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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JEANETTE JUSTON, as an individual, on
behalf of herself and all others similarly
situated,

Plaintiff,

vs.

SOSI SERVICES LLC, a Delaware Limited
Liability Company; and DOES 1 through 100,

Defendants.

Case No. 20STCV16867

*[Assigned for all purposes to the Hon. Rupert
A. Byrdsong, Dept. 28]*

**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 INCENTIVE AWARD**

Date: March 18, 2021
Time: 8:30 a.m.
Dept.: 28

Reservation No. 816502040253

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

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

2 PLEASE TAKE NOTICE that on March 18, 2021 at 8:30 a.m., or as soon thereafter as
3 the matter may be heard in Department 28 of the Los Angeles County Superior Court, located at
4 111 North Hill Street, Los Angeles, California 90012, Plaintiff Jeannette Juston (“Plaintiff”),
5 individually and on behalf of other aggrieved employees, will, and hereby does, move this Court
6 for entry of an Order:

- 7 1. Granting approval, pursuant to California Labor Code § 2699(I), of the parties’
8 proposed Settlement Agreement of claims brought by Plaintiff pursuant to the
9 Private Attorneys General Act of 2004, California Labor Code Section 2698 et seq.;
- 10 2. Appointing Phoenix Settlement Administrators as the Settlement Administrator, and
11 approving an award of \$2,750.00 in anticipated administration costs to Phoenix
12 Settlement Administrators for its settlement administration services;
- 13 3. Approving as to form and content the proposed Notice of PAGA Settlement and
14 Release of Claims, and directing that it be distributed to the PAGA Group Members
15 pursuant to the terms of the Settlement Agreement;
- 16 4. Directing the Distribution of the Gross Settlement Amount (\$400,000.00) pursuant
17 to the terms of the Settlement Agreement;
- 18 5. Approving an award of one-third of the Gross Settlement Amount (currently
19 estimated to be \$133,333.00) in attorneys’ fees to Plaintiff’s counsel;
- 20 6. Approving an award of \$9,613.65 in actual litigation costs reimbursement to
21 Plaintiff’s counsel; and
- 22 7. Approving an incentive award of \$5,000.00 to Plaintiff for her service to the PAGA
23 Group Members and the State of California.

24 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
25 the declarations of Paul K. Haines, Fletcher W. Schmidt, Alexandra R. McIntosh, Jeannette
26 Juston, Jodey Lawrence of Phoenix Settlement Administrators, and all exhibits attached thereto;
27 the Settlement Agreement; all other pleadings and papers on file in this action; and any further
28 oral or documentary evidence or argument presented at the time of hearing.

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

5
6 Dated: February 18, 2021

HAINES LAW GROUP, APC

7
8 By:



Fletcher W. Schmidt
Attorneys for Plaintiff and
PAGA Group Members

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jeannette Juston (“Plaintiff”), an alleged “aggrieved employee” under the Private
4 Attorneys General Act of 2004, California Labor Code Section 2698 *et seq.* (“PAGA”),
5 respectfully moves this Court for an Order granting approval of the PAGA Settlement Agreement
6 (“Settlement Agreement” or “Settlement”) with Defendants SOSi Services LLC and SOS
7 International LLC (collectively, “SOSi”), which is attached as Exhibit A to the Declaration of
8 Fletcher W. Schmidt filed herewith. Under the proposed settlement, SOSi has agreed to pay a
9 non-reversionary Gross Settlement Amount of \$400,000.00, to resolve Plaintiff’s representative
10 PAGA claim filed on behalf of the State of California and the following PAGA Group Members:
11 All interpreters who are, or were, party to an independent contractor agreement with
12 SOS International LLC to provide interpretation services in the United States
13 Immigration Courts and who provided these interpretation services in the
14 Immigration Courts in California at any time between May 1, 2019 and December
15 13, 2020 (the “Settlement Period” or “PAGA Period”).

16 Notably, the relief provided under the Settlement, and the claims released thereunder, are
17 *solely* for the payment of *civil penalties* under the PAGA.

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

27 Pursuant to the Settlement, SOSi will pay a Gross Settlement Amount (“GSA”) of
28 \$400,000.00 on a non-reversionary basis. *See* Settlement, §§ I.8 and III.2. After deducting

1 amounts for requested attorneys' fees (\$133,333.00), attorney costs (\$9,613.65),¹ incentive
2 award to named Plaintiff (\$5,000.00), and settlement administration costs (\$2,750.00), the
3 Settlement provides for a Net Settlement Amount ("NSA") of approximately \$249,303.35. *Id.*,
4 §§ I.9, III. 2, III.4; Declaration of Fletcher W. Schmidt ("Schmidt Decl."), ¶¶ 12, 24 & Exhibit
5 A; Declaration of Jodey Lawrence ("Lawrence Decl."), ¶ 16. Pursuant to Labor Code § 2699(i),
6 75% of the NSA (approximately \$186,977.51) will be distributed to the California Workforce
7 Development Department ("LWDA"), with the remaining 25% (approximately \$62,325.84)
8 distributed to PAGA Group Members. *See* Settlement, §§ I.9, III.4-5. There are approximately
9 284 PAGA Group Members. *See* Schmidt Decl., ¶ 22. Thus, the average payment to PAGA
10 Group Members is estimated at \$219.46.

