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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS

PAUL HERNANDEZ on behalf of
himself, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

UNITED FACILITIES, INC.; and DOES
1-100,

Defendants.

Case No. CV-21-004264

**PLAINTIFF PAUL HERNANDEZ'S
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Date: January 24, 2023
Time: 8:30 a.m.

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1 **I. INTRODUCTION**

2 Plaintiff Paul Hernandez (“Plaintiff”) respectfully requests that the Court approve of the
3 PAGA Settlement Agreement (“Settlement Agreement”) entered into between Plaintiff and
4 Defendant United Facilities, Inc. (“Defendant”) (collectively Plaintiff and Defendant are referred
5 to as the “Parties”) which resolves the claims raised against Defendant in exchange for a non-
6 reversionary \$1,350,000 Gross Settlement Amount (“GSA”).

7 This proposed settlement will settle the claims alleged in Plaintiff’s complaint under the
8 Private Attorneys General Act of 2004 (“PAGA”) on behalf of the California Labor and Workforce
9 Development Agency (“LWDA”) and all current and former non-exempt employees who worked
10 in California for Defendant during the PAGA Period (“Aggrieved Employees”). The PAGA Period
11 is June 6, 2020 through December 31, 2022.¹ The relief provided for under the Settlement
12 Agreement is solely for the payment of penalties under the PAGA.

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

22 **II. BACKGROUND**

23 **a. Procedural History**

24 Plaintiff sent his Notice of Labor Code Violations Pursuant to Labor Code § 2699.3 on
25

26 ¹ As this motion is being filed prior to the December 31, 2022 cutoff for the PAGA Period, Plaintiff
27 will file a supplemental brief before the January 24, 2023 hearing to apprise the Court of any
28 changes to the number of Aggrieved Employees and/or pay periods under the proposed settlement.

² 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.

May 26, 2021. In the letter, Plaintiff, a former non-exempt employee of Defendant, apprised the LWDA of his claims against Defendant United Facilities, Inc. Plaintiff's notice alleged that Defendant violated the California Labor Code by failing to pay all straight time wages, failing to pay minimum wages, failing to pay all overtime wages, failing to provide lawful meal and rest periods, failing to provide accurate itemized wage statements, failing to pay all wages owed at termination, and failing to pay wages twice per month. Declaration of David Mara, Esq. ("Mara Dec.") ¶ 9.

This action was filed by Plaintiff against Defendant in the Stanislaus County Superior Court on August 10, 2021. The complaint alleged causes of action on behalf of Plaintiff and those similarly situated aggrieved employees under the PAGA for failure to pay straight time wages, failure to pay overtime, failure to provide meal periods, failure to provide rest periods, failure to provide compliant wage statements, failure to pay all wages due at termination, and failure to pay wages twice per month. Mara Dec. ¶ 10.

b. Discovery and Investigation

After filing, the Parties conducted formal and informal discovery. On or around August 30, 2021, Plaintiff propounded one set of document requests and one sets of special interrogatories on Defendant. Defendant responded to this discovery on or around December 14, 2021. Thereafter, the Parties met and conferred over these responses. Once the Parties had agreed to attend mediation, they began conducting further informal discovery. Mara Dec. ¶ 11.

As a result of this formal and informal discovery, Defendant produced hundreds of pages of documents and a sampling of time and wage records for aggrieved employees. The documents included policy documents such as Defendant's meal and rest period policies, policies regarding the payment of wages, and employee handbooks. Mara Dec. ¶ 12.

c. Mediation

The Parties attended mediation with respected wage and hour mediator Hon. Wynne S. Carvill (Ret.) on October 19, 2022. Shortly after the mediation, the mediator issued a mediator's proposal that was ultimately accepted by the Parties. Thereafter, the Parties drafted and signed a Memorandum of Understanding, detailing the principal settlement terms, which were later

1 memorialized in the Settlement Agreement the Parties now ask the Court to approve. A copy of
2 the Settlement Agreement is attached to the Declaration of David Mara, Esq. as **Exhibit 1**. Mara
3 Dec. ¶ 13.

