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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LUIS OBISPO**

ENRIQUE ALCANTAR RUIZ, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

GREENHEART FARMS, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

Case No.: 21CV-0025

*[Assigned for all purposes to the Hon. Rita
Federman, Dept. 2]*

**PLAINTIFF ENRIQUE ALCANTAR
RUIZ'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: May 26, 2022

Time: 9:00 a.m.

Dept.: 2

Complaint Filed: January 21, 2021

Trial Date: None Set

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

3 PLEASE TAKE NOTICE that on May 26, 2022 at 9:00 a.m., or as soon thereafter as the
4 matter may be heard in Department 2 of the above-entitled Court, located at 1050 Monterey
5 Street, San Luis Obispo, CA 93408, Plaintiff Enrique Alcantar Ruiz (“Plaintiff”), individually
6 and on behalf of the State of California and other Aggrieved Employees, will, and hereby does,
7 move this Court for entry of an Order as follows:

- 8 1. Granting approval, pursuant to California Labor Code § 2699(1), 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 Gross Settlement Amount pursuant to
18 the terms of the Settlement Agreement;
- 19 5. Approving an award of attorneys’ fees to Plaintiff’s counsel of \$110,000.00 and an
20 award of litigation costs to Plaintiff’s counsel of \$16,465.16;
- 21 6. Approving an enhancement payment to Plaintiff in the amount of \$5,000.00; and
- 22 7. Approving up to \$3,995.00 in administration costs to Phoenix Settlement
23 Administrators.

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1 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
2 the declaration of Paul K. Haines and all exhibits attached thereto; the declaration of Sean M.
3 Blakely; the declaration of Jodey Lawrence of Phoenix Settlement Administrators and all
4 exhibits attached thereto; the declaration of Plaintiff Enrique Alcantar Ruiz; the Settlement
5 Agreement; Plaintiff's Request for Judicial Notice and all exhibits attached thereto; all other
6 pleadings and papers on file in this action; and on any further oral or documentary evidence or
7 argument presented at the time of hearing.

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10 Dated: May 2, 2022

Respectfully submitted,

HAINES LAW GROUP, APC

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12 By: 

Paul K. Haines

Sean M. Blakely

Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Enrique Alcantar Ruiz (“Plaintiff”), an “aggrieved employee” under the Private
4 Attorneys’ General Act of 2004 (“PAGA”), respectfully moves this Court for an Order granting
5 approval of the Settlement Agreement (“Settlement”) with Defendant Greenheart Farms, Inc.
6 (“Defendant” or “Greenheart”).¹ This PAGA representative action seeks civil penalties
7 predicated on Greenheart’s alleged failure to pay all minimum and overtime wages owed and
8 alleged failure to provide legally compliant meal and rest periods from January 21, 2020 through
9 the date of the Court Order granting approval of the PAGA Settlement (the “PAGA Period”).
10 The proposed Settlement, under which Greenheart has agreed to pay a non-reversionary Gross
11 Settlement Amount (“GSA”) of \$330,000.00, will resolve Plaintiff’s representative claim filed
12 on behalf of the State of California and all “Aggrieved Employees,” which consists of all current
13 and former non-exempt employees who worked for Greenheart in California at any time during
14 the PAGA Period.

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

21 In deciding whether to grant approval of the Settlement, the primary issue is whether the
22 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement
23 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the
24 product of arm’s-length negotiations; (2) was negotiated by attorneys experienced in wage-and-
25 hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was
26

27

28 ¹ The proposed Settlement Agreement 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 negotiated after undertaking sufficient discovery and investigation to evaluate the relative
2 strength and value of Plaintiff's PAGA claim and Greenheart's defenses thereto; and (4) reflects
3 a reasoned compromise based on the relative strength and value of the PAGA claim, as well as
4 the risks, expenses, complexity and likely duration of further litigation.