11 The GSA represents a positive result for the State of California and PAGA Group
12 Members, particularly when considering the limited release of only PAGA claims based on the
13 factual allegations in Plaintiff's operative Complaint. Further litigation may have resulted in a
14 smaller recovery, or even no recovery at all, based on the defenses asserted by SOSi and given
15 the significant litigation risks involved. Moreover, the GSA is exponentially greater than other
16 PAGA penalty awards approved as reasonable throughout California. *See, e.g., Penaloza v. PPG*
17 *Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20,
18 2013) (approving PAGA penalties of \$5,000 to class of 667 members, with an average PAGA
19 penalty of \$7.49); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL
20 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of \$10,000 for
21 about 3,000 class members with an average PAGA penalty of \$3.33). Further, the amounts
22 requested for attorneys' fees and costs, Plaintiff's incentive award, and settlement administration
23 costs are fair, adequate, and reasonable. In light of the foregoing, Plaintiff respectfully requests
24 that the Court enter the [Proposed] Order submitted concurrently herewith.

25 ///

26
27 ¹ Although the Settlement provides for reimbursement of Plaintiff's verified litigation costs and expenses
28 "up to \$17,500.00," Plaintiff's Counsel has incurred \$9,613.65 in actual litigation costs, and respectfully
requests reimbursement of only the amount actually incurred. *See* Settlement, §§ I.9 and III.4.a; Schmidt
Decl., ¶ 26, Exhibit D.

1 **II. SUMMARY OF THE LITIGATION**

2 **A. Factual and Procedural Background**

3 SOSi, through an ongoing contract with the Department of Justice, provides interpretation
4 services at immigration court proceedings throughout the United States . Schmidt Decl., ¶ 8.
5 Plaintiff and the PAGA Group Members provided interpretation services under contract with
6 SOS International LLC in California during the Settlement Period. *Id.* On April 30, 2020,
7 Plaintiff filed a class action complaint against SOSi, alleging five causes of action for SOSi's:
8 (1) minimum wage violations; (2) rest period violations; (3) wage statement violations; (4) failure
9 to indemnify all necessary business expenditures; and (5) engagement in unfair competition.
10 Schmidt Decl., ¶ 9. On May 1, 2020, Plaintiff provided written notice to SOSi via certified mail,
11 and to the LWDA via online submission, describing SOSi's alleged Labor Code violations, as
12 required by Labor Code section 2699.3. *Id.*, ¶ 10, Exhibit B (PAGA Notice Letter). On July 7,
13 2020, after exhausting her pre-filing requirements, Plaintiff amended her complaint to add a
14 cause of action for civil penalties under PAGA based on the underlying Labor Code violations.
15 *Id.*, Exhibit C (LWDA Confirmation of Receipt of Complaint) On October 13, 2020, pursuant to
16 stipulation, the Court dismissed Plaintiff's individual and class causes of action without
17 prejudice. *Id.*

18 On September 3, 2020, the parties attended a full-day mediation session with Jeff Ross,
19 Esq., an experienced wage and hour mediator. Schmidt Decl., ¶ 11. In connection with mediation,
20 Plaintiff requested a sample of timekeeping records and SOSi provided Plaintiff with a sample
21 of Certificate of Interpretation Forms (COI forms required by the DOJ showing the immigration
22 court hearing times), relevant policies and agreements, and several data points, including: the
23 total number of work orders worked by interpreters during the PAGA Period, total weeks in
24 which a work order was performed by interpreters during the PAGA Period, and the total number
25 of interpreters who provided language interpretation and translation services to the DOJ for SOSi
26 during the PAGA Period. *Id.* Plaintiff and her Counsel used this data to calculate SOSi's
27 maximum potential exposure for civil penalties under the PAGA. *Id.*

1 During mediation, the parties debated the legal bases for their claims and defenses, their
2 respective data analyses, their respective positions regarding the extent to which the Court would
3 likely reduce any PAGA penalties recovered, as well as the impact of SOSi's arbitration
4 agreements. Schmidt Decl., ¶ 12. SOSi also argued that Labor Code § 2777, which became
5 effective on September 4, 2020, exempts referral agencies who provide "interpreting services"
6 from the requirements of AB 5 and the "ABC test". *Id.* at ¶ 14. Moreover, SOSi pointed to the
7 possibility that the Legislature might also offer a solution for employers whom allegedly did not
8 receive advance notice of *Dynamex's* "ABC test"² and therefore could not have acted willfully
9 in the classification of the interpreters. *Id.*

10 **B. Plaintiff's Claims and SOSi's Defenses**

11 **1. Misclassification as Independent Contractors**

12 Plaintiff alleges that SOSi misclassified her and other PAGA Group Members who
13 provided interpretation services at United States Immigration Courts in California as independent
14 contractors. Schmidt Decl., ¶ 13. Plaintiff contends that because SOSi's core business is providing
15 interpretation services, and Plaintiff and other PAGA Group Members provide those
16 interpretation services for SOSi, they do not "perform work that is outside the usual course of
17 [SOSi's] business." *Id.* Thus, they do not meet the ABC test for independent contractor status
18 adopted by the California Supreme Court and codified into law by California Assembly Bill 5
19 ("AB 5"), and should have been classified as employees. *Id.*; *see also Dynamex, supra*, 4 Cal.5th
20 903 (2018) (adopting ABC test and holding that all workers are presumed employees unless
21 employer proves all three elements of the test are met, including "(B) that the worker performs
22 work that is outside the usual course of the hiring entity's business").

23 SOSi contends that their business is not to provide interpretation services but rather to
24 provide technical support and solutions to the aerospace, defense, and government service
25 industries and therefore, Plaintiff and other PAGA Group Members performed work that is
26 outside the usual course of SOSi's business. Schmidt Decl., ¶ 14. SOSi further contend that Labor

27
28 ² The instant mediation took place prior to the Supreme Court's recent ruling confirming the retroactivity of
Dynamex's ABC test. *See Vazquez v. Jan-Pro Franchising International, Inc.* (Cal., Jan. 14, 2021, No. S258191)
2021 WL 127201.

