

FILED
Superior Court of California
County of Los Angeles

JUN 22 2023

David W. Slayton, Executive Officer/Clerk of Court
By: N. Navarro, Deputy

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

CARMELLA JONES, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

PREVAIL RESOURCES, LLC, a Texas
limited liability company; F2ONSITE,
business form unknown; and DOES 1
through 100,

Defendants.

Case No.: 20STCV29860

~~[TENTATIVE]~~ ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT ON CONDITIONS 

Date: June 22, 2023
Time: 10:00 a.m.
Dept.: SSC 17

I. INTRODUCTION

This is an action alleging wage and hour claims by employee Carmella Jones (Plaintiff) against employer Prevail Resources, LLC dba F2Onsite (Defendant or F2Onsite). The operative First Amended Complaint (FAC) stated causes of action for (1) failure to pay overtime wages, (2) failure to pay minimum wages, (3) rest period violations, (4) meal period violations, (5) failure to reimburse business expenditures, (6)

1 wage statement violations, (7) unfair competition in violation of the Unfair Competition
2 Law (UCL, Bus. & Prof. Code sec. 17200 et seq.), and (8) civil penalties under the Private
3 Attorneys General Act of 2004 (PAGA, Labor Code sec. 2698 et seq.)

4 On September 3, 2021, the Court compelled arbitration of Plaintiff's individual
5 claims but did not stay litigation of Plaintiff's PAGA claim. The parties subsequently
6 mediated and settled the PAGA claim. A Settlement Agreement was signed June 16, 2022
7 but was not presented for approval until August 30, 2022. It was set for hearing on
8 January 4, 2023 but then continued on the Court's own motion to March 21, 2023. At that
9 hearing the Court issued a written order continuing this motion to June 22, 2023 due to
10 several issues with the proposed settlement.

11 Plaintiff moves for approval of the proposed settlement of her PAGA action as
12 amended in response to the March 21, 2023 Order. The motion is unopposed. Having
13 considered the moving and supplemental papers, admissible evidence, and oral argument
14 of counsel, Plaintiff's motion to approve the PAGA settlement is APPROVED,
15 ~~conditioned upon explanation at argument regarding the costs sought and submission of a~~
16 ~~judgment of dismissal.~~ 

18 II. LEGAL STANDARD

19 A. Standard for Approval of PAGA Settlements

20 PAGA was enacted to aid public agencies in enforcement of California's labor
21 laws. Private persons suing under the PAGA do so as a proxy of the state, specifically the
22 Labor and Workforce Development Agency (LWDA). *ZB, N.A. v. Superior Court* (2019)
23 8 Cal.5th 175, 185. Aggrieved employees suing under the PAGA are authorized to recover
24 civil penalties, which is essentially a law enforcement function, designed to protect the
25 public. *Ibid.*, citing *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986 (*Arias*) and
26 *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*).

27 Labor Code section 2699, subdivision (l)(2) provides that the "superior court shall
28 review and approve any settlement of any civil action filed pursuant to this part [i.e.,

1 PAGA]. The proposed settlement shall be submitted to the agency [i.e., the LWDA] at the
2 same time that it is submitted to the court.”

3 The standard for approving a PAGA settlements is whether it is “fair and
4 reasonable.” *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76. In particular,
5 courts consider “whether a settlement is fair in view of PAGA’s purposes and policies”
6 intended “to remediate present labor law violations, deter future ones, and to maximize
7 enforcement of state labor laws such as promoting the enforcement of state labor laws.”
8 *Id.* at 77. “Because many of the factors used to evaluate class action settlements bear on a
9 settlement’s fairness—including the strength of the plaintiff’s case, the risk, the stage of the
10 proceeding, the complexity and likely duration of further litigation, and the settlement
11 amount—these factors can be useful in evaluating the fairness of a PAGA settlement.”
12 *Ibid.*; see *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (class
13 action settlement considerations).

14 15 **III. EVIDENCE**

16 Plaintiff submitted her Declaration and the Declarations of Jodey Lawrence,
17 President of Business Development for Phoenix Settlement Administrators (Phoenix), and
18 Paul K. Haines, Plaintiff’s counsel in this action. Plaintiff later submitted a Supplemental
19 Declaration by Haines.

