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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PATRICIA MEJIA DE GONZALEZ, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

GOLDEN BOLT, LLC, a California limited
liability company; GOLDEN HIPPO
HOLDCO INC., a California corporation;
WHOLE BODY RESEARCH, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 21STCV02962

[Assigned for All Purposes to Hon. Mark v. Mooney]

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

Date: March 21, 2022
Time: 8:30 a.m.
Dept.: 68

Reservation ID: 347870944658

Complaint Filed: January 25, 2021
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on March 21, 2022 at 8:30 a.m., or as soon thereafter as the matter
3 may be heard in Department 68 of the above-entitled Court, located at 111 N. Hill Street, Los Angeles,
4 California 90012, Plaintiff Patricia Mejia de Gonzalez (“Plaintiff”), on behalf of herself and all other
5 aggrieved employees, will and hereby does move this Court for entry of an Order as follows:

- 6 1. Granting approval, pursuant to California Labor Code section 2698 *et seq.*, and specifically
7 Labor Code section 2699(1)(2), of the proposed Settlement of claims brought pursuant to the
8 Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698 *et seq.*) and set forth in the
9 Settlement;
- 10 2. Appointing Simpluris Administrators as the Settlement Administrator, and approving an
11 award of \$3,000.00 in anticipated costs to Simpluris for its settlement administration services;
- 12 3. Approving the proposed Notice of PAGA Settlement and Release of Claims as to form and
13 content, and directing that it be distributed to the Aggrieved Employees pursuant to the terms
14 of the Settlement;
- 15 4. Directing the distribution of the Gross Settlement Amount pursuant to the terms of the
16 Settlement;
- 17 5. Approving an award of one-third of the Gross Settlement Amount (currently estimated to be
18 \$33,333.33) in attorneys’ fees to Plaintiff’s Counsel;
- 19 6. Approving an award of \$9,449.64 in actual litigation costs reimbursement to Plaintiff’s
20 Counsel;
- 21 7. Approving an enhancement award of \$5,000.00 to Plaintiff for her service to the Aggrieved
22 Employees and the State of California; and
- 23 8. Approving the payment of \$36,912.77 to the California Labor & Workforce Development
24 Agency for its share of PAGA civil penalties.
- 25 9. Approving the payment of \$12,304.26 to the Aggrieved Employees on a *pro rata* basis based
26 on number of pay periods worked during the relevant time period.

27 This Motion is based on this Notice, the attached Memorandum of Points and Authorities; the
28 declarations of Scott M. Lidman, Elizabeth Nguyen, Paul K. Haines, Milan Moore, Plaintiff Patricia
Mejia de Gonzalez, and Eric Springer on behalf of Simpluris and the exhibits attached thereto, the

1 pleadings and other papers filed in this action, and on any further oral or documentary evidence or
2 argument presented at the time of hearing.

3
4 Dated: February 24, 2022

Respectfully Submitted,
LIDMAN LAW, APC

5
6 By:

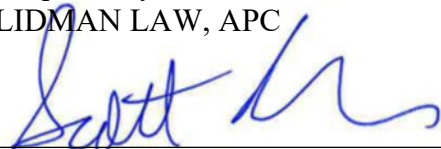

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Patricia Mejia de Gonzalez (“Plaintiff”), an “Aggrieved Employee” under the California Labor Code § 2698 *et seq.* (“PAGA”), respectfully requests this Court grant approval of the Settlement¹ with Golden Bolt, LLC (“Golden Bolt” or “Defendant”) pursuant to Labor Code section 2699(1)(2). This PAGA action is based on Golden Bolt’s alleged: (1) failure to pay all overtime wages owed; (2) failure to provide all legally required meal periods; (3) failure to authorize and permit all rest periods; (4) failure to provide reimbursements for business related expenses; (5) failure to provide accurate, itemized wage statements; and (6) failure to pay wages timely. This PAGA action seeks civil penalties on behalf of the California Labor & Workforce Development Agency (“LWDA”) and all “Aggrieved Employees,” defined in the Settlement as “all current and former hourly, non-exempt employees of Defendant Golden Bolt LLC who worked in California at any time from November 20, 2019 through date the Court grants approval of this Settlement.”

As set forth herein, the proposed Settlement should be approved because it is fair, reasonable, and adequate, as it (1) is the product of arm’s-length negotiations, (2) was negotiated by attorneys experienced in wage-and-hour issues, (3) was negotiated subsequent to undertaking sufficient investigation to evaluate the relative strength and value of the PAGA-based claims, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA-based claims, as well as the risks, expense, complexity and likely duration of further litigation.