Code § 2777 which became effective on September 4, 2020, exempts SOSi from the requirements of AB 5 by way of the referral agency exemption. *See* Labor Code § 2777 (a)–(b) (“If an individual acting as sole proprietor ... provides services to clients through a referral agency, the determination of whether the service provider is an employee or independent contractor of the referral agency shall be governed by *Borello*... (b)(B) [u]nder this paragraph, referrals for services shall include ... interpreting services.”); Schmidt Decl., ¶ 14. If either of the above challenges or efforts are successful, Plaintiff’s claims would be subject to the common law *Borello* test and SOSi contends, that under *Borello*, Plaintiff and other PAGA Group Members would be properly classified as independent contractors because, among other things, interpreters when and if they want to work at an immigration court hearing and are not directly supervised by SOSi. *Id*; *see also S.G. Borello & Sons, Inc. v. Dept. of Indus. Relations*, 48 Cal.3d 341, 350–51 (1989). Further, SOSi argues that Plaintiff could only seek PAGA penalties at the minimum \$5,000 violation rate, as opposed to the maximum \$15,000 violation rate under Labor Code § 226.8, since SOSi has never been put on notice by a court or the Labor Commissioner that its practices violated the Labor Code and therefore, did not willfully misclassify Plaintiff and other interpreters. Schmidt Decl., ¶ 14; *see also Noe v. Sup. Ct.*, (2015) 237 Cal.App.4th 316, 324 (“Section 226.8 provides for a penalty of between \$5,000 and \$15,000 for each “individual” who has been willfully misclassified as an independent contract.”)

2. Unpaid Wages Based On Non-Productive Time

Plaintiff maintains SOSi paid its interpreters on a piece-rate basis, whereby they were paid a fixed amount per appearance with an additional hourly rate if the appearance lasted more than three hours. Schmidt Decl., ¶ 15; Declaration of Jeannette Juston (“Juston Decl.”), ¶ 3. For instance, Plaintiff was compensated at a rate of \$135.00 per in-person appearance. *Id*. If the appearance itself (*not including* required pre- and post-appearance work, as discussed below) went over three hours in duration, then Plaintiff was compensated an additional \$45 dollars per hour for each hour in excess of three hours. *Id*. Plaintiff asserts that under this piece-rate pay plan, SOSi failed to separately compensate her and other PAGA Group Members for non-productive time, including time spent completing pre- and post-appearance tasks, such as:

1 reviewing work orders and filling out the COI form, undergoing security checks, checking in/out
2 at the clerk's window, assembling and disassembling equipment, waiting in court for the
3 Interpreter's case to be called, and traveling to and from court appearances, completing billing
4 records at the end of each week, among other tasks. *Id.*

5 SOSi contends Plaintiff and other PAGA Group Members work minimal (if any)
6 "nonproductive" time, as the activities mentioned above are all "directly related" to providing
7 interpretation services and thus do not qualify as "nonproductive" time that must be separately
8 compensated. Schmidt Decl., ¶ 16. SOSi further argue that Plaintiff and other PAGA Group
9 Members were not paid on a piece rate basis but were paid hourly and therefore, SOSi is not
10 obligated to pay Plaintiff and other PAGA Group Members for non-productive time. *Id.* SOSi
11 also argues that it actually over-compensates its interpreters as a result of its practice of paying
12 its interpreters for a minimum of three-hours of pay per appearance even though most
13 appearances do not last three-hours. *Id.* Finally, SOSi contends that to the extent Plaintiff and
14 other PAGA Group Members did work "non-productive" time, it was not recorded and therefore,
15 there is no common evidence of whether an employee worked non-productive time or not, which
16 would devolve into an unmanageable series of mini-trials. *Id.*

17 **3. Rest Period Violations**

18 Plaintiff asserts that SOSi does not maintain a written rest period policy and, in practice,
19 Plaintiff and other interpreters were often unable to take all required rest periods. Schmidt Decl.,
20 ¶ 17. Plaintiff also alleges that, because interpreters are paid on a piece-rate basis, SOSi is
21 required to separately pay them for rest periods but failed to do so. *Id.*; see Labor Code §
22 226.2(a)(1) (requiring that piece-rate workers must be paid separately for rest periods); *Bluford*
23 *v. Safeway, Inc.*, 216 Cal.App.4th 864 (2013) ("under the rule of *Armenta v. Osmose, Inc.*, 135
24 Cal.App.4th 314, 323 (2005), rest periods must be separately compensated in a piece-rate
25 system."); see also *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98, 114 (2017) (holding
26 that a commission pay plan was unlawful because it did not separately compensate for rest
27 periods, stating "[w]e agree with *Bluford* that Wage Order 7 requires employers to separately
28

1 compensate employees for rest periods if an employer's compensation plan does not already
2 include minimum hourly wage for such time.”).

3 SOSi responds by asserting that appearances rarely lasted over 3.5 hours and therefore,
4 interpreters were not entitled to a ten-minute rest period during their shifts. Schmidt Decl., ¶ 17.
5 SOSi further asserts that Plaintiff and other PAGA Group Members were free to take rest periods
6 whenever they wanted as they were not directly supervised by SOSi, and any interpreter who did
7 not take a rest period did not do so as a result of any policy or practice of SOSi. *Id.* SOSi also
8 argues that Plaintiff and other PAGA Group Members were not paid on a piece rate basis but
9 were paid by the hour, and therefore, SOSi is not required to pay them separately and hourly for
10 rest periods. *Id.* Lastly, SOSi argues that this claim is unmanageable, as it requires individualized
11 inquiries into why each PAGA Group Member failed to take a lawful rest period and on which
12 days, resulting in an unmanageable series of mini-trials. *Id.*

13 **4. Failure to Reimburse for Necessary Business Expenses**

14 Plaintiff alleges that SOSi failed to reimburse Plaintiff and other PAGA Group Members
15 for required work expenditures, including the purchase of required tools and instrumentalities,
16 such as sound enhancing equipment, pens, and paper. Schmidt Decl., ¶ 18. Additionally, Plaintiff
17 alleges that SOSi failed to reimburse Plaintiff and other PAGA Group Members for out-of-pocket
18 travel expenses, including mileage in traveling to and from appearances, parking, and other costs
19 in violation of California law. *Id.*; see DLSE Op. Ltr. 1994.02.16 at p. 7 (stating that “out-of-
20 pocket expenses in the use of [employees’] personal vehicle” must be reimbursed in scenario
21 where employees have no fixed job site).