20 21 **A. Plaintiff’s Declaration**

22 Plaintiff testifies that she “worked for F2Onsite as a “Field Technician”” between
23 June 2019 and “mid-August 2019.” Jones Decl., ¶ 2. Plaintiff “was generally paid a set
24 amount per client visit” and “was not paid separately for time spent performing tasks aside
25 from client visits, such as scheduling, picking up and dropping off computer parts,
26 trainings, and other tasks” or for “rest periods.” Jones Decl., ¶ 2. Plaintiff “was often
27 unable to take a 30-minute meal period by the end of [her] fifth hour of work.” Jones
28 Decl., ¶ 3. Plaintiff “believe[s] that [she] was not properly reimbursed for expenses [she]

1 incurred in connection with [her] job, such as mileage in driving [her] car for work and
2 using [her] personal laptop and other computer equipment for work.” Jones Decl., ¶ 3.
3 Plaintiff’s “understanding [is] that [she] was not provided with accurate itemized wage
4 statements while working for F2Onsite.” Jones Decl., ¶ 4. Plaintiff testifies that she has
5 “been actively involved in this case since it started” because she “had many phone
6 conversations with [her] attorneys throughout this case,” “gathered and reviewed
7 documents for use in the lawsuit,” and “reviewed and executed a declaration in opposition
8 to F2Onsite’s motion to compel arbitration.” Jones Decl., ¶ 7. Plaintiff estimates that she
9 “spent approximately 20-25 hours performing these activities in order to help the case.”
10 Jones Decl., ¶ 7.

11 12 **B. Haines Declarations**

13 Plaintiff’s counsel Haines submits a Declaration and supplemental Declaration in
14 support of this Motion. Haines testifies that he has “been intimately involved in every
15 aspect of this case from its inception through present.” Haines Decl., ¶ 10. On March 16,
16 2022 “the Parties attended a full-day mediation with mediator Jeffrey Krivis, Esq.” and
17 ultimately “negotiated and finalized” the original PAGA Settlement. Haines Decl., ¶ 16,
18 Ex. 1. Prior to the mediation F2Onsite informally “produced timekeeping and payroll
19 records for Plaintiff and all Aggrieved Employees during the PAGA Period, as well as all
20 relevant policy documents, and relevant data points necessary for a 1-year PAGA exposure
21 analysis.” Haines Decl., ¶ 15. The parties re-negotiated the settlement in light of the
22 March 21, 2023 Order—Haines offers clean and red-lined versions of the Amended
23 Settlement and explanatory letter. Supp. Haines Decl., ¶ 2, Ex. 1 (clean settlement), Ex. 2
24 (red-lined settlement), Ex. 3 (clean letter), Ex. 4 (red-lined letter).

25 Haines testifies that his firm rendered over \$96,000 in legal services in this action
26 and requests \$21,666.67 from the settlement fund (roughly one-third of the total fund).
27 Haines Decl., ¶¶ 25-26. Services rendered included “conducting extensive research
28 regarding the merits of Plaintiff’s claims, her ability to recover PAGA civil penalties, and

1 F2Onsite's potential defenses; conducting significant analysis of the data and information
2 produced by F2Onsite, and using this data and analysis to draft a comprehensive mediation
3 brief and exposure analysis; attending a full-day mediation; and preparing and negotiating
4 the Settlement, this Motion and supporting declarations" and "oppos[ing] F2Onsite's
5 Motion to Compel" Arbitration. Haines Decl., ¶ 28. Haines anticipates "oversee[ing] the
6 settlement administration process and work[ing] with the administrator to prepare a post-
7 disbursement declaration." Haines Decl., ¶ 28 Haines indicates that the "requested fee is
8 fair compensation for undertaking complex, risky, expensive, and time-consuming
9 litigation on a purely contingent basis" given the "nuanced legal issues" in this action.
10 Haines Decl., ¶ 25.

11 Haines also seeks reimbursement of "\$4,404.08 in costs associated with the
12 litigation of Plaintiff's PAGA claim" excluding previously requested costs of \$150.00 for
13 jury fees and \$429.97 for Westlaw charges, reduced from Haines' previous request for
14 "\$4,982.05 in total costs." Supp. Haines Decl., ¶ 3; compare Haines Decl., ¶ 29 Ex. 3
15 (summary of costs).

