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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

CARLOS CHACON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

EXEMPLIS LLC, a California limited liability
company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 30-2020-01157341-CU-OE-CXC

*[Assigned for All Purposes to Hon. Randall J.
Sherman, CX105]*

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

Date: August 27, 2021
Time: 10:00 a.m.
Dept.: CX105

Reservation No.: 73578931

Complaint Filed: August 27, 2020
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on August 27, 2021 at 10:00 a.m., or as soon thereafter as the
3 matter may be heard in Department CX105 of the above-entitled Court, located at 751 West Santa Ana
4 Blvd., Santa Ana, California 92701, Plaintiff Carlos Chacon ("Plaintiff"), on behalf of himself and all
5 other aggrieved employees, will and hereby does move this Court for entry of an Order as follows:

- 6 1. Granting approval, pursuant to California Labor Code section 2698 *et seq.*, and specifically
7 Labor Code section 2699(1)(2), of the proposed Settlement of claims brought pursuant to
8 the Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698 *et seq.*) and set forth in
9 the Settlement;
- 10 2. Appointing Phoenix Class Action Administrators as the Settlement Administrator, and
11 approving an award of \$3,750.00 in anticipated costs to Phoenix Class Action
12 Administrators for its settlement administration services;
- 13 3. Approving the proposed Notice of PAGA Settlement and Release of Claims as to form and
14 content, and directing that it be distributed to the Aggrieved Employees pursuant to the
15 terms of the Settlement;
- 16 4. Directing the distribution of the Gross Settlement Amount pursuant to the terms of the
17 Settlement;
- 18 5. Approving an award of one-third of the Gross Settlement Amount or \$83,333.33 in
19 attorneys' fees to Plaintiff's Counsel;
- 20 6. Approving an award of \$20,613.31 in actual litigation costs reimbursement to Plaintiff's
21 Counsel;
- 22 7. Approving an enhancement award of \$5,000.00 to Plaintiff for his service to the Aggrieved
23 Employees and the State of California; and
- 24 8. Approving the payment of \$102,977.52 to the California Labor & Workforce Development
25 Agency for its share of PAGA civil penalties.
- 26 9. Approving the payment of \$34,325.84 to the Aggrieved Employees on a pro rata basis based
27 on number of pay periods worked during the relevant time period.

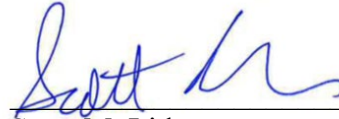
28 This Motion is based on this Notice, the attached Memorandum of Points and Authorities; the
declarations of Scott M. Lidman, Elizabeth Nguyen, Paul K. Haines, Milan Moore, Plaintiff Carlos

1 Chacon, and Jodey Lawrence on behalf of Phoenix Settlement Administrators and the exhibits attached
2 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
3 evidence or argument presented at the time of hearing.

4
5 Dated: August 2, 2021

Respectfully submitted,
LIDMAN LAW, APC

6
7 By:



8 Scott M. Lidman
Attorneys for Plaintiff
CARLOS CHACON

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MEMORANDUM OF POINTS AND AUTHORITIES¹

I. INTRODUCTION

Plaintiff Carlos Chacon (“Plaintiff”), an “Aggrieved Employee” under the California Labor Code § 2698 *et seq.* (“PAGA”), respectfully requests this Court grant approval of the Settlement² with Exemplis LLC (“Exemplis” or “Defendant”) pursuant to Labor Code section 2699(1)(2). This PAGA action is based on Defendant’s alleged: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide legally compliant meal periods; (4) failure to authorize and permit rest periods; (5) failure to issue accurate wage statements that included all information required by law, (6) failure to pay wages at least twice per calendar month, and (7) failure to maintain accurate records. This PAGA action seeks civil penalties on behalf of the California Labor & Workforce Development Agency (“LWDA”) and all “Aggrieved Employees,” defined in the Settlement as “all current and former hourly, non-exempt employees of Defendant Exemplis LLC who worked in California at any time from June 22, 2019 through the sooner of (1) the date the Court grants approval of this settlement or (2) the date the pay periods in the PAGA Period increase 15% of 18,329 (which is 21,079).”

As set forth herein, the proposed Settlement should be approved because it is fair, reasonable, and adequate, as it (1) is the product of arm’s-length negotiations, (2) was negotiated by attorneys experienced in wage-and-hour issues, (3) was negotiated subsequent to undertaking sufficient investigation to evaluate the relative strength and value of the PAGA-based claims, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA-based claims, as well as the risks, expense, complexity and likely duration of further litigation.

This proposed PAGA Settlement that Exemplis will pay a **non-reversionary** Gross Settlement Amount (“GSA”) of \$250,000.00. After deducting amounts for requested attorneys’ fees (one-third of the GSA or \$83,333.33), requested actual costs incurred by Plaintiff’s counsel (\$20,613.31), an

¹ Given the multiplicity of issues addressed herein, Plaintiff’s memorandum of points and authorities necessitates exceeding the 15-page limit set forth in California Rule of Court 3.1113(d). As this Motion is unopposed, Plaintiff respectfully requests that the Court consider the entire Motion, which is 18 pages in length.

