

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Neil M. Larsen (SBN 276490)
nlarsen@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
and Aggrieved Employees

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

ARTEMIO RAMIREZ, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

HOBIE CAT COMPANY, a Missouri
Corporation; and DOES 1 through 100,

Defendants.

Case No. 37-2020-00032735-CU-OE-CTL

*[Assigned for all purposes to the Hon.
Richard S. Whitney; Dept. C-68]*

**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: October 8, 2021
Time: 10:30 a.m.
Dept.: C-68

Complaint Filed: September 17, 2020
Trial Date: None Set

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

PLEASE TAKE NOTICE that on October 8, 2021, at 10:30 a.m., or as soon thereafter as the matter may be heard in Department C-68 of the above-entitled Court, located at 330 West Broadway, San Diego, California 92101, Plaintiff Artemio Ramirez (“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 ILYM Group, Inc. 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 (\$96,666.67) in attorneys’ fees to Plaintiff’s Counsel;
6. Approving an award of litigation costs to Plaintiff’s Counsel in the amount of \$16,585.22;
7. Approving an award of \$5,000.00 as Plaintiff’s Enhancement Payment, and
8. Approving \$7,500.00 in administration costs to ILYM Group, Inc.

///

///

///

///

///

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 Sean Hartranft and all exhibits attached thereto; the declaration of
4 Plaintiff Artemio Ramirez; the Settlement Agreement; Plaintiff's Request for Judicial Notice and
5 all exhibits attached thereto; all other pleadings and papers on file in this action; and on any further
6 oral or documentary evidence or argument presented at the time of hearing.

7
8 Dated: June 8, 2021

HAINES LAW GROUP, APC

9
10 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff and Aggrieved
Employees

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. Brief Factual Background and Summary of Claims	2
B. Procedural History.....	3
C. Pre-Mediation Discovery and Mediation	4
III. SUMMARY OF THE SETTLEMENT	4
A. “Aggrieved Employees” Defined.....	4
B. Monetary Terms	4
1. Requested Attorneys’ Fees and Costs, Administration Costs, and Plaintiff’s Enhancement Payment.....	5
2. Payment to LWDA and Aggrieved Employees	5
3. Funding of the Settlement	5
IV. LEGAL ARGUMENT.....	6
A. Standards for Approval of a PAGA Settlement	6
1. Factors in Evaluating a Representative PAGA Settlement.....	8
a. The Strength of Plaintiff’s Case	9
b. Risk, Expense, Complexity, and Duration of Further Litigation.....	11
c. Amount Offered in Settlement Given Realistic Value of Claims	11
d. Discovery Completed and the Status of Proceedings	12
e. The Experience and Views of Counsel	13
B. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the Settlement Fund, as Cross-Checked Against Counsel’s Lodestar	13
C. The Requested Litigation Costs and Settlement Administration Costs Are Fair, Reasonable, and Adequate	17
D. The Court Should Approve Plaintiff’s Requested Enhancement Payment Because It Is Fair, Adequate, and Reasonable in View of Plaintiff’s Efforts and the Risks He Assumed in This Litigation	18

1 V. CONCLUSION 18

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Federal Cases

<i>Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.</i> , 455 F.2d 101 (7th Cir. 1972).....	8
<i>Harris v. Marhoefer</i> , 24 F.3d 16 (9th Cir. 1994).....	17
<i>In re Immune Response Securities Litig.</i> , 497 F.Supp.2d 1166 (S.D. Cal. 2007).....	17
<i>In re Pac. Enter. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995).....	13
<i>In re Rite Aid Corp. Sec. Litig.</i> , 396 F.3d 294 (3d Cir. 2005).....	14
<i>Linney v. Cellular Alaska P’ship</i> , 151 F.3d 1234 (9th Cir. 1998)	12
<i>Officers for Justice v. Civil Service Com.</i> , 688 F.2d 615 (9th Cir. 1982).....	6
<i>Rawlings v. Prudential-Bache Properties, Inc.</i> , 9 F.3d 513 (6th Cir. 1993)	14
<i>Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.</i> 460 F.3d 1253 (9th Cir. 2006)	17
<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294 (N.D. Cal. 1995).....	18
<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043 (9th Cir. 2002).....	16

State Cases

<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.</i> , 46 Cal. 4th 993 (2009)	7
<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	12
<i>Arias v. Sup. Ct.</i> , 46 Cal. 4th 969 (2009).....	8
<i>Bell v. Farmers Ins. Exch.</i> , 115 Cal.App.4th 715 (2004)	18
<i>Betancourt v. OS Rest. Svcs., LLC</i> , 49 Cal.App.5th 240 (2020).....	11
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018).....	11, 12
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008)	14, 15
<i>Clark v. Am. Residential Serv. LLC</i> , 175 Cal.App.4th 785 (2009).....	9
<i>Coalition for L. County Planning etc. Interest v. Bd. of Supervisors</i> 76 Cal.App.3d 241 (1977)	15
<i>Consumer Privacy Cases</i> , 175 Cal.App.4th 545 (2009).....	15
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	8