16 After reduction of costs and removal of Plaintiff's service award, Haines testifies
17 that the "Net Settlement Amount . . . is now \$36,929.25" to "be distributed 75%
18 (approximately \$27,696.94) to the LWDA, and 25% (approximately \$9,232.31) to
19 Aggrieved Employees." Supp. Haines Decl., ¶ 4. Haines testifies there are "approximately
20 22 Aggrieved Employees who suffered a Labor Code violation during the applicable time
21 period of April 6, 2019 to February 21, 2021, resulting in average payments of
22 approximately \$419.65 to each." *Ibid.*

23 24 **C. Lawrence Declaration**

25 Jodey Lawrence testifies that Phoenix has "extensive experience in and are experts
26 at all aspects of administrating complex class action matters" and describes the process it
27 will employ to identify and notify settlement class members. Lawrence Decl., ¶¶ 7-8.
28 Lawrence testifies that "Settlement Administration [in this case] will include hard cost and

1 hourly costs" not exceeding \$2,000.00. Lawrence Decl., ¶¶ 16-17, Ex. B. She provides
2 evidence of the insurance carried by Phoenix.

3
4 **D. Request for Judicial Notice**

5 Plaintiff requests judicial notice of seven trial court orders approving PAGA
6 settlements in the following cases: *Resendez v. Bridgestone Retail Operations, LLC*, Los
7 Angeles Superior Court Case No. BC596892 (RFJN Ex. 1); *Canul v. Basmat, Inc.*, Los
8 Angeles Superior Court Case No. BC674940 (RFJN Ex. 2); *Gonzalez, et al v. CitiStaff*
9 *Solutions, Inc.*, Los Angeles Superior Court Case No. BC620115 (RFJN Ex. 3); *Ibarra v.*
10 *Baker Commodities, Inc.*, Los Angeles Superior Court Case No. 19STCV06148 (RFJN Ex.
11 4); *Pickett v. 99 Cents Only Stores*, et al, Los Angeles Superior Court Case No. BC473038
12 (RFJN Ex. 5); *Enombang, et al v. Target Corp.*, Alameda County Case No. RG17853948
13 (RFJN Ex. 6); and *Grace v. Flowmaster Inc.*, Sacramento County Case No. 34-2017-
14 00220347-CU-OE-GDS (RFJN Ex. 7).

15 Review of Plaintiff's moving papers shows that these orders are referenced to
16 support Plaintiff's request for an enhancement award of \$5,000. Motion, p. 18. Plaintiff
17 has foregone that request. The Amended Settlement does not expressly provide for an
18 enhancement award, although same is referenced. The request for judicial notice is denied
19 because the orders are not relevant to the Amended Settlement.

20
21 **IV. TERMS OF THE PROPOSED PAGA SETTLEMENT**

22
23 The PAGA Settlement contains the following relevant definitions and terms:

- 24 • **Aggrieved Employees** means "all current and former non-exempt employees who
25 worked at least one pay period for F2Onsite in California at any time during the
26 PAGA Period." Amended Settlement, ¶¶ I.2, III.3. The parties represent that there
27 are approximately 22 aggrieved employees over 673 affected pay periods. Haines
28 Decl., ¶¶ 17, 24; Supp. Haines Decl., ¶ 4.

- 1 • **Gross Settlement Amount** means "the non-reversionary sum of Sixty-Five
2 Thousand Dollars and Zero Cents (\$65,000.00), which represents the total all-in
3 amount payable under this Settlement by Defendant, including, without limitation,
4 payments to all Aggrieved Employees, payment to the LWDA, payment to the
5 LWDA, payment of Plaintiff's Counsel's fees and costs, payment of Plaintiff's
6 enhancement award and payment to the Settlement Administrator for
7 administration costs." Amended Settlement, ¶ I.8.
 - 8 ○ **Escalator Provision:** "If the number of Affected Pay Periods as reported to
9 the Settlement Administrator following the Effective Date is more than 10%
10 greater than this figure [673 pay periods] (i.e., if there are 741 or more
11 Affected Pay Periods), Defendant shall increase the [Gross Settlement
12 Amount] in proportion to the increase in Affected Pay Periods (e.g., if the
13 number of Affected Pay Periods is 12% greater than 673, Defendant will
14 increase the GSA by 12%)." Amended Settlement, ¶ III.3.
 - 15 ○ **Funding of the Gross Settlement Amount:** The Gross Settlement Amount
16 shall be paid "to the Settlement Administrator" within "thirty (30) calendar
17 days of the Effective Date." Amended Settlement, ¶ III.2.
- 18 • **Net Settlement Amount** means the amount remaining to distribute to the LWDA
19 and Aggrieved Employees after the following amounts (to the extent approved by
20 the Court) are subtracted from the Gross Settlement Amount:
 - 21 ○ (a) Plaintiff's Counsel's fees up to one-third of the Gross Settlement
22 Amount;
 - 23 ○ (b) Plaintiff's costs up to \$15,000.00; and
 - 24 ○ (c) Administration costs up to \$2,000.00. Amended Settlement, ¶ III.4.
- 25 • **Release by Aggrieved Employees:** The Settlement provides that Aggrieved
26 Employees will release "any and all PAGA Released Claims against the Released
27 Parties that arose during the PAGA Period." Amended Settlement, ¶ III.6. Upon
28 approval of the Settlement and payment of the Gross Settlement Amount, "Plaintiff

1 and all Aggrieved Employees will be forever barred from pursuing any and all of
2 the PAGA Released Claims that arose during the PAGA Period against the
3 Released Parties.” Amended Settlement, ¶ III.6.

