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on behalf of herself, all others similarly situated,
and on behalf of the general public

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

DAISY SOLANO, on behalf of herself and
all others similarly situated, and on behalf of
the general public,

Plaintiff,
v.

GOODWILL SERVING THE PEOPLE OF
SOUTHERN LOS ANGELES COUNTY,
and DOES 1 through 100, inclusive,

Defendant.

Case No.: 21STCV19280

**PLAINTIFF DAISY SOLANO'S MOTION
FOR APPROVAL OF PAGA
SETTLEMENT**

Date: June 7, 2022

Time: 8:30 a.m.

Dept: 73

Judge: Hon. Ann I. Jones

Reservation ID:225343640777

Action Filed: May 25, 2021

Trial Date: None Set

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1 **I. INTRODUCTION**

2 Plaintiff Daisy Solano (“Plaintiff” or “Ms. Solano”) respectfully requests that the Court
3 approve of the Joint Stipulation and Settlement Agreement (“Settlement Agreement”) entered into
4 between Plaintiff and Defendant Goodwill, Serving the People of Southern Los Angeles County
5 (“Defendant” or “Goodwill”) (collectively Plaintiff and Defendant are referred to as the “Parties”)
6 which resolves the claims raised against Defendant in exchange for a non-reversionary \$205,000
7 Maximum Settlement Amount (“MSA”).

8 This proposed settlement will settle the claims alleged in Plaintiff’s complaint under the
9 Private Attorneys General Act of 2004 (“PAGA”) on behalf of the California Labor and Workforce
10 Development Agency (“LWDA”) and all non-exempt, hourly managers and assistant managers
11 who worked in California for Defendant during the PAGA Period (“Aggrieved Employees”). The
12 PAGA Period is February 23, 2020 to the date the Court grants approval of the settlement. There
13 are approximately 167 Aggrieved Employees. The relief provided for under the Settlement
14 Agreement is solely for the payment of penalties under the PAGA.

15 Pursuant to California Labor Code § 2699, subsection (l)(2), a superior court shall review and
16 approve any settlement of any civil action filed pursuant to the PAGA. *See* Cal. Lab. Code §
17 2699(l)(2).¹ In deciding whether to grant approval of the proposed settlement, the primary issue to be
18 decided is whether the settlement is fair, adequate, and reasonable. As set forth herein, the proposed
19 settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is
20 the product of (1) arms-length negotiations, employing a neutral mediator, (2) negotiations by
21 attorneys experienced in these issues, (3) sufficient investigation which was necessary to evaluate the
22 relative strength and value of Plaintiff’s claims, and (4) a reasoned compromise based on the strength
23 and value of the case, as well as, the risks, expense, complexity, and likely duration of further
24 litigation.

25 ///

26 ///

27 _____
28 ¹ Plaintiff will upload a copy of the Settlement Agreement to the LWDA’s website at the same time
this motion is filed with the Court.

1 **II. BACKGROUND**

2 **a. Procedural History**

3 Plaintiff sent her Notice of Labor Code Violations Pursuant to Labor Code § 2699.3 on
4 February 23, 2021. In her notice, Plaintiff, a former non-exempt assistant manager with Defendant,
5 apprised the LWDA of her claims against Defendant. Plaintiff's notice alleged that Defendant
6 violated the California Labor Code by failing to pay all straight time wages, failing to pay
7 minimum wages, failing to pay all overtime wages, failing to provide lawful meal and rest periods,
8 failing to provide accurate itemized wage statements, failing to pay all wages owed at termination,
9 and failing to pay wages twice per month. (Declaration of David Mara, Esq. ("Mara Dec.") ¶ 9).

10 Plaintiff filed her complaint in the Los Angeles County Superior Court on May 21, 2021.
11 Plaintiff's complaint alleges causes of action on behalf of Plaintiff and those similarly situated
12 aggrieved employees under the PAGA for failure to pay straight time wages, failure to pay
13 overtime, failure to provide meal periods, failure to provide rest periods, failure to pay all wages
14 due at termination, and failure to provide compliant wage statements. (Mara Dec. ¶ 10).

15 **b. Discovery and Investigation**

16 After filing, the Parties conducted formal discovery. On August 23, 2021, Defendant
17 propounded one set of requests for production of documents, form interrogatories – employment,
18 and form interrogatories – general on Plaintiff. Plaintiff responded to this discovery on October 4,
19 2021. On September 7, 2021, Plaintiff served one set of requests for production of documents and
20 one set of special interrogatories on Defendant. Defendant responded to this discovery on October
21 26, 2021. On March 8, 2022, Defendant took Plaintiff's deposition. (Mara Dec. ¶ 11).

22 This discovery and the resulting meet and confer efforts led to Defendant producing over
23 600 pages of documents in addition to a sampling of time and wage records for aggrieved
24 employees. (Mara Dec. ¶ 12).

25 **c. Mediation**

26 The Parties attended mediation with wage and hour mediator Steve Mehta on March 31,
27 2022. At the mediation, the Parties were able to reach an agreement on settlement that is reflected
28 in the Joint Stipulation and Settlement Agreement the Parties now ask the Court to approve. (Mara

Dec. ¶ 13; *see also* **Exhibit 1** attached thereto).

III. THE PARTIES' CONFLICTING POSITIONS

Defendant operates 18 retail stores out of which it sells donated items to the public. At each of the stores, Goodwill employs hourly managers and assistant managers, both of whom share largely the same management responsibilities.

a. Meal and Rest Periods

Plaintiff alleges that employees are not provided with duty-free meal and rest periods. Employers have an obligation under California law to provide employees with thirty (30) minute meal periods. Under California Labor Code § 512(a), “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” Cal. Lab. Code § 512(a).

Employers have an obligation to provide employees with ten (10) minute rest periods. An employer’s obligation to provide its employees with rest periods arises under the Industrial Welfare Commission Wage Orders. Wage Order 7-2001, Section 12(A) states, “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. . . .”

