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

ARTHUR QUINTERO, JR., as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

SEIDNER-MILLER, INC., a California
corporation, dba TOYOTA OF GLENDORA;
SEIDNER-MILLER AUTOMOTIVE, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No. 20STCV36852

*[Assigned for all purposes to the Hon. Kevin
C. Brazile; Dept. 20]*

**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: July 12, 2021

Time: 8:30 a.m.

Dept.: 20

Reservation No.: 177700858690

Complaint Filed: September 25, 2020

Trial Date: None Set

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

PLEASE TAKE NOTICE that on July 12, 2021 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 20 of the above-entitled Court, located at 111 North Hill Street, Los Angeles, California 90012, Plaintiff Arthur Quintero, Jr. ("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.*) as 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 the 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 one-third of the Gross Settlement Amount (\$50,000.00) in attorneys' fees to Plaintiff's Counsel;
6. Approving an award of litigation costs to Plaintiff's Counsel in the amount of \$7,065.36;
7. Approving an award of \$5,000.00 as Plaintiff's Enhancement Payment, and
8. Approving \$1,895.00 in administration costs to Phoenix Settlement Administrators.

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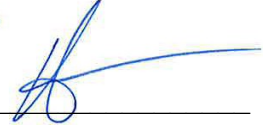
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1 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
2 the declaration of Paul K. Haines and all exhibits attached thereto; the declaration of Sean M.
3 Blakely; the declaration of Jodey Lawrence of Phoenix Settlement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

8
9 Dated: June 17, 2021

HAINES LAW GROUP, APC

10
11 By:  

Paul K. Haines

Sean M. Blakely

Neil M. Larsen

Attorneys for Plaintiff and Aggrieved
Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Arthur Quintero, Jr. ("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 Agreement") with Defendants Seidner-
6 Miller, Inc. dba Toyota of Glendora, and Seidner-Miller Automotive, Inc. ("Defendants" or
7 "Seidner-Miller").¹ This PAGA action seeks civil penalties predicated on Seidner-Miller's
8 alleged failure to pay all minimum wages, alleged failure to provide compliant meal and rest
9 periods, alleged failure to reimburse necessary business expenses, and alleged failure to pay all
10 final wages and issue accurate itemized wage statements. The proposed Settlement, under which
11 Seidner-Miller has agreed to pay a non-reversionary Gross Settlement Amount of \$150,000.00,
12 will resolve Plaintiff's representative claim filed on behalf of the State of California and the
13 following "Aggrieved Employees:"

14 All current and former commission-based employees that are not salary-
15 exempt and worked for Defendants at any time from July 22, 2019 through
16 the date of the Court Order granting approval of the PAGA Settlement.
("PAGA Period").

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

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

27 _____
28 ¹ The proposed Settlement Agreement is attached as Exhibit 1 to the Declaration of Paul K. Haines
filed herewith. The Explanatory Letter to accompany Aggrieved Employees' Individual PAGA
Payments is attached as Exhibit A to the Settlement Agreement.

1 complexity and likely duration of further litigation.

2 As noted, the Settlement provides for a Gross Settlement Amount (“GSA”) of
3 \$150,000.00. *See* Settlement Agreement, §§ I.9; III.2. After deducting amounts for requested
4 attorneys’ fees (\$50,000.00), litigation costs (\$7,065.36), Plaintiff’s Enhancement Payment
5 (\$5,000.00), and administration costs (\$1,895.00), the Settlement provides for distribution of a
6 Net Settlement Amount (“NSA”) of approximately \$86,039.64 to Aggrieved Employees and the
7 California Labor & Workforce Development Agency (“LWDA”). *See* Settlement Agreement, §§
8 I.10; III.4-5.

9 The Net Settlement Amount shall be distributed 75% (approximately \$64,529.73) to the
10 LWDA, and 25% (approximately \$21,509.91) to Aggrieved Employees, pursuant to the
11 requirements of the PAGA as codified in Lab. Code § 2699(i). *See* Settlement Agreement, § III.5.
12 There are approximately 62 Aggrieved Employees. *Id.*, § I.2. Thus, the average Individual PAGA
13 Payment to Aggrieved Employees is estimated at \$346.93.

