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7 Attorneys for Plaintiff Nancy Taylor, on behalf of herself and all "aggrieved employees" pursuant
8 to Labor Code § 2698 et seq.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF VENTURA**

11 NANCY TAYLOR, on behalf of herself and
12 all "aggrieved employees" pursuant to Labor
13 Code § 2698 et seq.,

14 Plaintiffs,

15 v.

16 MINER'S ACE HARDWARE, INC., a
California corporation, and DOES 1 through
17 10, inclusive,

18 Defendants.
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CASE NO: 56-2021-00558252-CU-OE-VTA

*Assigned to the Honorable Mark Borrell,
Department 40*

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS' FEES, COSTS,
GENERAL RELEASE PAYMENT, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
DISMISSING ACTION WITH PREJUDICE;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: April 15, 2022

Time: 8:30 a.m.

Dept.: 40

Reservation #2627816

Complaint Filed: September 22, 2021

Trial Date: None

1 **PLEASE TAKE NOTICE THAT** on April 15, 2022 at 8:30 a.m., or as soon thereafter as
2 the matter may be heard, in Department 40 of the above-entitled Court, located at 800 South
3 Victoria Avenue, Ventura, California 93009, Plaintiff Nancy Taylor will and hereby does move
4 unopposed for an Order: (1) granting approval of the proposed settlement of claims brought
5 pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) set forth in
6 the parties' Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement
7 ("Settlement Agreement"); (2) appointing Phoenix Class Action Administration Services and
8 approving payment of its fees not to exceed \$10,000 from the Gross Settlement Amount; (3)
9 directing disbursement of the Gross Settlement Amount pursuant to the terms of the Settlement
10 Agreement; (4) directing payment of attorneys' fees and litigation costs from the Gross Settlement
11 Amount in the amount of \$97,355.80 to Plaintiff's counsel; (5) directing payment of a general
12 release payment from the Gross Settlement Amount in the amount of \$12,000 to Plaintiff Taylor;
13 and (6) dismissing this action with prejudice.

14 This motion will be based on this Notice, the supporting memorandum of points and
15 authorities, the parties' Settlement Agreement, the Declarations of Daniel F. Gaines, Esq. and
16 Plaintiff Nancy Taylor, the documents and records on file in this matter, and such additional
17 arguments, authorities, and evidence and other matters as may be presented by the parties hereafter.

18
19 Date: March 18, 2022

Respectfully submitted,

GAINES & GAINES, APLC

20
21 By: 

22 DANIEL F. GAINES
23 ALEX P. KATOFISKY
24 Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Nancy Taylor ("Plaintiff" or "Taylor") and all Aggrieved Employees under the
4 Labor Code's Private Attorneys General Act of 2004 ("PAGA") respectfully move this Court for
5 an Order granting approval of the proposed Settlement Agreement of the above-captioned lawsuit
6 against Defendant Miner's Ace Hardware, Inc. ("Defendant"). The proposed Settlement will
7 dispose of the Released Claims asserted on behalf of Plaintiff and approximately 775 Aggrieved
8 Employees (defined as all current and former non-exempt employees employed by Miner's ACE
9 Hardware in California at any time during the Settlement Period (December 28, 2019 through
10 November 16, 2021). Defendant represents that the total number of Aggrieved Employees is no
11 more than 775 individuals through November 16, 2021.

12 This case addresses claimed violations of employee protections embodied in the California
13 Labor Code and penalties stemming therefrom for the violation of PAGA. Plaintiff alleged that
14 Defendant failed to pay Plaintiff and Aggrieved Employees all overtime wages due in violation of
15 Labor Code §§ 510, 558 and 1194; failed to provide legally compliant rest breaks to Plaintiff and
16 Aggrieved Employees in violation of Labor Code §§ 226.7 and 558 and Wage Order 4-2001; failed
17 to provide legally compliant meal periods to Plaintiff and Aggrieved Employees in violation of
18 Labor Code §§ 226.7, 510, 512, 558 and 1194 and Wage Order 4-2001; failed to issue accurately
19 itemized wage statements to Plaintiff and Aggrieved Employees in violation of Labor Code §§
20 226(a) and 226.3; failed to provide suitable seats to Plaintiff and Aggrieved Employees in violation
21 of Labor Code § 1198 and Wage Order 4-2001, § 14; and failed to timely pay wages to Aggrieved
22 Employees, in violation of Labor Code §§ 201-203. As a result of Defendant's alleged violations
23 of the Labor Code, approximately 775 employees are claimed to have suffered Labor Code
24 violations for up to 16,625 aggregate pay periods at the rate of \$100 each based on PAGA's penalty
25 provisions. Defendant denies that any of the Aggrieved Employees suffered any Labor Code
26 violations and denies that Plaintiff or the Aggrieved Employees are entitled to recover any civil
27 penalties under PAGA.

28 \\\

1 In deciding whether to grant approval of the proposed Settlement, the primary issue to be
2 decided is whether the Settlement is fair, adequate and reasonable. As set forth herein, the proposed
3 Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it:
4 (1) is the product of arms-length negotiations, (2) was negotiated by attorneys experienced in wage
5 and hour issues, (3) occurred subsequent to undertaking sufficient investigation necessary to
6 evaluate the relative strength and value of the PAGA claim, and (4) reflects a reasoned compromise
7 based directly on the relative strength and value of the PAGA claim, as well as the risks, expense,
8 complexity and likely duration of further litigation.

9 The value achieved by the Settlement may be gleaned from the fact that the Labor and
10 Workforce Development Agency ("LWDA") and the approximately 775 Aggrieved Employees
11 encompassed by the Settlement will receive no less than \$105,644.20 under the terms of the
12 Settlement, which, pursuant to the operative statute, shall be allocated "75 percent to the Labor and
13 Workforce Development Agency . . . and 25 percent to the aggrieved employees." *See Cal. Lab.*
14 *Code* § 2699(i). This is a reasonable recovery, not only because further litigation may have resulted
15 in a net-zero recovery based on the defenses available to Defendant, but because the amount secured
16 by Plaintiff is sizable and in line with similar settlements of these types of claims under PAGA. It
17 is also important to underscore that all penalty amounts paid to Aggrieved Employees will be an
18 unexpected windfall, as employees typically do not bring individual lawsuits asserting only PAGA
19 penalties.