Under California law an employer “satisfies this obligation [to provide meal periods] if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.” *Brinker Restaurant Corp. v. Superior Court* (“*Brinker*”) (2012) 53 Cal.4th 1004, 1040. Employees are not said to have received duty-free meal periods “[w]hen an employer directs, commands, or restrains an employee from leaving the work place for his or her lunch hour and thus prevents the employee from using the time effectively for his or her own purposes.” *Bono Enterprises, inc. v. Bradshaw* (1995) 32 Cal. App. 4th 968, 975. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court ruled that the standards applicable to providing meal periods the Court had articulated in *Brinker Restaurant*

1 *Corp. v. Superior Court* are equally applicable to the rest period context. Failure to provide a lawful
2 meal or rest period shall result in the employer paying “the employee one additional hour of pay
3 at the employee’s regular rate of compensation for each workday that the meal or rest or recovery
4 period is not provided.” Cal. Lab. Code § 226.7(c).

5 Plaintiff contends that Defendant tells its manager and assistant managers that they cannot
6 leave the retail centers when they are the only manager on duty, including during meal and rest
7 breaks. Plaintiff asserts that Defendant requires managers and assistant managers to remain in the
8 retail center when they are the only manager on duty so they can handle issues that may arise
9 during these times. (Mara Dec. ¶ 14).

10 Defendant contends that it paid meal period premiums in all shifts during which a manager
11 was the only manager on duty going back to May 2020. Defendant further asserts that its retail
12 stores were closed from March 15, 2020 through May 2020 due to COVID. Defendant argues that
13 prior to March 15, 2020, it did not have a policy under which managers had to remain on the
14 premises during meal periods. Defendant contends that prior to March 15, 2020, it had two
15 managers on duty at all times so managers were always able to leave the premises for meal periods.
16 Defendant asserts that it was forced to have only one manager on duty after COVID due to short
17 staffing as a result of COVID. As noted above, Defendant argues that it paid meal period premiums
18 for all shifts in which a manager was the only manager on duty once managers returned to the
19 retail stores after COVID. In addition, Defendant argues that managers were able to leave the
20 premises for rest periods.

21 **b. Unpaid Wages**

22 Plaintiff alleges that Defendant do not pay managers and assistant managers for all hours
23 worked, namely, for time spent on meal periods that are neither duty free nor control free. In
24 California, employees must be paid for all “hours worked,” as that phrase is defined in the Wage
25 Order and interpreted by California courts. Hours worked is defined in Wage Order 7-2001 as “the
26 time during which an employee is subject to the control of an employer, and includes all the time
27 the employee is suffered or permitted to work, whether or not required to do so.” Wage Order 7-
28 2001, Subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal. 4th 833. Under

1 this standard, “it is only necessary that the worker be subject to the control of the employer in order
2 to be entitled to compensation.” *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 584. The
3 *Morillion* Court reasoned that an employee is under the employer’s control and entitled to
4 compensation when the employer “directs, commands or restrains’ an employee.” *Morillion*, 22
5 Cal. 4th at 583 (*quoting Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal. App. 4th 968, 975).

6 As outlined above, Plaintiff contends that Defendant requires managers and assistant
7 managers to remain on the premises during unpaid meal periods when they are the only manager
8 on duty. Plaintiff asserts that this time should be paid as employees are under Defendant’s control
9 during meal periods. (Mara Dec. ¶ 15).

10 Defendant contends that it paid employees for meal period time going back to May 2020.
11 As previously discussed, Defendant argues that managers were not the only manager on duty prior
12 to May 2020. As such, Defendant asserts that employees have been paid all wages owed.

13 **c. Wage Statements and Waiting Time Penalties**

14 Plaintiff also pursued claims for failure to provide accurate itemized wage statements and
15 waiting time penalty claims. These claims are derivative of Plaintiff’s unpaid wages claim. Should
16 Plaintiff’s unpaid wages claim fail, these claims would also fail.

17 In addition, Defendant contends that even if Plaintiff were successful in her unpaid wage
18 claims, she would have to prove Defendant “willfully” failed to pay managers and assistant
19 managers the appropriate wages due upon separation of employment. “A willful failure to pay
20 wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails
21 to pay wages to an employee when those wages are due. However, a good faith dispute that any
22 wages are due will preclude imposition of waiting time penalties under Section 203.” Cal. Code
23 Regs. Tit. 8 § 13520. “A ‘good faith dispute’ that any wages are due occurs when an employer
24 presents a defense, based in law or fact, which would preclude any recovery on the part of the
25 employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good
26 faith dispute did exist.” *Id.* Defendant contend that any failure to pay wages due at the separate of
27 employment was not willful. Defendant argue that it would not be liable for waiting time penalties
28 because a “good faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8

1 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.

2 Defendant also argues that Plaintiff's unpaid wage claims cannot form the basis of her
3 wage statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22
4 Cal.App.5th 1308, for the position that employees do not suffer injury under California Labor
5 Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay
6 received even if the pay is later determined to be inaccurate.

7 **d. Manageability**

8 Defendant also argues that should litigation continue, it will bring a motion challenging the
9 manageability of trial as Defendant does not believe that this case can be tried manageably and
10 will require the testimony of every individual aggrieved employee.

11 **IV. THE PROPOSED SETTLEMENT**

12 The Parties have agreed (subject to and contingent upon the Court's approval) that this
13 action be settled and compromised for the non-reversionary total sum of \$205,000.00 ("Maximum
14 Settlement Amount" or "MSA"), which includes, subject to Court approval: (a) attorneys' fees of
15 \$68,326.50 (33.33% of the MSA) to compensate PAGA Counsel for work already performed and
16 work remaining to be performed in securing Court approval and overseeing administration of the
17 settlement; (b) litigation costs in the amount of \$11,809.96; (c) PAGA Representative Payment to
18 the named Plaintiff in the amount of \$10,000 in consideration for Plaintiff's work in litigating this
19 case and in exchange for agreeing to a general release of her claims against Defendant; and (d)
20 administration fees and expenses to Phoenix Settlement Administrators ("Phoenix") in the amount
21 of \$2,995.²

22 After all Court-approved deductions from the GSA, it is estimated that the Net Settlement
23 Amount ("NSA") will be \$111,868.54. California Labor Code § 2699(i) states that "civil penalties
24 recovered by aggrieved employees shall be distributed in accordance with Labor Code § 2699 *et*
25 *seq.* as follows: 75% to the LWDA for enforcement of labor laws, including the administration of

26
27 ² See Declaration of Jodey Lawrence of Phoenix Class Action Administration Solutions in Support
28 of Plaintiff's Motion for Settlement Approval of Claims Brought Under the Private Attorneys
General Act ("Lawrence Dec.") ¶ 17.

