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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

GRACIELA DE CABANAS GONZALEZ, as
an individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

MICHAEL STARS, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

CASE NO. 21STCV02784

*[Case assigned for all purposes to the Hon.
Michael P. Linfield, Dept. 34]*

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

Date: March 18, 2022
Time: 8:30 a.m.
Dept.: 34

Reservation ID: 118517237158

Complaint Filed: January 22, 2021
Trial Date: None Set

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

3 PLEASE TAKE NOTICE that on March 18, 2022 at 8:30 a.m., or as soon thereafter as
4 the matter may be heard in Department 34 of the above-entitled Court, located at 111 North Hill
5 Street, Los Angeles, California 90012, Plaintiff Graciela De Cabanas Gonzalez (“Plaintiff”),
6 individually and on behalf of the State of California and other Aggrieved Employees, will, and
7 hereby does, move this Court for entry of an Order as follows:

- 8 1. Granting approval, pursuant to California Labor Code § 2699(l), of the proposed
9 settlement of claims brought pursuant to the Private Attorneys General Act of 2004
10 (Cal. Labor Code § 2698, *et seq.*) and as set forth in the parties’ Settlement
11 Agreement, a true and correct copy of which is attached to the Declaration of Paul K.
12 Haines filed concurrently herewith;
- 13 2. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
- 14 3. Approving the proposed Explanatory Letter (attached as Exhibit A to the Settlement
15 Agreement), and directing that it be distributed to Aggrieved Employees pursuant to
16 the terms of the Settlement Agreement;
- 17 4. Directing the funding and distribution of the Maximum Settlement Amount pursuant
18 to the terms of the Settlement Agreement;
- 19 5. Approving an award of attorneys’ fees to Plaintiff’s counsel of \$81,666.67 and an
20 award of litigation costs to Plaintiff’s counsel in the amount of \$9,867.31;
- 21 6. Approving an enhancement payment to Plaintiff in the amount of \$5,000.00; and
- 22 7. Approving \$2,950.00 in administration costs to Phoenix Settlement Administrators.

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This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the declaration of Paul K. Haines and all exhibits attached thereto; the declaration of Sean M. Blakely; the declaration of Jodey Lawrence and all exhibits attached thereto; the declaration of Plaintiff Graciela De Cabanas Gonzalez; the Settlement Agreement; Plaintiff's Request for Judicial Notice and all exhibits attached thereto; all other pleadings and papers on file in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Respectfully submitted,

Dated: February 24, 2022

HAINES LAW GROUP, APC

By:

Paul K. Haines

Sean M. Blakely

Attorneys for Plaintiff and Aggrieved
Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Graciela De Cabanas Gonzalez (“Plaintiff”), an “aggrieved employee” under the
4 Private Attorneys’ General Act of 2004 (“PAGA”), respectfully moves this Court for an Order
5 granting approval of the Settlement Agreement (“Settlement”) with Defendant Michael Stars, Inc.
6 (“Defendant” or “Michael Stars”).¹ This PAGA representative action seeks civil penalties
7 predicated on Michael Stars’ alleged failure to pay all minimum and overtime wages owed and
8 alleged failure to provide timely off-duty meal periods from January 22, 2020 through October
9 31, 2021 (the “PAGA Period”). The proposed Settlement, under which Michael Stars has agreed
10 to pay a non-reversionary Maximum Settlement Amount (“MSA”) of \$245,000.00, will resolve
11 Plaintiff’s representative claim filed on behalf of the State of California and all “Aggrieved
12 Employees,” which consists of all current and former non-exempt employees who worked for
13 Michael Stars in California at any time during the PAGA Period.

14 Notably, the relief provided for under the Settlement, and the claims released thereunder,
15 are *solely* for the payment of *civil penalties* under the PAGA, and not for any underlying Labor
16 Code violations. The release also encompasses only PAGA civil penalties based upon the factual
17 allegations and theories alleged by Plaintiff in this Action, and only for claims arising during the
18 PAGA Period, which as noted above, ends on October 31, 2021.