4 ○ The PAGA Period is “the time-period from April 6, 2019 through February
5 21, 2021.” Amended Settlement, ¶ I.11.

6 ○ PAGA Released Claims are defined as “any and all claims, liquidated or
7 unliquidated, that were asserted or could have been asserted based on the
8 facts set forth in the operative pleading in the Action and/or notice submitted
9 to the LWDA in connection with the Action, to recover civil penalties
10 pursuant to PAGA for any alleged violations by Defendant with respect to
11 work performed for F2Onsite during the PAGA Period, including claims for
12 PAGA civil penalties based on alleged violations of Labor Code §§ 201,
13 202, 203, 204, 221, 222, 223, 226, 226.2, 226.7, 510, 512, 516, 558, 1174,
14 1182.12, 1194, 1194.2, 1197, 1198, 1199, 2802 and 2804, California
15 Industrial Commission Wage Orders, and California Code of Regulations
16 Title 8 §§ 11040, 11000 et seq., and all claims for attorneys' fees and costs
17 and statutory interest in connection therewith, which arose from April 6,
18 2019 to February 21, 2021.” Amended Settlement, ¶ I.13.

19 ○ The “Released Parties” are “Defendant [F2Onsite] and its former, present
20 and future parent companies, subsidiaries (direct or indirect), divisions,
21 predecessors, related or affiliated companies, insurers, reinsurers,
22 successors, and assigns, and each of their current and former shareholders,
23 officers, directors, attorneys, and agents thereof, both individually and in
24 their business capacities, and each of their employee benefit plans and
25 programs and the trustees, administrators, fiduciaries, and insurers of such
26 plans and programs, both individually and in their business capacities.”
27 Amended Settlement, ¶ I.12.

- 1 ○ The Settlement “is expressly conditioned upon the Court entering judgment”
2 approving the settlement and retaining jurisdiction to enforce the settlement,
3 and provides that such “judgment will not release or bar any claims other
4 than the PAGA Released Claims as to Plaintiff and Aggrieved Employees.”
5 Amended Settlement, ¶ III.12.
- 6 • **Plaintiff’s General Release:** “Upon the Effective Date and the Gross Settlement
7 Amount being fully funded by Defendant, Plaintiff, individually and on behalf of
8 Plaintiff’s heirs, executors, administrators, representatives, attorneys, successors,
9 and assigns knowingly and voluntarily releases and forever discharges Defendant
10 and the Released Parties, to the full extent permitted by law, of and from any and
11 all claims, known and unknown, asserted and unasserted, which Plaintiff has or
12 may have against Defendant and the Released Parties as of the date of execution of
13 the settlement agreement. However, . . . Plaintiff’s general release does not include
14 any claims for or related to workers compensation, unemployment benefits, or any
15 other claims that cannot be released as a matter of law.” Amended Settlement, ¶
16 III.7.
- 17 • **Effective Date:** “[T]he date the Court enters an order approving the Settlement
18 and entering judgment thereon. Amended Settlement ¶ I.5.
- 19 • **Settlement Administration:** Phoenix will administer the settlement.
- 20 ○ **Identification of Aggrieved Employees:** After Defendant provides Phoenix
21 “information for Aggrieved Employees,” Phoenix will prepare and
22 “circulate to counsel for both Parties an anonymized spreadsheet containing
23 the estimated individual settlement payments to each Aggrieved Employee
24 and the data used to calculate said payments. The Settlement Administrator
25 shall obtain approval from all counsel of the calculations before mailing
26 Individual PAGA Payments.” Settlement, ¶ IV.2.
- 27 ▪ Once Aggrieved Employees are identified and the Settlement fully
28 funded, Phoenix “shall mail copies of the explanatory letter . . . along

1 with Individual PAGA Payments to all Aggrieved Employees via
2 regular First Class U.S. Mail.” Settlement, ¶ IV.3.