1 this part, and for education of employers and employees about their rights and responsibilities
2 under this code, to be continuously appropriated to supplement and not supplant the funding to the
3 agency for those purposes; and 25% to the aggrieved employees.” Therefore, of the NSA,
4 \$83,901.40 (75% of the NSA) will go to the LWDA and \$27,967.14 (25% of the NSA) will be
5 distributed to Aggrieved Employees.³

6 **a. Calculation of the Settlement Payments to the Aggrieved Employees**

7 Subject to the terms and conditions of the Settlement Agreement, the Settlement
8 Administrator will calculate and issue Individual Settlement Shares to Aggrieved Employees based
9 on the following formula:

10 Each Aggrieved Employee will receive a proportionate share of the NSA that is
11 equal to (i) the number of pay periods he or she worked for Defendant in California
12 during the PAGA Period based on the Database provided by Defendant, divided by
13 (ii) the total number of pay periods worked by all Aggrieved Employees based on
14 the same Database, which is then multiplied by the NSA. One day worked in a
15 given pay period will be credited as a pay period for purposes of this calculation.
16 Therefore, the value of each Aggrieved Employee’s Individual Settlement Share
17 ties directly to the amount of pay periods that he or she worked.

18 (Exhibit 1 at Section III, Paragraph B(1)(a), Page 6). One hundred percent (100%) of each
19 Individual Share is considered to be a civil penalty. Payroll tax withholdings and deductions will
20 not be withheld from these Individual Settlement Shares. Each Individual Settlement Share will
21 be reported on IRS 1099 Forms. (See Exhibit 1 at Section III, Paragraph B(2), Page 6).

22 **b. Funding and Disbursement**

23 Within thirty (30) days of the Effective Final Settlement,⁴ Defendant shall deliver to
24 Phoenix an electronic database, which will list for each Aggrieved Employee: (1) first and last
25 name; (2) last known mailing address; (3) last known telephone number; (4) social security
26 number; (5) hire and termination dates; and (6) the total number of pay periods during which the
27 Aggrieved Employee performed work during the PAGA Period as an Aggrieved Employee
28 (“Database”). Phoenix will conduct a skip trace for the address of all Aggrieved Employees who

³ Aggrieved Employees are estimated to receive an average payment of approximately \$167.47 (\$27,967.14 divided by approximately 167 Aggrieved Employees).

⁴ The Effective Final Settlement Date is the date when the Court Enters an order granting approval of the Settlement. (Exhibit 1 at Section I, Paragraph J, Page 2).

1 are former employees of Defendant and an NCOA search on all addresses. (See **Exhibit 1** at
2 Section III, Paragraph E(2)(a), Page 9).

3 The Maximum Settlement Amount will be wired by Defendant to Phoenix in two equal
4 payments. The first payment shall occur within thirty (30) days of the Effective Final Settlement
5 Date. The second payment shall occur within sixty (60) days of the Effective Final Settlement
6 Payment. (See **Exhibit 1** at Section III, Paragraph E(2)(b), Page 9). Phoenix will disburse the MSA
7 within seven (7) days after receiving the second settlement payment from Defendant. The
8 Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Aggrieved
9 Employees; (2) the Attorney Fee Award and Cost Award to Plaintiff's Counsel, as approved by
10 the Court; (3) the PAGA Representative Payment paid to the Plaintiff, as approved by the Court;
11 (4) the Administration Costs, as approved by the Court; and (5) the LWDA Payment. (See **Exhibit**
12 **1** at Section III, Paragraph E(2)(d), Page 10). A Notice of PAGA Settlement, substantially similar
13 to the form attached to the Settlement Agreement as **Exhibit A**, subject to Court approval, shall
14 accompany each Individual Settlement Share check.

15 **c. Returned Notices and Checks**

16 If a Notice and Individual Settlement Check are returned because of an incorrect address,
17 within five (5) business days from receipt of the returned Notice, Phoenix will conduct a search
18 for a more current address for the Aggrieved Employee and re-mail the Notice and Individual
19 Settlement Share check to the Aggrieved Employee. Phoenix will use the NCOA and skip traces
20 to attempt to find the current address. Phoenix will be responsible for taking reasonable steps to
21 trace the mailing address of any Aggrieved Employee for whom a Notice and Individual
22 Settlement Share check is returned by U.S. Postal Service as undeliverable. These reasonable steps
23 shall include, at a minimum, the tracking of all undelivered mail; performing address searches for
24 all mail returned without a forwarding address; calling Aggrieved Employees to determine an
25 accurate mailing address if none can be found; and promptly re-mailing the Notice and Individual
26 Settlement Check to Aggrieved Employees for whom new addresses are found. If the PAGA
27 Notice is re-mailed, the Settlement Administrator will note for its own records the date and address
28 of each re-mailing. (See **Exhibit 1** at Section III, Paragraph E(2)(e), Page 10).

1 **d. Undeliverable Notices and Checks**

2 If any Notice is returned and deemed undeliverable by Phoenix, the Settlement
3 Administrator will promptly provide the contact information of the Aggrieved Employee with the
4 undeliverable Notice and Individual Settlement Share check to Plaintiff's Counsel. Plaintiff's
5 Counsel will provide this contact information to a third-party investigator to perform a TLOxp or
6 IDI search using the available contact information. The TLOxp or IDI search performs a "deep
7 skip trace" of the Aggrieved Employee and will have a greater chance of locating a better address
8 for the Aggrieved Employee. (See **Exhibit 1** at Section III, Paragraph E(2)(f), Page 10).

9 **e. Uncashed Checks**

10 Aggrieved Employees must cash or deposit their Individual Settlement Share checks within
11 one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are
12 not redeemed or deposited within ninety (90) calendar days after mailing, Phoenix will send a
13 reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90)
14 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or
15 misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period
16 after mailing the reminder notice, Phoenix will, within two hundred (200) calendar days after the
17 checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share
18 checks returned as undeliverable and funds associated with those Individual Settlement Share
19 checks remaining un-cashed, shall be transmitted by Phoenix to Legal Aid at Work. (See **Exhibit**
20 **1** at Section III, Paragraph E(6), Page 11).