² The Settlement Agreement (“Settlement”) is attached to the Declaration of Scott M. Lidman as Exhibit 2. The Proposed Notice of PAGA Settlement and Release of Claims is attached to the Settlement as Exhibit A. All defined terms in this Motion have the same definitions as used in the Settlement.

enhancement award for Plaintiff (\$5,000.00), and settlement administration costs (\$3,750.00) to Phoenix Settlement Administrators (“PSA”), the Settlement provides for distribution of civil penalties in the amount of \$137,303.36 Pursuant to Labor Code section 2699(i), 75% of \$137,303.36 (or \$102,977.52) will be distributed to the LWDA and 25% of \$137,303.36 (or \$34,325.84) will be distributed to the Aggrieved Employees. The amounts requested for attorneys’ fees and costs, Plaintiff’s enhancement awards, and settlement administration costs are fair, adequate, and reasonable, particularly in light of the recovery obtained. Because there are approximately 563 Aggrieved Employees, the average individual payment to each Aggrieved Employees is estimated to approximately \$60.97 (and will vary based on an employee’s actual length of employment). Additionally, the lowest estimated recovery is \$1.97 (an employee working only one (1) pay period) and the highest estimated recovery is \$112.29.³

The GSA of \$250,000.00 represents a fair and reasonable recovery for the State of California and Aggrieved Employees considering the limited scope and time period of the release. The release in the Settlement does not impact any underlying Labor Code claims any of the Aggrieved Employees may have. Further litigation may have resulted in a smaller recovery or even no recovery at all based on the defenses asserted by Exemplis and given the significant litigation risks involved.

In light of the foregoing, this Court should enter the [Proposed] Order Granting Approval of Settlement submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION

A. The Parties

Exemplis manufactures custom designed chairs. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Plaintiff, a former non-exempt employee, was employed by Exemplis from on or about August 1, 2016 through on or around March 2020. *See* Declaration of Carlos Chacon (“Chacon Decl.”), ¶ 2.

³ There are approximately 17,423 pay periods. Therefore, dividing the amount to Aggrieved Employees of \$34,325.84 by 17,423 = approximately \$1.97 per pay period. The lowest amount worked by an employee based on the data produced in connection with mediation was one pay period, meaning the lowest estimated amount of recovery would be \$1.97. The highest amount would be \$112.29, based on the Aggrieved Employee working the entire time period of June 22, 2019 through August 27, 2021 (the date of the hearing for approval), which is 114 workweeks and 57 bi-weekly pay periods.

1 **B. Procedural History**

2 On June 22, 2020, Plaintiff provided written notice to the LWDA and Exemplis asserting claims
3 for civil penalties pursuant to PAGA stemming from alleged violations of the California Labor Code
4 including: (1) failure to pay all overtime wages owed; (2) failure to pay all minimum wages owed; (3)
5 failure to provide all legally required meal periods; (4) failure to authorize and permit all rest periods; (5)
6 failure to provide accurate, itemized wage statements; (6) failure to pay all earned wages at least twice
7 during each calendar month; and (7) failure to maintain accurate records. Lidman Decl., ¶ 11; Exh. 1.

8 On August 27, 2020, after exhausting his administrative requirements, Plaintiff filed a
9 representative action against Exemplis alleging a single cause of action for civil penalties under PAGA.
10 *Id.* A copy of this motion, including the settlement agreement, has been submitted to the LWDA on the
11 same date that Plaintiff filed this motion. *Id.* at ¶ 37.

12 **C. Informal Discovery, Mediation, and Arms-Length Negotiations**

13 Prior to the Parties' scheduled mediation on May 3, 2021, Exemplis produced information and
14 documents pertaining to Plaintiff and other Aggrieved Employees, including an approximate 50%
15 sampling of timekeeping records and the entire payroll data for the Aggrieved Employees, employee
16 handbooks, wage and hour policies and other relevant documents and information for the underlying
17 claims. Lidman Decl., ¶ 12. Plaintiff received a random sample of timekeeping records for approximately
18 271 employees which is approximately 50% of the Aggrieved Employees. Plaintiff contends that a 50%
19 sampling of timekeeping records is statistically significant and reliable for purposes of evaluating a
20 potential settlement. *Id.*; *See e.g., Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016). In addition
21 to the sampling of timekeeping records, Plaintiff was provided with the payroll records for the entire group
22 of Aggrieved Employees. This data, coupled with the applicable employee handbooks and policies,
23 enabled Plaintiff to extrapolate the civil penalties owed for potential meal and rest and unpaid wages
24 violations. *Id.*

25 Indeed, after the detailed review of the payroll and time records analysis and other documents and
26 policies produced by Exemplis, Plaintiff's Counsel drew on their extensive experience in similar cases to
27 assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess
28 the merits and value of Plaintiff's claims and defenses thereto, if a settlement could not be reached. *Id.*

1 On May 3, 2021, after extensive research and analysis, a mediation was held with Marc Feder, a
2 well-respected wage and hour class and representative action mediator. Lidman Decl., ¶ 13. During
3 mediation, the Parties vigorously debated their opposing legal positions, the likelihood of Plaintiff
4 proceeding on a representative basis, and the legal basis for the claims and defenses. *Id.* Ultimately, the
5 Parties agreed in principle on a settlement that would resolve this matter in its entirety. *Id.* In the weeks
6 that followed, the parties finalized the terms of settlement and executed the Settlement Agreement
7 (“Settlement”). Lidman Decl., ¶ 13, Exh. 2.

