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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: June 2, 2022
Time: 8:30 a.m.
Dept: Division H

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 June 2, 2022 at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, in Division H of the Kern County Superior Court, located at 1215 Truxtun
4 Avenue, Bakersfield, California 93301, Plaintiffs Diana Foy, Raymond Ybarra, and Raymond
5 Harris (“Plaintiffs”), individually and on behalf of other aggrieved employees, will and hereby
6 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 \$19,950.00 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 Total Settlement Amount (\$2,738,488.59) pursuant
17 to the terms of the Settlement Agreement and the parties’ Addendum to Settlement
18 Agreement;
- 19 5. Approving an award of one-third of the Total Settlement Amount (\$912,829.53) in
20 attorneys’ fees to Plaintiffs’ Counsel;
- 21 6. Approving an award of \$13,539.77 in actual litigation costs reimbursement to
22 Plaintiffs’ Counsel;
- 23 7. Approving enhancement awards of \$5,000.00 each to Plaintiffs (\$15,000.00 total) for
24 their service to the Aggrieved Employees and the State of California; and
- 25 8. Approving the payment of \$1,332,876.97 to the California Labor & Workforce
26 Development Agency for its 75% share of PAGA civil penalties.

27 This Motion is based on this Notice, the attached Memorandum of Points and Authorities;
28 the declarations of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, Chelsea D. Hollins,

1 Diana Foy, Raymond Ybarra, Raymond Harris, and Jodey Lawrence of Phoenix Settlement
2 Administrators, and all exhibits attached thereto; the Settlement Agreement; the Addendum to
3 Settlement Agreement, all other pleadings and papers on file in this action; and on any further
4 oral or documentary evidence or argument presented at the time of hearing.

5 Given the multiplicity of issues addressed herein, Plaintiffs' memorandum of points and
6 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court
7 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider
8 the entire Motion, which is 25 pages in length.

9
10 Dated: May 9, 2022

Respectfully Submitted,
HAINES LAW GROUP, APC

11
12 By: 
13 Matthew K. Moen
14 Attorneys for Plaintiffs
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TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	3
A. The Parties.....	3
B. Procedural History.....	3
C. Plaintiffs’ Claims And Defendant’s Defenses	5
III. THE PROPOSED SETTLEMENT.....	10
A. “Aggrieved Employees” Defined.....	10
B. Essential Terms Of The Settlement.....	10
1. Attorneys’ Fees and Costs	10
2. Settlement Administration Costs	10
3. Plaintiffs’ Enhancement Awards	11
4. Payment to the LWDA and Aggrieved Employees	11
5. Funding of the Settlement.....	11
IV. ARGUMENT.....	12
A. Standards for Approval of a PAGA Settlement	12
B. This Court Should Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Claims	14
1. Factors in Evaluating a Representative PAGA Settlement.....	15
a) The Strength of Plaintiffs’ Case.....	16
b) Risk, Expense, Complexity, and Duration of Further Litigation.....	16
c) Amount Offered in Settlement Given Realistic Value of Claims.....	17
d) Discovery Completed and the Status of Proceedings	18
e) The Experience and Views of Counsel.....	19
C. The Requested Award for Attorneys’ Fees is Reasonable as a Percentage of the TSA	19
D. The Requested Cost Reimbursement Warrants Approval as Fair, Adequate, and Reasonable	23
E. The Court Should Approve the Requested Administration Costs.....	23

1 F. This Court Should Approve Plaintiffs’ Requested Enhancement Awards
2 Because they are Fair, Adequate, and Reasonable in View of Plaintiffs’
3 Efforts and the Risks Assumed on Behalf of the Aggrieved Employees24

4 V. CONCLUSION25
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

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<i>Air Lines Stewards, etc., Local 550 v. Am. Airlines, Inc.</i>	
455 F.2d 101 (7th Cir. 1972)	15-16
<i>Dunleavy v. Nadler</i>	
213 F.3d 454 (9th Cir. 2000)	18
<i>Hanlon v. Chrysler Corp.</i>	
150 F.3d 1011 (9th Cir. 1998)	14, 15
<i>Harris v. Marhoefer</i>	
24 F.3d 16 (9th Cir. 1994)	23
<i>Hesse v. Sprint Corp.</i>	
598 F.3d 581 (9th Cir., 2010)	14
<i>In re Corrugated Container Antitrust Litigation</i>	
643 F.2d 195 (5th Cir. 1981)	14
<i>In re Immune Response Securities Litigation</i>	
497 F.Supp.2d 1166 (S.D. Cal. 2007)	23
<i>In re Pacific Enterprises Securities Litigation</i>	
47 F.3d 373 (9th Cir. 1995)	19, 21
<i>In re Rite Aid Corp. Securities Litigation</i>	
396 F.3d 294 (3d Cir. 2005)	20
<i>In re Syncor ERISA Litig.</i>	
516 F.3d 1095 (9th Cir. 2008)	14-15
<i>International Brotherhood of Teamsters, Local 2785 v. Federal Motor Carrier Safety Administration</i>	
986 F.3d 841 (9th Cir. 2021)	8
<i>Linney v. Cellular Alaska Partnership</i>	
151 F.3d 1234 (9th Cir. 1998)	18
<i>Officers for Justice v. Civil Service Com.</i>	
688 F.2d 615 (9th Cir., 1982)	12
<i>Rawlings v. Prudential-Bache Properties, Inc.</i>	
9 F.3d 513 (6th Cir. 1993)	20
<i>Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.</i>	
460 F.3d 1253 (9th Cir. 2006)	23
<i>Van Vranken v. Atlantic Richfield Co.</i>	
901 F. Supp. 294 (N.D. Cal. 1995)	24

State Cases

<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.</i> (2009) 46 Cal.4th 993	13
<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	10, 17
<i>Bell v. Farmers Ins. Exch.</i> (2004) 115 Cal.App.4th 715	24
<i>Benton v. Telecom Network Specialists, Inc.</i> (2013) 220 Cal.App.4th 701	8
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	8
<i>Carrington v. Starbucks Corporation</i> (2018) 30 Cal.App.5th 504	9, 18
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	20-21
<i>Clark v. Am. Residential Serv. LLC</i> (2009) 175 Cal.App.4th 785	16
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	15
<i>Huntington Memorial Hospital v. Superior Court</i> (2005) 131 Cal.App.4th 893	6-7
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	15, 16, 19
<i>Laffitte v. Robert Half Int'l, Inc.</i> (2016) 1 Cal.5th 480	19, 20
<i>Maldonado v. Epsilon Plastics, Inc.</i> (2018) 22 Cal.App.5th 1308	7
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> (1980) 103 Cal.App.3d 573	14
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<i>Price v. Starbucks Corp.</i> (2011) 192 Cal.App.4th 1136	9

