

ERIC A. GROVER, ESQ. (SBN 136080)
eagrover@kellergrover.com
ROBERT W. SPENCER, ESQ. (SBN 238491)
rspencer@kellergrover.com
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861

ROBERT DREXLER, ESQ. (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
MOLLY DeSARIO, ESQ. (SBN 230763)
Molly.DeSario@CapstoneLawyers.com
JONATHAN LEE, ESQ. (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiffs
MARIA MILAR & MARIA RODRIGUEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MARIA MILAR and MARIA RODRIGUEZ, as
“aggrieved employees” and on behalf of
“aggrieved employees” under the California
Labor Code Private Attorneys General Act,

Plaintiff,

v.

SOCAL FOOD GROUP, LP d/b/a DEL TACO;
and DOES 1 through 10, inclusive,

Defendants.

Case No: 37-2021-00018665-CU-OE-CTL

REPRESENTATIVE ACTION

**PLAINTIFFS’ NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Assigned to the Honorable Kenneth Medel

Date: April 14, 2023

Time: 9:30 a.m.

Dept: C-66

Complaint Filed: April 27, 2021

PLEASE TAKE NOTICE THAT on April 14, 2023 at 9:30 a.m., or as soon thereafter as the matter may be heard, in Department C-66 of the above-entitled Court, located at Hall of Justice, 330 West Broadway, Fourth Floor, San Diego, California 92101, Plaintiffs Maria Milar and Maria Rodriguez will and hereby do move unopposed for an Order: (1) granting approval, pursuant to California Labor Code § 2699(l)(2), of the proposed settlement of claims brought pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 *et seq.*) against SOCAL FOOD GROUP, LP, d/b/a Del Taco, set forth in the parties' "Settlement Agreement and Release of Claims" (the "Settlement Agreement"); (2) appointing Phoenix Settlement Administrators as the Settlement Administrator; and (3) directing disbursement of the Settlement Sum pursuant to the terms of the Settlement Agreement.

This Motion will be based on this Notice, the Memorandum of Points and Authorities set forth herein, the Settlement Agreement and Release of Claims, the Declarations of Eric A. Grover, Robert Spencer, and Raul Perez and such evidence or oral argument as may be presented at the hearing, and on the complete records and file herein.

Respectfully submitted,

Dated: March 17, 2023

KELLER GROVER LLP

By: _____



ERIC A. GROVER

ROBERT W. SPENCER
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By this unopposed motion, Maria Milar and Maria Rodriguez (“Plaintiffs”), who are alleged aggrieved employees’ under the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”), seek the Court’s approval of the proposed settlement of this PAGA action against SOCAL FOOD GROUP, LP, d/b/a Del Taco (“Defendant”).¹

Plaintiffs’ PAGA action alleged that Defendant violated a number of California Labor Code provisions, including those requiring minimum wage and overtime pay, provision of meal and rest periods, issuance of accurate wage statements and reimbursement of business expenses.² Plaintiffs and Defendant (collectively, the “Parties”) have reached a proposed settlement that will dispose of the PAGA claims asserted on behalf of Plaintiffs and all other current and former employees of Defendant who worked for Defendant in California during the PAGA Period³ (the “Aggrieved Employees”).⁴

The proposed settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage-and-hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on the relative strength and value of the PAGA claims, as well as the risks, expense, complexity, and likely duration of further litigation.

The settlement achieves a substantial benefit for the State of California, Labor and Workforce Development Agency (“LWDA”) and the approximately 672 Aggrieved Employees.⁵

¹ See Declaration of Eric A. Grover submitted in support of Plaintiffs’ Motion for Approval of PAGA Settlement and Motion for Award of Attorneys’ Fees and Costs, Plaintiffs’ Service Awards and Settlement Administration Costs (“Grover Decl.”), at ¶ 5, Ex. 3 (the parties’ Settlement Agreement and Release of Claims (the “Settlement Agreement”)). All “Ex.” references are to Grover Declaration exhibits unless stated otherwise.

² Ex. 3 at § 2(c): Ex. 1 (the operative Complaint).

³ See Ex. 3 at §§ 1(c), 1(u), 3(b).

⁴ Ex. 3 at §§ 1(c), 1(t), 1(x), 1(y), 1(z), 3.

