

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
TALIA LUX (SBN 336074)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Ave., Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff Kris Brehm
(Additional counsel on next page)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER**

KRIS BREHM and CHRISTIANE T.
HILDEN, individually, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act (“PAGA”);

Plaintiffs,

v.

PLATINUM LIVING SERVICES, INC.
d/b/a OAKWOOD VILLAGE, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: S-CV-0046296
[Consolidated with Case No. S-CV-
0046676]

Honorable Michael Jones
Department 3

**PLAINTIFFS’ NOTICE OF
MOTION AND MOTION FOR
APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (LABOR
CODE §§ 2698, *ET SEQ.*) SETTLEMENT
AGREEMENT AND ATTORNEYS’
FEES AWARD, LITIGATION COSTS
AWARD, AND ENHANCEMENT
AWARDS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Declarations of Counsel (Douglas Han and
Jean-Claude Lapuyade); and [Proposed] Order
and Judgment filed concurrently herewith]

Hearing Date: January 5, 2023
Hearing Time: 8:25 a.m.
Hearing Place: Department 3

Complaint Filed: March 2, 2021
FAC Filed: April 26, 2022
Trial Date: None Set

1 SHANI O. ZAKAY (State Bar No. 277924)

2 ZAKAY LAW GROUP, APLC

3 5850 Oberlin Drive, Suite 230A

4 San Diego, CA 92121

5 Telephone: (619) 255-9047

6 Facsimile: (858) 404-9203

7 JEAN-CLAUDE LAPUYADE (State Bar No. 248676)

8 JCL LAW FIRM, APC

9 3990 Old Town Avenue, Suite C204

10 San Diego, CA 92110

11 Telephone: (619) 599-8292

12 Facsimile: (619) 599-8291

13 *Attorneys for Plaintiff Christiane Hilden*

1 **PLEASE TAKE NOTICE** that on January 5, 2023 at 8:25 a.m., or as soon as thereafter
2 as the matter may be heard, before the Honorable Michael Jones in Department 3 of the Placer
3 Superior Court, located at 101 Maple Street, Auburn, California 95603, Plaintiffs Kris Brehm
4 (“Plaintiff Brehm”) and Christiane T. Hilden (“Plaintiff Hilden”) (collectively, “Plaintiffs”) will
5 and hereby do move for entry of the following orders:

- 6 1. Granting approval, pursuant to Labor Code section 2699(1), of the settlement between
7 Plaintiff and Defendants Platinum Living Services, Inc. (“Platinum”) and Oakwood
8 Village (“Oakwood”) (collectively, “Defendants”) of the claims brought pursuant to
9 the Private Attorneys General Act of 2004 (“PAGA”) as set forth in the Confidential
10 Settlement Agreement and Release (“Settlement Agreement,” “Settlement,” or
11 “Agreement”), attached as **Exhibit 2** to the declaration of Douglas Han;
- 12 2. Approving the PAGA Penalties Fund available for payment of PAGA penalties that is
13 estimated to be \$71,177.02, seventy-five percent (75%) of which (\$53,382.76) will be
14 paid to the California Labor and Workforce Development Agency (“LWDA”) (
15 “LWDA Payment”) and twenty-five percent (25%) of which (\$17,794.26) will be paid
16 to the PAGA Group Members (“Net Settlement Amount”), on a pro rata basis, as their
17 Individual Settlement Award;
- 18 3. Directing Defendants to transfer the Gross Settlement Amount to the Settlement
19 Administrator in accordance with the Settlement Agreement;
- 20 4. Directing the mailing of the Individual Settlement Awards accompanied by an
21 explanatory letter providing notice of PAGA settlement to PAGA Group Members;
- 22 5. Awarding \$10,000 each to Plaintiffs as the Enhancement Awards; and
- 23 6. Awarding Settlement Administration Costs to the Settlement Administrator of up to
24 \$7,500;
- 25 7. Awarding to Plaintiffs’ Counsel, Justice Law Corporation, Zakay Law Group, APLC,
26 and JCL Law Firm, APC, Attorneys’ Fees Award of \$70,376 as compensation for
27 reasonable attorneys’ fees and Litigation Costs Award of \$16,146.98 as reimbursement
28 for litigation costs and expenses incurred in litigating the PAGA claim, pursuant to

1 Labor Code section 2699(g)(1) and Code of Civil Procedure section 1021.5;

2 This motion will be based upon the following Settlement Agreement, Declaration of
3 Plaintiff's Counsel (Douglas Han), the pleadings and other records on file with the Court in this
4 matter, and such evidence and oral argument as may be presented at the hearing on this motion.
5

6 Dated: December 8, 2022

JUSTICE LAW CORPORATION

7
8 By: 
9 Douglas Han
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Under Labor Code section 2699(l)(2), Plaintiffs seek approval of the Agreement.
4 Plaintiffs entered into the Agreement on behalf of themselves and all persons employed as non-
5 exempt employees who worked for Defendants in California at any time current from December
6 21, 2019 to February 15, 2022. (“PAGA Group,” “PAGA Group Member,” and “PAGA Period”).

