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

BRITTNEY LEGASPI, as an individual and
on behalf of all others similarly situated,

Plaintiff,

v.

MERCEDES DIAZ HOMES, INC., a
California Corporation; MDH SPECIALIZED
CARE HOMES 1, a California Corporation;
MDH SPECIALIZED CARE HOMES 2, a
California Corporation; MDH SPECIALIZED
CARE HOMES 3, a California Corporation;
and DOES 1 through 100,

Defendants.

Lead Case No. 20STCV45683

*Consolidated with Case Nos. 21NWCV00493
and 21STCV20211*

*[Assigned for all purposes to the Hon. Richard
L. Fruin, Dept. 15]*

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

Date: September 28, 2022

Time: 9:15 a.m.

Dept.: 15

Reservation ID: 394490844032

Action Filed: November 30, 2020

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on September 28, 2022 at 9:15 a.m. at the Los Angeles
3 County Superior Court, located at 111 North Hill Street, Los Angeles, California 90012, Plaintiff
4 Brittney Legaspi (“Plaintiff”), individually and on behalf of other aggrieved employees, hereby
5 moves this Court for entry of an Order as follows:

- 6 1. Granting approval pursuant to Labor Code § 2699(l) of the proposed Settlement
7 Agreement of claims brought by Plaintiff pursuant to the Private Attorneys General
8 Act of 2004, California Labor Code § 2698 *et seq.*;
- 9 2. Appointing Rust Consulting, Inc. as the third-party Settlement Administrator, and
10 approving an award of \$5,679.00 in anticipated costs to Rust Consulting, Inc. for its
11 settlement administration services;
- 12 3. Approving as to form and content the proposed Notice of PAGA Settlement and
13 Release of Claims, and directing that it be distributed to the aggrieved employees
14 pursuant to the terms of the Settlement Agreement;
- 15 4. Directing the distribution of the Maximum Settlement Amount (\$415,000.00)
16 pursuant to the terms of the Settlement Agreement;
- 17 5. Approving an award of one-third of the Maximum Settlement Amount (\$138,333.33)
18 in attorneys’ fees to Haines Law Group, APC as Plaintiff’s counsel;
- 19 6. Approving an award of \$13,773.23 in actual litigation costs reimbursement to Haines
20 Law Group, APC;
- 21 7. Approving an enhancement award of \$5,000.00 to Plaintiff for her service to the
22 aggrieved employees and the State of California; and
- 23 8. Approving the payment of \$189,160.83 to the California Labor & Workforce
24 Development Agency for its share of PAGA civil penalties.

25 This Motion is based on this Notice, the attached Memorandum of Points and Authorities;
26 the declarations of Fletcher W. Schmidt, Brittney Legaspi, and Andrew Meyer of Rust
27 Consulting, and all exhibits attached thereto; the Settlement Agreement; all other pleadings and
28

1 papers on file in this action; and on any further oral or documentary evidence or argument
2 presented at the time of hearing.

3 Given the multiplicity of issues addressed herein, Plaintiff's memorandum of points and
4 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court
5 3.764(c)(2). As this Motion is unopposed by Defendants, Plaintiff respectfully requests that the
6 Court consider the entire Motion, which is 23 pages in length.

7
8 Dated: July 29, 2022

Respectfully Submitted,
HAINES LAW GROUP, APC

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10 By:



11 Fletcher W. Schmidt
12 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Brittney Legaspi (“Plaintiff”), an “aggrieved employee” under the Private
4 Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”), respectfully
5 moves this Court for an Order granting approval of the Settlement Agreement (“Settlement
6 Agreement” or “Settlement”)¹ with Defendants Mercedes Diaz Homes, Inc., MDH Specialized
7 Care Homes 1, MDH Specialized Care Homes 2, and MDH Specialized Care Homes 3
8 (collectively “Defendants”).² The proposed Settlement, under which Defendants have agreed to
9 pay a non-reversionary amount of \$415,000.00, will dispose of Plaintiff’s representative PAGA
10 claim filed on behalf of the State of California and all “aggrieved employees” as defined by Labor
11 Code § 2699(c). This PAGA action is predicated on allegations that Defendants failed to pay all
12 minimum and overtime wages, failed to authorize and permit all required rest periods, failed to
13 provide all required meal periods, and failed to reimburse employees for all business expenses,
14 in addition to derivative claims that as a result of the foregoing violations, Defendants failed to
15 issue accurate, itemized wage statements and failed to pay all final wages at termination. This
16 PAGA action seeks civil penalties for Defendant’s Labor Code violations on behalf of the
17 California Labor & Workforce Development Agency (“LWDA”) and all “aggrieved employees,”
18 defined as “all current and former non-exempt employees of Defendants in California at any time
19 from September 1, 2019 through April 27, 2022” (the time period from September 1, 2019
20 through April 27, 2022 is referred to herein as the “PAGA Period”). Notably, the relief provided
21 under the Settlement, and the claims released thereunder, are *solely* for the payment of civil
22 penalties under the PAGA. Based on the information provided by Defendants, the number of
23 aggrieved employees, including Plaintiff, is estimated to be approximately 414 individuals.

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25
26 ¹ The Settlement Agreement is attached as Exhibit 1 to the Declaration of Fletcher W. Schmidt (“Schmidt
27 Decl.”), filed concurrently with this Motion. The Notice of PAGA Settlement and Release of Claims
28 (“Notice”) is attached as Exhibit A to the Settlement Agreement.

² Concurrently with the filing of this motion, Plaintiff is providing notice of the proposed Settlement to the
LWDA by serving copies of this motion and all papers filed in support hereof on the LWDA.

1 In deciding whether to grant approval of the Settlement, the primary issue is whether the
2 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement
3 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it (1) is the
4 product of arm's-length negotiations, (2) was negotiated by attorneys experienced in California
5 wage-and-hour litigation with the assistance of an experienced, neutral mediator, (3) was
6 negotiated after the parties undertook sufficient investigation to evaluate the relative strength and
7 value of the PAGA claim, and (4) reflects a reasoned compromise based directly on the relative
8 strength and value of the PAGA claim, the risks, expense, complexity and likely duration of
9 further litigation, and the risks that further litigation could result in a lesser recovery.