5 As noted, the Settlement provides for a GSA of \$330,000.00. After deducting amounts
6 for requested attorneys' fees (\$110,000.00), attorney costs (\$16,465.16), Plaintiff's Enhancement
7 Payment (\$5,000.00), and administration costs (\$3,995.00), the Settlement provides for
8 distribution of a Net Settlement Amount ("NSA") of approximately \$194,539.84 be paid to
9 Aggrieved Employees and the California Labor & Workforce Development Agency ("LWDA").
10 Settlement, §§ III.4-5; *see also* Declaration of Paul K. Haines ("Haines Decl."), ¶ 24 & Exh. 3;
11 Declaration of Jodey Lawrence, ¶ 17 & Exh. B.

12 The NSA shall be distributed 75% (approximately \$145,904.88) to the LWDA, and 25%
13 (approximately \$48,634.96) to Aggrieved Employees, pursuant to the requirements of the PAGA
14 as codified in Lab. Code § 2699(i). *See* Settlement, § III.5. There are approximately 328
15 Aggrieved Employees, resulting in average payments of approximately \$148.28 to each
16 Aggrieved Employee. Haines Decl., ¶ 15.

17 The GSA of \$330,000.00 represents a positive result for the State of California and
18 Aggrieved Employees. Further litigation may have resulted in a smaller recovery or even no
19 recovery at all, based on the defenses asserted by Greenheart and the significant ongoing
20 litigation risks. Moreover, the GSA is greater than other PAGA penalty awards that have been
21 approved as reasonable. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013
22 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-aside of
23 \$5,000, or \$7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No.
24 BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-
25 aside of \$10,000, or \$3.33 per employee). The amounts requested for attorneys' fees and costs,
26 Enhancement Payment, and settlement administration costs are all fair, adequate, and reasonable.
27 Thus, Plaintiff respectfully requests that the Court enter the [Proposed] Judgment and Order
28 submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION

A. Brief Factual Background and Summary of Claims

Founded in 1979, Greenheart is one of leading vegetable, restoration and rose transplant producers in the State of California. Haines Decl., ¶ 11. During the PAGA Period, Greenheart operated three facilities in California and boasts one of the largest nurseries in the country, with a total of 123 acres of indoor and outdoor plant production. *Id.* Plaintiff was employed by Greenheart at its Santa Maria location in the non-exempt position of “Tractor driver” from approximately December 2019 through October 2020. *See* Declaration of Plaintiff Enrique Alcantar Ruiz (“Ruiz Decl.”), ¶ 2.

Plaintiff’s PAGA claim is predicated primarily on Greenheart’s alleged unlawful timekeeping practices, which Plaintiff alleges has consistently and systematically underpaid its non-exempt employees, as well as Greenheart’s unlawful meal and rest period policies/practices. As explained below, Greenheart denies Plaintiff’s allegations and asserted several affirmative defenses to his claims.

B. Relevant Procedural History

On January 21, 2021, Plaintiff filed the instant action, alleging class-wide violations of the California Labor Code for: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; and (7) unfair competition. Haines Decl., ¶ 12. That same day, Plaintiff also submitted his notification letter to Greenheart and to the LWDA regarding Greenheart’s alleged Labor Code violations, as required by Labor Code § 2699.3. *Id.*, Exh. 2.

On March 29, 2021, after exhausting his pre-filing PAGA requirements, Plaintiff filed a First Amended Class and Representative Action Complaint adding a cause of action for civil penalties under the PAGA based on the same underlying Labor Code violations as those alleged in his original complaint. *See* Haines Decl., ¶ 13. Shortly thereafter, Greenheart produced an arbitration agreement with a class action waiver that Plaintiff had signed and, as a result, Plaintiff dismissed his class-wide claims without prejudice, leaving Plaintiffs’ PAGA claim as the sole cause of action. *Id.*

On December 9, 2021, the parties attended a full-day mediation with mediator Henry J. Bongiovi, Esq., in an effort to resolve Plaintiff's PAGA claim. Haines Decl., ¶ 14. In connection with mediation, Greenheart informally produced information and documents pertaining to Plaintiff and other Aggrieved Employees, including, but not limited to, payroll and timekeeping records for Plaintiff and a representative sample of Aggrieved Employees; several data points including the number of Aggrieved Employees and their hire and termination dates (where applicable); and Greenheart's 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.* In connection with mediation, Plaintiff's counsel hired a labor economist with a Ph.D. in economics to conduct a comprehensive analysis and extrapolation of the timekeeping and payroll data, to assist in calculating Greenheart's potential PAGA exposure. *Id.*

During mediation, the parties vigorously debated the legal bases for Plaintiff's claims and Greenheart's 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. Bongiovi, 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 Greenheart in California at any time during the PAGA Period. *See* Settlement, § I.2. The PAGA Period is defined as the time period from January 21, 2020 through the date of the Court Order granting approval of the PAGA Settlement. Settlement, § I.12.