1		
2	<i>Iskanian v. CLS Transp. Los Angeles, LLC</i> , 59 Cal.4th 348 (2014).....	7
3	<i>Kao v. Joy Holiday</i> , 12 Cal.App.5th 947 (2017)	10
4	<i>Ketchum v. Moses</i> , 24 Cal.4th 1122 (2001).....	15
5	<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008).....	8, 9, 13
6	<i>Laffitte v. Robert Half Int’l, Inc.</i> , 1 Cal.5th 480 (2016).....	14, 15
7	<i>Maldonado v. Epsilon Plastics, Inc.</i> , 22 Cal.App.5th 1308 (2018)	11
8	<i>Mallick v. Sup. Ct.</i> , 89 Cal.App.3d 434 (1979).....	8
9	<i>Maria P. v. Riles</i> , 43 Cal.3d 1281 (1987)	13
10	<i>Naranjo v. Spectrum Security Servs., Inc.</i> , 40 Cal.App.5th 444 (2019)	10
11	<i>Serrano v. Priest</i> , 20 Cal.3d 25 (1977)	13, 15
12	<i>Serrano v. Unruh</i> , 32 Cal.3d 621(1982)	13
13	<i>Thayer v. Wells Fargo Bank</i> , 92 Cal.App.4th 819 (2001)	15
14	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i> , 203 Cal.App.4th 1112 (2012).....	11, 12
15	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001).....	8
16	<i>Westside Comty. for Independent Living, Inc. v. Obledo</i> , 33 Cal.3d 348 (1983)	13
17	<i>ZB, N.A. v. Sup. Ct.</i> , 8 Cal.5th 175 (2019).....	7
18		
19	<u>State Statutes and Rules</u>	
20	8 Cal. Code Regs. § 13520.....	10
21	Cal. Code Civ. Proc. § 1021.5	13
22	Labor Code § 512(a)	10
23	Labor Code § 2699(e)(2)	11
24	Labor Code § 2699(f).....	12
25	Labor Code § 2699(g).....	13
26	Labor Code § 2699(i).....	2, 4, 5
27	Labor Code § 2699(l).....	6
28	Labor Code § 2699.3.....	3

1	Labor Code § 2699.3(a)(2)(A).....	3
2		
3	<u>Unpublished Cases</u>	
4	<i>Aguirre v. DSW, Inc.</i>	
5	2012 WL 11875296 (C.D. Cal. Nov. 29, 2012).....	16
6	<i>Ashker v. Sayre</i>	
7	2011 WL 825713 (N.D. Cal. Mar. 7, 2011).....	17
8	<i>Boyd v. Bank of Am. Corp.</i>	
9	2014 WL 6473804 (C.D. Cal. Nov. 18, 2014).....	16
10	<i>Cabrera v. Advantage Sale & Marketing, LLC</i>	
11	Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013).....	2
12	<i>Casida v. Sears Holdings Corp.</i>	
13	2012 WL 253217 (E.D. Cal. Jan. 26, 2012)	6
14	<i>Chavez v. Saticoy Lemon Ass’n</i>	
15	2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)	14
16	<i>Chu v. Wells Fargo Inv., LLC</i>	
17	2011 WL 672645 (N.D. Cal. Feb. 16, 2011)	16
18	<i>Clavel v. Lupe’s Thousand Oaks Mexican Restaurant, Inc.</i>	
19	2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25, 2016)	14
20	<i>Fleming v. Covidien, Inc.</i>	
21	Case No. ED-CV-10-1487-RGK, 2011 WL 7563047 (C.D. Cal. Aug. 12, 2011)	11, 12
22	<i>Franco v. Ruiz Food Prods.</i>	
23	2012 WL 5941801 (E.D. Cal. Nov. 27, 2012).....	16
24	<i>Garcia v. Gordon Trucking, Inc.</i>	
25	2012 WL 5364575 (E.D. Cal. Oct. 31, 2012).....	16
26	<i>In re TD Ameritrade Account Holder Litig.</i>	
27	2011 WL 4079226 (N.D. Cal. Sept. 13, 2011)	6
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Mendez v. Tween Brands, Inc.
2010 WL 2650571 (E.D. Cal. Jul. 1, 2010) 6, 7

Ochoa-Hernandez v. Cjaders Foods, Inc.
2010 WL 1340777 (N.D. Cal. Apr. 2, 2010) 7

Penaloza v. PPG Industries Inc.
Case No. BC471369, 2013 WL 2917624 (Super. Ct. L.A. County, May 20, 2013) 2