1	<i>Reed v. United Teachers Los Angeles</i>	
2	(2012) 208 Cal.App.4th 322	14
3	<i>Serrano v. Priest</i>	
4	(1977) 20 Cal.3d 25	20
5	<i>Serrano v. Unruh</i>	
6	(1982) 32 Cal.3d 621	20
7	<i>Stambaugh v. Superior Court</i>	
8	(1976) 62 Cal.App.3d 231	14
9	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
10	(2012) 203 Cal.App.4th 1112	9, 18
11	<i>Wershba v. Apple Computer, Inc.</i>	
12	(2001) 91 Cal.App.4th 224	15
13	<i>Westside Community for Independent Living, Inc. v. Obledo</i>	
14	(1983) 33 Cal.3d 348	19
15	<u>Federal Rules</u>	
16	29 CFR § 778.115	6
17	Fed. R. Civ. Proc. R. 23(e)	13
18	<u>State Statutes and Rules</u>	
19	Code of Civil Procedure § 1021.5(a)	19
20	Labor Code § 226(a)	9
21	Labor Code § 226.2(a)(3)(A)	6
22	Labor Code § 512(a)	8
23	Labor Code § 2699(e)(2)	9
24	Labor Code § 2699(f)(2)	17
25	Labor Code § 2699(g)	19
26	Labor Code § 2699(i)	11
27	Labor Code § 2699(l)	12
28	<u>Unpublishes Cases</u>	
	<i>Altamirano v. Shaw Industries, Inc</i>	
	2015 WL 4512372 (N.D. Cal. 2015)	18

1	<i>Ashker v. Sayre</i>	
2	No. 05-03759 CW	
3	2011 WL 825713 (N.D. Cal. 2011)	23
4	<i>Cabrera v. Advantage Sale & Marketing, LLC</i>	
5	Case No. BC485259	
6	2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013)	3, 21
7	<i>Casida v. Sears Holdings Corp.</i>	
8	2012 WL 253217 (E.D. Cal. Jan. 26, 2012)	12
9	<i>Chavez v. Saticoy Lemon Ass’n</i>	
10	Case No. 56-2015-00468600-CU-OE-VTA	
11	2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)	21
12	<i>In re TD Ameritrade Account Holder Litig.</i>	
13	Case Nos. C 07-2852 SBA, C 07-4903 SBA	
14	2011 WL 4079226 (N.D. Cal. Sept. 13, 2011)	12
15	<i>Mendez v. Tween Brands, Inc.</i>	
16	2010 WL 2650571 (E.D. Cal. Jul. 1, 2010)	12, 13
17	<i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i>	
18	2010 WL 1340777 (N.D. Cal. Apr. 2, 2010)	13
19	<i>Penaloza v. PPG Industries Inc.</i>	
20	Case No. BC471369	
21	2013 WL 2917624 (Super. Ct. L.A. County, May 20, 2013)	3, 21
22	<i>Ribot v. Farmers Insurance Group</i>	
23	Case No. CV 11-02404 DDP (FMOx)	
24	2013 WL 3778784 (C.D. Cal. July 17, 2013)	5-6
25	<u>Other Sources</u>	
26	4 Newberg on Class Actions § 14.6 (4th Ed. 2013)	21
27	DLSE Manual 49.2.5	6
28	Wage Order 1	7
	Wage Order 9	5, 8

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 and Addendum to Settlement Agreement (collectively, the “Settlement
7 Agreement” or “Settlement”)¹ with Defendant Exel, Inc. dba DHL Supply Chain (“Defendant”).²
8 The proposed Settlement, under which Defendant will pay a non-reversionary Total Settlement
9 Amount of \$2,738,488.59,³ will dispose of Plaintiffs’ representative PAGA claim filed on behalf
10 of the State of California and all “Aggrieved Employees” as defined by Labor Code section
11 2699(c). This PAGA action is predicated on Defendant’s alleged failures to: pay all minimum
12 and overtime wages; provide all lawful meal periods; authorize and permit all lawful rest periods;
13 issue accurate itemized wage statements; maintain accurate and complete records; and timely pay
14 all final wages owed upon separation from employment.

15 This PAGA action seeks civil penalties for Defendant’s Labor Code violations on behalf
16 of the California Labor & Workforce Development Agency (“LWDA”) and all “Aggrieved
17 Employees,” defined as “all current and former non-exempt employees of Defendant Exel Inc.
18 dba DHL Supply Chain who worked in the State of California at any time between October 21,
19 2019 to March 31, 2022” (the “PAGA Period”). Notably, the relief provided under the Settlement,
20

21 ¹ The Settlement Agreement is attached as Exhibit 1 to the Declaration of Matthew K. Moen (“Moen
22 Decl.”), filed concurrently with this Motion. The Notice of PAGA Settlement and Release of Claims
23 (“Notice”) is attached as Exhibit A to the Settlement Agreement. The parties’ Addendum to Settlement
Agreement is attached as Exhibit 2 to the Moen Decl.

24 ² Concurrently with the filing of this motion, Plaintiffs provided notice of the proposed Settlement, a copy
25 of this motion, and all papers filed in support hereof, to the LWDA. *See* Moen Decl., ¶ 10, Exhibit 3.

26 ³ The parties’ Settlement provides for a Gross Settlement Amount of \$1,895,000.00. *See* Moen Decl.,
27 Exhibit 1. However, the parties’ Settlement also includes an escalator clause that provides for a pro-rata
28 increase to the settlement amount in the event that the actual number of pay periods at issue exceeded the
amount of pay periods initially contemplated by the parties. *See id.*, § III.3; *see also id.*, Exhibit 2.
Ultimately, the escalator clause was triggered, resulting in a Total Settlement Amount of \$2,738,488.59.
See id., ¶ 11, Exhibit 2.

1 and the claims released thereunder, are *solely* for the payment of civil penalties under the PAGA.
2 Based on the information provided by Defendant, the number of Aggrieved Employees, including
3 Plaintiffs, is estimated to be 8,246 individuals.