19 In deciding whether to grant approval of the Settlement, the primary issue is whether the
20 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement
21 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the
22 product of arm’s-length negotiations; (2) was negotiated by attorneys experienced in wage-and-
23 hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was
24 negotiated after undertaking sufficient discovery and investigation to evaluate the relative
25 strength and value of Plaintiff’s PAGA claim and Michael Stars’ defenses thereto; and (4) reflects
26 a reasoned compromise based on the relative strength and value of the PAGA claim, as well as
27 the risks, expenses, complexity and likely duration of further litigation.

28 ¹ The proposed Settlement is attached as Exhibit 1 to the Declaration of Paul K. Haines filed herewith.
The Explanatory Letter to Aggrieved Employees is attached as Exhibit A to the Settlement.

1 As noted, the Settlement provides for a MSA of \$245,000.00. After deducting amounts
2 for requested attorneys' fees (\$81,666.67), attorney costs (\$9,867.31), Plaintiff's Enhancement
3 Payment (\$5,000.00), and administration costs (\$2,950.00), the Settlement provides for
4 distribution of a Net Settlement Amount ("NSA") of approximately \$145,516.02 be paid to
5 Aggrieved Employees and the California Labor & Workforce Development Agency ("LWDA").
6 Settlement, § III.2-5; *see also* Declaration of Paul K. Haines ("Haines Decl."), ¶ 23 & Exh. 3;
7 Declaration of Jodey Lawrence, ¶ 17 & Exh. B.

8 The NSA shall be distributed 75% (approximately \$109,137.02) to the LWDA, and 25%
9 (approximately \$36,379.00) to Aggrieved Employees, pursuant to the requirements of the PAGA
10 as codified in Lab. Code § 2699(i). *See* Settlement, § III.5. There are approximately 101
11 Aggrieved Employees, resulting in average payments of approximately \$360.19 to each
12 Aggrieved Employee. Haines Decl., ¶ 15.

13 The MSA of \$245,000.00 represents a positive result for the State of California and
14 Aggrieved Employees. Further litigation may have resulted in a smaller recovery or even no
15 recovery at all, based on the defenses asserted by Michael Stars and significant ongoing litigation
16 risks. Moreover, the MSA is greater than other PAGA penalty awards that have been approved as
17 reasonable. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624
18 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-aside of \$5,000, or
19 \$7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013
20 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-aside of \$10,000, or
21 \$3.33 per employee). The amounts requested for attorneys' fees and costs, Enhancement
22 Payment, and administration costs are all fair, adequate, and reasonable. Thus, Plaintiff
23 respectfully requests that the Court enter the [Proposed] Judgment and Order submitted
24 concurrently herewith.

25 **II. SUMMARY OF THE LITIGATION**

26 **A. Brief Factual Background and Summary of Claims**

27 Michael Stars is a Los Angeles-based apparel and lifestyle retail company that offers a
28 full collection of women's and men's fashion. Haines Decl., ¶ 11. Starting from a single location

1 in 1986, Michael Stars has since expanded to at least seven locations across the United States,
2 including five retail stores and at least one warehouse within California. *Id.* Plaintiff worked for
3 Michael Stars for approximately 15-years from 2006 to August 7, 2020 in its warehouse located
4 in Hawthorne, California. *Id.*

5 Plaintiff's PAGA claim is predicated primarily on Michael Stars' time-rounding practices,
6 which Plaintiff alleges has consistently and systematically underpaid its non-exempt employees,
7 as well as Michael Stars' alleged failure to provide its non-exempt employees with timely off-
8 duty meal periods of at least 30 minutes. As explained below, Michael Stars denies Plaintiff's
9 allegations and asserted several affirmative defenses to her claims.

10 **B. Relevant Procedural History**

11 On January 22, 2021, Plaintiff filed the instant action, alleging class-wide violations of
12 the California Labor Code for: (1) minimum wage violations; (2) failure to pay all overtime
13 wages; (3) meal period violations; (4) waiting time penalties; (5) wage statement violations; and
14 (6) unfair competition. Haines Decl., ¶ 12. That same day, Plaintiff also submitted her notification
15 letter to Michael Stars and to the LWDA regarding Michael Stars' alleged Labor Code violations,
16 as required by Labor Code § 2699.3. *Id.*, Exh. 2.

