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**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 AWARD OF ATTORNEYS’
FEES AND COSTS, PLAINTIFFS’
SERVICE AWARDS/GENERAL RELEASE
PAYMENTS, AND SETTLEMENT
ADMINISTRATION COSTS 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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Maria Milar and Maria Rodriguez (“Plaintiffs”) and SOCAL FOOD GROUP, LP, d/b/a Del Taco (“Defendant”) (collectively, the “Parties”) reached a proposed settlement of Plaintiffs’ representative action brought under the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, (“PAGA”) for a total amount of \$330,000, referred to as the Settlement Sum.¹ Concurrently with this motion, Plaintiffs have filed a Motion for Approval of PAGA Settlement, which addresses the details of the settlement terms, including the distribution of the Net Settlement Amount, estimated to be \$179,000, to the Labor and Workforce Development Agency (“LWDA”) and the Aggrieved Employees.²

Through this motion, Plaintiffs seek an order awarding attorneys’ fees and costs to Plaintiffs’ Counsel, service award/ general release payments for Plaintiffs, and settlement administration expenses to Phoenix Settlement Administrators, the Parties’ selected settlement administrator for this action. Specifically, Plaintiffs request that the Court approve the Settlement Agreement’s terms that allocate \$110,000 for the payment of Plaintiffs’ Counsel’s fees and \$12,010.68 for Plaintiffs’ Counsel’s actual costs, \$15,000 total for the named Plaintiffs’ service awards/general release payments, and settlement administration costs of \$7,000.³

II. STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Plaintiffs have set forth the details of the case and procedural history in the memorandum supporting the Motion for Approval of PAGA Settlement filed concurrently with this motion. For brevity’s sake, Plaintiffs do not repeat those facts here.

¹ 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.”), Ex. 3 (the Parties’ Settlement Agreement and Release of Claims (“Settlement Agreement”), at §§ 1(y), 1(z), 3(a), 4. All “Ex.” references are to Grover Declaration exhibits unless stated otherwise

² Grover Decl. at ¶ 15, Ex. 3 at §§ 1(c), 1 n), 1(q), 1(z), 3, 7.

³ Ex. 3 at §§ 3(a)(i)-(iv), *see also*, § 1(e); Grover Decl. at ¶¶ 26-48; Declaration of Raul Perez 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 (“Perez Decl.”), at ¶¶ 7-11.

III. PLAINTIFFS' COUNSEL'S WORK IN THIS ACTION.

A. Plaintiffs' Counsel's Investigation and Settlement Negotiations.

Prior to bringing this action, Plaintiffs' Counsel investigated and researched Plaintiffs' potential Labor Code claims, both in the individual context and as representative claims. Plaintiffs' Counsel drafted and sent Plaintiffs' February 19 2021 PAGA notice letter, pursuant to the exhaustion requirements of Labor Code § 2699.3.⁴ Plaintiffs' Counsel drafted the Complaint and, after the LWDA declined to take action within the statutory time period, filed the Complaint.⁵

After Plaintiffs served formal discovery, Plaintiffs' Counsel engaged in discussions with counsel for Defendant regarding potential early settlement and agreed to proceed to mediation after an informal exchange of relevant information. As part of the mediation process, Defendant agreed to produce relevant information and documents regarding its pay, meal and rest break, wage statement, and expense reimbursement policies and practices and other topics related to this action. Plaintiffs' Counsel obtained and reviewed the information and documents produced, including Plaintiffs' employee files and policy documents relating to the employment of Plaintiffs and other Aggrieved Employees.⁶

As noted, in preparation for the mediation, Plaintiffs' Counsel reviewed and analyzed the relevant documents and information that Defendant provided. The information produced enabled Plaintiffs to assess the size of the aggrieved employee group, the number of pay periods at issue, and the strength of their claims. The information provided showed that there were approximately 672 Aggrieved Employees who worked approximately 13,200 pay periods during the PAGA Period.⁷

Armed with sufficient information and data, the Parties were able to engage in informed negotiations of possible settlement alternatives and were able to reach a resolution of their

⁴ Grover Decl. at ¶ 9, Ex. 1.

