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Aggrieved Employees

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,

Plaintiff,

vs.

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

Defendants.

Case No. 20STCV29860

*[Assigned for all purposes to the Hon. Maren
Nelson, Dept. SSC-17]*

**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
AWARD**

Date: January 4, 2023
Time: 9:00 a.m.
Dept.: SSC-17

Complaint Filed: August 7, 2020
Trial Date: December 5, 2022

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

3 PLEASE TAKE NOTICE that on January 4, 2023, at 9:00 a.m., or as soon thereafter as
4 the matter may be heard in Department SSC-17 of the above-entitled Court, located at 312 North
5 Spring Street, Los Angeles, California 90012, Plaintiff Carmella Jones (“Plaintiff”), individually
6 and on behalf of the State of California and other Aggrieved Employees, will, and hereby does,
7 move this Court for entry of an Order as follows:

- 8 1. Granting approval, pursuant to California Labor Code § 2699(l), of the proposed
9 settlement of claims brought pursuant to the Private Attorneys General Act of 2004
10 (Cal. Labor Code § 2698, *et seq.*) and as set forth in the parties’ Settlement
11 Agreement, a true and correct copy of which is attached to the Declaration of Paul K.
12 Haines filed concurrently herewith;
- 13 2. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
- 14 3. Approving the proposed Explanatory Letter (attached as Exhibit A to the Settlement
15 Agreement), and directing that it be distributed to Aggrieved Employees pursuant to
16 the terms of the Settlement Agreement;
- 17 4. Directing the funding and distribution of the Gross Settlement Amount pursuant to
18 the terms of the Settlement Agreement;
- 19 5. Approving an award of attorneys’ fees to Plaintiff’s counsel of \$21,666.67 and an
20 award of litigation costs to Plaintiff’s counsel of \$4,982.05;
- 21 6. Approving an enhancement award to Plaintiff in the amount of \$5,000.00; and
- 22 7. Approving \$2,000.00 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 of Phoenix Settlement Administrators and all exhibits attached thereto; the declaration
4 of Plaintiff Carmella Jones; the Settlement Agreement; Plaintiff's Request for Judicial Notice
5 and all exhibits attached thereto; all other pleadings and papers on file in this action; and on any
6 further oral or documentary evidence or argument presented at the time of hearing.

7
8
9 Dated: August 30, 2022

Respectfully submitted,

HAINES LAW GROUP, APC

10
11 By:  _____

Paul K. Haines

Sean M. Blakely

Attorneys for Plaintiff
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I. INTRODUCTION

Plaintiff Carmella Jones (“Plaintiff”), an “aggrieved employee” under the Private Attorneys’ General Act of 2004 (“PAGA”), respectfully moves this Court for an Order granting approval of the Settlement Agreement (“Settlement”) with Defendant Prevail Resources, LLC dba F2Onsite (“Defendant” or “F2Onsite”) (collectively with Plaintiff, the “Parties”).¹ This PAGA representative action seeks civil penalties predicated on F2Onsite’s alleged failure to pay all overtime and minimum wages, alleged failure to provide compliant meal and rest periods, alleged failure to reimburse necessary business expenses, and alleged failure to issue accurate itemized wage statements from April 6, 2019 through February 21, 2021 (the “PAGA Period”).

The proposed Settlement, under which F2Onsite has agreed to pay a non-reversionary Gross Settlement Amount (“GSA”) of \$65,000.00, will resolve Plaintiff’s representative claim for civil penalties filed on behalf of the State of California and all “Aggrieved Employees,” which consists of 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.

Notably, the relief provided for under the Settlement, and the claims released thereunder, are *solely* for the payment of *civil penalties* under the PAGA, and not for any underlying Labor Code violations. The release also encompasses only PAGA civil penalties based upon the factual allegations and theories alleged by Plaintiff in this Action, and only for claims arising during the PAGA Period.

In deciding whether to grant approval of the Settlement, the primary issue is whether the Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the product of arm's-length negotiations; (2) was negotiated by attorneys experienced in wage-and-hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was

¹ The proposed Settlement Agreement is attached as **Exhibit 1** to the Declaration of Paul K. Haines filed herewith. The Explanatory Letter to Aggrieved Employees is attached as Exhibit A to the Settlement.