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

13 Pursuant to the Settlement, Defendant will pay a Total Settlement Amount ("TSA") of
14 \$2,738,488.59 on a non-reversionary basis. See Settlement, §§ I.8 and III.2; Addendum, pp. 2.
15 After deducting amounts for requested attorneys' fees (\$912,829.53), attorney costs
16 (\$13,539.77),⁴ enhancement awards for the named Plaintiffs (\$5,000.00 each), settlement
17 administration costs (\$19,950.00), and the LWDA's 75% share of the amount designated as civil
18 penalties pursuant to Labor Code section 2699(i) (\$1,332,876.97), the Settlement provides for
19 distribution of approximately \$444,292.32 in civil penalties to the Aggrieved Employees.
20 Settlement, §§ I.9, III.4-5; Addendum, pp. 2.

21 The TSA represents a reasonable recovery for the State of California and Aggrieved
22 Employees when considering the limited release of only PAGA claims based on the factual
23 allegations in Plaintiffs' operative complaint. Further litigation may have resulted in a smaller
24 recovery, or even no recovery at all, based on the defenses asserted by Defendant and the
25

26 ⁴ Although the Settlement provides for reimbursement of Plaintiffs' verified litigation costs and expenses
27 "up to \$22,500.00," Plaintiffs' Counsel has collectively incurred \$13,539.77 in actual litigation costs, and
28 respectfully requests reimbursement of only the amount actually incurred. See Settlement, §§ I.9 and
III.4.a; Moen Decl., Exhibit 4 (Expense Report); Declaration of Chelsea D. Hollins ("Hollins Decl."), ¶¶
16-17, Exhibit 1.

significant litigation risks involved. Moreover, the TSA 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 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., ¶ 12. 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

1 with Business and Professions Code §§17200, *et seq.* Moen Decl., ¶ 13. On December 29, 2020,
2 after exhausting her pre-filing requirements, Plaintiff Foy filed a First Amended Complaint,
3 adding a cause of action for civil penalties under PAGA premised upon the same underlying
4 Labor Code violations. *Id.* Shortly thereafter, Defendant provided Plaintiff Foy’s counsel with an
5 arbitration agreement signed by Plaintiff Foy containing a class action waiver. *Id.* As a result,
6 Plaintiff Foy dismissed her class and individual claims without prejudice, and amended her
7 complaint to allege a single cause of action for civil penalties under PAGA. *Id.* Around this same
8 time, Plaintiff Ybarra retained Plaintiff Foy’s counsel with the intent of pursuing similar claims
9 against Defendant. *Id.* On June 1, 2021, Plaintiff Foy filed a Second Amended Complaint, adding
10 Plaintiff Ybarra as a named plaintiff. *Id.*

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

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

26 On June 17, 2021, the parties attended a full-day mediation session with Steve Pearl, an
27 experienced wage and hour mediator. Moen Decl., ¶ 16. Prior to attending mediation, Defendant
28 provided Plaintiffs with a representative sampling of the Aggrieved Employees’ timekeeping and

1 payroll records, as well as various key data points, including the total number of both current and
2 former Aggrieved Employees and the total number of workweeks worked by the Aggrieved
3 Employees during the relevant time period, and Defendant’s applicable written wage and hour
4 policies. *Id.* Plaintiffs then retained an expert to examine Defendant’s produced data and conduct
5 a comprehensive exposure analysis for the claims at issue. *Id.*

6 During mediation, the parties debated the legal bases for their claims and defenses, their
7 respective data analyses, and their respective positions regarding the extent to which the Court
8 would likely reduce any PAGA penalties recovered. Moen Decl., ¶ 17. At the conclusion of
9 mediation, the parties successfully reached an agreement to globally and fully resolve all PAGA
10 claims asserted by Plaintiffs, and ultimately executed the Settlement Agreement. *Id.* As a material
11 term of the Settlement, Plaintiffs Foy and Ybarra filed a Third Amended Complaint on November
12 19, 2021, adding Plaintiff Harris as a named plaintiff in the instant action. *Id.* Subsequently,
13 Plaintiff Harris filed a request for dismissal, without prejudice, of the *Harris Action*, which was
14 granted on December 6, 2021. *Id.* In March 2022, the parties agreed to make a modification to
15 the parties’ settlement agreement, and ultimately executed the Addendum to Settlement
16 Agreement. *Id.*

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

18 Plaintiffs allege that Defendant failed to pay Plaintiffs and the Aggrieved Employees all
19 wages owed for work performed off-the-clock. Moen Decl., ¶ 18. Specifically, Plaintiffs allege
20 that employees were required to spend an additional 10 minutes inside Defendant’s facilities
21 waiting in line with other employees to clock in for their shift. *Id.* Plaintiffs also allege that, shortly
22 after the start of the pandemic, Plaintiffs and the Aggrieved Employees were required to undergo
23 temperature checks before clocking in for their work shifts. *Id.* Plaintiffs further allege that
24 Defendant failed to accurately record all time worked by the Aggrieved Employees due to an
25 inability to access their electronic timekeeping system, Kronos, or other timekeeping systems for
26 a period of time. *Id.*; *see also* Wage Order 9, § 2(H) (“‘Hours Worked’ means the time during
27 which an employee is subject to the control of an employer...”); *Ribot v. Farmers Insurance*
28 *Group*, Case No. CV 11-02404 DDP (FMOx), 2013 WL 3778784 (C.D. Cal. July 17, 2013)

1 (certifying claim for failing to compensate for pre-shift work). In response, Defendant contends
2 that employees clocked in immediately upon arrival to Defendant’s facilities at all times
3 throughout the PAGA liability period, and therefore were accurately paid all wages owed. Moen
4 Decl., ¶ 18. Defendant further asserts that individualized inquiries would be necessary to
5 determine whether an employee was actually performing compensable work during the hours
6 prior to the employee’s scheduled start time, an issue exacerbated by the lack of any records of
7 off-the-clock work being performed, resulting in an unmanageable series of mini-trials. *Id.*

8 Plaintiffs further allege that Defendant failed to separately compensate piece-rate
9 employees on an hourly basis for their rest periods at their effective hourly rate of pay for the
10 workweek. Moen Decl., ¶ 19; see Labor Code § 226.2(a)(3)(A) (“Employees shall be
11 compensated for rest and recovery periods at a regular hourly rate that is no less than the higher
12 of: (i) An average hourly rate determined by dividing the total compensation for the workweek,
13 exclusive of compensation for rest and recovery periods and any premium compensation for
14 overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods;
15 (ii) The applicable minimum wage.”). Instead, Plaintiffs allege that Defendant paid the employees
16 separate rest period pay at a rate that did not factor in the value of any piece-rate earnings accrued,
17 resulting in Defendant’s failure to separately compensate for all rest periods at the proper rate of
18 pay. Moen Decl., ¶ 19.