14 The GSA of \$150,000.00 represents a positive result for the State of California and
15 Aggrieved Employees. Further litigation may have resulted in a smaller recovery or even no
16 recovery at all, based on the defenses asserted by Seidner-Miller and given the significant
17 litigation risks involved. Moreover, the GSA is greater than other PAGA penalty awards approved
18 as reasonable. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624
19 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-aside of \$5,000, or
20 \$7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013
21 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-aside of \$10,000, or
22 \$3.33 per employee). The amounts requested for attorneys’ fees and costs, enhancement payment,
23 and administration costs are all fair, adequate, and reasonable. Thus, Plaintiff respectfully
24 requests that the Court enter the [Proposed] Judgment and Order submitted concurrently herewith.

25 **II. SUMMARY OF THE LITIGATION**

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

27 Seidner-Miller owns and operates Toyota of Glendora, an automotive retailer in
28 California. Plaintiff worked for Seidner-Miller as a non-exempt “Sales Closer” employee from

1 approximately March 2019 until approximately May 2020. *See* Declaration of Arthur Quintero,
2 Jr. (“Quintero Decl.”), ¶ 2.

3 Plaintiff’s PAGA claim is predicated on Seidner-Miller’s commission-based
4 compensation system, which Plaintiff alleges failed to separately compensate commissioned
5 employees for rest periods and “non-productive time.” Plaintiff further contends that Seidner-
6 Miller failed to provide all required and compliant meal periods, failed to reimburse necessary
7 business expenses, and failed to timely pay final wages and provide complete and accurate wage
8 statements.

9 **B. Procedural History**

10 On July 22, 2020, Plaintiff sent a letter by certified mail to Seidner-Miller, and online to
11 the LWDA, describing Seidner-Miller’s alleged Labor Code violations, as required by Labor
12 Code § 2699.3. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 11 & Exh. 2; *see also*
13 Settlement Agreement, § II.2. On September 25, 2020, after the prescribed 65-day waiting period
14 under Labor Code § 2699.3(a)(2)(A), Plaintiff filed his representative Complaint, which alleged
15 a sole cause of action for PAGA civil penalties. Haines Decl., ¶ 12; *see also* Settlement
16 Agreement, § II.3.

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

18 In connection with mediation, Seidner-Miller provided Plaintiff with extensive informal
19 discovery, including payroll records for a random sampling of Aggrieved Employees, all relevant
20 policy documents and commission compensation pay plans, along with a summary of relevant
21 data necessary for a 1-year PAGA exposure analysis. Haines Decl., ¶ 13; *see also* Settlement
22 Agreement, § II.4.

23 On February 17, 2021, the Parties attended mediation with Steven G. Pearl, Esq., a well-
24 respected wage and hour mediator. Haines Decl., ¶ 14; *see also* Settlement Agreement, § II.5.
25 During mediation, the Parties vigorously debated Plaintiff’s ability to proceed on a representative
26 basis, the legal basis for Plaintiff’s claims and Seidner-Miller’s defenses, the potential amount of
27 penalties, and the Parties’ data analyses and conclusions based thereon. *Id.* Ultimately, the Parties
28 agreed in principle to resolve Plaintiff’s PAGA claim and the Parties memorialized their

1 agreement in a Memorandum of Understanding. *Id.* Over the following months, the Parties
2 negotiated and finalized the Settlement Agreement. *Id.*

3 **III. SUMMARY OF THE SETTLEMENT**

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

5 Aggrieved Employees are defined as “all current and former commission-based
6 employees that are not salary-exempt and worked for Defendants at any time from July 22, 2019
7 through the date of the Court Order granting approval of the PAGA Settlement.” *See* Settlement
8 Agreement, § I.2. The PAGA Period is defined as July 22, 2019 through the date of the Court
9 Order granting approval of the PAGA Settlement. *Id.*, § I.12.