21 **f. Release of Claims**

22 Each of the Aggrieved Employees, including Plaintiff, shall fully release and forever
23 discharge any and all debts, liabilities, demands, obligations, penalties, guarantees, costs,
24 expenses, attorneys' fees, damages, or interest based on any and all PAGA claims seeking civil
25 penalties under California Labor Code sections 2698, et seq., Wage Orders, regulations, and/or
26 other provisions of law alleged or, based on the facts pled in the Lawsuit and PAGA Notice, could
27 have been alleged to have been violated in the Lawsuit with respect to the Aggrieved Employees,
28 including but not limited to all claims for failure to provide meal periods, all claims for failure to

1 authorize and permit rest breaks, all claims for failure to pay all wages, including overtime and
2 premium wages, all claims for failure to provide compensation for all hours worked, all claims for
3 failure to pay minimum wages, all claims for waiting time penalties/late payment of wages, and
4 all claims for failure to maintain and provide accurate itemized wage statements during the PAGA
5 Period. Aggrieved employees, other than Plaintiff, will not be deemed to have released any
6 individual wage and hour claims by virtue of this Settlement. (**Exhibit 1** at Section I, Paragraph
7 Z, Pages 3-4). The Released Parties include Defendant including its past, present, and future
8 divisions, affiliates, parents, subsidiaries, predecessors, successors, assigns, members,
9 shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives,
10 administrators, fiduciaries, beneficiaries, subrogees, executors, partners, and privies. (**Exhibit 1** at
11 Section I, Paragraph AA, Page 4).

12 Plaintiff has also agreed to a general release of her individual claims. (*See Exhibit 1* at
13 Section III, Paragraph G, Page 12).

14 **V. THE COURT SHOULD APPROVE OF THE SETTLEMENT**

15 The PAGA allows for the private enforcement of certain California Labor Code sections
16 relating to wage and hour violations. The settlement of a PAGA action requires court approval
17 pursuant to the operative PAGA statute, which states that a superior court shall review and approve
18 the settlement of any civil action filed pursuant to the PAGA. *See* Cal. Lab. Code § 2699(1)(2).
19 However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not
20 obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain
21 approval of the PAGA settlement through a motion for preliminary or final approval. The only
22 requirement placed on settling parties under California Labor Code § 2699(1)(2) is that the
23 proposed settlement must be submitted to the LWDA at the same time it is filed with the Court.
24 Cal. Lab. Code § 2699(1)(2). As noted above, Plaintiff already provided the Parties' Settlement
25 Agreement to the LWDA. Other than this requirement, the PAGA does not set forth any standards
26 by which the Court must conduct its review of the Settlement Agreement. *See Id.*

27 In evaluating the adequacy of the settlement amount, a court is not concerned with the
28 amount the aggrieved employees are to receive, but rather, a court must focus on the total

1 settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit
2 consists of civil penalties, not individual or class damages.” *Mendez v. Tween Brands, Inc.* (E.D.
3 Cal. July 1, 2010) 2010 WL 2650571 *4. “Unlike class actions, these civil penalties are not meant
4 to compensate unnamed employees because the action is fundamentally a law enforcement action.”
5 *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. April 2, 2010) 2010 WL 1340777 *4.
6 Moreover, a court must not lose sight of the fact that “[u]nlike a class action seeking damages or
7 injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to
8 recover civil penalties for the government that otherwise may not have been assessed and collected
9 by overburdened state enforcement agencies.” *Id.*

10 As with any settlement, a court must be mindful in conducting its inquiry that “[s]ettlement
11 is a compromise, which balances the possible recovery against the risks inherent in litigating
12 further.” *See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) 2011 U.S.
13 Dist. LEXIS 103222, *24. Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes
14 and an abandoning of highest hopes’” [*Officers for Justice v. Civil Service Com.* (9th Cir. 1982)
15 688 F.2d 615, 624], as “it is the very uncertainty of outcome in litigation and avoidance of wasteful
16 and expensive litigation that induce consensual settlements.” *Id.* at 625.

17 In analyzing PAGA settlements, it is important that “the relief provided for under the
18 PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit
19 the public[.]” *O’Connor v. Uber Techs., Inc.* (N.D. Cal. Aug. 18, 2016) 201 F.Supp.3d 1110, 1133.
20 The court in *O’Connor* suggests that courts can look at the factors outlined in *Hanlon v. Chrysler*
21 *Corp.* (9th Cir. 1998) 150 F.3d 1011, in evaluating a PAGA settlement. *See O’Connor*, 201
22 F.Supp.3d at 1134.

23 Under *Hanlon*, a court must conclude that a settlement is “fundamentally fair, adequate,
24 and reasonable” before it approves of the settlement. *Hanlon*, 150 F.3d at 1026. The analysis in
25 *Hanlon* is typically used in federal district courts to evaluate proposed class action settlements. In
26 California state courts, settlements are more typically evaluated under the standards set forth in the
27 cases *Dunk v. Ford Motor Co.* (“*Dunk*”) (1996) 48 Cal.App.4th 1794, and *Kullar v. Foot Locker*
28 *Retail, Inc.* (“*Kullar*”) (2008) 168 Cal.App.4th 116. Similar to *Hanlon*, *Dunk* found that in deciding

1 whether to approve a proposed class action settlement under California Code of Civil Procedure §
2 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” *Dunk*, 48
3 Cal.App.4th at 1801.

4 A proposed settlement is presumed fair under the following circumstances: (1) the Parties
5 reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient
6 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
7 and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802. Here, as will be shown
8 herein, all of these elements bearing on the fairness of the proposed settlement—with the exception
9 of the percentage of objectors, which is not applicable in a PAGA action⁵—are present.

10 *Kullar* instructs that an understanding of the amount in controversy is an important factor
11 into whether the settlement “of the class members’ claims is reasonable in light of the strengths
12 and weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker*
13 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of*
14 *Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the
15 strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”
16 *Id.* In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to “decide
17 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of
18 the attorneys.” *Kullar*, 168 Cal.App.4th at 133.

19 **a. The Settlement is Fair, Reasonable, and Adequate**

20 **i. The Settlement was Reached as a Result of Arm’s Length Negotiations**

21 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
22 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
23 nature. At the mediation, counsel for the Parties conducted extensive arm’s length settlement
24 negotiations until the settlement was reached.