10 Pursuant to the Settlement, Defendants will pay a Maximum Settlement Amount ("MSA")
11 of \$415,000.00 on a non-reversionary basis. *See* Settlement, §§ I.8 and II.2. After deducting
12 amounts for requested attorneys' fees (\$138,333.33), attorney costs (\$13,773.23), an
13 enhancement award for the named Plaintiff (\$5,000.00), and settlement administration costs
14 (\$5,679.00), the Settlement provides for distribution of **\$189,160.83** to the LWDA for its share
15 of the civil penalties pursuant to Labor Code § 2699(i), and **\$63,053.61** in civil penalties to the
16 aggrieved employees, an average of approximately \$150.00 per aggrieved employee. *Id.*, §§ I.10,
17 III.4 and 5.

18 In addition to the monetary component of the settlement, beginning in late 2020 and
19 continuing through 2021, during which time this lawsuit was filed, Defendants undertook a
20 comprehensive overhaul of their wage and hour policies and practices, including implementing a
21 new employee handbook, implementing revised meal and rest period policies, implementing
22 revised timekeeping practices, and issuing a "personal device policy" which provided a process
23 for requesting reimbursement for work-related cell phone use. Schmidt Decl., ¶ 17. This overhaul
24 was coupled with the creation of employee training materials to ensure that existing and new
25 employees were fully informed of their rights and understood how to use the new systems. *Id.* As
26 a result of these changes, Defendants contend that all of the violations alleged by Plaintiff had
27 been remedied by March 1, 2021, and in some cases earlier than that. *Id.*

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1 This Settlement represents a reasonable recovery for the State of California and aggrieved
2 employees when considering the limited release of only PAGA claims based on the factual
3 allegations in Plaintiff's operative complaint and prefiling LWDA letter. Of particular relevance
4 here is the fact that on June 15, 2022, less than two months after this Settlement was reached, the
5 United States Supreme Court issued its opinion in *Viking River Cruises, Inc. v. Moriana* ("Viking
6 River") where it overruled the California Supreme Court's holding in *Iskanian v. CLS*
7 *Transportation Los Angeles, LLC* which held that a representative PAGA claim could not be
8 compelled to arbitration. See *Viking River Cruises, Inc. v. Moriana* (June 15, 2022, No. 20-1573)
9 596 U.S. ____ [____ S.Ct. ____, 2022 WL 2135491; *Iskanian v. CLS Transportation Los Angeles,*
10 *LLC* (2014) 59 Cal.4th 348. In effect, the U.S. Supreme Court's ruling in *Viking River* means that
11 if this matter had not settled, Defendants would likely be able to compel this case (as well as the
12 two later-filed actions which were consolidated with this case) to individual arbitrations based on
13 the arbitration agreements signed by each Plaintiff, precluding any PAGA recovery whatsoever.
14 Therefore, this is a unique case where further litigation would almost certainly have resulted in a
15 smaller recovery, or even no recovery at all. Moreover, notwithstanding these risks, the MSA
16 results in individual payments that significantly exceed other PAGA penalty awards approved as
17 reasonable throughout California. See, e.g., *Penaloza v. PPG Industries Inc.*, Case No.
18 BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (average PAGA
19 penalties of \$7.49); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013
20 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (average PAGA penalties of \$3.33).
21 Further, the amounts requested for attorneys' fees and costs, Plaintiff's enhancement award, and
22 settlement administration costs are fair, adequate, and reasonable. In light of the foregoing, this
23 Court should enter the [Proposed] Judgment and Order submitted herewith.

24 **II. SUMMARY OF THE LITIGATION**

25 **A. The Parties**

26 Defendants operate a network of more than 30 residential care facilities for elderly and
27 developmentally disabled individuals, and also provide various non-residential care and support
28 services. Plaintiff worked for Defendants from approximately March 19, 2011 until her separation

1 on July 24, 2020. Declaration of Brittney Legaspi (“Legaspi Dec.”), ¶ 2. Plaintiff, like all
2 aggrieved employees, was subject to Defendants’ challenged wage and hour policies and
3 practices. *Id.*

4 **B. Procedural History**

5 On September 1, 2020, Plaintiff provided written notice of her intent to file a claim for
6 civil penalties under PAGA to the LWDA and Defendants. Schmidt Decl., ¶ 7; Exhibit 2. On
7 November 30, 2020, Plaintiff filed her representative action complaint, which was assigned to
8 this department. Schmidt Decl., ¶ 7. On December 3, 2020, Isabella Mauries (represented by
9 Andre Sherman of Sherman & Sherman, APC) submitted a written notice to the LWDA making
10 substantially similar allegations against Defendants and subsequently filed a representative action
11 complaint on May 28, 2021. *Id.* On May 26, 2021, Tania Marroquin (represented by Edwin
12 Aiwazian of Lawyers for Justice, PC) submitted her own written notice to the LWDA making
13 substantially similar allegations against Defendants and subsequently filed a representative action
14 complaint on July 29, 2021. *Id.* After finding that the three actions were related, this Court issued
15 a minute order consolidating the three actions for all purposes and designating the *Legaspi* action
16 as the lead case. *Id.*

17 Plaintiff and Defendants originally agreed to attend mediation on December 1, 2021,
18 although that mediation session subsequently had to be postponed due to delays in obtaining the
19 necessary data from Defendants, and was ultimately rescheduled for April 27, 2022 with
20 respected wage and hour mediator Francis “Tripper” Ortman. Schmidt Decl., ¶ 8. Mediation was
21 scheduled solely between Plaintiff Legaspi and Defendants given that Plaintiff Legaspi was the
22 first to provide notice to the LWDA and therefore carried the longest remedies period and fully
23 subsumed the two later-filed actions. *Id.* Furthermore, Plaintiff Legaspi’s counsel was
24 uncomfortable working in any kind of cooperative or collaborative capacity with counsel for
25 either Mauries or Marroquin, for the reasons set forth in Plaintiff’s Legaspi’s Motion for
26 Appointment of Lead Counsel, which was filed on April 28, 2022, and which detailed significant
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1 and widespread evidence of unethical conduct and incompetence by counsel for Mauries and
2 Marroquin.³