20 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this
21 Court enter the Order submitted herewith.

22 **II. STATEMENT OF THE CASE AND THE SETTLEMENT**

23 **A. The Parties**

24 Defendant is a family-owned hardware retail chain based in Grover Beach, California with
25 nine locations in California. In 1972 it joined Ace Hardware, a buying co-op owned entirely by
26 independent dealers. Gaines Decl. at ¶ 6.

27 Plaintiff worked as a non-exempt cashier from July 2013 through October 2020 in
28 Defendant's Morro Bay location. Gaines Decl. at ¶ 7.

1 **B. The Claims Asserted**

2 Plaintiff asserts claims that Defendant failed to pay Plaintiff and Aggrieved Employees all
3 wages due including all overtime wages in violation of Labor Code §§ 246, 510, and 1194; failed
4 to provide legally compliant rest breaks to Plaintiff and Aggrieved Employees in violation of Labor
5 Code § 226.7; failed to provide legally compliant meal breaks to Plaintiff and Aggrieved
6 Employees in violation of Labor Code §§ 226.7 and 512; failed to provide suitable seats to Plaintiff
7 and Aggrieved Employees in violation of Labor Code §§ 226.7 and 512; failed to issue accurately
8 itemized wage statements to Plaintiff and Aggrieved Employees, in violation of Labor Code §§
9 226(a) and 226.3; and failed to timely pay wages to Aggrieved Employees in violation of Labor
10 Code §§ 201-203. Plaintiff asserts these claims under PAGA, seeking civil penalties for the alleged
11 Labor Code violations. Gaines Decl. at ¶ 8.

12 **C. Procedural Posture**

13 On December 28, 2020, pursuant to Labor Code § 2699.3, Plaintiff gave written notice by
14 online filing with the LWDA and by certified mail, return receipt requested, to Defendant of the
15 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
16 to support the alleged violation. Gaines Decl. at ¶ 9, **Exhibit B**.

17 On September 22, 2021, following the Parties' tolling of the statute of limitations on
18 Plaintiff's claims, Plaintiff Taylor filed a complaint in the Superior Court of the State of California
19 for the County of Ventura styled, *Nancy Taylor v. Miner's ACE Hardware*, Case No. 56-2021-
20 00558252-CU-OE-VTA. The Complaint alleges a single representative cause of action on behalf
21 of Plaintiff, the State of California and other Aggrieved Employees pursuant to the Private
22 Attorneys General Act of 2004 (Cal. Labor Code § 2698 et seq.) based on alleged violations of
23 Labor Code §§ 201, 202, 226(a), 226.3, 226(a), 226.3, 226.7, 510, 512, 558, 1194 and 1198,
24 premised on Defendant's alleged failure to pay all overtime wages, provide all meal and rest
25 periods, or premium compensation in lieu thereof, timely pay wages due at separation of
26 employment, provide suitable seating, and issue complete and accurate wage statements. Gaines
27 Decl., ¶ 10.

28 \\\

1 Concurrently with the filing of this Motion, Plaintiff submitted the Settlement Agreement,
2 together with this Motion and all supporting documents, to the LWDA via online upload on March
3 18, 2022. Service of the LWDA is reflected on the Declaration of Service submitted herewith.
4 Gaines Decl. at ¶ 11.

5 **D. Plaintiff's Counsel's Investigation**

6 Counsel for Plaintiff engaged in informal discovery of Defendant's alleged Labor Code
7 violations, which specifically targeted evaluating the strength and value of the PAGA claims in
8 preparation for a resolution of this Action. Gaines Decl. at ¶ 12.

9 Plaintiff's Counsel obtained and reviewed multiple documents, including (i) Plaintiff's
10 employee file and wage statements, (ii) policy documents relating to the employment of Plaintiff
11 and other Aggrieved Employees, and (iii) data relating to the number of alleged violations and the
12 value of the recoverable penalties. Gaines Decl. at ¶ 13.

13 Based on the information received, as well as through discussions with Defendant's
14 Counsel, Plaintiff's Counsel were able to (i) determine the total number of distinct individuals
15 falling within the definition of "Aggrieved Employee" for the relevant statutory period, and (ii)
16 construct a damage model that calculated the maximum realistic amount of PAGA penalties that
17 could be levied against Defendant within the Release Period. Defendant, however, disputed
18 Plaintiff's claims and disputed both the existence of and extent of liability as alleged by Plaintiff.
19 Gaines Decl. at ¶ 14.

20 Based on Plaintiff's Counsel's experience in litigating similar "representative" wage and
21 hour claims, the degree of investigation that was conducted, and the amount of data that was
22 obtained, was sufficient to determine the potential value of the PAGA claim, and to evaluate the
23 strength of this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-5, 15.

24 **E. Settlement Negotiations**

25 On September 16, 2021, the Parties participated in a mediation session with respected
26 mediator Hon. Howard Broadman (Ret.). During the mediation, the parties engaged in arm's-
27 length negotiations but reached an impasse. Thereafter, Judge Broadman successfully brought the
28 parties to agree on a resolution of the PAGA claims asserted in the action. Gaines Decl. at ¶ 16.