This proposed PAGA Settlement that Golden Bolt will pay a **non-reversionary** Gross Settlement Amount (“GSA”) of \$100,000.00. After deducting amounts for requested attorneys’ fees (one-third of the GSA, currently estimated at \$33,333.33), requested actual costs incurred by Plaintiff’s counsel (\$9,449.64), an enhancement award for Plaintiff (\$5,000.00), and settlement administration costs (\$3,000.00) to Phoenix Settlement Administrators (“PSA”), the Settlement provides for distribution of civil penalties in the amount of \$49,217.03 Pursuant to Labor Code section 2699(i), 75% of \$49,217.03 (or \$36,912.77) will be distributed to the LWDA and 25% of \$49,217.03 (or \$12,304.26) will be

¹ The PAGA Settlement Agreement (“Settlement”) is attached to the Declaration of Scott M. Lidman as Exhibit 2. The Proposed Notice of PAGA Settlement and Release of Claims is attached to the Settlement as Exhibit A. All defined terms in this Motion have the same definitions as used in the Settlement.

distributed to the Aggrieved Employees on a *pro rata* basis. The amounts requested for attorneys' fees and costs, Plaintiff's enhancement award, and settlement administration costs are fair, adequate, and reasonable, particularly in light of the recovery obtained. Because there are approximately 92 Aggrieved Employees, the average individual payment to each Aggrieved Employees is estimated to approximately \$133.74 (and will vary based on an employee's actual length of employment).

The GSA of \$100,000.00 represents a fair and reasonable recovery for the State of California and Aggrieved Employees considering the limited scope and time period of the release. The release in the Settlement does *not* impact any underlying Labor Code claims any of the Aggrieved Employees may have. Further litigation may have resulted in a smaller recovery or even no recovery at all based on the defenses asserted by Golden Bolt and given the significant litigation risks involved.

In light of the foregoing, this Court should enter the [Proposed] Order Granting Approval of Settlement submitted concurrently herewith

II. SUMMARY OF THE LITIGATION

A. The Parties

Golden Bolt manufactures and distributes nutritional supplements. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. Plaintiff, a former hourly employee, was employed with Golden Bolt since on or about March 29, 2016 until her separation. *See* Declaration of Patricia Mejia de Gonzalez ("Gonzalez Decl."), ¶ 2.

B. Procedural History

On November 20, 2020, Plaintiff provided written notice to the LWDA and Golden Bolt asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of the California Labor Code including: (1) failure to pay all overtime wages owed; (2) failure to provide all legally required meal periods; (3) failure to authorize and permit all rest periods; (4) failure to provide accurate, itemized wage statements; (5) failure to pay all earned wages at least twice during each calendar month and (6) failure to maintain accurate records. Lidman Decl., ¶ 11; Exh. 1.

On January 25, 2021, after exhausting her administrative remedies, Plaintiff filed a representative action against Golden Bolt asserting a single cause of action under PAGA. *Id.* On March 23, 2021, Plaintiff filed a First Amended Complaint. On April 8, 2021, pursuant to Plaintiff's request, the Court

1 dismissed Defendants Golden Hippo Holdco, Inc. and Whole Body Research, LLC. *Id.* On January 10,
2 2022, Plaintiff filed a supplemental letter with the LWDA asserting PAGA-based claims for failure to
3 reimburse necessarily incurred business expenses. Lidman Decl., ¶ 40, Exh. 6. In connection with the
4 settlement, the Parties stipulated to the filing of a Second Amended Complaint, which Plaintiff intends
5 to file on March 17, 2022 after the exhaustion of her administrative remedies subject to Court approval.

6 A copy of this motion, including the Settlement Agreement, has been submitted to the LWDA on
7 the same date that Plaintiff filed this motion. *Id.* at ¶ 39, Exhibit 5.

8 **C. Informal Discovery, Mediation, and Arms-Length Negotiations**

9 Throughout this litigation, Plaintiff propounded formal written discovery including Form
10 Interrogatories, Employment Law, Form Interrogatories, General, Special Interrogatories, and Requests
11 for Production. Lidman Decl., ¶ 12. Afterwards, the Parties agreed to participate in private mediation.
12 Prior to mediation, Golden Bolt produced substantial information and documents pertaining to Plaintiff
13 and other Aggrieved Employees, including sampling of timekeeping records and payroll data, employee
14 handbooks, wage and hour policies and other relevant documents and information for the underlying
15 claims, including claims related to unreimbursed business expenses. Lidman Decl., ¶ 12. Plaintiff then
16 analyzed the payroll data, time records and other data and information produced by Golden Bolt. *Id.*
17 After the detailed review of the payroll and time records analysis and other documents and policies
18 produced by Golden Bolt, Plaintiff's Counsel drew on their extensive experience in similar cases to assess
19 the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the
20 merits and value of Plaintiff's claims, if a settlement could not be reached. *Id.*

21 On January 10, 2022, the Parties participated in mediation with Steven G. Mehta, Esq., a well-
22 respected wage and hour class and representative action mediator. Lidman Decl., ¶¶ 12-13. During
23 mediation, the Parties vigorously debated their opposing legal positions and the likelihood of Plaintiff's
24 ability to proceed on a representative basis. Lidman Decl., ¶ 13. Ultimately, the Parties reached a
25 settlement, the terms of which were subsequently finalized in writing after mediation. Lidman Decl., ¶
26 13, Exh. 2.