10 **B. Monetary Terms**

11 As noted, the Settlement provides for Seidner-Miller’s payment of a non-reversionary
12 GSA of \$150,00,000.00. Settlement Agreement, §§ I.9; III.2. After deducting amounts for
13 requested attorneys’ fees, litigation costs, Plaintiff’s Enhancement Payment, and settlement
14 administration costs, the Settlement provides for the remaining Net Settlement Amount (“NSA”)
15 to be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Lab. Code §
16 2699(i). *Id.* at §§ I.10; III.5. The 25% portion to Aggrieved Employees shall be distributed based
17 on each Aggrieved Employee’s proportional number of pay periods worked for Seidner-Miller in
18 California during the PAGA Period. *Id.* at § III.5.

19 **1. *Requested Attorneys’ Fees and Costs, Administration Costs, and 20 Plaintiff’s Enhancement Payment***

21 Plaintiff’s Counsel requests one-third of the GSA (i.e., \$50,000.00) in attorneys’ fees, and
22 \$7,065.36 in litigation costs. Settlement Agreement, § III.4(a). As discussed in detail below, a fee
23 award of one-third of the GSA is fair, adequate, and reasonable as a percentage of the fund and is
24 in line with fee awards in other PAGA settlements.

25 The Parties have agreed to engage Phoenix Settlement Administrators (“Phoenix”) as the
26 third-party settlement administrator. *See* Settlement Agreement, §§ I.4; IV.1. Phoenix will update
27 Aggrieved Employee addresses using the National Change of Address database, calculate and
28 distribute Individual PAGA Payments, mail payments to all Aggrieved Employees together with
the Explanatory Letter, and perform other duties that are integral to the effectuation of the

Settlement. *Id.*, at §§ IV.1-6. Plaintiff requests that the Court approve \$1,895.00 in administration costs to Phoenix, which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.* at §§ I.10; III.4; *see also* Declaration of Jodey Lawrence (“Lawrence Decl.”), ¶ 16, Exh. B.

Finally, Plaintiff requests an enhancement payment of \$5,000, in recognition of Plaintiff’s contributions to this case and his efforts in bringing this case to successful resolution. *See* Quintero Decl., ¶¶ 8-10; *see also* Settlement Agreement, §§ I.10, III.4(b).

2. Payment to LWDA and Aggrieved Employees

As stated, the NSA will be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Labor Code § 2699(i). Settlement Agreement, § III.5. Based on the above requested distributions, the NSA is estimated to be \$86,039.64, with \$64,529.73 paid to the LWDA and \$21,509.91 distributed to Aggrieved Employees. *Id.* at §§ I.10; III.4-5.

3. Funding of the Settlement

Seidner-Miller will fund the settlement within thirty (30) days of the Effective Date. *See* Settlement Agreement, §§ I.17; III.2. Within twenty-one (21) calendar days after the GSA has been fully funded, and after receiving approval from counsel of the payment calculations, Phoenix will mail the Explanatory Letter and Individual PAGA Payments to Aggrieved Employees via First-Class U.S. Mail. *See* Settlement Agreement, § IV.3.

Funds represented by undeliverable checks, or checks remaining uncashed after 180 days, shall escheat to the California State Controller’s Office for deposit in the Unclaimed Property Fund, in the name of the Aggrieved Employee. *Id.*, § IV.4.

IV. LEGAL ARGUMENT

A. Standards for Approval of a PAGA Settlement

The settlement of a PAGA claim requires court approval pursuant to the PAGA statute, which states that the “court shall review and approve any settlement of any civil action filed pursuant to this part.” Labor Code § 2699(l). Of course, “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13, 2011). “[T]he

1 very essence of a settlement is...‘a yielding of absolutes and an abandoning of highest hopes,’”
2 as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
3 litigation that induce consensual settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d
4 615, 624 (9th Cir. 1982). As such, “the settlement or fairness hearing is not to be turned into a
5 trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure
6 of what might have been achieved by the negotiators.” *Id.*

7 Although the PAGA statute does not set forth the criteria by which a PAGA settlement is
8 to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a
9 class action settlement. However, “a PAGA claim asserted on a non-class representative basis...is
10 not considered a class action but a law enforcement action, and therefore does not have to meet
11 the requirements of [a class action].” *Casida v. Sears Holdings Corp.*, 2012 WL 253217 at *3
12 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at *4 (E.D. Cal. Jul.
13 1, 2010) (“PAGA claims are law enforcement actions, not class actions”). A court’s review of a
14 PAGA settlement implicates the following unique features that render the approval process
15 distinct from approval of a class action settlement.