Other Sources

Wage Order 1, § 3(c)(2)-(3) 9

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Artemio Ramirez (“Plaintiff”), an “Aggrieved Employee” under the Private
4 Attorneys General Act of 2004 (“PAGA”), respectfully moves this Court for an Order granting
5 approval of the Settlement Agreement (“Settlement”) with Defendant Hobie Cat Company
6 (“Defendant” or “Hobie Cat”).¹ This PAGA action seeks civil penalties predicated on Hobie Cat’s
7 alleged failure to pay all minimum and overtime wages, alleged failure to provide compliant meal
8 and rest periods, and alleged failure to pay all final wages and issue accurate itemized wage
9 statements. The proposed Settlement, under which Hobie Cat has agreed to pay a non-
10 reversionary Gross Settlement Amount of \$290,000.00, will resolve Plaintiff’s representative
11 claim filed on behalf of the State of California and the following “Aggrieved Employees:”

12 All current and former non-exempt employees who worked for Hobie Cat
13 in California at any time from April 6, 2019 through the date of the Court
Order granting approval of the PAGA Settlement. (“PAGA Period”).

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

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

25 As noted, the Settlement provides for a Gross Settlement Amount (“GSA”) of
26 \$290,000.00. *See* Settlement, §§ I.9; III.2. After deducting amounts for requested attorneys’ fees

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

(one-third of the GSA, \$96,666.67), litigation costs (\$16,585.22), Plaintiff's Enhancement Payment (\$5,000.00), and administration costs (\$7,500.00), the Settlement provides for distribution of a Net Settlement Amount ("NSA") of approximately \$164,248.11 to Aggrieved Employees and the California Labor & Workforce Development Agency ("LWDA"). *See* Settlement, §§ I.10; III.4-5.

The Net Settlement Amount shall be distributed 75% (approximately \$123,186.08) to the LWDA, and 25% (approximately \$41,062.03) to Aggrieved Employees, pursuant to the requirements of the PAGA as codified in Lab. Code § 2699(i). *See* Settlement, § III.5. There are approximately 217 Aggrieved Employees. *Id.*, § I.2. Thus, the average Individual PAGA Payment to Aggrieved Employees is estimated at \$189.22.

The GSA of \$290,000.00 represents a positive result for the State of California and Aggrieved Employees. Further litigation may have resulted in a smaller recovery or even no recovery at all, based on the defenses asserted by Hobie Cat and given the significant litigation risks involved. Moreover, the GSA is greater than other PAGA penalty awards approved as reasonable. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-aside of \$5,000, or \$7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-aside of \$10,000, or \$3.33 per employee). The amounts requested for attorneys' fees and costs, enhancement payment, and administration costs are all fair, adequate, and reasonable. Thus, Plaintiff respectfully requests that the Court enter the [Proposed] Judgment and Order submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION

A. Brief Factual Background and Summary of Claims

Hobie Cat manufactures and distributes a wide selection of watercraft, including kayaks, pedalboards, catamarans, stand-up paddleboards, and surfboards. Plaintiff worked for Hobie Cat as a non-exempt "Sails Loft" employee from approximately 1996 until approximately February 13, 2020. *See* Declaration of Artemio Ramirez ("Ramirez Decl."), ¶ 2.

Plaintiff's PAGA claim is predicated on Plaintiff's allegations that Hobie Cat owes unpaid

overtime wages due to instituting an improper Alternative Workweek Schedule (“AWS”), failed to to authorize and permit all legally required rest periods, failed to provide all required meal periods, and failed to timely pay final wages and provide complete and accurate wage statements.

B. Procedural History

On September 17, 2020, Plaintiff filed a class action complaint in San Diego Superior Court asserting multiple Labor Code claims against Hobie Cat on a class-wide basis. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 11. On September 24, 2020, Plaintiff sent a letter by certified mail to Hobie Cat, and online to the LWDA, describing Hobie Cat’s alleged Labor Code violations, as required by Labor Code § 2699.3. *Id.*, ¶ 12 & Exh. 2; *see also* Settlement, § I.1. On November 30, 2020, after the prescribed 65-day waiting period under Labor Code § 2699.3(a)(2)(A), Plaintiff filed a First Amended Complaint, which added a claim for PAGA civil penalties. Haines Decl., ¶ 13.