- 3 ■ Phoenix will also “distribute the following additional payments: (1)
4 the 75% share of the Net Settlement Amount to the LWDA; (2)
5 Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3)
6 Court-approved enhancement award to Plaintiff; and (4) Court-
7 approved administration costs to” Phoenix itself. Settlement, ¶ IV.5.

- 8 ○ **Tax Consequences:** PAGA payments to Aggrieved Employees “will be
9 attributed 100% as penalties and interest and paid via IRS Form 1099 issued
10 to each Aggrieved Employee.” The Settlement does not “make[] any
11 representations or warranties with respect to tax consequences of any
12 payment under this Settlement.” Settlement, ¶ IV.7.

- 13 • **Allocation and Calculation of the PAGA Penalties:** “25% of the Net Settlement
14 Amount shall be paid to Aggrieved Employees. This portion of the Net Settlement
15 Amount shall be paid to all Aggrieved Employees pro rata based on the
16 proportional number of pay periods worked by each Aggrieved Employee for
17 F2Onsite in California during the PAGA Period.” Settlement, ¶ III.5.
- 18 • **Uncashed Checks:** “Funds represented by checks returned as undeliverable after a
19 re-mailing, and funds represented by checks remaining un-cashed for more than
20 180 days after issuance, will be tendered to the State Controller's Office under the
21 unclaimed property fund laws in the names of the Aggrieved Employees to whom
22 the checks were issued.” Settlement, ¶ IV.4.
- 23 • **Notice to LWDA:** The Settlement provides that “Plaintiff's Counsel will notify
24 the LWDA of the settlement at the time the settlement is submitted to the court for
25 approval, seek approval of the settlement, and perform any and all statutory tasks
26 as required by law.” Plaintiff filed a proof of service showing that this Settlement
27 and Motion to Approve Settlement were served on the LWDA.

1 **V. THE SETTLEMENT IS APPROVED**

2
3 **A. The Gross Settlement Amount Is Reasonable**

4 The settlement was negotiated before mediator Jeffrey Krivis, Esq. on March 16,
5 2022. Haines Decl., ¶ 16. Ahead of that mediation, “F2Onsite provided Plaintiff with
6 extensive informal discovery” including “timekeeping and payroll records for Plaintiff and
7 all Aggrieved Employees during the PAGA Period, as well as all relevant policy
8 documents, and relevant data points necessary for a 1-year PAGA exposure analysis.”
9 Haines Decl., ¶ 15. “During mediation, the Parties vigorously debated Plaintiff’s ability to
10 proceed on a representative basis, the legal basis for Plaintiff’s claims and F2Onsite’s
11 defenses, the potential amount of civil penalties, and the Parties’ data analyses and
12 conclusions based thereon.” Haines Decl., ¶ 16. The parties were ultimately able to settle
13 the claims “[w]ith the assistance of Mr. Krivis,” a neutral. Haines Decl., ¶ 16.

14 Plaintiff argues the Gross Settlement Amount of \$65,000.00 is reasonable because it
15 is more than 96% of Plaintiff’s “maximum potential PAGA exposure of \$67,300 (673
16 ‘initial’ violations * 100),” which assumes “that Plaintiff could prove a violation in each
17 and every pay period.” Haines Decl., ¶ 24. While calculated as a “maximum,” this analysis
18 assumes PAGA penalties would not be “stacked.”

19 Plaintiff argues her actual recovery after litigation could be less than the Gross
20 Settlement Amount due to substantial disagreement over whether F2Onsite maintained
21 lawful policies concerning payment, meal and rest breaks, and reimbursement of business
22 expenses, F2Onsite’s denial of breaks and required payments, and the potential presence of
23 “highly individualized” issues of entitlement to compensation for “non-productive time,”
24 i.e., “time spent completing pre- and post-appointment tasks.” Motion, pp. 9-11. In
25 addition, she notes the penalties are discretionary and could be reduced if it is found the
26 employer acted in good faith.

27 The settlement amount, although not the conceivable “maximum,” appears fair and
28 reasonable in the circumstances.

1 **B. The Release Is Proper**

2 The Court deemed the prior release overbroad because the released claims included
3 under Labor Code §§ 210, 226.3, and 1197.1, but which were not referenced in Plaintiff's
4 notice to the LWDA. Haines Decl., Ex. 2 (letter to LWDA). The PAGA "requires the
5 employee to give written notice of the alleged Labor Code violation to both the employer
6 and the [LWDA], and the notice must describe facts and theories supporting the violation."
7 *Uribe v. Crown Building Maintenance Co.* (2021) 70 Cal.App.5th 986, 1003. The plaintiff
8 must notify the LWDA and employer "of the *specific provisions of this code alleged to*
9 *have been violated*, including the facts and theories to support the alleged violation." *Ibid.*,
10 emphasis added, quoting Labor Code sec. 2699.3, subd. (a)(1)(A). The amended PAGA
11 Release properly omits references to Labor Code §§ 210, 226.3, and 1197.1.