1 negotiated after undertaking sufficient discovery and investigation to evaluate the relative
2 strength and value of Plaintiff's PAGA claim and F2Onsite's defenses thereto; and (4) reflects a
3 reasoned compromise based on the relative strength and value of the PAGA claim, as well as the
4 risks, expenses, complexity and likely duration of further litigation.

5 As noted above, the Settlement provides for a GSA of \$65,000.00. After deducting
6 amounts for requested attorneys' fees (\$21,666.67), attorney costs (\$4,982.05), Plaintiff's
7 Enhancement Award (\$5,000.00), and administration costs (\$2,000.00), the Settlement provides
8 for distribution of a Net Settlement Amount ("NSA") of approximately \$31,351.28 be paid to
9 Aggrieved Employees and the California Labor & Workforce Development Agency ("LWDA").
10 Settlement, §§ III.4-5; *see also* Declaration of Paul K. Haines ("Haines Decl."), ¶ 30 & Exh. 3;
11 Declaration of Jodey Lawrence, ¶ 17 & Exh. B.

12 The NSA shall be distributed 75% (approximately \$23,513.46) to the LWDA, and 25%
13 (approximately \$7,837.82) to Aggrieved Employees, pursuant to the requirements of the PAGA
14 as codified in Lab. Code § 2699(i). *See* Settlement, § III.5. There are approximately 22 Aggrieved
15 Employees, resulting in average payments of approximately \$356.26 to each Aggrieved
16 Employee. *See* Settlement, § I.2; Haines Decl., ¶ 17.

17 The GSA of \$65,000.00 represents a positive result for the State of California and
18 Aggrieved Employees. Further litigation may have resulted in a smaller recovery or even no
19 recovery at all, based on the defenses asserted by F2Onsite and the significant ongoing litigation
20 risks. Moreover, the GSA is greater than other PAGA penalty awards that have been approved as
21 reasonable. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624
22 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-aside of \$5,000.00, or
23 \$7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013
24 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-aside of \$10,000.00,
25 or \$3.33 per employee). The amounts requested for attorneys' fees and costs, Enhancement
26 Award, and settlement administration costs are all fair, adequate, and reasonable. Thus, Plaintiff
27 respectfully requests that the Court enter the [Proposed] Judgment and Order submitted
28 concurrently herewith.

1 **II. SUMMARY OF THE LITIGATION**

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

3 F2Onsite provided on-demand technical support to individuals and businesses throughout
4 California up to February 21, 2021. Haines Decl., ¶ 11. On or about February 21, 2021, F2Onsite
5 ceased operating in California. *Id.* Plaintiff Carmella Jones (“Plaintiff”) worked for F2Onsite as
6 a “Field Technician” from approximately June 2019 to mid-August 2019. *See* Declaration of
7 Carmella Jones (“Jones Decl.”), ¶ 2.

8 Plaintiff’s PAGA claim is predicated on F2Onsite’s piece-rate compensation system,
9 which Plaintiff alleges failed to separately compensate employees for rest periods and “non-
10 productive time.” Plaintiff further contends that F2Onsite failed to pay all overtime wages owed,
11 provide all required and compliant meal periods, failed to reimburse necessary business expenses,
12 and failed to timely pay all final wages and provide complete and accurate itemized wage
13 statements.

14 **B. Relevant Procedural History**

15 On August 7, 2020, Plaintiff provided written notice to the LWDA and F2Onsite asserting
16 claims for civil penalties pursuant to PAGA stemming from alleged violations of various Labor
17 Code sections and her intent to file a civil lawsuit under the PAGA. *See* Haines Decl., ¶ 12 &
18 Exh. 2; *see also* Settlement Agreement, § II.2.

19 On August 7, 2020, Plaintiff filed a Class Action Complaint titled *Carmella Jones v.*
20 *Prevail Resources LLC, et al*, Los Angeles County Superior Court Case No. 21STCV29860.
21 Haines Decl., ¶ 13.

22 On October 14, 2020, after the prescribed 65-day waiting period under Labor Code §
23 2699.3(a)(2)(A), Plaintiff filed her operative First Amended Class Action and Representative
24 Action Complaint, adding a cause of action for civil penalties under the PAGA. *See* Haines Decl.,
25 ¶ 14; *see also* Settlement Agreement, §§ II.3-4.

