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and on behalf of all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF KERN**

DIANA FOY; RAYMOND YBARRA; and  
RAYMOND HARRIS; individually and on  
behalf of all others similarly situated,

Plaintiffs,  
vs.

EXEL INC., dba DHL SUPPLY CHAIN; and  
DOES 1 through 20, inclusive,

Defendants.

Case No.: BCV-20-102463

*[Case assigned for all purposes to the Hon.  
Bernard C. Barmann, Jr., Dept. 10]*

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

Date: March 24, 2022  
Time: 8:30 a.m.  
Dept: 10

Action Filed: October 21, 2020  
Trial Date: None Set

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

2           PLEASE TAKE NOTICE that on March 24, 2022 at 8:30 a.m., or as soon thereafter as  
3 the matter may be heard, in Bakersfield Department 10 of the Kern County Superior Court,  
4 located at 1415 Truxtun Avenue, Bakersfield, California 93301, Plaintiffs Diana Foy, Raymond  
5 Ybarra, and Raymond Harris (“Plaintiffs”), individually and on behalf of other aggrieved  
6 employees, will and hereby do move this Court for entry of an Order as follows:

- 7           1. Granting approval pursuant to Labor Code section 2699(l) of the parties’ proposed  
8 Settlement Agreement of claims brought by Plaintiff pursuant to the Private  
9 Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*;
- 10          2. Appointing Phoenix Settlement Administrators as the third-party Settlement  
11 Administrator, and approving an award of \$12,250.00 in anticipated costs to Phoenix  
12 Settlement Administrators for its settlement administration services;
- 13          3. Approving as to form and content the proposed Notice of PAGA Settlement and  
14 Release of Claims, and directing that it be distributed to the Aggrieved Employees  
15 pursuant to the terms of the Settlement Agreement;
- 16          4. Directing the distribution of the Gross Settlement Amount (\$1,895,000.00) pursuant  
17 to the terms of the Settlement Agreement;
- 18          5. Approving an award of one-third of the Gross Settlement Amount (\$631,666.66) in  
19 attorneys’ fees to Plaintiffs’ Counsel;
- 20          6. Approving an award of \$13,316.32 in actual litigation costs reimbursement to  
21 Plaintiffs’ Counsel;
- 22          7. Approving enhancement awards of \$5,000.00 each to Plaintiffs (\$15,000.00 total) for  
23 their service to the Aggrieved Employees and the State of California; and
- 24          8. Approving the payment of \$917,075.26 to the California Labor & Workforce  
25 Development Agency for its 75% share of PAGA civil penalties.

26           This Motion is based on this Notice, the attached Memorandum of Points and Authorities;  
27 the declarations of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, Chelsea D. Hollins,  
28 Diana Foy, Raymond Ybarra, Raymond Harris, and Jodey Lawrence of Phoenix Settlement

Administrators, and all exhibits attached thereto; the Settlement Agreement; all other pleadings and papers on file in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Given the multiplicity of issues addressed herein, Plaintiffs' memorandum of points and authorities necessitates exceeding the 20-page limit set forth in California Rule of Court 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider the entire Motion, which is 24 pages in length.

Dated: February 22, 2022

Respectfully Submitted,  
HAINES LAW GROUP, APC

By:



Matthew K. Moen  
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Diana Foy, Raymond Ybarra and Raymond Harris (collectively, “Plaintiffs”),  
4 “Aggrieved Employees” under the Private Attorneys General Act of 2004, California Labor Code  
5 section 2698 *et seq.* (“PAGA”), respectfully moves this Court for an Order granting approval of  
6 the Settlement Agreement (“Settlement Agreement” or “Settlement”)<sup>1</sup> with Defendant Exel, Inc.  
7 dba DHL Supply Chain (“Defendant”).<sup>2</sup> The proposed Settlement, under which Defendant has  
8 agreed to pay a non-reversionary Gross Settlement Amount of \$1,895,000.00, will dispose of  
9 Plaintiffs’ representative PAGA claim filed on behalf of the State of California and all “Aggrieved  
10 Employees” as defined by Labor Code section 2699(c). This PAGA action is predicated on  
11 Defendant’s alleged failures to: pay all minimum and overtime wages; provide all lawful meal  
12 periods; authorize and permit all lawful rest periods; issue accurate itemized wage statements;  
13 and timely pay all final wages owed upon separation from employment.

14 This PAGA action seeks civil penalties for Defendant’s Labor Code violations on behalf  
15 of the California Labor & Workforce Development Agency (“LWDA”) and all “Aggrieved  
16 Employees,” defined as “all current and former non-exempt employees of Defendant Exel Inc.  
17 dba DHL Supply Chain who worked in the State of California at any time between October 21,  
18 2019 to August 15, 2021” (the “PAGA Period”). Notably, the relief provided under the  
19 Settlement, and the claims released thereunder, are *solely* for the payment of civil penalties under  
20 the PAGA. Based on the information provided by Defendant, the number of Aggrieved  
21 Employees, including Plaintiffs, is estimated to be 5,300 individuals.

22 In deciding whether to grant approval of the Settlement, the primary issue is whether the  
23 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement  
24 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it (1) is the

25 \_\_\_\_\_  
26 <sup>1</sup> The Settlement Agreement is attached as Exhibit 1 to the Declaration of Matthew K. Moen (“Moen  
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.

<sup>2</sup> Concurrently with the filing of this motion, Plaintiffs provided notice of the proposed Settlement, a copy  
of this motion, and all papers filed in support hereof, to the LWDA. *See* Moen Decl., ¶ 10, Exhibit 2.

product of extensive arm's-length negotiations, (2) was negotiated by attorneys experienced in wage-and-hour issues with the assistance of an experienced, neutral mediator, (3) was negotiated after the parties undertook sufficient investigation to evaluate the relative strength and value of the PAGA claim, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and likely duration of further litigation.

Pursuant to the Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of \$1,895,000.00 on a non-reversionary basis. *See* Settlement, §§ I.8 and III.2. After deducting amounts for requested attorneys' fees (\$631,666.66), attorney costs (\$13,316.32),<sup>3</sup> enhancement awards for the named Plaintiffs (\$5,000.00 each), settlement administration costs (\$12,250.00), and the LWDA's 75% share of the amount designated as civil penalties pursuant to Labor Code section 2699(i) (\$917,075.26), the Settlement provides for distribution of approximately \$305,691.76 in civil penalties to the Aggrieved Employees. *Id.*, §§ I.9, III.4-5.