1 **III. ARGUMENT**

2 **A. Standard For Approval Of A PAGA Settlement**

3 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute,
4 which states that the “court shall review and approve any penalties sought as part of a proposed settlement
5 agreement pursuant to this part.” *See* Lab. Code § 2699(l). Notably, the PAGA statute does not set
6 expressly forth the criteria by which a PAGA settlement is to be judged.

7 In evaluating the adequacy of the settlement amount, the Court’s focus is not concerned with the
8 amount(s) that “aggrieved employees” are to receive, but rather, must focus on the total settlement
9 amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit consists of civil
10 penalties, not individual or class damages.” *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 (E.D.
11 Cal. Jul. 1, 2010) at *4. “Unlike class actions, these civil penalties are not meant to compensate unnamed
12 employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders*
13 *Foods, Inc.*, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). Moreover, while “[a PAGA] action is
14 ... designed to protect the public and penalize the employer for past illegal conduct” (*Mendez*, 2010 WL
15 2650571 at *4), a reviewing Court must take into account the fact that settlement of a PAGA claim – like
16 any settlement – involves a “compromise” that stops short of rendering findings of liability and damages.
17 The Court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief
18 for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for
19 the government that otherwise may not have been assessed and collected by overburdened state
20 enforcement agencies.” *Ochoa-Hernandez*, at *4.

21 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
22 claim,² “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
23 to opt-out of the representative PAGA claim.” *Ochoa-Hernandez* at *5.

26 ² As held by the California Supreme Court, “[t]he Labor Code Private Attorneys General Act of 2004 does not
27 create property rights or any other substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved
28 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 **B. This Court Should Approve The Settlement Because It Is A Fair, Adequate, And**
2 **Reasonable Compromise Of Disputed Claims**

3 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*
4 *Court* 62 Cal.App.3d 231, 236 (1976). To be approved, a settlement must be “fair, reasonable and
5 adequate to all concerned.” *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012). The
6 Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole
7 is fair and is not the product of fraud or collusion between the negotiating parties. *See, e.g., Hanlon,*
8 *supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was
9 negotiated at arm’s length by experienced counsel. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th
10 116, 130 (2008).

11 Here, the GSA secured by Plaintiff is greater than other PAGA penalty awards approved as
12 reasonable within California state courts, which often range between \$7,500.00 and \$15,000.00 for
13 PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty
14 payments on a per person basis. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013
15 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of \$5,000.00 to
16 class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL
17 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of \$10,000.00 for class
18 of approximately 3,000 members). Because this Settlement is fair, adequate, and reasonable, Plaintiff
19 respectfully requests that the Court approve the Settlement

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

21 A settlement is presumptively fair where it is reached through arm’s-length bargaining, based on
22 sufficient discovery and investigation to allow counsel and the court to act intelligently, and counsel is
23 experienced in similar litigation. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). Relevant
24 factors for the Court to consider in determining whether the settlement is “fair, adequate, and reasonable”
25 include, but are not limited to:

26 [T]he strength of Plaintiff’s case, the risk, expense, complexity and likely
27 duration of further litigation, the risk of maintaining class action status
28 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.

Dunk, 48 Cal.App.4th at 1801.³

“In the context of a settlement agreement, the test is not the maximum amount Plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than likely would be obtained if the suit were successfully litigated can be reasonable because “the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Id.* (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. *See Kullar, supra*, 168 Cal.App.4th at 129-31. Information is sufficient where it allows the parties and the court to form “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential Serv. LLC*, 175 Cal.App.4th 785, 801 (2009). This requirement exists so that the parties can provide the court with “a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132.

a) Overview of the Proposed Settlement

i. “Aggrieved Employees” Defined

Aggrieved Employees are defined as, “all current and former hourly, non-exempt employees of Defendant Golden Bolt LLC who worked in California at any time from November 20, 2019 through date the Court grants approval of this Settlement.” The Aggrieved Employees, including Plaintiff, worked an estimated 2,700 pay periods during the period of November 20, 2019 through the date of mediation, January 10, 2022. *See Settlement*, ¶ III.4.

ii. Essential Terms Of The Settlement

This Settlement provides for Golden Bolt to pay a Gross Settlement Amount of \$100,000.00. Settlement, ¶ III.3. After deducting amounts for requested attorneys’ fees, attorneys’ costs, Plaintiff’s

³ As explained above, in the context of a representative PAGA settlement, the third and eighth factors (risk of maintaining class action status and reaction of class members to settlement) are inapplicable.

requested enhancement award, and settlement administration costs, the Settlement provides for distribution of the remaining Net Settlement Amount (“NSA”) to Aggrieved Employees and the LWDA distributed as follows: 75% to the LWDA and 25% to Aggrieved Employees pursuant to Labor Code 2699(i). Settlement, ¶ III.5.