25 ///

26 ⁵ The PAGA provides no notice or claim procedures. Therefore, objections, other than the potential
27 objection of the LWDA, are not contemplated in PAGA actions. *See Baumann v. Chase Inv. Servs.*
28 *Corp.* (2014) 747 F.3d 1117, 1122 (“Unlike *Rule 23(c)(2)*, PAGA has no notice requirements for
unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”).

1 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

2 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
3 before reaching the proposed settlement, and engaged in sufficient investigation, research and
4 discovery to support the settlement. The significant amount of discovery, the production and
5 analysis of hundreds of documents and thousands of lines of data, and protracted settlement
6 negotiations through the mediations and in the discussions that followed were the substantial bases
7 upon which the Parties’ “clear view of the strengths and weaknesses of their cases” was made
8 possible. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

9 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

10 Both Plaintiff’s Counsel and Defendant’s Counsel are particularly experienced in wage and
11 hour employment law and class actions. Plaintiff’s Counsel has significant experience in litigating
12 cases on behalf of employees, including for unpaid wages, unprovided meal and rest periods, and
13 overtime claims. (Mara Dec. ¶¶ 2-8, Declaration of Mohamed Eldessouky, Esq. (“Eldessouky
14 Dec.”) ¶¶ 2-20). Indeed, Plaintiff’s Counsel at Mara Law Firm, PC, was class counsel in
15 *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject case in the landmark
16 decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. (Mara Dec. ¶ 4).
17 Plaintiff’s Counsel has prosecuted numerous wage and hour cases on behalf of employees for
18 California Labor Code violations and thus are experienced and qualified to evaluate the claims and
19 to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the
20 defenses. This experience instructed Plaintiff’s Counsel on the risks and uncertainties of further
21 litigation and guided their determination to endorse the proposed settlement. Defendant’s Counsel
22 practices labor and employment law and have represented numerous employers in similar types of
23 claims. Accordingly, both Parties’ Counsel are experienced in wage and hour employment law and
24 class actions.

25 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

26 An understanding of the amount in controversy is an important factor into whether the
27 settlement of the Aggrieved Employees’ “claims is reasonable in light of the strengths and
28 weaknesses of the claims and the risks of the particular litigation.” *Kullar*, 168 Cal.App.4th 116,

1 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
2 409. The most important factor in this regard is “the strength of the case for plaintiffs on the merits,
3 balanced against the amount offered in settlement.” *Id.*

4 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
5 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
6 that of the attorneys.” *Kullar*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit
7 statement of the maximum amount the Aggrieved Employees could recover if it prevailed on all
8 its claims, provided there is a record which allows “an understanding of the amount that is in
9 controversy and the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409.
10 Put differently, “as the court does when it approves a settlement as in good faith under *Code of*
11 *Civil Procedure* section 877.6, the court must at least satisfy itself that the [PAGA] settlement is
12 within the ‘ballpark’ of reasonableness.” *Kullar*, 168 Cal.App.4th at 133, citing *Tech-Bilt v.*
13 *Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.

14 As the following subsections show, the Parties’ investigation and discovery revealed a
15 healthy discount was needed in order to reach a settlement.

16 **1. The Settlement is Fair and Reasonable Based on the Strengths
of Plaintiff’s Case and the Risks and Costs of Further Litigation**

17 Based upon the data provided by Defendant, Plaintiff determined that there are
18 approximately 167 Aggrieved Employees who worked approximately 2,500 pay periods.

19 Plaintiff claims that there are five (5) potential violations under § 2699(f)(2) – failure to
20 provide lawful meal breaks, failure to provide lawful rest breaks, failure to pay all wages, failure
21 to pay for failure to provide accurate itemized wage statements, and failure to pay wages at the
22 time of termination⁶ – of the Labor Code sections which give rise to PAGA penalties. (Mara Dec.
23 ¶ 16).

24 The PAGA allows the private enforcement of certain California Labor Code sections
25 relating to wage and hour violations. PAGA Section 2699(f)(2) reads, in part, as follows:

26 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per
27

28 ⁶ Plaintiff’s claims for wage statements and waiting time penalties are derivative of her claims for failure to pay all wages.

1 pay period for the initial violation and two hundred dollars (\$200) for each
2 aggrieved employee per pay period for each subsequent violation.

3 California courts have interpreted this language to require notice to the employer that an initial
4 violation occurred before penalties for subsequent violations could be assessed. *See Amaral v.*
5 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1210. Under *Amaral*, “subsequent” has a special
6 meaning within the California Labor Code that triggers heightened statutory penalties only after
7 an employer has learned that its conduct violates the Labor Code—that is, pursuant to
8 *Amaral*, courts may reject a purely chronological understanding of the term “subsequent” and
9 interpret its use in California Labor Code to require that “the employer has been notified that it is
10 violated a Labor Code provision” before higher penalties are triggered. *Amaral*, 163 Cal.App.4th
11 at 1157, 1207–09. Each of Plaintiff’s claims, with the exception of Plaintiff’s claims for waiting
12 time penalties, occurred at least once in every pay period. Plaintiff’s claims for waiting time
13 penalties only occurred in approximately 113 pay periods. Thus, Defendant’s *maximum* exposure
14 under §2699(f)(2) is \$1,011,300:

15
$$\$100 \times 4 \text{ PAGA violations} \times 2,500 \text{ pay periods} = \$1,000,000$$

16
$$\$100 \times 1 \text{ PAGA violations} \times 113 \text{ pay periods} = \$11,300$$

17
$$\text{Maximum Exposure: } \$1,011,300$$

18 (Mara Dec. ¶ 17).

19 In exploring the settlement of any PAGA action, the critical fact that the Court is permitted
20 discretion to award a “lesser amount than the maximum penalty amount” must be heavily taken
21 into consideration. *Lab. Code*. § (e)(2). Unlike the underlying violations upon which the Plaintiffs
22 seek to impose PAGA civil penalties, there is no set amount the Court must levy on an employer
23 Defendant it finds to have violated the underlying claims. Under “the facts and circumstances of
24 the particular case,” the Court is permitted wide discretion to slash civil penalty amounts. This
25 discretion and how a particular court will exercise it is always an unknown variable in predicting
26 the dollar outcome of any PAGA action when evaluating settlement. Under its wide discretion to
27 award lesser amounts, a Court could side with Plaintiff on his claims and find that the underlying
28 Labor Code rights were violated but decide to substantially moderate the imposition of PAGA

1 penalties for those violations.