16 First, in evaluating the adequacy of the settlement, the court is not concerned with the
17 amount(s) received by “aggrieved employees,” but rather, must focus on the total settlement
18 amount in achieving PAGA’s objective. “The remedy sought in a PAGA suit consists of civil
19 penalties, not individual or class damages.” *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike
20 class actions, these civil penalties are not meant to compensate unnamed employees because the
21 action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*,
22 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court recently confirmed,
23 “PAGA claims are ‘representative’ actions in the sense that they are brought on the state’s behalf.
24 The employee...‘represents the same legal right and interest as’ those agencies — ‘namely,
25 recovery of civil penalties that otherwise would have been assessed and collected by the
26 [LWDA].” *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian v. CLS Transp. Los*
27 *Angeles, LLC*, 59 Cal.4th 348, 380 (2014)).

28 Moreover, while “[a PAGA] action is ... designed to protect the public and penalize the

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

7 Second, consistent with the fact that unnamed employees have no property interest in a
8 PAGA claim,² “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
9 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
10 1340777 at *5. This renders the approval process of a PAGA settlement distinct from a class
11 action settlement, as the Court need not employ the “two-step approval process” required for class
12 action settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

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

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

21 In deciding whether to approve a proposed settlement, a trial court has broad powers to
22 determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup.*
23 *Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to
24 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*,
25 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court
26 to consider include, but are not limited to:

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

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

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

11 Because settlements inherently involve compromise, even settlements providing for
12 substantially narrower relief than likely would be obtained if the suit were successfully litigated
13 can be reasonable because "the public interest may indeed be served by a voluntary settlement in
14 which each side gives ground in the interest of avoiding litigation." *Wershba v. Apple Computer,*
15 *Inc.*, 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines,*
16 *Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). In addition, courts review the discovery process and
17 information received through it to aid them in assessing whether the parties sufficiently developed
18 the claims and their supporting factual bases before reaching settlement. *Kullar v. Foot Locker*
19 *Retail, Inc.*, 168 Cal.App.4th 116, 129-31 (2008). Information is sufficient where it allows the
20 parties and the court to form "an understanding of the amount that is in controversy and the
21 realistic range of outcomes of the litigation." *Clark v. Am. Residential Serv. LLC*, 175 Cal.App.4th
22 785, 801 (2009). This requirement exists so that the parties can provide the court with "a
23 meaningful and substantiated explanation of the manner in which the factual and legal issues have
24 been evaluated." *Kullar, supra*, 168 Cal.App.4th at 132.

25 **a. The Strength of Plaintiff's Case**

26 Although he steadfastly maintains his claims are meritorious, Plaintiff acknowledges his
27 position included real risks and uncertainty. Plaintiff argues that he and other Aggrieved
28 Employees, who were paid on a commission-only basis, were not separately compensated for
time spent working on tasks which were not compensated on a commission basis, including for
example, hours spent waiting for customers, cleaning the dealership, and attending mandatory
sales meetings (i.e., non-productive time). *See Haines Decl.*, ¶ 16. As a result, Plaintiff alleges he

1 and aggrieved employees were not paid at least the minimum wage for all hours worked. *Id.*
2 Seidner-Miller argues that all work performed by commissioned employees was directly related
3 to the activities that were being compensated via commissions, and therefore, did not need to be
4 separately compensated. *Id.* Seidner-Miller further argues that any questions of non-productive
5 time would be highly individualized, as there are no records or other common evidence of time
6 spent on potentially non-productive tasks, thereby making it difficult for Plaintiff to proceed on a
7 representative basis. *Id.*