22 In response, SOSi contends that commute-related expenses are not required to be
23 reimbursed, just as commute time is not compensable. Schmidt Decl., ¶ 19. SOSi also counters
24 that because interpreters often work for multiple agencies simultaneously, and because
25 interpreters can use their tools and instrumentalities to perform work for other agencies, SOSi
26 should not be solely responsible for reimbursement of these expenses, even if interpreters are
27 found to be employees. *Id.* SOSi also contends that the interpreters are compensated for
28 transportation and housing costs for travel assignments. Finally, SOSi argues that this claim is

1 unmanageable, as it requires individualized inquiries into how much money was spent, which
2 tools and/or equipment were purchased, and the distance, duration and frequency of travel time,
3 resulting in an unmanageable series of mini-trials. *Id.*

4 **5. Derivative Wage Statement Violations and Waiting Time Penalties**

5 As a result of SOSi's misclassification of interpreters as independent contractors, failure
6 to pay all earned wages, failure to pay rest period premiums, and failure to reimburse for business
7 expenses, Plaintiff asserts SOSi failed to issue accurate itemized wage statements, and failed to
8 timely pay all final wages to former interpreters. Schmidt Decl., ¶ 20; *see also* Labor Code §§
9 203(a) and 226(a). Plaintiff further alleges that SOSi violated Labor Code § 226 (a) because its
10 wage statements failed to list the total hours worked, the number of piece rate units earned and
11 the applicable piece rate, the inclusive dates of the period, the last four digits of the employee's
12 social security number or an employee identification number, and the correct name of the legal
13 entity that is the employer. *Id.*

14 In response, SOSi argues that for the reasons stated above, including their exemption
15 from the requirements of AB 5 as a referring agency, Plaintiff's underlying allegations have no
16 merit, and as a result, the wholly derivative wage statement and final wage allegations will fail
17 as well. Schmidt Decl., ¶ 20. SOSi also argues that its wage statements always reflected the
18 accurate amount of money *paid* to employees, and therefore it would not face any liability for a
19 failure to issue accurate wage statements under Labor Code § 226. Schmidt Decl., ¶ 20;
20 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) ("The purpose
21 of section 226 is to '*document the paid wages* to ensure the employee is fully informed regarding
22 the calculation of those wages.'") (italics in original; citing *Soto v. Motel 6 Operating, L.P.*, 4
23 Cal.App.5th 385, 392 (2016)).

24 **6. SOSi's Additional Arguments for Reduction of PAGA Penalties**

25 SOSi also maintains that given its good-faith defenses, this Court would exercise its
26 discretion to substantially reduce any PAGA penalties awarded. Schmidt Decl., ¶ 21; *see also*
27 Labor Code § 2699(e)(2) (authorizing reduction in penalties in court's discretion); *Thurman v.*
28 *Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA

penalties); *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming trial court’s reduction of PAGA penalties to 10% of calculated exposure after bench trial).

Further, SOSi argues that Plaintiff could only seek PAGA penalties at the \$100 “initial” violation rate, as opposed to the \$200 “subsequent” violation rate, since SOSi had never been put on notice by a court or the Labor Commissioner that its practices violated the Labor Code until Plaintiff initiated this action. Schmidt Decl., ¶ 21; *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (finding “initial” violation rate applies until employer has been notified that it is violating a Labor Code provision).

III. THE PROPOSED SETTLEMENT

A. “PAGA Group Members” Defined

PAGA Group Members are defined under the Settlement as all California based interpreters who are, or were, party to an independent contractor agreement with SOS International LLC to provide interpretation services in the United States Immigration Courts and who provided these interpretation services in the Immigration Courts in California at any time between May 1, 2019 and December 13, 2021. *See* Settlement, § I.2.

B. Essential Terms Of The Settlement

Under the Settlement, SOSi will pay a GSA of \$400,000.00. Settlement, §§ I.8 and III.2. After deducting amounts for requested attorneys’ fees and costs, Plaintiff’s incentive award, and settlement administration costs, the remaining Net Settlement Amount (“NSA”) distributable to the PAGA Group Members and the LWDA is estimated to be \$249,303.35. *See* Settlement, §§ I.9 and III.4. This non-reversionary Settlement does not require PAGA Group Members to submit a claim form to reap the financial benefits of the Settlement. *Id.*, §§ I.8 and III.2. The monetary terms of the Settlement are:

Maximum Settlement Amount:	\$400,000.00
Minus Court-approved attorneys’ fees (1/3):	\$133,333.00
Minus Court-approved attorneys’ costs:	\$9,613.65
Minus Plaintiff’s Incentive Award	\$5,000.00
Minus Settlement Administrator costs:	\$2,750.00
Net Settlement Amount:	\$249,303.35
Minus LWDA’s 75% Share:	\$186,977.51

Total Paid to PAGA Group Members: \$62,325.84

1. Attorneys' Fees and Costs, Settlement Administration Costs, and Plaintiff's Enhancement Payment

Plaintiff's Counsel requests one-third of the GSA (\$133,333.00) in attorneys' fees, and \$9,613.65 in actual litigation costs. Settlement, §§ I.9 and III.4.a; Schmidt Decl., ¶¶ 25, 26, Exhibit D. As discussed in detail below, an award of one-third of the GSA is fair, adequate, and reasonable as a percentage of the fund and is in line with fee awards in other PAGA settlements.