2 Courts have used this discretion to massively discount PAGA penalties imposed where it
3 found the defendant employer took its Labor Code obligations seriously, even if the employer fell
4 short of complying with them. In *Thurman v. Bayshore Transit Management, Inc.* (“*Thurman*”)
5 (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum penalty
6 allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the
7 maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th
8 1112, 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has
9 taken its obligations to comply with the law seriously. *Id.* In *Kaanaana v. Barrett Business*
10 *Services, Inc.* (2018) 29 Cal.App.5th 778, 788 & 809, the Court of Appeals took no issue with the
11 trial court exercising its discretion in slashing PAGA civil penalties for violations of Labor Code
12 section 512 to 13% of the total recoverable penalties. In *Carrington v. Starbucks* (2018) 30
13 Cal.App.5th 504, the plaintiff requested penalties in excess of \$70 million, based on a \$25 to \$75
14 penalty per violation. The court reduced the award, stating that awarding the maximum penalty
15 would be unjust, arbitrary, and oppressive based on Starbucks’s good faith attempts to comply with
16 the law. The lower court’s reduced award of \$150,000 was affirmed on appeal, which reflects .2%
17 of the total recoverable penalties sought.⁷

18 Thus, the projected value of PAGA claims is a variable value of two predictive indexes: 1)
19 the likelihood that Plaintiff will succeed in proving the underlying claims were violated, and 2) the
20 extent to which the Court will impose Civil Penalties permitted under PAGA. This is to be
21 distinguished from the projected values of class claims of Labor Code and Wage Order violations.
22 For instance, and relevant to the underlying claims in this action, class claims alleging California’s
23 meal and rest break, minimum wage, and wage statement laws were violated, the predictive value
24 for purposes of determining whether settlement values are fair and reasonable rests only on the

25
26 ⁷ These instances of judicial discretion imposing massive reductions in recoverable penalties is to
27 be contrasted with *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) 365 F.Supp. 3d 980, 992, where
28 the trial court reduced the recoverable PAGA penalties by only 25%. *Bernstein*, however, only
amplifies the predictive blind spot of how a court can exercise its wide-discretion to reduce full
PAGA exposure.

1 likelihood of prevailing on the merits and the exposure related thereto, as there is no judicial
2 discretion to award lesser amounts owed for adjudged violations. It is for these reasons that, in
3 assessing and judging the reasonableness of PAGA settlements, the touchstone feature is the
4 “remedial purpose” achieved in the settlement amount, which takes into account the defendant
5 employer’s “good faith” belief that it complied with the laws claimed to be violated. *Bernstein*,
6 365 F. Supp. 3d at 991.

7 Based on this blind spot of how the Court would exercise its discretion in addition to the
8 likelihood the Court would side with Plaintiffs on the underlying Labor Code violations, Plaintiff
9 necessarily and substantially had to discount the settlement value off of the full PAGA penalty
10 amounts. As discussed earlier, Defendant argues its meal and rest policies and practices track the
11 Labor Code and Wage Order requirements and the standards articulated in *Brinker* and *Augustus*.
12 Thus, even if Defendant were proven wrong on these fronts and ultimately found to have violated
13 the underlying Labor Code claims, the Court could find a good faith reliance on *Brinker*, *Augustus*,
14 and other governing authorities justifiably instructed Defendant’s actions and thereby impose a
15 massive reduction of PAGA penalties akin to the Courts in *Kaanaana* and *Carrington*.

16 Good faith settlement negotiations, after considerable discovery, investigation, and
17 litigation, necessarily had to focus on amounts far less than that potential exposure. The proposed
18 PAGA settlement here of \$205,000, which takes into account the realistic exposure, the very real
19 impediments of succeeding on the merits, the risk of further litigation, and, even if Plaintiff
20 succeeded on the merits, persuading against a robust discount, reflects an appropriate, balanced,
21 and reasonable settlement value of the PAGA claims. The settlement amount fits within the
22 “remedial purpose” of PAGA of enforcing compliance with important employee protections in the
23 Labor Code and Wage Order.

24 **b. The Court Should Approve the Requested Attorneys’ Fees and Costs**

25 The PAGA provides that any employee who prevails is entitled to an award of reasonable
26 attorneys’ fees and costs. Cal. Lab. Code § 2699(g)(1). The PAGA statute provides for approval
27 of the settlement but does not specifically provide that the amount or reasonableness of attorneys’
28 fees and costs is subject to court approval. Cal. Lab. Code §§ 2699(g)(1) and (l)(2). A reasonable

1 interpretation of the PAGA is that the amount of attorneys' fees need only be addressed by a court
2 when the LWDA objects because there is no need to provide absent employees' due process rights
3 in a PAGA settlement since the aggrieved employees do not have their own substantive rights. *See*
4 *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 436. And, the LWDA,
5 as the real party in interest and the primary beneficiary of the settlement, has an opportunity to
6 review the settlement before it is approved. Cal. Lab. Code § 2699(1)(2). Unlike a class action,
7 where the purpose of court approval is to protect absent class members, in a PAGA settlement the
8 real party in interest, the LWDA, has the opportunity to review and consider the reasonableness of
9 the fees and object before the court hears the approval motion. If a court considers the
10 reasonableness of the attorneys' fees requested, it should be guided by the common fund doctrine
11 typically applied in class action cases.

12 **i. The Requested Attorneys' Fee and Cost Award is Within the Range of**
13 **Fees Approved in Comparable Common Fund Cases**

14 California state and federal courts have recognized that an appropriate method for
15 determining an award of attorneys' fees is based on a percentage of the total value of benefits to
16 class members by a settlement, also known as the "common fund" method. *Serrano v. Priest*
17 (1977) 20 Cal.3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent*
18 *v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. "Despite its primacy, the lodestar
19 method is not necessarily utilized in common fund cases." *Lealao v. Beneficial California, Inc.*
20 (2000) 82 Cal.App.4th 19, 27 [*Lealao*]; *Dunk*, 48 Cal. App. 4th at 1808 (the percentage method
21 calculates attorney fees as a reasonable percentage of the common fund and may be used where
22 the amount of the settlement is a certain or easily calculable sum of money). The purpose of the
23 common fund/percentage approach is to "spread litigation costs proportionally among all the
24 beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557
25 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: "[O]ne
26 who expends attorneys' fees in winning a suit which creates a fund from which others derive
27 benefits may require those passive beneficiaries to bear a fair share of the litigation costs."