⁵ Grover Decl. at ¶ 9, Ex. 2.

⁶ Grover Decl. at ¶ 10.

⁷ Grover Decl. at ¶ 11.

1 dispute. On October 5, 2022, the Parties participated in a formal mediation session with mediator
2 Eve Wagner, Esq. Plaintiffs' Counsel participated in the mediation session. Plaintiffs' Counsel's
3 experience in litigating similar representative PAGA actions based on wage and hour claims, the
4 degree of investigation Plaintiffs' Counsel conducted, and the amount of data obtained from
5 Defendant made it possible for Plaintiffs' Counsel to determine the potential value and evaluate
6 the strength of the PAGA claims when negotiating the settlement.⁸ The arm's-length, mediated
7 negotiations resulted in the Parties reaching an agreement to settle the entire action, subject to the
8 Court's approval.⁹

9 Following the mediation, Plaintiffs' Counsel and counsel for Defendant engaged in
10 extensive negotiations over the terms of the Settlement Agreement. With additional assistance
11 from the mediator, the Settlement Agreement and its exhibits were finalized and executed. All of
12 terms of the Parties' settlement are set forth in the Settlement Agreement.¹⁰

13 **B. The Proposed Settlement**

14 Plaintiffs also refer to the Motion for Approval of PAGA Settlement and accompanying
15 memorandum to avoid repeating the details of the proposed settlement's terms and benefits to the
16 LWDA and the Aggrieved Employees. In brief summary, the Settlement Agreement provides
17 that all Aggrieved Employees, defined as "all current and former employees of Defendant who
18 worked for Defendant in California during the PAGA Period and who received commission pay
19 and/or worked from home,"¹¹ will receive a settlement payment.¹² The PAGA Period is defined
20 as any time starting on and including February 19, 2020 up to and including October 5, 2022, or
21 as provided in Section 3(b) of the Settlement Agreement.¹³

22 _____
23 ⁸ Grover Decl. at ¶ 12.

24 ⁹ Grover Decl. at ¶ 12.

25 ¹⁰ Grover Decl. at ¶ 13, Ex. 3.

26 ¹¹ Ex. 3 at § 1(c).

27 ¹² Ex. 3 at §§ 1(c), 1(k), 1(l), 1(q), 1(y), 1(z), 3, 7.

28 ¹³ Ex. 3 at § 1(u). 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. Ex. 3 at § 3(b).

There are approximately 672 Aggrieved Employees who worked approximately 13,200 pay periods during the PAGA Period.¹⁴ If the settlement is approved, all Aggrieved Employees will divide a total of \$44,750, which is 25% of the Net Settlement Amount, based on the formula set forth in the Settlement Agreement.¹⁵ The LWDA will receive \$134,250, which is 75% of the Net Settlement Amount.¹⁶

1) Settlement administration.

The Settlement Agreement provides for the payment of the costs of settlement administration up to \$7,000.¹⁷ The Parties have selected Phoenix Settlement Administrator (“Phoenix”) to serve as Settlement Administrator.¹⁸ Phoenix has agreed to provide all administrative functions necessary for the distribution of the Settlement Amount for an amount not to exceed \$7,000.¹⁹

2) Attorneys’ fees and costs.

The Settlement Agreement permits Plaintiffs’ Counsel to seek an award of attorneys’ fees in the amount of \$110,000, which is one-third of the total Settlement Sum, and payment of actual costs of \$12,010.68.²⁰ The request for Plaintiffs’ Counsel’s fees and actual costs is discussed in Section IV.B below.

3) Service awards/general release payments for the named Plaintiffs.

The Settlement Agreement also provides that Plaintiffs may seek service awards/general release payments of \$7,500 each to the named Plaintiffs for their work bringing this action on behalf of the Aggrieved Employees and the LWDA and for providing general releases.²¹ The service award/general release payment request is discussed in Section IV.C below.

¹⁴ Grover Decl. at ¶ 11.

¹⁵ Ex. 3 at §§ 7(b), *see also*, §§ 1(k), 1(l).

¹⁶ Grover Decl. at ¶ 16; Ex. 3 at §§ 1(p), 7(a).