⁵ Ex. 3 at § 3(b); see Grover Decl. at ¶¶ 14-23; Declaration of Raul Perez submitted in support of

(Cont’d)

1 The Settlement Agreement allocates approximately \$179,000 to the settlement of the PAGA
2 claims.⁶ According to statute, from the \$179,000, 75% (\$134,250) goes to the LWDA and 25%
3 (\$44,750) is to be paid to the Aggrieved Employees.⁷ The \$44,750 to be distributed to the
4 Aggrieved Employees will be distributed according to the formula set forth in the Settlement
5 Agreement.⁸ On average, each Aggrieved Employees will receive \$66.59.⁹

6 This is a significant recovery, not only because further litigation may have resulted in a
7 net-zero recovery based on Defendant's asserted defenses, but because the amount that Plaintiffs
8 have secured is significant in light of PAGA's limitations.¹⁰ In this regard, Defendant has raised
9 what it considers to be substantial defenses to Plaintiffs' claims on the merits and has argued that,
10 even if Plaintiffs succeed, it will be able to convince the court to reduce the amount of PAGA
11 penalties awarded.¹¹

12 For these reasons, as set forth more fully herein, Plaintiffs respectfully request that this
13 Court enter an order approving the PAGA settlement. In a separate motion being filed today,
14 Plaintiffs seek an order awarding attorneys' fees and costs, the named Plaintiffs' service
15 payments, approving of Phoenix Settlement Administrators as the settlement administrator and
16 awarding payment of the settlement administration fees.

17 **II. STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

18 **A. The Parties.**

19 Defendant is a California limited partnership that operates numerous Del Taco restaurants
20

21 _____
22 Plaintiffs' Motion for Approval of PAGA Settlement and Motion for Award of Attorneys' Fees
23 and Costs, Plaintiffs' Service Awards and Settlement Administration Costs ("Perez Decl.") at ¶ 5.

24 ⁶ Ex. 3 at § 7, *see also*, § 1(q). Grover Decl. at ¶ 15. The estimated \$179,000 Net Settlement
25 Amount is the total Settlement Sum minus the amounts allocated for Plaintiffs' Counsel's fees and
26 costs, settlement administration costs and named Plaintiffs' service awards. Ex. 3 at §§ 1(q), 1(z),
27 3(a), 7.

28 ⁷ Lab. Code § 2699(i); Ex. 3 at §§ 1(q), 1(z), 3(a), 4, 7.

⁸ Ex. 3 at § 7(b).

⁹ Grover Decl. at ¶ 18 (\$44,750/672 Aggrieved Employees = \$66.59).

¹⁰ Grover Decl. at ¶¶ 14-23.

¹¹ Grover Decl. at ¶¶ 19, 23.

1 throughout California.¹²

2 Plaintiffs Milar and Rodriguez were employed by Defendant during the PAGA Period as
3 non-exempt, hourly Shift Managers in California.¹³

4 The Aggrieved Employees are all current and former employees of Defendant who
5 worked for Defendant in California during the PAGA Period.¹⁴ Based on Defendant's records,
6 there are approximately 672 Aggrieved Employees and no more than a total of 13,200 pay
7 periods.¹⁵

8 **B. Plaintiffs' exhaustion of administrative remedies and filing of the Complaint.**

9 On February 19, 2021, pursuant to § 2699.3's exhaustion requirements, Plaintiffs gave
10 written notice of their PAGA claims to the LWDA and Defendant by certified mail.¹⁶

11 On April 27, 2021 – after the LWDA declined to take action within the statutory time
12 period – Plaintiffs filed the operative Complaint on behalf of themselves and all other aggrieved
13 employees asserting multiple PAGA-based claims, including violations of Labor Code §§ 201,
14 202, 203, 204, 218.6, 226, 226(a), (e), 226.3, 226.7, 510, 512, 512(a) 515(a), 558, 1194, 1194.2,
15 1197, 1197.1, 1198, 1199, 2802, and related sections of Wage Order 5. The Complaint seeks
16 Labor Code § 2699(f) penalties and attorneys' fees and costs as allowed by Labor Code §
17 2699(g)(1) and C.C.P. § 1021.5.¹⁷

18 Defendant has denied all of the allegations in their entirety. To date, no court has made
19 any findings that Defendant engaged in any wrongdoing or in any wrongful conduct or otherwise
20 acted improperly or in violation of any state law, rule or regulation, with respect to the issues
21 presented in the litigation.¹⁸

22
23 _____
24 ¹² Ex. 2 (operative Complaint) at ¶ 10.

25 ¹³ Ex. 2 at ¶¶ 4, 5.