1 **F. The Proposed Settlement**

2 The Parties jointly prepared and executed the Settlement Agreement. Gaines Decl., ¶ 17,
3 **Exhibit C.** The Settlement Agreement sets forth the terms of the Settlement reached by the Parties,
4 including the following key points:

5 1. Defendant agrees to settle this matter for the payment of One Hundred Eleven
6 Thousand Dollars (\$225,000) (hereinafter the "Gross Settlement Amount"), which shall be all
7 inclusive, encompassing (i) all payments to the Labor and Workforce Development Agency and
8 Aggrieved Employees, (ii) any and all costs of third-party administration of the settlement, (iii)
9 Plaintiff's Counsel's attorneys' fees and costs of suit, and (iv) a general release payment to Plaintiff.
10 See Settlement Agreement, at § 3.02(a)(1).

11 2. The total sum available for payment of PAGA penalties shall be calculated by
12 deducting \$97,355.80 for the payment of Plaintiff's Counsel's fees and costs (\$90,000 in fees and
13 \$7,335.80 in costs)¹, \$12,000 to Plaintiff Taylor for her general release, and the costs of
14 administration (up to \$12,000) from the \$225,000 Gross Settlement Amount, yielding
15 approximately \$105,644.20. Seventy-five percent (75%) of this amount, or \$79,233.15, shall be
16 distributed to the LWDA, and the remaining twenty-five percent (25%) or \$26,411.05, shall be
17 distributed to the Aggrieved Employees. See Settlement Agreement, at § 3.02(a)(2).

18 3. Each Aggrieved Employee will be paid an amount equal to their individual number
19 of pay periods worked in California during the Settlement Period multiplied by the Pay Period
20 Value. See Settlement Agreement, at § 3.02(a)(4). Although these calculations will not be made
21 until after approval, a rough estimation of the value to the 775 individuals falling within the
22 definition of "Aggrieved Employee" may be gleaned from the fact that an equal division would
23 provide about \$34.08 to each Aggrieved Employee, net of payments to the LWDA, to the
24 Settlement Administrator, attorney's fees and costs. The LWDA will be paid \$79,233.15. See
25 Gaines Decl. at ¶ 19.

26
27 ¹ Plaintiff's counsel's formal fee request is 40% of the Gross Settlement Amount and combined
28 total final costs of \$7,355.80, as discussed herein and set forth in **Exhibit D** to the Gaines
Declaration.

1 4. In exchange for the above settlement consideration, Defendant and the Released
2 Parties shall be entitled to the following release from each and every Aggrieved Employee,
3 including Plaintiff²:

4 Upon the Effective Date and subject to Defendant's full payment of
5 the Gross Settlement Amount, Plaintiff, on behalf of herself, her
6 heirs, executors, and assigns, the Aggrieved Employees, and the
7 State of California, fully releases and discharges Defendant, and each
8 of its present and former affiliates, parent companies, subsidiaries,
9 divisions, successors, predecessors, and assigns, and each of its
10 respective past and present shareholders, officers, partners, directors,
11 current and former employees, agents, attorneys, insurers,
12 successors, assigns, representatives, accountants, and all persons
13 acting under, by, through, or in concert with any of them
(collectively, "Released Parties") from any and all claims, rights,
demands, liabilities, and causes of action of every nature and
description, under PAGA, which were asserted in the Complaint or
which could have been asserted in the Complaint based on the facts
pled therein ("Released Claims") that accrued during the Settlement
Period.

14 See Settlement Agreement, at § 5.01.

15 5. Settlement administration, which is to be paid from the Gross Settlement Amount,
16 will not exceed \$10,000. See Settlement Agreement, at § 3.02(a)(2). Phoenix Class Action
17 Administration Solutions, a reputable settlement administration company, has agreed to administer
18 the settlement for this amount, submitting a competitive bid.

19 6. As detailed herein, Plaintiff's counsel seek an award of attorneys' fees and litigation
20 costs of a combined \$97,355.80, and Plaintiff seeks a general release payment of \$12,000. See
21 Settlement Agreement, at § 3.02(a)(2).

22 7. Finally, under the terms of Settlement, the value of checks uncashed more than
23 180 days after issuance shall be paid to the Office of the California State Controller – Unclaimed
24 Property Fund, to be held in the name of the respective Aggrieved Employees. See Settlement

25
26 ² This comports with settled California Supreme Court authority. See *Arias v. Superior Court*
27 (2009) 46 Cal. 4th 969, 986 (concluding that "with respect to the recovery of civil penalties,
28 nonparty employees as well as the government are bound by the judgment in an action brought
under the act . . .").

1 Agreement, at § 3.02(a)(6).

2 **III. LEGAL ARGUMENT**

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

4 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
5 statute, which states that the “[t]he superior court shall review and approve any settlement of any
6 civil action filed pursuant to this part.” *See Labor Code* § 2699(l)(2).

7 As with any settlement, the Court must be mindful in conducting its inquiry that
8 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
9 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222,
10 24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding of
11 absolutes and an abandoning of highest hopes’” [*Officers for Justice v. Civil Service Com.*, 688
12 F.2d 615, 624 (9th Cir., 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
13 of wasteful and expensive litigation that induce consensual settlements.” *See id.*, at 625. As such,
14 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
15 or “judged against a hypothetical or speculative measure of what might have been achieved by the
16 negotiators.” *See id.*

17 Although the operative PAGA statute does not set forth the criteria on which a PAGA
18 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for
19 review of a class action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. § 382 and Rule
20 3.769, Cal. Rules of Court, as courts within California have approved settlements of PAGA claims
21 encompassed within class action settlements using Rule 23 criteria.³ However, it is important to

22 ³ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
23 balancing of several factors which may include, among others, some or all of the following: [1] the
24 strength of Plaintiffs’ case; [2] the risk, expense, complexity, and likely duration of further
25 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
26 in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the
27 experience and views of counsel; [7] the presence of a governmental participant; and [8] the
28 reaction of the class members to the proposed settlement.” *See Linney v. Cellular Alaska P’ship*,
151 F.3d 1234, 1242 (9th Cir., 1998). “Not all of these factors will apply to every class action
settlement” and “[u]nder certain circumstances, one factor alone may prove determinative in
finding sufficient grounds for court approval.” *See Nat’l Rural Telcoms. Coop. v. DIRECTV, Inc.*,
221 F.R.D. 523, 525-526 (C.D. Cal. 2004).

underscore that not all Rule 23 factors can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of Rule 23.” *See Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan. 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2, 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010). Based thereon, a court’s review of a PAGA settlement necessarily implicates the following unique features that render the approval process completely distinct from approval of a class action settlement under Rule 23 or C.C.P. § 382 and Rule 3.769, Cal. Rules of Court.