B. Monetary Terms

The Settlement provides for Greenheart's payment of a non-reversionary Gross Settlement Amount ("GSA") of \$330,000.00. *See* Settlement, §§ I.9, III.2. After deducting requested attorneys' fees, litigation costs, Plaintiff's Enhancement Payment, and settlement 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 \$48,634.96 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 GSA (i.e., \$110,000.00) in attorneys' fees, and \$16,465.16 in litigation costs. *See* Settlement, § III.4(a); Haines Decl., ¶¶ 22-24 & Exh. 3. As discussed in detail below, a fee award of one-third of the GSA is fair, adequate, and reasonable as a percentage of the fund and is in line with fee awards in other PAGA settlements.

The parties have agreed to engage Phoenix Settlement Administrators ("Phoenix") as the third-party settlement administrator. *See* Settlement, § IV.1. Phoenix will update Aggrieved Employees' addresses using the National Change of Address database, calculate and distribute Individual PAGA Payments, mail payments to all Aggrieved Employees together with the Explanatory Letter, and perform other duties that are integral to the effectuation of the Settlement. *Id.*, §§ IV.2-6. Plaintiff requests that the Court approve up to \$3,995.00 in administration costs to Phoenix, which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.* at § III.4(c); *see also* Declaration of Jodey Lawrence ("Lawrence Decl.") and attached exhibits.

Finally, Plaintiff requests an Enhancement Payment of \$5,000.00, in recognition of Plaintiff's contributions to this case and his efforts in bringing this case to successful resolution. *See* Settlement, § III.4(b); Ruiz Decl., ¶¶ 3-5.

2. Payment to LWDA and Aggrieved Employees

The NSA will be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Labor Code § 2699(i). Based on the above requested distributions, the NSA is estimated to be \$194,539.84, with \$145,904.88 paid to the LWDA and \$48,634.96 distributed to Aggrieved Employees. Haines Decl., ¶ 15. As noted, there are approximately 328 total Aggrieved Employees. *Id.* Thus, it is anticipated that overall, Aggrieved Employees will receive average Settlement payments of approximately \$148.28. *Id.*

///

1 **3. *Funding of the Settlement***

2 Greenheart will deposit the Gross Settlement Amount with Phoenix, the Settlement
3 Administrator, within forty-five (45) calendar days of Court approval. *See Settlement*. § III.2.
4 Within twenty-one (21) calendar days after the Settlement has been fully funded and after
5 receiving approval from counsel of the payment calculations, Phoenix will mail the Individual
6 PAGA Payments and Explanatory Letter in English and Spanish to Aggrieved Employees via
7 First-Class U.S. Mail. *See Settlement*, § IV.3.

8 Funds from any settlement checks remaining uncashed after 180 days shall escheat to the
9 California State Controller’s Office for deposit in the Unclaimed Property Fund, in the name of
10 the Aggrieved Employee. *See Settlement*, § IV.4.

11 **IV. LEGAL ARGUMENT**

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

13 The settlement of a PAGA claim requires court approval pursuant to the PAGA statute,
14 which states that the “court shall review and approve any settlement of any civil action filed
15 pursuant to this part.” Labor Code § 2699(l). Of course, “[s]ettlement is a compromise, which
16 balances the possible recovery against the risks inherent in litigating further.” *See In re TD*
17 *Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13, 2011). “[T]he
18 very essence of a settlement is...‘a yielding of absolutes and an abandoning of highest hopes,’”
19 as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
20 litigation that induce consensual settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d
21 615, 624 (9th Cir. 1982). As such, “the settlement or fairness hearing is not to be turned into a
22 trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure
23 of what might have been achieved by the negotiators.” *Id.*

24 Although the PAGA statute does not set forth the criteria by which a PAGA settlement is
25 to be judged, it is presumed that a reviewing court may utilize some of the factors for review of
26 a class action settlement. However, “a PAGA claim asserted on a non-class representative
27 basis...is not considered a class action but a law enforcement action, and therefore does not have
28 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 are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, No. C-08-2073-MHP, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court confirmed, “PAGA claims are ‘representative’ actions in the sense that they are brought on the state’s behalf. The employee... ‘represents the same legal right and interest as’ those agencies — ‘namely, recovery of civil penalties that otherwise would have been assessed and collected by the [LWDA].’” *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 380 (2014)).