The GSA represents a reasonable recovery for the State of California and Aggrieved Employees when considering the limited release of only PAGA claims based on the factual allegations in Plaintiffs' operative complaint. Further litigation may have resulted in a smaller recovery, or even no recovery at all, based on the defenses asserted by Defendant and the significant litigation risks involved. Moreover, the GSA results in individual payments that exceed other PAGA penalty awards approved as reasonable throughout California. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at \*2 (Super. Ct. L.A. County, May 20, 2013) (average PAGA penalties of \$7.49); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (average PAGA penalties of \$3.33). Further, the amounts requested for attorneys' fees and costs, Plaintiffs' enhancement awards, and settlement administration costs are fair, adequate, and

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<sup>3</sup> Although the Settlement provides for reimbursement of Plaintiffs' verified litigation costs and expenses "up to \$22,500.00," Plaintiffs' Counsel has collectively incurred \$13,316.32 in actual litigation costs, and respectfully requests reimbursement of only the amount actually incurred. *See* Settlement, §§ I.9 and III.4.a; Moen Decl., Exhibit 3 (Expense Report); Declaration of Chelsea D. Hollins ("Hollins Decl."), ¶¶ 16-17, Exhibit 1.

reasonable. In light of the foregoing, this Court should enter the [Proposed] Judgment and Order Granting Plaintiffs' Motion for Settlement Approval of Claims Brought Under the PAGA, Reasonable Attorneys' Fees and Costs, and Enhancement Awards, submitted herewith.

## **II. SUMMARY OF THE LITIGATION**

### **A. The Parties**

Defendant provides services such as international freight forwarding, warehousing, supply chain analysis and management, in-plant services, assembly and packaging, and transportation management throughout California. Moen Decl., ¶ 11. Plaintiff Foy began working for Defendant in May 2020 in Defendant's shipping and auditing department at a facility in Arvin, California. *Id.* Plaintiff Ybarra began working for Defendant in November 2015 as a forklift operator at Defendant's Carson, California facility. *Id.* Plaintiff Harris began working for Defendant on February 25, 2019 as a non-exempt Driver. *Id.* Plaintiffs, like all Aggrieved Employees, were employed by Defendant as non-exempt employees during the PAGA Period, and were subject to Defendant's wage and hour policies and practices. *Id.*; *see also, generally*, Declaration of Diana Foy ("Foy Decl."); Declaration of Raymond Ybarra ("Ybarra Decl."); Declaration of Raymond Harris ("Harris Decl.").

### **B. Procedural History**

On October 20, 2020, Plaintiff Foy filed the instant action against Defendant, alleging that Defendant failed to: (1) pay all minimum wages; (2) pay all overtime wages; (3) provide all lawful meal periods; (4) permit all lawful rest periods; (5) issue accurate itemized wage statements; (6) pay all wages due upon separation of employment and within the required time; and (7) comply with Business and Professions Code §§17200, *et seq.* Moen Decl., ¶ 12. On December 29, 2020, after exhausting her pre-filing requirements, Plaintiff Foy filed a First Amended Complaint, adding a cause of action for civil penalties under PAGA premised upon the same underlying Labor Code violations. *Id.* Shortly thereafter, Defendant provided Plaintiff Foy's counsel with an arbitration agreement signed by Plaintiff Foy containing a class action waiver. *Id.* As a result, Plaintiff Foy dismissed her class and individual claims without prejudice, and amended her complaint to allege a single cause of action for civil penalties under PAGA. *Id.* Around this same

1 time, Plaintiff Ybarra retained Plaintiff Foy's counsel with the intent of pursuing similar claims  
2 against Defendant. *Id.* On June 1, 2021, Plaintiff Foy filed a Second Amended Complaint, adding  
3 Plaintiff Ybarra as a named plaintiff. *Id.*

4 On November 6, 2020, Plaintiff Harris filed a class action complaint against Defendant in  
5 Riverside County Superior Court, titled *Raymond Harris v. Exel, Inc., dba DHL Supply Chain*  
6 *(USA)*, Case No. CVRI2000034 (the "Riverside County Action"), alleging that Defendant failed  
7 to: (1) properly separately compensate for rest periods being paid on a piece-rate basis; (2) issue  
8 accurate itemized wage statements; and (3) comply with Business and Professions Code §§17200,  
9 *et seq.* Moen Decl., ¶ 13. On November 6, 2020, Plaintiff Harris sent a letter to Defendant via  
10 certified mail, and to the LWDA via online submission, describing Defendant's alleged Labor  
11 Code violations and providing notice of his intent to bring a PAGA claim, as required by Labor  
12 Code section 2699.3. *Id.* After exhausting his pre-filing requirements, Plaintiff Harris filed a First  
13 Amended Complaint on January 11, 2021, adding a cause of action for PAGA civil penalties  
14 based on the underlying labor code violations alleged in his initial complaint. *Id.*

15 After the filing of his First Amended Complaint, Plaintiff Harris learned that Plaintiff Foy  
16 had previously initiated the instant action. Moen Decl., ¶ 14. Counsel in the two actions then met  
17 and conferred, and agreed to jointly prosecute the two actions and to attend mediation in an  
18 attempt to seek a global resolution of all claims alleged therein. *Id.*

19 On June 17, 2021, the parties attended a full-day mediation session with Steve Pearl, an  
20 experienced wage and hour mediator. Moen Decl., ¶ 15. Prior to attending mediation, Defendant  
21 provided Plaintiffs with a representative sampling of the Aggrieved Employees' timekeeping and  
22 payroll records, as well as various key data points, including the total number of both current and  
23 former Aggrieved Employees and the total number of workweeks worked by the Aggrieved  
24 Employees during the relevant time period, and Defendant's applicable written wage and hour  
25 policies. *Id.* Plaintiffs then retained an expert to examine Defendant's produced data and conduct  
26 a comprehensive exposure analysis for the claims at issue. *Id.*

27 During mediation, the parties debated the legal bases for their claims and defenses, their  
28 respective data analyses, and their respective positions regarding the extent to which the Court

1 would likely reduce any PAGA penalties recovered. Moen Decl., ¶ 16. At the conclusion of  
2 mediation, the parties successfully reached an agreement to globally and fully resolve all PAGA  
3 claims asserted by Plaintiffs, and ultimately executed the Settlement Agreement now before the  
4 Court for approval. *Id.* As a material term of the Settlement, Plaintiffs Foy and Ybarra filed a  
5 Third Amended Complaint on November 19, 2021, adding Plaintiff Harris as a named plaintiff  
6 in the instant action. *Id.* Subsequently, Plaintiff Harris filed a request for dismissal, without  
7 prejudice, of the *Harris Action*, which was granted on December 6, 2021. *Id.*