19 Similarly, Plaintiffs allege that Defendant failed to pay Plaintiffs and the Aggrieved
20 Employees all overtime wages earned in pay periods in which employees earned shift premiums
21 and other forms of incentive and/or bonus pay. Moen Decl., ¶ 20. Specifically, Plaintiffs allege
22 that Defendant used the rate in effect method of calculating overtime rates of pay in such
23 instances, when it should have used the weighted average method instead, or otherwise incorrectly
24 calculated the Aggrieved Employees’ overtime rates of pay using the wrong hours. *Id.*; see DLSE
25 Manual 49.2.5 (“Where two rates of pay are paid during a workweek, the California method for
26 determining the regular rate of pay for calculating overtime in that workweek mirrors the federal
27 method, based upon the weighted average of all hourly rates paid.”) (citing 29 CFR § 778.115);
28 *see also Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 902-903

(payments included in the calculation of the regular rate are generally consistent under state and federal law and include all earnings whether paid on an hourly, piece-rate, or commission basis). As a result, Defendant failed to incorporate the value of incentive pay into the Aggrieved Employees' overtime rates of pay. Moen Decl., ¶ 20.

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

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

Plaintiffs also assert that Defendant failed to provide Plaintiffs and the Aggrieved Employees with all lawful meal periods to which they were entitled. Moen Decl., ¶ 23.

1 Specifically, Plaintiffs assert that Defendant routinely failed to provide the Aggrieved Employees
2 with meal periods when employees worked shifts lasting between 5.0 and 6.0 hours and between
3 10.0 and 12.0 hours, and instead forced Plaintiffs and the Aggrieved Employees to sign unlawful
4 meal period waivers as a condition of employment. *Id.*; see also Labor Code § 512(a); *Brinker*
5 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041 (“We conclude that, absent
6 waiver, section 512 requires a first meal period no later than the end of an employee’s fifth hour
7 of work...”); *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 728-29
8 (“[The wage order] imposes an affirmative obligation on every employer to authorize and provide
9 legally required meal and rest breaks; if it fails to do so, it has violated the law and is liable.”).
10 Similarly, Plaintiffs assert that Defendant failed to authorize and permit the Aggrieved Employees
11 to take a third rest period for shifts lasting longer than 10.0 hours in length, as required by
12 California law. Moen Decl., ¶ 23; see also *Brinker, supra*, 53 Cal.4th 1004; Wage Order 9, §
13 12(A) (“Every employer shall authorize and permit...ten (10) minutes net rest time per four (4)
14 hours or major fraction thereof.”).

15 In response, Defendant asserts that it maintained facially lawful written meal and rest
16 period policies at all times throughout the PAGA liability period, and the meal period waivers
17 that employees signed were voluntary, lawful, and not a condition of continued employment.
18 Moen Decl., ¶ 24. Moreover, Defendant asserts that Plaintiffs’ meal and rest period claims are
19 preempted by the Ninth Circuit Court of Appeals’ holding in *International Brotherhood of*
20 *Teamsters, Local 2785 v. Federal Motor Carrier Safety Administration*, 986 F.3d 841 (9th Cir.
21 2021), which held that the applicable federal regulations governing companies employing
22 property-carrying motor vehicle drivers preempted the applicable meal and rest period rules
23 outlined in the California Labor Code. See *id.* Further, Defendant asserts that these claims are
24 unmanageable, as they require individualized inquiries into whether each employee failed to take
25 a lawful rest period and on which days, or whether the employee voluntarily waived a meal period
26 on any given day, resulting in an unmanageable series of mini-trials. Moen Decl., ¶ 24.

27 Plaintiffs also allege that Defendant failed to provide the Aggrieved Employees with wage
28 statements that complied with the requirements of Labor Code section 226(a), as the wage

1 statements issued by Defendant failed to include the correct rates of pay for overtime wages when
2 employees received a shift premium, and failed to list employees' total hours worked, piece rate
3 units earned, and corresponding piece-rates earned during pay periods in which an employee was
4 paid on a piece-rate basis. Moen Decl., ¶ 25; see Labor Code § 226(a) ("An employer...shall
5 furnish to his or her employee...an accurate itemized wage statement in writing showing...(2)
6 total hours worked...(3) the number of piece-rate units earned and any applicable piece rate...and
7 (9) all applicable hourly rates in effect during the pay period..."). In response, Defendant asserts
8 that the wage statements it issued did comply with Labor Code section 226(a) with respect to all
9 hourly rates of pay, including overtime rates of pay. Moen Decl., ¶ 25. Further, Defendant asserts
10 that Plaintiffs' damages analyses are substantially overstated, as only a small fraction of the
11 Aggrieved Employees performed piece-rate work as drivers during the relevant time period, and
12 because Defendant changed the information contained on the wage statements issued to those
13 drivers in August 2020. *Id.*

14 Finally, as a result of Defendant's failures to pay all minimum wages, overtime wages,
15 and meal period and rest period premiums, Plaintiff asserts that Defendants also failed to issue
16 accurate and itemized wage statements, and failed to timely pay all final wages at the time of
17 separation. Moen Decl., ¶ 26; see also Labor Code § 226(a). In response, Defendant argues that
18 Plaintiffs' underlying claims will fail and, as a result, the wholly derivative wage statement claim
19 will also fail. Moen Decl., ¶ 26; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
20 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.").
21 Defendant also maintains that given its good faith defenses, this Court would exercise its
22 discretion to substantially reduce any PAGA penalties awarded. Moen Decl., ¶ 26; see also Labor
23 Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135
24 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corporation* (2018) 30
25 Cal.App.5th 504 (affirming trial court's reduction of PAGA penalties to 10% of calculated
26 exposure after bench trial).