26 ¹⁴ Ex. 3 at § 1(c), *see also*, §§1(u), 3(b).

27 ¹⁵ Ex. 3 at §§ 1(c), 3(b).

28 ¹⁶ Ex. 1 (Plaintiffs' PAGA exhaustion letter); Ex. 3 at §§ 1(o), 2(a); Grover Decl. at ¶ 6.

¹⁷ Ex. 2 (Complaint); Ex. 3 at § 2(c); Grover Decl. at ¶ 7; Perez Decl. at ¶¶ 3-4.

¹⁸ Ex. 3 at § 2(d); Grover Decl. at ¶ 8.

1 After Plaintiffs served formal discovery, the Parties discussed a potential early settlement
2 and agreed to proceed to mediation after an informal exchange of relevant information.¹⁹ As part
3 of the mediation process, Defendant agreed to produce relevant information and documents
4 regarding its pay, meal and rest break, wage statement and expense reimbursement policies and
5 practices and other topics related to this action.²⁰ The information and documents produced
6 included Plaintiffs' employee files and policy documents relating to the employment of Plaintiffs
7 and other Aggrieved Employees.²¹

8 From that information, Plaintiffs were able to assess the size of the aggrieved employee
9 group, the number of pay periods at issue, and the strength of their claims.²² The information
10 provided showed that there were approximately 672 Aggrieved Employees who worked
11 approximately 13,200 pay periods during the relevant period.²³

12 Armed with sufficient information and data, the Parties were able to engage in informed
13 negotiations of possible settlement alternatives and were able to reach a resolution of their
14 dispute. On October 5, 2022 the Parties participated in a formal mediation session with mediator
15 Eve Wagner, Esq. Through experienced counsel and with the information obtained, Plaintiffs
16 were able to determine the potential value and evaluate the strength of the PAGA claims when
17 negotiating the settlement. The arm's-length, mediated negotiations resulted in the Parties
18 reaching an agreement to settle the entire action, subject to the Court's approval.²⁴

19 Following the mediation, the Parties engaged in extensive negotiations over the terms of
20 the Settlement Agreement. With additional assistance from the mediator, the Parties executed the
21 detailed, formalized Settlement Agreement, which sets forth all terms of the Parties' settlement.²⁵

22
23
24 ¹⁹ Grover Decl. at ¶ 10.

25 ²⁰ Grover Decl. at ¶ 10; Perez Decl. at ¶ 5; Ex. 3 at § 2(e).

26 ²¹ Grover Decl. at ¶ 10.

27 ²² Grover Decl. at ¶ 11.

28 ²³ Grover Decl. at ¶¶ 11; Ex. 3 at § 1(c), 3(b).

²⁴ Grover Decl. at ¶ 12; Perez Decl. at ¶ 6.

²⁵ Ex. 3; Grover Decl. at ¶ 13.

C. The Proposed Settlement.

1. The Aggrieved Employees and PAGA Period.

The Settlement Agreement defines the Aggrieved Employees as “all current and former employees of Defendant who worked for Defendant in California during the PAGA Period.”²⁶ The PAGA Period is defined as any time starting on and including February 19, 2020 up to and including October 5, 2022, or as provided in Section 3(b) of the Settlement Agreement.²⁷ Section 3(b) is an Escalator Clause providing that, if the actual number of pay periods exceeds the currently estimated 13,200 pay periods by more than 10%, Defendant may either increase the Net Settlement Amount proportionately for any excess increase in the total number of pay periods or modify the applicable PAGA Period to a date prior to October 5, 2022 to avoid incurring the pro rata increase.²⁸

2. The benefits to the LWDA and Aggrieved Employees.

The Settlement Agreement provides that, to settle this matter, Defendant will pay a gross amount of \$330,000 (the “Settlement Sum”). The Settlement Sum shall be all inclusive, encompassing (i) all payments to the LWDA and the Aggrieved Employees, (ii) any and all costs of third-party administration of the settlement, (iii) Plaintiffs’ Counsel’s attorneys’ fees and costs of suit, and (iv) a modest service payment to the named Plaintiffs.²⁹ The estimated Net Settlement Amount of \$179,000 available for the payment of PAGA penalties is calculated by deducting \$110,000 for Plaintiffs’ Counsel’s fees, \$20,000 in estimated actual costs, \$14,000 for service award payments to Plaintiffs, and administration costs of up to \$7,000 from the \$330,000 Settlement Sum.³⁰

As required by Labor Code § 2699(i), the Net Settlement Amount will be paid 75% (\$134,250) to the LWDA and 25% (\$44,750) will be paid to the Aggrieved Employees.³¹

²⁶ Ex. 3 at § 1(c).

