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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ROSA GOMEZ FELIX, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

WESTLAND SERVICES, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No. 37-2020-00015385-CU-OE-CTL

*[Assigned for all purposes to Hon. Joel R.
Wohlfeil, C-73]*

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

Date: June 16, 2021
Time: 9:00 a.m.
Dept.: C-73

Complaint Filed: May 26, 2020
Trial Date: None Set

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

PLEASE TAKE NOTICE that on June 16, 2021 at 9:00 a.m., or as soon thereafter as the matter may be heard in Department C-73 of the above-entitled Court, located at 330 W. Broadway, San Diego, California, 92101, Plaintiff Rosa Gomez Felix (“Plaintiff”), individually and on behalf of the State of California and other Aggrieved Employees, will, and hereby does, move this Court for entry of an Order as follows:

1. Granting approval, pursuant to California Labor Code § 2699(l), of the proposed settlement of claims brought pursuant to the Private Attorneys’ General Act of 2004 (Cal. Labor Code § 2698, *et seq.*) and set forth in the Parties’ Settlement Agreement, a true and correct copy of which is attached to the Declaration of Paul K. Haines filed concurrently herewith;
2. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
3. Approving the proposed Explanatory Letter (attached as Exhibit A to the Settlement Agreement), and directing that it be distributed to Aggrieved Employees pursuant to the terms of the Settlement Agreement;
4. Directing the distribution of the Gross Settlement Amount pursuant to the terms of the Settlement Agreement;
5. Approving an award of attorneys’ fees to Plaintiff’s counsel of 35% of the Gross Settlement Amount (currently estimated to be \$119,000.00) and an award of litigation costs to Plaintiff’s counsel in the amount of \$8,557.92;
6. Approving an award of \$5,000.00 as Plaintiff’s Enhancement Payment, and
7. Approving \$4,450.00 in administration costs to Phoenix Settlement Administrators.

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1 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
2 the declaration of Paul K. Haines and all exhibits attached thereto; the declaration of Jodey
3 Lawrence and all exhibits attached thereto; the declaration of Plaintiff Rosa Gomez Felix; the
4 Settlement Agreement; Plaintiff's Request for Judicial Notice and all exhibits attached thereto;
5 all other pleadings and papers on file in this action; and on any further oral or documentary
6 evidence or argument presented at the time of hearing.

7 Respectfully submitted,

8 Dated: May 20, 2021

HAINES LAW GROUP, APC

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

2 **I. INTRODUCTION**

3 Plaintiff Rosa Gomez Felix (“Plaintiff”), an “Aggrieved Employee” under the Private
4 Attorneys’ General Act of 2004 (“PAGA”), respectfully moves this Court for an Order granting
5 approval of the Settlement Agreement (“Settlement”) with Defendant Westland Services, Inc. dba
6 Sandstrand (“Defendant” or “Westland”).¹ This PAGA action seeks civil penalties predicated on
7 Westland’s alleged unlawful timekeeping practices, alleged failure to provide meal and rest
8 periods, alleged failure to reimburse for necessary business expenses, alleged failure to pay all
9 final wages, and alleged failure to issue accurate itemized wage statements. The proposed
10 Settlement, under which Westland has agreed to pay a non-reversionary Gross Settlement
11 Amount of \$340,000.00, will resolve Plaintiff’s representative claim filed on behalf of the State
12 of California and the following “Aggrieved Employees:”

13 All past and former hourly paid, non-exempt employees of Defendant
14 Westland Services, Inc. dba Sandstrand (“Westland”) who worked for
15 Westland in California at any time from April 6, 2019 through the date the
Court approves of this PAGA settlement (“PAGA Period”).

16 Notably, the relief provided for under the Settlement, and the claims released thereunder,
17 are *solely* for the payment of *civil penalties* under the PAGA, and not for any underlying Labor
18 Code violations.