26 On July 8, 2021, F2Onsite filed its Motion to Compel Arbitration and Request for Stay of
27 Plaintiff’s PAGA Action (“Motion to Compel”). Haines Decl., ¶ 14. On September 3, 2021, the
28 Court granted F2Onsite’s Motion to Compel and dismissed Plaintiff’s class claims, but denied

F2Onsite’s request to stay Plaintiff’s PAGA claim. *Id.*; see also Settlement Agreement, § II.5.

C. Pre-Mediation Discovery and Mediation

In connection with mediation, F2Onsite provided Plaintiff with extensive informal discovery. F2Onsite produced timekeeping and payroll records for Plaintiff and all Aggrieved Employees during the PAGA Period, as well as all relevant policy documents, and relevant data points necessary for a 1-year PAGA exposure analysis. Haines Decl., ¶ 15. This discovery allowed the Parties to evaluate the strength of Plaintiff’s claims and F2Onsite’s defense thereto. *Id.*

On March 16, 2022, the Parties attended a full-day mediation with mediator Jeffrey Krivis, Esq., a well-respected wage and hour mediator. Haines Decl., ¶ 15; Settlement, § I.7. During mediation, the Parties vigorously debated Plaintiff’s ability to proceed on a representative basis, the legal basis for Plaintiff’s claims and F2Onsite’s defenses, the potential amount of civil penalties, and the Parties’ data analyses and conclusions based thereon. Haines Decl., ¶ 16. With the assistance of Mr. Krivis, the Parties agreed to fully and finally resolve Plaintiff’s PAGA claim, and subsequently negotiated and finalized the Settlement now before the Court. *Id.*

III. SUMMARY OF THE SETTLEMENT

A. “Aggrieved Employees” Defined

Aggrieved Employees are defined 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.” See Settlement, § I.2. The PAGA Period is defined as the time period from April 6, 2019 through February 21, 2021. *Id.*, § I.11.

B. Monetary Terms

The Settlement provides for F2Onsite’s payment of a non-reversionary GSA of \$65,000.00. See Settlement, §§ I.8, III.2. After deducting requested attorneys’ fees, litigation costs, Plaintiff’s Enhancement Award, and settlement administration costs, the Settlement provides for the Net Settlement Amount (“NSA”) to be distributed 75% to the LWDA and 25% to Aggrieved Employees, per Labor Code § 2699(i). *Id.*, at §§ III.4-5. The Aggrieved Employees’ portion of the NSA is estimated to be \$7,837.82 and will be paid to all Aggrieved Employees *pro*

1 *rata* based on the proportional number of pay periods worked by each Aggrieved Employee for
2 F2Onsite in California during the PAGA Period. *See* Settlement, § III.5.

3 **1. Requested Attorneys’ Fees and Costs, Administration Costs, and**
4 **Plaintiff’s Enhancement Award**

5 Plaintiff’s Counsel requests one-third of the GSA (i.e., \$21,666.67) in attorneys’ fees, and
6 \$4,982.05 in litigation costs. *See* Settlement, §§ I.9, III.4(a); Haines Decl., ¶¶ 26, 30 & Exh. 3. As
7 discussed in detail below, a fee award of one-third of the GSA is fair, adequate, and reasonable
8 as a percentage of the fund and is in line with fee awards in other PAGA settlements.

9 The Parties have agreed to engage Phoenix Settlement Administrators (“Phoenix”) as the
10 third-party settlement administrator. *See* Settlement, § IV.1. Phoenix will update Aggrieved
11 Employees’ addresses using the National Change of Address database, calculate and distribute
12 Individual PAGA Payments, mail payments to all Aggrieved Employees together with the
13 Explanatory Letter, and perform other duties that are integral to the effectuation of the Settlement.
14 *Id.*, §§ IV.2-6. Plaintiff requests that the Court approve up to \$2,000.00 in administration costs to
15 Phoenix, which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.*,
16 at §§ I.9, III.4(c); *see also* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached
17 exhibits.

18 Finally, Plaintiff requests an Enhancement Award of \$5,000.00, in recognition of
19 Plaintiff’s contributions to this case and her efforts in bringing this case to successful resolution.
20 *See* Settlement, §§ I.9, III.4(b); Jones Decl., ¶¶ 3-5.

