff's counsel commensurate with their skill,
16 reputation, and experience, the requested fee award of \$105,000.00 is fair and reasonable as a
17 percentage of the recovery, and should therefore be approved.

18 As stated above, Plaintiff's counsel incurred \$13,006.16 in actual litigation costs. Schmidt
19 Decl., ¶ 30, Exhibit 5. Plaintiff's counsel's request for reimbursement of these litigation costs is
20 fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See*
21 *id.*, Exhibit 5. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by
22 courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
23 "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v.*
24 *Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) ("costs of reproducing
25 pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and
26 are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland*
27 *Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re*
28 *Immune Response Securities Litigation*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007)

1 (mediation expenses, legal research, copies, postage, filing fees, messenger and overnight
2 delivery costs are reimbursable). Because the expense reimbursements requested by Plaintiff's
3 counsel were reasonably incurred, the Court should grant Plaintiff's counsel's request for
4 reimbursement of \$13,006.16 in actual litigation costs incurred.

5 Finally, Plaintiff also requests that the Court approve \$1,850.00 in administration costs to
6 the Settlement Administrator, Phoenix Settlement Administrators. Schmidt Decl. ¶ 32; Lawrence
7 Decl., ¶ 9, Exhibit B. As detailed in the Settlement Agreement and declaration of Jodey
8 Lawrence, submitted concurrently with this Motion, Phoenix will perform duties in connection
9 with this Settlement that are integral in effectuating the Settlement and the Notice process.
10 Among other things, Phoenix will calculate each PAGA Settlement Group Member's Settlement
11 Share, update addresses contained in the employee data supplied by PDS Tech, format the Notices
12 for mailing, mail Notices to all 95 PAGA Settlement Group Members, and otherwise administer
13 the Settlement. *See generally*, Lawrence Decl.; Settlement, § III.J.3. Phoenix was selected
14 because it is an experienced, well-respected settlement administrator, and returned a bid at a
15 competitive rate. *See generally*, Lawrence Decl. For these reasons, Phoenix's requested
16 administration costs are fair, reasonable, and adequate, and should be approved.

17 **D. This Court Should Approve Plaintiff's Requested Enhancement Award**
18 **Because It Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts**
19 **and the Risks Assumed on Behalf of the PAGA Settlement Group Members**

20 Courts routinely approve enhancement awards to compensate named plaintiffs for the
21 services they provide and the risks they incur during class and representative litigation. *See, e.g.,*
22 *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to
23 named plaintiffs for their efforts in bringing the case); *see also Van Vranken v. Atlantic Richfield*
24 *Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000 enhancement award). Here, pursuant
25 to the Settlement, Plaintiff seeks an enhancement award of \$5,000.00. *See* Settlement, §§ I.T.,
26 III.G. This request is reasonable given Plaintiff's efforts in this case, the significant time devoted
27 to the prosecution of this action, and the risks she undertook on behalf of the PAGA Settlement
28 Group Members. *See* Schmidt Decl., ¶ 31, Exhibit 6 (sampling of Orders granting incentive
payments in PAGA-only settlements). Plaintiff spent hours searching for employment-related

documents, provided substantial factual information and documents to Plaintiff's counsel, had multiple discussions with Plaintiff's counsel regarding her employment with PDS Tech, and discussed the facts, legal theories at issue, and general case strategy with Plaintiff's counsel. Schmidt Decl., ¶ 31; Berry Decl., ¶¶ 4-5. Accordingly, Plaintiff's enhancement award is appropriate and justified as part of the Settlement.

V. CONCLUSION

Concurrently with the filing of this motion, Plaintiff 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., ¶ 33, Exhibit 7. For the reasons stated herein, this Court should grant Plaintiff's Motion in its entirety and adopt the [Proposed] Judgment and Order Granting Plaintiff's Motion for Settlement Approval of Claims Brought Under the PAGA, Reasonable Attorneys' Fees and Costs, and Enhancement Award, submitted concurrently herewith.

Dated: March 25, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

By:



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