7 Subject to Court approval, the Parties agreed to resolve this case brought for a Gross
8 Settlement Amount of \$185,200 inclusive of the: (1) amount allocated for the LWDA that will
9 be distributed in accordance with Labor Code section 2699(i); (2) Attorneys’ Fees Award and
10 Litigation Costs Award, pursuant to Labor Code section 2699(g)(1); (3) Enhancement Awards;
11 and (4) Settlement Administration Costs.

12 Plaintiffs submit the Settlement is fair, adequate, and reasonable and meets requirements
13 for Court approval. Thus, Plaintiffs respectfully request this Court approve the Settlement.

14 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

15 On December 21, 2020, Plaintiff Brehm served a notice letter to the LWDA and
16 Defendants. Afterwards, on March 2, 2021, Plaintiff Brehm filed this representative PAGA
17 action. On or about April 26, 2022, Plaintiff Brehm filed a First Amended Complaint, naming
18 Plaintiff Hilden.¹

19 Plaintiffs’ allegations are Defendants: (1) failed to pay minimum and overtime wages; (2)
20 failed to provide compliant meal and rest breaks; (3) failed to timely pay wages; (4) failed to
21 provide compliant wage statements; and (5) failed to reimburse necessary business expenses.²
22 After conducting significant investigation, the Parties’ counsel engaged in extensive negotiations
23 to try to resolve the entire matter. The Parties participated in private mediation on February 15,
24

25 ¹ (Declaration of Douglas Han In Support of Plaintiffs’ Motion for Approval of Private
26 Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement (“Han Decl.”), ¶
27 10.)

28 ² (*Id.* at ¶ 21.)

2022 before Jeffrey A. Ross that ultimately resulted in the settlement of this case.³

Plaintiffs now move for an order granting approval of the Settlement, pursuant to Labor Code section 2699(1)(2).

III. SUMMARY OF THE SETTLEMENT TERMS

A. Distribution of the Gross Settlement Amount

Defendants will pay a Gross Settlement Amount of \$185,200. The PAGA Penalties Fund will be the Gross Settlement Amount less the following: (1) Attorneys' Fees Award of \$70,376; (2) Litigation Costs Award of \$16,146.98; (3) Enhancement Awards of \$10,000 to both Plaintiff Brehm and Plaintiff Hilden; and (4) Settlement Administration Costs of up to \$7,500.⁴ Twenty-five percent (25%) of the PAGA Penalties Fund will be distributed to each PAGA Group Member, on a pro rata basis, as their Individual Settlement Awards, and the remaining seventy-five percent (75%) of the PAGA Penalties Fund will be transmitted to the LWDA, pursuant to Labor Code section 2699(i).⁵

B. Distribution of the PAGA Penalties Fund

Twenty (20) days after the Effective Date, Defendants shall deposit the Gross Settlement Amount with the Settlement Administrator.⁶ Within fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will issue the payments required by section 7 of the Agreement to the appropriate entities or persons.⁷ Individual Settlement Awards will be paid in the form of a check delivered to each PAGA Group Member at the last known address on file

³ (Han Decl., *supra*, at ¶¶ 15-16.)

⁴ (See Settlement Agreement attached as **Exhibit 2** to the Declaration of Douglas Han In Support of Plaintiff's Motion for Approval of Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement filed concurrently herewith ("Settlement Agreement"), §§ 7(a), 7(b)(i), 7(b)(ii), 7(b)(iii), 7(b)(iv).)

⁵ (*Id.* at § 7(b)(v).)

⁶ (*Id.* at § 8(a).)

⁷ (*Id.* at § 8(b).)

1 with Defendants or as updated by the Settlement Administrator. Each Individual Settlement
2 Award will be accompanied by an explanatory letter.⁸

3 Individual Settlement Award checks will remain negotiable for one hundred twenty (120)
4 days after the date of their issuance (“Check Stale Date”). Any Individual Settlement Award
5 checks not cashed, deposited, or negotiated after the Check Stale Date will be void and the amount
6 of those checks will be directed to the California State Controller for the Unclaimed Property
7 Fund in the name of the employee.⁹