Moreover, while “[a PAGA] action is ... designed to protect the public and penalize the employer for past illegal conduct” (*Mendez*, 2010 WL 2650571 at *4), a PAGA settlement – like any settlement – involves a compromise that stops short of rendering findings of liability and damages. “Unlike 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.” *Ochoa-Hernandez*, 2010 WL 1340777 at *4.

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim,² “[u]nnamed employees need not be given notice of the PAGA claim, nor do they

² “The [PAGA] does not create property rights or any other substantive rights” as “[i]t is simply 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).

1 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
2 1340777 at *5; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482 (2020)
3 (recognizing that “there is no mechanism for opting out of the judgment entered on the PAGA
4 claim.”). This renders the approval process of a PAGA settlement distinct from a class action
5 settlement, as the Court need not employ the “two-step approval process” required for class
6 action settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

7 Finally, unlike a class action settlement under Fed. R. Civ. Proc. Rule 23(e) or Cal. Rule
8 of Court 3.769, the scope of release in a PAGA settlement is limited to *civil penalties*. While
9 “judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on
10 government agencies and any aggrieved employee not a party to the proceeding...the non-party
11 employees, because they were not given notice of the action or afforded any opportunity to be
12 heard, would not be bound by the judgment as to remedies other than civil penalties.” *Arias v.*
13 *Sup. Ct.*, 46 Cal. 4th 969, 986-87 (2009).

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

15 In deciding whether to approve a proposed settlement, a trial court has broad powers to
16 determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup.*
17 *Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to
18 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*,
19 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court
20 to consider include, but are not limited to:

21 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely
22 duration of further litigation, the risk of maintaining class action status
23 through trial, the amount offered in settlement, the extent of discovery
24 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.

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

1 Because settlements inherently involve compromise, even a settlement providing for
2 substantially narrower relief than might be obtained if the suit were successfully litigated can be
3 reasonable because “the public interest may indeed be served by a voluntary settlement in which
4 each side gives ground in the interest of avoiding litigation.” *Wershba v. Apple Computer, Inc.*,
5 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*,
6 455 F.2d 101, 109 (7th Cir. 1972)). Courts also review the discovery process and information
7 received through it to aid them in assessing whether the parties sufficiently developed the claims
8 and their supporting factual bases before reaching settlement. *Kullar*, 168 Cal.App.4th at 129-
9 31. Information is sufficient where it allows the parties and the court to form “an understanding
10 of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Clark*
11 *v. Am. Residential Serv. LLC*, 175 Cal.App.4th 785, 801 (2009). This requirement exists so that
12 the parties can provide the court with “a meaningful and substantiated explanation of the manner
13 in which the factual and legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132.

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

15 Although he steadfastly maintains his claims are meritorious, Plaintiff acknowledges his
16 position included real risks and uncertainty. Haines Decl., ¶ 16. Greenheart asserted several
17 affirmative defenses to Plaintiff’s claims. For example, with respect to Plaintiff’s unpaid wage
18 claims, Plaintiff alleges that from the beginning of the PAGA Period through August 28, 2020,
19 Greenheart did not accurately record the hours worked by its non-exempt employees, and that
20 during this time period, Greenheart’s foremen maintained handwritten records of employees’
21 hours worked and failed to accurately record all time actually worked by employees. *Id.*
22 However, Greenheart contends it utilized a compliant timekeeping system that compensated
23 employees for all hours worked. *Id.* Greenheart further argues that starting on or around August
24 28, 2020, Greenheart required its employees to clock in/out for their workday by entering a code
25 into a tablet, which recorded employees’ time worked to the minute. *Id.* Greenheart further argues
26 that just because an employee is clocked in does not mean they are performing compensable
27 work. *Id.* Greenheart also contends this claim was not manageable on a representative basis, since
28 individualized inquiries would be necessary as to whether employees were in fact underpaid or

overpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id.*

With respect to Plaintiff's meal period claims, Greenheart contends that it has always maintained compliant written meal period policies throughout the PAGA Period, and that employees are free to take their meal periods whenever they choose as Greenheart does not police employee meal periods. Haines Decl., ¶ 17. Greenheart also maintains that Plaintiff's meal period claim would not be manageable on a representative basis, as individual inquiries would be required to establish which Aggrieved Employees experienced non-compliant meal periods, how many non-compliant meal periods each Aggrieved Employee experienced, and why a particular Aggrieved Employee had a non-compliant meal period during a particular shift. *Id.*

With respect to Plaintiff's rest period claim, Greenheart contends its written rest period policies are legally compliant, and that it has always authorized and permitted employees at least 10-minute rest periods for each four (4) hours worked, or major fraction thereof. Haines Decl., ¶ 18. Any failure to take rest periods was a result of employee choice, Greenheart argues, rather than any Greenheart policy or practice. *Id.* Greenheart further argues that Plaintiff's rest period claim is not manageable on a representative basis, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id.* These manageability concerns are especially present with respect to rest periods, Greenheart argues, since rest periods are not recorded. *Id.*

As for Plaintiff's claims that Greenheart violated its wage statement and final payment obligations in violation of Labor Code §§ 226 and 203, respectively, Greenheart asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding a finding of a failure to pay all final wages that would otherwise result in waiting time penalties. Haines Decl., ¶ 19; *see also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" precluded imposition of waiting time penalties). Greenheart further contends Plaintiff's meal and rest period claims cannot support a claim for violations of Labor

Code §§ 226 or 203, as Courts of Appeal recently held in *Naranjo v. Spectrum Security Servs., Inc.*, 40 Cal.App.5th 444, 473-75 (2019) (review granted Jan. 2, 2020) and *Betancourt v. OS Rest. Svcs., LLC*, 49 Cal.App.5th 240, 248 (2020) (review granted Aug. 19, 2020).

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

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

Although the parties had engaged in significant informal discovery, the parties still had more formal discovery, including written and deposition discovery, to conduct if the case did not settle. Moreover, potential additional substantive motion work and trial preparation remained for the parties, as well as potential appeals. As a result, the parties would likely incur considerably more attorneys’ fees and costs through trial and possible appeal. The Settlement avoids those risks and the accompanying expense.

c. Amount Offered in Settlement Given Realistic Value of Claims

The proposed Settlement provides a fair and reasonable monetary recovery for the State of California and Aggrieved Employees in the face of hotly disputed claims, when compared with the potential realistic exposure. Based on data provided by Greenheart, there were approximately 13,296 pay periods worked by the Aggrieved Employees during the PAGA

Period. Haines Decl., ¶ 21; Settlement, § III.3. Assuming an “initial” violation rate of \$100 per pay period under Labor Code § 2699(f) (*see Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (holding “initial” violation rate applies to PAGA penalties until employer is notified by Labor Commissioner or a court that it violated Labor Code)), and assuming that Plaintiff could prove a violation in each and every pay period, Plaintiff estimated a **maximum** potential PAGA exposure of \$1,329,600. Haines Decl., ¶ 21. However, because the Court maintains discretion to reduce these penalties, and in light of Greenheart’s arguments and defenses described above, Plaintiff discounted that figure by 40% for a risk of losing on the merits, and by an additional 55% for risk of the Court reducing penalties, to arrive at a realistic exposure of \$358,992. *Id.* The proposed \$330,000 GSA thus represents approximately 91.9% of Plaintiff’s reasonably forecasted total recovery, while avoiding the risks of proceeding through trial. *Id.* “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.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). Plaintiff acknowledges there was substantial uncertainty and risk as to his PAGA claim. Approval of the Settlement is appropriate, as the Settlement will provide tangible monetary relief to Aggrieved Employees and the State of California while avoiding the risks and costs of continued litigation and trial.