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

27
28 ¹ The proposed Settlement is attached as Exhibit 1 to the Declaration of Paul K. Haines filed herewith.
The Notice of Settlement to accompany Aggrieved Employees’ Individual PAGA Payments is attached
as Exhibit A to the Settlement.

1 As noted, the Settlement provides for a Gross Settlement Amount (“GSA”) of
2 \$340,000.00. After deducting amounts for requested attorneys’ fees (35% of the GSA, or
3 \$119,000), attorney costs (\$8,557.92), Plaintiff’s Enhancement Payment (\$5,000), and
4 administration costs (\$4,450), the Settlement provides for distribution of a Net Settlement
5 Amount (“NSA”) of approximately \$202,892.08 to Aggrieved Employees and the California
6 Labor & Workforce Development Agency (“LWDA”). Settlement, § 3.01(a)-(e).

7 The NSA shall be distributed 75% (approximately \$152,269.06) to the LWDA, and 25%
8 (approximately \$50,723.02) to Aggrieved Employees, pursuant to the requirements of the PAGA
9 as codified in Lab. Code § 2699(i). See Settlement, § 3.04(b).

10 The GSA of \$340,000.00 represents a positive result for the State of California and
11 Aggrieved Employees. Further litigation may have resulted in a smaller recovery or even no
12 recovery at all, based on the defenses asserted by Westland and given the significant litigation
13 risks involved. Moreover, the GSA is greater than other PAGA penalty awards that have been
14 approved as reasonable. See, e.g., *Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013
15 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-aside of
16 \$5,000, or \$7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No.
17 BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-
18 aside of \$10,000, or \$3.33 per employee). The amounts requested for attorneys’ fees and costs,
19 enhancement payment, and administration costs are all fair, adequate, and reasonable. Thus,
20 Plaintiff respectfully requests that the Court enter the [Proposed] Judgment and Order submitted
21 concurrently herewith.

22 **II. SUMMARY OF THE LITIGATION**

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

24 Westland provides full-time janitorial services for a wide range of commercial buildings
25 throughout Southern California. Plaintiff was a non-exempt employee for Westland in California
26 from approximately February 2018 to approximately November 2019.

27 Plaintiff’s PAGA claim is predicated on Plaintiff’s allegations that Westland utilized a
28 timekeeping system which failed to compensate Plaintiff and other non-exempt employees for all

1 hours actually worked, allegedly failed to authorize and permit rest periods, allegedly failed to
2 provide all required meal periods, allegedly failed to reimburse business expenses, and allegedly
3 failed to timely pay final wages and provide complete and accurate wage statements.

4 **B. Procedural History**

5 On April 6, 2020, Plaintiff submitted a Class Action Complaint for filing in the San Diego
6 County Superior Court. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 13; Settlement, ¶
7 2.01(a). Due to Court closures related to the COVID-19 pandemic, the Court processed the Class
8 Action Complaint on May 26, 2020, and it was file-stamped with that date. *Id.* Plaintiff’s Class
9 Action complaint asserted multiple Labor Code claims against Westland on a class-wide basis.
10 *Id.* On or about June 18, 2020, Plaintiff mailed her notification letter to the LWDA and sent it by
11 certified mail to Westland, describing Westland’s alleged Labor Code violations, as required by
12 Labor Code § 2699.3. *Id.*, ¶ 14 & Exh. 2; *see also* Settlement, § 2.01(b). On August 24, 2020,
13 after the prescribed 65-day waiting period under Labor Code § 2699.3(a)(2)(A), Plaintiff filed a
14 First Amended Complaint (“FAC”), which added a claim for PAGA civil penalties. Haines Decl.,
15 ¶ 15; Settlement, ¶ 2.01(c).