3 In advance of mediation, Defendants provided Plaintiff with a 10% sampling of the
4 aggrieved employees' timekeeping and payroll data, in addition to producing all of the relevant
5 written policies at issue and various data points pertaining to the aggrieved employees (including
6 the total aggregate number of pay periods worked during the PAGA period). Schmidt Decl., ¶ 9.
7 Plaintiff retained an expert with a Ph.D. in labor economics who completed a comprehensive
8 analysis of the payroll and timekeeping data to assist Plaintiff's counsel in preparing an exposure
9 model for the claims at issue. *Id.* On April 27, 2022, the parties attended a full-day mediation
10 session where the parties debated the legal bases for their claims and defenses and their respective
11 data analyses. *Id.* At the conclusion of mediation, the parties were able to reach a resolution of
12 Plaintiff's PAGA claim and executed a binding memorandum of understanding. *Id.* Over the
13 following months, the parties negotiated the final terms of the proposed Settlement now before
14 this Court for approval. *Id.*

15 **C. Plaintiff's Claims and Defendant's Defenses**

16 Plaintiff alleges that Defendants maintained an unlawful written rest period policy which
17 required employees to remain on company premises and supervise residents during rest periods.
18 Schmidt Decl., ¶ 10. By prohibiting their non-exempt employees from leaving the work premises
19 and by requiring employees to supervise residents during their rest periods, Plaintiff contends that
20 Defendants failed to relinquish control over employees in violation of California law. *See*
21 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 ("[O]ne cannot square the
22 practice of compelling employees to remain at the ready, tethered by time and policy to particular
23 locations or communications devices, with the requirement to relieve employees of all work duties
24 and employer control during 10-minute rest periods."). Defendants counter that Section 12(C) of
25 Wage Order 5 provides an exception to the California rest period rules for employees of

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27 ³ At the hearing on Plaintiff's Motion to Appoint Lead Counsel, which took place on May 24,
28 2022, the Court declined to rule on the motion in light of the settlement which had been reached
by Plaintiff Legaspi and Defendants, reasoning that if the settlement were approved by the
Court, it would moot the need to appoint lead counsel. Schmidt Decl. ¶ 8.

1 residential care facilities who are in “sole charge of residents,” which Defendants argue would
2 apply to most, if not all, of their employees. Schmidt Decl., ¶ 10. Defendants also produced a
3 revised rest period policy which was issued in February 2021 which expressly permitted
4 employees to leave company premises during rest periods subject to limited exceptions in
5 compliance with Wage Order 5, arguing that any alleged liability for this theory would be cut off
6 as of that date. *Id.*

7 Plaintiff alleges that Defendants failed to provide Plaintiff and other non-exempt
8 employees with all lawful meal periods to which they were entitled. Schmidt Decl., ¶ 11.
9 Specifically, Plaintiff alleges that Defendants’ written meal period policy required employees to
10 remain on duty during meal periods, which is only permitted in limited circumstances where the
11 nature of the work prevents an employee from being relieved of duties. *See* Wage Order 5, §
12 11(A). Plaintiff’s expert’s analysis of the timekeeping records however showed that employees
13 clocked out for meal periods approximately half of the time, which Plaintiff argues undercuts the
14 argument that the nature of the work prevents employees from being relieved of duty for meal
15 periods. Schmidt Decl., ¶ 11. Furthermore, Plaintiff argues that Defendants had a duty to record
16 the beginning and ending of even on-duty meals to show that they were timely and at least 30-
17 minutes in duration. *See L’Chaim House, Inc. v. Department of Industrial Relations* (2019) 38
18 Cal.App.5th 141. Defendants contend that the applicability of Section 11(A) of Wage Order 5
19 would need to be analyzed on a case-by-case basis, and the fact that some employees were able
20 to take duty-free meal periods on certain shifts does not mean that other shifts could not qualify
21 for on-duty meal periods. Schmidt Decl., ¶ 11. Additionally, Defendants produced revised meal
22 period and timekeeping policies which were issued in February 2021 that differentiated between
23 employees of residential care facilities in charge of supervising residents (who would receive on-
24 duty meal periods) and non-residential employees (who would receive duty-free meal periods)
25 and created a system for recording on-duty meal periods in the timekeeping records. *Id.*

26 Plaintiff also alleges that employees frequently had to use their personal cell phones for
27 work-related purposes such as communicating with supervisors and doctors, but that Defendants
28 maintained no mechanism for reimbursing employees for these expenses. Schmidt Decl., ¶ 12.

Defendants argue in response that Plaintiff could not show that her cell phone usage was “necessary” rather than merely for her own convenience, as there were other methods of contacting supervisors and doctors, such as land line phones in the homes. *Id.* Defendants also produced a “Personal Device Policy” that was issued in January 2021 which provided a process for employees to request and receive reimbursement for work-related personal cell phone use. *Id.*

Lastly, Plaintiff alleges that Defendants failed to accurately capture all hours worked by employees due to situations when employees would begin their shifts outside of the facilities, such as when an employee needed to pick residents up from daytime activities.⁴ Schmidt Decl., ¶ 13. In such instances, Plaintiff alleges that the practice was to call a supervisor to have the supervisor clock the employee in remotely, but that supervisors would frequently forget or fail to do so. *Id.* Defendants argue that these situations were extremely rare, and that there would be no manageable method of identifying any supposed violations under this theory. *Id.*

As a result of Defendant’s failures to pay all meal and rest period premiums, and wages for all hours worked, Plaintiff alleges derivative PAGA claims for failure to issue accurate and itemized wage statements and failure to pay all wages owed at separation. *See* Labor Code §§ 226(a), 201-203; Schmidt Decl., ¶ 15. In response, Defendants argue that Plaintiff’s underlying claims will fail and, as a result, the derivative claims will also fail. *See Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendants also maintain that any “derivative” PAGA claims for violations of Labor Code Sections 226 or 203 would be entirely duplicative and would be unlikely to be awarded in any significant manner by a Court. Given their good faith defenses and prompt remedial measures, Defendants argue that this Court would exercise its discretion to substantially reduce any PAGA penalties awarded. *See* Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corporation* (2018) 30

⁴ Plaintiff also alleged that Defendants were rounding employees’ hours in an uneven manner, but Plaintiff’s expert’s analysis of the timekeeping records confirmed that the rounding of time entries had been completely discontinued prior to the beginning of the PAGA period. Schmidt Decl., ¶ 14.