28 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the

1 California Supreme Court recognized that the common fund doctrine has been applied
2 “consistently in California when an action brought by one party creates a fund in which other
3 persons are entitled to share.” The reasons for applying the common fund doctrine include:
4 “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery
5 might be consumed by the expenses; correlative prevention of an unfair advantage to the others
6 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
7 encouragement of the attorney for the successful litigant, who will be more willing to undertake
8 and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured
9 that he will be properly and directly compensated should his efforts be successful.” *Id.*

10 Assessing an appropriate fee based on a percentage of the fund involves taking into account
11 “all of the circumstances of the case.” There is sparse case law addressing the evaluation of
12 reasonable attorneys’ fees in employee representative or class actions as appellate cases addressing
13 fees arise almost exclusively where awards were challenged by Defendant or objectors – the only
14 parties with standing to appeal. *Wershba*, 91 Cal.App.4th at 236. Several studies of class action
15 fee awards have found that the median common fund fee award is approximately one-third of the
16 total settlement fund. *See, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11
17 (numerous studies have shown that “fee awards in class actions average around one-third of the
18 recovery.”); Reagan W. Silber and Frank E. Goodrich, Common Funds and Common Problems:
19 Fee Objections and Class Counsel’s Response, 17 Rev. Litig. 525, 546 ; T. Willging, L. Hooper
20 and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to
21 the Advisory Committee on Civil Rules, 90 (1996) (finding that attorneys’ fees in class litigation
22 “were generally in the traditional range of approximately one-third of the total settlement”).

23 Here, PAGA Counsel applies for an award of attorneys’ fees in the sum of \$68,326.50
24 (which is 33.33% of the MSA). The requested fee falls in the mid-range of percentage class fee
25 awards, which commonly range from 20% to 50% of a common fund, and constitutes fair
26 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
27 contingent basis and compensates PAGA Counsel for their efforts, as well as the result achieved
28 for the benefit of the State of California and the Aggrieved Employees. (Mara Dec. ¶ 18).

1 Numerous state and federal courts in California routinely approve fee requests equal to or
2 greater than 33.33% of the common fund. In short, PAGA Counsel's fee request of \$68,326.50 is
3 in line with awards in California and nationwide and demonstrates that PAGA Counsel's fee
4 request is consistent with market rates and is reasonable.

5 **ii. A Lodestar Cross-Check Confirms the Reasonableness of the**
6 **Requested Fee**

7 PAGA Counsel's fee request is reasonable when calculated using the lodestar method.
8 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
9 spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977)
10 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a "multiplier" to account for a
11 range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree
12 of success achieved. *Id.* at 49; *see also Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM*
13 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92
14 Cal.App.4th 819, 834, ("[t]here is no ... rule limiting the factors that may justify an exercise of
judicial discretion to [adjust the] lodestar").

15 PAGA Counsel has worked 220 hours to date on this case and have calculated the lodestar
16 fee on those hours at \$151,050 at rates reflecting those currently earned in the marketplace. (Mara
17 Dec. ¶¶ 23, 26; **Exhibit 5**, Summary of Time and Costs; Eldessouky Dec. ¶ 26). All of the work
18 and tasks performed by PAGA Counsel were reasonable and necessary to the prosecution of this
19 case and are reflected in the result achieved.

20 PAGA Counsel respectfully requests a fee of \$68,326.50, which, based on the total attorney
21 hours expended (220) and applicable hourly rates would result in a lodestar fee of \$151,050. As
22 PAGA Counsel's lodestar fee is in excess of their fee request, a multiplier on their lodestar fee is
23 not sought herein. (Mara Dec. ¶ 21). In fact, the requested fee results in a so-called "negative
24 multiplier" which suggests the percentage of the fund amount is reasonable and fair. *See Chun-*
25 *Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc.*
26 *Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at *16.

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28 ///

1 **iii. PAGA Counsel's Hourly Rates are Reasonable**

2 PAGA Counsel's hourly rates are between \$600 and \$800 and are in line with rates
3 typically approved in wage and hour class action and PAGA litigation and which rates have been
4 approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda,
5 Orange and San Diego County Superior Courts. (Mara Dec. ¶ 22; **Exhibit 2**, Westlaw Court
6 Express's Legal Billing Report, Volume 14, Number 3, California Region for December 2012;
7 **Exhibit 3**, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC
8 GIC834348; **Exhibit 4**, 2012 National Law Journal Survey of Hourly Billing Rates for Partners
9 and Associates)).

10 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
11 experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson*
12 *v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining a
13 reasonable hourly rate, courts may consider factors such as the attorney's skill and experience, the
14 nature of the work performed, the relevant area of expertise and the attorney's customary billing
15 rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.

16 PAGA Counsel's skill and experience support their hourly rates. Their practice is limited
17 exclusively to litigation, focusing on the representation of employees in wage and hour class action
18 and PAGA matters. As prominent attorneys in the field of wage and hour employment litigation,
19 Plaintiff's counsel continually monitors the prevailing market rates charged by both defense and
20 plaintiff law firms and set the billing rates of their attorneys and paralegals/law clerks to be
21 consistent with the prevailing market rates in the private sector for attorneys and staff of
22 comparable skill, qualifications and experience. Other wage and hour attorneys working as class
counsel before California courts charge comparable if not higher rates.

23 **iv. PAGA Counsel's Total Hours are Reasonable**

24 In determining a lodestar fee, reasonable hours include, in addition to time spent during
25 litigation, the time spent before the action was filed, including time spent interviewing clients,
26 investigating the facts and the law, and preparing the initial pleadings.⁸ Further, the fee award
27 should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Priest*

28 ⁸ See *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.

(1982) 32 Cal.3d 621, 639 (“*Serrano IV*”). PAGA Counsel has expended a total of 220 hours on this case. The work performed by PAGA Counsel in order to achieve a settlement that will provide valuable consideration to the State of California and the Aggrieved Employees is summarized by PAGA Counsel in the declarations submitted herewith. (Mara Dec. ¶¶ 23, 26; Eldessouky Dec. ¶ 26).