After the case was at issue, the Parties began an informal exchange of documents and information, and Defendant produced an arbitration agreement signed by Plaintiff that included a class action waiver. Haines Decl., ¶ 14; *see also* Settlement, § II.4. After Plaintiff’s counsel reviewed the arbitration agreement, Plaintiff’s counsel concluded that the arbitration agreement would likely be found by the Court to be enforceable, and the Court would likely require Plaintiff to dismiss his class and individual claims as a result. Haines Decl., ¶ 14. Based on this understanding, the Parties agreed to mediate Plaintiff’s PAGA claims, and as part of the Settlement Agreement, the Parties agreed to seek dismissal of Plaintiff’s class and individual claims without prejudice (leaving only the PAGA claim), and to seek permission from the Court for Plaintiff to file an amended Second Amended Representative Action Complaint alleging only the PAGA claim. Haines Decl., ¶ 14; *see also* Settlement, § III.7. On May 25, 2021, the Parties submitted a stipulation to dismiss Plaintiff’s individual and class claims without prejudice, and leave for Plaintiff to file a Second Amended Representative Action Complaint containing only a PAGA claim. Haines Decl., ¶ 14. On May 27, 2021, the Court granted the Parties’ stipulation and dismissed Plaintiff’s individual and class claims without prejudice. *Id.* On June 3, 2021, Plaintiff filed his Second Amended Representative Action Complaint. *Id.*

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

2 In connection with mediation, Hobie Cat provided Plaintiff with extensive informal
3 discovery. Hobie Cat produced timekeeping and payroll records for a 25% random sampling of
4 aggrieved employees during the PAGA Period; a spreadsheet containing hire dates, termination
5 dates, rates of pay, and other information for all aggrieved employees; and its employee handbook
6 and other written policies in effect during the PAGA Period. Haines Decl., ¶ 15; *see also*
7 Settlement, § II.4. Plaintiff retained an expert economist to assist him in analyzing and
8 extrapolating the timekeeping and other data produced by Hobie Cat, and to assist Plaintiff in
9 creating a comprehensive damages model. Haines Decl., ¶ 15.

10 The Parties attended mediation with Hon. Peter D. Lichtman (Ret.) on December 8, 2020.
11 Haines Decl., ¶ 16; *see also* Settlement, § II.5. During mediation, the Parties vigorously debated
12 Plaintiff's ability to proceed on a representative basis, the legal basis for Plaintiff's claims and
13 Hobie Cat's defenses, the potential amount of penalties, and the Parties' data analyses and
14 conclusions based thereon. *Id.* Ultimately, the Parties agreed in principle to resolve Plaintiff's
15 PAGA claims and the Parties memorialized their agreement in a Memorandum of Understanding.
16 *Id.* Over the following months, the Parties negotiated and finalized the Settlement Agreement. *Id.*

17 **III. SUMMARY OF THE SETTLEMENT**

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

19 Aggrieved Employees are defined as “all current and former non-exempt employees who
20 worked for Hobie Cat in California at any time during the PAGA Period.” *See* Settlement, § I.2.
21 The PAGA Period is defined as April 6, 2019 through the date of the Court Order granting
22 approval of the PAGA Settlement. *Id.*, § I.12.

23 **B. Monetary Terms**

24 As noted, the Settlement provides for Hobie Cat's payment of a non-reversionary GSA of
25 \$290,000.00. Settlement, §§ I.9; III.2. After deducting amounts for requested attorneys' fees,
26 litigation costs, Plaintiff's Enhancement Payment, and settlement administration costs, the
27 Settlement provides for the remaining Net Settlement Amount (“NSA”) to be distributed 75% to
28 the LWDA and 25% to Aggrieved Employees, pursuant to Lab. Code § 2699(i). *Id.* at §§ I.10;

1 III.5. The 25% portion to Aggrieved Employees shall be distributed based on each Aggrieved
2 Employee's proportional number of pay periods worked for Hobie Cat in California during the
3 PAGA Period. *Id.* at § III.5.

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

5 Plaintiff's Counsel requests one-third of the GSA (i.e., \$96,666.67) in attorneys' fees, and
6 \$16,585.22 in litigation costs. Settlement, § III.4(a). As discussed in detail below, a fee award of
7 one-third of the GSA is fair, adequate, and reasonable as a percentage of the fund and is in line
8 with fee awards in other PAGA settlements.

9 The Parties have agreed to engage ILYM Group, Inc. ("ILYM") as the third-party
10 settlement administrator. *See* Settlement, §§ I.4; IV.1. ILYM will update Aggrieved Employee
11 addresses using the National Change of Address database, calculate and distribute Individual
12 PAGA Payments, mail payments to all Aggrieved Employees together with the Explanatory
13 Letter, and perform other duties that are integral to the effectuation of the Settlement. *Id.*, at §§
14 IV.1-6. Plaintiff requests that the Court approve \$7,500.00 in administration costs to ILYM,
15 which will cover all costs incurred by ILYM in connection with the Settlement. *Id.* at §§ I.10;
16 III.4; *see also* Declaration of Sean Hartranft ("Hartranft Decl."), ¶¶ 4-5, Exh. B.

17 Finally, Plaintiff requests an enhancement payment of \$5,000, in recognition of Plaintiff's
18 contributions to this case and his efforts in bringing this case to successful resolution. *See* Ramirez
19 Decl., ¶¶ 6-8; *see also* Settlement, §§ I.10, III.4(b).