Gross Settlement Amount:	\$100,000.00⁴
Minus Court-approved attorneys’ fees (1/3):	\$33,333.33
Minus Court-approved attorneys’ costs:	\$9,449.64
Minus Court-approved enhancement award:	\$5,000.00
Minus settlement administrator costs:	\$3,000.00
Net Settlement Amount:	\$49,217.03

Net Settlement Amount:	\$49,217.03
75% to LWDA	\$36,912.77
25% to Aggrieved Employees	\$12,304.26

The payment of the GSA shall be deposited with the Settlement Administrator within 30 calendar days of Court approval of the settlement. *See* Settlement, ¶ III.3. Within 10 business days of the court signing the approval order, Defendant shall provide the Settlement Administrator with information for Aggrieved Employees in order to calculate and distribute checks to Aggrieved Employees. *See* Settlement, ¶ IV.2. Upon receipt of this information, the Settlement Administrator will prepare and circulate an anonymized spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee for the Parties approval. The Settlement Administrator shall also determine whether the Escalator Clause in Section III.3 has been triggered. Within two business days of receiving the Parties’ approval, the Settlement Administrator shall mail copies of the explanatory letter to all Aggrieved Employees with their checks. *See* Settlement, ¶ IV.3. The Settlement does not require Aggrieved

⁴ Defendant represents that there are an estimated 2,700 pay periods worked by the aggrieved employees during the period of November 20, 2019 through the date of mediation, January 10, 2022. If the number of PAGA periods worked by aggrieved employees during the PAGA Period (defined above in paragraph 3 as November 20, 2019 through the date the Court grants approval of this settlement) is more than 15% greater than this figure, Defendant shall have the sole option to: (i) agree to increase the Gross Settlement Amount on a proportional basis above the 15% (i.e., if there was a 20% increase in the number of pay periods worked by aggrieved employees during the PAGA Period, Defendant would agree to increase the Gross Settlement Amount by 5%); or (ii) end the PAGA period as of the date that the number of pay periods worked by aggrieved employees reaches 15% above 2700 pay periods). *See* Settlement, ¶ III.4.

Employees to submit a claim form to reap financial benefit from the Settlement. *Id.* Any checks remaining uncashed for more than 180 days will be tendered to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued. *See* Settlement, ¶ IV.4.

iii. Payment to the LWDA and Aggrieved Employees

The entire NSA shall be designated as PAGA civil penalties. Of the NSA, 75% of the NSA will be distributed to the LWDA and 25% will be distributed to the Aggrieved Employees pursuant to Labor Code § 2699(i). Based on these distributions, the amount to be paid to the LWDA will be \$36,912.77 and the amount paid to Aggrieved Employees is estimated to be \$12,304.26. *Lidman Decl.*, ¶ 16. This portion of the NSA shall be paid to all Aggrieved Employees pro rata based on the proportional number of pay periods worked by each Aggrieved Employee during the PAGA Period and **will be reported on an IRS Form 1099**. Settlement, ¶ III.3.; *Lidman Decl.*, ¶ 15. The average payment to an Aggrieved Employee is estimated to be \$133.74.

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

The Parties conducted an extensive exchange of informal documents and information for mediation which allowed Plaintiff to thoroughly evaluate the claims. *See Lidman Decl.*, ¶¶ 12-13. Had the Parties not settled, they would need to engage in formal discovery, potential cross-summary judgment motions, preparation for trial as well as the prospect of appeals in the wake of a summary judgment ruling for either party, and/or post trial-motions. As a result, the Parties would incur considerably more attorneys' fees and costs through trial. This settlement avoids those risks, the accompanying expense, and protracted litigation.

c) Strength of Plaintiff's Case and Realistic Value of Claims

Here, Aggrieved Employees' claims arise from Golden Bolt's overtime, meal and rest period, and expense reimbursement policies and practices. Although she maintains that the PAGA action is meritorious, Plaintiff acknowledges that her position includes real risks and uncertainty, especially in the face of Golden Bolt's numerous defenses on the merits discussed below. While Plaintiff maintains she could rebut these defenses, Plaintiff nonetheless faced several substantial challenges in prevailing in this

1 matter, and this risk factor weight in favor of approving the Settlement. Plaintiff estimate Golden Bolt's
2 realistic exposure, based on these defenses and risks, follows:

3 Civil Penalties Owed for Failing to Pay for All Overtime Wages: Plaintiff alleges that Golden
4 Bolt paid her and the other hourly employees Paid Lunch Awards. Lidman Decl., ¶ 16. Plaintiff believes
5 that Golden Bolt failed to include this non-discretionary form of compensation in the employees' regular
6 rate for purposes of overtime. Thus, Plaintiff alleges that she and the other hourly employees were
7 systematically underpaid their overtime wages. Based on Plaintiff's review of the pay records produced
8 in connection with mediation, this occurred in approximately 2% or 53 of the relevant time periods.
9 Accordingly, pursuant to Labor Code section 558, and using only the initial rate of \$50, Plaintiff
10 calculated Defendants' exposure at \$2,650.00 (53 x \$50 initial violation). *Id.*