16 After filing the FAC, Defendant presented Plaintiff with a copy of a Collective Bargaining
17 Agreement (“CBA”) that contained an arbitration agreement and class action waiver. Haines
18 Decl., ¶ 16; Settlement, ¶ 2.01(d)-(e). After Plaintiff’s counsel reviewed the CBA and the relevant
19 law, and as part of the Settlement Agreement, the Parties agreed to seek dismissal of Plaintiff’s
20 class and individual claims without prejudice (leaving only the PAGA claim), and to seek
21 permission from the Court for Plaintiff to file a Second Amended Complaint (“SAC”) alleging
22 only the PAGA claim. *See* Settlement, § 2.01(f). On May 13, 2021, the Parties filed a stipulation
23 to dismiss the non-PAGA claims without prejudice and to file the proposed SAC containing only
24 a PAGA claim. Haines Decl., ¶ 16.

25 **C. Pre-Mediation Discovery and Mediation**

26 In connection with mediation, Westland provided Plaintiff with extensive informal
27 discovery. Westland produced a spreadsheet containing hire dates, termination dates, rates of pay,
28 and other information for all Aggrieved Employees; timesheets and wage statements for a 15%

1 sample of Aggrieved Employees; and Westland’s Employee Handbook, CBA, and other written
2 policies in effect during the PAGA Period. Haines Decl., ¶ 17. Plaintiff retained an expert
3 economist to assist in analyzing the timekeeping and other data produced by Westland, and to
4 assist Plaintiff in creating damages models. *Id.*

5 On January 14, 2021, the Parties attended mediation with Henry Bongiovi, Esq. *See*
6 Haines Decl., ¶ 18. During mediation, the Parties vigorously debated the legal bases for
7 Plaintiff’s claims and Westland’s defenses, the manageability of the case as a representative
8 action, the potential amount of penalties, and the Parties’ data analyses and conclusions based
9 thereon. *Id.* Ultimately, the Parties agreed to resolve the matter and the Parties memorialized
10 their agreement in a Memorandum of Understanding. *Id.* Over the following months, the Parties
11 negotiated and finalized the Settlement Agreement. *Id.*

12 **III. SUMMARY OF THE SETTLEMENT**

13 **A. “Aggrieved Employees” Defined**

14 Aggrieved Employees are defined as “all past and present hourly-paid, non-exempt
15 employees of Defendant Westland Services, Inc. dba Sandstrand who worked for Defendant in
16 California at any time during the PAGA Period.” *See* Settlement, § 1.01(b). The PAGA Period
17 is defined as April 6, 2019 to the date the Court approves this PAGA Settlement. *Id.* at § 1.01(i).²

18 **B. Monetary Terms**

19 As noted, the Settlement provides for Westland’s payment of a non-reversionary GSA of
20 \$340,000.00. Settlement, § 1.01(f). After deducting amounts for attorneys’ fees, litigation costs,
21 Plaintiff’s Enhancement Payment, and settlement administration costs, the Settlement provides
22 for the remaining NSA to be distributed 75% to the LWDA and 25% to Aggrieved Employees,
23 per Labor Code § 2699(i). *Id.*, §§ 1.01(f), 3.01(a)-(e), 3.04(b). The 25% portion to Aggrieved
24 Employees shall be distributed based on each Aggrieved Employee’s respective number of pay
25 periods worked for Westland in California during the PAGA Period. *Id.*, § 3.04(b).

26
27 ² Pursuant to Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were tolled
28 from April 6, 2020 until October 1, 2020. Because Plaintiff’s PAGA notice and PAGA action were filed
during this tolling period, the PAGA Period reaches back to one year prior to the beginning of the tolling
period, i.e., April 6, 2019.

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

3 Plaintiff's Counsel requests 35% of the GSA (i.e., \$119,000.00) in attorneys' fees, and
4 \$8,557.92 in litigation costs. See Settlement, § 3.01(a)-(b); Haines Decl., ¶ 31 & Exh. 4. As
5 discussed in detail below, a fee award of \$119,000.00 is fair, adequate, and reasonable as a
6 percentage of the fund and its reasonableness is further confirmed by a lodestar cross-check.