²⁷ Ex. 3 at § 1(u).

²⁸ Ex. 3 at § 3(b).

²⁹ Ex 3 at §§ 1(q), 1(z), and 3(a).

³⁰ Ex. 3 at §§ 1(q), 1(z), 3(a), 7; *see also*, Grover Decl. at ¶ 15.

³¹ Ex. 3 at §§ 1(k), 1(n), 1(p), 3(a)(v), 3(a)(vi).

Aggrieved Employees do not need to submit a claim to receive a settlement payment.³²

The \$44,750 to be divided amongst the Aggrieved Employees will be distributed according to the formula set forth in the Settlement Agreement, which is described here.³³ Plaintiffs and each Aggrieved Employee shall receive a portion of the Aggrieved Employee Net Settlement Amount on a pro-rata basis by multiplying the Aggrieved Employee Net Settlement Amount by the ratio of (i) the number of pay periods worked by each individual Aggrieved Employee during the PAGA Period to (ii) the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. No benefit, including but not limited to 401(k) contributions, shall increase or accrue as a result of any payment made as a result of this settlement.³⁴ On average, each Aggrieved Employee will receive \$66.59.³⁵

The Settlement Agreement provides that the Settlement Administrator will mail the Aggrieved Employees their individual Aggrieved Employee Settlement Share checks.³⁶ The Settlement Administrator will include the Notice of PAGA Settlement with the Aggrieved Employee Settlement Share check, notifying Aggrieved Employees about the settlement.³⁷

3. The releases.

a. The limited release applicable to Aggrieved Employees.

The Settlement Agreement provides that Aggrieved Employees will release only certain PAGA claims for a limited time period.³⁸ In exchange for the above-described settlement consideration, Defendant shall be entitled to the following release from the named Plaintiffs and the Aggrieved Employees on behalf of the LWDA.

“Upon entry of the Approval Order by the Court approving payment of the PAGA penalties as described in this Agreement, Plaintiffs, individually and as

³² Ex. 3 at §§ 1(k), 1(l) 7(b).

³³ Ex. 3 at §§ 1(k), 1(l), 7(b).

³⁴ Ex. 3 at § 7(b).

³⁵ Grover Decl. at ¶ 18(\$44,750/672 Aggrieved Employees = \$66.59).

³⁶ Ex. 3 at §§ 1(l), 1(r), 5(b).

³⁷ Ex. 3 at §§ 1(l), 1(r), 5(b) and exhibit A (the Notice of PAGA Settlement that will accompany the Aggrieved Employees Settlement Share checks).

³⁸ Ex. 3 at § 12.

representatives acting as proxies or agents of the LWDA, a state of California Executive Branch Agency, and all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from any and all claims, demands, rights, liabilities, and/or causes of action for penalties under PAGA that accrued during the PAGA Period and that were asserted in Plaintiffs' LWDA Notice or the Action as well as those that could have been alleged in the Action based on the facts contained therein, including, without limitation, Labor Code Sections 201, 202, 203, 204, 218.6, 226, 226(a), (e), 226.3, 226.7, 510, 512, 512(a) 515(a), 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, *et seq.*, 2699, 2699(f), (g)(1), 2699.3, 2802, and the applicable Industrial Welfare Commission Orders including, but not limited to, Order No. 5-2001. Plaintiffs and the Aggrieved Employees shall be deemed to have acknowledged and agreed that their claims in this Action are disputed, and that the payments set forth in this Agreement constitute payment of all sums allegedly due to Plaintiffs, the LWDA, and the Aggrieved Employees arising from the PAGA Claims and constitute settlement of all PAGA Claims.

Nothing in this Agreement is intended to or shall preclude Plaintiffs and Aggrieved Employees from filing a complaint and/or charge with any appropriate federal, state, or local government agency and/or cooperating with said agency in its investigation. Plaintiffs and Aggrieved Employees retain the right to file a charge with, and to participate in an investigation conducted by, any appropriate government agency charged with enforcement of any law and the right to engage in concerted activity granted by Section 7 of the National Labor Relations Act. Plaintiffs and Aggrieved Employees, however, shall not be entitled to receive any civil penalties for the PAGA Claims in connection with any complaint or charge brought against any Released Party for claims arising on or before the date Plaintiffs execute this Agreement, without regard as to who brought said complaint or charge.”³⁹

b. The named Plaintiffs' general release.