27 Further, Defendant argues that Plaintiffs could only seek PAGA penalties at the \$100
28 "initial" violation rate, as opposed to the \$200 "subsequent" violation rate, since Defendant had

never been put on notice by a court or the Labor Commissioner that its practices violated the Labor Code until Plaintiffs initiated this action. Moen Decl., ¶ 26; *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (finding “initial” violation rate applies until employer has been notified that it is violating a Labor Code provision).

III. THE PROPOSED SETTLEMENT

A. “Aggrieved Employees” Defined

Aggrieved Employees are defined as, “all current and former non-exempt employees of Defendant Exel Inc. dba DHL Supply Chain who worked in the State of California at any time between October 21, 2019 to March 31, 2022.” *See* Moen Decl., Exhibit 2.

B. Essential Terms Of The Settlement

Defendant will pay a TSA of \$2,738,488.59. Moen Decl., Exhibit 2, at pp. 2. After deducting amounts for requested attorneys’ fees and costs, Plaintiffs’ enhancement awards, and settlement administration costs, the remaining Net Settlement Amount (“NSA”) distributable to the Aggrieved Employees and the LWDA is estimated to be \$1,777,169.29. *See id.* This non-reversionary Settlement does not require Aggrieved Employees to submit a claim form to reap the financial benefits of the Settlement. Settlement, §§ I.8, III.2. The monetary terms of the Settlement are as follows:

Total Settlement Amount:	\$2,738,488.59
Minus Court-approved attorneys’ fees (1/3):	\$912,829.53
Minus Court-approved attorneys’ costs:	\$13,539.77
Minus Court-approved enhancement payments:	\$5,000.00 each
Minus settlement administrator costs:	\$19,950.00
Net Settlement Amount:	\$1,777,169.29
Minus LWDA’s 75% Share:	\$1,332,876.97
Total Paid to Aggrieved Employees:	\$444,292.32

1. Attorneys’ Fees and Costs

Plaintiffs’ Counsel requests one-third of the TSA (\$912,829.53) in attorneys’ fees, and \$13,539.77 in actual litigation costs. Moen Decl., Exhibit 2, at pp. 2, Exhibit 3; Hollins Decl., Exhibit 1.

2. Settlement Administration Costs

The parties agree to engage Phoenix Settlement Administrators (“Phoenix”) as the third-party settlement administrator. *See* Settlement, §§ I.16, IV.1. Phoenix shall be responsible for

1 translating the Notice into Spanish,⁵ calculating the settlement checks, and mailing the settlement
2 checks and Notice to the Aggrieved Employees, among other duties. *Id.*, § IV. Phoenix estimates
3 incurring \$19,950.00 in costs in connection with the administration of this settlement. *See*
4 Declaration of Jodey Lawrence (“Lawrence Decl.”), Exhibit B.

5 **3. Plaintiffs’ Enhancement Awards**

6 Plaintiffs also request enhancement awards of \$5,000.00 each in recognition of their
7 efforts to initiate this case, their contributions to the prosecution of this case, and their efforts in
8 bringing this case to a successful resolution. Settlement, §§ I.9, III.4.b; Moen Decl., ¶ 34; Foy
9 Decl., ¶¶ 5-9; Ybarra Decl., ¶¶ 5-9; Harris Decl., ¶¶ 4-7.

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

11 The entire NSA shall be designated as PAGA civil penalties. Settlement, § IV.7. From
12 the NSA, 75% (\$1,332,876.97) will be distributed to the LWDA, and 25% (\$444,292.32) will be
13 distributed to the Aggrieved Employees. *Id.*, § III.5; *see also* Labor Code § 2699(i) (“[C]ivil
14 penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the
15 [LWDA]...and 25 percent to the aggrieved employees.”). 100% of the individual payments to
16 the Aggrieved Employees will be reported using IRS Form-1099s, since all funds received under
17 Section 2699 are civil penalties that do not trigger payroll taxes or withholdings. *See* Settlement,
18 § IV.7. Individual Settlement Payments shall be apportioned based on the proportionate number
19 of pay periods worked by each Aggrieved Employee during the PAGA Period, by multiplying the
20 NSA by a fraction, the numerator of which is each Aggrieved Employee’s total pay periods
21 worked during the PAGA Period, and the denominator of which is the total aggregate number of
22 pay periods worked by all Aggrieved Employees during the PAGA Period. *Id.*, § III.5.

23 **5. Funding of the Settlement**

24 Defendant will deposit the TSA within sixty (60) calendar days after the Court signs an
25 Order approving the Settlement. Addendum, § III.2. Within ten (10) business days after the Court
26 enters an Order approving the Settlement, Defendant will provide Phoenix with a list of the
27 Aggrieved Employees’ full name, last known mailing address, last known telephone number, pay
28

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

1 period information, and Social Security numbers. Settlement, § IV.2. Within ten (10) business
2 days thereafter, Phoenix will circulate to counsel for both parties an anonymized spreadsheet
3 containing the Individual Settlement Payments and the data used to calculate said payments. *Id.*
4 Within ten (10) business days after receiving approval from the parties of the calculations used to
5 determine the Individual Settlement Payments, Phoenix will mail copies of the explanatory letter,
6 in English and Spanish, along with the Individual Settlement Payments to the Aggrieved
7 Employees via First-Class U.S. Mail. *Id.*, § IV.3. Before mailing, Phoenix will perform a search
8 on the National Change of Address database to update the Aggrieved Employees' addresses. *Id.*

9 **IV. ARGUMENT**

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

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

22 Although the operative PAGA statute does not set forth the criteria by which a PAGA
23 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors
24 for review of a class action settlement. However, “a PAGA claim asserted on a non-class
25 representative basis...is not considered a class action but a law enforcement action, and therefore
26 does not have to meet the requirements of [a class action].” *See Casida v. Sears Holdings Corp.*,
27 2012 WL 253217 at *3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL
28 2650571 at *4 (E.D. Cal. Jul. 1, 2010). A court’s review of a PAGA settlement necessarily

1 implicates the following unique features that render the approval process distinct from approval
2 of a class action settlement under C.C.P. § 382 and C.R.C. Rule 3.769.

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

16 Second, consistent with the fact that unnamed employees have no property interest in a
17 PAGA claim,⁶ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
18 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
19 1340777 at *5. This renders the approval process of a PAGA settlement distinct from a class
20 action settlement, as there is no need for the Court to employ the “two-step approval process”
21 required under F.R.C.P. Rule 23 (“Rule 23”) and C.R.C. Rule 3.769 (“Rule 3.769”).⁷

22
23
24 ⁶ As held by the California Supreme Court, “[PAGA] does not create property rights or any other
25 substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employee to recover civil
26 penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement
agencies.” *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46 Cal.4th 993, 1003.