d. Discovery Completed and the Status of Proceedings

As noted, the parties engaged in substantial informal discovery to evaluate the PAGA claim. Haines Decl., ¶ 14. Greenheart provided Plaintiff with, *inter alia*, timekeeping and payroll records for a sampling of Aggrieved Employees, additional relevant data points and information and its relevant written policies. *Id.* Only after engaging in mediation and in adversarial discussions about the likelihood of prevailing on the merits, did the parties reach the proposed Settlement. Thus, this factor supports settlement approval. *Id.*

e. The Experience and Views of Counsel

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec.*

1 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel with
2 decades of combined experience, who believe this Settlement to be fair and adequate for all
3 involved. Haines Decl., ¶¶ 3-9; Declaration of Sean M. Blakely (“Blakely Decl.”), ¶¶ 2-6. This
4 factor strongly supports settlement approval. *Kullar*, 168 Cal.App.4th at 130 (“The court
5 undoubtedly should give considerable weight to the competency and integrity of counsel and the
6 involvement of a neutral mediator in assuring itself that a settlement agreement represents an
7 arm’s length transaction entered without self-dealing or other potential misconduct.”).

8 **B. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of**
9 **the Settlement Fund as Confirmed by a Lodestar Cross-Check**

10 As the prevailing party in settlement, Plaintiff is entitled to recover attorneys’ fees and
11 costs for his claims. *See* Labor Code § 2699(g) (providing for attorney fees and costs in PAGA
12 actions); Cal. Code Civ. Proc. § 1021.5. A fee award is justified where the legal action has
13 produced its benefits by way of settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91
14 (1987); *Westside Comty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983);
15 *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number of persons are entitled in common
16 to a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation
17 or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”);
18 *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained
19 for the benefit of all parties, the trial court acts within its equitable power to prevent the other
20 parties’ unjust enrichment); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th
21 Cir. 1993 (the percentage of the fund method for calculating attorneys’ fees more accurately
22 reflects the results achieved for the putative class than the lodestar method and “establishes
23 reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it
24 encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Sec. Litig.*,
25 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in
26 common fund cases because it allows courts to award fees from the fund ‘in a manner that
27 rewards counsel for success and penalizes it for failure.”).

28 Fee awards of one-third of the settlement fund are routinely awarded in California courts

1 in class and representative PAGA actions. The California Supreme Court recently confirmed its
2 approval of the use of the “percentage of fund” method. *See Laffitte v. Robert Half Int’l, Inc.*, 1
3 Cal.5th 480, 506 (2016) (“the percentage of fund method survives in California class action
4 cases...”.) Specifically, the *Laffitte* Court held:

5 The recognized advantages of the percentage method—including relative ease
6 of calculation, alignment of incentives between counsel and the class, a better
7 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.

8 *Id.*, at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-
9 third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also*
10 *Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)
11 (approving attorneys’ fees of one-third of settlement fund in PAGA settlement); *Clavel v. Lupe’s*
12 *Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25,
13 2016) (same).

14 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards
15 with tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s
16 lodestar (hours worked multiplied by hourly rate) and determines whether the “lodestar
17 multiplier” needed to bring the lodestar on par with the percentage of recovery is reasonable.
18 *Laffitte* at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.*
19 at 506 (“[w]e hold further that trial courts have discretion to conduct a lodestar cross-check on a
20 percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check
21 and use other means to evaluate the reasonableness of a requested percentage fee.”).

22 Here, Class Counsel’s fee request of \$110,000.00 (one-third of the Gross Settlement
23 Amount) is fair and reasonable based on a percentage of the recovery confirmed with a lodestar
24 cross-check. First, “regardless whether the percentage method or the lodestar method is used, fee
25 awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162
26 Cal.App.4th 43, 66, fn. 11 (2008). This is also consistent with Plaintiff’s counsel’s experience in
27 similar wage and hour and PAGA matters. *See Haines Decl.*, ¶ 22. Thus, the percentage sought
28 by Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

1 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
2 multiplying the number of hours reasonably expended by each attorney or legal staff member by
3 their reasonable hourly rates. *See, e.g., Serrano*, 20 Cal.3d at 48. The court then enhances this
4 lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty
5 of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*,
6 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001)
7 (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial
8 discretion to increase or decrease a lodestar calculation”).