Cal.App.5th 504 (affirming trial court’s reduction of PAGA penalties to 10% of calculated exposure after bench trial).

III. THE PROPOSED SETTLEMENT

A. “Aggrieved Employees” Defined

Aggrieved employees are defined as, “all current and former non-exempt employees of Defendants in California at any time from September 1, 2019 through April 27, 2022.” *See* Settlement, § I.2.

B. Essential Terms of the Settlement

Defendants will pay a MSA of \$415,000.00. Settlement, §§ I.8, II.2. After deducting amounts for requested attorneys’ fees and costs, Plaintiff’s enhancement award, and settlement administration costs, the remaining Net Settlement Amount (“NSA”) distributable to the aggrieved employees and the LWDA is estimated to be \$252,214.44. *See* Settlement, §§ I.9, II.4.

The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	\$415,000.00
Minus Court-approved attorneys’ fees (1/3):	\$138,333.33
Minus Court-approved attorneys’ costs:	\$13,773.23
Minus Court-approved enhancement awards:	\$5,000.00
Minus settlement administrator costs:	\$5,679.00
Net Settlement Amount:	\$252,214.44
Minus LWDA’s 75% Share:	\$189,160.83
Total Paid to Aggrieved Employees:	\$63,053.61

1. Attorneys’ Fees and Costs

Plaintiff’s counsel requests one-third of the MSA (\$138,333.33) in attorneys’ fees, and \$13,773.23 in actual litigation costs. *See* Schmidt Decl., ¶ 25 and Exhibit 4.

2. Settlement Administration Costs

The parties agree to engage Rust Consulting, Inc. (“Rust”) as the third-party settlement administrator. *See* Settlement, §§ I.16, III.1. Rust shall be responsible for translating the Notice into Spanish,⁵ calculating the settlement checks, and mailing the settlement checks and Notice to the aggrieved employees, among other duties. *Id.*, § III. Rust estimates incurring \$5,679.00 in

⁵ Based on Defendants’ employees’ demographics, Notices will be sent out in English and Spanish.

costs in connection with the administration of this settlement. *See* Declaration of Andrew Meyer (“Meyer Decl.”), Exhibit A.

3. Plaintiff’s Enhancement Award

Plaintiff also requests an enhancement award of \$5,000.00 in recognition of her efforts to initiate this case, her contributions to the prosecution of this case, and her efforts in bringing this case to a successful resolution. Settlement, § II.4.b; Legaspi Decl., ¶¶ 3-4.

4. Payment to the LWDA and Aggrieved Employees

From the NSA, 75% (\$189,160.83) will be distributed to the LWDA, and 25% (\$63,053.61) will be distributed to the aggrieved employees. Settlement, § II.5; *see also* Labor Code § 2699(i) (“[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the [LWDA]...and 25 percent to the aggrieved employees.”). 100% of the individual payments to the aggrieved employees will be reported using IRS Forms 1099-MISC, since all funds received under Section 2699 are civil penalties that do not trigger payroll taxes or withholdings. *See* Settlement, § III.7. Individual Settlement Payments shall be apportioned based on the proportionate number of pay periods worked during the PAGA Period, by multiplying the Net Settlement Amount by a fraction, the numerator of which is the aggrieved employees’ total pay periods worked during the PAGA Period, and the denominator of which is the total number of pay periods worked by all aggrieved employees during the PAGA Period. *Id.*, § II.5. There are approximately 14,579 aggregate pay periods worked by the estimated 414 aggrieved employees during the PAGA Period. Settlement, § II.3. Therefore, average recovery is estimated at approximately \$150.00, and each workweek is worth approximately \$4.32. This means that the lowest possible recovery, should an aggrieved employee have been employed for only a single pay period during the PAGA Period, is approximately \$4.32, while the highest possible recovery, should an aggrieved employee have worked throughout the entirety of the PAGA Period (approximately 70 bi-weekly pay periods), is approximately \$300.00.

5. Funding of the Settlement

Defendants will fund the entire Maximum Settlement Amount within thirty (30) calendar days after the date upon which the Court signs an Order approving the Settlement, assuming there

are no objections or appeals (the “Effective Date”). Settlement, §§ I.5, II.2. Within five (5) business days after the Effective Date, Defendants will provide Rust with a list of the aggrieved employees’ full name, last known mailing address, last known telephone number, pay period information, and Social Security numbers. *Id.* § III.2. Within ten (10) business days thereafter, Rust will circulate to counsel for both parties an anonymized spreadsheet containing the Individual Settlement Payments and the data used to calculate said payments. *Id.* Within five (5) business days after Plaintiff’s and Defendants’ counsel approve the information contained in the anonymized spreadsheet, Rust will perform a search on the National Change of Address database to update the aggrieved employees’ addresses. *Id.*, § III.3. No later than twenty-one (21) calendar days after Defendants have deposited the MSA, Rust will mail the Individual Settlement Payments to the aggrieved employees with the Notice, in English and Spanish, via First-Class U.S. Mail. *Id.*, § III.3.

IV. **ARGUMENT**

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

The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699(1) (stating, the “court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.”). The Court must be mindful that “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further.” *In re TD Ameritrade Account Holder Litig.*, Case Nos. C 07-2852 SBA, C 07-4903 SBA, 2011 WL 4079226, *9 (N.D. Cal. Sept. 13, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes,’” as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir., 1982). As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits,” or “judged against a hypothetical or speculative measure of what might have been achieved.” *Id.*

Although the operative PAGA statute does not set forth the criteria by which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement. However, “a PAGA claim asserted on a non-class representative basis...is not considered a class action but a law enforcement action, and therefore

1 does not have to meet the requirements of [a class action].” *See Casida v. Sears Holdings Corp.*,
2 2012 WL 253217 at *3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL
3 2650571 at *4 (E.D. Cal. Jul. 1, 2010). A court’s review of a PAGA settlement necessarily
4 implicates the following unique features that render the approval process distinct from approval
5 of a class action settlement under C.C.P. § 382 and C.R.C. Rule 3.769.