17 On March 29, 2021, after exhausting her pre-filing PAGA requirements, Plaintiff filed a
18 First Amended Complaint adding a cause of action for civil penalties under the PAGA based on
19 the same underlying Labor Code violations as those alleged in her original complaint. *See* Haines
20 Decl., ¶ 13. Shortly thereafter, Michael Stars produced an arbitration agreement that Plaintiff had
21 signed and, as a result, Plaintiff dismissed her class-wide claims without prejudice, leaving
22 Plaintiff's PAGA claim as the sole cause of action. *Id.*

23 On October 22, 2021, the parties attended a full-day mediation with mediator Steve G.
24 Pearl, Esq., in an effort to resolve Plaintiff's PAGA claim. Haines Decl., ¶ 14. In connection with
25 mediation, Michael Stars informally produced information and documents pertaining to Plaintiff
26 and other Aggrieved Employees, including, but not limited to, payroll and timekeeping records
27 for Plaintiff and a representative sample of Aggrieved Employees; several data points including
28 the number of Aggrieved Employees and their hire and termination dates (where applicable); and

Michael Stars’ relevant wage and hour policy documents, in order for Plaintiff’s counsel to investigate Plaintiff’s allegations and value the claims prior to mediation. *Id.* During mediation, the parties vigorously debated the legal bases for Plaintiff’s claims and Michael Stars’ defenses, the manageability of the case as a representative action, the potential amount of penalties, and the parties’ data analyses and conclusions based thereon. *Id.* With the assistance of Mr. Pearl, the parties agreed to fully and finally resolve Plaintiff’s PAGA claim. *Id.* The parties subsequently negotiated and finalized the Settlement now before the Court. *Id.*

III. SUMMARY OF THE SETTLEMENT

A. “Aggrieved Employees” Defined

As noted above, the “Aggrieved Employees” consist of all current and former non-exempt employees who worked for Michael Stars in California at any time during the PAGA Period. *See* Settlement, § I.2. The PAGA Period is defined as the time period from January 22, 2020 through October 31, 2021. Settlement, § I.13.

B. Monetary Terms

The Settlement provides for Michael Stars’ payment of a non-reversionary Maximum Settlement Amount (“MSA”) of \$245,000.00. *See* Settlement, §§ I.10, III.2. After deducting requested attorneys’ fees, litigation costs, Plaintiff’s Enhancement Payment, and administration costs, the Settlement provides for the Net Settlement Amount (“NSA”) to be distributed 75% to the LWDA and 25% to Aggrieved Employees, per Labor Code § 2699(i). *Id.*, at §§ III.4-5. The Aggrieved Employees’ portion of the NSA is estimated to be \$36,379.00 and will be distributed to all Aggrieved Employees based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period. *See* Settlement, § III.5.

1. *Attorneys’ Fees and Costs, Administration Costs, and Plaintiff’s Enhancement Payment*

Plaintiff’s counsel requests one-third of the MSA (i.e., \$81,666.67) in attorneys’ fees, and \$9,867.31 in litigation costs. *See* Settlement, § III.4(a); Haines Decl., ¶¶ 21-23 & Exh. 3. As discussed in detail below, a fee award of one-third of the MSA is fair, adequate, and reasonable as a percentage of the fund and is in line with fee awards in other PAGA settlements.

1 The parties have agreed to engage Phoenix Settlement Administrators (“Phoenix”) as the
2 third-party settlement administrator. *See* Settlement, § IV.1. Phoenix will update Aggrieved
3 Employee addresses using the National Change of Address database, calculate and distribute
4 Individual PAGA Payments, mail payments to all Aggrieved Employees together with the
5 Explanatory Letter, and perform other duties that are integral to the effectuation of the Settlement.
6 *Id.*, §§ IV.2-6. Plaintiff requests that the Court approve \$2,950.00 in administration costs to
7 Phoenix, which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.* at
8 § III.4(c); *see also* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached exhibits.