8 **C. Plaintiffs’ Claims And Defendant’s Defenses**

9 Plaintiffs allege that Defendant failed to pay Plaintiffs and the Aggrieved Employees all  
10 wages owed for work performed off-the-clock. Moen Decl., ¶ 17. Specifically, Plaintiffs allege  
11 that employees were required to spend an additional 10 minutes inside Defendant’s facilities  
12 waiting in line with other employees to clock in for their shift. *Id.* Plaintiffs also allege that, shortly  
13 after the start of the pandemic, Plaintiffs and the Aggrieved Employees were required to undergo  
14 temperature checks before clocking in for their work shifts. *Id.*; *see also* Wage Order 9, § 2(H)  
15 (“‘Hours Worked’ means the time during which an employee is subject to the control of an  
16 employer...”); *Ribot v. Farmers Insurance Group*, Case No. CV 11-02404 DDP (FMOx), 2013  
17 WL 3778784 (C.D. Cal. July 17, 2013) (certifying claim for failing to compensate for pre-shift  
18 work). In response, Defendant contends that employees clocked in immediately upon arrival to  
19 Defendant’s facilities, and therefore were accurately paid all wages owed. Moen Decl., ¶ 17.  
20 Defendant further asserts that individualized inquiries would be necessary to determine whether  
21 an employee was actually performing compensable work during the hours prior to the employee’s  
22 scheduled start time, an issue exacerbated by the lack of any records of off-the-clock work being  
23 performed, resulting in an unmanageable series of mini-trials. *Id.*

24 Plaintiffs further allege that Defendant failed to separately compensate piece-rate  
25 employees on an hourly basis for their rest periods at their effective hourly rate of pay for the  
26 workweek. Moen Decl., ¶ 18; *see* Labor Code § 226.2(a)(3)(A) (“Employees shall be  
27 compensated for rest and recovery periods at a regular hourly rate that is no less than the higher  
28 of: (i) An average hourly rate determined by dividing the total compensation for the workweek,

1 exclusive of compensation for rest and recovery periods and any premium compensation for  
2 overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods;  
3 (ii) The applicable minimum wage.”). Instead, Plaintiffs allege that Defendant paid the employees  
4 separate rest period pay at a rate that did not factor in the value of any piece-rate earnings accrued,  
5 resulting in Defendant’s failure to separately compensate for all rest periods at the proper rate of  
6 pay. Moen Decl., ¶ 18.

7 Similarly, Plaintiffs allege that Defendant failed to pay Plaintiffs and the Aggrieved  
8 Employees all overtime wages earned in pay periods in which employees earned shift premiums.  
9 Moen Decl., ¶ 19. Specifically, Plaintiffs allege that Defendant used the rate in effect method of  
10 calculating overtime rates of pay in such instances, when it should have used the weighted average  
11 method instead. *Id*; see DLSE Manual 49.2.5 (“Where two rates of pay are paid during a  
12 workweek, the California method for determining the regular rate of pay for calculating overtime  
13 in that workweek mirrors the federal method, based upon the weighted average of all hourly rates  
14 paid.”) (citing 29 CFR § 778.115); see also *Huntington Memorial Hospital v. Superior Court*  
15 (2005) 131 Cal.App.4th 893, 902-903 (payments included in the calculation of the regular rate  
16 are generally consistent under state and federal law and include all earnings whether paid on an  
17 hourly, piece-rate, or commission basis). As a result, Defendant failed to incorporate the value of  
18 shift premiums into the Aggrieved Employees’ overtime rates of pay. Moen Decl., ¶ 19.

19 In response, Defendant argues that it does separately compensate employees paid on a  
20 piece-rate basis for rest periods at the proper rate. Moen Decl., ¶ 20. Moreover, Defendant argues  
21 that Plaintiffs’ damages analysis for these claims were overstated, since only a small portion of  
22 the Aggrieved Employees worked for Defendant as drivers, and only drivers were paid on a piece-  
23 rate basis, and only 2% of the Aggrieved Employees received shift premiums and earned overtime  
24 wages in the same pay period. *Id*. Defendant further argues that Plaintiffs’ claims would be  
25 unmanageable at trial, since they would require individualized inquiries into every pay period  
26 worked by the Aggrieved Employees to determine whether Defendant had complied with Labor  
27 Code § 226.2 and 29 CFR § 778.115. *Id*.

28 ///

1 Plaintiffs also allege that Defendant failed to pay all overtime wages owed to Plaintiffs  
2 and the Aggrieved Employees as a result of Defendant's failure to properly institute a lawful  
3 alternative workweek schedule ("AWS"). Moen Decl., ¶ 21. Specifically, Plaintiffs allege that  
4 Defendant only paid overtime wages to the Aggrieved Employees when they worked more than  
5 10.0 hours in a workday, despite not satisfying all of the statutory prerequisites to implementing  
6 a lawful AWS. *Id.*; *see also* Wage Order Ch. 1, § 3(C)(3); *Maldonado v. Epsilon Plastics, Inc.*  
7 (2018) 22 Cal.App.5th 1308, 1312 (affirming the invalidity of the AWS and recognizing that the  
8 trial court was "specifically troubled" that "[defendant] failed to inform the Employees that by  
9 agreeing to the [AWS], they were waiving overtime pay for hours...that they would otherwise be  
10 entitled to."). In response, Defendant asserts that it properly implemented a valid AWS after  
11 complying with all election procedures at two of its locations, and that those remain the only  
12 locations at which an AWS was used. Moen Decl., ¶ 21. Defendant therefore contends that it will  
13 prevail on the merits of this claim. *Id.*

14 Plaintiffs also assert that Defendant failed to provide Plaintiffs and the Aggrieved  
15 Employees with all lawful meal periods to which they were entitled. Moen Decl., ¶ 22.  
16 Specifically, Plaintiffs assert that Defendant routinely failed to provide the Aggrieved Employees  
17 with meal periods when employees worked shifts lasting between 5.0 and 6.0 hours and between  
18 10.0 and 12.0 hours, and instead forced Plaintiffs and the Aggrieved Employees to sign unlawful  
19 meal period waivers as a condition of employment. *Id.*; *see also* Labor Code § 512(a); *Brinker*  
20 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041 ("We conclude that, absent  
21 waiver, section 512 requires a first meal period no later than the end of an employee's fifth hour  
22 of work..."); *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 728-29  
23 ("[The wage order] imposes an affirmative obligation on every employer to authorize and provide  
24 legally required meal and rest breaks; if it fails to do so, it has violated the law and is liable.").  
25 Similarly, Plaintiffs assert that Defendant failed to authorize and permit the Aggrieved Employees  
26 to take a third rest period for shifts lasting longer than 10.0 hours in length, as required by  
27 California law. Moen Decl., ¶ 22; *see also Brinker, supra*, 53 Cal.4th 1004; Wage Order 9, §  
28

1 12(A) (“Every employer shall authorize and permit...ten (10) minutes net rest time per four (4)  
2 hours or major fraction thereof.”).