11 Golden Bolt counters that it compensated Plaintiff and all other non-exempt employees for all
12 overtime hours worked. Lidman Decl., ¶ 17. Golden Bolt further counters that any bonuses to putative
13 class members during the relevant time period were discretionary and did not need to be included in the
14 regular rate of pay for overtime purposes. *See* 29 C.F.R. §§778.208, 778.211 (excluding "discretionary"
15 bonuses from the regular rate); *see also* DLSE Manual § 49.1.2.4(3) (bonuses are discretionary, and
16 therefore excludable, if "both the fact that payment is to be made and the amount of the payment" are
17 discretionary). *Id.* In light of these defenses and Golden Bolt's argument that the Court would exercise
18 its discretion to reduce any civil penalty due to its good faith efforts to comply with applicable law,
19 Plaintiff discounted the maximum recovery on this claim by 50% to account for the risk that Defendant
20 could prevail in their defenses, to arrive at a projected total of \$1,325.00. *Id.*

21 Civil Penalties Owed for Failing to Provide Legally Compliant Meal Periods: Plaintiff alleges that
22 as a result of the work demands imposed by Golden Bolt and the requirement to be back at their work
23 stations at the end of the meal period, their meal periods often did not start before the end of their fifth
24 hour of work, meaning the meal periods were late or otherwise short or unlawful in violation of Labor
25 Code section 512. Lidman Decl., ¶ 18. Indeed, based on Plaintiff's review of the time records produced
26 in connection with mediation, it appears that there was at least one meal period violation in 80% of the
27 pay periods or 2,117 pay periods. Accordingly, pursuant to Labor Code section 558, Plaintiff calculated
28 ASC's maximum exposure at \$207,100.00 ((92 x \$50 initial violation) + (2,025 x \$100 subsequent
violation)). *Id.*

1 Golden Bolt counters that it has always provided non-exempt employees with an opportunity to
2 take legally compliant meal periods, and any non-compliant meal periods reflected in employee
3 timekeeping records were solely the result of employee choice, rather than any policy or practice of
4 Defendant. Lidman Decl., ¶ 19. Golden Bolt points out that under *Brinker Restaurant Corp. v. Superior*
5 *Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal periods, not
6 “ensure” meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038
7 (rejecting “ensure” standard). *Id.* Golden Bolt further contends it paid its non-exempt employees meal
8 period premiums when a legally compliant meal period was not provided. *Id.* Golden Bolt also contends
9 that Plaintiff could not recover the \$100 civil penalty for “subsequent violations” because it did not have
10 notice of any initial violation. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *In re*
11 *Taco Bell Wage and Hour Actions*, 2016 WL 2755938, at *7 (E.D. Cal. April 8, 2016). Lastly, Golden
12 Bolt contends that the Court would use its discretion provided for in the PAGA to reduce the maximum
13 penalty exposure due to its good faith efforts to comply with applicable law. In light of these defenses,
14 Plaintiff discounted the maximum recovery on this claim by 65% to account for the risk that Golden Bolt
15 could prevail in its defenses, to arrive at a projected total of \$72,845.00. Lidman Decl., ¶ 19.

16 Civil Penalties Owed for Failing to Authorize and Permit Rest Periods: Plaintiff alleges that
17 Golden Bolt failed to authorize and permit all legally required rest periods. Lidman Decl., ¶ 20.
18 Specifically, Plaintiff alleges that Golden Bolt’s rest period practice was requiring its employees must
19 remain on company premises. *Id.* As such, pursuant to Labor Code section 558, Plaintiff calculated
20 Golden Bolt’s exposure at \$260,000.00 (92 x \$50 initial violation) + (2,554 x \$100 subsequent
21 violations)). *Id.*

22 Golden Bolt counters contends it has always maintained and enforced lawful rest period policies
23 and practices, Plaintiff and other non-exempt employees were authorized and permitted to take all off-
24 duty rest periods in compliance with California law, and employees were always allowed to leave the
25 premises. Lidman Decl., ¶ 21. Golden Bolt also contends that Plaintiff could not recover the \$100 civil
26 penalty for “subsequent violations” because it did not have notice of any initial violation. *Amaral v. Cintas*
27 *Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *In re Taco Bell Wage and Hour Actions*, 2016 WL
28 2755938, at *7 (E.D. Cal. April 8, 2016). Lastly, Golden Bolt contends that the Court would use its
discretion provided for in the PAGA to reduce the maximum penalty exposure due to its good faith efforts