6 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
7 concerned with the amount(s) that “aggrieved employees” are to receive, but rather, must focus
8 on the total settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a
9 PAGA suit consists of civil penalties, not individual or class damages,” and while a “[PAGA]
10 action is ... designed to protect the public and penalize the employer for past illegal conduct,” a
11 reviewing Court must be mindful of the fact that settlement of a PAGA claim involves a
12 compromise. *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties
13 are not meant to compensate unnamed employees because the action is fundamentally a law
14 enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at *4 (N.D.
15 Cal. Apr. 2, 2010). The Court must not lose sight of the fact that “[u]nlike a class action seeking
16 damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private
17 parties to recover civil penalties for the government that otherwise may not have been assessed
18 and collected by overburdened state enforcement agencies.” *Id.*

19 Second, consistent with the fact that unnamed employees have no property interest in a
20 PAGA claim,⁶ “[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 there is no need for the Court to employ the “two-step approval process”
24
25

26 _____
27 ⁶ As held by the California Supreme Court, “[PAGA] does not create property rights or any other
28 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.” *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46 Cal.4th 993, 1003.

1 required under F.R.C.P. Rule 23 (“Rule 23”) and C.R.C. Rule 3.769 (“Rule 3.769”).⁷

2 Finally, unlike class action settlements under Rule 23(e) and Rule 3.769, the scope of
3 release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is
4 binding not only on the named employee Plaintiffs but also on government agencies and any
5 aggrieved employee not a party to the proceeding...the non-party employees, because they were
6 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
7 judgment as to remedies other than civil penalties.” *See Arias v. Sup. Ct.* (2009) 46 Cal.4th 969,
8 986-87. Thus, the scope of a release in a PAGA settlement is confined to the PAGA penalties
9 alleged in the complaint (or the prefiling letters to the LWDA) and to the claims that were, or
10 could have been, alleged pursuant to PAGA based on the factual allegations in the complaint.⁸ In
11 the case at hand, as the only claims at issue are PAGA claims, those will be the only claims
12 extinguished because of this Settlement.

13 **B. This Court Should Approve the Settlement Because It Is a Fair, Adequate,**
14 **and Reasonable Compromise of Disputed Claims**

15 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v.*
16 *Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class and
17 representative PAGA settlements involve a court approval process that exists to prevent fraud,
18 collusion, and unfairness to absent individuals. *See Malibu Outrigger Bd. of Governors v.*
19 *Superior Court* (1980) 103 Cal.App.3d 573, 578-79. California law generally follows the same
20 standards applicable under Rule 23. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
21 1998) (stating that Rule 23(e) requires the trial court to determine “whether a proposed settlement

22 ⁷ The “two-step” approval process of Rule 23(e) is required to facilitate “notice” to absent class members,
23 as Rule 23(e) expressly requires notice and an opportunity for absent class members to exclude themselves
24 or object. *See Fed. R. Civ. Proc. R. 23(e)*. Rule 3.769 contains similar rules for State court class actions.

25 ⁸ This is contrasted with the much broader release permitted in a class action context, which may release
26 all underlying Labor Code violations based on “any matter or fact” alleged in the complaint. *See In re*
27 *Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981) (“The weight of authority
28 establishes that ... a court may release not only those claims alleged in the complaint and before the court,
but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set
forth or referred to in’ the complaint.”); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir., 2010) (“we
have held that federal district courts properly released claims not alleged in the underlying complaint where
those claims depended on the same set of facts as the claims that gave rise to the settlement.”).

is fundamentally fair, adequate, and reasonable”). To be approved, a settlement must be “fair, reasonable and adequate to all concerned.” *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337. Settlement is the preferred means of dispute resolution, particularly in complex representative litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product of fraud or collusion between the negotiating parties. *See, e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s length by experienced counsel. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Because this Settlement is fair, adequate, and reasonable, Plaintiff respectfully requests that the Court grant approval.

1. Factors in Evaluating a Representative PAGA Settlement

A settlement is presumptively fair where it is reached through arm’s-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, and counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; *see also Kullar, supra*, 168 Cal.App.4th at 130. 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.* (1979) 89 Cal.App.3d 434, 438. In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited to:

[T]he strength of Plaintiff’s 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 and are non-exhaustive. Trial courts should therefore 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.

1 “In the context of a settlement agreement, the test is not the maximum amount Plaintiff
2 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
3 under all of the circumstances.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
4 250. Because settlements inherently involve compromise, settlements providing for narrower
5 relief than can be obtained if the suit were successfully litigated can be reasonable because “the
6 public interest may indeed be served by a voluntary settlement in which each side gives ground
7 in the interest of avoiding litigation.” *Air Lines Stewards, etc., Local 550 v. Am. Airlines, Inc.*,
8 455 F.2d 101, 109 (7th Cir. 1972). Further, courts review the discovery conducted by the parties
9 to aid in assessing whether the parties sufficiently developed the claims and supporting factual
10 bases before reaching settlement. *See Kullar, supra*, 168 Cal.App.4th at 129-31. Information is
11 sufficient where it allows the parties and the court to form “an understanding of the amount that
12 is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential*
13 *Serv. LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that parties can provide
14 the trial court with “a meaningful and substantiated explanation of the manner in which the factual
15 and legal issues have been evaluated.” *Kullar, supra*, 168 Cal.App.4th at 132.

16 **a) The Strength of Plaintiff’s Case**

17 Plaintiff acknowledges that there are substantial risks and uncertainty in proceeding to
18 trial. First and foremost was the risk that the United States Supreme Court would issue its opinion
19 in *Viking River* which could result in the outright dismissal of Plaintiff’s representative PAGA
20 claim. *See Schmidt Decl.*, ¶ 16. At the time that this settlement was reached, *Viking River* had
21 been fully briefed and oral argument had already occurred. *Id.* Less than two months after Plaintiff
22 entered into this Settlement, this risk became a reality and the Supreme Court issued its opinion
23 in *Viking River*, which overturns the California Supreme Court’s holding in *Iskanian v. CLS*
24 *Transportation Los Angeles, LLC* which held that a representative PAGA claim could not be
25 compelled to arbitration. *See Viking River Cruises, Inc. v. Moriana* (June 15, 2022, No. 20-1573)
26 596 U.S. ____ [____ S.Ct. ____], 2022 WL 2135491; *Iskanian v. CLS Transportation Los Angeles,*
27 *LLC* (2014) 59 Cal.4th 348. As a result, absent this settlement, it is likely that no representative
28 PAGA recovery would be possible at all.