3 In response, Defendant asserts that it maintained facially lawful written meal and rest  
4 period policies at all times throughout the PAGA liability period, and the meal period waivers  
5 that employees signed were voluntary, lawful, and not a condition of continued employment.  
6 Moen Decl., ¶ 23. Moreover, Defendant asserts that Plaintiffs’ meal and rest period claims are  
7 preempted by the Ninth Circuit Court of Appeals’ holding in *International Brotherhood of*  
8 *Teamsters, Local 2785 v. Federal Motor Carrier Safety Administration*, 986 F.3d 841 (9th Cir.  
9 2021), which held that the applicable federal regulations governing companies employing  
10 property-carrying motor vehicle drivers preempted the applicable meal and rest period rules  
11 outlined in the California Labor Code. *See id.* Further, Defendant asserts that these claims are  
12 unmanageable, as they require individualized inquiries into whether each employee failed to take  
13 a lawful rest period and on which days, or whether the employee voluntarily waived a meal period  
14 on any given day, resulting in an unmanageable series of mini-trials. Moen Decl., ¶ 23.

15 Plaintiffs also allege that Defendant failed to provide the Aggrieved Employees with wage  
16 statements that complied with the requirements of Labor Code section 226(a), as the wage  
17 statements issued by Defendant failed to include the correct rates of pay for overtime wages when  
18 employees received a shift premium, and failed to list employees’ total hours worked, piece rate  
19 units earned, and corresponding piece-rates earned during pay periods in which an employee was  
20 paid on a piece-rate basis. Moen Decl., ¶ 24; *see* Labor Code § 226(a) (“An employer...shall  
21 furnish to his or her employee...an accurate itemized wage statement in writing showing...(2)  
22 total hours worked...(3) the number of piece-rate units earned and any applicable piece rate...and  
23 (9) all applicable hourly rates in effect during the pay period...”). In response, Defendant asserts  
24 that the wage statements it issued did comply with Labor Code section 226(a) with respect to all  
25 hourly rates of pay, including overtime rates of pay. Moen Decl., ¶ 24. Further, Defendant asserts  
26 that Plaintiffs’ damages analyses are substantially overstated, as only a small fraction of the  
27 Aggrieved Employees performed piece-rate work as drivers during the relevant time period, and  
28

1 because Defendant changed the information contained on the wage statements issued to those  
2 drivers in August 2020. *Id.*

3 Finally, as a result of Defendant’s failures to pay all minimum wages, overtime wages,  
4 and meal period and rest period premiums, Plaintiff asserts that Defendants also failed to issue  
5 accurate and itemized wage statements, and failed to timely pay all final wages at the time of  
6 separation. Moen Decl., ¶ 25; *see also* Labor Code § 226(a). In response, Defendant argues that  
7 Plaintiffs’ underlying claims will fail and, as a result, the wholly derivative wage statement claim  
8 will also fail. Moen Decl., ¶ 25; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147  
9 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”).  
10 Defendant also maintains that given its good faith defenses, this Court would exercise its  
11 discretion to substantially reduce any PAGA penalties awarded. Moen Decl., ¶ 25; *see also* Labor  
12 Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135  
13 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corporation* (2018) 30  
14 Cal.App.5th 504 (affirming trial court’s reduction of PAGA penalties to 10% of calculated  
15 exposure after bench trial).

16 Further, Defendant argues that Plaintiffs could only seek PAGA penalties at the \$100  
17 “initial” violation rate, as opposed to the \$200 “subsequent” violation rate, since Defendant had  
18 never been put on notice by a court or the Labor Commissioner that its practices violated the  
19 Labor Code until Plaintiffs initiated this action. Moen Decl., ¶ 25; *see also Amaral v. Cintas Corp.*  
20 *No. 2* (2008) 163 Cal.App.4th 1157, 1209 (finding “initial” violation rate applies until employer  
21 has been notified that it is violating a Labor Code provision).

### 22 **III. THE PROPOSED SETTLEMENT**

#### 23 **A. “Aggrieved Employees” Defined**

24 Aggrieved Employees are defined as, “all current and former non-exempt employees of  
25 Defendant Exel Inc. dba DHL Supply Chain who worked in the State of California at any time  
26 between October 21, 2019 to August 15, 2021.” *See* Settlement, § I.2.

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1           **B.       Essential Terms Of The Settlement**

2           Defendant will pay a GSA of \$1,895,000.00. Settlement, §§ I.8, III.2. After deducting  
3 amounts for requested attorneys’ fees and costs, Plaintiffs’ enhancement awards, and settlement  
4 administration costs, the remaining Net Settlement Amount (“NSA”) distributable to the  
5 Aggrieved Employees and the LWDA is estimated to be \$1,222,767.02. *See* Settlement, §§ I.9,  
6 III.4. This non-reversionary Settlement does not require Aggrieved Employees to submit a claim  
7 form to reap the financial benefits of the Settlement. *Id.*, §§ I.8, III.2. The monetary terms of the  
8 Settlement are as follows:

|                                                         |                       |
|---------------------------------------------------------|-----------------------|
| 9 <b>Gross Settlement Amount:</b>                       | <b>\$1,895,000.00</b> |
| 10          Minus Court-approved attorneys’ fees (1/3): | \$631,666.66          |
| 11          Minus Court-approved attorneys’ costs:      | \$13,316.32           |
| 12          Minus Court-approved enhancement payments:  | \$5,000.00 each       |
| 13          Minus settlement administrator costs:       | \$12,250.00           |
| 14 <b>Net Settlement Amount:</b>                        | <b>\$1,222,767.02</b> |
| 15          Minus LWDA’s 75% Share:                     | \$917,075.26          |
| 16 <b>Total Paid to Aggrieved Employees:</b>            | <b>\$305,691.76</b>   |

17           **1.   Attorneys’ Fees and Costs**

18           Plaintiff’s Counsel requests one-third of the GSA (\$631,666.66) in attorneys’ fees, and  
19 \$13,316.32 in actual litigation costs. Settlement, §§ I.9 and III.4.a; Moen Decl., Exhibit 3; Hollins  
20 Decl., Exhibit 1.

21           **2.   Settlement Administration Costs**

22           The parties agree to engage Phoenix Settlement Administrators (“Phoenix”) as the third-  
23 party settlement administrator. *See* Settlement, §§ I.16, IV.1. Phoenix shall be responsible for  
24 translating the Notice into Spanish,<sup>4</sup> calculating the settlement checks, and mailing the settlement  
25 checks and Notice to the Aggrieved Employees, among other duties. *Id.*, § IV. Phoenix estimates  
26 incurring \$12,250.00 in costs in connection with the administration of this settlement. *See*  
27 Declaration of Jodey Lawrence (“Lawrence Decl.”), Exhibit B.

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<sup>4</sup> Based on Defendant’s employees’ demographics, Notices will be sent out in English and Spanish.

1                   **3. Plaintiffs' Enhancement Awards**

2           Plaintiffs also request enhancement awards of \$5,000.00 each in recognition of their  
3 efforts to initiate this case, their contributions to the prosecution of this case, and their efforts in  
4 bringing this case to a successful resolution. Settlement, §§ I.9, III.4.b; Moen Decl., ¶ 33; Foy  
5 Decl., ¶¶ 5-9; Ybarra Decl., ¶¶ 5-9; Harris Decl., ¶¶ 4-7.