Counsel’s many tasks, in summary form, included the following: communicating with Plaintiff; interviewing aggrieved employees throughout the state; drafting PAGA letter notifying the LWDA of Plaintiff’s claims; investigation into Defendant’s pay-structures and policies; draft and file pleadings; numerous conferences with co-counsel and Defendant’s Counsel; draft and revise case management statements; attend case management conferences; draft brief in support of jury trial as to damages; propound discovery; review discovery responses; draft meet and confer letter; draft Belaire West notice; analyze records produced by Defendant relating to their policies, pay-structures, and time keeping; respond to discovery propounded on Plaintiff; prepare Plaintiff for her deposition; attend and defend Plaintiff’s deposition; draft mediation brief and mediation damage and exposure models; prepare for and attend mediation; draft, review, negotiate, and revise the memorandum of understanding and settlement agreement; discussions with settlement administrator regarding their duties; draft settlement approval motion and supporting papers; review settlement administrator’s declaration; and appearing at the settlement approval hearing. (Mara Dec. ¶¶ 23, 26; Eldessouky Dec. ¶¶ 21-26).

All of the tasks and work performed were reasonable and necessary to the prosecution of this case.

v. Costs of Litigation

PAGA Counsel seeks reimbursement of the litigation costs and expenses of \$11,809.96. These costs were all reasonable and necessary to the prosecution of this case and the results achieved, and are fair, reasonable, and unopposed by Defendant. (Mara Dec. ¶ 28; **Exhibit 5**).

c. The Court Should Approve the Requested PAGA Representative Payment

PAGA Counsel seeks approval of PAGA Representative Payment for the named Plaintiff in the sum of \$10,000. In a typical class or representative action, Courts routinely approve service

1 payments, or incentive awards, to compensate named plaintiffs for the services they provide and
2 the risks they incur during class litigation. See *In re Cellphone Fee Termination Cases* (2010) 186
3 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-
4 26 (upholding service payments to class representatives); Manual § 21.62 n.971 (noting that
5 service payments are warranted). Plaintiff has not only deferred any individual recovery up until
6 this point, but as a result of this settlement, will be releasing her own claims arising out of her
7 employment with Defendant, including any individual wage and hour claims. If the Court approves
8 this settlement, the aggrieved employees are still free to pursue their own individual wage and hour
9 claims.

10 Not only is Plaintiff giving up the right to recover for her own individual wage and hour
11 claims in addition to all other known and unknown claims against Defendant,⁹ Plaintiff has also
12 put a great deal of effort into pursuing this matter for the State of California and for her fellow
13 aggrieved employees, furthering the purposes of PAGA and conserving the limited resources of
14 the Labor Commissioner. The requested service payment is reasonable in light of the benefits
15 Plaintiff has conferred upon the State of California and the Aggrieved Employees, the significant
16 time spent assisting counsel with the investigation and prosecution of these claims, giving a general
17 release of all claims, and consenting to the proposed settlement. (See Declaration of Plaintiff Daisy
18 Solano). Based on the foregoing, the \$10,000 PAGA Representative Payment to the named
19 Plaintiff is fair, appropriate and justified as part of the overall settlement.

20 **d. The Administration Costs are Reasonable**

21 The Parties agreed to hire Phoenix as the Administrator.¹⁰ Phoenix will be responsible for
22 formatting, printing, and mailing an agreed upon Notice of Settlement of PAGA Action to be sent
23 along with the Individual Settlement Shares. It will also be responsible for updating addresses and
24 re-mailing checks returned as undeliverable, responding to Aggrieved Employee inquiries, and
25 answering questions from the Parties. Phoenix also provided a declaration for filing with the

26 ⁹ On the Effective Final Settlement Date, and as a condition of receiving any portion of the PAGA
27 Representative Payment, Plaintiff is agreeing to an additional General Release of all claims against
28 Defendant. (See **Exhibit 1** at Section III, Paragraph G, Page 12).

¹⁰ See Lawrence Dec., which outlines Phoenix's qualifications and experience.

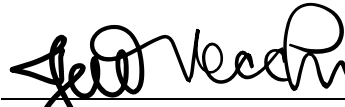
1 settlement motion. Phoenix seeks a fee of \$2,995 for the services it will provide in conjunction
2 with this settlement. (Lawrence ¶ 17). Plaintiff now requests that the Court approve a fee of \$2,995
3 to Phoenix for services to be rendered. Following the grant of approval, Phoenix will calculate and
4 mail the Individual Settlement Share checks to the Aggrieved Employees, disburse other payments
5 as ordered by the Court, and perform such other duties as set forth in the Settlement Agreement.
6 Phoenix's fee of \$2,995 for services rendered and to be rendered is fair and reasonable and should
7 be granted.

8 **VI. CONCLUSION**

9 For the reasons stated herein, the Court should grant Plaintiff's motion in its entirety.

10
11 Dated: May 13, 2022

MARA LAW FIRM, PC

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13 

14 David Mara, Esq.

15 Jill Verchi, Esq.

16 Attorneys for Daisy Solano, on behalf of herself,
17 all others similarly situated, and on behalf of the
18 general public
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Make a Reservation

DAISY SOLANO vs GOODWILL, SERVING THE PEOPLE OF SOUTHERN CALIFORNIA LOS ANGELES COUNTY

Case Number: 21STCV19280 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2021-05-21 Location: Stanley Mosk Courthouse - Department 73

Reservation

Case Name: DAISY SOLANO vs GOODWILL, SERVING THE PEOPLE OF SOUTHERN CALIFORNIA LOS ANGELES COUNTY	Case Number: 21STCV19280
Type: Motion re: (Motion for PAGA Settlement)	Status: RESERVED
Filing Party: Daisy Solano (Plaintiff)	Location: Stanley Mosk Courthouse - Department 73
Date/Time: 06/07/2022 8:30 AM	Number of Motions: 1
Reservation ID: 225343640777	Confirmation Code: CR-LZRBEUMEPWP8CJQDE

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: Visa
Account Number: XXXX0650	Authorization: 004054

[Print Receipt](#)[+ Reserve Another Hearing](#)