First, in evaluating the adequacy of the settlement amount, the Court’s focus is not concerned with the amount which “aggrieved employees” are to receive, but rather, must focus on the total settlement amount in achieving PAGA’s objective.

While “[a PAGA] action is . . . designed to protect the public and penalize the employer for past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a “compromise” that stops short of rendering findings of liability and damages. Moreover, the Court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” *See Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS 32774, at 12.

B. The Settlement Meets All the Criteria For Approval

Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA considerations detailed above – the proposed Settlement embodies all of the key features of a settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

1. The Factors Giving Rise to a Presumption of Fairness Exist

In conducting a review of a settlement, it is generally recognized that an “agreement . . . reached through arms-length negotiation between experienced parties . . . is entitled to a

1 presumption of fairness.” *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377,
2 44 (C.D. Cal. Apr. 12, 2010).

3 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-
4 length negotiations brokered through a respected third party neutral [Gaines Decl. at ¶ 13], (2) that
5 was negotiated by Counsel with significant experience in similar wage and hour litigation [*see id.*,
6 at ¶¶ 2-5 and **Exhibit A**], (3) which occurred after Counsel had conducted sufficient investigation
7 to evaluate the strength and potential value of the PAGA claims, as well as evaluating the risks of
8 litigating this claim through trial. *See id.*, at ¶ 12-16. Based thereon, the court should give
9 considerable weight to the competency and integrity of counsel in assuring itself that the Settlement
10 Agreement represents an arm’s-length transaction entered without self-dealing or other potential
11 misconduct.

12 **2. The Relative Strength Of The PAGA Claim, And the Realistic Range of**
13 **Outcomes In The Litigation, Strongly Favor Approval of the Settlement**

14 The relative strength of the PAGA claims brought by Plaintiff weighs in favor of the Court
15 finding that the settlement is fair, adequate, and reasonable, as Defendant maintained numerous
16 defenses to the theories of penalty-liability put forward by Plaintiff that, if successful, had the
17 potential to completely eliminate any recovery.

18 This case addresses alleged violations of important employee protections embodied in the
19 California Labor Code – namely, that Defendant failed to pay Plaintiff and Aggrieved Employees
20 all overtime wages due in violation of Labor Code §§ 510, 558 and 1194; failed to provide legally
21 compliant rest breaks to Plaintiff and Aggrieved Employees in violation of Labor Code §§ 226.7
22 and 558 and Wage Order 4-2001; failed to provide legally compliant meal periods to Plaintiff and
23 Aggrieved Employees in violation of Labor Code §§ 226.7, 510, 512, 558 and 1194 and Wage
24 Order 4-2001; failed to issue accurately itemized wage statements to Plaintiff and Aggrieved
25 Employees in violation of Labor Code §§ 226(a) and 226.3; failed to provide suitable seats to
26 Plaintiff and Aggrieved Employees in violation of Labor Code § 1198 and Wage Order 4-2001, §
27 14; and failed to timely pay wages to Aggrieved Employees, in violation of Labor Code §§ 201-
28 203. Defendant’s maximum theoretical exposure in this action, without stacking potentially

1 duplicative and oppressive penalties, totals approximately \$1,662,500 computed by multiplying
2 16,625 pay periods by \$100 each. *See* Gaines Decl., ¶ 20.

3 Defendant contends it acted within the requirements of California law at all times as to all
4 Aggrieved Employees. It further contends that not every pay period at issue involved an alleged
5 Labor Code violation subject to civil penalties. Moreover, it maintained that even if the Court did
6 award penalties, the Court could and would *substantially* reduce the penalties awarded based on
7 the discretionary factors contained in Labor Code § 2699(e)(2) (“In action by an aggrieved
8 employee . . . , a court may award a lesser amount than the maximum civil penalty amount specified
9 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
10 result in an award that is unjust, arbitrary and oppressive, or confiscatory.”). *See* Gaines Decl., ¶
11 21.

12 Based on these disputes, which had the potential to completely eliminate Plaintiff’s
13 recovery, the range of realistic “litigation outcomes” on the Plaintiff’s PAGA claim was defined
14 by a “maximum possible liability” amount of approximately \$1,662,500 based on 16,625 pay
15 periods in the Settlement Period, without stacking claims, at \$100 per violation [Gaines Decl., ¶
16 20], and a net-zero recovery based on the defenses asserted by Defendant. *Id.* Notwithstanding the
17 existence of such issues, the Settlement achieves a significant benefit. As such, this factor weighs
18 very heavily in favor of resolution by way of the compromise set forth in the Settlement.

19 **3. The Risk, Expense, and Complexity of Further Litigation Balances**
20 **Strongly in Favor of Approval of the Settlement**

21 Approval of the proposed Settlement Agreement is also appropriate in light of the risk,
22 expense, and complexity of further litigation. As discussed above, the proposed Settlement
23 Agreement takes into consideration the specific factual and legal hurdles faced by Plaintiff in
24 establishing Defendant’s penalty-liability in this case, which again, may have resulted in a net-zero
25 recovery. These risks – when balanced with the fact that the settlement achieved a very significant
26 recovery (as demonstrated below), and that further litigation posed a risk of diminishing such
27 recovery by increasing litigation expenses – weigh strongly in favor of settlement approval.
28

1 **4. The Benefits Conferred by the Settlement Balance in Favor of Approval**

2 The Settlement Agreement provides a significant monetary benefit that falls well within
3 “the range of an acceptable settlement” under the circumstances, which is the standard on which
4 the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and
5 reasonable even where it only provides a fraction of what could have been obtained at trial:

6 The proposed settlement is not to be judged against a hypothetical or
7 speculative measure of what might have been achieved by the
8 negotiators.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d at
9 625 (emphasis in original). Thus, “the very essence of a settlement is
10 compromise, ‘a yielding of absolutes and an abandoning of highest
11 hopes.’” *Id.* at 624 (citations omitted). As the Second Circuit has
12 pointed out: “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.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 &
 n.2 (2nd Cir. 1974).