8 **C. The Scope of the Release in the Settlement Agreement**

9 The Agreement and the judgment to be entered by the Court forever bar Plaintiffs, the
10 LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any
11 and all PAGA Group Members, from pursuing any action against the Released Entities under
12 PAGA based on or arising out of violations of Labor Code sections alleged in this case, and
13 claims that could have been asserted in this case based upon the facts alleged in Plaintiffs’
14 complaint through the end of the PAGA Period (“Released Claims”). The Released Claims
15 include, but are not limited to, claims under the PAGA for civil penalties for alleged violations
16 of Labor Code sections 201, 202, 203, 204, 206.5, 210, 218.5, 221, 226(a), 226.3, 226.7, 246,
17 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802; and claims for
18 attorneys’ fees, costs, or interest resulting therefrom.¹⁰

19 The Released Entities include Defendants and each of their respective affiliated entities,
20 officers, directors, representatives, owners, partners, subsidiaries, parent companies, joint
21 venturers, clients, venders, members, joint employers, predecessors, successors-in-interest,
22 assigns, and current and former employees, including but not limited to agents, insurers, and
23 attorneys (“Released Entities”).¹¹

24
25 ⁸ (*Id.* at § 8(c)(i).)

26 ⁹ (Settlement Agreement, *supra*, at § 8(c)(ii).)

27 ¹⁰ (*Id.* at § 9(b).)

28 ¹¹ (*Id.* at § 9(a).)

1 **D. No Right to Object to or Opt Out of the Settlement**

2 “[A] PAGA action is a statutory action for penalties brought as a proxy for the state, rather
3 than a procedure for resolving the claims of other employees, there is no need to protect absent
4 employees’ due process rights[.]” *Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 546. “Unnamed
5 employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out
6 of the representative PAGA claim.” *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr.
7 2, 2010), 2010 WL 3570777, at p. *5. “PAGA does not make other potentially aggrieved
8 employees parties” to the action and no “due process concerns arise under PAGA because absent
9 employees do not own a personal claim for PAGA civil penalties and whatever personal claims
10 the absent employees might have for relief are not at stake.” *Williams, supra*, at 546-547 (internal
11 references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009)
12 46th Cal.4th 993, 1003 and *Iskanian v. CLS Trans. Los Angeles, LLC*, (2014) 58 Cal.4th 348,
13 381.)

14 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
15 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v. Sup.*
16 *Ct.* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Indus., Inc.* (1981) 29 Cal, 3d 462, 474.)

17 As such, consistent with the law, the Settlement does not provide for a procedure for
18 PAGA Group Members to opt out or otherwise exclude themselves the Settlement.

19 **IV. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

20 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself,
21 other aggrieved employees and the State to recover civil penalties with respect to provisions of
22 the Labor Code that do not otherwise provide for civil penalties (Lab. Code § 2699(g)), and also,
23 civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an
24 employer (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must
25 comply with Labor Code section 2699.3. See Lab. Code § 2699(a).

26 The settlement of a PAGA claim requires court approval. See Lab. Code § 2699(l)(2)
27 (“The superior court shall review and approve any settlement of any civil action pursuant to this
28 part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not

1 considered a class action but a law enforcement action” and, therefore, does not have to meet the
2 requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012
3 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL
4 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that
5 “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v*
6 *PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of
7 a PAGA settlement involves analysis of several unique features that render the approval process
8 distinct from approval of a class action settlement. A court reviewing a PAGA settlement need
9 only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing
10 Lab. Code § 2699(1)(2)). Although Labor Code section 2699(1) does not set forth the criteria on
11 which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims.¹²

12 In a PAGA case, the Court’s focus is not the amount which “aggrieved employees” are to
13 receive, but instead, whether the total settlement amount achieves PAGA’s objectives. The
14 purpose of PAGA is “to incentivize private parties to recover civil penalties for the government
15 that otherwise may not have been assessed and collected by overburdened state enforcement
16 agencies.” See *Ochoa-Hernandez, supra*, 2010 WL 3570777, at *4 (citing *Arias, supra*, 46
17 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to “be distributed to the
18 [LWDA] for enforcement of labor laws . . . and for education of employers and employees about
19 their rights and responsibilities under this code, to be continuously appropriated to supplement
20 and not supplant the funding to the agency for those purposes.” See Lab. Code § 2699(j). The
21 recovery of penalties on behalf of the state, by way of a PAGA claim, is essentially a law
22 enforcement action. See *Amalgamated, supra*, 46 Cal.4th at 1003 (stating that the PAGA is

23
24 ¹² (See also See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Sup.
25 Ct., Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Sup.
26 Ct., Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012)
27 2012 WL 5364575, at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL
28 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645,
at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14;
Nordstrom Commissions Case (2010) 186 Cal.App. 4th 576, 589.)