9 Finally, Plaintiff requests an Enhancement Payment of \$5,000.00, in recognition of
10 Plaintiff’s contributions to this case and her efforts in bringing this case to successful resolution.
11 *See* Settlement, § III.4(b); Declaration of Graciela De Cabanas Gonzalez (“Gonzalez Decl.”), ¶¶
12 4-6.

13 **2. Payment to LWDA and Aggrieved Employees**

14 The NSA will be distributed 75% to the LWDA and 25% to Aggrieved Employees,
15 pursuant to Labor Code § 2699(i). Based on the above requested distributions, the NSA is
16 estimated to be \$145,516.02, with \$109,137.02 paid to the LWDA and \$36,379.00 distributed to
17 Aggrieved Employees. Haines Decl., ¶ 15. As noted, there are approximately 101 total Aggrieved
18 Employees. *Id.* Thus, it is anticipated that overall, Aggrieved Employees will receive average
19 Settlement payments of approximately \$360.19. *Id.*

20 **3. Funding of the Settlement**

21 Michael Stars will deposit the Maximum Settlement Amount with Phoenix, the
22 Settlement Administrator, within thirty (30) calendar days of Court approval. *See* Settlement, §
23 III.2. Within ten (10) business days after the Settlement has been fully funded and after receiving
24 approval from counsel of the payment calculations, Phoenix will mail the Individual PAGA
25 Payments and Explanatory Letter in English and Spanish to Aggrieved Employees via First-Class
26 U.S. Mail. *See* Settlement, § IV.3.

27 Funds from any settlement checks remaining uncashed after 180 days will be sent by
28 Phoenix to Central American Resource Center – CARECEN – of California, which is a 501(c)(3)

organization dedicated to providing legal services to children and the indigent. *See* Settlement, § IV.4.

IV. LEGAL ARGUMENT

A. Standards for Approval of a PAGA Settlement

The settlement of a PAGA claim requires court approval pursuant to the PAGA statute, which states that the “court shall review and approve any settlement of any civil action filed pursuant to this part.” Labor Code § 2699(l). Of course, “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13, 2011). “[T]he very essence of a settlement is... ‘a yielding of absolutes and an abandoning of highest hopes,’” as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624 (9th Cir. 1982). As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.*

Although the PAGA statute does not set forth the criteria by which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement. However, “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 [a class action].” *Casida v. Sears Holdings Corp.*, 2012 WL 253217 at *3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at *4 (E.D. Cal. Jul. 1, 2010) (“PAGA claims are law enforcement actions, not class actions”). A court’s review of a PAGA settlement implicates the following unique features that render the approval process distinct from approval of a class action settlement.

First, in evaluating a PAGA settlement, the court is not concerned with amount(s) received by “aggrieved employees,” but rather, must focus on the total settlement amount in achieving PAGA’s objective. “The remedy sought in a PAGA suit consists of civil penalties, not individual or class damages.” *Mendez*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties

1 are not meant to compensate unnamed employees because the action is fundamentally a law
2 enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, No. C-08-2073-MHP, 2010 WL
3 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court confirmed, “PAGA claims are
4 ‘representative’ actions in the sense that they are brought on the state’s behalf. The
5 employee... ‘represents the same legal right and interest as’ those agencies — ‘namely, recovery
6 of civil penalties that otherwise would have been assessed and collected by the [LWDA].” *ZB,*
7 *N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian v. CLS Transp. Los Angeles, LLC*, 59
8 Cal.4th 348, 380 (2014)).

9 Moreover, while “[a PAGA] action is ... designed to protect the public and penalize the
10 employer for past illegal conduct” (*Mendez*, 2010 WL 2650571 at *4), a PAGA settlement – like
11 any settlement – involves a compromise that stops short of rendering findings of liability and
12 damages. “Unlike a class action seeking damages or injunctive relief for injured employees, the
13 purpose of PAGA is to incentivize private parties to recover civil penalties for the government
14 that otherwise may not have been assessed and collected by overburdened state enforcement
15 agencies.” *Ochoa-Hernandez*, 2010 WL 1340777 at *4.