8 **III. ARGUMENT**

9 **A. Standard For Approval Of A PAGA Settlement**

10 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute,
11 which states that the “court shall review and approve any penalties sought as part of a proposed settlement
12 agreement pursuant to this part.” *See* Lab. Code § 2699(l). Notably, the PAGA statute does not set
13 expressly forth the criteria by which a PAGA settlement is to be judged.

14 In evaluating the adequacy of the settlement amount, the Court’s focus is not concerned with the
15 amount(s) that “aggrieved employees” are to receive, but rather, must focus on the total settlement
16 amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit consists of civil
17 penalties, not individual or class damages.” *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 (E.D.
18 Cal. Jul. 1, 2010) at *4. “Unlike class actions, these civil penalties are not meant to compensate unnamed
19 employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders*
20 *Foods, Inc.*, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). Moreover, while “[a PAGA] action is
21 ... designed to protect the public and penalize the employer for past illegal conduct” (*Mendez*, 2010 WL
22 2650571 at *4), a reviewing Court must take into account the fact that settlement of a PAGA claim – like
23 any settlement – involves a “compromise” that stops short of rendering findings of liability and damages.
24 The Court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief
25 for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for
26 the government that otherwise may not have been assessed and collected by overburdened state
27 enforcement agencies.” *Ochoa-Hernandez*, at *4.

28 Second, consistent with the fact that unnamed employees have no property interest in a PAGA

claim,⁴ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez* at *5.

B. This Court Should Approve The Settlement Because It Is A Fair, Adequate, And Reasonable Compromise Of Disputed Claims

California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior Court* 62 Cal.App.3d 231, 236 (1976). To be approved, a settlement must be “fair, reasonable and adequate to all concerned.” *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012). The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product of fraud or collusion between the negotiating parties. *See, e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s length by experienced counsel. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

Here, the GSA secured by Plaintiff is greater than other PAGA penalty awards approved as reasonable within California state courts, which often range between \$7,500.00 and \$15,000.00 for PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments on a per person basis. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of \$5,000.00 to class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of \$10,000.00 for class of approximately 3,000 members). Because this Settlement is fair, adequate, and reasonable, Plaintiff respectfully requests that the Court approve the Settlement.

1. Factors in Evaluating a Representative PAGA Settlement

A settlement is presumptively fair where it is reached through arm’s-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, and counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). Relevant

⁴ As held by the California Supreme Court, “[t]he Labor Code Private Attorneys General Act of 2004 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 penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies.” *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal. 4th 993, 1003 (2009).

factors for the Court to consider in determining whether the settlement is “fair, adequate, and reasonable” include, but are not limited to:

[T]he strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.
Dunk, 48 Cal.App.4th at 1801.⁵

“In the context of a settlement agreement, the test is not the maximum amount Plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than likely would be obtained if the suit were successfully litigated can be reasonable because “the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Id.* (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). In addition, courts review the discovery process and information received through it to aid them in assessing whether the parties sufficiently developed the claims and their supporting factual bases before reaching settlement. *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 is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential Serv. LLC*, 175 Cal.App.4th 785, 801 (2009). This requirement exists so that the parties can provide the court with “a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132.

a) Overview of the Proposed Settlement

i. “Aggrieved Employees” Defined

Aggrieved Employees are defined as, “all current and former hourly, non-exempt employees of Defendant Exemplis LLC who worked in California at any time from June 22, 2019 through the sooner

⁵ As explained above, in the context of a representative PAGA settlement, the third and eighth factors (risk of maintaining class action status and reaction of class members to settlement) are inapplicable.

of (1) the date the Court grants approval of this settlement or (2) the date the pay periods in the PAGA Period increase 15% of 18,329 (which is 21,079).” See Settlement, ¶ I.2.

ii. Essential Terms Of The Settlement

This Settlement provides for Exemplis to pay a Gross Settlement Amount of \$250,000.00. Settlement, ¶ III.2. After deducting amounts for requested attorneys’ fees, attorneys’ costs, Plaintiff’s requested enhancement award, and settlement administration costs, the Settlement provides for distribution of the remaining Net Settlement Amount (“NSA”) to Aggrieved Employees and the LWDA distributed as follows: 75% to the LWDA and 25% to Aggrieved Employees pursuant to Labor Code 2699(i). Settlement, ¶ III.4.