1 mechanism for “an aggrieved employee to recover civil penalties—for Labor Code violations—
2 that otherwise would be sought by state labor law enforcement agencies”); *see also Iskanian*,
3 *supra*, at 381.

4 **V. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED.**

5 **A. The Factors Giving Rise to a Presumption of Fairness Exist.**

6 The Parties reached the Settlement through arm’s-length negotiations through
7 experienced counsel and a mediator at a full-day mediation.¹³ A settlement agreement that is “the
8 product of extensive and hard-fought adversarial negotiations between the parties” is entitled to
9 a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

10 The Settlement is presumptively fair because it: (1) is the product of non-collusive, arm’s-
11 length negotiations; (2) was negotiated by counsel with significant experience in similar wage-
12 and-hour litigation; and (3) occurred after Parties’ counsel engaged in significant investigation
13 the strengths of this case and the risks of continued litigation. During all settlement discussions,
14 Parties conducted their negotiations at arm’s-length from an adversarial position.¹⁴

15 The Parties agreed this matter is well-suited for settlement given the strengths and
16 weaknesses of the PAGA claim, and Plaintiffs’ Counsel believe the Settlement is a fair, adequate,
17 and reasonable resolution of this matter.¹⁵ Plaintiffs’ Counsel have extensive experience in
18 representative and class action wage-and-hour litigation and used that experience to achieve an
19 exceptional result.¹⁶ Therefore, the Court should give considerable weight to the competency,
20 experience, and opinion of counsel and the involvement of a neutral mediator in assuring the
21 Settlement is a product of hard-fought negotiations that was entered without collusion. See
22 *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is
23 entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-

24
25 ¹³ (Han Decl., *supra*, at ¶¶ 15-16.)

26 ¹⁴ (Han Decl., *supra*, at ¶¶ 15-16.)

27 ¹⁵ (*Id.* at ¶¶ 24, 49.)

28 ¹⁶ (*Id.* at ¶¶ 2-8; Exhibit 1.)

1 17, 622 (recommendations of plaintiffs’ counsel should be given a presumption of
2 reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL
3 1114010, at *4 (stating that the “assistance of an experienced mediator in the settlement process
4 confirms that the settlement is non-collusive”).

5 **B. The Relative Strength of the PAGA Claim and the Range of Possible**
6 **Outcomes in the Litigation Strongly Favor Approval of the Settlement.**

7 For Plaintiffs to recover civil penalties, they must prove the underlying Labor Code
8 violations, demonstrate PAGA Group Members suffered, and show Defendants’ conduct gave
9 rise to penalties. See, e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d
10 1169, 1181-82 (“Plaintiffs’ claim under [PAGA] is wholly dependent upon her other claims.
11 Because all of Plaintiffs’ other claims fail as a matter of law, so does her PAGA claim.”).

12 Although wage-and-hour actions are amenable to resolution as to a group of employees,¹⁷
13 courts have found the issues raised here raise individualized issues and/or are unmanageable and
14 are not suitable for adjudication.¹⁸ Defendants contended courts have found due process to
15 Defendants requires the adjudication of a PAGA claim meet a “manageability” requirement. See,
16 e.g., *Liuy v. Merrill Lynch & Co.* (C.D.Cal. Nov. 10, 2014) No. CV-14-0425-PA, WL 5904904 at
17 **3-4 (Court dismissed the PAGA claim because a multitude of individualized assessments
18 would be necessary, making the PAGA claim unmanageable).

19 Defendants maintained they had legally compliant employment policies and practices
20 throughout the statutory period. Defendants also denied they ever violated any provision of the
21 Labor Code. Next, Defendants denied this case is appropriate for representative treatment for any
22 purpose other than the Settlement. Finally, Defendants may challenge Plaintiffs’ standing as a
23 PAGA Group Member and deny Defendants’ other employees were aggrieved.¹⁹

24 ¹⁷ (See, e.g., *Martinez vs. Joe’s Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362,
25 383-84, *modified on other grounds by Martinez v. Joe’s Crab Shack Holdings, et al.* (Dec. 3,
26 2014 B242807) 2014 Cal.App. LEXIS 1102, *1-2.)

27 ¹⁸ (See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal. 4th 1, 25, 29, 31, and 34-35.)

28 ¹⁹ (Han Decl., *supra*, at ¶¶ 22-23.)