¹⁷ Ex. 3 at §§ 1(e), 3(a)(iii).

¹⁸ Ex. 3 at § 1(e); Grover Decl. at ¶ 20.

¹⁹ Grover Decl. at ¶ 20.

²⁰ Ex. 3 at §§ 3(a)(i) and (ii); *see* Grover Decl. at ¶ 47.

²¹ Ex. 3 at § 3(a)(iv).

1 **IV. LEGAL ARGUMENT**

2 **A. Standards for approval of a PAGA settlement.**

3 The reasons supporting approval of the main terms of the PAGA settlement are discussed
4 in the memorandum accompanying the Motion for Approval of PAGA Settlement. Here,
5 Plaintiffs focus only on their request for an award of attorneys' fees and costs, the Plaintiffs'
6 service awards/general release payments, and payment of the settlement administrator's expenses,
7 all of which are requested in accordance with the Settlement Agreement.

8 **B. Plaintiffs' Counsel is entitled to recover their reasonable fees and costs.**

9 Pursuant to the Settlement Agreement, Plaintiffs' Counsel seeks attorneys' fees in the
10 amount of \$110,000 and actual costs incurred litigating this action in the amount of
11 \$12,010.68.²² Plaintiffs' Counsel's entitlement to an award of attorneys' fees and costs is
12 warranted on multiple independent grounds, which are discussed below.

13 1) Plaintiffs are statutorily entitled to an award of attorneys' fees and costs.

14 In a PAGA action, the plaintiff is entitled to recover attorney's fees and costs as a matter
15 of right under PAGA. Labor Code § 2699(g)(1) provides that "[a]ny employee who prevails in
16 any action shall be entitled to an award of reasonable attorney's fees and costs." As discussed,
17 PAGA's purpose is to allow employees to enforce the Labor Code in order to further the State's
18 law enforcement interest.²³ The statute ensures that an individual who performs this law
19 enforcement function as PAGA authorizes is able to recover his or her attorneys' fees and costs.

20 To the extent the amount recovered is the basis of the fee award, the court should
21 consider the entire amount recovered, given that the State is the real party in interest and 100%
22 of the recovery is the property of the State, regardless of the subsequent distribution
23 arrangement.²⁴ In other words, a lawyer who represents a private attorney general is working to
24 advance law enforcement on behalf of the State²⁵ and his or her performance should be judged

25
26 ²² Ex. 3 at §§ 3(a)(i) and (ii); Grover Decl. at ¶¶ 26-48; *see also*, Perez Decl. at ¶¶ 7, 11.

27 ²³ *See Arias v. Superior Court* (2009) 46 Cal.4th 969, 986, discussing PAGA.

28 ²⁴ *See Iskanian v. CLS Transp. L.A., LLC* (2014) 59 Cal.4th 348, 382.

²⁵ *See Arias, supra*, 46 Cal.4th at 986.

1 by the total amount recovered in that function. Limiting the calculation of attorneys’ fees to the
2 amount distributed to the affected employees would ignore both the basic structure and intent of
3 PAGA. If the fee award was limited in that manner, it would become economically unfeasible to
4 bring representative PAGA actions, which would frustrate PAGA’s purpose of encouraging
5 private individuals to assist the State in enforcing the Labor Code. Awarding attorneys’ fees
6 based on the total recovery obtained allows private attorneys general to engage experienced
7 counsel to advance the State’s interests.

8 Even in the class action context, fees are calculated on the total amount recovered, *i.e.*,
9 the gross settlement amount including the amounts that are allocated for fees and costs. “[A]
10 lawyer who recovers a common fund for the benefit of persons other than himself or his client is
11 entitled to a reasonable attorney’s fee from the fund as a whole.”²⁶ An attorney representing the
12 named plaintiff in a class action settlement involving Labor Code claims would be entitled to a
13 percentage of recovery on the total fund.²⁷ An attorney representing a private attorney general in
14 a representative PAGA action that results in a settlement benefiting the State and aggrieved
15 employees is entitled to fees on the same basis.