The parties agree to engage Phoenix Settlement Administrators ("Phoenix") as the third-party settlement administrator. *See* Settlement, §§ I.16 and IV.1. Phoenix shall be responsible for calculating the settlement checks, and mailing the settlement checks and Notice to the PAGA Group Members, among other duties. Phoenix requests that the Court approve \$2,750.00 in administration costs to Phoenix, which will cover all costs incurred by Phoenix in connection with the administration of the Settlement. Declaration of Jodey Lawrence ("Lawrence Decl."), Exhibit F; Settlement, § IV.

Finally, Plaintiff requests an incentive award of \$5,000, in recognition of Plaintiff's contributions to this case and her efforts in bringing this case to successful resolution. *See* §§ I.9, III.4.b; Juston Decl., ¶¶ 4-5.

2. Payment to the LWDA and PAGA Group Members

The entire NSA shall be designated as PAGA civil penalties. Settlement, § IV.8. From the NSA, 75% (\$186,977.51) will be distributed to the LWDA, and 25% (\$62,333.83) will be distributed to the PAGA Group Members. *Id.*, § III.5; *see also* Labor Code § 2699(i) ("[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the [LWDA]...and 25 percent to the aggrieved employees."). 100% of the individual payments to the PAGA Group Members will be reported using IRS Form-1099s, since all funds received under Section 2699 are civil penalties that do not trigger payroll taxes or withholdings. *See* Settlement, § IV.8. Individual Settlement Payments will be determined based on the proportionate number of work orders worked by all PAGA Group Members during the PAGA Period. *Id.*, § III.5.

1 **3. Funding of the Settlement**

2 SOSi will deposit the GSA with Phoenix within ninety (90) calendar days after the date
3 upon which the Court enters an Order approving the Settlement. Settlement §§ I.5 and III.2.

4 Within five (5) business days after the GSA has been fully funded, and after receiving
5 approval from counsel of the payment calculations, Phoenix will mail the Explanatory Letter
6 (attached to the Settlement as Exhibit A) and Individual PAGA Payments to PAGA Group
7 Members via First-Class U.S. Mail. *See* Settlement, § IV.3. Funds represented by undeliverable
8 checks, or checks remaining uncashed after 180 days, shall be made payable to the National
9 Center for Youth Law, a 501(c)(3) organization dedicated to promoting the well-being of
10 children. *Id.*, § IV.6.

11 **IV. ARGUMENT**

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

13 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
14 statute, which states that the “court shall review and approve any settlement of any civil action
15 filed pursuant to this part.” *See* Lab. Code § 2699(l).

16 Of course, “[s]ettlement is a compromise, which balances the possible recovery against
17 the risks inherent in litigating further.” *In re TD Ameritrade Account Holder Litig.*, Case Nos. C
18 07-2852 SBA, C 07-4903 SBA, 2011 WL 4079226, *9 (N.D. Cal. Sept. 13, 2011). Indeed, “the
19 very essence of a settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes,’”
20 as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
21 litigation that induce consensual settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d
22 615, 624-25 (9th Cir., 1982).

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

1 (E.D. Cal. Jul. 1, 2010). A court’s review of a PAGA settlement implicates the following unique
2 features that render the approval process distinct from approval of a class action settlement under
3 C.C.P. § 382 and C.R.C. Rule 3.769.

4 First, in evaluating the adequacy of the settlement amount, the Court is not concerned
5 with the amount(s) that “aggrieved employees” are to receive, but rather, must focus on the total
6 settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit
7 consists of civil penalties, not individual or class damages,” and while a “[PAGA] action is ...
8 designed to protect the public and penalize the employer for past illegal conduct,” a reviewing
9 Court must be mindful of the fact that settlement of a PAGA claim involves a compromise.
10 *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties are not meant
11 to compensate unnamed employees because the action is fundamentally a law enforcement
12 action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2,
13 2010). As our Supreme Court recently confirmed, “PAGA claims are ‘representative’ actions in
14 the sense that they are brought on the state’s behalf. The employee... ‘represents the same legal
15 right and interest as’ those agencies — ‘namely, recovery of civil penalties that otherwise would
16 have been assessed and collected by the [LWDA].’” *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185
17 (2019) (citing *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 380 (2014)).

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

25 Second, consistent with the fact that unnamed employees have no property interest in a
26 PAGA claim,³ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
27

28 ³ As held by the California Supreme Court, “[PAGA] does not create property rights or any other
substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employee to recover civil

1 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
2 1340777 at *5. This renders the approval process of a PAGA settlement distinct from a class
3 action settlement, as there is no need for the Court to employ the “two-step approval process”
4 required under F.R.C.P. Rule 23 (“Rule 23”) and C.R.C. Rule 3.769 (“Rule 3.769”).

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

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

17 In deciding whether to approve a proposed settlement, a trial court has broad powers to
18 determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup.*
19 *Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to
20 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*,
21

22
23
24 penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement
agencies.” *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009).

25 ⁴ This is contrasted with the much broader release permitted in a class action context, which may release
26 all underlying Labor Code violations based on “any matter or fact” alleged in the complaint. *See In re*
27 *Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221(5th Cir. 1981) (“The weight of authority
28 establishes that ... a court may release not only those claims alleged in the complaint and before the court,
but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set
forth or referred to in’ the complaint.”); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (“we
have held that federal district courts properly released claims not alleged in the underlying complaint
where those claims depended on the same set of facts as the claims that gave rise to the settlement.”).