1 In addition, Defendants presented numerous defenses to Plaintiff's underlying allegations
2 and argued that in light of its prompt remedial actions, the Court would utilize its discretion to
3 substantially reduce any award of PAGA penalties. While Plaintiff was prepared to litigate her
4 claims through trial, she faced substantial challenges in prevailing in this matter and obtaining a
5 better result than will be provided through the Settlement. Thus, this factor supports approval.

6 **b) Risk, Expense, Complexity, and Duration of Further Litigation**

7 As discussed in Section IV.B.1.a, *Viking River* posed an existential threat to this case, and
8 has since become controlling precedent that would likely result in the dismissal of Plaintiff's
9 representative PAGA claim if it had not already been settled. Therefore, at the time the settlement
10 was reached, Plaintiff faced tremendous risk that continued litigation would have resulted in the
11 dismissal of her representative PAGA claim. This factor therefore clearly supports approval of
12 the Settlement.

13 **c) Amount Offered in Settlement Given Realistic Value of Claims**

14 There were a total of 14,579 pay periods worked within the PAGA period. Settlement, §
15 II.3. However, as discussed in Section I, *supra*, Defendants implemented new meal, rest,
16 reimbursement and timekeeping policies following the filing of this lawsuit, such that they
17 contend that all or substantially all of the violations had been cured as of March 1, 2021. Schmidt
18 Decl., ¶ 17. Defendants therefore contend that the relevant number of pay periods is actually only
19 7,840, which was the number of aggregate pay periods worked from the beginning of the PAGA
20 period through March 1, 2021. *Id.* at ¶ 18. Labor Code § 2699(f)(2) provides for PAGA civil
21 penalties in the amount of \$100 for each aggrieved employee per pay period for the initial
22 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation.
23 *See* Labor Code § 2699(f)(2). However, courts have interpreted section 2699(f)(2) to only impose
24 the \$200 subsequent penalty after an employer has been notified that its conduct violates the
25 Labor Code. *See, e.g., Amaral, supra*, 163 Cal.App.4th at 1207 (finding "initial" violation rate
26 applies until employer is notified that it is violating a Labor Code provision); *Trang v. Turbine*
27 *Engine Components Technologies Corp.*, No. CV 12-07658 DDP (RZx), 2012 WL 6618854, at
28 *5 (C.D. Cal. Dec. 19, 2012) ("courts have held that employers are not subject to heightened
penalties for subsequent violations unless and until a court or commissioner notifies the employer

that it is in violation of the Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430, at *9 (S.D. Cal. 2009) (finding that California law imposes the “subsequent violation penalty” only after an employer has been notified its conduct violates the Labor Code). Plaintiff’s expert’s analysis confirmed that Plaintiff’s primary substantive theories of relief (non-compliant meal and rest period policies, and failure to reimburse for work-related cell phone use) would be triggered in virtually every pay period prior to the policies being updated. Schmidt Decl., ¶ 18. Assuming that Plaintiff could prove at least one Labor Code violation in each pay period prior to the policy updates, Plaintiff calculated Defendants’ likely PAGA exposure at \$784,000 (7,840 pay periods x \$100 per violation). *Id.*

However, as discussed above, Defendants raised numerous defenses to the merits of Plaintiff’s claims, and argued that even if found liable, the Court would exercise its discretion to reduce any potential PAGA penalties given Defendants’ prompt and comprehensive remedial actions. *See Thurman, supra*, 203 Cal.App.4th at 1136 (affirming reduction of PAGA penalties); *Carrington, supra*, 30 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of maximum exposure). Additionally, at the time of mediation, there was a looming threat that a forthcoming decision in *Viking River* could preclude any representative PAGA recovery at all. Schmidt Decl., ¶ 16. In the face of Defendants’ defenses on the merits, the Court’s discretion to reduce PAGA penalties, and the threat (which has since become reality) of an adverse *Viking River* ruling, Plaintiff felt that the negotiated settlement of \$415,000, which was equivalent to approximately 53% of the maximum PAGA civil penalties, was clearly in the best interests of the LWDA and the aggrieved employees and was well within the range of reasonableness. *See Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, *9 (N.D. Cal. 2015) (“Although 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval...”); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of “roughly one-sixth of the potential recovery”); *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of

1 itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”)
2 (internal quotations omitted); Schmidt Decl., ¶ 18.

3 **d) Discovery Completed and the Status of Proceedings**

4 The parties engaged in a significant exchange of documents and data necessary to evaluate
5 the value of the PAGA claim prior to mediation. *See* Schmidt Decl., ¶ 9. Defendants provided
6 Plaintiff with a 10% sampling of the aggrieved employees’ timekeeping and payroll data, and
7 relevant policy documents in effect. *Id.* It was only after the completion of this discovery and
8 Plaintiff’s expert’s comprehensive data analysis that the parties attended mediation. *Id.* Thus, this
9 factor supports settlement approval.

10 **e) The Experience and Views of Counsel**

11 “Parties represented by competent counsel are better positioned than courts to produce a
12 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
13 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
14 by competent and experienced wage and hour counsel, who pressed Plaintiff’s PAGA claim
15 forward, and who believe this Settlement to be fair and adequate for all involved. *See* Schmidt
16 Decl., ¶¶ 2-6, 21-22. Further, the proposed Settlement was reached with the input and assistance
17 of mediator Francis “Tripper” Ortman. Schmidt Decl., ¶ 9. Thus, this factor strongly supports
18 settlement approval. *See, Kullar, supra*, 168 Cal.App.4th at 130 (“The court undoubtedly should
19 give considerable weight to the competency and integrity of counsel and the involvement of a
20 neutral mediator in assuring itself that a settlement agreement represents an arm’s length
21 transaction entered without self-dealing or other potential misconduct.”).