9 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
10 *Chavez*, *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of*
11 *Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34);
12 *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241,251
13 (1977) (approving multiplier of ~2.04). In actions such as this one, where the value of the benefit
14 conferred to the class “can be monetized with a reasonable degree of certainty,” a court may
15 “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee
16 awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in
17 comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009). In doing so,
18 “the court determines, retrospectively, whether the litigation involved a contingent risk or
19 required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to
20 approximate the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at
21 503-05.

22 In this case, Plaintiff’s counsel has a lodestar of approximately \$115,910.00 without the
23 use of any multiplier, resulting in a *negative* multiplier of approximately 1.05 compared to the
24 \$110,000.00 fee request. Haines Decl., ¶¶ 25-26. The billing rates used are reasonable in view of
25 the evidence submitted herewith. *Id.*, Exh. 4 (2021-2022 Laffey Matrix).

26 The requested fee award is also justified because Plaintiff’s counsel achieved a significant
27 monetary recovery in an uncertain and risky case, while bearing the substantial burden of
28 representation on a contingency basis, and the fees requested are in line with the market rate.

1 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional
2 results in a contingency case, significant risk and the absence of supporting precedents, are proper
3 considerations in awarding attorneys' fees). Here, Plaintiff's counsel expended significant time
4 and resources in litigating this case, which resulted in an excellent result for Plaintiff, the State of
5 California, and Aggrieved Employees in the face of significant defenses. Counsel also bore the
6 contingency risk of this litigation for the benefit of the Aggrieved Employees, as well as the State
7 of California (which elected not to take the case after receiving Plaintiff's PAGA notice).

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

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

28 Plaintiff's counsel have over two decades of combined wage-and-hour class and

representative action experience and have been certified as class counsel in numerous wage and hour class actions. Haines Decl., ¶¶ 3-9; Blakely Decl., ¶¶ 2-6. Because it is reasonable to compensate counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable. Other factors show the requested fee is reasonable. This case involved nuanced legal issues, including the legality of Greenheart’s timekeeping practices and obligations to “provide” meal and rest periods, as well as the availability and amount of PAGA civil penalties for the alleged Labor Code violations. Haines Decl., ¶ 22. Greenheart 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 \$16,465.16 is also fair and reasonable. All of Plaintiff’s litigation costs are reasonably incurred. *See* Haines Decl., ¶ 24 & 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 up to \$3,995.00 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.

1 *Id.* Its modest requested fee is therefore reasonable.

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

5 Courts routinely approve enhancement awards to compensate named plaintiffs for the
6 services they provide and the risks they incur during representative litigation. *See, e.g., Bell v.*
7 *Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named
8 plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
9 \$50,000 incentive payment); *see also* Plaintiff's Request for Judicial Notice, Exhs. 1-7 (PAGA
10 settlement approval orders awarding incentive payments to representative PAGA plaintiffs
11 ranging from \$5,000 to \$20,000). Here, Plaintiff seeks an Enhancement Payment of \$5,000.00.
12 *See* Settlement, § III.4.b. This request is reasonable given Plaintiff's efforts in this case and the
13 risks he undertook on behalf of Aggrieved Employees. Ruiz Decl., ¶¶ 3-5. Plaintiff provided
14 substantial factual information and documents to counsel, assisted in identifying potential
15 witnesses, and participated in numerous discussions with Plaintiff's counsel regarding the case.
16 *Id.*; *see also* Haines Decl., ¶ 27. Accordingly, Plaintiff's requested Enhancement Payment is
17 appropriate and justified as part of the Settlement.

18 **V. CONCLUSION**

19 For the reasons stated herein, Plaintiff respectfully requests that this Court grant
20 Plaintiff's Motion and adopt the [Proposed] Judgment and Order Granting Settlement Approval
21 submitted concurrently herewith.

22
23 Dated: May 2, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

24 By: 
25 Paul K. Haines
26 Sean M. Blakely
27 Attorneys for Plaintiff
28