(Footnote continued)

1 Defendants argued the Court was unlikely to assess cumulative penalties for the maximum
2 numbers of possible separate Labor Code violations because it would be unjust, arbitrary,
3 oppressive, and/or confiscatory. Thus, Plaintiffs and Plaintiffs' Counsel considered the strengths
4 and weaknesses of each side's position and the uncertainty of how the case might have ended.²⁰

5 The provisions of the Labor Code potentially triggering PAGA penalties in this case
6 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a),
7 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and
8 2802. Defendants assert, regardless of the results of the underlying causes of action, PAGA
9 penalties are not mandatory but permissive and discretionary. Defendants also maintain they had
10 a strong argument it would be unjust to award maximum PAGA penalties given the law's
11 unsettled state. (*Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112
12 [reducing penalties by 30% under this authority].) Defendants argued without stacking and
13 limited to the initial violation, the PAGA penalties would be **\$14,000** (140 employees x \$100
14 initial violations) on the low end and **\$112,000** (140 employees x \$100 x 8 theories of recovery)
15 on the high end.²¹

16 Many of the causes of action brought were cumulative for which the Court may or may not
17 stack the violations. Thus, a Gross Settlement Amount of \$185,200 for PAGA civil penalties was
18 reasonable and significant. When PAGA penalties are negotiated in good faith and "there is no
19 indication that [the] amount was the result of self-interest at the expense of other Class Members,"
20 such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-
21 00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com.*
22 *Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]rial court did not abuse its discretion in approving
23 a settlement which does not allocate any damages to the PAGA claims."). Plaintiffs' Counsel
24 negotiated about an average of **\$100** in penalties per aggrieved pay period would be fair and
25

26 ²⁰ (*Id.* at ¶¶ 23-24.)

27 ²¹ (Han Decl., *supra*, at ¶¶ 25-29.)

1 reasonable [$\$185,200 \div 1,852$ pay periods in PAGA Period = **\$100**]. Considering the recent cases
2 justifying \$5 per pay period, *see e.g., Carrington v. Starbucks Corp.* 30 Cal.App.5th 504 (2018),
3 **\$100** per pay period is great result.²²

4 **C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation.**

5 Courts favor the voluntary conciliation and settlement of complex litigation. *Class*
6 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, “unless the settlement
7 is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive
8 litigation with uncertain results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan.
9 5, 2004) 221 F.R.D. 523, 526 (citation omitted).

10 Both sides used the pre-mediation time to investigate the veracity, strength, and scope of
11 the PAGA claim. The Parties engaged in discovery and exchanged documents and data relevant
12 to Plaintiffs’ claim and Defendants’ defenses to determine the potential value and strength of the
13 PAGA claim. Parties’ Counsel undertook significant investigation and invested time reviewing
14 and analyzing relevant documents and data to evaluate Plaintiffs’ claims, including Plaintiffs’
15 Counsel’s calculation of the potential penalties recoverable under PAGA.²³

16 **D. The Settlement Is Fair, Adequate, and Reasonable.**

17 “[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an
18 abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1981) 688
19 F.2d 615, 624. “The proposed settlement is not to be judged against a hypothetical or speculative
20 measure of what might have been achieved by the negotiators.” *Id.* at 625.

21 The Settlement provides a significant monetary benefit to the LWDA and PAGA Group
22 Members and falls well within the range of acceptable settlement. Under the Agreement,
23 Defendants agreed to pay a Gross Settlement Amount of \$185,200. The PAGA Penalties Fund is
24 currently estimated to be \$71,177.02. The proposed plan of allocation of the PAGA Penalties
25 Fund to the LWDA and PAGA Group Members fully complies with Labor Code section 2699(i).

26 ²² (*Id.* at ¶ 30.)

27 ²³ (Han Decl., *supra*, at ¶¶ 13-14, 24.)

1 Plaintiffs and Plaintiffs' Counsel recognize the expense, length, and risk of continued
2 proceedings necessary to litigate the disputes. They are aware of the burdens of proof necessary
3 to establish liability and the difficulties in establishing Defendants' liability for penalties on
4 behalf of Plaintiffs and the PAGA Group Members. Finally, Plaintiffs and Plaintiffs' Counsel
5 considered Defendants' agreement to enter a settlement that confers significant relief.
6 Collectively, Plaintiffs and Plaintiffs' Counsel determined the Settlement represents a fair,
7 adequate, and reasonable resolution of the PAGA claim.²⁴

8 Therefore, the results achieved, and the PAGA allocation provided by the Settlement, is
9 within the range of acceptable settlement under the circumstances.²⁵

10 **E. The Experience and Views of Plaintiffs' Counsel Favor Settlement**
11 **Approval.**

12 Plaintiffs' Counsel are experienced in complex representative and class action wage-and-
13 hour litigation.²⁶ Plaintiffs' Counsel believe the benefit conferred by the Settlement is eminently
14 fair and reasonable and in the best interests of the LWDA and PAGA Group Members.²⁷

15 **VI. APPROVAL OF THE REQUESTED ATTORNEYS' FEES.**

16 **A. A Fee Award of Percentage of the Entire Fund is Appropriate.**

17 The Settlement provides for Plaintiff's Counsel to apply for an Attorneys' Fees Award
18 \$70,376 (38% of the Gross Settlement Amount). The requested Attorneys' Fees Award is

19 ²⁴ (Han Decl., *supra*, at ¶¶ 21, 24, 49.)