4 **III. THE PARTIES' CONFLICTING POSITIONS**

5 **a. Rest Periods**

6 Based upon the investigation, discovery, and litigation conducted, Plaintiff contends that
7 Defendant fails to provide employees with lawful rest periods. Employers have an obligation to
8 provide employees with ten (10) minute rest periods. An employer's obligation to provide its
9 employees with rest breaks arises under the IWC Wage Orders. Wage Order 9-2001 – the Wage
10 Order Applicable to the employees in this matter - Section 12(A) requires:

11 Every employer shall authorize and permit all employees to take rest periods, which
12 insofar as practicable shall be in the middle of each work period. The authorized
13 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.

14 The Labor Code penalizes an employer who fails to provide a rest period as mandated by the Wage
15 Orders by requiring the employer to pay the employee "one additional hour of pay at the
16 employee's regular rate of compensation for each workday that the meal or rest or recovery period
17 is not provided." *See* Labor Code section 226.7.

18 In *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016), the California Supreme
19 Court ruled that the standards applicable to providing meal periods the Court had articulated a few
20 years earlier, in *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012) were equally
21 applicable to the rest period context. Citing to *Brinker*, the *Augustus* Court ruled that, like meal
22 periods, "[d]uring required rest periods, employers must relieve their employees of all duties and
23 relinquish any control over how employees spend their break time" *Augustus, supra*, 2 Cal.5th at
24 260. At a minimum, to relinquish employer control over how employees spend their break time,
25 the employee must be "free to leave the premises." *Brinker, supra*, 53 Cal.4th at 1036. As the
26 *Augustus* Court reasoned, the employee must be free to travel five minutes away from the work
27 site so that they can get back within the allotted ten minute time frame of the break. *Augustus,*
28 *supra*, 2 Cal.5th at 270.

1 Plaintiff contends that Defendant maintains a uniform rest period policy that explicitly tells
2 employees that they are not permitted to leave the work premises during a rest period. For this
3 reason, Defendant does not relinquish all control over class members during their rest periods in
4 violation of California law. Mara Dec. ¶ 14.

5 Defendants contend that although at one time they may have had a rest period policy that
6 did not permit employees to leave the premises, this has not been the case since February of 2018.
7 Defendant points to an addendum in the back of the employee handbook that clearly states that
8 employees are permitted to leave the premises for their rest periods. Further, Defendant claims that
9 it informs employees that they are to take duty-free rest periods wherever they choose and that
10 they do not need to stay on the premises if they want to go somewhere else. Mara Dec. ¶ 15.

11 **b. Meal Periods**

12 Under California Labor Code section 512 and the IWC Wage Orders, no employer shall
13 employ any person for a work period of more than five hours without providing a meal period of
14 not less than thirty minutes. The first meal period must be permitted to commence no later than
15 after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). *Brinker*
16 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. The second meal period must be
17 permitted to commence no later than after ten hours of work, or the start of the eleventh hour of
18 work (10.0 hours on the clock). *Id.* In *Brinker*, the California Supreme Court succinctly
19 described Section 512's mandate: "Employers must afford employees uninterrupted half-hour
20 periods in which they are relieved of any duty or employer control and are free to come and go
21 as they please." *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.

22 Plaintiff argues that Defendant fails to provide employees with a full 30 minute meal
23 period "in which they are relieved of any duty or employer control." Defendant expects
24 employees to clock out and in for meal periods. However, it takes employees several minutes to
25 travel from the breakroom to the timeclock to punch back in at the end of a meal period. To
26 make matters worse, employees are required to wait in line behind other employees for several
27 minutes who are also trying to clock back in after a meal period. All of this time spent under
28 Defendant's control cuts into the employee's 30 minute meal period. Mara Dec. ¶ 16.