13 *See Linney*, 151 F.3d at 1242.

14 Here, after all deductions are made for administration, a general release payment, attorneys’
15 fees and costs, \$97,355.80 will be paid out, of which \$79,233.15 (i.e. 75%) will go to the LWDA,
16 and \$26,411.05 (i.e. 25%) will go to the Aggrieved Employees, as required by Labor Code § 2699(i)
17 (“civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to
18 the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”).
19 Gaines Decl., ¶¶ 19-20.

20 This result is remarkable, as settlements of PAGA claims impacting thousands of
21 individuals have been approved as reasonable for amounts far less than the payment in this case.
22 *See Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012)
23 (“Defendant has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the \$10,000,
24 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will benefit
25 the class The Court finds that the PAGA payment is set at a reasonable amount, and it shall be
26 approved.”); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal.
27 Oct. 29, 2012) (“GTI agrees to allocate \$10,000 to Plaintiff’s PAGA claims, and will pay \$7,500
28 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports with

1 settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
2 allocation of the Settlement to Plaintiff's PAGA claim."); *Schiller v. David's Bridal, Inc.*, 2012
3 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) ("Pursuant to the Settlement Agreement, the
4 parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .
5 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
6 be approved."); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
7 2012) ("Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
8 California Labor and Workforce Development Agency The Court finds that the PAGA
9 payment is set at a reasonable amount, and it shall be approved.").⁴

10 Thus, notwithstanding the existence of issues having the potential to completely eliminate
11 recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds
12 typical PAGA awards routinely approved by the courts, it recovers significant monies for
13 Aggrieved Employees which they otherwise would not receive. As such, this factor balances
14 strongly in favor of approval of the Settlement.

15 **5. The Scope of the Release is Narrowly Tailored**

16 As discussed above, the California Supreme Court has concluded that in the context of
17 PAGA "the nonparty employees, because they were not given notice of the action or afforded any
18 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
19 penalties." *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the release provided in exchange for
20 the foregoing consideration is limited to the civil penalties asserted in the Action under Labor Code
21 §§ 2698 *et seq.* *See Settlement Agreement*, at § 5.01.

22 As such, this factor balances strongly in favor of approval of the Settlement.
23
24

25 ⁴ Significantly, each of the above-cited actions involved substantially more "aggrieved employees"
26 than the approximately 111 aggrieved employees in the instant Lawsuit. *See Franco*, 2012 U.S.
27 Dist. LEXIS 169057, 14 ("2,055 Class Members were ultimately identified"); *Garcia*, 2012 U.S.
28 Dist. LEXIS 160052, at 12 (class comprised of "approximately 1,869 individuals"); *Schiller*, 2012
U.S. Dist. LEXIS 80776, 16 ("3,327 California Class members were ultimately identified"); *Gong-
Chun*, 2012 U.S. Dist. LEXIS 96828, 18 ("2,051 California Class Members were ultimately
identified").

1
2 **6. The Experience and Views of Plaintiff's Counsel Favor Approval of the Settlement**

3 Plaintiff's Counsel has a significant degree of experience in complex wage and hour
4 litigation. See Gaines Decl., ¶¶ 2-5, Gaines Decl. at **Exhibit A**. In Plaintiff's Counsel's view, the
5 benefit conferred by the proposed Settlement is fair, reasonable, and adequate under the
6 circumstances, as it reflects a reasoned compromise which takes into consideration the risks
7 inherent in this case which had the potential to completely eliminate recovery. Gaines Decl., ¶¶
8 14-17. As such, this factor balances in favor of approval of the Settlement.

9 **7. The Extent of Discovery Completed And The Stage Of The Proceedings Favor Approval of the Settlement**

10 In evaluating this element, the Court should be mindful that "formal discovery is not a
11 necessary ticket to the bargaining table" [*Linney*, 151 F.3d at 1239], as the relevant consideration
12 is "whether 'the parties have sufficient information to make an informed decision about
13 settlement.'" See *Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at
14 26 (C.D. Cal. Nov. 9, 2011).

15 Here, the extent of informal discovery conducted was sufficient to enable Plaintiff's
16 Counsel to evaluate the strength and value of the claim for purposes of settlement. Gaines Decl.,
17 ¶¶ 12-16. As discussed above, Plaintiff's Counsel's investigation was sufficient to, among other
18 things, tabulate with precision the total number of alleged Labor Code violations at issue during
19 the Release Period and identify the total number of individuals falling within the definition of
20 "Aggrieved Employee" for the Settlement Period.

21 Based on Plaintiff's Counsel's experience litigating wage and hour claims, such
22 investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate
23 the strength of this claim for purposes of settlement. See Gaines Decl., ¶¶ 2-5.

24 **8. Additional Factors Weigh In Favor Of Finding The Terms Of The Proposed Settlement To Be Fair, Adequate, And Reasonable**

25 In addition to the factors presented above, the proposed Settlement does not possess any
26 obvious deficiencies. The Settlement contemplates entry of an order (submitted concurrently
27
28

1 herewith) which approves the Settlement and dismisses the Action with prejudice. Section 6.11 of
2 the Settlement Agreement and paragraph 8 of the proposed order authorize the Court to retain
3 jurisdiction over the Action pursuant to Code of Civil Procedure section 664.6. This procedure
4 effectively disposes of the Action in its entirety, documents the Court's approval of the Settlement
5 as required by PAGA, allows for Court intervention if necessary to enforce the terms of the
6 Settlement Agreement, and avoids any stigmas associated with the entry of a judgment against
7 Defendant. In sum, under the applicable standards for approval of PAGA settlements in California,
8 the settlement in this case meets the standards for approval.