Under the Settlement Agreement, the named Plaintiffs also will provide a general release of their individual claims against the Released Parties.⁴⁰ The general release applies only to Plaintiffs Milar and Rodriguez and does not apply to the other Aggrieved Employees.⁴¹

4. Residual funds from uncashed checks.

Under the terms of the Settlement Agreement, the value of checks uncashed more than 180 calendar days after issuance shall be remitted to the California State Controller for deposit in

³⁹ Ex. 3 at § 12; *see also*, §§ 1(x), 1(y), 1(z).

⁴⁰ Ex. 3 at § 12; *see also*, §§ 1(x), 1(y), 1(z).

⁴¹ Ex. 3 at § 12.

the Unclaimed Property Fund in the name of the Aggrieved Employee to whom the uncashed Individual Settlement Payment was drafted.⁴²

5. The Settlement Agreement selects Phoenix Settlement Administrators as the settlement administrator.

The Settlement Agreement provides that Phoenix Settlement Administrators will administer the settlement.⁴³

6. Settlement administration, attorneys' fees and costs, and the Plaintiffs' service awards/general release payments.

The Settlement Agreement also provides for the payment of settlement administration fees, award of attorneys' fees and costs, and service awards/general release payments for the Plaintiffs.⁴⁴ Those terms are discussed in the memorandum accompanying the Motion for Award of Attorneys' Fees and Costs, Plaintiffs' Service Awards/General Release Payments and Settlement Administration Costs that is being filed concurrently with this motion.

7. Notification to the LWDA of the Settlement.

As detailed in the Robert Spencer declaration, filed concurrently with the submission of the Settlement Agreement to the Court, Plaintiffs are submitting the settlement to the LWDA as required by Labor Code § 2699(1)(2).

III. LEGAL ARGUMENT

A. Standards for Approval of a PAGA settlement.

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute. Section 2699(1)(2) provides that the court must "review and approve any settlement of any civil action filed pursuant to [PAGA]." The California Supreme Court has noted that the trial court's review and approval of PAGA settlements ensures "that any negotiated resolution is fair to those affected."⁴⁵

As with any settlement, the court conducts its inquiry staying mindful that "[s]ettlement is

⁴² Ex. 3 at § 5(e).

⁴³ Ex. 3 at § 1(e).

⁴⁴ Ex. 3 at § 3(a).

⁴⁵ *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549, citing Lab. Code, § 2699 (1)(2).

1 a compromise, which balances the possible recovery against the risks inherent in litigating
2 further.”⁴⁶ Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes and an
3 abandoning of highest hopes,’”⁴⁷ as “it is the very uncertainty of outcome in litigation and
4 avoidance of wasteful and expensive litigation that induce consensual settlements.”⁴⁸ As such,
5 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the
6 merits” or “judged against a hypothetical or speculative measure of what might have been
7 achieved by the negotiators.”⁴⁹

8 Although Section 2699(l) does not set forth the criteria on which a PAGA settlement is to
9 be judged, courts utilize some of the factors used to review a class action settlement, which can
10 include the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of
11 further litigation, and the experience and views of counsel.⁵⁰ It, however, is important to
12 underscore that “a PAGA claim asserted on a non-class representative basis ... is not considered a
13 class action but a law enforcement action, and therefore does not have to meet the requirements of
14 [FRCP] Rule 23” or C.C.P. § 384.⁵¹ As a result, certain factors relevant to a class action
15 settlement do not apply when assessing the fairness of a PAGA settlement.

16 In addition, other factors that are not relevant in the class action context are relevant in the
17 PAGA settlement context.⁵² First, a court assesses the adequacy of a PAGA settlement based on

18 ⁴⁶ See *In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) No. C 07-2852 SBA
19 and C 07-4903 SBA, 2011 U.S. Dist. LEXIS 103222, at *24.

20 ⁴⁷ *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 624.

21 ⁴⁸ See *id.* at 625.

22 ⁴⁹ See *id.*

23 ⁵⁰ See, e.g., *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug. 25, 2017) No. 16-CV-04708-
24 LHK, 2017 U.S. Dist. LEXIS 137272, at *8 (assessing a PAGA settlement with some of the
25 factors used to assess class action settlements set forth in *Hanlon v. Chrysler Corp.* (9th Cir. 1998)
150 F.3d 1011, 1026). Plaintiffs cite federal authorities for guidance. See *In re Cellphone Fee
Termination Cases* (2010) 186 Cal. App.4th 1380, 1392 (“California courts may look to federal
authority for guidance on matters involving class action procedures.”).