1 Defendant asserts that, just as with rest periods, employees are provided with meal
2 periods in accordance with California law. Defendant points out that the meal period policy in
3 the employee handbook is facially lawful, that nothing in Defendant's meal period policy
4 prevents employees from taking additional time beyond the minimum allocated 30 minutes, and
5 that no one is disciplined for not clocking in precisely at the 30-minute mark upon their return
6 from a meal period, nor would it be feasibly possible to expect employees to do so, highlighting
7 the absurdity of Plaintiff's claims here. Defendant also argues that Plaintiff would have to ask
8 each employee whether they thought the policy Plaintiff relies upon actually meant that
9 employees were required to clock back in to work after a 30-minute meal period, despite
10 Defendant's meal period policy explicitly providing for a minimum of 30 minutes, not a
11 maximum. Because each employee would have to testify as to their understanding of the policy,
12 Plaintiff's claim would be unmanageable at trial. *Mara Dec.* ¶ 17.

13 **c. Unpaid Wages**

14 Employees must be paid for all "hours worked," as that phrase is defined in the Wage Order
15 and interpreted by California courts. Hours worked is defined in Wage Order 9-2001 – the Wage
16 Order that governs the employees in this case - as "the time during which an employee is subject
17 to the control of an employer, and includes all the time the employee is suffered or permitted to
18 work, whether or not required to do so." Wage Order 9-2001, Subd. 2(K); *see also Mendiola v.*
19 *CPS Security Solutions, Inc.*, 60 Cal. 4th 833 (2015). Under this standard, "it is only necessary that
20 the worker be subject to the control of the employer in order to be entitled to compensation."
21 *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 584 (2000).

22 The *Morillion* Court reasoned that an employee is under the employer's control and entitled
23 to compensation when the employer "directs, commands or restrains' an employee." *Morillion*,
24 *supra*, 22 Cal. 4th at 583, quoting from *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968,
25 975 (1995). Whether time is considered compensable hours worked is based entirely on employer
26 control. *Id.* at 584. That is, whether during the time in question the employee is subject to an
27 employer's directive, command, or restraint. *Id.* at 583. Completely irrelevant to the analysis of
28 whether time is compensable work time is whether employees were permitted to engage in limited,

1 non-working activities, such as eating, reading, or sleeping, while they are under the employer's
2 directive, command, or restraint. *Id.* at 587. Again, it is the existence of the directive, command,
3 or restraint that the employee must oblige that determines whether the employee is engaged in
4 compensable hours worked. *Id.* at 583.

5 As discussed previously, Plaintiff asserts that Defendant does not pay employees for the
6 time spent traveling from the breakroom to the timeclock during their unpaid meal periods, nor for
7 the time spent waiting in line to clock back in for work during their unpaid meal periods. As
8 employees are off the clock during these time periods, they are not being paid for this time, despite
9 clearly being under Defendant's control pursuant to *Morillion* and the authorities that have
10 followed. Mara Dec. ¶ 18.

11 Defendant argues that beyond the limited accusations of Plaintiff, there is no evidence that
12 employees performed *any* work-related tasks for which they were not compensated, and that
13 Defendant has uniform practices and policies *forbidding* employees from working off the clock.
14 Defendant claims that Plaintiff's recitation of the circumstances surrounding how employees clock
15 in for work after a meal period is wholly inaccurate, and that the time spent engaging in the above
16 activities takes merely seconds, not minutes. Due to this brevity, Defendant asserts that it is not
17 reasonably required to compensate employees for this time. Mara Dec. ¶ 19.

18 **d. Wage Statements, Waiting Time Penalties, and Failure to Pay All Wages**
19 **Twice Per Month**

20 Plaintiff also pursued claims for failure to provide accurate itemized wage statements and
21 waiting time penalty claims. These claims are derivative of Plaintiff's unpaid wages claim. Should
22 Plaintiff's unpaid wages claim fail, these claims would also fail. Mara Dec. ¶ 20.