20 ²⁵ (See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833
21 (May 2017) (approving \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia*,
22 *supra*, 2012 WL 5364575, at *3 (approving \$10,000 out of \$3.7 million toward settlement of
23 PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving \$10,000 out of \$518,245
24 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving \$10,000
25 out of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at
26 *14 (approving \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom*
27 *Commissions Case, supra*, at 589 (finding no abuse of discretion by the trial court in approving
28 a settlement that allocates \$0 toward the settlement of PAGA claims at issue in the lawsuit).)

²⁶ (Han Decl., *supra*, at ¶¶ 2-8; Exhibit 1.)

²⁷ (*Id.* at ¶ 49.)

1 commensurate with the: (1) risks undertaken; (2) time, effort, and expense dedicated; (3) skills
2 and determination shown; (4) value achieved; and (5) other cases turned down.

3 Plaintiffs' Counsel are entitled to recover reasonable attorneys' fees and costs as a matter
4 of right under PAGA. See Lab. Code § 2699(g)(1). Plaintiffs' Counsel is entitled to fees and costs
5 under Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for
6 the benefit" of others and has secured monetary awards for PAGA Group Members.²⁸
7 Furthermore, the payment to the LWDA will also benefit the agency in enforcing labor laws and
8 educating "employers and employees about their rights and responsibilities under [the Labor
9 Code]." Lab. Code § 2699(i).

10 Plaintiffs' Counsel investigated and litigated this case for about a year before mediation
11 with a real chance of not reaching a resolution. The ongoing work has been extensive and
12 successful in achieving a settlement.²⁹ Plaintiffs' Counsel have borne all the risks and costs of
13 litigation and will not receive any compensation until recovery. Thus, the requested Attorneys'
14 Fees Award and Litigation Costs Award are reasonable and should be awarded.

15 **B. The Requested Attorneys' Fees Award is Reasonable Based on the Factors**
16 **Considered in Determination of Fee Awards.**

17 The factors courts consider in determining whether fee awards are reasonable are: (1) time
18 and labor required; (2) novelty and difficulty of the questions; (3) requisite skills to perform the
19 legal services; (4) preclusion of other employment by the attorney; (5) customary fee; (6) whether
20 the fee is fixed or contingent; (7) time limitation imposed; (8) amount involved and results
21 obtained; (9) experience, reputation and ability of the attorney; (10) undesirability of the case;
22 (11) nature and length of the professional relationship; and (12) awards in similar cases. *Camden*
23 *I Condo. Ass'n, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772.

24
25 ²⁸ (See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App4th 1, 16-17
26 (recognizing that recovery obtained on behalf of 209 individual satisfies the "significant
27 benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure
section 1021.5, regardless of plaintiff's personal motivation).)

28 ²⁹ (Han Decl., *supra* at ¶¶ 11-13.)

1 It should be highlighted the percentage award sought is commensurate with: (1) results
2 obtained; (2) extraordinary risks undertaken; (3) novelty and difficulty of this case; and (4) skills
3 displayed and the quality of work, which are addressed below.

4 **1. The Results Obtained**

5 The results attorneys obtain for their clients is an important factor when determining the
6 reasonability of a percentage-based fee. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
7 480, 489. Law firms that obtain exceptional results for clients expect them to be reflected in their
8 fees.

9 The results obtained are reasonable as Plaintiff's Counsel obtained a settlement of
10 \$185,200 without the need for extended litigation. If this case went to trial, there was no guarantee
11 the trial would have been short or either party would have prevailed. Even if the Parties reached
12 a similar settlement, it would have been undercut by additional expenses incurred. Resolution of
13 this dispute at this stage is preferred as the Parties were moving to the phase where significant
14 time and money would inevitably have to be spent to prepare for trial.

15 Consequently, by agreeing to settle this case prior to trial, Plaintiffs' Counsel used their
16 skills and experience to obtain a fair result for the PAGA Group Members at far less expense. By
17 avoiding the uncertainties associated with conducting trial and Defendants' responses to
18 Plaintiffs' allegations, Plaintiffs' Counsel obtained those results more quickly and surely than if
19 the matter had been litigated to final resolution. Under California law, this factor also supports
20 the requested fee. *See Lealao v. Beneficial Cal., Inc.*, (2000) 82 Cal. App. 4th 19, 51.