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

21 As stated, the NSA will be distributed 75% to the LWDA and 25% to Aggrieved
22 Employees, pursuant to Labor Code § 2699(i). Settlement, § III.5. Based on the above requested
23 distributions, the NSA is estimated to be \$164,248.11, with \$123,186.08 paid to the LWDA and
24 \$41,062.03 distributed to Aggrieved Employees. *Id.* at §§ I.10; III.4-5.

25 **3. Funding of the Settlement**

26 Hobie Cat will fund the settlement within thirty (30) days following a Court order
27 approving the Settlement. *See* Settlement, § III.2. Within twenty-one (21) calendar days after the
28 GSA has been fully funded, and after receiving approval from counsel of the payment

1 calculations, ILYM will mail the Explanatory Letter and Individual PAGA Payments to
2 Aggrieved Employees via First-Class U.S. Mail. *See* Settlement, § IV.3.

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

6 **IV. LEGAL ARGUMENT**

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

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

19 Although the PAGA statute does not set forth the criteria by which a PAGA settlement is
20 to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a
21 class action settlement. However, “a PAGA claim asserted on a non-class representative basis...is
22 not considered a class action but a law enforcement action, and therefore does not have to meet
23 the requirements of [a class action].” *Casida v. Sears Holdings Corp.*, 2012 WL 253217 at *3
24 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at *4 (E.D. Cal. Jul.
25 1, 2010) (“PAGA claims are law enforcement actions, not class actions”). A court’s review of a
26 PAGA settlement implicates the following unique features that render the approval process
27 distinct from approval of a class action settlement.

28 First, in evaluating the adequacy of the settlement, the court is not concerned with the

1 amount(s) received by “aggrieved employees,” but rather, must focus on the total settlement
2 amount in achieving PAGA’s objective. “The remedy sought in a PAGA suit consists of civil
3 penalties, not individual or class damages.” *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike
4 class actions, these civil penalties are not meant to compensate unnamed employees because the
5 action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*,
6 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court recently confirmed,
7 “PAGA claims are ‘representative’ actions in the sense that they are brought on the state’s behalf.
8 The employee...‘represents the same legal right and interest as’ those agencies — ‘namely,
9 recovery of civil penalties that otherwise would have been assessed and collected by the
10 [LWDA].’” *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian v. CLS Transp. Los*
11 *Angeles, LLC*, 59 Cal.4th 348, 380 (2014)).

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

19 Second, consistent with the fact that unnamed employees have no property interest in a
20 PAGA claim,² “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
21 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
22 1340777 at *5. This renders the approval process of a PAGA settlement distinct from a class
23 action settlement, as the Court need not employ the “two-step approval process” required for class
24 action settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

25 Finally, unlike a class action settlement under Rule 23(e) and Rule 3.769, the scope of
26

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 release in a PAGA settlement is limited to *civil penalties*. While “judgment in [a PAGA] action
2 is binding not only on the named employee plaintiff but also on government agencies and any
3 aggrieved employee not a party to the proceeding...the nonparty employees, because they were
4 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
5 judgment as to remedies other than civil penalties.” *Arias v. Sup. Ct.*, 46 Cal. 4th 969, 986-87
6 (2009). Thus, the scope of release in a PAGA settlement is strictly confined to PAGA penalties.

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

8 In deciding whether to approve a proposed settlement, a trial court has broad powers to
9 determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup.*
10 *Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to
11 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*,
12 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court
13 to consider include, but are not limited to:

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

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

24 Because settlements inherently involve compromise, even settlements providing for
25 substantially narrower relief than likely would be obtained if the suit were successfully litigated
26 can be reasonable because “the public interest may indeed be served by a voluntary settlement in
27 which each side gives ground in the interest of avoiding litigation.” *Wershba v. Apple Computer,*
28 *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)). In addition, courts review the discovery process and
information received through it to aid them in assessing whether the parties sufficiently developed
the claims and their supporting factual bases before reaching settlement. *Kullar v. Foot Locker*

1 *Retail, Inc.*, 168 Cal.App.4th 116, 129-31 (2008). Information is sufficient where it allows the
2 parties and the court to form “an understanding of the amount that is in controversy and the
3 realistic range of outcomes of the litigation.” *Clark v. Am. Residential Serv. LLC*, 175 Cal.App.4th
4 785, 801 (2009). This requirement exists so that the parties can provide the court with “a
5 meaningful and substantiated explanation of the manner in which the factual and legal issues have
6 been evaluated.” *Kullar, supra*, 168 Cal.App.4th at 132.