16 Second, consistent with the fact that unnamed employees have no property interest in a
17 PAGA claim,² “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
18 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
19 1340777 at *5; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482 (2020)
20 (recognizing that “there is no mechanism for opting out of the judgment entered on the PAGA
21 claim.”). This renders the approval process of a PAGA settlement distinct from a class action
22 settlement, as the Court need not employ the “two-step approval process” required for class action
23 settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

24 Finally, unlike a class action settlement under Fed. R. Civ. Proc. Rule 23(e) or Cal. Rule
25 of Court 3.769, the scope of release in a PAGA settlement is limited to *civil penalties*. While
26

27 ² “The [PAGA] does not create property rights or any other substantive rights” as “[i]t is simply
28 a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code
violations—that otherwise would be sought by state labor law enforcement agencies.” *See*
Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct., 46 Cal.4th 993, 1003 (2009).

“judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding...the non-party employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.” *Arias v. Sup. Ct.*, 46 Cal. 4th 969, 986-87 (2009).

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

In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup. Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited to:

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

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

Because settlements inherently involve compromise, even a settlement providing for substantially narrower relief than might be obtained if the suit were successfully litigated can be reasonable because “the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). Courts also review the discovery process and information received through it to aid them in assessing whether the parties sufficiently developed the claims and their supporting factual bases before reaching settlement. *Kullar*, 168 Cal.App.4th at 129-31. Information is sufficient where it allows the parties and the court to form “an understanding of

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

5 **a. The Strength of Plaintiff’s Case**

6 Although she steadfastly maintains her claims are meritorious, Plaintiff acknowledges her
7 position included real risks and uncertainty. Haines Decl., ¶ 16. Michael Stars asserted several
8 affirmative defenses to Plaintiff’s claims. For example, with respect to Plaintiff’s unpaid wage
9 claims, Michael Stars contends it utilizes an even-handed timekeeping system that, on balance,
10 results in employees being paid for all hours actually worked. *Id.*; *See’s Candy Shops, Inc. v. Sup.*
11 *Ct.*, 210 Cal.App.4th 889, 901 (2012) (holding rounding policies lawful if they are consistently
12 applied and, on average, favor neither overpayment nor underpayment of wages). Michael Stars
13 further argues that just because an employee is clocked in does not mean they are *working*. Haines
14 Decl., ¶ 16. For example, much of the alleged unpaid time was pre-shift (i.e., employees clocked
15 in before the scheduled start of the shift), and Michael Stars argues employees engage in personal
16 activities like reading or talking with co-workers before their shift. *Id.* Moreover, Michael Stars
17 asserts the amount of unpaid time per shift is *de minimis* and thus non-compensable. *Id.* Michael
18 Stars also contends this claim was not manageable on a representative basis, since its rounding
19 policy is facially neutral and some employees were *overpaid* due to rounding, and individualized
20 inquiries would be necessary as to whether employees were in fact underpaid or overpaid for each
21 workday in question (including whether they were actually working when they were clocked in),
22 resulting in an unmanageable series of mini-trials. *Id.*

23 With respect to Plaintiff’s meal period claim, Michael Stars contends that it has always
24 maintained compliant written meal period policies, and that employees are free to take their meal
25 periods whenever they choose as Michael Stars does not police employee meal periods. Haines
26 Decl., ¶ 17. Michael Stars also maintains that Plaintiff’s meal period claim would not be
27 manageable on a representative basis, as individual inquiries would be required to establish which
28 Aggrieved Employees experienced non-compliant meal periods, how many non-compliant meal

1 periods each Aggrieved Employee experienced, and why a particular Aggrieved Employee had a
2 non-compliant meal period during a particular shift. *Id.*

3 As for Plaintiff's claims that Michael Stars violated its wage statement and final payment
4 obligations in violation of Labor Code §§ 226 and 203, respectively, Michael Stars asserts it has
5 strong, good-faith defenses to Plaintiff's underlying claims, precluding a finding of a failure to
6 pay all final wages that would otherwise result in waiting time penalties. Haines Decl., ¶ 18; *see*
7 *also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude
8 imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017)
9 (holding "good faith dispute" precluded imposition of waiting time penalties). Michael Stars
10 further contends Plaintiff's meal period claims cannot support a claim for violations of Labor
11 Code §§ 226 or 203, as Courts of Appeal recently held in *Naranjo v. Spectrum Security Servs.*,
12 *Inc.*, 40 Cal.App.5th 444, 473-75 (2019) (review granted Jan. 2, 2020) and *Betancourt v. OS Rest.*
13 *Svcs., LLC*, 49 Cal.App.5th 240, 248 (2020) (review granted Aug. 19, 2020).