26 ⁵¹ *Arias v. Superior Court* (2009) 46 Cal.4th 969, 975, 980-88; see *Casida v. Sears Holdings Corp.*
27 (E.D. Cal. Jan. 25, 2012) 1:11-cv-01052-AWI-JLT, 2012 U.S. Dist. LEXIS 9302, at *8; *Thomas v.*
28 *Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) No. 1:10-cv-01906-AWI-SKO, 2011 U.S. Dist.
LEXIS 59377, at *2.

⁵² See *Ramirez, supra*, 2017 U.S. Dist. LEXIS 137272, at *8-9.

whether the total settlement achieves PAGA’s objective.⁵³ PAGA’s “declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves,” authorizing the employee plaintiff to pursue recovery of civil penalties that otherwise would have been assessed and collected by the LWDA.⁵⁴ A PAGA action “is designed to protect the public, and the potential impact on remedies other than civil penalties is ancillary to the action’s primary objective.”⁵⁵ That said, a PAGA settlement – like any settlement – involves a compromise that stops short of rendering findings of liability and damages.

Second, because they have no property interest in a PAGA claim,⁵⁶ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.”⁵⁷ This renders the approval process of a PAGA settlement distinct from a class action settlement, as there is no need for the Court to employ the “two-step approval process” required under California Rule of Court 3.769 and FRCP Rule 23(e).⁵⁸

Finally, unlike in a class action settlement, the scope of release permitted in a PAGA settlement is limited. While “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

⁵³ See *Nordstrom Com’n Cases* (2010) 186 Cal.App.4th 576, 589 (finding that the trial court properly considered the overall circumstances of the settlement when determine whether the PAGA settlement was appropriate).

⁵⁴ *Arias, supra*, 46 Cal.4th at 986. See also, e.g., *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010) No. C 08-2073 MHP, 2010 U.S. Dist. LEXIS 32774, at *12 (“[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.”).

⁵⁵ *Arias, supra*, 46 Cal.4th at 987.

⁵⁶ See *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 (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.”).

⁵⁷ See *Ochoa-Hernandez, supra*, 2010 U.S. Dist. LEXIS 32774, at *13.

⁵⁸ The Rule 23(e) two-step process facilitates “notice” to absent class members by requiring “(1) preliminary approval of the settlement; and (2) final approval of the settlement at a fairness hearing following notice to the class.” See, e.g., *In re TD Ameritrade*, 2011 U.S. Dist. LEXIS103222, at *10; see F.R.C.P. 23(e). Cal. Rule of Court 3.769 contains similar rules for state court class actions.

the proceeding,”⁵⁹ “the nonparty 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.”⁶⁰ Thus, the scope of a release in a PAGA settlement is necessarily limited to PAGA claims.

B. The settlement meets all of the criteria for approval.

The proposed settlement embodies all of the key features of a settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

1. The factors giving rise to a presumption of fairness exist.

When reviewing a settlement, “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; [and] (3) counsel is experienced in similar litigation.”⁶¹ In this case, the proposed Settlement (1) is the product of arms-length negotiations,⁶² (2) occurred after Plaintiffs’ Counsel had conducted sufficient investigation to evaluate the strength and potential value of the PAGA claims, as well as evaluating the risks of litigating these claims through trial,⁶³ and (3) was negotiated by Plaintiffs’ Counsel with significant experience in similar wage and hour litigation.⁶⁴ As a result, the proposed PAGA settlement warrants a presumption of fairness.

2. The risk, expense, and complexity of further litigation balances strongly in favor of approval of the Settlement.

The proposed settlement takes into consideration the risks that this action may have resulted in a net-zero recovery due to the legal hurdles Plaintiffs faced in establishing Defendant’s

⁵⁹ *Arias*, *supra* 46 Cal.4th at 986.

⁶⁰ *See id.* at 987.

⁶¹ *Nordstrom Com. Cases*, *supra*, 186 Cal.App.4th at 581 (internal quotations and alterations omitted), citing *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1117–1118 (also listing as a factor relevant only to class actions that percentage of objectors is small).

⁶² Grover Decl. at ¶¶ 10-13.

⁶³ Grover Decl. at ¶¶ 10-13.