12 The PAGA Release also released claims against "Defendant and its former, present
13 and future parent companies, subsidiaries (direct or indirect), divisions, predecessors,
14 concepts, related or affiliated companies, insurers, reinsurers, successors, and assigns, and
15 each of their Employees...and agents thereof, both individually and in their business
16 capacities." Settlement, ¶ I.12. It was not clear what "concepts" were purportedly at issue
17 or whether "the 'employees' released include[d] the Aggrieved Employees," rendering the
18 release "vague and overly inclusive." March 21, 2023 Order, p. 12. References to
19 "concepts" and "employees" are omitted from the definition of "Released Parties" in the
20 Amended Settlement. Amended Settlement, ¶ I.12.

21
22 **C. Attorney's Fees Are Reasonable and Substantiated but Costs Are Not**

23 An aggrieved employee who prevails in a PAGA action may recover reasonable
24 attorney's fees and costs. Lab. Code, § 2699, subd. (g)(1). In class action settlements that
25 "establish[] a relief fund from which the attorney fee is to be drawn," courts employ one
26 of two methods to determine an appropriate fee award: the "percentage method [which]
27 calculates the [attorney] fee as a percentage share of a recovered common fund" or the
28 "lodestar method" which "calculates the fee 'by multiplying the number of hours

1 reasonably expended by counsel by a reasonable hourly rate.” *Laffitte v. Robert Half*
2 *Int’l, Inc.* (2016) 1 Cal.5th 480, 489.

3 The Supreme Court confirmed in *Laffitte* that “when class action litigation
4 establishes a monetary fund for the benefit of the class members, and the trial court in its
5 equitable powers awards class counsel a fee out of that fund, the court may determine the
6 amount of a reasonable fee by choosing an appropriate percentage of the fund created.”
7 *Id.* at 503. “The recognized advantages of the percentage method—including relative ease
8 of calculation, alignment of incentives between counsel and the class, a better
9 approximation of market conditions in a contingency case, and the encouragement it
10 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
11 litigation [citations]—convince us the percentage method is a valuable tool that should not
12 be denied our trial courts.” *Ibid.*

13 Although a PAGA action is a form of qui tam action, not a class action, the
14 Settlement creates a common fund for the benefit of the LWDA and aggrieved employees.
15 The percentage method is appropriate for calculation of a fee award. Plaintiff’s counsel
16 requests one-third of the Gross Settlement Amount (\$21,666.67) as attorney’s fees,
17 consistent with the “average” fee awards in class actions. In support, Plaintiff’s counsel
18 offers evidence that counsel rendered services in this case valued in excess of the fees
19 claimed. See Haines Decl., ¶¶ 26-27 (attorney Haines performed 25.2 hours of work at
20 \$675 hourly rate; attorney Korobkin performed 65.9 hours of work at \$650 hourly rate;
21 attorney Larsen performed 15.8 hours of work at \$550 hourly rate; attorney McIntosh
22 performed 60.1 hours of work at \$400 hourly rate; “Firm Paralegals” performed 20.5
23 hours of work at \$175 hourly rate for total fees of \$96,162.50).

24 It appears that some of this time was devoted to arbitration issues. That time was
25 not excluded from counsel’s “lodestar” analysis. Nonetheless, the requested amount is far
26 below the claimed lodestar and appears reasonable in the circumstances.

27 Plaintiff’s counsel also requests reimbursement of costs totaling \$4,404.08
28 “associated with the litigation of Plaintiff’s PAGA claim.” Supp. Haines Decl., ¶ 3. The

costs requested are not itemized. ^{retaining} Although Plaintiff's counsel ~~testifies~~ that these costs exclude "a \$150.00 charge for jury fees" and "\$429.97 charge for Westlaw," the previous summary of costs supplied did not reference jury fees and had a different number for Westlaw expenses (\$472.97). *Ibid.*; compare Haines Decl., ¶ 29 Ex. 3 (Expense Summary). Clarification ~~may be~~ ^{was} provided at oral argument. An updated expense summary ~~is needed.~~ *will be filed 6/26/23*

D. References to Enhancement Award Not Removed

Plaintiff states the Settlement Agreement was "revised . . . to remove reference to the \$5,000 enhancement payment." Supp. Brief p. 2. The Amended Settlement still states the Gross Settlement Amount includes "payment of Plaintiff's enhancement award" and that Phoenix will distribute a "Court-approved enhancement award to Plaintiff." Supp. Haines Decl., Ex. 1 (Amended Settlement, ¶ I.8, ¶ IV.5). This language is viewed as surplusage. No enhancement is awarded.