7 The Parties have agreed to engage Phoenix Settlement Administrators ("Phoenix") as the
8 third-party settlement administrator. See Settlement, § 1.01(l). Phoenix will update Aggrieved
9 Employee addresses using the National Change of Address database, calculate and distribute
10 Individual PAGA Payments, mail payments to all Aggrieved Employees together with the Notice
11 of Settlement, and perform other duties that are integral to the effectuation of the Settlement. *Id.*,
12 § 3.01(c). Plaintiff requests that the Court approve \$4,450 in administration costs to Phoenix,
13 which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.* at § 3.01(c);
14 see also Declaration of Jodey Lawrence ("Lawrence Decl.") and attached exhibits.

15 Finally, Plaintiff requests an enhancement payment of \$5,000, in recognition of Plaintiff's
16 contributions to this case and her efforts in bringing this case to successful resolution. See
17 Settlement, § 3.01(d); Declaration of Rosa Gomez Felix ("Felix Decl."), ¶¶ 2-7.

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

19 As stated, the NSA will be distributed 75% to the LWDA and 25% to Aggrieved
20 Employees, pursuant to Labor Code § 2699(i). Based on the above requested distributions, the
21 NSA is estimated to be \$202,892.08, with \$152,269.06 paid to the LWDA and \$50,723.02
22 distributed to Aggrieved Employees. Haines Decl., ¶ 19. There are approximately 909 Aggrieved
23 Employees (*id.*, pg. 1), resulting in average Settlement payments of approximately \$55.80 per
24 Aggrieved Employee.

25 **3. Funding of the Settlement**

26 Westland will deposit the GSA with the Settlement Administrator in three equal
27 installments: (1) one-third of the GSA will be deposited within 10 days of the Effective Date; (2)
28 one-third will be deposited within 180 days of the Effective Date; and (3) the final one-third will

1 be deposited within 360 days of the Effective Date (“Final Deposit Date”). *See* Settlement. §
2 3.04(a). Within 30 calendar days after the Final Deposit Date, and after receiving approval from
3 counsel of the payment calculations, Phoenix will mail the Notice of Settlement and Individual
4 PAGA Payments to Aggrieved Employees via First-Class U.S. Mail. *See* Settlement, §§
5 3.03(a)(3), 3.04(b).

6 Funds from any settlement checks remaining uncashed after 180 days, will be sent by
7 Phoenix to the to Controller of the State of California to be held pursuant to the Unclaimed
8 Property Law, California Civil Code section 1500 *et seq.*, for the benefit of that Aggrieved
9 Employee. *See* Settlement, § 3.04(b).

10 **IV. LEGAL ARGUMENT**

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

12 The settlement of a PAGA claim requires court approval pursuant to the PAGA statute,
13 which states that the “court shall review and approve any settlement of any civil action filed
14 pursuant to this part.” Labor Code § 2699(l). Of course, “[s]ettlement is a compromise, which
15 balances the possible recovery against the risks inherent in litigating further.” *See In re TD*
16 *Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13, 2011). “[T]he
17 very essence of a settlement is... ‘a yielding of absolutes and an abandoning of highest hopes,’”
18 as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
19 litigation that induce consensual settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d
20 615, 624 (9th Cir. 1982). As such, “the settlement or fairness hearing is not to be turned into a
21 trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure
22 of what might have been achieved by the negotiators.” *Id.*

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 a
25 class action settlement. However, “a PAGA claim asserted on a non-class representative basis...is
26 not considered a class action but a law enforcement action, and therefore does not have to meet
27 the requirements of [a class action].” *Casida v. Sears Holdings Corp.*, 2012 WL 253217 at *3
28 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at *4 (E.D. Cal. Jul.

1, 2010) (“PAGA claims are law enforcement actions, not class actions”). A court’s review of a PAGA settlement implicates the following unique features that render the approval process distinct from approval of a class action settlement.