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

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

13 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v.*
14 *Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class and
15 representative PAGA settlements involve a court approval process that exists to prevent fraud,
16 collusion, and unfairness to absent individuals. *See Malibu Outrigger Bd. of Governors v.*
17 *Superior Court* (1980) 103 Cal.App.3d 573, 578-79. California law generally follows the same
18 standards applicable under Rule 23. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
19 1998) (stating that Rule 23(e) requires the trial court to determine “whether a proposed settlement
20 is fundamentally fair, adequate, and reasonable”). To be approved, a settlement must be “fair,
21 reasonable and adequate to all concerned.” *Reed v. United Teachers Los Angeles* (2012) 208
22 Cal.App.4th 322, 337. Settlement is the preferred means of dispute resolution, particularly in
23 complex representative litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.

24
25 ⁸ This is contrasted with the much broader release permitted in a class action context, which may release
26 all underlying Labor Code violations based on “any matter or fact” alleged in the complaint. *See In re*
27 *Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981) (“The weight of authority
28 establishes that ... a court may release not only those claims alleged in the complaint and before the court,
but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set
forth or referred to in’ the complaint.”); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir., 2010) (“we
have held that federal district courts properly released claims not alleged in the underlying complaint where
those claims depended on the same set of facts as the claims that gave rise to the settlement.”).

2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product of fraud or collusion between the negotiating parties. *See, e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s length by experienced counsel. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Because this Settlement is fair, adequate, and reasonable, Plaintiffs respectfully requests that the Court grant approval.

1. Factors in Evaluating a Representative PAGA Settlement

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

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

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

“In the context of a settlement agreement, the test is not the maximum amount Plaintiff 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.* (2001) 91 Cal.App.4th 224, 250. Because settlements inherently involve compromise, settlements providing for narrower relief than can be obtained if the suit were successfully litigated can be reasonable because “the

1 public interest may indeed be served by a voluntary settlement in which each side gives ground
2 in the interest of avoiding litigation.” *Air Lines Stewards, etc., Local 550 v. Am. Airlines, Inc.*,
3 455 F.2d 101, 109 (7th Cir. 1972). Further, courts review the discovery conducted by the parties
4 to aid in assessing whether the parties sufficiently developed the claims and supporting factual
5 bases before reaching settlement. *See Kullar, supra*, 168 Cal.App.4th at 129-31. Information is
6 sufficient where it allows the parties and the court to form “an understanding of the amount that
7 is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential*
8 *Serv. LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that parties can provide
9 the trial court with “a meaningful and substantiated explanation of the manner in which the factual
10 and legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132.

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

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

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

21 Although the parties engaged in substantial informal discovery and information exchange
22 prior to mediation, the parties agreed to postpone formal written and deposition discovery until
23 after exhausting their settlement efforts at mediation. Moen Decl., ¶ 27. Therefore, absent
24 settlement, the parties will be required to expend substantial time and resources conducting formal
25 written and deposition discovery. *Id.* Preparation for trial remained, as well as the prospect of
26 appeals in the wake of a summary judgment ruling for either party, and appeals after trial. *Id.* This
27 settlement avoids these considerable costs, risks, and the accompanying burden of continued
28 litigation on the Court.

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

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

6 **PAGA Civil Penalties: \$2,502,237**

7 Prior to mediation, Plaintiffs' data analysis revealed that the Aggrieved Employees
8 worked an aggregate 228,447 pay periods during the relevant time period. Moen Decl., ¶ 28.
9 Plaintiffs' data analysis further revealed that approximately 16.9% of the applicable pay periods
10 included an overtime underpayment as a result of Defendant's allegedly unlawful AWS
11 implementation; approximately 47.1% of the applicable pay periods included at least one rest
12 period violation; approximately 56.9% of the applicable pay periods included at least one meal
13 period violation; and approximately 14.2% of the applicable pay periods included an overtime
14 underpayment as a result of Defendant's failure to accurately incorporate the value of shift
15 premium payments or piece-rate earnings into the regular rate calculation. *Id.* Labor Code section
16 2699(f)(2) provides for PAGA civil penalties in the amount of \$100 for each aggrieved employee
17 per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for
18 each subsequent violation. *See* Labor Code § 2699(f)(2). However, courts have interpreted section
19 2699(f)(2) to only impose the \$200 subsequent penalty after an employer has been notified that
20 its conduct violates the Labor Code. *See Amaral, supra*, 163 Cal.App.4th at 1209 (finding "initial"
21 violation rate applies until employer has been notified that it is violating a Labor Code provision).
22 Plaintiffs therefore calculate Defendants' maximum possible PAGA exposure at \$12,998,634
23 (228,447 pay periods x 56.9% highest applicable violation rate x \$100 per violation). Moen Decl.,
24 ¶ 28.

25 However, as discussed above, Defendant raised numerous defenses to the merits of
26 Plaintiffs' underlying claims and challenged the manageability of Plaintiffs' claims should the
27 action proceed to trial, and argued that even if found liable, the Court would exercise its discretion
28 to drastically reduce any potential PAGA penalties awarded. Moen Decl., ¶ 29; *see also* Section

1 II.C, *supra*. Plaintiff therefore discounted this figure by 45% to account for the risk of losing on
2 the merits and/or for having overestimated Defendant’s potential maximum exposure, and by an
3 additional 65% for the risk of the Court reducing the penalties, to arrive at a realistic recovery of
4 \$2,502,237. Moen Decl., ¶ 29; *see also, e.g., Thurman, supra*, 203 Cal.App.4th at 1136 (affirming
5 reduction of PAGA penalties); *Carrington, supra*, 30 Cal.App.5th 504 (affirming reduction of
6 PAGA penalties to 10% of maximum exposure).