E. Settlement Administration Charges

Phoenix seeks approval of administration charges not exceeding \$2,000.00. Lawrence Decl., ¶ 17. The administration expenses are reasonable and approved.

F. Distribution of Net Settlement Amount to LWDA and Aggrieved Employees

1. Definition of "Aggrieved Employees" Is Corrected

The Settlement properly provides that 75% of the Net Settlement Amount will be distributed to the LWDA and 25% of the Net Settlement Amount distributed to Aggrieved Employees. However, the original Settlement defined "Aggrieved Employees" as "all current and former non-exempt employees who worked at least one pay period for F2Onsite in California at any time during the PAGA Period," a definition which was not limited to employees that suffered Labor Code violations during the PAGA Period.

1 Plaintiff confirms now that all 22 employees identified by the parties “suffered at least one
2 (1) Labor Code violation during the PAGA Period.” Supp. Brief, p. 3; see Supp. Haines
3 Decl., ¶ 4 (“There are approximately 22 Aggrieved Employees who suffered a Labor Code
4 violation during the [PAGA] period”).

5 6 **2. Administration Process Is Adequately Described**

7 The administration of the Settlement begins on the Effective Date, which is the “date
8 the Court enters an order granting approval of the Settlement, provided no appeal or motion
9 for reconsideration or other efforts to obtain review has been filed before said date,” or “the
10 date of final resolution of any such appeals or motions for reconsideration or review have
11 been finally concluded.”

12 “Within five (5) business days of the Effective Date, Defendant shall provide
13 [Phoenix] with information for Aggrieved Employees.” “Within seven (7) business days of
14 receiving the Aggrieved Employees' information from Defendant, [Phoenix] will circulate
15 to counsel for both parties an anonymized spreadsheet containing the estimated individual
16 settlement payments to each Aggrieved Employee and the data used to calculate said
17 payments.” “Upon receipt of the information for Aggrieved Employees, [Phoenix] will
18 perform a search on the National Change of Address database to update the Aggrieved
19 Employees' addresses.” “Within twenty-one (21) calendar days of the Settlement being fully
20 funded . . . [Phoenix] shall mail copies of the explanatory letter . . . along with Individual
21 PAGA Payments to all Aggrieved Employees via regular First Class U.S. Mail.” Moreover,
22 “[w]ithin twenty-one (21) calendar days of the Settlement being fully funded,” Phoenix will
23 distribute “(1) the 75% share of the Net Settlement Amount to the LWDA; (2) Court-
24 approved attorneys' fees and costs to Plaintiff's Counsel; (3) Court-approved enhancement
25 award to Plaintiff; and (4) Court-approved administration costs” to Phoenix.¹

26 The administration procedure is sufficiently set forth in the Settlement. The
27 Settlement provides for verification of employee addresses through the National Change of

28

1 As discussed above, the reference to the enhancement award must be removed.

1 Address Database. Moreover, Phoenix “shall exercise its best judgment to determine the
2 current mailing address for each Aggrieved Employee.” Phoenix has significant experience
3 in administering class settlements similarly requiring identification of class members’
4 addresses. See Lawrence Decl., ¶¶ 5, 7.

5 Lawrence testifies that Phoenix “maintains an errors and omissions insurance policy,
6 which includes a data breach provision” in the event any Aggrieved Employees’ information
7 is breached. Lawrence Decl., ¶ 13. Lawrence further testifies that Phoenix has a “procedure
8 in place to safeguard the data and funds to be entrusted to it,” indicating that Phoenix’s
9 “processing of confidential and personal information is handled and maintained within the
10 organization and therefore all data received is kept within a strict chain of custody
11 internally.” Lawrence Decl., ¶ 11.

12 Once addresses are initially verified through the National Change of Address
13 Database, Phoenix will distribute payments and an explanatory letter describing the
14 Settlement.