1 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court
2 to consider include, but are not limited to:

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

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

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

23 **1. The Strength of Plaintiff's Case**

24 Although Plaintiff steadfastly maintains that this action is meritorious, Plaintiff
25 acknowledges that there are substantial risks and uncertainty in proceeding to trial. SOSi
26 presented numerous defenses to Plaintiff's underlying claims, and arguments as to why Plaintiff's
27 damages calculations were overstated, including that the Court would utilize its discretion to
28 substantially reduce any award of PAGA penalties in light of SOSi's good-faith defenses to

1 Plaintiff's underlying misclassification claim. While Plaintiff was prepared to litigate her claims
2 through trial, she faced substantial challenges in prevailing in this matter and obtaining a better
3 result than will be provided through the Settlement. Thus, this factor supports approval.

4 **2. Risk, Expense, Complexity, and Duration of Further Litigation**

5 The parties agreed to postpone formal written discovery and depositions until after
6 exhausting their settlement efforts. Schmidt Decl., ¶ 11. Therefore, absent settlement, the parties
7 would be required to expend substantial time and resources conducting formal discovery and taking
8 depositions. Preparation for trial remained, as well as the prospect of appeals in the wake of a
9 summary judgment ruling for either party, as well as appeals after trial. This settlement avoids these
10 considerable costs, risks, and the accompanying burden of continued litigation on the Court.

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

12 This proposed Settlement provides a fair and reasonable monetary recovery for the
13 LWDA and PAGA Group Members in the face of significant litigation risks. Plaintiff estimated
14 SOSi's realistic exposure for PAGA civil penalties as follows:

15 **Penalties for Misclassification Under Labor Code § 226.8: \$177,500**

16 Plaintiff maintained that she would be able to seek PAGA penalties for each PAGA Group
17 Member employed by SOSi during the PAGA period. Schmidt Decl., ¶ 22. Based on the data
18 provided by SOSi, there were approximately 284 Interpreters employed by SOSi during the
19 PAGA Period. *Id.* Assuming a \$5,000 penalty per employee under Labor Code § 226.8, Plaintiff
20 estimated a PAGA exposure of \$1,420,000.

21 However, SOSi maintains that it properly classified interpreters as independent
22 contractors. Schmidt Decl., ¶¶ 14, 22. As stated above, SOSi contends that Labor Code § 2777
23 which became effective on September 4, 2020, exempts SOSi from the requirements of AB 5 by
24 way of the referral agency exemption. *See* Labor Code § 2777 (a)–(b); Schmidt Decl., ¶ 14. SOSi,
25 further contends, that even if it the ABC test were to apply, SOSi's business is not to provide
26 interpretation services but rather to provide technical support and solutions to the aerospace,
27 defense, and government service industries and therefore, Plaintiff and other PAGA Group
28 Members performed work that is outside the usual course of SOSi's business. *Id.* SOSi argues

1 that if any of the above challenges or efforts are successful, Plaintiff's claims would be subject
2 to the common law *Borello* test and, that under *Borello*, Plaintiff and other PAGA Group
3 Members would be properly classified as independent contractors because, among other things,
4 interpreters select which court appearance they work, are not directly supervised, and are required
5 to supply their own tools. *Id*; see also *S.G. Borello & Sons, Inc. v. Dept. of Indus. Relations*, 48
6 Cal.3d 341, 350-51 (1989). SOSi also contends that a majority of the 284 interpreters who have
7 performed at least one work order in the immigration courts during the time period worked on
8 such a sporadic basis (they may specialize in a rare or uncommon language or have other clients
9 or jobs that limit the time they can perform work orders) that it is unlikely that such interpreters
10 would be found to be under SOSi's control.

11 Given these defenses, SOSi asserts that it would likely prevail on the merits, or at a
12 minimum the Court would exercise its discretion to significantly reduce any PAGA penalties
13 awarded. *Id*. Plaintiff therefore discounted the maximum figure by 75% for a risk of losing on
14 the merits, and by an additional 50% for the risk of being unable to proceed on a representative
15 basis and/or this Court reducing penalties, to arrive at an estimated exposure of \$177,500.
16 Schmidt Decl., ¶ 22.

17 PAGA Penalties for Wage and Hour Violations Under Lab. Code § 2699: **\$226,538**

18 Based on the alleged violations described above, Plaintiff maintained that she would be
19 able to seek PAGA penalties for each PAGA Group Members for each pay period in the PAGA
20 Period, even if SOSi prevailed on its misclassification defense. Schmidt Decl., ¶ 23. Based on
21 the data provided by SOSi, PAGA Group Members worked a combined total of 6,041 pay periods
22 during the PAGA period. Thus, assuming that Plaintiff could prove at least one underlying Labor
23 Code violation in each pay period within the PAGA period, Plaintiff estimates SOSi's maximum
24 PAGA exposure at \$604,100.00 (calculated from 6,041 pay periods at \$100 per violation). *Id*.;
25 see also *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial"
26 violation rate applies until employer is notified that it is violating a Labor Code provision).
27 However, these penalties derive from the underlying wage and hour violations discussed above,
28 which SOSi disputes. See e.g., *Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL

3907506, *5, n.5 (explaining that a PAGA claim’s success was determined by the merits of its underlying claims). Plaintiff also recognizes, as noted above, that the Court has discretion to reduce any award of PAGA penalties where it views them as duplicative. Schmidt Decl., ¶ 23; *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming reduction of PAGA penalties to \$5 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Plaintiff therefore discounted the maximum figure by 50% for the risk of being unable to proceed on a representative basis and an additional 25% to account for the risk of losing on the merits and/or of this Court reducing penalties, to arrive at an estimated exposure of \$226,538. Schmidt Decl., ¶ 23.