8 As for Plaintiff's rest period claim, Plaintiff alleges that he and Aggrieved Employees
9 worked shifts in excess of 3.5 hours, and were not provided with a paid rest period for every 4-
10 hour period worked, or major fraction thereof, because Seidner-Miller's commission
11 compensation plans failed to separately compensate Plaintiff and Aggrieved Employees for
12 required rest periods at the correct rate of pay. See *Vaquero v. Stoneledge Furniture LLC*, 9
13 Cal.App.5th 98 (2017); *Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013) ("There is no dispute
14 that Safeway's activity-based compensation system did not separately compensate drivers for
15 their rest periods."). Haines Decl., ¶ 17. As a result, Plaintiff and Aggrieved Employees were not
16 provided with compensated rest periods or rest periods compensated at the correct rate of pay as
17 required by Industrial Welfare Commission Wage Order 4, § 12(A). *Id.* Seidner-Miller contends
18 that it has always maintained lawful written rest period policies, including the number, duration,
19 and frequency of rest periods, and that it has always authorized and permitted rest periods in
20 accordance with those policies. *Id.* Seidner-Miller also argues that it revised its commission pay
21 plans in approximately December 2020 to separately compensate its commissioned employees
22 for rest periods, thereby cutting off any potential liability for this claim for a portion of PAGA
23 Period. *Id.*

24 With respect to Plaintiff's meal period claim, Plaintiff alleges that Seidner-Miller failed
25 to provide employees with all required meal periods, such that first meal periods often began after
26 five hours of work, and Seidner-Miller failed to provide second meal periods during shifts in
27 excess of 10.0 hours. Haines Decl., ¶ 18. Seidner-Miller contends that it has always maintained
28 compliant written meal period policies, including provision of both first and second meal periods.

1 *Id.* Furthermore, Seidner-Miller asserts that any late or short meal periods were the result of
2 employee choice rather than any policy or practice of Seidner-Miller. *Id.* Seidner-Miller also
3 contends that, in practice, it has always provided employees with the *opportunity* to take second
4 meal periods on shifts over 10.0 hours, but that employees choose to waive second meal periods,
5 as they are entitled to do under Labor Code section 512(a). *Id.* Seidner-Miller also maintains that
6 Plaintiff’s meal period claim would not be manageable on a representative basis, as individual
7 inquiries would be required to establish which Aggrieved Employees experienced non-compliant
8 meal periods, how many non-compliant meal periods each Aggrieved Employee experienced, and
9 why a particular Aggrieved Employee had a non-compliant meal period during a particular shift.
10 *Id.*

11 Plaintiff also alleged that Seidner-Miller failed to reimburse Aggrieved Employees for a
12 reasonable portion of cellular phone expenses even though employees were required to use their
13 personal cellular phones for daily work activities. Haines Decl. ¶ 19. Seidner-Miller argues that
14 that it was rare, if ever, that their employees were required to use their personal cellular phones
15 for business purposes. *Id.* Seidner-Miller also contends that any cellular phone expenses would
16 be minimal due to the availability of low-cost cellular phone plans. *Id.*

17 As for Plaintiff’s derivative claims that Seidner-Miller violated its wage statement and
18 final payment obligations in violation of Labor Code §§ 226 and 203, respectively, Seidner-Miller
19 asserts it has strong, good-faith defenses to Plaintiff’s underlying claims, precluding a finding of
20 a failure to pay all final wages that would otherwise result in waiting time penalties. Haines Decl.,
21 ¶ 20; *see also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will
22 preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963
23 (2017) (holding “good faith dispute” precluded imposition of waiting time penalties). Seidner-
24 Miller further contends Plaintiff’s meal and rest period claims cannot support a claim for
25 violations of Labor Code §§ 226 or 203, as Courts of Appeal recently held in *Naranjo v. Spectrum*
26 *Security Servs., Inc.*, 40 Cal.App.5th 444, 473-75 (2019) (*review granted* Jan. 2, 2020) and
27 *Betancourt v. OS Rest. Svcs., LLC*, 49 Cal.App.5th 240, 248 (2020) (*review granted* Aug. 19,
28 2020). Seidner-Miller further contends that wage statements always accurately reflected amounts

1 paid to employees, and thus Seidner-Miller cannot be found liable for wage statement violations
2 under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336 (2018) (“The purpose
3 of section 226 is to *document the paid wages* to ensure the employee is fully informed regarding
4 the calculation of those wages.”) (italics in original). Haines Decl., ¶ 20.