22 **C. The Requested Award for Attorneys’ Fees is Reasonable as a Percentage of**
23 **the MSA and Confirmed by a Lodestar Crosscheck**

24 Plaintiff, as the prevailing party in settlement, is entitled to recover attorneys’ fees and
25 costs for bringing this PAGA claim. *See* Cal. Labor Code § 2699(g) (“Any employee who prevails
26 in any action shall be entitled to an award of reasonable attorney’s fees and costs.”); Code of Civil
27 Procedure § 1021.5(a). A fee award is justified where the legal action has produced its benefits
28 by way of a voluntary settlement. *See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91;
Westside Community for Independent Living, Inc. v. Obledo (1983) 33 Cal.3d 348, 352-53;

1 *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when a number of persons are entitled in common to
2 a specific fund, and an action brought by a Plaintiff...for the benefit of all results in the creation
3 or preservation of that fund, such Plaintiff...may be awarded attorney’s fees out of the fund.”).

4 California state and federal courts routinely award fee awards of one-third of the
5 settlement fund in class actions. *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, fn. 11;
6 *see also Wershba, supra*, 91 Cal. App. 4th at 254 (recognizing the “percentage of recovery”
7 method); *In re Pacific Enterprises Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (affirming
8 33% fee award). Indeed, the California Supreme Court approved the use of the “percentage of
9 fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (“the
10 percentage of fund method survives in California class action cases...”.) Specifically, the *Laffitte*
11 Court held:

12 The recognized advantages of the percentage method—including relative
13 ease of calculation, alignment of incentives between counsel and the class, a
14 better approximation of market conditions in a contingency case, and the
15 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.

16 *Id.*, at 503 (internal citation omitted). This is consistent with Plaintiff’s counsel’s experience in
17 similar wage-and-hour class and representative action matters. Schmidt Decl., ¶ 19. Here,
18 Plaintiff’s counsel’s fee request of \$138,333.33 (one-third of the MSA) is the same percentage
19 sought in *Laffitte* and is fair and reasonable based on the percentage of the recovery method. *Id.*

20 The California Supreme Court in *Laffitte* also held that trial courts have discretion to
21 assess the reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby
22 the trial court calculates counsel’s lodestar and determines whether the “lodestar multiplier”
23 needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1
24 Cal.5th at 503-06. Under the lodestar method, the court multiplies the number of hours reasonably
25 expended by each attorney or legal staff member by their reasonable hourly rates, then enhances
26 this lodestar figure by a “multiplier” to account for a range of factors, such as the contingent
27 nature of the case and the degree of success achieved. *See Serrano v. Priest* (1977) 20 Cal.3d 25,
28 48-49; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank, N.A.*

(2001) 92 Cal.App.4th 819, 833, *as modified* (Oct. 25, 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.”).

Lodestar multipliers can range considerably. *See, e.g., Chavez, supra*, 162 Cal. App. 4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L.A. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal. App. 3d 241, 251 (approving multiplier of approximately 12.8). In representative actions such as this one, where Plaintiff’s counsel efficiently protected the rights of the aggrieved employees and where the value of the benefit conferred to the group “can be monetized with a reasonable degree of certainty,” the 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* (2009) 175 Cal. App. 4th 545, 557.

In this case, Plaintiff’s counsel has a lodestar of approximately \$115,000, which results in a modest 1.2 multiplier compared to the \$138,333.33 fee request. Schmidt Decl., ¶ 20. A general summary showing the number of hours of work performed by each attorney and firm paralegals is set forth below. Plaintiff’s counsel submits that the billing rates used are reasonable in view of the market rates and the rates at which Class Counsel has been approved at in other California and State courts. *Id.* at ¶¶ 20-23 and Exhibit 3 (Laffey Matrix).

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (16th Year Attorney)	\$675	35.5	\$23,962.50
Fletcher W. Schmidt (10th Year Attorney)	\$650	101.7	\$66,105
Matthew K. Moen (7th Year Attorney)	\$475	45.0	\$21,375
Firm Paralegals	\$175	20.2	\$3,535
Total Lodestar			\$114,977.5

The fee award requested here is justified because Plaintiff’s counsel achieved a significant monetary recovery for the aggrieved employees and the State of California in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis.

1 Additionally, Plaintiff's recovery for the State of California and aggrieved employees exceeds
2 other PAGA awards approved by courts in California. *See, e.g., Penaloza, supra*, 2013 WL
3 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average PAGA
4 penalties of \$3.33). That Plaintiff's counsel achieved these results without engaging in a
5 protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape,
6 confirms the strength of the results achieved.

7 As discussed, this case presented significant risks to Plaintiff, including the risk that an
8 adverse *Viking River* decision could effectively conclude the case. It is fair and reasonable to
9 account for these risks in compensating Plaintiff's counsel, as well as the risks involved in
10 undertaking this litigation and expending considerable effort while working on a pure
11 contingency basis. Since undertaking representation of Plaintiff, Plaintiff's counsel dedicated
12 substantial resources to this litigation, including expending \$13,583.23 in litigation costs, without
13 receiving any compensation to date. Schmidt Decl., ¶ 25 and Exhibit 4. Plaintiff's counsel's
14 efforts include conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal
15 research regarding Plaintiff's claims (including potential defenses based on exceptions in Wage
16 Order 5 for employees of residential care facilities), drafting Plaintiff's complaint and notice to
17 the LWDA, interviewing potential witnesses, preparing written discovery, attending various court
18 hearings, researching and drafting a motion to be appointed as lead counsel, reviewing substantial
19 documents and data produced by Defendants, meeting and conferring with Defendants' counsel
20 regarding Defendants' informal document production, evaluating the timekeeping and payroll
21 data with a retained expert prior to mediation, drafting a mediation brief, preparing for and
22 attending mediation, negotiating and drafting the long-form Settlement Agreement and Notice,
23 preparing this Motion for settlement approval and all supporting documents hereto, and otherwise
24 litigating the case. Schmidt Decl., ¶ 24. Plaintiff's counsel will spend additional time attending
25 the hearing on this Motion and overseeing the settlement administration process. *Id.* Given the
26 potential for adverse outcomes, the contingent risk borne by Plaintiff's counsel was great. The
27 quality of Plaintiff's counsel's work, and the efficacy and dedication with which it was performed,
28 should be compensated.