The proposed Settlement of \$400,000.00 therefore represents slightly more than 100% of Plaintiff’s reasonably forecasted recovery, while avoiding the risks of proceeding through trial. Schmidt Decl., ¶ 24. “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*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotations omitted). Plaintiff acknowledges that there was substantial uncertainty and risk to these claims, and that even in the event she prevailed, the Court nonetheless maintained discretion to reduce the penalties. Thus, Plaintiff submits that this Settlement falls well within the realm of being fair, reasonable, and adequate. Therefore, approval is appropriate since the Settlement will provide tangible, monetary relief to PAGA Group Members and the State of California.

4. Discovery Completed and the Status of Proceedings

SOSi provided Plaintiff with a sample of COI forms for PAGA Group members, relevant policies and agreements, the total number of work orders worked during the PAGA Period, the total work weeks worked during the PAGA Period, and the total number of PAGA Group members who worked for SOSi during the PAGA Period. Schmidt Decl., ¶ 11. It was only after the exchange of this informal discovery that the parties attended mediation, and ultimately

1 reached the proposed settlement. *Id.* Thus, this factor supports settlement approval.

2 **5. The Experience and Views of Counsel**

3 “Parties represented by competent counsel are better positioned than courts to produce a
4 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
5 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
6 by competent and experienced counsel who possess extensive experience litigating wage and
7 hour class actions and PAGA representative actions, and who believe this Settlement to be fair
8 and adequate for all involved. *See* Schmidt Decl., ¶¶ 2-7; Declaration of Paul K. Haines (“Haines
9 Decl.”), ¶¶ 2-9; Declaration of Alexandra R. McIntosh (McIntosh Decl., ¶¶ 2-4). Further, the
10 proposed Settlement was reached with the input and assistance of Jeffrey A. Ross, Esq., an
11 experienced wage and hour mediator. Schmidt Decl., ¶ 12. Thus, this factor strongly supports
12 settlement approval. *See, Kullar, supra*, 168 Cal. App. 4th at 130 (“The court undoubtedly should
13 give considerable weight to the competency and integrity of counsel and the involvement of a
14 neutral mediator in assuring itself that a settlement agreement represents an arm’s length
15 transaction entered without self-dealing or other potential misconduct.”).

16 **C. The Requested Awards for Attorneys’ Fees is Reasonable as a Percentage of**
17 **the MSA, as Cross-Checked Against Counsel’s Lodestar**

18 Plaintiff, as the prevailing party in settlement, is entitled to recover attorneys’ fees and
19 costs for bringing this PAGA claim. *See* Labor Code § 2699(g) (“Any employee who prevails in
20 any action shall be entitled to an award of reasonable attorney’s fees and costs.”); Code of Civil
21 Procedure § 1021.5(a). A fee award is justified where the legal action has produced its benefits
22 by way of a voluntary settlement. *See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91;
23 *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53;
24 *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when a number of persons are entitled in common to
25 a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation
26 or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”).
27 The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th
28 480, 506, that “[t]he percentage of fund method survives in California class action cases.”

Specifically, the *Laffitte* Court held:

The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Id., at 503 (internal citation omitted); *see also, e.g., 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 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties’ unjust enrichment); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’”). Further, while trial courts have discretion to assess the reasonableness of fee awards with tools such as the “lodestar cross-check,” it need not do so. *Laffitte*, 1 Cal.5th at 506 (“[w]e hold further that trial courts...retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.”).

Here, Plaintiff’s counsel’s fee request of \$133,333.00 (one-third of the GSA) is the same percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the recovery method. Fee awards of roughly one-third of the settlement fund are routinely awarded in California state and federal courts in class and representative PAGA actions. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11; *see also In re Pacific Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award); *Chavez v. Saticoy Lemon Ass’n*, Case No. 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29,

1 2015) (approving attorneys’ fees of one-third of settlement fund in representative PAGA
2 settlement). This is also consistent with Plaintiff’s counsel’s experience in similar wage and hour
3 class action and PAGA matters. Schmidt Decl., ¶ 25; *see also* 4 Newberg on Class Actions § 14.6
4 (4th Ed. 2013) (“No general rule can be articulated on what is a reasonable percentage of a
5 common fund. Usually 50% of the fund is the upper limit on a reasonable fee award...”).

6 The fee award requested here is justified because Plaintiff’s counsel achieved a
7 reasonable monetary recovery for the PAGA Group Members and the State of California (who
8 did not take this case after receiving Plaintiff’s PAGA notice) in an uncertain and risky case
9 while bearing the substantial burdens of representation on a contingency basis. Schmidt Decl., ¶
10 25; *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002). Additionally,
11 Plaintiff’s recovery for the State of California and PAGA Group Members exceeds other PAGA
12 awards approved by courts in California. *See, e.g., Boyd v. Bank of Am. Corp.*, 2014 WL 6473804
13 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Penaloza, supra*, 2013 WL
14 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average
15 PAGA penalties of \$3.33). That Plaintiff’s counsel achieved these results in the face of serious
16 defense challenges and an uncertain legal landscape, confirms the strength of the results
17 achieved.