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

8 Although he steadfastly maintains his claims are meritorious, Plaintiff acknowledges his
9 position included real risks and uncertainty. For example, with respect to Plaintiff’s claim that
10 Hobie Cat failed to pay all overtime wages owed due to improperly implementing an Alternative
11 Workweek Schedule (“AWS”), Hobie Cat maintains that it substantially complied with the
12 requirements of Wage Order 1, § 3(c)(2)-(3)³ to adopt a valid AWS by distributing written
13 correspondence to Aggrieved Employees, and that a secret ballot election would be taking place
14 where each Aggrieved Employee would be able to vote in favor or against the proposed AWS.
15 Haines Decl., ¶ 18. Hobie Cat also contends that it complied with the Wage Order’s requirements
16 for adopting a valid AWS by holding meetings with some Aggrieved Employees either 13 or 14
17 days prior to the AWS election. *Id.* Hobie Cat further contends that more than two-thirds (2/3) of
18 Aggrieved Employees voted in favor of the proposed AWS, which they argue reflects their desire
to implement the AWS. *Id.*

19 As for Plaintiff’s rest period claim, Plaintiff alleged that Hobie Cat failed to authorize and
20 permit Plaintiff and Aggrieved Employees from taking all statutorily permitted rest periods during
21 their shifts. Haines Decl., ¶ 19. Hobie Cat contends that it has always maintained lawful written
22 rest period policies, including the number, duration, and frequency of rest periods, and that it has
23 always authorized and permitted rest periods in accordance with those policies. *Id.* Hobie Cat
24

25 ³ Pursuant to Wage Order 1, § 3(c)(3), “Prior to the secret ballot vote, any employer who proposed
26 to institute an alternative workweek schedule shall have made a disclosure in writing to the
27 affected employees, including the effects of the proposed arrangement on the employees’
28 wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at
least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative
workweek schedule...Failure to comply with this paragraph shall make the election null and
void.”

1 further contends that Plaintiff and other Aggrieved Employees often worked on their own without
2 direct supervision, and thus Hobie Cat contends that they had complete discretion regarding when
3 and how to take their rest breaks. *Id.*

4 With respect to Plaintiff's meal period claim, Plaintiff alleged that Hobie Cat failed to
5 provide employees with all required meal periods, such that first meal periods often began after
6 five hours of work, and Hobie Cat failed to provide second meal periods during shifts in excess
7 of 10.0 hours. Haines Decl., ¶ 20. Hobie Cat contends that it has always maintained compliant
8 written meal period policies, including provision of both first and second meal periods. *Id.*
9 Furthermore, Hobie Cat asserts that any late or short meal periods were the result of employee
10 choice rather than any policy or practice of Hobie Cat. *Id.* Hobie Cat also contends that, in
11 practice, it has always provided employees with the *opportunity* to take second meal periods on
12 shifts over 10.0 hours, but that employees choose to waive second meal periods, as they are
13 entitled to do under Labor Code section 512(a). *Id.* Hobie Cat further argues that it paid meal
14 period premiums during the PAGA Period, thereby demonstrating its commitment to ensuring
15 meal periods are provided, and paying the appropriate remedy when they are not. *Id.* Hobie Cat
16 also maintains that Plaintiff's meal period claim would not be manageable on a representative
17 basis, as individual inquiries would be required to establish which Aggrieved Employees
18 experienced non-compliant meal periods, how many non-compliant meal periods each Aggrieve
19 Employee experienced, and why a particular Aggrieved Employee had a non-compliant meal
20 period during a particular shift. *Id.*

21 As for Plaintiff's derivative claims that Hobie Cat violated its wage statement and final
22 payment obligations in violation of Labor Code §§ 226 and 203, respectively, Hobie Cat asserts
23 it has strong, good-faith defenses to Plaintiff's underlying claims, precluding a finding of a failure
24 to pay all final wages that would otherwise result in waiting time penalties. Haines Decl., ¶ 21;
25 *see also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude
26 imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017)
27 (holding "good faith dispute" precluded imposition of waiting time penalties). Hobie Cat further
28 contends Plaintiff's meal and rest period claims cannot support a claim for violations of Labor
Code §§ 226 or 203, as Courts of Appeal recently held in *Naranjo v. Spectrum Security Servs.*,

1 *Inc.*, 40 Cal.App.5th 444, 473-75 (2019) (review granted Jan. 2, 2020) and *Betancourt v. OS Rest.*
2 *Svcs., LLC*, 49 Cal.App.5th 240, 248 (2020) (review granted Aug. 19, 2020). Hobie Cat further
3 contends that wage statements always accurately reflected amounts paid to employees, and thus
4 Hobie Cat cannot be found liable for wage statement violations under *Maldonado v. Epsilon*
5 *Plastics, Inc.*, 22 Cal.App.5th 1308, 1336 (2018) (“The purpose of section 226 is to
6 document the *paid wages* to ensure the employee is fully informed regarding the calculation of
7 those wages.”) (italics in original). Haines Decl., ¶ 21.