9 **IV. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER THEIR**
10 **REASONABLE FEES AND COSTS**

11 Pursuant to the terms of the Settlement, Plaintiff's Counsel seeks attorneys' fees of \$90,000
12 and reimbursement of total litigation costs of \$7,355.80, falling within the bounds authorized by
13 the Settlement Agreement. *See* Settlement Agreement, at § 3.02(a)(2). Plaintiff's Counsel's
14 entitlement to an award of attorneys' fees and costs is warranted on multiple independent grounds.
15 Further, the amount of fees requested falls well within the range of reasonableness under applicable
16 standards, as the amount requested constitutes a "percentage of the fund" deemed reasonable in
17 similar wage and hour settlements of this size and approved by California courts, which is not only
18 warranted based on the contingency risk Plaintiff's Counsel has agreed to incur for the benefit of
19 the State of California and Aggrieved Employees, but also based on the significant results achieved,
20 as the Settlement obtains a recovery substantially above the range approved as reasonable by
21 California state and federal courts. Based thereon, Plaintiff's Counsel respectfully request that the
22 Court enter an order approving the fee and cost amounts requested.

23 **A. Plaintiff's Counsel Are Entitled To Recover Their Reasonable Fees And**
24 **Costs As A Matter Of Right**

25 Plaintiff's Counsel are entitled to recover attorneys' fees and costs under the "common
26 fund" doctrine as a matter of right. As held by the U.S. Supreme Court, "a lawyer who recovers a
27 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
28 attorney's fee from the fund as a whole." *See Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.

1 Courts have long recognized the “common fund” or “common benefit” doctrine, under
2 which attorneys who create a common fund or benefit for a group of persons may be awarded their
3 fees and costs to be paid out of the fund. *Serrano v. Priest* (“*Serrano III*”) (1977) 20 Cal.3d 25,
4 34, quoting *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees’*
5 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
6 15 Cal.3d 162, 167; see also *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
7 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

8 The California Supreme Court has held that, “when a number of persons are entitled in
9 common to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all
10 results in the creation or preservation of that fund, such Plaintiff or Plaintiffs may be awarded
11 attorneys’ fees out of the fund.” *Serrano III*, *supra*, 20 Cal.3d at 34, quoting *D’Amico*, 11 Cal.3d
12 1; see also *Boeing*, *supra*, 444 U.S. at 478 (“[A] lawyer who recovers a common fund for the benefit
13 of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as
14 a whole.”); *Mills*, *supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common
15 fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter
16 Group) at § 17:172.3 explains the common fund doctrine as follows:

17 Where the lawsuit results in the recovery of a fund or property
18 benefiting others as well as Plaintiffs (e.g., a class action), the court
19 has inherent equitable power to order Plaintiffs’ attorney fees paid
20 out of the common fund or property [citations]. Such fee spreading
assures that all of those benefited by the litigation pay their fair share
of obtaining the recovery.

21 The percentage-of-the-fund approach appears to be the preferred method of awarding fees
22 in traditional common fund cases, such as this case. Where the settlement amount is a “certain or
23 easily calculable sum of money,” use of the percentage-of-the-fund method is appropriate. *Serrano*
24 *III*, 20 Cal. 3d at 35.

25 In *Glendale City Employees’ Association v. City of Glendale* (1975) 15 Cal.3d 328, 341
26 fn.19, the California Supreme Court upheld an attorneys’ fee award based on a percentage of the
27 common benefit obtained in a lawsuit by a city employees’ association for retroactive wages:
28

1 It is not necessary to find this suit a proper class action in order to
2 uphold the portion of the judgment awarding counsel for Plaintiffs
3 25 percent of all retroactive salaries and wages received. That award
4 may be sustained under the rule that a litigant who creates a fund in
5 which others enjoy beneficial rights may require those beneficiaries
6 to pay their fair share of the expense of litigation. (See *Sprague v.*
7 *Ticonic National Bank* (1939) 307 U.S. 161, 159; *Estate of Stauffer*
8 (1959) 53 Cal.2d 124, 132).

9 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court
10 stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which
11 others derive benefits may require those passive beneficiaries to bear a fair share of the litigation
12 costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111,
13 the California Supreme Court recognized that the common benefit doctrine has been applied
14 “consistently in California when an action brought by one party creates a fund in which other
15 persons are entitled to share.”

16 Numerous appellate courts have similarly found. See e.g., *Knoff v. City and County of San*
17 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
18 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable
19 powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and
20 expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
21 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit
22 created by action compelling state to claim dormant bank accounts).

23 Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth,
24 Tenth, Eleventh and the D.C. Circuit—have endorsed the “percentage fee” method for determining
25 reasonable attorneys’ fees in common benefit cases. See e.g., *In re Sumitomo Copper Litig.*
26 (S.D.N.Y. 1999) 74 F. Supp. 2d 393, 396-398 (describing the overwhelming weight of federal
27 authority in favor of the percentage fee method); see also, *Lealao, supra*, 82 Cal.App.4th at 30-31
28 (describing same).

Thus, as Plaintiff’s Counsel have expended a significant amount of time and money to
secure a \$225,000 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S.
Dist. LEXIS 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees

1 have resulted in the preservation or recovery of a certain or easily calculable sum of money-out of
2 which sum or 'fund' the fees are to be paid.'")], and in doing so, have exclusively borne the risk of
3 loss for such expenditures of time and expenses (as the LWDA elected not to take the case after
4 receiving the PAGA Notice), Plaintiff's Counsel are entitled to claim reasonable fees from that
5 fund under applicable precedent.⁵

6 **B. The Fee Amount Requested Is Reasonable**

7 In addition to the forgoing, Plaintiff's Counsel's request for attorneys' fees in the amount
8 of \$90,000, or 40% of the \$225,000 Gross Settlement Amount, falls well within the "zone of
9 reasonableness."