First, in evaluating the adequacy of the settlement, the court is not concerned with the amount(s) received by “aggrieved employees,” but rather, must focus on the total settlement amount in achieving PAGA’s objective. “The remedy sought in a PAGA suit consists of civil penalties, not individual or class damages.” *Mendez*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court recently confirmed, “PAGA claims are ‘representative’ actions in the sense that they are brought on the state’s behalf. The employee... ‘represents the same legal right and interest as’ those agencies — ‘namely, recovery of civil penalties that otherwise would have been assessed and collected by the [LWDA].’” *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 380 (2014)).

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

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim,³ “[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*, 2010 WL

³ “The [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 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).

1340777 at *5. This renders the approval process of a PAGA settlement distinct from a class action settlement, as the Court need not employ the “two-step approval process” required for class action settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

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

1. Factors in Evaluating a Representative PAGA Settlement.

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

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

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

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.” *Wershba v. Apple Computer*,

1 *Inc.*, 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines,*
2 *Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). In addition, courts review the discovery process and
3 information received through it to aid them in assessing whether the parties sufficiently developed
4 the claims and their supporting factual bases before reaching settlement. *Kullar*, 168 Cal.App.4th
5 at 129-31. Information is sufficient where it allows the parties and the court to form “an
6 understanding of the amount that is in controversy and the realistic range of outcomes of the
7 litigation.” *Clark v. Am. Residential Serv. LLC*, 175 Cal.App.4th 785, 801 (2009). This
8 requirement exists so that the parties can provide the court with “a meaningful and substantiated
9 explanation of the manner in which the factual and legal issues have been evaluated.” *Kullar*, 168
10 Cal.App.4th at 132.

11 **a. The Strength of Plaintiff’s Case**

12 Although she steadfastly maintains her claims are meritorious, Plaintiff acknowledges her
13 position included real risks and uncertainty. Haines Decl., ¶ 20. For example, Plaintiff alleged
14 that Westland engaged in unlawful timekeeping practices, in which Westland failed to keep
15 accurate records of Plaintiff’s and other Aggrieved Employees’ hours worked, and compensated
16 Aggrieved Employees based on their scheduled, 8-hour shift, rather than the actual hours worked.
17 *Id.* Westland, however, contends that employees were instructed to, and did, accurately fill out
18 their timesheets and therefore Westland maintained accurate records and compensated Aggrieved
19 Employees for all hours worked. *Id.* Westland represents that many non-exempt employees,
20 including employees who worked on the same contract as Plaintiff, had signed (or would sign)
21 declarations stating that their time records were accurate. Moreover, Westland maintains this
22 claim would not be manageable on a representative basis, since determining whether each
23 employee was not compensated for all hours worked on each workday would require an
24 unmanageable series of hundreds of mini-trials. *Id.*

25 As for Plaintiff’s meal and rest period claim, Plaintiff alleged that Westland failed to
26 provide Plaintiff and Aggrieved Employees with all statutory meal periods and failed to authorize
27 and permit all statutory rest periods, due to the workload imposed on them. Haines Decl., ¶ 21.
28 Westland contends it has always maintained lawful written meal and rest period policies,

1 including regarding the number, duration, and frequency of meal and rest periods, and that it has
2 always provided meal and rest periods in accordance with those policies. *Id.* Westland further
3 contends that Plaintiff and other Aggrieved Employees often worked on their own without direct
4 supervision, and thus they had complete discretion regarding when and how to take their breaks.
5 Moreover, Westland represented that many non-exempt employees had signed (or would sign)
6 declarations attesting that they were provided with all lawful meal and rest periods. *Id.* Finally,
7 Westland contends this claim would not be manageable on a representative basis, as it would
8 require testimony from each employee as to which shifts they did or did not take meal and/or rest
9 periods, how many they did or did not take, and the reasons why.