Gross Settlement Amount:	\$250,000.00
Minus Court-approved attorneys’ fees (1/3):	\$83,333.33
Minus Court-approved attorneys’ costs:	\$20,613.31
Minus Court-approved enhancement award:	\$5,000.00
Minus settlement administrator costs:	\$3,750.00
Net Settlement Amount:	\$137,303.36

Net Settlement Amount:	\$137,303.36
75% to LWDA	\$102,977.52
25% to Aggrieved Employees	\$34,325.84

Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days of the Effective Date, which is the later of (1) the day after the last day by which a notice of appeal of the Approval Order and/or of an order rejecting any motion to intervene may be timely filed, and none is filed; (2) if such an appeal is filed, and the Approval Order is affirmed, the day after the last date for filing a request for further review of the decision passes and no further review is requested; (3) if an appeal is filed and further review of the decision affirming the Approval Order is requested, the day after the request for review is denied with prejudice and/or no further review of the decision can be requested, or (4) if review is accepted, the day after the United States or California Supreme Court affirms the Settlement. See Settlement, ¶ III.2.

Within 20 business days of the court signing the approval order, Defendant shall provide the Settlement Administrator with information for Aggrieved Employees in order to calculate and distribute checks to Aggrieved Employees. See Settlement, ¶ IV.2. Upon receipt of this information, the Settlement

1 Administrator will prepare and circulate an anonymized spreadsheet containing the estimated individual
2 settlement payments to each Aggrieved Employee for the Parties approval. *See* Settlement, ¶ IV.2.

3 Within two (2) business days of the full funding of the Gross Settlement Amount, the Settlement
4 Administrator shall mail copies of the explanatory letter, in English and Spanish, along with Individual
5 PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail. *See* Settlement, ¶ IV.3.
6 The Settlement does not require Aggrieved Employees to submit a claim form to reap financial benefit
7 from the Settlement. *Id.* Any checks remaining uncashed for more than 180 days will be tendered to
8 the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved
9 Employees to whom the checks were issued. *See* Settlement, ¶ IV.4.

10 **iii. Payment to the LWDA and Aggrieved Employees**

11 The entire NSA shall be designated as PAGA civil penalties. Of the NSA, 75% of the NSA will
12 be distributed to the LWDA and 25% will be distributed to the Aggrieved Employees under Labor Code
13 § 2699(i). Based on these distributions, the amount to be paid to the LWDA will be \$102,977.52 and the
14 amount paid to Aggrieved Employees is estimated to be \$34,325.84. Lidman Decl., ¶ 16. This portion
15 of the NSA shall be paid to all Aggrieved Employees pro rata based on the proportional number of pay
16 periods worked by each Aggrieved Employee during the PAGA Period and **will be reported on an IRS**
17 **Form 1099**. Settlement, ¶ III.4.b.; Lidman Decl., ¶ 15. The average payment to an Aggrieved Employee
18 is estimated to be \$60.97, the lowest is estimated to be \$1.97 (an employee working only one (1) pay
19 period) and the highest is estimated to be \$112.29.

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

21 The Parties conducted an exchange of informal documents and information for mediation which
22 allowed Plaintiff to thoroughly evaluate the claims. *See* Lidman Decl., ¶¶ 12-13. Had the Parties not
23 settled, they would need to engage in formal discovery, potential cross-summary judgment motions,
24 preparation for trial as well as the prospect of appeals in the wake of a summary judgment ruling for
25 either party, and/or post trial-motions. As a result, the Parties would incur considerably more attorneys'
26 fees and costs through trial. This settlement avoids those risks, the accompanying expense, and protracted
27 litigation.

1 **c) Strength of Plaintiff's Case and Realistic Value of Claims**

2 Here, Aggrieved Employees' claims arise from Exemplis' timekeeping and meal and rest period
3 policies and practices, which Plaintiff alleges failed to pay Aggrieved Employees all minimum and
4 overtime wages and failed to provide Aggrieved Employees with all legally required meal and rest
5 periods. As a result, Plaintiff also alleges Exemplis failed to issue inaccurate wage statements to
6 Aggrieved Employees. Although he maintains that the PAGA action is meritorious, Plaintiff
7 acknowledges that his position includes real risks and uncertainty, especially in the face of Exemplis'
8 numerous defenses on the merits discussed below. While Plaintiff maintains he could rebut these
9 defenses, Plaintiff nonetheless faced several substantial challenges in prevailing in this matter, and this
10 risk factor weight in favor of approving the Settlement. Plaintiff estimates Exemplis' realistic exposure,
11 based on these defenses and risks, as follows:

12 Civil Penalties Owed for Failing to Pay for All Overtime Wages: Plaintiff alleges that Exemplis
13 failed to properly compensate Plaintiff and other non-exempt employees for all of their time worked.
14 Lidman Decl., ¶ 16. Specifically, for at least a portion of the time period relevant to his claims, Plaintiff
15 alleges he received non-discretionary incentive bonuses, based on number of chairs produced each day,
16 and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate
17 (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). *Id.* Despite
18 Exemplis' payment of Incentive Pay to Plaintiff, Plaintiff alleges Exemplis failed to include all forms of
19 Incentive Pay when calculating Plaintiff's regular rate of pay, thereby causing Plaintiff to be underpaid
20 all of his required overtime wages. In addition to miscalculating Plaintiff's regular rate of pay, and as a
21 result of Exemplis' policies and practices of automatically deducting time from Plaintiff's work time for
22 purported meal periods, irrespective of whether or not a meal period was actually taken, Plaintiff was
23 systematically underpaid for all hours worked. *Id.* As such, Plaintiff and other non-exempt employees
24 were not compensated for all required overtime wages. Accordingly, pursuant to Labor Code section
25 558, to the extent the rounding resulted in unpaid overtime wages, Plaintiff calculated Exemplis'
26 exposure at \$1,506,800 ((478 x \$100 initial violation) + (5,836 x \$250 subsequent violation)). *Id.*

27 Exemplis counters that it properly compensated Plaintiff and all other non-exempt employees for
28 all of their time worked. Lidman Decl., ¶ 17. Exemplis also contends that any bonuses paid to Aggrieved

1 Employees were included in the regular rate for purposes of overtime, and that the Court would utilize
2 its discretion to reduce any potential penalties. *Id.* In light of these defenses, Plaintiff discounted the
3 maximum recovery on this claim by 90% to account for the risk that Exemplis could prevail in its
4 defenses, to arrive at a projected total of \$150,680.00. *Id.*

5 Civil Penalties Owed for Failing to Provide Legally Compliant Meal Periods: Plaintiff alleges that
6 Defendant failed to provide all legally required meal periods to him and the other non-exempt employees.
7 Lidman Decl., ¶ 18. Specifically, Plaintiff alleges that Exemplis used a bell to signify the start of a meal
8 period at 11:00 a.m. and the stop of a meal period at 11:30 a.m. Exemplis required employees to be at
9 their workstations ready to resume work by the time the bell signifying the end of a meal period rang,
10 which resulted in a meal period of less than 30 minutes. *Id.* Plaintiff also alleges that Exemplis required
11 Plaintiff and other non-exempt employees to remain on the premises during meal periods and upon
12 information and belief, during at least a portion of the relevant time period, Exemplis would automatically
13 deduct thirty (30) minutes from Plaintiff's hours worked regardless of whether or not a meal period was
14 actually taken. *Id.* Based on the records produced in connection with mediation, Exemplis had what
15 appeared to be in the records at least one meal period violation in approximately all of the 17,423 pay
16 periods during the relevant time period. As such, pursuant to Labor Code section 558, Plaintiff calculated
17 Exemplis' exposure at \$1,714,150.00 ((563 x \$50 initial violation) + (16,860 x \$100 subsequent
18 violation)). *Id.*

19 Exemplis counters that it has always provided non-exempt employees with an opportunity to take
20 legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping
21 records were solely the result of employee choice, rather than any policy or practice of Defendant such
22 that they do not trigger any liability. Lidman Decl., ¶ 19. Exemplis points out that under *Brinker*
23 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the
24 opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so.
25 *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). *Id.* Exemplis contends that the second
26 bell signifies employees to begin returning to their workstations not that the employees had to be at their
27 workstations at that time. Exemplis also contends that Plaintiff could not recover the \$100 civil penalty
28 for "subsequent violations" because it did not have notice of any initial violation. *Amaral v. Cintas Corp.*
No. 2, 163 Cal. App. 4th 1157, 1209 (2008); *In re Taco Bell Wage and Hour Actions*, 2016 WL 2755938,

1 at *7 (E.D. Cal. April 8, 2016). Lastly, Exemplis contends that the Court would use its discretion
2 provided for in the PAGA to reduce the maximum penalty exposure due to its good faith efforts to comply
3 with applicable law. In light of these defenses, Plaintiff discounted the maximum recovery on this claim
4 by 80% to account for the risk that Exemplis could prevail in its defenses, to arrive at a projected total of
5 \$342,830.00. Lidman Decl., ¶ 19.

6 Civil Penalties Owed for Failing to Authorize and Permit Rest Periods: Plaintiff alleges that
7 Exemplis failed to authorize and permit all legally required rest periods. Lidman Decl., ¶ 20. Specifically,
8 Plaintiff alleges that Exemplis' rest period policy as written in its Employee Handbook states that its
9 employees must remain on company premises. *Id.* Therefore, Plaintiff alleges there was at least one rest
10 period violation in every pay period. As such, pursuant to Labor Code section 558, Plaintiff calculated
11 Exemplis' exposure at \$1,714,150.00 ((563 x \$50 initial violation) + (16,860 x \$100 subsequent
12 violations)). *Id.*