7 Therefore, the proposed gross settlement amount of \$1,895,000 represented
8 approximately 75.7% of Plaintiffs’ reasonably forecasted recovery, which is well within the range
9 approved by courts as being fair, reasonable and adequate, while also avoiding further expense
10 and risk of further litigation.⁹ Moen Decl., ¶ 29; *see, e.g., Altamirano v. Shaw Industries, Inc.*,
11 2015 WL 4512372, *9 (N.D. Cal. 2015) (“Although 15% represents a modest fraction of the
12 hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to
13 grant preliminary approval...”); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving
14 settlement of “roughly one-sixth of the potential recovery”); *Linney v. Cellular Alaska*
15 *Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“The fact that a proposed settlement may only
16 amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed
17 settlement is grossly inadequate and should be disapproved.”) (internal quotations omitted).
18 Plaintiffs acknowledge that there was substantial uncertainty and risk should they proceed
19 through trial, and that even in the event that they prevailed, the Court still maintained discretion
20 to reduce the penalties awarded. Therefore, approval is appropriate since the Settlement will
21 provide tangible, monetary relief to the Aggrieved Employees and the State of California.

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

23 The parties engaged in substantial informal discovery and information exchange
24 necessary to evaluate the value of the PAGA claims prior to mediation. *See* Moen Decl., ¶¶ 16-
25

26 ⁹ Following the parties’ execution of the Settlement Agreement, the Escalator Clause in the agreement was
27 triggered, resulting in a pro-rata increase to the gross settlement amount based on the actual number of pay
28 periods at issue. *See* Moen Decl., ¶ 11. This resulted in a TSA of \$2,738,488.59, which was calculated
based on the percentage increase in the overall number of pay periods at issue. *Id.* Because the increase in
total pay periods was mirrored by the increase in the TSA, Plaintiffs submit that the fairness of the
settlement and the percentage of the forecasted recovery remain unchanged. *Id.*

1 17. Defendant provided Plaintiffs with a representative sampling of the Aggrieved Employees’
2 timekeeping and payroll records, written wage and hour policies, and various key data points,
3 including the total number of Aggrieved Employees and pay periods at issue in the liability period.
4 *Id.* It was only after the completion of this informal discovery and Plaintiff’s comprehensive data
5 analysis that the parties attended mediation, and ultimately reached the proposed settlement. *Id.*
6 Thus, this factor supports settlement approval.

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

8 “Parties represented by competent counsel are better positioned than courts to produce a
9 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
10 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are
11 represented by competent and experienced wage and hour counsel who possess extensive
12 experience litigating wage and hour class actions and PAGA representative actions, and who
13 believe this Settlement to be fair and adequate for all involved. *See* Moen Decl., ¶¶ 2-8; Hollins
14 Decl., ¶¶ 3-15; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; Declaration of Fletcher
15 W. Schmidt (“Schmidt Decl.”), ¶¶ 2-6. Further, the proposed Settlement was reached with the
16 input and assistance of Steve Pearl, Esq., an experienced wage and hour mediator. Moen Decl., ¶
17 16. Thus, this factor strongly supports settlement approval. *See, Kullar, supra*, 168 Cal.App.4th
18 at 130 (“The court undoubtedly should give considerable weight to the competency and integrity
19 of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement
20 represents an arm’s length transaction entered without self-dealing or other potential
21 misconduct.”).

22 **C. The Requested Award for Attorneys’ Fees is Reasonable as a Percentage of**
23 **the TSA**

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

1 California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
2 506, that “[t]he percentage of fund method survives in California class action cases.” Specifically,
3 the *Laffitte* Court held:

4 The recognized advantages of the percentage method—including relative
5 ease of calculation, alignment of incentives between counsel and the class, a
6 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.

7 *Id.*, at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34
8 (“when a number of persons are entitled in common to a specific fund, and an action brought by
9 a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,
10 such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*
11 (1982) 32 Cal.3d 621, 627 (in awarding a fee from the common fund obtained for the benefit of
12 all parties, the trial court acts within its equitable power to prevent the other parties’ unjust
13 enrichment); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the
14 percentage of the fund method for calculating attorneys’ fees more accurately reflects the results
15 achieved for the putative class than the lodestar method and “establishes reasonable expectations
16 on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early
17 settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396
18 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in
19 common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards
20 counsel for success and penalizes it for failure.’”). Further, while trial courts have discretion to
21 assess the reasonableness of fee awards with tools such as the “lodestar cross-check,” it need not
22 do so. *Laffitte*, 1 Cal.5th at 506 (“[w]e hold further that trial courts...retain the discretion to forgo
23 a lodestar cross-check and use other means to evaluate the reasonableness of a requested
24 percentage fee.”).

25 Here, Plaintiffs’ counsel’s fee request of \$912,829.53 (one-third of the TSA) is the same
26 percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the recovery
27 method. Fee awards of roughly one-third of the settlement fund are routinely awarded in
28

California state and federal courts in class and representative PAGA actions. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11; *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). This is also consistent with Plaintiffs’ counsel’s experience in similar wage and hour class action and PAGA matters. Moen Decl., ¶ 30; *see also* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013) (“No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award...”).

The fee award requested here is justified because Plaintiffs’ counsel achieved a reasonable monetary recovery for the Aggrieved Employees and the State of California (who did not take this case after receiving Plaintiff’s PAGA notice) in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis. Moen Decl., ¶ 30. Additionally, Plaintiffs’ recovery for the State of California and Aggrieved Employees exceeds other PAGA awards approved by courts in California. *See, e.g., Penaloza, supra*, 2013 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average PAGA penalties of \$3.33). That Plaintiffs’ counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed, this case presented significant risks both on the merits and with respect to the Court’s authority to reduce an award of PAGA penalties. It is fair and reasonable to account for these risks in compensating Plaintiffs’ counsel, as well as the risks involved in undertaking this litigation and expending considerable effort while working on a pure contingency basis. Since undertaking representation of Plaintiffs, Plaintiffs’ counsel dedicated substantial resources to this litigation, including expending \$13,539.77 in litigation costs, without receiving any compensation to date. Moen Decl., ¶¶ 31-32, Exhibit 4; Hollins Decl., Exhibit 1. Plaintiffs’ counsel’s efforts include conducting pre-filing investigation, analyzing Plaintiffs’ claims, conducting extensive legal research regarding the merits and legal bases of Plaintiffs’ claims, Plaintiffs’ ability to

1 recover penalties under the PAGA, and Defendants’ potential defenses, drafting and filing
2 Plaintiffs’ respective complaints and LWDA notice letters, reviewing the arbitration agreement
3 produced by Defendant, drafting Plaintiffs’ requests to dismiss class and individual claims,
4 attending various court hearings, reviewing substantial documents and data produced by
5 Defendant prior to mediation, retaining an expert to analyze Defendant’s document production,
6 extensively evaluating the timekeeping and payroll data prior to mediation, building a
7 comprehensive damages model, preparing for and attending mediation, drafting a mediation brief,
8 negotiating and drafting the long-form Settlement Agreement, Addendum to Settlement
9 Agreement, and Notice documents, preparing this Motion for settlement approval and all
10 supporting documents hereto, and otherwise litigating the case. Moen Decl., ¶ 31. Plaintiffs’
11 counsel will spend additional time attending the hearing on this Motion and overseeing the
12 settlement administration process. *Id.* Given the potential for adverse outcomes, the contingent
13 risks borne by Plaintiffs’ counsel was great. The quality of Plaintiffs’ counsel’s work, and the
14 efficacy and dedication with which it was performed, should be compensated.