6                   **4. Payment to the LWDA and Aggrieved Employees**

7           The entire NSA shall be designated as PAGA civil penalties. Settlement, § IV.7. From  
8 the NSA, 75% (\$917,075.26) will be distributed to the LWDA, and 25% (\$305,691.76) will be  
9 distributed to the Aggrieved Employees. *Id.*, § III.5; *see also* Labor Code § 2699(i) (“[C]ivil  
10 penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the  
11 [LWDA]...and 25 percent to the aggrieved employees.”). 100% of the individual payments to  
12 the Aggrieved Employees will be reported using IRS Form-1099s, since all funds received under  
13 Section 2699 are civil penalties that do not trigger payroll taxes or withholdings. *See* Settlement,  
14 § IV.7. Individual Settlement Payments shall be apportioned based on the proportionate number  
15 of pay periods worked by each Aggrieved Employee during the PAGA Period, by multiplying the  
16 NSA by a fraction, the numerator of which is each Aggrieved Employee’s total pay periods  
17 worked during the PAGA Period, and the denominator of which is the total aggregate number of  
18 pay periods worked by all Aggrieved Employees during the PAGA Period. *Id.*, § III.5.

19                   **5. Funding of the Settlement**

20           Defendant will deposit the GSA within forty-five (45) calendar days after the Court signs  
21 an Order approving the Settlement. Settlement, §§ I.5, III.2. Within ten (10) business days after  
22 the Court enters an Order approving the Settlement, Defendant will provide Phoenix with a list  
23 of the Aggrieved Employees’ full name, last known mailing address, last known telephone  
24 number, pay period information, and Social Security numbers. *Id.*, § IV.2. Within ten (10)  
25 business days thereafter, Phoenix will circulate to counsel for both parties an anonymized  
26 spreadsheet containing the Individual Settlement Payments and the data used to calculate said  
27 payments. *Id.* Within ten (10) business days after receiving approval from the parties of the  
28 calculations used to determine the Individual Settlement Payments, Phoenix will mail copies of

1 the explanatory letter, in English and Spanish, along with the Individual Settlement Payments to  
2 the Aggrieved Employees via First-Class U.S. Mail. *Id.*, § IV.3. Before mailing, Phoenix will  
3 perform a search on the National Change of Address database to update the Aggrieved  
4 Employees' addresses. *Id.*

#### 5 **IV. ARGUMENT**

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

7 The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699(l)  
8 (stating, the "court shall review and approve any penalties sought as part of a proposed settlement  
9 agreement pursuant to this part."). The Court must be mindful that "[s]ettlement is a compromise,  
10 which balances the possible recovery against the risks inherent in litigating further." *In re TD*  
11 *Ameritrade Account Holder Litig.*, Case Nos. C 07-2852 SBA, C 07-4903 SBA, 2011 WL  
12 4079226, \*9 (N.D. Cal. Sept. 13, 2011). Indeed, "the very essence of a settlement is ... 'a yielding  
13 of absolutes and an abandoning of highest hopes,'" as "it is the very uncertainty of outcome in  
14 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements."  
15 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir., 1982). As such, "the  
16 settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits,"  
17 or "judged against a hypothetical or speculative measure of what might have been achieved." *Id.*

18 Although the operative PAGA statute does not set forth the criteria by which a PAGA  
19 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors  
20 for review of a class action settlement. However, "a PAGA claim asserted on a non-class  
21 representative basis...is not considered a class action but a law enforcement action, and therefore  
22 does not have to meet the requirements of [a class action]." *See Casida v. Sears Holdings Corp.*,  
23 2012 WL 253217 at \*3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL  
24 2650571 at \*4 (E.D. Cal. Jul. 1, 2010). A court's review of a PAGA settlement necessarily  
25 implicates the following unique features that render the approval process distinct from approval  
26 of a class action settlement under C.C.P. § 382 and C.R.C. Rule 3.769.

27 First, in evaluating the adequacy of the settlement amount, the Court's focus is not  
28 concerned with the amount(s) that "aggrieved employees" are to receive, but rather, must focus  
on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a

1 PAGA suit consists of civil penalties, not individual or class damages,” and while a “[PAGA]  
2 action is ... designed to protect the public and penalize the employer for past illegal conduct,” a  
3 reviewing Court must be mindful of the fact that settlement of a PAGA claim involves a  
4 compromise. *Mendez, supra*, 2010 WL 2650571 at \*4. “Unlike class actions, these civil penalties  
5 are not meant to compensate unnamed employees because the action is fundamentally a law  
6 enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at \*4 (N.D.  
7 Cal. Apr. 2, 2010). The Court must not lose sight of the fact that “[u]nlike a class action seeking  
8 damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private  
9 parties to recover civil penalties for the government that otherwise may not have been assessed  
10 and collected by overburdened state enforcement agencies.” *Id.*

11 Second, consistent with the fact that unnamed employees have no property interest in a  
12 PAGA claim,<sup>5</sup> “[u]nnamed employees need not be given notice of the PAGA claim, nor do they  
13 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL  
14 1340777 at \*5. This renders the approval process of a PAGA settlement distinct from a class  
15 action settlement, as there is no need for the Court to employ the “two-step approval process”  
16 required under F.R.C.P. Rule 23 (“Rule 23”) and C.R.C. Rule 3.769 (“Rule 3.769”).<sup>6</sup>

17 Finally, unlike class action settlements under Rule 23(e) and Rule 3.769, the scope of  
18 release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is  
19 binding not only on the named employee plaintiff but also on government agencies and any  
20 aggrieved employee not a party to the proceeding...the non-party employees, because they were  
21 not given notice of the action or afforded any opportunity to be heard, would not be bound by the  
22 judgment as to remedies other than civil penalties.” *See Arias v. Sup. Ct.* (2009) 46 Cal.4th 969,  
23 986-87. Thus, the scope of a release in a PAGA settlement is confined to the PAGA penalties

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24  
25 <sup>5</sup> As held by the California Supreme Court, “[PAGA] does not create property rights or any other  
26 substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employee to recover civil  
27 penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement  
28 agencies.” *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46 Cal.4th 993, 1003.

<sup>6</sup> The “two-step” approval process of Rule 23(e) is required to facilitate “notice” to absent class members,  
as Rule 23(e) expressly requires notice and an opportunity for absent class members to exclude themselves  
or object. *See Fed. R. Civ. Proc. R. 23(e)*. Rule 3.769 contains similar rules for State court class actions.

1 alleged in the complaint and to the claims that were, or could have been, alleged pursuant to  
2 PAGA based on the factual allegations in the complaint.<sup>7</sup> In the case at hand, as the only claims  
3 at issue are PAGA claims, those will be the only claims extinguished because of this Settlement.