⁶⁴ Grover Decl. at ¶¶ 2-4, 14, 31-33; Perez Decl. at ¶¶ 12-20, Ex. 2.

liability. Further, there is significant risk that, even if Plaintiffs succeed on the merit, the Court could exercise its discretion to drastically reduce the penalties awarded.⁶⁵ In addition, continued litigation posed the risk of diminishing such recovery by increasing litigation expenses. Those combined risks, balanced with the fact that the settlement achieved a significant recovery, as demonstrated below, weigh strongly in favor of settlement approval.

3. The benefits conferred by the settlement balance in favor of approval.

The proposed settlement provides a significant monetary benefit for the LWDA and the Aggrieved Employees. As the Ninth Circuit has held, a settlement may be fair and reasonable even where it only provides a fraction of what could have been obtained at trial:

The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators. Thus, the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes. ... 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.⁶⁶

There are approximately 672 Aggrieved Employees who worked approximately 13,200 pay periods during the PAGA Period.⁶⁷ At \$100 per pay period, a PAGA award would amount to \$1,320,000. Labor Code § 2699(e)(2) allows a court to reduce the amount of a PAGA penalty at the court's discretion. And, as a number of reported cases demonstrate, many courts end up awarding less than the full amount in PAGA penalties.⁶⁸ Here, after all deductions are made for settlement administration, service payments to the Plaintiffs, and attorneys' fees and costs,

⁶⁵ Grover Decl. at ¶ 19.

⁶⁶ *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242 (internal quotations omitted), citing *Officers for Justice v. Civil Serv. Com.* (9th Cir. 1982) 688 F.2d 615, 625; *see also, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150, quoting *Linney, supra*, 151 F.3d at 1242 and *Officers for Justice, supra*, 688 F.2d at 624.

⁶⁷ Ex. 3 at §§ 1(c), 3(b); Grover Decl. at ¶ 11.

⁶⁸ *See e.g. Thurman v Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1119, 1135-36 (affirmed trial court's award of \$358,588, a 30% reduction of the \$512,000 PAGA penalties requested); *Aguirre v Genesis Logistics* (CD Cal, Dec. 30, 2013), No. SACV 12-00687-JVS (ANx)) 2013 U.S. Dist. LEXIS 189820 (district court awarded \$500,000 of \$1,899,000 requested PAGA penalties (*see Aguirre* Docket 106, page 1-2, stating requested PAGA penalties); *see also, Grover Decl. at ¶ 19.*

1 \$134,250 of the settlement funds will be paid out to the LWDA.⁶⁹ The remaining \$44,750 will be
2 distributed to the Aggrieved Employees based on the formula set forth in the Settlement
3 Agreement.⁷⁰ Each Aggrieved Employee will receive, on average, \$66.59.⁷¹

4 4. The scope of the release is narrowly tailored.

5 The release bars Plaintiffs and the LWDA from prosecuting any claims covered by the
6 Settlement Agreement through the PAGA Period.⁷² Under *Arias*, that precludes any other
7 Aggrieved Employee from asserting such claims on behalf of the LWDA in a future action but
8 does not impact any other claims that any Aggrieved Employee may have.⁷³ The California
9 Supreme Court has concluded that, in the context of PAGA, “the nonparty employees, because
10 they were not given notice of the action or afforded any opportunity to be heard, would not be
11 bound by the judgment as to remedies other than civil penalties.”⁷⁴ Thus, the scope of the release
12 provided in exchange for the foregoing consideration is limited to the civil penalties asserted in
13 this action under §§ 2698, *et seq.*⁷⁵ As such, this factor balances strongly in favor of approval of
14 the proposed settlement.

15 5. The experience and views of Plaintiffs’ Counsel favor approval of the settlement.

16 Plaintiffs’ Counsel has significant experience in complex wage and hour litigation.⁷⁶ In
17 the view of Plaintiffs’ Counsel, the benefit conferred by the proposed settlement is fair,
18 reasonable, and adequate under the circumstances, as it reflects a reasoned compromise which
19 takes into consideration the risks inherent in this case which have the potential to completely
20 eliminate recovery.⁷⁷ As such, this factor weighs in favor of approval of the proposed settlement.

21
22 ⁶⁹ Grover Decl. at ¶¶ 15-16; Ex. 3 at §§ 1(q), 1(z), 3(a), 7.

23 ⁷⁰ Grover Decl. at ¶ 17; Ex. 3 at §§ 1(q), 1(z), 3(a), 7.