1 to comply with applicable law. In light of these defenses, Plaintiff discounted the maximum recovery on
2 this claim by 70% to account for the risk that Golden Bolt could prevail in its defenses, to arrive at a
3 projected total of \$78,000.00. *Id.*

4 Civil Penalties for Derivative Wage Statement Violations: As Plaintiff's PAGA claim was based
5 on the underlying failure to pay all wages and meal and rest period premiums, Plaintiff asserts PAGA
6 penalties for each Aggrieved Employee for each pay period in the PAGA limitations period. Lidman
7 Decl., ¶ 22. Therefore, only applying the initial violation rate of \$100, the estimated exposure is \$264,600
8 (2,646 x \$100 initial violation). *Id.*

9 Golden Bolt argues that Plaintiff's underlying claims will fail and, as a result, the wholly
10 derivative wage statement claim will also fail. Lidman Decl., ¶ 23. *See Price v. Starbucks Corp.* (2011)
11 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and
12 PAGA claims also fail."). Golden Bolt also argues that a meal and rest period claims cannot support a
13 claim for wage statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App.
14 5th 444, review granted and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*see, e.g.,*
15 *Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-
16 9). Finally, Golden Bolt also argues that since the primary allegations in this case are that Golden Bolt
17 failed to pay all wages and provide all meal and rest periods, imposing multiple penalties based on
18 different Labor Code section under derivative theories of liability for the same conduct would be
19 inappropriate and unfair. As such, Plaintiff discounted that figure by 75% to account for the risk of losing
20 on the merits and for the risk of the Court reducing penalties, to arrive at a realistic recovery for Aggrieved
21 Employees of \$66,150.00. *See, e.g., Thurman, supra*, 203 Cal.App.4th at 1136 (affirming reduction of
22 PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047
23 at *5 (C.D Cal. Aug. 12, 2011) (reducing PAGA penalties by more than 82%); *Id.*

24 Civil Penalties for Failing to Reimburse Business Expenses: Plaintiff alleges that Golden Bolt
25 required employees to use and purchase their own protective gear and their personal cellular phones to
26 discharge their duties as required under Labor Code section 2802 and by *Cochran v. Schwan's Home*
27 *Service, Inc.* (2014) 228 Cal.App.4th 1137. Plaintiff alleges that despite this requirement Golden Bolt
28 failed to reimburse its employees for necessary business expenses. Lidman Decl., ¶ 24. Plaintiff believes

1 that this failure occurred in all of the relevant pay periods. *Id.* Therefore, pursuant to Labor Code section
2 558, Plaintiff calculated Golden Bolt's exposure at \$260,000.00 (92 x \$50 initial violation) + (2,554 x
3 \$100 subsequent violations)). *Id.*

4 Golden Bolt argues that , that cellular phones largely were not necessary for work and in fact
5 use was prohibited during work but it did reimburse employees for cell phone use when required.
6 Lidman Decl., ¶ 25. Golden Bolt also contends that there are no uniforms to be worn, and that it provides
7 vouchers for employees to purchase steel-toed shoes such that they would not have to incur any personal
8 expenses. *Id.* Lastly, Golden Bolt contends that it provides all protective equipment to its employees,
9 including face masks, face shields, goggles, earplugs and gloves such that no expenses would ever need
10 to be incurred by the employees. *Id.* In light of this, Plaintiff discounted the maximum recovery on this
11 claim by 80% to account for the risk that Golden Bolt could prevail in its arguments, to arrive at a
12 projected total of \$52,000.00. *Id.* Based on the sum of the foregoing estimated figures, Plaintiff predicts
13 the realistic total recovery for the Aggrieved Employees to be approximately \$269,960.00. Lidman
14 Decl., ¶ 26.

15 The proposed settlement of \$100,000.00 therefore represents approximately 37% of the realistic
16 total recovery for Aggrieved Employees and avoids the risks of proceeding through trial. *Id.* "The fact
17 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of
18 itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Linney v.*
19 *Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotations omitted). Plaintiff
20 acknowledges that there was substantial uncertainty and risk as to these claims. Approval is appropriate
21 since this settlement will provide tangible, monetary relief to Aggrieved Employees and the State of
22 California.

23 **d) The Experience and Views of Counsel**

24 "Parties represented by competent counsel are better positioned than courts to produce a
25 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises*
26 *Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995).

27 Here, Plaintiff's Counsel collectively brings over four decades of wage-and-hour class and
28 representative action experience. *See* Lidman Decl., ¶¶ 2-8; Declaration of Paul K. Haines ("Haines

Decl.”), ¶¶ 2-7; and Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶¶ 2-8. They have been certified as class counsel in numerous cases alleging wage and hour claims. *Id.* Their experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Golden Bolt and the reasonableness of the Settlement. Practice in the narrow field of wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class and representative action litigation. Because it is reasonable to compensate Plaintiff’s Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the GSA is reasonable. Other factors show that the amount of fees requested is reasonable. This case involved legal issues regarding the propriety of civil PAGA penalties, an unsettled area of law. Golden Bolt was also represented by respected counsel with extensive wage-and-hour litigation experience. This factor strongly supports settlement approval. *See, Kullar, supra*, 168 Cal.App.4th at 130 (“The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s length transaction entered without self-dealing or other potential misconduct.”).