15 If any checks are “returned as non-deliverable on or before the check cashing
16 deadline,” Phoenix will either resend the checks “to the forwarding address affixed” or
17 “attempt to determine the correct address, using a skip-trace or other similar search, using
18 the name, address and/or Social Security number of the Aggrieved Employee and will
19 perform a single re-mailing if a new address is located.” See Lawrence Decl., ¶ 8.

20 Any funds from checks “returned as undeliverable after a re-mailing” or checks
21 “remaining un-cashed for more than 180 days after issuance” will escheat “to the State
22 Controller’s Office under the unclaimed property fund laws in the names of the Aggrieved
23 Employees to whom the checks were issued.” The Settlement provides that Phoenix,
24 Defendant, and Plaintiff are not responsible for the tax consequences of cashed checks;
25 payments will be “paid via IRS Form 1099 issued to each Aggrieved Employee” but the
26 Settlement does not “make[] any representations or warranties with respect to tax
27 consequences of any payment under this Settlement.” Settlement, ¶ IV.7.

1 **3. The Mechanism for Distribution Is Appropriate**

2 Phoenix will distribute an explanatory letter with the individual PAGA payments.
3 Plaintiff's first proposed explanatory letter was deemed inadequate because it failed to "fully
4 describe" the Settlement, including the parties released, the method for calculating
5 payments, and a "procedure for an employee to challenge that calculation." March 21, 2023
6 Order, p. 17.

7 Plaintiff offers an amended explanatory letter. Supp. Haines Decl., Ex. 1.A. The
8 amended letter explains that the parties "reached a settlement of Plaintiff's claims" that
9 provides for civil penalties to be paid in part to aggrieved employees. The letter explains to
10 the aggrieved employee that their "payment is based on the proportionate number of pay
11 periods you worked for F2Onsite in California from April 6, 2019 to February 21, 2021" and
12 states the number of pay periods attributed to the employee in F2OnSite's records. The letter
13 describes the released parties and claims consistent with the Amended Settlement.

14 There is no process to dispute miscalculated PAGA payments. Plaintiff argues a
15 dispute procedure would "(1) further delay the time for the Aggrieved Employees to receive
16 their check as there would necessarily need to be a waiting time period for employees to
17 dispute their workweeks and (2) cause Aggrieved Employees individual payments to further
18 decrease in order compensate for additional administration costs." Supp. Brief p. 4. Plaintiff
19 also emphasizes that aggrieved employees "do not have the right to opt out or object to
20 PAGA settlements," citing *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 79 and
21 *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476, 482. Supp. Brief, p. 3.

22 These arguments are persuasive. The court retains jurisdiction should there be any
23 dispute as to payment due an Aggrieved Employee.

24
25 **G. The Judgment Shall Provide for Dismissal**

26 The Settlement provides for entry of a judgment retaining jurisdiction to enforce the
27 Settlement under Code Civ. Proc., sec. 664.6. The proposed Judgment does not provide
28 for dismissal of the Action after the Settlement is approved. Plaintiff argues dismissal is

unnecessary and “requests that the Court set a further hearing for Plaintiff to file a declaration confirming the final distribution of funds after which the matter may be dismissed.” Supp. Brief pp. 4-5. That is, Plaintiff contends the action should not be dismissed until after “final distribution of the funds.”

The action does not need to remain pending until final distribution because the Settlement provides for retention of jurisdiction under Section 664.6. “[E]ven though a settlement may call for a case to be dismissed, or the plaintiff may dismiss the suit of its own accord, the court may nevertheless retain jurisdiction to enforce the terms of the settlement, until such time as all of its terms have been performed by the parties, if the parties have requested this specific retention of jurisdiction” pursuant to Section 664.6. *Sayta v. Chu* (2017) 17 Cal.App.5th 960, 966.

A judgment in the form submitted but including a date for a non-appearance review and a dismissal upon entry of the Judgment is appropriate and shall be filed by June __ 2023.

The Settlement indicates Plaintiff’s counsel will notify the LWDA of the Settlement (which has been done) and “perform any and all statutory tasks as required by law.” For clarity, this would include notifying the LWDA of entry of the judgment approving the Settlement and dismissing the action. Labor Code sec. 2699(1)(3) .

VI. CONCLUSION AND ORDER

Plaintiff’s motion to approve the PAGA settlement is GRANTED. A form of judgment shall be submitted by June 26 2023.

Low amended expense check / declaration

Dated: 6/22/23

Maren E. Nelson

MAREN E. NELSON
JUDGE OF THE SUPERIOR COURT