10 It is important to highlight at the outset that the fee amount presently sought is not
11 extraordinary, but actually falls at the "average" fee deemed reasonable under California State court
12 authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in wage
13 and hour class actions that result in recovery of a common fund under \$10 million." *See e.g. Martin*
14 *v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). In fact, this fee
15 request is at the lower end of that range.

16 Moreover, taking into account the contingency risk Plaintiff's Counsel agreed to incur for
17 the benefit of the State of California (which elected not to take the case after receiving the PAGA
18 Notice), and the significant results achieved – facts which justify the requested fee – Plaintiff's
19 Counsel's requested fee is reasonable under all applicable standards.

20 **C. The Fee Amount Allocated by The Settlement Agreement Is Within the**
21 **Zone of Reasonableness Under the "Percentage of the Fund" Method**

22
23 ⁵ Plaintiff's Counsel is also entitled to recover attorney's fees and costs as a matter of right under
24 the PAGA statute [*Labor Code* § 2699(g)(1) ("Any employee who prevails in any action shall be
25 entitled to an award of reasonable attorney's fees and costs.")], and under *C.C.P.* § 1021.5, as the
26 instant PAGA action was by definition "for the public benefit" and secured monetary awards for
27 approximately 188 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.*
28 (2007) 154 Cal. App. 4th 1, 16-17 (2007) ("Estrada's personal motivation does not diminish the
fact that he pursued this public interest class action not only for himself but on behalf of a class
comprised of FedEx's past and present drivers and ultimately obtained awards for 209 drivers. []
No more is required to satisfy the 'significant benefit,' 'public interest,' and 'large class of persons'
requirements of Code of Civil Procedure section 1021.5.").

1 The amount of fees requested by Plaintiff's Counsel is also reasonable based on standards
2 applicable to the "percentage of the fund" method. "When assessing whether the percentage
3 requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of
4 litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the
5 financial burden; and (f) the awards made in similar cases." *See Vasquez v. Coast Valley Roofing,*
6 *Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

7 First, the results achieved by Plaintiff's Counsel are significant, as Defendant has agreed to
8 pay \$225,000 pursuant to the Settlement. This is a significant recovery given the risk of success in
9 obtaining any recoverable penalties. [Gaines Decl., ¶ 22], and further, as the settlement of PAGA
10 claims impacting much higher numbers of individuals have been approved as reasonable for
11 between \$7,500 and \$15,000. *See* Section III.B.4., *supra*.

12 Second, such results were achieved in the face of significant risks. As explained above,
13 Defendant maintained defenses to Plaintiff's PAGA claims that very well could have resulted in a
14 net-zero recovery at trial. Gaines Decl. at ¶ 23.

15 Third, notwithstanding this risk of loss, Plaintiff's Counsel undertook representation of the
16 instant PAGA claim for the benefit of the State of California on a contingency basis. Gaines Decl.
17 at ¶ 24. This not only required Plaintiff's Counsel to personally assume the risk of nonpayment in
18 securing the very substantial financial benefit the State of California stands to receive, but
19 constitutes a "loan" on Plaintiff's Counsel services – both of which are factors warranting fee
20 enhancement under applicable California Supreme Court authority:

21 One of the most common fee enhancers . . . is for contingency risk.
22 We reaffirmed the propriety of a contingency risk enhancement in
23 Ketchum: "The economic rationale for fee enhancement in
24 contingency cases has been explained as follows: 'A contingent fee
25 must be higher than a fee for the same legal services paid as they are
26 performed. The contingent fee compensates the lawyer not only for
27 the legal services he renders but for the loan of those services. The
28 implicit interest rate on such a loan is higher because the risk of
default (the loss of the case, which cancels the debt of the client to
the lawyer) is much higher than that of conventional loans.' (Posner,
Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) 'A lawyer
who both bears the risk of not being paid and provides legal services

1 is not receiving the fair market value of his work if he is paid only
2 for the second of these functions. If he is paid no more, competent
counsel will be reluctant to accept fee award cases.”

3 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, 579-580.

4 Finally, the percentage requested by Plaintiff’s Counsel falls within a typical range,
5 particularly in light of the modest settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796,
6 23 (“[C]ourts may award attorney’s fees in the 30-40% range in wage and hour class actions that
7 result in recovery of a common fund under \$10 million.” *See also Crandall v. U-Haul*
8 *International, Inc.*, LASC Case No. BC178775 (awarding attorneys’ fees of 40% of a common
9 fund).

10 Attorneys’ fee awards in the amount sought here are well-established by California law and
11 practice. Accordingly, Plaintiff’s Counsel’s fee request is fair and reasonable and is consistent with
12 the awards in California and the Ninth Circuit. It is also reasonable given the history of this action
13 and the results obtained.

14 **D. Plaintiff’s Counsel’s Request for Costs is Reasonable**

15 In the course of this litigation, Plaintiff’s Counsel collectively incurred out-of-pocket costs
16 of \$7,355.80 through the conclusion of this matter. *See* Gaines Decl. at ¶ 29, **Exhibit D**.

17 As demonstrated in the Gaines Declaration submitted herewith, the incurred costs included
18 filing fees, mediation fees, photocopy charges, service of process fees, mailing charges, and other
19 charges typical of litigation of this nature. *Id.* Such costs are appropriate for cost reimbursement
20 in these types of cases. *See e.g., In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL
21 7321 1, *6 (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); *see also, In re GNC*
22 *Shareholder Litigation* (W.D. Pa. 1987) 668 F. Supp. 450, 452.