C. Requested Award of Attorneys’ Fees/Costs Are Fair and Reasonable

Plaintiff, as the prevailing party in settlement, is entitled to recover attorneys’ fees and costs for these claims. *See* Cal. Labor Code § 2699(g) (“Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”); Cal. Code of Civil Procedure § 1021.5(a). A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”) Fee awards of roughly one-third of the settlement fund are routinely awarded in California state and federal courts in class and representative PAGA actions.⁵ Indeed, the California

⁵ *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008); *see also, In re Pacific Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award); *Chavez v. Saticoy Lemon Ass’n*, Case No. 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015) (approving attorneys’ fees of one-third of settlement fund in representative PAGA settlement).

Supreme Court approved the use of the “percentage of fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (“the percentage of fund method survives in California class action cases...”). This is also consistent with Plaintiff’s Counsel’s experience in similar wage-and-hour class and PAGA matters. *See* Lidman Decl., ¶ 27. Here, Plaintiff’s Counsel’s fee request of \$90,000.00 (one-third of the GSA) is the same percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the recovery method.

The California Supreme Court in *Laffitte* also held that trial courts have discretion to assess the reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. Under the lodestar method, the court multiplies the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure by a “multiplier” to account for a range of factors. *See Serrano v. Priest* 20 Cal.3d 25, 48-49 (1977).

Lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez, supra*, 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 this case, Plaintiff’s Counsel have a lodestar of \$119,092.50 without the use of any multiplier, which is approximately 3.57 times more than the \$33,333.33 fee request. *See* Lidman Decl., ¶ 30. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below and in the Lidman Declaration filed concurrently herewith. The billing rates used are reasonable in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. *Id.*, at ¶31, Exh. 3.

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (23rd Year Attorney)	\$750	77.5	\$58,125.00
Elizabeth Nguyen (16th Year Attorney)	\$650	41.4	\$26,910.00
Paul K. Haines (15th Year Attorney)	\$650	15.2	\$9,880.00
Milan Moore (6th Year Attorney)	\$400	53.4	\$21,360.00
Paralegals	\$175	16.1	\$2,817.50
Total Lodestar			\$119,092.50

1
2 The fee award requested here is justified because it is **lower** than lodestar. Further, the fee award
3 requested here is justified because Plaintiff's Counsel achieved a fair civil penalty recovery for the State
4 and the Aggrieved Employees in an uncertain and risky case, while bearing the substantial burdens of
5 representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v.*
6 *Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency
7 case, significant risk and the absence of supporting precedents, are proper considerations in awarding
8 attorneys' fees). Additionally, Plaintiff's recovery for the State of California and Aggrieved Employees
9 exceeds other PAGA awards approved by courts in California. *See, e.g., Boyd v. Bank of Am. Corp.*, 2014
10 WL 6473804 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Penaloza, supra*, 2013
11 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average PAGA
12 penalties of \$3.33). That Plaintiff's Counsel achieved these results without engaging in a protracted legal
13 battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength
14 of the results achieved.

15 As discussed above, this case carried substantial risks on the merits and with respect to the
16 propriety of "stacking penalties" based on a single primary allegation and the Court's authority to reduce
17 an award of PAGA penalties. It is fair and reasonable to account for these risks in compensating
18 Plaintiff's Counsel, as well as the risks involved in undertaking this litigation and expending considerable
19 effort while working on a pure contingency basis.

20 Indeed, since undertaking representation of Plaintiff, Plaintiff's Counsel dedicated substantial
21 resources to this litigation, including expending a total of \$9,449.64 (including costs associated with the
22 instant motion) in actual litigation costs, without receiving any compensation to date. Lidman Decl., ¶
23 36, Exh. 4. Plaintiff's Counsel conducted legal research regarding the merits of Plaintiff's claims, the
24 ability to recover penalties under the PAGA, and Golden Bolt's potential defenses. *Id.* Plaintiff's Counsel
25 also analyzed the data and information produced informally prior to mediation and prepared an exposure
26 analysis on the PAGA penalties. *Id.* Plaintiff's Counsel also expended significant additional effort in
27 preparing subsequent settlement documents, this Motion for settlement approval, and supporting
28 declarations, and will oversee the settlement administration process. *Id.* Given the considerable potential

1 for adverse outcomes in this case, the contingent risk borne by Plaintiff's Counsel was great. The quality
2 of Plaintiff's Counsel's work, and the efficacy and dedication with which it was performed, should be
3 compensated.