13 Exemplis counters contends it has always maintained and enforced lawful rest period policies and
14 practices, and that Plaintiff and other non-exempt employees were authorized and permitted to take all
15 off-duty rest periods in compliance with California law. Lidman Decl., ¶ 21. Exemplis also contends
16 that its written rest period policy changed in 2020 and for the entire relevant time period it allowed its
17 non-exempt employees to leave the work premises during rest periods. *Id.* Exemplis also contends that
18 Plaintiff could not recover the \$100 civil penalty for "subsequent violations" because it did not have
19 notice of any initial violation. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *In re*
20 *Taco Bell Wage and Hour Actions*, 2016 WL 2755938, at *7 (E.D. Cal. April 8, 2016). Lastly, Exemplis
21 contends that the Court would use its discretion provided for in the PAGA to reduce the maximum penalty
22 exposure due to its good faith efforts to comply with applicable law especially since Exemplis changed
23 its rest period policy in 2020. In light of these defenses, Plaintiff discounted the maximum recovery on
24 this claim by 85% to account for the risk that Exemplis could prevail in its defenses, to arrive at a projected
total of \$257,122.50. *Id.*

25 Civil Penalties for Derivative Wage Statement Violations: As Plaintiff's PAGA claim was based
26 on the underlying failure to pay all overtime wages, meal and rest period premiums and deficient wage
27 statements, Plaintiff asserts PAGA penalties for each Aggrieved Employee for each pay period in the
28 PAGA limitations period. Lidman Decl., ¶ 22. As discussed above, Plaintiff alleges there are 17,423

1 pay periods in with at least one of the underlying violations. Therefore, pursuant to Labor Code § 226.3
2 and only applying the initial violation rate \$250, the estimated exposure is \$4,355,750.00 (17,423 pay
3 periods x \$250 initial violation). *Id.*

4 Exemplis argues that Plaintiff's underlying claims will fail and, as a result, the wholly derivative
5 wage statement claim will also fail. Lidman Decl., ¶ 23. *See Price v. Starbucks Corp.* (2011) 192
6 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA
7 claims also fail."). Exemplis also argues that meal and rest period claims cannot support a claim for wage
8 statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, *review*
9 *granted* and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*see, e.g., Jones v. Spherion*
10 *Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9). Further,
11 Exemplis contends that the "second violation" should not be applied where the LWDA has not previously
12 cited Exemplis. Finally, Exemplis also argues that since the primary allegations in this case are that
13 Exemplis failed to pay all overtime wages and provide all meal and rest periods, imposing multiple
14 penalties based on different Labor Code section under derivative theories of liability for the same conduct
15 would be inappropriate and unfair. As such, Plaintiff discounted that figure by 90% to account for the
16 risk of losing on the merits and for the risk of the Court reducing penalties, to arrive at a realistic recovery
17 for Aggrieved Employees of \$435,575.00. *See, e.g., Thurman, supra*, 203 Cal.App.4th at 1136 (affirming
18 reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011
19 WL 7563047 at *5 (C.D Cal. Aug. 12, 2011) (reducing PAGA penalties by more than 82%); *Id.*

20 Based on the sum of the foregoing estimated figures, Plaintiff predicts the realistic total recovery
21 for the Aggrieved Employees to be approximately \$1,186,207.50, and that is even assuming the Court
22 would allow the "stacking" of PAGA penalties for various Labor Code violations. Lidman Decl., ¶ 24.
23 The proposed settlement of \$250,000.00 therefore represents approximately 21.1% of the realistic total
24 recovery for Aggrieved Employees and avoids the risks of proceeding through trial. *Id.* "The fact that
25 a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself,
26 mean that the proposed settlement is grossly inadequate and should be disapproved." *Linney v. Cellular*
27 *Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotations omitted). Plaintiff
28 acknowledges that there was substantial uncertainty and risk as to these claims. Approval is appropriate

1 since this settlement will provide tangible, monetary relief to Aggrieved Employees and the State of
2 California.

3 **d) The Experience and Views of Counsel**

4 “Parties represented by competent counsel are better positioned than courts to produce a
5 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
6 *Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff’s Counsel collectively brings over
7 four decades of wage-and-hour class and representative action experience. *See* Lidman Decl., ¶¶ 2-8;
8 Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-7; and Declaration of Elizabeth Nguyen (“Nguyen
9 Decl.”), ¶¶ 2-8. They have been certified as class counsel in numerous cases alleging wage and hour
10 claims. *Id.* Their experience in similar matters was integral in evaluating the strengths and weaknesses
11 of the case against Exemplis and the reasonableness of the Settlement. Practice in the narrow field of
12 wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive state
13 and federal law, as well as the procedural law of class and representative action litigation. Because it is
14 reasonable to compensate Plaintiff’s Counsel commensurate with their skill, reputation, and experience,
15 a fee award of one-third of the GSA is reasonable. Other factors show that the amount of fees requested
16 is reasonable. This case involved legal issues regarding the propriety of civil PAGA penalties, an
17 unsettled area of law. Exemplis was also represented by respected counsel with extensive wage-and-
18 hour litigation experience. This factor strongly supports settlement approval. *See, Kullar, supra*, 168
19 Cal.App.4th at 130 (“The court undoubtedly should give considerable weight to the competency and
20 integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement
21 agreement represents an arm’s length transaction entered without self-dealing or other potential
22 misconduct.”).