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

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

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

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

28 This proposed Settlement provides a fair and reasonable monetary recovery for the

1 Aggrieved Employees in the face of hotly disputed claims. Plaintiff estimated Hobie Cat's
2 realistic exposure for PAGA civil penalties as follows:

3 Based on the above-described violations, Plaintiff asserts that he would be able to seek
4 PAGA penalties for each Aggrieved Employee for each pay period in the PAGA limitations
5 period. Haines Decl., ¶ 23. Based on data provided by Hobie Cat, there were approximately
6 13,970 pay periods during the PAGA limitations period. *Id.*; *see also* Settlement, § III.3.
7 Assuming an initial violation rate of \$100 per pay period under Labor Code § 2699(f) (*see Amaral*
8 *v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (holding "initial" violation rate applies
9 to PAGA penalties until employer is notified it violated Labor Code)), Plaintiff estimated a total
10 potential PAGA exposure of \$1,397,000.00. Haines Decl., ¶ 23. However, because the Court
11 maintains discretion to reduce these penalties, and in light of Hobie Cat's arguments and defenses
12 described above, Plaintiff discounted that figure by 40% for a risk of losing on the merits, and by
13 an additional 60% for risk of the Court reducing penalties, to arrive at a realistic exposure of
14 \$335,280. Haines Decl., ¶ 23; *see also, e.g., Thurman*, 203 Cal.App.4th at 1136 (affirming
15 reduction of PAGA penalties); *Fleming*, 2011 WL 7563047 at *5 (reducing PAGA penalties by
16 over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay
17 period).

18 The proposed \$290,000.00 GSA therefore represents approximately 86.5% of Plaintiff's
19 reasonably forecasted total recovery, while avoiding the risks of proceeding through trial. Haines
20 Decl., ¶ 23. "The fact that a proposed settlement may only amount to a fraction of the potential
21 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
22 should be disapproved." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).
23 Plaintiff acknowledges there was substantial uncertainty and risk as to his claims. Approval of
24 the Settlement is appropriate, as the Settlement will provide tangible monetary relief to Aggrieved
25 Employees and the State of California.

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

27 As noted, the parties engaged in substantial informal discovery required to evaluate the
28 value of Plaintiff's PAGA claim. Hobie Cat provided Plaintiff with timekeeping and payroll

1 records for a 25% random sampling of aggrieved employees during the PAGA Period; a
2 spreadsheet containing hire dates, termination dates, rates of pay, and other information for all
3 aggrieved employees; and its employee handbook and other written policies in effect during the
4 PAGA Period. Haines Decl., ¶ 15. Plaintiff hired an expert with a Ph.D. in economics to analyze
5 and extrapolate the data produced by Hobie Cat, and to assist Plaintiff in creating a damages
6 model. *Id.* Only after the completion of this comprehensive discovery, and significant
7 discussions about the likelihood of prevailing on the merits, did the Parties reach the proposed
8 Settlement. Thus, this factor supports settlement approval.

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

10 “Parties represented by competent counsel are better positioned than courts to produce a
11 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec.*
12 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel, who
13 believe this Settlement to be fair and adequate for all involved. Haines Decl., ¶¶ 3-9, 18-23;
14 Declaration of Sean M. Blakely (“Blakely Decl.”), ¶¶ 2-6. This factor strongly supports settlement
15 approval. *Kullar, supra*, 168 Cal.App.4th at 130 (“The court undoubtedly should give
16 considerable weight to the competency and integrity of counsel and the involvement of a neutral
17 mediator in assuring itself that a settlement agreement represents an arm’s length transaction
18 entered without self-dealing or other potential misconduct.”).

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

21 As the prevailing party in settlement, Plaintiff is entitled to recover attorneys’ fees and
22 costs for his claims. *See* Labor Code § 2699(g) (providing for attorney fees and costs in PAGA
23 actions); Cal. Code Civ. Proc. § 1021.5. A fee award is justified where the legal action has
24 produced its benefits by way of settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91
25 (1987); *Westside Comty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983);
26 *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when a number of persons are entitled in common to
27 a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation
28 or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”);
Serrano v. Unruh (1982) 32 Cal.3d 621, 627 (in awarding a fee from the common fund obtained

1 for the benefit of all parties, the trial court acts within its equitable power to prevent the other
2 parties’ unjust enrichment); *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d
3 513, 516 (the percentage of the fund method for calculating attorneys’ fees more accurately
4 reflects the results achieved for the putative class than the lodestar method and “establishes
5 reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it
6 encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Sec. Litig.*,
7 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in
8 common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards
9 counsel for success and penalizes it for failure.’”).