16 In addition, California Code of Civil Procedure § 1021.5 also entitles Plaintiffs to an
17 award of attorneys’ fees and costs. That statute provides for the award of:

18 attorneys’ fees to a successful party against one or more opposing parties in any
19 action which has resulted in the enforcement of an important right affecting the
20 public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has
21 been conferred on the general public or a large class of persons, (b) the necessity
22 and financial burden of private enforcement, ... are such as to make the award
23 appropriate, and (c) such fees should not in the interest of justice be paid out of
24 the recovery, if any.

25 The instant PAGA representative action was, by definition, “for the public benefit” that
26 secured monetary awards for the LWDA and the 672 Aggrieved Employees and was authorized

27 ²⁶ *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 967, citing *Boeing Co. v. Van Gemert*
(1980) 444 U.S. 472, 478, 62 L. Ed. 2d 676, 100 S. Ct. 745.

28 ²⁷ *See id.*

1 due the State's lack of enforcement resources.²⁸

2 2) Plaintiffs' Counsel is entitled to an award of reasonable fees and costs under
3 the percentage of the common fund doctrine.

4 Counsel is entitled to recover attorneys' fees and costs under the "common fund" doctrine.
5 The California Supreme Court has clarified that the percentage of the common fund is a proper
6 and accepted method for awarding attorneys' fees.²⁹ Indeed, courts have long recognized the
7 "common fund" or "common benefit" doctrine, under which attorneys who create a common fund
8 or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund.³⁰
9 In *Laffitte*, the California Supreme Court held that,

10 when class action litigation establishes a monetary fund for the benefit of
11 the class members, and the trial court in its equitable powers awards class
12 counsel a fee out of that fund, the court may determine the amount of a
13 reasonable fee by choosing an appropriate percentage of the fund
created."³¹

14 The California Supreme Court also noted that the percentage of the fund method "more
15 accurately reflects the results achieved" than the lodestar method, serves as a "better
16 approximation of market conditions in a contingency case," and encourages "counsel to seek an
17 early settlement and avoid unnecessarily prolonging the litigation."³²

18 Under the Settlement Agreement, Plaintiffs have created a fixed common fund from
19 which reasonable attorneys' fees can be recovered.³³ Each Aggrieved Employee will receive an

20 _____
21 ²⁸ See e.g. *Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 16-17
22 (finding that, because the plaintiff pursued class action not only for himself but on behalf of a class
and ultimately obtained awards for 209 drivers, he satisfied "the 'significant benefit,' 'public
interest,' and 'large class of persons' requirements of [C.C.P. §] 1021.5.").

23 ²⁹ *Laffitte, supra*, 1 Cal.5th at 503 (noting that it was among "the overwhelming majority of federal
and state courts" that hold that trial courts may apply the percentage of the fund method).

24 ³⁰ *Id.*; see also, *Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25, 34; *Glendale City*
25 *Employees' Assoc. v. City of Glendale* (1975) 15 Cal.3d 328, 341, fn.19; *In re Consumer Privacy*
26 *Cases* (2009) 175 Cal.App.4th 545, 557; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478;
Mills v. Electric Auto-Lite Co. (1970) 396 U.S. 375, 391-392.

27 ³¹ *Laffitte, supra*, 1 Cal.5th at 503 (providing an extended analysis of California law regarding fee
award methodology).

28 ³² *Id.* at 503-04.

³³ Ex. 3.

ascertainable settlement payment. Thus, the common fund doctrine enables the Court to determine a reasonable fee with “some exactitude.”³⁴

a. The requested fee award is supported circumstances of this case is within the range of reasonable fee awards.