14 Michael Stars further maintains that even if the Court awarded PAGA penalties for any of
15 the alleged violations, it would substantially reduce the penalties based on the discretionary
16 factors in Labor Code § 2699(e)(2) (authorizing reduction in penalties "if, based on the facts and
17 circumstances of the particular case, to do otherwise would result in an award that is unjust,
18 arbitrary and oppressive, or confiscatory."). Haines Decl., ¶ 19. Indeed, Michael Stars argues,
19 many courts have reduced PAGA penalties drastically where, as here, the employer presented
20 good-faith defenses and attempted to comply with the law. *See Thurman v. Bayshore Transit*
21 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because
22 "defendants took their obligations...seriously and attempted to comply with the law"); *Fleming*
23 *v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011)
24 (reducing PAGA penalties by over 82%, in part because employer "not aware" of violations);
25 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just
26 \$5 per pay period where employer made "good faith attempts" to comply with the law).

27 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

28 Although the parties had engaged in significant informal discovery, the parties still had

1 more formal discovery, including written and deposition discovery, to conduct if the case did not
2 settle. Moreover, potential additional substantive motion work and trial preparation remained for
3 the parties, as well as potential appeals. As a result, the parties would likely incur considerably
4 more attorneys' fees and costs through trial and possible appeal. The Settlement avoids those risks
5 and the accompanying expense.

6 **c. Amount Offered in Settlement Given Realistic Value of Claims**

7 The proposed Settlement provides a fair and reasonable monetary recovery for the State
8 of California and Aggrieved Employees in the face of hotly disputed claims, when compared with
9 the potential realistic exposure. Based on data provided by Michael Stars, there were
10 approximately 3,300 pay periods worked by the Aggrieved Employees through October 2021.
11 Haines Decl., ¶ 20; Settlement, § III.3. Assuming an "initial" violation rate of \$100 per pay period
12 under Labor Code § 2699(f) (*see Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209
13 (2008) (holding "initial" violation rate applies to PAGA penalties until employer is notified by
14 Labor Commissioner or a court that it violated Labor Code)), and assuming that Plaintiff could
15 prove a violation in each and every pay period, without any reduction on the merits or for the risk
16 of reduced penalties, Plaintiff estimated a **maximum** potential PAGA exposure of \$330,000.
17 Haines Decl., ¶ 20. The proposed \$245,000 MSA thus represents approximately 74% of Plaintiff's
18 **maximum** potential recovery, while avoiding the risks of proceeding through trial. *Id.* "The fact
19 that a proposed settlement may only amount to a fraction of the potential recovery does not, in
20 and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved."
21 *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). Plaintiff acknowledges
22 there was substantial uncertainty and risk as to her claim. Approval of the Settlement is
23 appropriate, as the Settlement will provide tangible monetary relief to Aggrieved Employees and
24 the State of California while avoiding the risks and costs of continued litigation and trial.

25 **d. Discovery Completed and the Status of Proceedings**

26 As noted, the parties engaged in substantial informal discovery to evaluate the PAGA
27 claim. Haines Decl., ¶ 14. Michael Stars provided Plaintiff with, *inter alia*, timekeeping and
28 payroll records for non-exempt employees, additional relevant data, and its relevant written

1 policies. *Id.* Only after engaging in mediation and in adversarial discussions about the likelihood
2 of prevailing on the merits, did the parties reach the proposed Settlement. Thus, this factor
3 supports settlement approval. *Id.*

4 **e. The Experience and Views of Counsel**

5 “Parties represented by competent counsel are better positioned than courts to produce a
6 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec.*
7 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel with
8 decades of combined experience, who believe this Settlement to be fair and adequate for all
9 involved. Haines Decl., ¶¶ 3-9; Declaration of Sean M. Blakely (“Blakely Decl.”), ¶¶ 2-6. This
10 factor strongly supports settlement approval. *Kullar*, 168 Cal.App.4th at 130 (“The court
11 undoubtedly should give considerable weight to the competency and integrity of counsel and the
12 involvement of a neutral mediator in assuring itself that a settlement agreement represents an
13 arm’s length transaction entered without self-dealing or other potential misconduct.”).