10 With respect to Plaintiff’s reimbursement claim, Plaintiff alleges that Westland failed to
11 reimburse Plaintiff and other Aggrieved Employees for the use of their personal cellular phones
12 to communicate with their supervisors and managers. Haines Decl., ¶ 22. Westland contends that
13 it did indeed pay more than \$300,000 in reimbursements during the relevant time period,
14 demonstrating that it takes its reimbursement obligations seriously and does reimburse reasonable
15 business expenses when employees seek reimbursement. *Id.* Westland further argues that
16 establishing whether an employee incurred an expense, how much the expense was, and whether
17 it was “reasonable” would vary from one employee to another, and would not be manageable on
18 a representative basis. *See, e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568
19 (2007) (“In calculating the reimbursement amount due under section 2802, the employer may
20 consider not only the actual expenses that the employee incurred, but also whether each of those
21 expenses was ‘necessary,’ which in turn depends on the reasonableness of the employee’s
22 choices”).

23 As for Plaintiff’s derivative claims that Westland violated its wage statement and final
24 payment obligations in violation of Labor Code §§ 226 and 203, Westland asserts it has strong,
25 good-faith defenses to Plaintiff’s underlying claims, precluding a finding of a failure to pay all
26 final wages that would otherwise result in waiting time penalties. *See* 8 Cal. Code Regs. § 13520
27 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”);
28 *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded

1 imposition of waiting time penalties); Haines Decl., ¶ 23. Westland further contends Plaintiff's
2 meal and rest period claims cannot support a claim for violations of Labor Code §§ 226 or 203,
3 as Courts of Appeal recently held in *Naranjo v. Spectrum Security Servs., Inc.*, 40 Cal.App.5th
4 444, 473-75 (2019) (review granted Jan. 2, 2020) and *Betancourt v. OS Rest. Svcs., LLC*, 49
5 Cal.App.5th 240, 248 (2020) (review granted Aug. 19, 2020). Westland further contends that
6 wage statements always accurately reflected amounts paid to employees, and thus Westland could
7 not be found liable for wage statement violations under *Maldonado v. Epsilon Plastics, Inc.*, 22
8 Cal.App.5th 1308, 1336 (2018) ("The purpose of section 226 is to *document the paid wages* to
9 ensure the employee is fully informed regarding the calculation of those wages.").

10 Westland further maintains that even if the Court awarded PAGA penalties for any of the
11 alleged violations, the Court would substantially reduce the penalties based on the discretionary
12 factors in Labor Code § 2699(e)(2) (authorizing reduction in PAGA penalties "if, based on the
13 facts and circumstances of the particular case, to do otherwise would result in an award that is
14 unjust, arbitrary and oppressive, or confiscatory."). Haines Decl., ¶ 24. Indeed, Westland argues,
15 many courts have reduced PAGA penalties drastically where, as here, the employer presented
16 good-faith defenses and attempted to comply with the law. *See, e.g., Thurman v. Bayshore Transit*
17 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because
18 "defendants took their obligations...seriously and attempted to comply with the law"); *Fleming*
19 *v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011)
20 (reducing PAGA penalties by over 82%, in part because employer was "not aware" of violations);
21 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just
22 \$5 per pay period where employer made "good faith attempts" to comply with the law).

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

24 Although the Parties had engaged in significant informal discovery, the Parties still had
25 much written and deposition discovery to conduct if the case did not settle. Substantive motion
26 work and trial preparation also remained for the Parties, as well as potential appeals. As a result,
27 the Parties would likely incur considerably more attorneys' fees and costs through trial and
28 possible appeal. The Settlement avoids those risks and the accompanying expense.

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Based on the above-described violations, Plaintiff asserts she would be able to seek PAGA penalties for each Aggrieved Employee for each pay period in the PAGA limitations period. Haines Decl., ¶ 25. Based on data provided by Westland, there were approximately 25,853 pay periods during the PAGA period. *Id.* Assuming an initial violation rate of \$100 per pay period under Labor Code § 2699(f) (*see Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (holding “initial” violation rate applies to PAGA penalties until employer is notified by Labor Commissioner or a court that it violated Labor Code)), Plaintiff estimated a total potential PAGA exposure of \$2,585,300. *Id.* However, because the Court maintains discretion to reduce these penalties, and in light of Westland’s arguments and defenses described above, Plaintiff discounted that figure by 50% for a risk of losing on the merits, and by an additional 65% for risk of the Court reducing penalties, to arrive at a realistic exposure of \$452,428. Haines Decl., ¶ 25; *see, e.g., Thurman*, 203 Cal.App.4th at 1136 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047 at *5 (reducing PAGA penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