Given the results achieved under the circumstances of this litigation, a fee award of 33.33% is reasonable. As encapsulated in *Sumitomo Copper Litigation*:³⁵

No one expects a lawyer whose compensation is contingent on the success of his services to charge, when successful, as little as he would charge a client who in advance of the litigation has agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

In that vein, this Court should consider the results achieved, contingency nature of this case, the uncertainty of the outcome, the quality of the counsel, and the preclusion from other employment.³⁶

First, the results achieved are significant, as \$134,250 will be paid out to the LWDA and \$44,750 will be paid to approximately 672 Aggrieved Employees³⁷ — for a total payout of \$179,000.³⁸ Second, such results were achieved in the face of significant risks. As explained above, Defendant maintained defenses to Plaintiffs’ PAGA claim that very well could have resulted in a net-zero recovery at trial.³⁹ Third, notwithstanding this risk of loss, Plaintiffs’ Counsel undertook representation of the instant PAGA claims for the benefit of the State (and the Aggrieved Employees) on a contingency basis.⁴⁰ This not only required Plaintiffs’ Counsel to personally assume the risk of nonpayment in securing the financial benefit the State of California stands to receive, but constitutes a “loan” on Plaintiffs’ Counsel service—both of which are

³⁴ *Paul, Johnson, Alston & Hunt v. Grauly* (9th Cir. 1989) 886 F.2d 268, 271.

³⁵ *In Re Sumitomo Copper Litig.*, (S.D.N.Y. 1999) 74 Supp. 2d 393, 396.

³⁶ See Ex. 3 at §§ 3, 7; Grover Decl. at ¶¶ 2-4, 14-19, 22, 26, 31-33, 39-44.

³⁷ See Ex. 3 at § 3(b); Grover Decl. at ¶¶ 11, 14-18, 22.

³⁸ Ex. 3 at §§ 1(q), 1(z), 3(a), 7; Grover Decl. ¶¶ 19, 22-23.

³⁹ Grover Decl. at ¶¶ 19, 22-23, 39-40.

⁴⁰ Grover Decl. at ¶¶ 26, 39-40.

factors warranting fee enhancement under applicable California Supreme Court authority:

One of the most common fee enhancers ... is for contingency risk. We reaffirmed the propriety of a contingency risk enhancement in *Ketchum*: “The economic rationale for fee enhancement in contingency cases has been explained as follows: ‘A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.’ (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534, 567.) ‘A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.’”⁴¹

Finally, the percentage requested falls within a typical range, particularly in light of the settlement size.⁴² It is recognized that “courts may award attorney’s fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million.”⁴³ Accordingly, Plaintiffs’ Counsel’s fee request is fair and reasonable and is consistent with other awards in California and the Ninth Circuit.

3) The requested fees also are justified under the lodestar method.

Fee calculations under the lodestar method would result in a similar award, demonstrating the fairness of Plaintiffs’ Counsel’s percentage fee request. Because this is a common fund case, the lodestar method is not required but may be used to cross check the reasonableness of the fee request.⁴⁴

⁴¹ *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579-580.

⁴² See e.g., *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 545 (“[F]ee awards in class actions average around one-third of the recovery” regardless of “whether the percentage method or the lodestar method is used.”), quoting *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11.

⁴³ *Martin v. AmeriPride Servs.* (S.D. Cal. June 9, 2011) No. 08cv440-MMA (JMA), 2011 U.S. Dist. LEXIS 61796, at *23, citing string of cases; see also, e.g., *Armes v. Hot Pizzas, LLC* (D. Ariz. June 9, 2017) No. CV-16-01152- PHX-JJT, 2017 U.S. Dist. LEXIS 89920, at *18 (similar, approving 33% fee award where the common fund was “well below the \$10 million threshold..”).

⁴⁴ See e.g., *Laffitte, supra*, 1 Cal.5th at 503-04; *Glass v. UBS Fin. Servs., Inc.* (9th Cir. 2009) 331 F. App’x 452, 456 (approving the district court’s “informal lodestar cross-check” for confirming the reasonableness of the percentage award).

Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. Plaintiffs' Counsel's hourly rates are summarized in the Grover Declaration filed in support of this motion.⁴⁵ Plaintiffs' Counsel's hourly rates are well within the range of those found permissible for attorneys practicing class action litigation in California.⁴⁶

Plaintiffs' Counsel has spent 164.7 hours litigating this case through March 15, 2023, as described in further detail in the Grover Declaration.⁴⁷ Plaintiffs' Counsel expects to spend another 10 hours completing the work on this motion, preparing for and attending the approval hearing, and dealing with settlement administration issues.⁴⁸ The fee award should include fees incurred to establish and defend the attorneys' fee claim.⁴⁹

The lodestar for Plaintiffs' Counsel through March 15, 2023 is \$119,980.⁵⁰ Plaintiffs' Counsel expects its future lodestar to reach approximately \$7,500 for a final lodestar of \$127,390.⁵¹ The requested fee award of \$110,000 thus represents a negative multiplier.