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

22 The NSA will be distributed 75% to the LWDA and 25% to Aggrieved Employees,
23 pursuant to Labor Code § 2699(i). *See* Settlement, § III.5. Based on the above requested
24 distributions, the NSA is estimated to be \$31,351.28, with \$23,513.46 paid to the LWDA and
25 \$7,837.82 distributed to Aggrieved Employees. Haines Decl., ¶ 17. As noted, there are
26 approximately 22 total Aggrieved Employees. *Id.* Thus, it is anticipated that overall, Aggrieved
27 Employees will receive average Settlement payments of approximately \$356.26. *Id.*

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1 **3. *Funding of the Settlement***

2 F2Onsite shall pay the Gross Settlement Amount to the Settlement Administrator within
3 thirty (30) calendar days of the Effective Date. *See* Settlement. § III.2. Within twenty-one (21)
4 calendar days after the Settlement has been fully funded, the Settlement Administrator shall mail
5 copies of the explanatory letter along with Individual PAGA Payments to all Aggrieved
6 Employees via regular First-Class U.S. Mail. *See* Settlement, § IV.3. Funds from any settlement
7 checks remaining uncashed after 180 days will be tendered to the California State Controller’s
8 Office for deposit in the Unclaimed Property Fund, in the name of the Aggrieved Employee. *See*
9 Settlement, § IV.4.

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 a PAGA settlement, the court is not concerned with 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.*, No. C-08-2073-MHP, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court 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 settlement – 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,² “[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

² “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; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482 (2020) (recognizing that “there is no mechanism for opting out of the judgment entered on the PAGA claim.”). 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 Fed. R. Civ. Proc. Rule 23(e) or Cal. Rule of Court 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).

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 a settlement providing for

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

a. The Strength of Plaintiff’s Case

Although she steadfastly maintains her claims are meritorious, Plaintiff acknowledges her position included real risks and uncertainty. Haines Decl., ¶¶ 18-23. Plaintiff argues that she and other Aggrieved Employees, who were paid on a piece-rate basis, but were not separately compensated for time spent completing pre- and post-appointment tasks (i.e., “non-productive” time). *Id.*, ¶ 18. As a result, Plaintiff alleges she and other Aggrieved Employees were not paid at least the minimum wage for all hours worked. *Id.* Plaintiff also argues that F2Onsite failed to pay Plaintiff and Aggrieved Employees at least minimum wage for all hours worked due to F2Onsite’s policy and practice of compensating its non-exempt employees at a set amount per appointment regardless of the amount of time required to complete each appointment. *Id.* F2Onsite argues that all work performed by piece-rate employees was directly related to the activities that were being compensated, and therefore, did not need to be separately compensated. *Id.* However, F2Onsite argues that its compensation policies/practice comply with California law and that it paid all wages owed to Aggrieved Employees throughout the PAGA Period. *Id.*, at ¶ 18. F2Onsite further argues that any questions of non-productive time would be highly individualized, as there are no records or other common evidence of time spent on

1 potentially non-productive tasks, thereby making it difficult for Plaintiff to proceed on a
2 representative basis. *Id.*

3 As for Plaintiff's unpaid overtime claim, Plaintiff alleges that she and other Aggrieved
4 Employees worked in excess of 8 hours per day and/or 40 hours per week and were not
5 compensated at one and one-half times their regular rate for all hours worked in excess of 8 hours
6 per day and/or 40 hours per week as a result of being compensated solely on a piece-rate basis as
7 described above. Haines Decl., ¶ 19. F2Onsite argues that Plaintiff and other Aggrieved
8 Employees worked very little if any overtime hours during the PAGA Period, and thus the claim
9 had limited value. *Id.*

10 As for Plaintiff's rest period claim, Plaintiff alleges that she and Aggrieved Employees
11 worked shifts in excess of 3.5 hours, and were not provided with a paid rest period for every 4-
12 hour period worked, or major fraction thereof, because F2Onsite's piece-rate compensation plan
13 failed to separately compensate Plaintiff and Aggrieved Employees for required rest periods at
14 the correct rate of pay. *See Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013) ("There is no
15 dispute that Safeway's activity-based compensation system did not separately compensate drivers
16 for their rest periods."). Haines Decl., ¶ 20. As a result, Plaintiff alleges she and other Aggrieved
17 Employees were not provided with compensated rest periods or rest periods compensated at the
18 correct rate of pay as required by Industrial Welfare Commission Wage Order 4, § 12(A). *Id.*
19 F2Onsite contends that it has always maintained lawful written rest period policies, including the
20 number, duration, and frequency of rest periods, and that they have always authorized and
21 permitted rest periods in accordance with those policies. *Id.*