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As noted, the Parties engaged in substantial informal discovery to evaluate the PAGA claim. Westland provided Plaintiff with relevant wage and hour policies, a 15% sampling of

1 Aggrieved Employees’ timesheets and wage statements, and other relevant information and
2 documents. Haines Decl., ¶ 17. Only after the completion of this significant discovery, and
3 adversarial discussions about the likelihood of prevailing on the merits, did the Parties reach the
4 proposed Settlement. Thus, this factor supports settlement approval. *Id.*

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

6 “Parties represented by competent counsel are better positioned than courts to produce a
7 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec.*
8 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel, who
9 believe this Settlement to be fair and adequate for all involved. Haines Decl., ¶¶ 3-12. This factor
10 strongly supports settlement approval. *Kullar*, 168 Cal.App.4th at 130 (“The court undoubtedly
11 should give considerable weight to the competency and integrity of counsel and the involvement
12 of a neutral mediator in assuring itself that a settlement agreement represents an arm’s length
13 transaction entered without self-dealing or other potential misconduct.”).

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

16 Plaintiff requests an award of \$119,000 in attorney fees. Notably, the Settlement provides
17 for attorneys’ fees of up to 40% (see Settlement, § 3.01(a)), but Plaintiff’s counsel request only
18 35%, leaving more money to be distributed to Aggrieved Employees and the LWDA. Plaintiff
19 submits this request is fair, reasonable, and adequate, as a percentage of the Gross Settlement
20 Amount and as cross-checked against Plaintiff’s counsel’s lodestar, which *exceeds* the fee request.

21 Plaintiff is entitled to attorney fees as a matter of right under California Labor Code
22 section 2699(g)(1), which provides that “[a]ny employee who prevails in any [PAGA] action shall
23 be entitled to an award of reasonable attorneys’ fees and costs.” *See also Gouskos v. Aptos Village*
24 *Garage, Inc.*, 94 Cal.App.4th 754, 765 (2001) (holding that attorneys’ fees to prevailing party are
25 mandatory when the statute uses the word “shall”). It is undisputed that by obtaining PAGA
26 penalties for the LWDA and Aggrieved Employees, Plaintiff has prevailed. *See Graciano v.*
27 *Robinson Ford Sales*, 144 Cal.App.4th 140, 153 (2006) (“[P]laintiffs may be considered
28 ‘prevailing parties’ for attorney’s fee purposes if they succeed on any significant issue in the

litigation that achieves some of the benefit the parties sought in bringing suit.” (internal citation omitted)). A fee award is justified where the legal action has produced its benefits by way of settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Comty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627 (in awarding a fee from the common fund obtained 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.* (6th Cir. 1993) 9 F.3d 513, 516 (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. Sec. Litig.*, 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.’”)

Fee awards of similar percentages of the common fund are routinely awarded in California courts in class and representative PAGA actions. The California Supreme Court recently confirmed its approval of the use of the “percentage of fund” method. *See Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (“the percentage of fund method survives in California class action cases...”)

Specifically, the *Laffitte* Court held:

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

Id., at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008). This is also consistent with Plaintiff’s counsel’s experience in similar wage-and-hour class and

1 PAGA matters. Haines Decl., ¶ 26. Here, Plaintiff's fee request of 35% of the GSA (estimated to
2 be \$119,000) is fair and reasonable based on the percentage of the recovery method, as confirmed
3 by a lodestar cross-check.