4) Plaintiffs' Counsel's requested costs are reasonable.

In the course of this litigation, Plaintiffs' Counsel had to (and will) incur out-of-pocket costs of approximately \$12,010.68.⁵² As described in the Grover Declaration, the incurred costs

⁴⁵ Grover Decl. at ¶¶ 30-36, Perez Decl. at ¶¶ 7-10, 12-20, Ex. 1 and 2.

⁴⁶ See e.g., *Gonzalez v. S. Wine & Spirits of Am., Inc.* (9th Cir. 2014) 555 F. App'x 704, 704-05 (reversing district court's order reducing attorneys' hourly rates without considering evidence of "prevailing hourly rates for comparable legal services in the community"). See *O'Bannon v. NCAA*, (N.D. Cal. 2015) 114 F. Supp. 3d 819, 827 (similar range of rates for Bay Area counsel experienced in complex class actions were reasonable); *Williams v. SuperShuttle Int'l, Inc.* (N.D. Cal. Feb. 12, 2015) No. 12-cv-06493-WHO, 2015 U.S. Dist. LEXIS 19341, at *5 (similar); *Steinfeld v. Discover Fin. Servs.* (N.D. Cal. Mar. 31, 2014) 2014 U.S. Dist. LEXIS 48540, at *4-5 (similar); *Vedachalam v. Tata Consulting Serv. Ltd.* (N.D. Cal. July 18, 2013) 2013 U.S. Dist. LEXIS 100796, at *8 (similar); *Bolton v. U.S. Nursing Corp.* (N.D. Cal. Oct. 18, 2013) 2013 U.S. Dist. LEXIS 150299, at *14-15 (similar); see also, Grover Decl. at ¶¶ 35-56 (noting range of hourly rates approved in recent Bay Area fee orders); Perez Decl. at ¶¶ 8-10 (noting court orders approving Capstone's hourly rates and range of hourly rates in California fee orders), Ex. 1 (Laffey Matrix fee scale).

⁴⁷ Grover Decl. at ¶¶ 9-13, 26, 28-29, Exs. 4, 5, 6.

⁴⁸ Grover Decl. at ¶ 28.

⁴⁹ *Serrano v. Unruh* (1982) 32 Cal. 3d 621, 639 ("Serrano IV").

⁵⁰ Grover Decl. at ¶¶ 27-29, 37.

⁵¹ Grover Decl. at ¶¶ 28 38.

⁵² See Grover Decl. at ¶¶ 45-47, Ex. 7; Perez Decl. at ¶ 11.

1 included mediation fees, filing fees, legal research fees, and FedEx and mailing charges.⁵³ Such
2 costs are appropriate for cost reimbursement in these types of cases.⁵⁴

3 The costs incurred by Plaintiffs' Counsel in this litigation benefited Plaintiffs, the
4 Aggrieved Employees, and the State. In light of the litigation costs Plaintiffs' Counsel incurred
5 to prosecute this action, Plaintiffs' request for costs is reasonable and should be granted.

6 **C. The service awards/general release payments are reasonable.**

7 As the Settlement Agreement permits, Plaintiffs seek service awards/general release
8 payments in the amount of \$7,500 each to Plaintiffs Milar and Rodriguez.⁵⁵ The service awards
9 are intended to recognize the time and efforts that each Plaintiff spent on behalf of the other
10 Aggrieved Employees and the State.⁵⁶

11 Although PAGA does not address service awards to private attorneys general, the
12 reasoning of case law approving named plaintiffs' service awards in class actions supports that
13 they also are appropriate in PAGA representative actions. Like in class actions, service
14 payments should be awarded to named plaintiffs in representative actions to acknowledge the
15 effort and risk they undertake to obtain a reward on behalf of others.⁵⁷ The California Court of
16 Appeal has found that "incentive awards are fairly typical in class action cases" and "are
17 intended to compensate class representatives for work done on behalf of the class, to make up for
18 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize
19 their willingness to act as a private attorney general."⁵⁸ The Ninth Circuit also has recognized

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21 ⁵³ Grover Decl. at ¶ 45, Ex. 7; Perez Decl. at ¶ 11.