14 **B. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of**
15 **the Settlement Fund**

16 As the prevailing party in settlement, Plaintiff is entitled to recover attorneys’ fees and
17 costs for her claims. *See* Labor Code § 2699(g) (providing for attorney fees and costs in PAGA
18 actions); Cal. Code Civ. Proc. § 1021.5. A fee award is justified where the legal action has
19 produced its benefits by way of settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91
20 (1987); *Westside Comty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983);
21 *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number of persons are entitled in common to
22 a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation
23 or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”);
24 *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained
25 for the benefit of all parties, the trial court acts within its equitable power to prevent the other
26 parties’ unjust enrichment); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th
27 Cir. 1993 (the percentage of the fund method for calculating attorneys’ fees more accurately
28 reflects the results achieved for the putative class than the lodestar method and “establishes

1 reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it
2 encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Sec. Litig.*,
3 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in
4 common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards
5 counsel for success and penalizes it for failure.”).

6 Fee awards of one-third of the settlement fund are routinely awarded in California courts
7 in class and representative PAGA actions. The California Supreme Court recently confirmed its
8 approval of the use of the “percentage of fund” method. *See Laffitte v. Robert Half Int’l, Inc.*, 1
9 Cal.5th 480, 506 (2016) (“the percentage of fund method survives in California class action
10 cases...”.) Specifically, the *Laffitte* Court held:

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

14 *Id.*, at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-
15 third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also*
16 *Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)
17 (approving attorneys’ fees of one-third of settlement fund in PAGA settlement); *Clavel v. Lupe’s*
18 *Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25,
19 2016) (same). This is also consistent with Plaintiff’s counsel’s experience in similar wage-and-
20 hour class and PAGA matters. Haines Decl., ¶ 21. Thus, the percentage sought by Plaintiff’s
21 counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

22 The requested fee award is also justified because Plaintiff’s counsel achieved a significant
23 monetary recovery in an uncertain and risky case, while bearing the substantial burden of
24 representation on a contingency basis, and the fees requested are in line with the market rate.
25 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional
26 results in a contingency case, significant risk and the absence of supporting precedents, are proper
27 considerations in awarding attorneys’ fees). Here, counsel expended significant time and
28 resources in litigating this case, which resulted in an excellent result for Plaintiff, the State of

1 California, and Aggrieved Employees in the face of significant defenses. Counsel also bore the
2 contingency risk of this litigation for the benefit of the Aggrieved Employees, as well as the State
3 of California (which elected not to take the case after receiving Plaintiff's PAGA notice).

4 Critically, Plaintiff's recovery in this case significantly exceeds other PAGA awards
5 approved by California courts. *See, e.g., Aguirre v. DSW, Inc.*, 2012 WL 11875296, *3 (C.D. Cal.
6 Nov. 29, 2012) (approving \$10,000 PAGA payment); *Garcia v. Gordon Trucking, Inc.*, 2012 WL
7 5364575, *7 (E.D. Cal. Oct. 31, 2012) (approving \$10,000 PAGA payment, finding it "comports
8 with settlement approval of PAGA awards in other cases. [Citations.]"); *Boyd v. Bank of Am.*
9 *Corp.*, 2014 WL 6473804, *8 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment);
10 *Franco v. Ruiz Food Prods.*, 2012 WL 5941801, *14 (E.D. Cal. Nov. 27, 2012) (\$10,000 PAGA
11 payment); *Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645, *1 (N.D. Cal. Feb. 16, 2011) (\$10,000
12 PAGA payment). That counsel achieved these results without engaging in a protracted legal
13 battle, in the face of serious defense challenges, confirms the strength of the results achieved.