22 With respect to Plaintiff's meal period claim, Plaintiff alleges that F2Onsite failed to
23 provide employees with all required meal periods, such that first meal periods often began after
24 five hours of work, and F2Onsite failed to provide second meal periods during shifts in excess of
25 10.0 hours. Haines Decl., ¶ 21. F2Onsite contends that it has always maintained compliant written
26 meal period policies, including provision of both first and second meal periods. *Id.* Furthermore,
27 F2Onsite asserts that any late or short meal periods was the result of employee choice rather than
28 any policy or practice of F2Onsite. *Id.* F2Onsite also contends that, it has always provided

employees with the *opportunity* to take second meal periods on shifts over 10.0 hours, but that employees choose to waive second meal periods, as they are entitled to do under Labor Code section 512(a). *Id.*

Plaintiff also alleged that F2Onsite failed to reimburse her and other Aggrieved Employees for the required use of their personal computers and equipment, vehicles, and personal cellular phones for daily work activities. Haines Decl. ¶ 22. F2Onsite argues that that it was rare, if ever, that Plaintiff and Aggrieved Employees were required to use their personal computers and equipment, vehicles, and personal cellular phones for business purposes. *Id.* F2Onsite also contends that any cellular phone expenses would be minimal due to the availability of low-cost cellular phone plans. *Id.*

F2Onsite further maintains that even if the Court awarded PAGA penalties for any of the alleged violations, the Court would substantially reduce the penalties based on the discretionary factors in Labor Code § 2699(e)(2) (authorizing reduction in PAGA penalties “if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”). Haines Decl., ¶ 23. Indeed, F2Onsite argues, many courts have reduced PAGA penalties drastically where, as here, the employer presented good-faith defenses and attempted to comply with the law. *Id.*; see, e.g., *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because “defendants took their obligations...seriously and attempted to comply with the law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%, in part because employer was “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

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

Although the Parties engaged in significant informal discovery prior to mediation, the Parties still had much written and deposition discovery to conduct if the case did not settle. Moreover, potential additional substantive motion work and trial preparation remained for the

Parties, as well as potential appeals. As a result, the Parties would likely incur considerably more attorneys' fees and costs through trial and possible appeal. The Settlement avoids those risks and the accompanying expense.

c. Amount Offered in Settlement Given Realistic Value of Claims

The proposed Settlement provides a fair and reasonable monetary recovery for the State of California and Aggrieved Employees in the face of hotly disputed claims, when compared with the potential realistic exposure. Based on data provided by F2Onsite, there were approximately 673 pay periods worked by the Aggrieved Employees during the PAGA Period. Haines Decl., ¶ 24; Settlement, § III.3.

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)), and assuming that Plaintiff could prove a violation in each and every pay period, Plaintiff estimated a **maximum** potential PAGA exposure of \$67,300 (673 "initial" violations * \$100). Haines Decl., ¶ 24. The proposed \$65,000.00 GSA thus represents approximately 96.6% of Plaintiff's maximum potential recovery, while avoiding the risks of proceeding through trial. *Id.* "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). Plaintiff acknowledges there was substantial uncertainty and risk as to her PAGA claim. Approval of the Settlement is appropriate, as the Settlement will provide tangible monetary relief to Aggrieved Employees and the State of California while avoiding the risks and costs of continued litigation and trial.

d. Discovery Completed and the Status of Proceedings

As discussed above, the Parties engaged in substantial informal discovery to evaluate the PAGA claim. Haines Decl., ¶ 15. F2Onsite provided Plaintiff with timekeeping and payroll records for *all* Aggrieved Employees, relevant policy documents, and relevant data necessary for a 1-year PAGA exposure analysis. *Id.* Only after the completion of this comprehensive discovery

process, and significant discussions about the likelihood of prevailing on the merits, did the Parties reach the proposed Settlement. Thus, this factor supports settlement approval. *Id.*, ¶ 16.

e. The Experience and Views of Counsel

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

B. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the Settlement Fund as Confirmed by a Lodestar Cross-Check

As the prevailing party in settlement, Plaintiff is entitled to recover attorneys’ fees and costs for her claims. *See* Labor Code § 2699(g) (providing for attorney fees and costs in PAGA actions); Cal. Code Civ. Proc. § 1021.5. 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*, 20 Cal.3d 25, 34 (1977) (“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*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties’ unjust enrichment); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993 (the percentage of the fund method for calculating attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it

encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. 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).