24 ⁷¹ Grover Decl. at ¶ 18.

25 ⁷² See Ex. 3 at § 12.

26 ⁷³ *Arias*, *supra*, 46 Cal. 4th at 986.

27 ⁷⁴ See *id.* at 987.

28 ⁷⁵ Ex. 3 at § 12.

⁷⁶ See *e.g.*, Grover Decl. at ¶¶ 2-4, 14, 31-33; Perez Decl. at ¶¶ 12-20, Ex. 2.

⁷⁷ Grover Decl. at ¶¶ 14-23.

6. The extent of discovery completed and the stage of the proceedings favor approval of the proposed settlement.

In evaluating this element, the relevant consideration is whether “the parties have sufficient information to make an informed decision about settlement.”⁷⁸ And as the California Court of Appeal and the Ninth Circuit have noted, “formal discovery is not a necessary ticket to the bargaining table.”⁷⁹

Here, the extent of informal discovery conducted was sufficient to enable Plaintiffs’ Counsel to evaluate the strength and value of the claims for purposes of settlement.⁸⁰ Plaintiffs’ Counsel’s investigation and the documents obtained from Defendant were sufficient to evaluate the strength of the claims based on Defendant’s pay, meal period, rest break, wage statement and expense reimbursement policies and practices, tabulate the total number of pay periods at issue during the PAGA Period, and identify the approximate total number of individuals falling within the definition of the Aggrieved Employees during the PAGA Period.⁸¹

Based on Plaintiffs’ Counsel’s experience litigating wage and hour claims, such investigation was sufficient to determine the potential value of the PAGA claims, and to evaluate the strength of these claims for purposes of settlement.⁸²

IV. CONCLUSION

As shown above, the Settlement Agreement is fair, adequate and reasonable, as it represents a reasoned compromise obtained through arm’s-length negotiations. For all the reasons set forth above, Plaintiffs respectfully request that this Court, as set forth in the proposed Order Approving Settlement submitted herewith, do the following:

- 1) Approve the Settlement Agreement, pursuant to § 2699(l);
- 2) Approve the proposed notice to the Aggrieved Employees;

⁷⁸ *7-Eleven Owners, supra*, 85 Cal. App. 4th at 1150 (some internal quotations omitted), quoting *Linney, supra*, 151 F.3d at 1239.

⁷⁹ *Id.*, quoting *Linney, supra*, 151 F.3d at 1239.

⁸⁰ Grover Decl. at ¶¶ 10-12.

⁸¹ Grover Decl. at ¶¶ 10-12; Perez Decl. at ¶ 5

⁸² Grover Decl. at ¶ 12, *see also* ¶¶ 2-4, 14, 31-33; Perez Decl. at ¶¶ 5, 12-20, Ex. A.

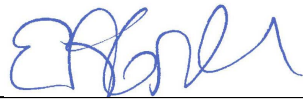
- 3) Appoint Phoenix Settlement Administrators as the Settlement Administrator; and
- 4) Direct disbursement of the remaining Net Settlement Amount to the LWDA and all Aggrieved Employees as provided for in the Settlement Agreement.

Respectfully submitted,

Dated: March 17, 2023

KELLER GROVER LLP

By: _____



ERIC A. GROVER
ROBERT W. SPENCER
Attorneys for Plaintiffs

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **March 17, 2023**, in the case of *Milar, et al. v. Socal Food Group, L.P. d/b/a Del Taco*, San Diego Superior Court Case Number 37-2021-00018665-CU-OE-CTL, I served the foregoing document(s):

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

on the interested party(ies) below, using the following means:

Beth A. Kahn, Esq.
Ryan C. McKim, Esq.

Attorneys for Defendant

SOCAL FOOD GROUP, L.P. D/B/A DEL TACO

CLARK HILL

555 South Flower Street, 24th Floor
Los Angeles, California 90071

BKahn@ClarkHill.com

RMcKim@ClarkHill.com

Robert Drexler, Esq.
Molly DeSario, Esq.
Jonathan Lee, Esq.

Attorneys for Plaintiffs

MARIA MILAR & MARIA RODRIGUEZ

CAPSTONE LAW APC

1875 Century Park East, Suite 1000
Los Angeles, California 90067

Robert.Drexler@capstonelawyers.com

molly.desario@capstonelawyers.com

Jonathan.Lee@capstonelawyers.com

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| ☒ | (BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties. |
| ☒ | (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. |



JOEY GONZALEZ