21 **2. The Extraordinary Risk Taken by Plaintiffs' Counsel**

22 Whether or not representation is provided on a contingency basis is an important factor:

23 A contingent fee must be higher than a fee for the same legal services paid as they are
24 performed [and] [...] compensates the lawyer not only for the legal services he renders
25 but for the loan of those services. A lawyer who both bears the risk of not being paid and
26 provides legal services is not receiving the fair market value of his work if he is paid
27 only for the second of these functions. If he is paid no more, competent counsel will be
28 reluctant to accept fee award cases. (internal quotes and citations omitted)

Cates v. Chiang (2013) 213 Cal. App. 4th 791, 823.

1 Plaintiffs executed contingent fee agreements. This meant no recovery would have equated
2 to no compensation for 415.9 hours of work and \$16,146.98 litigation costs incurred.³⁰

3 Several factors made this case tricky, including: (1) size of PAGA Group; (2) difficulties
4 in pinning down job responsibilities, wages paid, meal and rest breaks taken; (3) number of
5 documents that had to be analyzed; (4) shifting wage-and-hour laws; (5) the fact Defendants
6 conducted their business in different locations; and (6) Defendants' firm resistance to the relief.

7 **3. The Novelty and Difficulty of the Litigation**

8 The myriad of difficulties addressed above made this case more complex and difficult
9 than the average lawsuit. Plaintiff's Counsel overcame them by obtaining a settlement that is fair,
10 adequate, and reasonable. The fact Plaintiff's Counsel were able to obtain a reasonable settlement
11 despite these obstacles speaks volumes of their skills. *See Lealao*, 82 Cal.App.4th at 42 (counsel's
12 "special skill and experience of counsel" a relevant factor when determining fee award).

13 The Task & Time Chart set forth substantial number of hours devoted, allocating the total
14 time to the tasks that were required to bring this matter to its successful conclusion. The chart is
15 thorough, comprehensive, and demonstrates the effort to diligently manage this case.³¹ As stated
16 in the previous section, this was not a clear-cut case, and Plaintiffs' Counsel had to overcome
17 several roadblocks and obstacles before they could reach a reasonable settlement. The fact this
18 case has been litigated for a year speaks volumes of the novelty and difficulty of this case that
19 Plaintiffs' Counsel had to deal with and overcome.

20 **4. The Skill Displayed and Quality of Work**

21 The level of skill displayed and the excellent quality of work it produced also justify the
22 requested fee. Plaintiff's Counsel are skilled and experienced representative and class action
23 wage-and-hour litigators. The Task & Time Chart further illustrates this assertion.

24 Plaintiffs' Counsel used the pre-mediation time period to investigate the veracity,
25 strength, and scope of the PAGA claims and to prepare for representative adjudication. This
26

27 ³⁰ (Han Decl., *supra*, at ¶¶ 41, 45; Exhibits 4, 7.)

28 ³¹ (Han Decl., *supra*, at ¶ 41; Exhibit 4.)

1 included, among other things: (1) case strategy and analysis; (2) drafting, reviewing, and revising
2 pleadings and a mediation brief; (3) preparing for and appearing for court proceedings; (4)
3 undertaking calculations of the value of the claims; (5) propounding formal discovery; and (6)
4 preparing for and attending the mediation and settlement negotiations. In addition to determining
5 scope of the PAGA Group Members, Plaintiffs' Counsel undertook the time-consuming task of
6 locating and interviewing PAGA Group Members to verify if Plaintiffs' claims raised
7 individualized issues.³²

8 **C. The Lodestar Methodology Also Justifies Approval of the Requested Fees.**

9 Plaintiffs' Counsel spent 415.9 hours litigating this matter. Plaintiffs' Counsel's hourly
10 rates are supported by the 2021 Real Rate Report that was compiled by Wolter Kluwer that
11 surveyed the hourly rates charged in 2021 by hundreds of attorneys in California. Likewise,
12 Plaintiffs' Counsel's hourly rates are also in line with the Laffey Matrix.³³

13 Plaintiffs' Counsel documented lodestar is calculated to be \$283,191.67. When cross-
14 checked with the requested Attorneys' Fees Award, it results in a negative multiplier of 0.25. The
15 hours spent are fully documented and consistent with those that would be expected in a matter of
16 this duration, complexity, and amounts at stake.³⁴

17 ***1. Plaintiffs' Counsel Performed Work for a Reasonable Number of Hours.***

18 The Task & Time Chart evidence the numerous tasks that were performed to seek all
19 necessary information.³⁵ Thus, Plaintiffs' Counsel spent a reasonable number of hours working
20 on this case, and their application for attorneys' fees is within the range of reasonableness.

21 The case involved, among other things, gathering and analyzing data from Defendants
22 and the PAGA Group Members. Plaintiffs' Counsel undertook intense preparation to resolve the
23

24 ³² (Han Decl., *supra*, at ¶ 13.)