10 Fee awards of one-third of the settlement fund are routinely awarded in California courts
11 in class and representative PAGA actions. The California Supreme Court recently confirmed its
12 approval of the use of the “percentage of fund” method. *See Laffitte v. Robert Half Int’l, Inc.*, 1
13 Cal.5th 480, 506 (2016) (“the percentage of fund method survives in California class action
14 cases...”.) Specifically, the *Laffitte* Court held:

15 The recognized advantages of the percentage method—including relative
16 ease of calculation, alignment of incentives between counsel and the class, a
17 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.

18 *Id.*, at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-
19 third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also*
20 *Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)
21 (approving attorneys’ fees of one-third of settlement fund in PAGA settlement); *Clavel v. Lupe’s*
22 *Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25,
23 2016) (same). This is also consistent with Plaintiff’s counsel’s experience in similar wage-and-
24 hour class and PAGA matters. Haines Decl., ¶ 24. Here, Plaintiff’s fee request of one-third of the
25 GSA (estimated to be \$96,666.67) is fair and reasonable based on the percentage of the recovery
26 method, as confirmed by a lodestar cross-check.

27 In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the
28 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 \$116,921.50 without the use of any multiplier, resulting in a negative multiplier of approximately 0.83 compared to the \$96,666.67 fee request. Haines Decl., ¶ 25. 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
Tuvia Korobkin (12th Year Attorney)	\$595	40.8	\$24,276
Neil M. Larsen (10th Year Attorney)	\$550	30.3	\$16,665

Daniel B. Marin-Finn (5th Year Attorney)	\$425	39.4	\$16,745
Firm Paralegals	\$175	5.8	\$1,015
Total Lodestar			\$116,921.50

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

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

Counsel conducted extensive research regarding the merits of Plaintiff's claims, his ability to recover PAGA civil penalties, and Hobie Cat's potential defenses. Haines Decl., ¶¶ 15, 27. Counsel also conducted significant analysis of data and information produced by Hobie Cat, and used this data and analysis to draft a comprehensive mediation brief and exposure analysis. *Id.* Counsel attended a full-day mediation, and expended significant effort in preparing subsequent

1 settlement documents, this Motion and supporting documents, and will oversee the settlement
2 administration process. *Id.* Given the considerable potential for adverse outcomes in this case, the
3 contingent risk borne by Plaintiff's counsel was great. *Id.* The quality of Plaintiff's counsel's
4 work, and the efficacy and dedication with which it was performed, should be compensated.

5 Plaintiff's counsel have over two decades of combined wage-and-hour class and
6 representative action experience and have been certified as class counsel in numerous wage and
7 hour class actions. Haines Decl., ¶¶ 3-8, 26; Blakely Decl., ¶¶ 2-6. Because it is reasonable to
8 compensate counsel commensurate with their skill, reputation, and experience, a fee award of
9 one-third of the GSA is reasonable. Other factors show the requested fee is reasonable. This case
10 involved nuanced legal issues, including the legality of Hobie Cat's AWS, Hobie Cat's
11 obligations to "provide" meal periods and "authorize and permit" rest periods, as well as the
12 availability and amount of PAGA civil penalties for the alleged Labor Code violations. Haines
13 Decl., ¶¶ 18-23. Hobie Cat was also represented by experienced wage-and-hour litigation counsel.
14 *Id.* Thus, Plaintiff submits the requested fee award is fair, reasonable and adequate and should be
15 approved.

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

17 Plaintiff's request for reimbursement of litigation costs of \$16,585.22 is also fair and
18 reasonable. All of Plaintiff's litigation costs are documented and reasonably incurred. *See* Haines
19 Decl., ¶ 28 & Exh. 4. Moreover, the costs Plaintiff seeks are the types of costs routinely approved
20 by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
21 "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v.*
22 *Sayre*, 2011 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings, motions
23 and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable);
24 *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d
25 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response*
26 *Securities Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant
27 and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery
28 costs are reimbursable).

1 The request for administration costs of \$7,500.00 is also fair and reasonable. ILYM was selected
2 because it is an experienced settlement administrator, and because it returned a competitive bid.
3 *See* Settlement, § I.10, IV.4(c); *see also* Declaration of Sean Hartranft & Exhibits. Moreover,
4 ILYM will perform several important functions that are integral to the implementation of the
5 Settlement. Its modest requested fee is therefore reasonable.

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

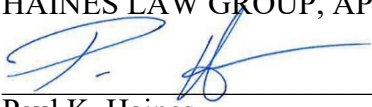
9 Courts routinely approve enhancement payments to compensate named plaintiffs for the
10 services they provide and the risks they incur during representative litigation. *See, e.g., Bell v.*
11 *Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named
12 plaintiffs);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

21 **V. CONCLUSION**

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

25 Dated: June 9, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

26 By: 

27 Paul K. Haines
28 Sean M. Blakely
Attorneys for Plaintiff and
Aggrieved Employees