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

6 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v.*  
7 *Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class and  
8 representative PAGA settlements involve a court approval process that exists to prevent fraud,  
9 collusion, and unfairness to absent individuals. *See Malibu Outrigger Bd. of Governors v.*  
10 *Superior Court* (1980) 103 Cal.App.3d 573, 578-79. California law generally follows the same  
11 standards applicable under Rule 23. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.  
12 1998) (stating that Rule 23(e) requires the trial court to determine “whether a proposed settlement  
13 is fundamentally fair, adequate, and reasonable”). To be approved, a settlement must be “fair,  
14 reasonable and adequate to all concerned.” *Reed v. United Teachers Los Angeles* (2012) 208  
15 Cal.App.4th 322, 337. Settlement is the preferred means of dispute resolution, particularly in  
16 complex representative litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.  
17 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the  
18 agreement taken as a whole is fair and is not the product of fraud or collusion between the  
19 negotiating parties. *See, e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of  
20 fairness when the settlement agreement was negotiated at arm’s length by experienced counsel.  
21 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Because this Settlement is  
22 fair, adequate, and reasonable, Plaintiffs respectfully requests that the Court grant approval.  
23

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24  
25 <sup>7</sup> 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.”).

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

2                   A settlement is presumptively fair where it is reached through arm’s-length bargaining,  
3 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,  
4 and counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th  
5 1794, 1802; *see also Kullar, supra*, 168 Cal.App.4th at 130. In deciding whether to approve a  
6 proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair  
7 under the circumstances of the case. *Mallick v. Sup. Ct.* (1979) 89 Cal.App.3d 434, 438. In  
8 exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair,  
9 adequate, and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant  
10 factors for the Court to consider include, but are not limited to:

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

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

20                   “In the context of a settlement agreement, the test is not the maximum amount Plaintiff  
21 might have obtained at trial on the complaint, but rather whether the settlement is reasonable  
22 under all of the circumstances.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,  
23 250. Because settlements inherently involve compromise, settlements providing for narrower  
24 relief than can be obtained if the suit were successfully litigated can be reasonable because “the  
25 public interest may indeed be served by a voluntary settlement in which each side gives ground  
26 in the interest of avoiding litigation.” *Air Lines Stewards, etc., Local 550 v. Am. Airlines, Inc.*,  
27 455 F.2d 101, 109 (7th Cir. 1972). Further, courts review the discovery conducted by the parties  
28 to aid in assessing whether the parties sufficiently developed the claims and 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

1 is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential*  
2 *Serv. LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that parties can provide  
3 the trial court with “a meaningful and substantiated explanation of the manner in which the factual  
4 and legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132.

5 **a) The Strength of Plaintiffs’ Case**

6 Although Plaintiffs steadfastly maintains that this action is meritorious, Plaintiffs  
7 acknowledge that there are substantial risks and uncertainty in proceeding to trial. Defendant  
8 presented numerous defenses to Plaintiffs’ underlying claims and arguments to why Plaintiffs’  
9 damages calculations were overstated; chief among them that the Court would utilize its  
10 discretion to substantially reduce any award of PAGA penalties. While Plaintiffs were prepared  
11 to litigate their claims through trial, Plaintiffs faced substantial challenges in prevailing in this  
12 matter and obtaining a better result than will be provided through the Settlement. Thus, this factor  
13 supports approval.

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

15 Although the parties engaged in substantial informal discovery and information exchange  
16 prior to mediation, the parties agreed to postpone formal written and deposition discovery until  
17 after exhausting their settlement efforts at mediation. Moen Decl., ¶ 26. Therefore, absent  
18 settlement, the parties will be required to expend substantial time and resources conducting formal  
19 written and deposition discovery. *Id.* Preparation for trial remained, as well as the prospect of  
20 appeals in the wake of a summary judgment ruling for either party, and appeals after trial. *Id.* This  
21 settlement avoids these considerable costs, risks, and the accompanying burden of continued  
22 litigation on the Court.

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

24 This proposed Settlement provides a fair and reasonable monetary recovery for the  
25 LWDA and Aggrieved Employees in the face of disputed claims and significant litigation risks.  
26 Plaintiffs and their retained expert analyzed Defendant’s produced data, and forecasted  
27 Defendant’s realistic exposure for PAGA civil penalties as follows:

28 PAGA Civil Penalties: \$2,502,237

Plaintiffs’ data analysis revealed that the Aggrieved Employees worked an aggregate

228,447 pay periods during the relevant time period. Moen Decl., ¶ 27. Plaintiffs’ data analysis further revealed that approximately 16.9% of the applicable pay periods included an overtime underpayment as a result of Defendant’s allegedly unlawful AWS implementation; approximately 47.1% of the applicable pay periods included at least one rest period violation; approximately 56.9% of the applicable pay periods included at least one meal period violation; and approximately 14.2% of the applicable pay periods included an overtime underpayment as a result of Defendant’s failure to accurately incorporate the value of shift premium payments or piece-rate earnings into the regular rate calculation. *Id.* Labor Code section 2699(f)(2) provides for PAGA civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. *See* Labor Code § 2699(f)(2). However, courts have interpreted section 2699(f)(2) to only impose the \$200 subsequent penalty after an employer has been notified that its conduct violates the Labor Code. *See Amaral, supra*, 163 Cal.App.4th at 1209 (finding “initial” violation rate applies until employer has been notified that it is violating a Labor Code provision). Plaintiffs therefore calculate Defendants’ maximum possible PAGA exposure at \$12,998,634 (228,447 pay periods x 56.9% highest applicable violation rate x \$100 per violation). Moen Decl., ¶ 27.

However, as discussed above, Defendant raised numerous defenses to the merits of Plaintiffs’ underlying claims and challenged the manageability of Plaintiffs’ claims should the action proceed to trial, and argued that even if found liable, the Court would exercise its discretion to drastically reduce any potential PAGA penalties awarded. Moen Decl., ¶ 28; *see also* Section II.C, *supra*. Plaintiff therefore discounted this figure by 45% to account for the risk of losing on the merits and/or for having overestimated Defendant’s potential maximum exposure, and by an additional 65% for the risk of the Court reducing the penalties, to arrive at a realistic recovery of \$2,502,237. Moen Decl., ¶ 28; *see also, e.g., 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).

Therefore, the proposed Settlement of \$1,895,000 represents approximately 75.7% of Plaintiffs’ reasonably forecasted recovery, which is well within the range approved by courts as

being fair, reasonable and adequate, while also avoiding further expense and risk of further litigation. Moen Decl., ¶ 28; *see, e.g., 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 itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”) (internal quotations omitted). Plaintiffs acknowledge that there was substantial uncertainty and risk should they proceed through trial, and that even in the event that they prevailed, the Court still maintained discretion to reduce the penalties awarded. Therefore, approval is appropriate since the Settlement will provide tangible, monetary relief to the Aggrieved Employees and the State of California.