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

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

23 In this case, Plaintiff's counsel have a lodestar of approximately \$130,644.50, which
24 results in a *negative* multiplier of about 0.91 compared to the \$119,000 fee request. Haines Decl.,
25 ¶¶ 27-29. A general summary showing the number of hours of work performed by each attorney
26 and paralegals is set forth below. The billing rates used are reasonable in view of the evidence
27 submitted herewith. See Haines Decl., ¶¶ 28-29 & Exh. 3 (*Laffey Matrix*).

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Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (15th Year Attorney)	\$650	58.7	\$38,155.00
Tuvia Korobkin (12th Year Attorney)	\$595	103.6	\$61,642.00
Neil M. Larsen (10th Year Attorney)	\$550	35.4	\$19,470.00
Daniel B. Marin-Finn (5th Year Attorney)	\$425	20.8	\$8,840.00
Firm Paralegals	\$175	14.5	\$2,537.50
Total Lodestar			\$130,644.50

Counsel’s requested rates are reasonable as they are within the range of market rates and have been approved by courts in prior actions. Haines Decl., ¶¶ 27-29. The requested fee is also fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent basis. *Id.* This case involved nuanced legal issues, including the legality of Westland’s timekeeping practices, Westland’s obligations to “provide” meal periods and “authorize and permit” rest periods, as well as the availability and amount of PAGA civil penalties for the alleged Labor Code violations. *Id.* Westland was also represented by experienced wage-and-hour litigation counsel. *Id.* Thus, the requested fee award is fair, reasonable and adequate.

The requested fee award is also justified because Plaintiff’s counsel achieved a significant monetary recovery in an uncertain and risky case, while bearing the substantial burden of representation on a contingency basis. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys’ fees). Here, counsel expended significant time and resources in litigating this case, which resulted in a favorable result for Plaintiff, the State of California, and Aggrieved Employees in the face of significant defenses. Haines Decl., ¶ 30. Counsel also bore the contingency risk of this litigation for the benefit of the Aggrieved Employees, as well as the State of California (which elected not to take the case after receiving Plaintiff’s PAGA notice).

Counsel conducted extensive research regarding the merits of Plaintiff’s claims, her ability to recover PAGA civil penalties, and Westland’s potential defenses. Haines Decl., ¶ 30. Counsel also conducted significant analysis of data and information produced by Westland, and

1 used this data and analysis to draft a comprehensive mediation brief and exposure analysis. *Id.*
2 Counsel attended a full-day mediation, and expended significant effort in preparing subsequent
3 settlement documents, this Motion and supporting documents, and will oversee the settlement
4 administration process. *Id.* Given the considerable potential for adverse outcomes in this case, the
5 contingent risk borne by Plaintiff's counsel was great. The quality of Plaintiff's counsel's work,
6 and the efficacy and dedication with which it was performed, should be compensated. Thus,
7 Plaintiff submits the requested fee award is fair, reasonable and adequate and should be approved.

8 **C. The Requested Litigation Costs and Settlement Administration Costs**
9 **Are Fair, Reasonable, and Adequate**

10 Plaintiff's request for reimbursement of litigation costs of \$8,557.92 is also fair and
11 reasonable. All of Plaintiff's litigation costs are documented and reasonably incurred. *See* Haines
12 Decl., ¶ 31 & Exh. 4. Moreover, the costs Plaintiff seeks are the types of costs routinely approved
13 by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
14 "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker*
15 *v. Sayre*, 2011 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings,
16 motions and exhibits are typically billed by attorneys to their fee-paying clients" and are
17 reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins.*
18 *Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune*
19 *Response Securities Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses,
20 consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight
21 delivery costs are reimbursable).

22 The request for administration costs of \$4,450 is also fair and reasonable. Phoenix was
23 selected because it is an experienced settlement administrator and returned a reasonable bid. *See*
24 Declaration of Jodey Lawrence & Exhibits. Moreover, Phoenix will perform several important
25 functions that are integral to the implementation of the Settlement. Its modest requested fee is
26 therefore reasonable.

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V. CONCLUSION

Dated: May 20, 2021

By: 
Paul K. Haines
Attorneys for Plaintiff and
Aggrieved Employees