23 **C. Requested Award of Attorneys’ Fees/Costs Are Fair and Reasonable**

24 Plaintiff, as the prevailing party in settlement, is entitled to recover attorneys’ fees and costs for
25 these claims. *See* Cal. Labor Code § 2699(g) (“Any employee who prevails in any action shall be entitled
26 to an award of reasonable attorney’s fees and costs.”); Cal. Code of Civil Procedure § 1021.5(a). A fee
27 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
28 *e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living*,

1 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number
2 of persons are entitled in common to a specific fund, and an action brought by a plaintiff...for the benefit
3 of all results in the creation or preservation of that fund, such plaintiff...may be awarded attorney’s fees
4 out of the fund.”)

5 Fee awards of roughly one-third of the settlement fund are routinely awarded in California state
6 and federal courts in class and representative PAGA actions.⁶ Indeed, the California Supreme Court
7 approved the use of the “percentage of fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.*,
8 1 Cal.5th 480, 506 (2016) (“the percentage of fund method survives in California class action cases...”).
9 This is also consistent with Plaintiff’s Counsel’s experience in similar wage-and-hour class and PAGA
10 matters. *See* Lidman Decl., ¶ 28. Here, Plaintiff’s Counsel’s fee request of \$83,333.33 (one-third of the
11 GSA) is the same percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the
12 recovery method.

13 The California Supreme Court in *Laffitte* also held that trial courts have discretion to assess the
14 reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court
15 calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring the lodestar
16 on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. Under the lodestar
17 method, the court multiplies the number of hours reasonably expended by each attorney or legal staff
18 member by their reasonable hourly rates, then enhances this lodestar figure by a “multiplier” to account
19 for a range of factors. *See Serrano v. Priest* 20 Cal.3d 25, 48-49 (1977).

20 Lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez, supra*, 162 Cal. App.
21 4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L. County Planning etc. Interest*
22 *v. Bd. of Supervisors*, 76 Cal. App. 3d 241, 251 (1977) (approving multiplier of approximately 12.8).

23 In this case, Plaintiff’s Counsel have a lodestar of \$93,152.50 without the use of any multiplier,
24 which is approximately 1.12 times more than the \$83,333.33 fee request. *See* Lidman Decl., ¶ 28. A
25 general summary showing the number of hours of work performed by each attorney and paralegals is set

26
27 ⁶ *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008); *see also, In re Pacific Enterprises Securities Litig.*,
28 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, 2015) (approving attorneys’ fees
of one-third of settlement fund in representative PAGA settlement).

1 forth in the Lidman Declaration filed concurrently herewith. The billing rates used are reasonable in light
2 of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently
3 herewith. *Id.*, at ¶ 29, Exh. 3.

4 The fee award requested here is justified because it is **lower** than lodestar. Further, the fee award
5 requested here is justified because Plaintiff's Counsel achieved a fair civil penalty recovery for the State
6 and the Aggrieved Employees in an uncertain and risky case, while bearing the substantial burdens of
7 representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v.*
8 *Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency
9 case, significant risk and the absence of supporting precedents, are proper considerations in awarding
10 attorneys' fees). Additionally, Plaintiff's recovery for the State of California and Aggrieved Employees
11 exceeds other PAGA awards approved by courts in California. *See, e.g., Boyd v. Bank of Am. Corp.*, 2014
12 WL 6473804 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Penaloza, supra*, 2013
13 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average PAGA
14 penalties of \$3.33). That Plaintiff's Counsel achieved these results without engaging in a protracted legal
15 battle, in the face of serious defense challenges and an uncertain legal landscape, including Casa
16 Pacifica's financial condition, confirms the strength of the results achieved.

17 As discussed above, this case carried substantial risks on the merits and with respect to the
18 propriety of "stacking penalties" based on a single primary allegation and the Court's authority to reduce
19 an award of PAGA penalties. It is fair and reasonable to account for these risks in compensating
20 Plaintiff's Counsel, as well as the risks involved in undertaking this litigation and expending considerable
21 effort while working on a pure contingency basis.

22 Indeed, since undertaking representation of Plaintiff, Plaintiff's Counsel dedicated substantial
23 resources to this litigation, including expending a total of \$20,613.31 (including costs associated with the
24 filing the instant motion) in actual litigation costs, without receiving any compensation to date. Lidman
25 Decl., ¶ 34, Exh. 5. Plaintiff's Counsel conducted legal research regarding the merits of Plaintiff's claims,
26 the ability to recover penalties under the PAGA, and Exemplis' potential defenses. *Id.* Plaintiff's Counsel
27 also analyzed the data and information produced informally prior to mediation, prepared an exposure
28 analysis on the PAGA penalties, attended private mediation. *Id.* Plaintiff's Counsel also expended

1 significant additional effort in preparing subsequent settlement documents, this Motion for settlement
2 approval, and supporting declarations, and will oversee the settlement administration process. *Id.* Given
3 the 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 and dedication with which
5 it was performed, should be compensated.

6 Thus, Plaintiff's Counsel submit that the requested fee award is fair, reasonable and adequate and
7 should be approved. Plaintiff's request for reimbursement of actual litigation costs of \$20,613.31 is also
8 fair and reasonable. As the evidence submitted herewith shows, all of Plaintiff's litigation costs are
9 documented and reasonably incurred. *See* Lidman Decl., ¶34, Exh. 5.