4 Thus, Plaintiff's Counsel submit that the requested fee award is fair, reasonable and adequate and
5 should be approved. Plaintiff's request for reimbursement of actual litigation costs of \$9,449.64 is also
6 fair and reasonable. As the evidence submitted herewith shows, all of Plaintiff's litigation costs are
7 documented and reasonably incurred. *See* Lidman Decl., ¶36, Exh. 4.

8 **D. Notice and Requested Settlement Administration Costs Are Fair and Reasonable**

9 The parties agreed to engage Simpluris as the settlement administrator. *See* Settlement, ¶ I.19.
10 Under the Settlement, Parties have agreed to have the proposed Notice of PAGA Settlement and Release
11 ("Notice"), subject to Court approval, be sent with the settlement checks to inform the Aggrieved
12 Employees about the scope of the released claims and their responsibility for any taxes payable on the
13 amount received. The PAGA does not require notice and the Aggrieved Employees do not have the right
14 to opt-out. The Notice which is attached as Exhibit A to the Settlement and Exhibit A to the [Proposed]
15 Order is only being provided as a courtesy.

16 Simpluris shall be responsible for translating and mailing the Notice in both English and Spanish
17 and calculating and distributing the settlement checks, among other duties. The parties have designated
18 \$3,000.00 as settlement administration costs. Settlement, ¶ III.4.c. Simpluris's quote is attached as
19 Exhibit B to the Declaration of Eric Springer on behalf of Simpluris in support of Motion for Approval
20 of PAGA Settlement filed concurrently herewith.

21 **E. Plaintiff's Requested Enhancement Award is Fair, Adequate, and Reasonable**

22 Courts routinely approve enhancement awards to compensate named Plaintiff for the services
23 they provide and the risks they incur during class and representative litigation. *Cellphone Termination*
24 *Fee Cases*, 186 Cal. App. 5th 1380, 1393-94 (2010) ("These awards 'are discretionary, [citation], and are
25 intended to compensate class representatives for work done on behalf of the class, to make up for financial
26 or reputational risk undertaken in bringing the action, and, sometimes, to *recognize their willingness to*

1 *act as a private attorney general.*”)⁶

2 Here, pursuant to the Settlement, Plaintiff seeks an enhancement award of \$5,000.00. *See*
3 Settlement, ¶ III.4.b. Plaintiff will request the Court award an enhancement award of \$5,000.00 in
4 recognition of her unique contributions to the prosecution of this case, her efforts in bringing this case to
5 a successful and significant resolution and her execution of a full general release of all known and
6 unknown claims – a release not being applied to the Aggrieved Employees. *Id.*; Mejia de Gonzalez Decl.,
7 ¶¶ 3-10. This request is reasonable given Plaintiff’s efforts in this case and the risks she undertook on
8 behalf of the Aggrieved Employees. Plaintiff provided substantial factual information to Plaintiff’s
9 Counsel, attended numerous meetings with Plaintiff’s Counsel and numerous hours expended by him
10 assisting in the litigation of this action. Mejia de Gonzalez Decl., ¶¶ 3-10. Further, Plaintiff put her future
11 employment prospects at risk by becoming a class representative, as the fact that she filed a lawsuit “is
12 searchable on the internet and may become known to prospective employers when evaluating” them for
13 employment. *Guippone v. BH S&B Holdings, LLC*, 2011 U.S., Dist. LEXIS 126026, *20 (S.D.N.Y. Oct.
14 28, 2011). Accordingly, Plaintiff’s request is appropriate and justified as part of the Settlement.

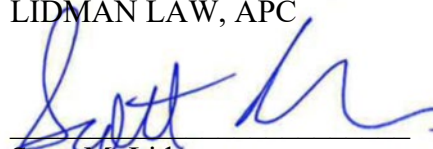
15 **IV. CONCLUSION**

16 For the reasons stated herein, this Court should grant Plaintiff’s Motion in its entirety and adopt
17 the [Proposed] Order and Judgment Granting Plaintiff’s Motion for Settlement Approval of Claims
18 Brought Under the Private Attorneys General Act and Reasonable Attorneys’ Fees, Costs, and
19 Enhancement Award submitted concurrently herewith.

20 Dated: February 24, 2022

Respectfully submitted,
LIDMAN LAW, APC

21
22 By:


Scott M. Lidman
Attorneys for Plaintiff
PATRICIA MEJIA DE GONZALEZ

23
24
25
26 ⁶ California courts, including many judges in Los Angeles Superior Court, routinely award enhancement payments
27 in PAGA-only, non-class actions. *See Canul v. Basmat, Inc.*, Case No. BC674940, Judge Beaudet of this Court
28 (Dept. 50) approved a PAGA-only settlement including a \$5,000 enhancement award to the named plaintiff. *See*
also, Pickett v. 99 Cents Only Stores, et al, Case No. BC473038, Judge Hiroshige of this Court (Dept. 54) approved
a \$12,500 enhancement payment to each of two named plaintiffs in a PAGA only settlement.