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

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

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

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

26 This proposed Settlement provides a fair and reasonable monetary recovery for the
27 Aggrieved Employees in the face of hotly disputed claims. Plaintiff estimated Seidner-Miller’s
28 realistic exposure for PAGA civil penalties as follows:

1 Based on the above-described violations, Plaintiff asserts that he would be able to seek
2 PAGA penalties for each Aggrieved Employee for each pay period in the PAGA limitations
3 period. Haines Decl., ¶ 22. Based on data provided by Seidner-Miller, there were approximately
4 1,114 pay periods during the PAGA limitations period. *Id.*; *see also* Settlement Agreement, §
5 III.3. Assuming a civil penalty of \$100 per pay period for each initial violation and \$200 for each
6 Aggrieved Employee per pay period for each subsequent violation under Labor Code § 2699(f),
7 Plaintiff estimated a total potential PAGA exposure of \$216,600 ([62 “initial” violations * \$100]
8 + [1052 “subsequent” violations * \$200]). Haines Decl., ¶ 23. However, because the Court
9 maintains discretion to reduce these penalties, and in light of Seidner-Miller’s arguments and
10 defenses described above, Plaintiff discounted that figure by 15% for a risk of losing on the merits,
11 and an additional 15% for risk of the Court reducing penalties, to arrive at a realistic exposure of
12 \$156,493. Haines Decl., ¶ 22; *see also, e.g., Thurman*, 203 Cal.App.4th at 1136 (affirming
13 reduction of PAGA penalties); *Fleming*, 2011 WL 7563047 at *5 (reducing PAGA penalties by
14 over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay
15 period).

16 The proposed \$150,000.00 GSA therefore represents approximately 95.8% of Plaintiff’s
17 reasonably forecasted total recovery, while avoiding the risks of proceeding through trial. Haines
18 Decl., ¶ 22. “The fact that a proposed settlement may only amount to a fraction of the potential
19 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
20 should be disapproved.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).
21 Plaintiff acknowledges there was substantial uncertainty and risk as to his claims. Approval of
22 the Settlement is appropriate, as the Settlement will provide tangible monetary relief to Aggrieved
23 Employees and the State of California.

24 **d. Discovery Completed and the Status of Proceedings**

25 As discussed above, the parties engaged in substantial informal discovery necessary to
26 evaluate the value of the PAGA claims. *See* Haines Decl., ¶ 13. Seidner-Miller provided Plaintiff
27 with a random sampling of payroll records for Aggrieved Employees, all relevant policy
28 documents and compensation pay plans, along with a summary of relevant data. *Id.* Only after

1 the completion of this comprehensive discovery process, and significant discussions about the
2 likelihood of prevailing on the merits, did the Parties reach the proposed Settlement. *Id.* Thus,
3 this factor supports settlement approval.

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

5 “Parties represented by competent counsel are better positioned than courts to produce a
6 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec.*
7 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel, who
8 believe this Settlement to be fair and adequate for all involved. Haines Decl., ¶¶ 3-10, 16-22;
9 Declaration of Sean M. Blakely (“Blakely Decl.”), ¶¶ 2-6. This factor strongly supports settlement
10 approval. *Kullar, supra*, 168 Cal.App.4th at 130 (“The court undoubtedly should give
11 considerable weight to the competency and integrity of counsel and the involvement of a neutral
12 mediator in assuring itself that a settlement agreement represents an arm’s length transaction
13 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, as Cross-Checked Against Counsel’s Lodestar**