10 **D. Notice and Requested Settlement Administration Costs Are Fair and Reasonable**

11 The parties agreed to engage PSA as the settlement administrator. *See* Settlement, ¶ I.18. Under
12 the Settlement, Parties have agreed to have the proposed Notice of PAGA Settlement and Release
13 ("Notice"), subject to Court approval, be sent with the settlement checks to inform the Aggrieved
14 Employees about the scope of the released claims and their responsibility for any taxes payable on the
15 amount received. The PAGA does not require notice and the Aggrieved Employees do not have the right
16 to opt-out. The Notice which is attached as Exhibit A to the Settlement and Exhibit A to the [Proposed]
17 Order is only being provided as a courtesy.

18 PSA shall be responsible for translating and mailing the Notice in English and Spanish and
19 calculating and distributing the settlement checks, among other duties. PSA has agreed to a fixed rate of
20 \$3,750.00 as settlement administration costs. Settlement, ¶ III.4.c. PSA's quote is attached as Exhibit F
21 to the Declaration of Jodey Lawrence on behalf of PSA in support of Motion for Approval of PAGA
22 Settlement filed concurrently herewith ("Lawrence Decl.").

23 **E. Plaintiff's Requested Enhancement Award is Fair, Adequate, and Reasonable**

24 Courts routinely approve enhancement awards to compensate named Plaintiff for the services
25 they provide and the risks they incur during class and representative litigation. *Cellphone Termination*
26 *Fee Cases*, 186 Cal. App. 5th 1380, 1393-94 (2010) ("These awards 'are discretionary, [citation], and are
27 intended to compensate class representatives for work done on behalf of the class, to make up for financial
28 or reputational risk undertaken in bringing the action, and, sometimes, to *recognize their willingness to*

1 *act as a private attorney general.*”)⁷

2 Here, pursuant to the Settlement, Plaintiff seeks an enhancement award of \$5,000.00. *See*
3 Settlement, ¶ III.3.b. Plaintiff will request the Court award an enhancement award of \$5,000.00 in
4 recognition of his unique contributions to the prosecution of this case and his efforts in bringing this case
5 to a successful and significant resolution. *Id.*; Chacon Decl., ¶¶ 3-12. Also, in recognition of this
6 requested enhancement award, Plaintiff will release all claims (whether known or unknown) Exemplis –
7 a release which extends significantly beyond the PAGA-based claims released by Aggrieved Employees
8 in this Settlement. Settlement, ¶ III.7. Plaintiff has also agreed to a 1542 waiver. This request is
9 reasonable given Plaintiff’s efforts in this case and the risks he undertook on behalf of the Aggrieved
10 Employees. Plaintiff provided substantial factual information to Plaintiff’s Counsel, attended numerous
11 meetings with Plaintiff’s Counsel and numerous hours expended by him assisting in the litigation of this
12 action. Chacon Decl., ¶¶ 3-12. Further, Plaintiff put his future employment prospects at risk by becoming
13 a representative, as the fact that he filed a lawsuit “is searchable on the internet and may become known
14 to prospective employers when evaluating” them for employment. *Guippone v. BH S&B Holdings, LLC*,
15 2011 U.S., Dist. LEXIS 126026, *20 (S.D.N.Y. Oct. 28, 2011). Accordingly, Plaintiff’s request is
16 appropriate and justified as part of the Settlement.

17 **F. Pending PAGA Actions Impacted by Settlement**

18 The Parties are not aware of any other PAGA claims pending against Defendant, either in court
19 or in the pre-filing LWDA stage. Lidman Decl., ¶ 38.

20 **IV. CONCLUSION**

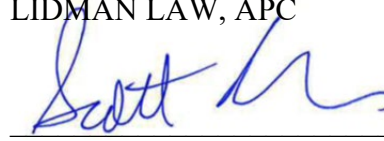
21 For the reasons stated herein, this Court should grant Plaintiff’s Motion in its entirety and adopt
22 the [Proposed] Order and Judgment Granting Plaintiff’s Motion for Settlement Approval of Claims
23 Brought Under the Private Attorneys General Act and Reasonable Attorneys’ Fees, Costs, and
24 Enhancement Award submitted concurrently herewith.

25
26 ⁷ California courts, including many judges in Los Angeles Superior Court, routinely award enhancement payments
27 in PAGA-only, non-class actions. *See Canul v. Basmat, Inc.*, Case No. BC674940, Judge Beaudet of this Court
28 (Dept. 50) approved a PAGA-only settlement including a \$5,000 enhancement award to the named plaintiff. *See also, Pickett v. 99 Cents Only Stores, et al*, Case No. BC473038, Judge Hiroshige of this Court (Dept. 54) approved a \$12,500 enhancement payment to each of two named plaintiffs in a PAGA only settlement.

1
2 Dated: August 2, 2021
3

Respectfully submitted,
LIDMAN LAW, APC

4 By:



5 Scott M. Lidman
6 Attorneys for Plaintiff
7 CARLOS CHACON
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