23 The costs incurred by Plaintiff’s Counsel in this litigation benefited Plaintiff, Aggrieved
24 Employees, and the State. In light of the litigation costs that Plaintiff’s Counsel was required to
25 incur to prosecute this action, Plaintiff’s cost request is reasonable and should be granted.

26 **V. THE GENERAL RELEASE PAYMENT SOUGHT BY PLAINTIFF IS**
27 **REASONABLE AND SHOULD BE APPROVED**

1 The Parties have agreed that Plaintiff will be paid a general release payment in the amount
2 of \$12,000. These payments are intended to recognize both the time and effort that Plaintiff spent
3 on behalf of other Aggrieved Employees and the State and to compensate her for a full general
4 release of all claims. See Settlement Agreement at § 3.02(a)(2). See Gaines Decl., ¶ 30; Declaration
5 of Nancy Taylor ("Taylor Dec.") submitted herewith.

6 As to an incentive award, case law supports the award of incentive payments in private
7 attorney general actions. The Ninth Circuit has recognized that a named Plaintiff's "willingness to
8 act as a private attorney general" may justify the award of an incentive payment. *Rodriguez v. West*
9 *Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub*
10 *LLC*, no. 2:12-CV-02716-TLN-CKD (E.D. Cal., Sep. 6, 2013), the United States District Court for
11 the Eastern District of California approved a similar PAGA-only settlement and awarded a service
12 payment to the representative Plaintiff in recognition of her efforts.

13 The traditional bases for awarding incentive awards in class settlements support the award
14 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
15 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive
16 awards and held that "the rationale for making enhancement or incentive awards to named Plaintiffs
17 is that he or she should be compensated for the expense or risk he has incurred in conferring a
18 benefit" on others. *Id.* at 806. This rationale applies in this Action exactly the same as it would in
19 a traditional class action.

20 Without Plaintiff's efforts, there would be no recovery at all. The requested award is
21 appropriate to compensate Plaintiff for the risk and expense she incurred in conferring a benefit on
22 other of Defendant's employees and the State of California in exchange for her broad release of
23 claims. See Settlement Agreement, § 5.02.

24 As a result of the named Plaintiff's efforts, Aggrieved Employees will receive monetary
25 settlement payments, and the State of California will receive \$79,233.15 to be put toward education
26 about and enforcement of California's labor laws.

27 In this case, Plaintiff performed the following tasks, among others: (1) assisted Counsel in
28 investigating and substantiating the claims alleged in this action, including multiple interviews with

1 counsel to review facts, documents, and Defendant's policies; (2) assisted in the preparation of the
2 complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the
3 settlement of this litigation. *See generally*, Taylor Dec. Moreover, as with any plaintiff who files
4 a civil action, the named Plaintiff undertook the financial risk that, in the event of a judgment in
5 favor of Defendant in this action, she could have been personally responsible for any attorneys'
6 fees and costs awarded in Defendant's favor.

7 The award of such payment to Plaintiff is especially warranted in a case like this one. It is
8 necessary to ensure that employees, like Plaintiff, continue to bring claims like those brought here
9 to enforce the rights of employees. Individuals like Plaintiff (and most Aggrieved Employees)
10 would have little, if any, recourse without the representative action device. Most Aggrieved
11 Employees – like the Plaintiff—would be fearful of retaliation in response to filing any lawsuit,
12 much less a representative action suit. Plaintiff must be commended for pursuing her claims; a
13 modest payment like that sought here is an appropriate means of doing so.

14 Plaintiff is also entering into a full general release against Defendant and its Released
15 Parties, which is far broader than the release by other Aggrieved Employees. Specifically,
16 Aggrieved Employees are releasing only limited PAGA civil penalty claims, while Ms. Taylor is
17 releasing all Labor Code claims which underlie the PAGA claims she asserts. *See* Settlement
18 Agreement at § 5.02. No other Aggrieved Employee is subject to this broad form of release. Gaines
19 Decl. at ¶ 31. The value of Plaintiff's claims are substantial and merit the amount requested for
20 their general release. Gaines Decl. at ¶ 31.

21 This broad release was negotiated (and necessary) to resolve the Action. Plaintiff threatened
22 to assert her individual claims, either in arbitration or in litigation, and Defendant required that they
23 be resolved in connection with the resolution of the Action. Without the resolution and release of
24 Plaintiff's individual wage claims, litigation would continue in a piecemeal fashion, and Defendant
25 is buying peace with this settlement, such that its objectives would not be achieved absent the
26 general release. Gaines Decl. at ¶¶ 30-32.

27 **VI. CONCLUSION**

28 As shown herein, the Settlement Agreement is fair, adequate and reasonable, as it represents

1 a reasoned compromise obtained through arms-length negotiations. For all the reasons set forth
2 above, Plaintiff respectfully requests that this Court, as set forth in the proposed Order Approving
3 Settlement, do the following:

4 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
5 2699, subpart 1;

6 2. Appoint Phoenix Class Action Administration Services as the Settlement
7 Administrator and approve its administration fees up to \$10,000 for payment out of the Gross
8 Settlement Amount;

9 3. Approve the award of attorneys' fees and costs to Plaintiff's Counsel in the amount
10 of \$97,355.80 payment of which shall come from the Gross Settlement Amount;

11 5. Approve the award of a general release payment to Plaintiff Taylor in the amount of
12 \$12,000 from the Gross Settlement Amount;

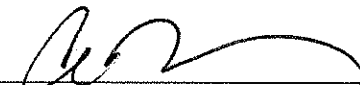
13 6. Direct disbursement of the remaining Gross Settlement Amount to the LWDA and
14 all Aggrieved Employees as provided for in the Settlement Agreement; and

15 7. Dismiss the Action with prejudice.

16 Date: March 18, 2022

17 Respectfully submitted,

18 GAINES & GAINES, APLC

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20 By: 

21 DANIEL F. GAINES
22 ALEX P. KATOFISKY
23 Attorneys for Plaintiff
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