22 ⁵⁴ See e.g., *Parker v. Cherne Contracting Corp.*, No. 18-cv-01912-HSG, 2021 U.S. Dist. LEXIS
23 236229, at *22 (N.D. Cal. Dec. 9, 2021) (in class settlement, approving request for class counsel's
24 incurred costs, which included "filing fees, legal research fees, mediation fees, mailing charges,
25 federal express costs, hotels, travel costs, meals, and deposition transcripts[,] which the court
26 "reflect[ed] the type of expenses routinely charged to paying clients."), citing cases.

27 ⁵⁵ Ex. 3 at § 3(a)(iv).

28 ⁵⁶ See Declarations of Maria Milar and Maria Rodriguez, submitted herewith.

⁵⁷ See e.g., *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-94, citing *Clark*
v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.

⁵⁸ *Cellphone Termination*, *supra*, 186 Cal.App.4th at 1393-94 (internal citations, quotations and
alterations omitted), citing *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958,
4 *Newberg on Class Actions* (4th ed. 2002) § 11:38, p. 81, and Eisenberg & Miller, *Incentive*
Awards to Class Action Plaintiffs: An Empirical Study (2006) 53 UCLA L. Rev. 1303.

1 that a named plaintiff’s “willingness to act as a private attorney general” may justify the award of
2 an incentive payment.⁵⁹

3 Further, two separate authorities support service awards for an employee plaintiff serving
4 as a private attorney general. First, PAGA and its legislative history make clear that its purpose
5 is to incentivize individuals to act on behalf of, and for the benefit of, the State to enforce the
6 Labor Code due to shortage of the State’s law enforcement resources.⁶⁰ With that goal in mind,
7 it is reasonable to conclude that the statute permits compensation for individuals who take on
8 that work. Even if, for example, the statute that enables the State to employ an attorney general
9 did not specify a salary for that position, it would be reasonable to conclude that the State has
10 authority to pay the individual who performs that work. The same must be true for an individual
11 who acts as a private attorney general. The Legislature’s stated purpose of encouraging private
12 law enforcement work necessarily contemplates compensation for individuals who do that work.

13 It should not be assumed that the share of compensation paid to each aggrieved employee
14 is somehow intended to be the only money available to the individual who takes on the risk and
15 effort of filing and litigating a lawsuit. If that were the rule, each employee who is subjected to
16 an illegal wage and hour practice would be better off waiting for someone else to file a
17 representative claim so that he or she could reap the same reward without taking any risk.

18 The second authority supporting a service award is the California Supreme Court’s
19 consistent mandate that courts should “liberally construe the Labor Code ... to favor the
20 protection of employees.”⁶¹ When addressing questions for which there is no specific statutory
21 answer, the California Supreme Court has explained that courts interpreting the Labor Code must
22 “adopt the construction that best gives effect to the purpose of the Legislature” which is “the
23 protection of employees.”⁶² The Court’s mandate weighs in favor of providing service awards
24

25 ⁵⁹ *Rodriguez, supra*, 563 F.3d at 959.

26 ⁶⁰ *Iskanian, supra*, 59 Cal.4th at 379 (explaining PAGA’s legislative history and stated goal to
enable private attorneys general to enforce the Labor Code due to the State’s resource shortages).

27 ⁶¹ *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58, 67; *Troester v. Starbucks Corp.* (2018) 5
Cal.5th 829, 839, citing other California Supreme Court cases.

28 ⁶² *Augustus v. ABM Sec. Servs., Inc.* (2016) 2 Cal. 5th 257, 262-63.

1 because refusing them would dramatically impair the State's ability to achieve its goal of Labor
2 Code enforcement through private attorneys general. If an employee plaintiff acting as a private
3 attorney general can expect no compensation other than his or her individual share of the
4 recovered penalties, it would be extremely difficult to find anyone willing to undertake the
5 extensive risk and effort involved in bringing a representative PAGA action.