15 Plaintiffs’ counsel’s previous experience in litigating wage and hour class and
16 representative actions also supports the reasonableness of the fee request. Plaintiffs’ counsel are
17 well-versed in plaintiff- and defense-side wage and hour class and representative action litigation,
18 and collectively bring eight decades worth of wage-and-hour class and representative action
19 litigation experience. *See* Moen Decl., ¶¶ 2-7; *see also generally* Hollins Decl.; Haines Decl.;
20 Schmidt Decl. Plaintiffs’ counsel have also been certified as class counsel in numerous class
21 action cases alleging wage and hour claims. *See id.* Plaintiffs’ counsel’s experience in similar
22 matters was integral in evaluating the strengths and weaknesses of this case and the
23 reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires
24 skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as
25 the procedural law of representative litigation. Moen Decl., ¶ 31. Because it is reasonable to
26 compensate Plaintiffs’ counsel commensurate with their skill, reputation, and experience, the
27 requested fee award of \$912,829.53 (one-third of the TSA) is fair and reasonable, as the California
28 Supreme Court held in *Laffitte*, and should therefore be approved.

1 **D. The Requested Cost Reimbursement Warrants Approval as Fair, Adequate,**
2 **and Reasonable**

3 Plaintiffs’ counsel incurred and respectfully requests reimbursement of \$13,539.77 in
4 actual litigation costs. Moen Decl., ¶ 32, Exhibit 4; Hollins Decl., Exhibit 1. Plaintiffs’ counsel’s
5 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably
6 incurred. *See id.* Moreover, the costs Plaintiffs seek are the types of costs routinely approved by
7 courts. *See, e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel should recover
8 “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v.*
9 *Sayre*, No. 05-03759 CW, 2011 WL 825713, * 3 (N.D. Cal. 2011) (“costs of reproducing
10 pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients” and
11 are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland*
12 *Ins. Co.* (9th Cir. 2006) 460 F.3d 1253, 1258-59 (legal research costs are reimbursable); *In re*
13 *Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation
14 expenses, legal research, copies, postage, filing fees, messenger and overnight delivery costs are
15 reimbursable). Because the expense reimbursements requested by Plaintiffs’ counsel were
16 reasonably incurred, the Court should grant Plaintiffs’ counsel’s request for reimbursement of
17 \$13,539.77 in actual litigation costs incurred.

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

19 Plaintiffs also request that the Court approve \$19,950.00 in administration costs to the
20 Settlement Administrator, Phoenix Settlement Administrators. Moen Decl., ¶ 33; Lawrence Decl.,
21 ¶ 17, Exhibit B; Addendum, § III.4.c. As detailed in the Settlement Agreement and declaration
22 of Jodey Lawrence, submitted concurrently with this Motion, Phoenix will perform duties in
23 connection with this Settlement that are integral in effectuating the Settlement and the Notice
24 process. Among other things, Phoenix will calculate each Aggrieved Employee’s Individual
25 Settlement Payment, update addresses contained in the employee data supplied by Defendant,
26 format the Notices for mailing and translate them into Spanish, mail Notices to all Aggrieved
27 Employees, and otherwise administer the Settlement. *See generally*, Lawrence Decl.; Settlement,
28 § IV. Phoenix was selected to administer this Settlement because it is an experienced and well-
respected settlement administrator, and returned a bid at a competitive rate. Moen Decl., ¶ 33; *see*

generally, Lawrence Decl. For these reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should be approved.

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

Courts routinely approve enhancement awards to compensate named plaintiffs for the services they provide and the risks they incur during class and representative litigation. *See, e.g., Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 enhancement award). Here, pursuant to 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 to the prosecution and resolution of this action, and the risks they undertook on behalf of the Aggrieved Employees. Among other things, Plaintiffs searched for and gathered relevant documents and provided them to their attorneys, engaged in multiple discussions with their attorneys regarding Defendant’s policies and practices, provided information related to their working conditions and Defendant’s company structure and operations, had regular discussions with their attorneys over the phone regarding the claims in the lawsuit and the facts and legal theories at issue in the case, discussed the status of the case and general case strategy with their attorneys on many occasions, helped their attorneys prepare for mediation, and reviewed and discussed the Settlement with their attorneys. Foy Decl., ¶¶ 5-7; Ybarra Decl., ¶¶ 5-7; Harris Decl., ¶ 7. Plaintiff Foy estimates spending approximately 34 hours on activities that ultimately lead to the Settlement. Foy Decl., ¶ 8. Plaintiff Ybarra estimates spending approximately 24 hours on activities that ultimately lead to the Settlement. Ybarra Decl., ¶8. Plaintiff Harris estimates spending approximately 30 hours on activities that ultimately lead to the Settlement. Harris Decl., ¶ 7. Accordingly, Plaintiffs’ enhancement awards are appropriate and justified as part of the Settlement.

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1 **V. CONCLUSION**

2 Concurrently with the filing of this motion, Plaintiffs provided notice of the proposed
3 Settlement, as well as copies of this motion and all papers filed in support hereof, to the LWDA.
4 See Moen Decl., ¶ 10, Exhibit 3. For the reasons stated herein, this Court should grant Plaintiffs'
5 Motion in its entirety and adopt the [Proposed] Judgment and Order Granting Plaintiffs' Motion
6 for Settlement Approval of Claims Brought Under the PAGA, Reasonable Attorneys' Fees and
7 Costs, and Enhancement Awards, submitted concurrently herewith.

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9 Dated: May 9, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

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11 By:



12 Matthew K. Moen
13 Attorneys for Plaintiff
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