25 ³³ (Han Decl., *supra*, at ¶ 43; Exhibits 5-6.)

26 ³⁴ (*Id.* at ¶¶ 42, 44.)

27 ³⁵ (Han Decl., *supra*, at ¶ 41; Exhibit 4.)
28

entire matter through mediation. These intense preparations ranged from locating and interviewing several putative PAGA Group Members, reviewing a myriad of documents, determining the scope of the PAGA Group Members, verifying the strengths of Plaintiffs' claims, etc.

2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation.

Plaintiffs' Counsel's hourly rates are well within the range of rates charged by comparably qualified attorneys in California and the legal profession in general for comparably complex work. By extension, Plaintiffs' Counsel's hourly rates are also in line with the Laffey Matrix.³⁶

Plaintiffs' Counsel's hourly rates are reasonable for the following reasons: (1) comparable hourly rates for similar services have been deemed to be reasonable in several cases in California; and (2) several surveys of legal rates have supported Plaintiffs' Counsel's hourly rates. Based on the attorney time expended, the lodestar fees incurred to date total \$283,191.67, resulting in a negative multiplier of 0.25 when cross-checked to the requested Attorneys' Fees Award.³⁷

VII. THE LITIGATION COSTS TO BE REIMBURSED AND SHOULD BE APPROVED

The Settlement provides for Litigation Costs Award not to exceed \$7,500.³⁸ Plaintiffs' Counsel have incurred \$16,146.98 in litigation costs and expenses, which were reasonable and necessary.³⁹ Thus, Plaintiffs' Counsel request the Court order reimbursement for the above-mentioned costs as the Litigation Costs Award.

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³⁶ (*Id.* at ¶¶ 42-43; Exhibits 5-6.)

³⁷ (Han Decl., *supra*, at ¶¶ 42, 44.)

³⁸ (Settlement Agreement, *supra*, § 7(b)(ii).)

³⁹ (Han Decl., *supra*, at ¶ 45; Exhibit 7.)

1 **VIII. APPROVAL OF THE PROPOSED ENHANCEMENT AWARDS TO**
2 **PLAINTIFFS**

3 The Settlement provides for Enhancement Awards of \$10,000 to each Plaintiff.⁴⁰
4 Plaintiffs contributed considerable time and effort to the litigation to enforce the Labor Code,
5 producing relevant documents and providing the facts and evidence necessary to support the
6 allegations (*i.e.*, describing work experience and work environment created by Defendants).
7 Plaintiffs were available whenever Plaintiffs' Counsel needed them and tried to obtain documents
8 and information that would aid the litigation of this case (*i.e.*, contact information of PAGA
9 Group Members). Plaintiffs were made aware of and accepted the risks and consequences
10 associated with serving as the named plaintiff (*i.e.*, difficulty finding employment, risk of a
11 judgment entered against him for attorneys' fees and costs). Plaintiffs continued assistance has
12 proven to be invaluable in terms of developing legal theories, interviewing PAGA Group
13 Members, and obtaining documents.⁴¹

14 Thus, it is fair and reasonable to award Plaintiffs the Enhancement Awards of \$10,000
15 each.

16 **IX. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED**

17 The Agreement provides for the payment of Settlement Administration Costs of up to
18 \$7,500 to Phoenix Class Action Administration Solutions ("Phoenix").⁴² The Settlement
19 Administration Costs are intended to cover the costs incurred by Phoenix for performing its duties
20 outlined in Agreement. Plaintiffs' Counsel have worked with Phoenix in the past and are familiar
21 with their superior reputation and work product. Thus, the Court should approve the payment of
22 the Settlement Administration Costs of up to \$7,500 to Phoenix.

23 ///

24 ///

25 _____
26 ⁴⁰ (Settlement Agreement, *supra*, at § 7(b)(iv).)

27 ⁴¹ (Han Decl., *supra*, at ¶ 48)

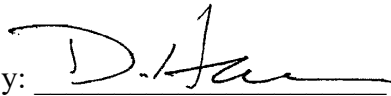
28 ⁴² (Settlement Agreement, *supra*, at § 7(b)(iii).)

1 **X. CONCLUSION**

2 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise.
3 Based thereon, Plaintiffs request the Court approve the Settlement, including the plan of
4 allocation and distribution of the Gross Settlement Amount, Attorneys' Fees Award, Litigation
5 Costs Awards, Settlement Administration Costs, and Enhancement Awards.
6

7 Dated: December 8, 2022

JUSTICE LAW CORPORATION

8 By: 
9 Douglas Han
10 *Attorneys for Plaintiff*
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