1 Plaintiff's counsel's previous experience in litigating wage and hour class and
2 representative actions also supports the reasonableness of the fee request. Plaintiff's counsel is
3 well-versed in plaintiff and defense-side wage and hour class and representative action litigation,
4 and collectively brings over three decades worth of wage-and-hour class and representative action
5 litigation experience. *See* Schmidt Decl., ¶¶ 2-7, 21-22. Plaintiff's counsel has also been certified
6 as class counsel in numerous class action cases alleging wage and hour claims. *Id.* Plaintiff's
7 counsel's experience in similar matters was integral in evaluating the strengths and weaknesses
8 of this case and the reasonableness of the Settlement. Because it is reasonable to compensate
9 Plaintiff's counsel commensurate with their skill, reputation, and experience, the requested fee
10 award of \$138,333.33 is fair, reasonable and adequate, and should therefore be approved.

11 **D. The Requested Cost Reimbursement Warrants Approval as Fair, Adequate,**
12 **and Reasonable**

13 Plaintiff's counsel incurred and respectfully requests reimbursement of \$13,773.23 in
14 actual litigation costs. Schmidt Decl., ¶ 25 and Exhibit 4.⁹ Plaintiff's counsel's request is fair,
15 adequate, and reasonable, as all of these costs are documented and reasonably incurred. *Id.*
16 Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g.,*
17 *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel should recover "those out-of-pocket
18 expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, No. 05-03759
19 CW, 2011 WL 825713, * 3 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions and
20 exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *In re*
21 *Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation
22 expenses, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
23 Because the expense reimbursements requested by Plaintiff's counsel were reasonably incurred,
24 the Court should grant Plaintiff's counsel's request for reimbursement of \$13,773.23 in actual
25 litigation costs incurred.

26 ⁹ Plaintiff's counsel's costs records reflect Plaintiff's actual costs as of the date of the filing (\$13,583.23).
27 Schmidt Decl., ¶ 25. However, the total amount that Plaintiff's counsel is requesting for expense
28 reimbursements, \$13,773.23, includes an additional \$190.00 in anticipated future costs for the filing and
service of this Motion for PAGA Settlement Approval, as well as the CourtCall costs for Plaintiff's counsel
to attend the hearing on this Motion, which will be incurred by the time this motion is heard. *Id.*

1 **E. The Court Should Approve the Requested Administration Costs**

2 Plaintiff also requests that the Court approve \$5,679.00 in administration costs to the
3 Settlement Administrator, Rust Consulting. Meyer Decl., Exhibit A; Settlement, § II.4.c. As
4 detailed in the Settlement Agreement and declaration of Andrew Meyer, submitted concurrently
5 with this Motion, Rust will perform duties in connection with this Settlement that are integral in
6 effectuating the Settlement and the Notice process. Among other things, Rust will calculate each
7 aggrieved employee's Individual Settlement Payment, update addresses contained in the
8 employee data supplied by Defendants, format the Notice Packets for mailing and translate them
9 into Spanish, mail Notice Packets to all aggrieved employees, and otherwise administer the
10 Settlement. *See generally*, Meyer Decl.; Settlement, § III. Rust was selected to administer this
11 Settlement because it is an experienced and well-respected settlement administrator and returned
12 the lowest quote after soliciting three quotes. Schmidt Decl., ¶ 26; *see generally*, Meyer Decl. For
13 these reasons, Rust's requested costs are fair, reasonable, and adequate, and should be approved.

14 **F. This Court Should Approve Plaintiff's Requested Enhancement Award**
15 **Because It Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts**
16 **and the Risks Assumed on Behalf of the Aggrieved Employees**

17 Courts routinely approve enhancement awards to compensate named plaintiffs for the
18 services they provide and the risks they incur during class and representative litigation. *See, e.g.,*
19 *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to
20 named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*
21 (N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 enhancement award). This is also true in
22 the context of PAGA-only settlements. *See* Schmidt Decl., ¶ 27 and Exhibit 6. Here, pursuant to
23 the Settlement, Plaintiff seeks an enhancement award of \$5,000.00. *See* Settlement, § II.4.b. This
24 request is reasonable given Plaintiff's efforts in this case and the risks she undertook on behalf of
25 the aggrieved employees. Among other things, Plaintiff searched for and gathered relevant
26 documents for use in the lawsuit and provided factual information to her counsel, had numerous
27 discussions with her counsel regarding the lawsuit, case strategy, and Defendants' workplace
28 policies and practices. Legaspi Decl., ¶ 4. Plaintiff estimates spending at least 10 hours on

1 activities that ultimately led to the Settlement. *Id.* Accordingly, Plaintiff's enhancement award is
2 appropriate and justified as part of the Settlement.

3 **V. CONCLUSION**

4 For the reasons stated herein, this Court should grant Plaintiff's Motion in its entirety and
5 adopt the [Proposed] Judgment and Order Granting Plaintiff's Motion for Settlement Approval
6 of Claims Brought Under the PAGA, Reasonable Attorneys' Fees and Costs, and Enhancement
7 Awards, submitted concurrently herewith.

8 Dated: July 29, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

9
10 By:



11 Fletcher W. Schmidt
12 Attorneys for Plaintiff
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Make a Reservation

BRITTNEY LEGASPI vs MERCEDES DIAZ HOMES, INC., et al.

Case Number: 20STCV45683 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2020-11-30 Location: Stanley Mosk Courthouse - Department 15

Reservation

Case Name:

BRITTNEY LEGASPI vs MERCEDES DIAZ HOMES, INC.,
et al.

Case Number:

20STCV45683

Type:

Motion re: (For Settlement Approval of Claims Brought
Under the Private Attorneys General Act, Reasonable
Attorneys' Fees and Costs, and Enhancement Award)

Status:

RESERVED

Filing Party:

Brittney Legaspi (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 15

Date/Time:

09/28/2022 9:15 AM

Number of Motions:

1

Reservation ID:

394490844032

Confirmation Code:

CR-2SET43R6ICZBSJPBG

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:

\$61.65

Type:

Visa

Account Number:

XXXX6940

Authorization:

00694G

[Print Receipt](#)

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