16 As the prevailing party in settlement, Plaintiff is entitled to recover attorneys’ fees and
17 costs for his PAGA claim. *See* Labor Code § 2699(g) (providing for attorney fees and costs in
18 PAGA actions); Cal. Code Civ. Proc. § 1021.5. A fee award is justified where the legal action has
19 produced its benefits by way of settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91
20 (1987); *Westside Comty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983);
21 *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when a number of persons are entitled in common to
22 a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation
23 or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”);
24 *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627 (in awarding a fee from the common fund obtained
25 for the benefit of all parties, the trial court acts within its equitable power to prevent the other
26 parties’ unjust enrichment); *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d
27 513, 516 (the percentage of the fund method for calculating attorneys’ fees more accurately
28 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 one-third of the settlement 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); *see also Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015) (approving attorneys’ fees of one-third of settlement fund in PAGA settlement); *Clavel v. Lupe’s Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25, 2016) (same). This is also consistent with Plaintiff’s counsel’s experience in similar wage-and-hour class and PAGA matters. Haines Decl., ¶ 23. Here, Plaintiff’s fee request of one-third of the GSA (estimated to be \$50,000.00) is fair and reasonable based on the percentage of the recovery method, as confirmed by a lodestar cross-check.

In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. Under the lodestar method, the court multiplies the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the contingent nature of the case and

the degree of success achieved. *See Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977); *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation”).

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

In this case, Plaintiff’s counsel has a lodestar of approximately \$82,083 without the use of any multiplier, resulting in a negative multiplier of approximately 0.61 compared to the \$50,000.00 fee request. Haines Decl., ¶ 24. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below. The billing rates used are reasonable in view of the evidence submitted herewith. *See* Haines Decl., ¶¶ 25-27 & Exh. 3 (*Laffey Matrix*).

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (15th Year Attorney)	\$650	38.4	\$24,960
Sean M. Blakely (12th Year Attorney)	\$595	55.9	\$33,260.50
Neil M. Larsen (10th Year Attorney)	\$550	30.3	\$16,665
Diana M. Martinez (3rd Year Attorney)	\$325	19.4	\$6,305
Firm Paralegals	\$175	5.1	\$892.50
Total Lodestar			\$82,083.00

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, and the fees requested are in line with the market rate.

1 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional
2 results in a contingency case, significant risk and the absence of supporting precedents, are proper
3 considerations in awarding attorneys' fees). Here, counsel expended significant time and
4 resources in litigating this case, which resulted in a favorable result for Plaintiff, the State of
5 California, and Aggrieved Employees in the face of significant defenses. Counsel also bore the
6 contingency risk of this litigation for the benefit of the Aggrieved Employees, as well as the State
7 of California (which elected not to take the case after receiving Plaintiff's PAGA notice).

8 Critically, Plaintiff's recovery in this case significantly exceeds other PAGA awards
9 approved by California courts. *See, e.g., Aguirre v. DSW, Inc.*, 2012 WL 11875296, *3 (C.D. Cal.
10 Nov. 29, 2012) (approving \$10,000 PAGA payment); *Garcia v. Gordon Trucking, Inc.*, 2012 WL
11 5364575, *7 (E.D. Cal. Oct. 31, 2012) (approving \$10,000 PAGA payment, finding it "comports
12 with settlement approval of PAGA awards in other cases. [Citations.]"); *Boyd v. Bank of Am.*
13 *Corp.*, 2014 WL 6473804, *8 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment);
14 *Franco v. Ruiz Food Prods.*, 2012 WL 5941801, *14 (E.D. Cal. Nov. 27, 2012) (\$10,000 PAGA
15 payment); *Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645, *1 (N.D. Cal. Feb. 16, 2011) (\$10,000
16 PAGA payment). That counsel achieved these results without engaging in a protracted legal
17 battle, in the face of serious defense challenges, confirms the strength of the results achieved.