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

The parties engaged in substantial informal discovery and information exchange necessary to evaluate the value of the PAGA claims prior to mediation. *See* Moen Decl., ¶¶ 15-16. Defendant provided Plaintiffs with a representative sampling of the Aggrieved Employees’ timekeeping and payroll records, written wage and hour policies, and various key data points, including the total number of Aggrieved Employees and pay periods at issue in the liability period. *Id.* It was only after the completion of this informal discovery and Plaintiff’s comprehensive data analysis that the parties attended mediation, and ultimately reached the proposed settlement. *Id.* Thus, this factor supports settlement approval.

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

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented by competent and experienced wage and hour counsel who possess extensive experience litigating wage and hour class actions and PAGA representative actions, and who

1 believe this Settlement to be fair and adequate for all involved. *See* Moen Decl., ¶¶ 2-8; Hollins  
2 Decl., ¶¶ 3-15; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; Declaration of Fletcher  
3 W. Schmidt (“Schmidt Decl.”), ¶¶ 2-6. Further, the proposed Settlement was reached with the  
4 input and assistance of Steve Pearl, Esq., an experienced wage and hour mediator. Moen Decl., ¶  
5 15. Thus, this factor strongly supports settlement approval. *See, Kullar, supra*, 168 Cal.App.4th  
6 at 130 (“The court undoubtedly should give considerable weight to the competency and integrity  
7 of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement  
8 represents an arm’s length transaction entered without self-dealing or other potential  
9 misconduct.”).

10 **C. The Requested Award for Attorneys’ Fees is Reasonable as a Percentage of**  
11 **the GSA**

12 Plaintiffs, as the prevailing party in settlement, are entitled to recover attorneys’ fees and  
13 costs for bringing this PAGA claim. *See* Cal. Labor Code § 2699(g) (“Any employee who prevails  
14 in any action shall be entitled to an award of reasonable attorney’s fees and costs.”); Code of Civil  
15 Procedure § 1021.5(a). A fee award is justified where the legal action has produced its benefits  
16 by way of a voluntary settlement. *See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91;  
17 *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53. The  
18 California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480,  
19 506, that “[t]he percentage of fund method survives in California class action cases.” Specifically,  
20 the *Laffitte* Court held:

21 The recognized advantages of the percentage method—including relative  
22 ease of calculation, alignment of incentives between counsel and the class, a  
23 better approximation of market conditions in a contingency case, and the  
encouragement it provides counsel to seek an early settlement and avoid  
unnecessarily prolonging the litigation—convince us the percentage method  
is a valuable tool that should not be denied our trial courts.

24 *Id.*, at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34  
25 (“when a number of persons are entitled in common to a specific fund, and an action brought by  
26 a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,  
27 such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*  
28 (1982) 32 Cal.3d 621, 627 (in awarding a fee from the common fund obtained for the benefit of

1 all parties, the trial court acts within its equitable power to prevent the other parties’ unjust  
2 enrichment); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the  
3 percentage of the fund method for calculating attorneys’ fees more accurately reflects the results  
4 achieved for the putative class than the lodestar method and “establishes reasonable expectations  
5 on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early  
6 settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396  
7 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in  
8 common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards  
9 counsel for success and penalizes it for failure.”). Further, while trial courts have discretion to  
10 assess the reasonableness of fee awards with tools such as the “lodestar cross-check,” it need not  
11 do so. *Laffitte*, 1 Cal.5th at 506 (“[w]e hold further that trial courts...retain the discretion to forgo  
12 a lodestar cross-check and use other means to evaluate the reasonableness of a requested  
13 percentage fee.”).

14 Here, Plaintiffs’ counsel’s fee request of \$631,666.66 (one-third of the GSA) is the same  
15 percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the recovery  
16 method. Fee awards of roughly one-third of the settlement fund are routinely awarded in  
17 California state and federal courts in class and representative PAGA actions. *Chavez v. Netflix,*  
18 *Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11; *see also In re Pacific Enterprises Securities Litig.*, 47  
19 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award); *Chavez v. Saticoy Lemon Ass’n*, Case  
20 No. 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29,  
21 2015) (approving attorneys’ fees of one-third of settlement fund in representative PAGA  
22 settlement). This is also consistent with Plaintiffs’ counsel’s experience in similar wage and hour  
23 class action and PAGA matters. Moen Decl., ¶ 29; *see also* 4 Newberg on Class Actions § 14.6  
24 (4th Ed. 2013) (“No general rule can be articulated on what is a reasonable percentage of a  
25 common fund. Usually 50% of the fund is the upper limit on a reasonable fee award...”).

26 The fee award requested here is justified because Plaintiffs’ counsel achieved a reasonable  
27 monetary recovery for the Aggrieved Employees and the State of California (who did not take  
28 this case after receiving Plaintiff’s PAGA notice) in an uncertain and risky case, while bearing

1 the substantial burdens of representation on a contingency basis. Moen Decl., ¶ 29. Additionally,  
2 Plaintiffs' recovery for the State of California and Aggrieved Employees exceeds other PAGA  
3 awards approved by courts in California. *See, e.g., Penaloza, supra*, 2013 WL 2917624 (average  
4 PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average PAGA penalties of  
5 \$3.33). That Plaintiffs' counsel achieved these results without engaging in a protracted legal  
6 battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the  
7 strength of the results achieved.

8 As discussed, this case presented significant risks both on the merits and with respect to  
9 the Court's authority to reduce an award of PAGA penalties. It is fair and reasonable to account  
10 for these risks in compensating Plaintiffs' counsel, as well as the risks involved in undertaking  
11 this litigation and expending considerable effort while working on a pure contingency basis. Since  
12 undertaking representation of Plaintiffs, Plaintiffs' counsel dedicated substantial resources to this  
13 litigation, including expending \$13,316.32 in litigation costs, without receiving any compensation  
14 to date. Moen Decl., ¶¶ 30-31, Exhibit 3; Hollins Decl., Exhibit 1. Plaintiffs' counsel's efforts  
15 include conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting extensive  
16 legal research regarding the merits and legal bases of Plaintiffs' claims, Plaintiffs' ability to  
17 recover penalties under the PAGA, and Defendants' potential defenses, drafting and filing  
18 Plaintiffs' respective complaints and LWDA notice letters, reviewing the arbitration agreement  
19 produced by Defendant, drafting Plaintiffs' requests to dismiss class and individual claims,  
20 attending various court hearings, reviewing substantial documents and data produced by  
21 Defendant prior to mediation, retaining an expert to analyze Defendant's document production,  
22 extensively evaluating the timekeeping and payroll data prior to mediation, building a  
23 comprehensive damages model, preparing for and attending mediation, drafting a mediation brief,  
24 negotiating and drafting the long-form Settlement Agreement and Notice documents, preparing  
25 this Motion for settlement approval and all supporting documents hereto, and otherwise litigating  
26 the case. Moen Decl., ¶ 30. Plaintiffs' counsel will spend additional time attending the hearing on  
27 this Motion and overseeing the settlement administration process. *Id.* Given the potential for  
28 adverse outcomes, the contingent risks borne by Plaintiffs' counsel was great. The quality of