14 Counsel conducted extensive research regarding the merits of Plaintiff's claims, her
15 ability to recover PAGA civil penalties, and Michael Stars' potential defenses. Haines Decl., ¶¶
16 14, 22. Counsel also conducted significant analysis of data and information produced by Michael
17 Stars, and used this data and analysis to draft a comprehensive mediation brief and exposure
18 analysis. *Id.* Counsel attended a full-day mediation, and expended significant effort in preparing
19 subsequent settlement documents, this Motion and supporting documents, and will oversee the
20 settlement administration process. *Id.* Given the considerable potential for adverse outcomes in
21 this case, the contingent risk borne by Plaintiff's counsel was great. *Id.* The quality of Plaintiff's
22 counsel's work, and the efficacy and dedication with which it was performed, should be
23 compensated.

24 Plaintiff's counsel have over two decades of combined wage-and-hour class and
25 representative action experience and have been certified as class counsel in numerous wage and
26 hour class actions. Haines Decl., ¶¶ 3-9; Blakely Decl., ¶¶ 2-6. Because it is reasonable to
27 compensate counsel commensurate with their skill, reputation, and experience, a fee award of
28 one-third of the MSA is reasonable. Other factors show the requested fee is reasonable. This case

involved nuanced legal issues, including the legality of Michael Stars' rounding practices and obligations to "provide" meal periods, as well as the availability and amount of PAGA civil penalties for the alleged Labor Code violations. Haines Decl., ¶ 21. Michael Stars was also represented by experienced wage-and-hour litigation counsel. *Id.* Thus, Plaintiff submits the requested fee award is fair, reasonable and adequate and should be approved.

C. The Requested Litigation Costs and Settlement Administration Costs Are Fair, Reasonable, and Adequate

Plaintiff's request for reimbursement of litigation costs of \$9,867.31 is also fair and reasonable. All of Plaintiff's litigation costs are reasonably incurred. *See* Haines Decl., ¶ 23 & Exh. 3. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, 2011 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs reimbursable); *In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

Likewise, the request for administration costs of \$2,950.00 is also fair and reasonable. Phoenix was selected because it is an experienced settlement administrator and returned a reasonable bid. *See* Declaration of Jodey Lawrence & Exhibits. Moreover, Phoenix will perform several important functions that are integral to the implementation of the Settlement. *Id.* Its modest requested fee is therefore reasonable.

D. The Court Should Approve Plaintiff's Requested Enhancement Payment Because It Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks She Assumed in This Litigation

Courts routinely approve enhancement awards to compensate named plaintiffs for the services they provide and the risks they incur during representative litigation. *See, e.g., Bell v.*

1 *Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named
2 plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
3 \$50,000 incentive payment); *see also* Plaintiff’s Request for Judicial Notice, Exhs. 1-7 (PAGA
4 settlement approval orders awarding incentive payments to representative PAGA plaintiffs
5 ranging from \$5,000 to \$20,000). Here, Plaintiff seeks an Enhancement Payment of \$5,000.00.
6 *See* Settlement, § III.4.b. This request is reasonable given Plaintiff’s efforts in this case and the
7 risks she undertook on behalf of Aggrieved Employees. Gonzalez Decl., ¶¶ 4-6. Plaintiff provided
8 substantial factual information and documents to counsel, assisted in identifying potential
9 witnesses, and participated in numerous discussions with Plaintiff’s counsel regarding the case.
10 *Id.*; *see also* Haines Decl., ¶ 24. Accordingly, Plaintiff’s requested Enhancement Payment is
11 appropriate and justified as part of the Settlement.

12 **V. CONCLUSION**

13 For the reasons stated herein, Plaintiff respectfully requests that this Court grant Plaintiff’s
14 Motion and adopt the [Proposed] Judgment and Order Granting Settlement Approval submitted
15 concurrently herewith.

16
17 Dated: February 24, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

18 By: 

19 Paul K. Haines
20 Sean M. Blakely
21 Attorneys for Plaintiff and
22 Aggrieved Employees
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