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. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.”).

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 \$96,162.50, resulting in a negative multiplier compared to the \$21,666.67 fee request. Haines Decl., ¶¶ 26-27. The billing rates used are reasonable in view of the evidence submitted herewith. *Id.*, Exh. 4 (2021-2022 Laffey Matrix).

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (17th Year Attorney)	\$675	25.2	\$17,010.00
Tuvia Korobkin (13th Year Attorney)	\$650	65.9	\$42,835.00
Neil M. Larsen (11th Year Attorney)	\$550	15.8	\$8,690.00
Alexandra R. McIntosh (6th Year Attorney)	\$400	60.1	\$24,040
Firm Paralegals	\$175	20.5	\$3,587.50
Total Lodestar			\$96,162.50

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, Plaintiff's counsel expended significant time
4 and resources in litigating this case, which resulted in an excellent 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 exceeds other PAGA awards approved by
9 California courts. *See, e.g., Aguirre v. DSW, Inc.*, 2012 WL 11875296, *3 (C.D. Cal. Nov. 29,
10 2012) (approving \$10,000 PAGA payment); *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575,
11 *7 (E.D. Cal. Oct. 31, 2012) (approving \$10,000 PAGA payment, finding it "comports with
12 settlement approval of PAGA awards in other cases. [Citations.]"); *Boyd v. Bank of Am. Corp.*,
13 2014 WL 6473804, *8 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Franco*
14 *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 Plaintiff's counsel conducted extensive research regarding the merits of Plaintiff's claims,
19 their ability to recover PAGA civil penalties, and F2Onsite's potential defenses. Haines Decl., ¶¶
20 15-16, 28. Counsel also opposed F2Onsite's Motion to Compel. *Id.* Counsel also conducted
21 significant analysis of data and information produced by F2Onsite, and used this data and analysis
22 to draft a comprehensive mediation brief and exposure analysis. *Id.* Counsel attended a full-day
23 mediation, and expended significant effort in preparing subsequent settlement documents, this
24 Motion and supporting documents, and will oversee the settlement administration process. *Id.*
25 Given the considerable potential for adverse outcomes in this case, the contingent risk borne by
26 Plaintiff's counsel was great. *Id.* The quality of Plaintiff's counsel's work, and the efficacy and
27 dedication with which it was performed, should be compensated.

28 Plaintiff's counsel has significant wage-and-hour class and representative action

1 experience and have been certified as class counsel in numerous wage and hour class actions.
2 Haines Decl., ¶¶ 3-9. Because it is reasonable to compensate counsel commensurate with their
3 skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is
4 reasonable. Other factors show the requested fee is reasonable. This case involved nuanced legal
5 issues, including the legality of F2Onsite’s piece-rate payment practices and obligations to
6 “provide” meal and rest periods, as well as the availability and amount of PAGA civil penalties
7 for the alleged Labor Code violations. Haines Decl., ¶ 25. F2Onsite was also represented by
8 experienced wage-and-hour litigation counsel. *Id.* Thus, Plaintiff submits the requested fee award
9 is fair, reasonable and adequate and should be approved.

10 **C. The Requested Litigation Costs and Settlement Administration Costs Are**
11 **Fair, Reasonable, and Adequate**

12 Plaintiff’s request for reimbursement of litigation costs of \$4,982.05 is also fair and
13 reasonable. All of Plaintiff’s litigation costs are reasonably incurred. *See* Haines Decl., ¶ 29 &
14 Exh. 3. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts.
15 *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover “those out-
16 of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*, 2011
17 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) (“costs of reproducing pleadings, motions and exhibits
18 are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees of*
19 *Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-
20 59 (9th Cir. 2006) (legal research costs reimbursable); *In re Immune Response Sec. Litig.*, 497
21 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
22 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

23 Likewise, the request for administration costs of up to \$2,000.00 is also fair and
24 reasonable. Phoenix was selected because it is an experienced settlement administrator and
25 returned a reasonable bid. *See* Declaration of Jodey Lawrence & Exhibits. Moreover, Phoenix
26 will perform several important functions that are integral to the implementation of the Settlement.
27 *Id.* Its modest requested fee is therefore reasonable.

28 ///