6 Service awards to the named Plaintiffs are especially warranted in a case like this one
7 involving claims brought to enforce the Labor Code's protections for employees. Without
8 Plaintiffs' efforts, there would be no recovery at all. Incentive awards appropriately
9 acknowledge and compensate Plaintiffs for the risk and expense they incurred in conferring a
10 benefit on other of Defendant's employees and the State of California. As a result of the named
11 Plaintiffs' efforts, the Aggrieved Employees will receive monetary settlement payments –
12 approximately \$66.59 each, on average.⁶³ The State of California will receive more than
13 \$134,000, to be put toward education about, and enforcement of, California's labor laws.⁶⁴
14 Plaintiffs should be commended for pursuing PAGA claims; a modest service award like that
15 sought here is an appropriate means of doing so.

16 In this case, Plaintiffs Milar and Rodriguez performed the following tasks, among others:
17 (1) assisted Plaintiffs' Counsel in investigating and substantiating the claims alleged in this
18 action, including multiple telephone calls with counsel to review facts, documents, and
19 Defendant's policies; (2) assisted in the preparation of the complaint in this action; (3) produced
20 evidentiary documents; and (4) assisted in the settlement of this litigation.⁶⁵ Moreover, as with
21 any plaintiff who files a civil action, Plaintiffs undertook the financial risk that, in the event of a
22 judgment in favor of Defendant in this action, they could have been personally responsible for
23 any attorneys' fees and costs awarded in its favor.

24 Also, Plaintiffs Milar and Rodriguez are providing a general release of their claims
25

26 _____
27 ⁶³ Grover Decl. at ¶¶ 17-18, 24-25.

28 ⁶⁴ Ex. 3 at §§ 1(p), 1(q), 1(z), 3(a)(v); Grover Decl. at ¶ 16.

⁶⁵ See generally, Milar and Rodriguez Declarations.

1 against Defendant.⁶⁶ The Plaintiffs' general release is separate from and in addition to the
2 narrow Release of PAGA Claims that applies to the Aggrieved Employees.⁶⁷

3 In light of the work that Plaintiffs performed on behalf of the Aggrieved Employees and
4 the State and in exchange for their general release, the requested service awards/general release
5 payments are reasonable and appropriate.

6 **D. The Settlement Administrator's fee is reasonable and should be paid.**

7 Phoenix has agreed to provide all administrative functions necessary for the distribution
8 of the PAGA Settlement Sum for an amount not to exceed \$7,000, which is the amount set forth
9 in the Settlement Agreement.⁶⁸ Plaintiffs request that the Court approve payment to Phoenix in
10 the amount of \$7,000.

11 **V. CONCLUSION**

12 For all the reasons set forth above, Plaintiffs respectfully request that this Court, as set
13 forth in the proposed Order Approving Settlement submitted herewith, approve Phoenix
14 Settlement Administrators as the Settlement Administrator and approve payment of its
15 administration fees up to \$7,000; approve the award of attorneys' fees and costs to Plaintiffs'
16 Counsel in the total amount of \$122,010.68; and approve the award of service awards/general
17 release payments to Plaintiffs Milar and Rodriguez in the amount of \$7,500 each.

18
19 Respectfully submitted,

20 Dated: March 17, 2023

KELLER GROVER LLP

21
22 By: 

23 ERIC A. GROVER
24 ROBERT W. SPENCER
25 Attorneys for Plaintiffs

26
27 ⁶⁶ Ex. 3 at § 12, *see* Plaintiffs' Released Claims; *see* Grover Decl. at ¶¶ 24-25.

28 ⁶⁷ Ex. 3 at § 12, *compare* Plaintiffs Released Claims with Released PAGA Claims.

⁶⁸ Ex. 3 at § 3(a)(iii); Grover Decl. at ¶ 20.

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 AWARD OF ATTORNEYS' FEES AND COSTS, PLAINTIFFS' SERVICE AWARDS/GENERAL RELEASE PAYMENTS, AND SETTLEMENT ADMINISTRATION COSTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

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

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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