18 As discussed above, this case presented significant risks on the merits and with respect to
19 the Court’s authority to reduce an award of PAGA penalties. It is fair and reasonable to account
20 for these risks in compensating Plaintiff’s counsel, as well as the risks involved in undertaking
21 this litigation and expending considerable effort while working on a pure contingency basis.
22 Since undertaking representation of Plaintiff, Plaintiff’s counsel dedicated substantial resources
23 to this litigation, including expending \$9,613.65 in costs, without receiving any compensation to
24 date. Schmidt Decl., ¶¶ 25, 26, Exhibit D. Plaintiff’s counsel’s efforts include conducting pre-
25 filing investigation, legal research and analysis regarding the merits of Plaintiff’s claims,
26 Plaintiff’s ability to recover penalties under the PAGA, and Defendant’s potential defenses,
27 reviewing documents and data provided by Defendant prior to mediation, building a
28 comprehensive damages model, drafting a mediation brief, preparing for, traveling to, and
attending mediation, negotiating and preparing the Memorandum of Understanding, drafting the

1 long-form Settlement Agreement and Notice documents, preparing this Motion for settlement
2 approval and supporting declarations, and otherwise litigating the case. *Id.* Given the
3 considerable potential for adverse outcomes in this case, the contingent risk borne by Plaintiff's
4 counsel was great. The quality of Plaintiff's counsel's work, and the efficacy with which it was
5 performed, should be compensated.

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

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

19 Plaintiff's Counsel incurred \$9,613.65 in actual litigation costs. Schmidt Decl., ¶ 26,
20 Exhibit D. Plaintiff's Counsel's request for reimbursement of these litigation costs is fair,
21 adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See id.*
22 Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g.,*
23 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket
24 expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, No. 05-03759
25 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions and
26 exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable);
27 *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d
28 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response*

1 *Securities Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, legal
2 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
3 Because the expense reimbursements requested by Plaintiff's Counsel were reasonably incurred,
4 the Court should grant Plaintiff's Counsel's request for reimbursement of \$9,613.65 in actual
5 litigation costs incurred.

6 **E. This Court Should Approve Plaintiff's Requested Incentive Award Because**
7 **it is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the**
8 **Risks Assumed on Behalf of the PAGA Group Members**

9 Courts routinely approve incentive awards to compensate named plaintiffs for the services
10 they provide and the risks they incur during class and representative litigation. *See, e.g., Bell v.*
11 *Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named
12 plaintiffs for their efforts in bringing the case); *see also Van Vranken v. Atlantic Richfield Co.*,
13 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000 incentive award). Here, pursuant to the
14 Settlement, Plaintiff seeks an incentive award of \$5,000.00. *See* Settlement, §§ III.2 & III.4.b.
15 This request is reasonable given Plaintiff's efforts in this case, the significant time devoted to the
16 prosecution of this action, and the risks she undertook on behalf of the PAGA Group Members
17 and the State of California. *See* Schmidt Decl., ¶ 27, Exhibit E (sampling of Orders granting
18 incentive payments in PAGA-only settlements). Plaintiff devoted significant effort to searching
19 for employment-related documents, provided substantial factual information and documents to
20 Plaintiff's counsel, and had multiple in-depth discussions with Plaintiff's counsel to discuss the
21 facts, legal theories at issue, and general case strategy with Plaintiff's counsel. Schmidt Decl., ¶
22 27; Juston Decl., ¶¶ 4-5. Accordingly, Plaintiff's requested incentive award is appropriate and
23 justified as part of the Settlement.

24 **F. The Court Should Approve the Requested Administration Costs**

25 Plaintiff also requests that the Court approve \$2,750.00 in administration costs to the
26 Settlement Administrator, Phoenix Settlement Administrators. *See* Schmidt Decl., ¶ 28;
27 Lawrence Decl., ¶ 16, Exhibit F. As detailed in the Settlement Agreement and declaration of
28 Jodey Lawrence, submitted concurrently with this Motion, Phoenix will perform duties in
connection with this Settlement that are integral in effectuating the Settlement and the Notice
process. Among other things, Phoenix will calculate each PAGA Group Member's Individual
Settlement Payment, update addresses contained in the employee data supplied by Defendant,

1 format the Notices for mailing, mail Notices to all 284 PAGA Group Members, and otherwise
2 administered the Settlement. *See generally*, Lawrence Decl.; Settlement, § IV. Phoenix was
3 selected because it is an experienced, well-respected settlement administrator, and returned a bid
4 at a competitive rate. *See generally*, Lawrence Decl.; Schmidt Decl. ¶ 28. For these reasons,
5 Phoenix's requested administration costs are fair, reasonable, and adequate, and should be
6 approved.

7 **V. CONCLUSION**

8 For the reasons stated herein, this Court should grant Plaintiff's Motion in its entirety and
9 adopt the [Proposed] Judgment and Order Granting Plaintiff's Motion for Settlement Approval
10 of Claims Brought Under the PAGA, and Reasonable Attorneys' Fees and Costs, submitted
11 concurrently herewith.

12 Dated: February 18, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

13 By:



Fletcher W. Schmidt
Attorneys for Plaintiff and
PAGA Group Members



Make a Reservation

JEANETTE JUSTON vs SOSI SERVICES LLC

Case Number: 20STCV16867 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2020-04-30 Location: Stanley Mosk Courthouse - Department 28

Reservation

Case Name: JEANETTE JUSTON vs SOSI SERVICES LLC	Case Number: 20STCV16867
Type: Motion re: (Approval of PAGA Settlement)	Status: RESERVED
Filing Party: Jeanette Juston (Plaintiff)	Location: Stanley Mosk Courthouse - Department 28
Date/Time: 03/18/2021 8:30 AM	Number of Motions: 1
Reservation ID: 816502040253	Confirmation Code: CR-7XWPKOINFTRJHHFIK

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: Visa
Account Number: XXXX6940	Authorization: 05316G

[Print Receipt](#)[+ Reserve Another Hearing](#)[View My Reservations](#)