1 Plaintiffs' counsel's work, and the efficacy and dedication with which it was performed, should  
2 be compensated.

3 Plaintiffs' counsel's previous experience in litigating wage and hour class and  
4 representative actions also supports the reasonableness of the fee request. Plaintiffs' counsel are  
5 well-versed in plaintiff- and defense-side wage and hour class and representative action litigation,  
6 and collectively bring eight decades worth of wage-and-hour class and representative action  
7 litigation experience. *See* Moen Decl., ¶¶ 2-7; *see also generally* Hollins Decl.; Haines Decl.;  
8 Schmidt Decl. Plaintiffs' counsel have also been certified as class counsel in numerous class  
9 action cases alleging wage and hour claims. *See id.* Plaintiffs' counsel's experience in similar  
10 matters was integral in evaluating the strengths and weaknesses of this case and the  
11 reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires  
12 skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as  
13 the procedural law of representative litigation. Moen Decl., ¶ 30. Because it is reasonable to  
14 compensate Plaintiffs' counsel commensurate with their skill, reputation, and experience, the  
15 requested fee award of \$631,666.66 (one-third of the GSA) is fair and reasonable, as the  
16 California Supreme Court held in *Laffitte*, and should therefore be approved.

17 **D. The Requested Cost Reimbursement Warrants Approval as Fair, Adequate,**  
18 **and Reasonable**

19 Plaintiffs' counsel incurred and respectfully requests reimbursement of \$13,316.32 in  
20 actual litigation costs. Moen Decl., ¶ 31, Exhibit 3; Hollins Decl., Exhibit 1. Plaintiffs' counsel's  
21 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably  
22 incurred. *See id.* Moreover, the costs Plaintiffs seek are the types of costs routinely approved by  
23 courts. *See, e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel should recover  
24 "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v.*  
25 *Sayre*, No. 05-03759 CW, 2011 WL 825713, \* 3 (N.D. Cal. 2011) ("costs of reproducing  
26 pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and  
27 are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland*  
28 *Ins. Co.* (9th Cir. 2006) 460 F.3d 1253, 1258-59 (legal research costs are reimbursable); *In re*

1 *Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation  
2 expenses, legal research, copies, postage, filing fees, messenger and overnight delivery costs are  
3 reimbursable). Because the expense reimbursements requested by Plaintiffs' counsel were  
4 reasonably incurred, the Court should grant Plaintiffs' counsel's request for reimbursement of  
5 \$13,316.32 in actual litigation costs incurred.

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

7 Plaintiffs also request that the Court approve \$12,250.00 in administration costs to the  
8 Settlement Administrator, Phoenix Settlement Administrators. Moen Decl., ¶ 32; Lawrence Decl.,  
9 ¶ 17, Exhibit B; Settlement, § III.4.c. As detailed in the Settlement Agreement and declaration  
10 of Jodey Lawrence, submitted concurrently with this Motion, Phoenix will perform duties in  
11 connection with this Settlement that are integral in effectuating the Settlement and the Notice  
12 process. Among other things, Phoenix will calculate each Aggrieved Employee's Individual  
13 Settlement Payment, update addresses contained in the employee data supplied by Defendant,  
14 format the Notices for mailing and translate them into Spanish, mail Notices to all Aggrieved  
15 Employees, and otherwise administer the Settlement. *See generally*, Lawrence Decl.; Settlement,  
16 § IV. Phoenix was selected to administer this Settlement because it is an experienced and well-  
17 respected settlement administrator, and returned a bid at a competitive rate. Moen Decl., ¶ 32; *see*  
18 *generally*, Lawrence Decl. For these reasons, Phoenix's requested costs are fair, reasonable, and  
19 adequate, and should be approved.

20 **F. This Court Should Approve Plaintiffs' Requested Enhancement Awards**  
21 **Because they are Fair, Adequate, and Reasonable in View of Plaintiffs'**  
22 **Efforts and the Risks Assumed on Behalf of the Aggrieved Employees**

23 Courts routinely approve enhancement awards to compensate named plaintiffs for the  
24 services they provide and the risks they incur during class and representative litigation. *See, e.g.,*  
25 *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to  
26 named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*  
27 (N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 enhancement award). Here, pursuant to  
28 the Settlement, Plaintiffs seek enhancement awards of \$5,000.00 each. *See* Settlement, §§ I.9 and  
III.4.b. This request is reasonable given Plaintiffs' efforts in this case, the significant time devoted

1 to the prosecution and resolution of this action, and the risks they undertook on behalf of the  
2 Aggrieved Employees. Among other things, Plaintiffs searched for and gathered relevant  
3 documents and provided them to their attorneys, engaged in multiple discussions with their  
4 attorneys regarding Defendant's policies and practices, provided information related to their  
5 working conditions and Defendant's company structure and operations, had regular discussions  
6 with their attorneys over the phone regarding the claims in the lawsuit and the facts and legal  
7 theories at issue in the case, discussed the status of the case and general case strategy with their  
8 attorneys on many occasions, helped their attorneys prepare for mediation, and reviewed and  
9 discussed the Settlement with their attorneys. Foy Decl., ¶¶ 5-7; Ybarra Decl., ¶¶ 5-7; Harris  
10 Decl., ¶ 7. Plaintiff Foy estimates spending approximately 34 hours on activities that ultimately  
11 lead to the Settlement. Foy Decl., ¶ 8. Plaintiff Ybarra estimates spending approximately 24 hours  
12 on activities that ultimately lead to the Settlement. Ybarra Decl., ¶8. Plaintiff Harris estimates  
13 spending approximately 30 hours on activities that ultimately lead to the Settlement. Harris Decl.,  
14 ¶ 7. Accordingly, Plaintiffs' enhancement awards are appropriate and justified as part of the  
15 Settlement.

16 **V. CONCLUSION**

17 Concurrently with the filing of this motion, Plaintiffs provided notice of the proposed  
18 Settlement, as well as copies of this motion and all papers filed in support hereof, to the LWDA.  
19 See Moen Decl., ¶ 10, Exhibit 2. For the reasons stated herein, this Court should grant Plaintiffs'  
20 Motion in its entirety and adopt the [Proposed] Judgment and Order Granting Plaintiffs' Motion  
21 for Settlement Approval of Claims Brought Under the PAGA, Reasonable Attorneys' Fees and  
22 Costs, and Enhancement Awards, submitted concurrently herewith.

23  
24 Dated: February 22, 2022

Respectfully submitted,  
HAINES LAW GROUP, APC

25  
26 By:

  
Matthew K. Moen  
Attorneys for Plaintiff