18 Counsel conducted extensive research regarding the merits of Plaintiff's claims, his ability
19 to recover PAGA civil penalties, and Seidner-Miller's potential defenses. Haines Decl., ¶¶ 16-
20 22. Counsel also conducted significant analysis of data and information produced by Seidner-
21 Miller, and used this data and analysis to draft a comprehensive mediation brief and exposure
22 analysis. *Id.*, at ¶¶ 13, 16-26. Counsel attended a full-day mediation, and expended significant
23 effort in preparing subsequent settlement documents, this Motion and supporting documents, and
24 will oversee the settlement administration process. *Id.*, at ¶ 26. Given the considerable potential
25 for adverse outcomes in this case, the contingent risk borne by Plaintiff's counsel was great. The
26 quality of Plaintiff's counsel's work, and the efficacy and dedication with which it was performed,
27 should be compensated.
28

1 Plaintiff's counsel have over two decades of combined wage-and-hour class and
2 representative action experience and have been certified as class counsel in numerous wage and
3 hour class actions. Haines Decl., ¶¶ 2-9; Blakely Decl., ¶¶ 2-6. Because it is reasonable to
4 compensate counsel commensurate with their skill, reputation, and experience, a fee award of
5 one-third of the GSA is reasonable. Other factors show the requested fee is reasonable. This case
6 involved nuanced legal issues, Seidner-Miller's obligations to compensate commission-based
7 employees for "non-productive time", obligations to "provide" meal periods and "authorize and
8 permit" rest periods, as well as the availability and amount of PAGA civil penalties for the alleged
9 Labor Code violations. Haines Decl., ¶¶ 16-21. Seidner-Miller was also represented by
10 experienced wage-and-hour litigation counsel. Thus, Plaintiff submits the requested fee award is
11 fair, reasonable and adequate and should be approved.

12 **C. The Requested Litigation Costs and Settlement Administration Costs Are**
13 **Fair, Reasonable, and Adequate**

14 Plaintiff's request for reimbursement of litigation costs of \$7,065.36 is also fair and
15 reasonable. All of Plaintiff's litigation costs are documented and reasonably incurred. *See* Haines
16 Decl., ¶ 27 & Exh. 4. Moreover, the costs Plaintiff seeks are the types of costs routinely approved
17 by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
18 "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v.*
19 *Sayre*, 2011 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings, motions
20 and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable);
21 *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d
22 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response*
23 *Securities Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant
24 and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery
25 costs are reimbursable).

26 The request for administration costs of \$1,895.00 is also fair and reasonable. Phoenix was
27 selected because it is an experienced settlement administrator, and because it returned a
28 competitive bid. *See* Settlement Agreement, § I.10, IV; *see also* Lawrence Declaration &
Exhibits. Moreover, Phoenix will perform several important functions that are integral to the

1 implementation of the Settlement. Its modest requested fee is therefore reasonable.

2 **D. The Court Should Approve Plaintiff's Requested Enhancement Payment**
3 **Because It Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts**
4 **and the Risks He Assumed in This Litigation.**

5 Courts routinely approve enhancement payments to compensate named plaintiffs for the
6 services they provide and the risks they incur during representative litigation. *See, e.g., Bell v.*
7 *Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named
8 plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
9 \$50,000 incentive payment); *see also* Plaintiff's Request for Judicial Notice, Exhs. 1-7 (PAGA
10 settlement approval orders awarding incentive payments to representative PAGA plaintiffs
11 ranging from \$5,000 to \$20,000). Here, Plaintiff seeks an enhancement payment of \$5,000. This
12 request is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of
13 Aggrieved Employees. Plaintiff provided substantial factual information and documents to
14 counsel, assisted in identifying potential witnesses, and attended numerous meetings with
15 Plaintiff's counsel. *See* Quintero Decl., ¶¶ 8-10. Accordingly, Plaintiff's requested enhancement
16 payment is appropriate and justified as part of the Settlement.

17 **V. CONCLUSION**

18 For the reasons stated herein, Plaintiff respectfully requests that this Court grant Plaintiff's
19 Motion and adopt the [Proposed] Judgment and Order Granting Settlement Approval submitted
20 concurrently herewith.

21 Dated: June 17, 2021

22 Respectfully submitted,
23 **HAINES LAW GROUP, APC**
24 
25 By: 
26 Paul K. Haines
27 Sean M. Blakely
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