23 In addition, Defendant contends that even if Plaintiff were successful in his unpaid wage
24 claims, he would have to prove Defendant "willfully" failed to pay employees the appropriate
25 wages due upon separation of employment. "A willful failure to pay wages within the meaning of
26 Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee
27 when those wages are due. However, a good faith dispute that any wages are due will preclude
28 imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good

1 faith dispute' that any wages are due occurs when an employer presents a defense, based in law or
2 fact, which would preclude any recovery on the part of the employee. The fact that a defense is
3 ultimately unsuccessful will not preclude a finding that a good faith dispute did exist." *Id.*
4 Defendant contends that any failure to pay wages due at the separate of employment was not
5 willful. Defendant argues that it would not be liable for waiting time penalties because a "good
6 faith dispute" exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral*
7 *v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.

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

13 **e. Manageability**

14 Defendant also argues that should litigation continue, they will bring a motion challenging
15 the manageability of trial as Defendant does not believe that this case can be tried manageably and
16 will require the testimony of every individual aggrieved employee. Furthermore, while Defendant
17 does not concede that any of their wage and hour policies are unlawful, Defendant claims that any
18 challenges Plaintiff has posed to these policies are easily refuted by how they are implemented in
19 practice; as a result, no aggrieved employee has suffered any damages. *Mara Dec.* ¶ 21.

20 **IV. THE PROPOSED SETTLEMENT**

21 The Parties have agreed (subject to and contingent upon the Court's approval) that this
22 action be settled and compromised for the non-reversionary total sum of \$1,350,000.00 ("Gross
23 Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of
24 \$449,955 (33.33% of the GSA) to compensate PAGA Counsel for work already performed and
25 work remaining to be performed in securing Court approval and overseeing administration of the
26 settlement; (b) litigation costs in the amount of \$8,878.94; (c) PAGA Representative Payment to
27 the named Plaintiff in the amount of \$10,000 in consideration for Plaintiff's work in litigating this
28 case and in exchange for agreeing to a general release of his claims against Defendant; and (d)

administration fees and expenses to Phoenix Settlement Administrators (“Phoenix”) in the amount of \$3,500.³

After all Court-approved deductions from the GSA, it is estimated that the Net Settlement Amount (“NSA”) will be \$877,666.06. California Labor Code § 2699(i) states that “civil penalties recovered by aggrieved employees shall be distributed in accordance with Labor Code § 2699 *et seq.* as follows: 75% to the LWDA for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25% to the aggrieved employees.” Therefore, of the NSA, \$658,249.54 (75% of the NSA) will go to the LWDA and \$219,416.52 (25% of the NSA) will be distributed to Aggrieved Employees.⁴

a. Calculation of the Settlement Payments to the Aggrieved Employees

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

Settlement Payment = Twenty-Five Percent (25%) of the NSA × [pay periods worked by individual Aggrieved Employee during the Settlement Period ÷ total pay periods worked by all Aggrieved Employees during the Settlement Period].

Exhibit 1 at Paragraph 16(b), Page 5. One hundred percent (100%) of each Individual Share is considered to be a civil penalty. Payroll tax withholdings and deductions will not be withheld from these Individual Settlement Shares. Each Individual Settlement Share will be reported on IRS 1099 Forms. See **Exhibit 1** at Paragraph 23, Page 8.

b. Funding and Disbursement

Within fourteen (14) calendar days after entry of the order and judgment granting approval of the Settlement Agreement, Defendant will provide Phoenix a complete list of all Aggrieved

³ See Declaration of Jodey Lawrence of Phoenix Settlement Administrators in Support of PAGA Settlement (“Lawrence Dec.”), **Exhibit B**.

⁴ Aggrieved Employees are estimated to receive an average payment of approximately \$979.53 (\$219,416.515 divided by approximately 224 Aggrieved Employees).

1 Employees (“Aggrieved Employee List”). The Aggrieved Employee List will be formatted in
2 Microsoft Office Excel or other computer-readable format and will include each Aggrieved
3 Employees full name; most recent mailing address and telephone number; Social Security number;
4 the respective number of pay periods during which each Aggrieved Employee worked during the
5 PAGA Period; and any other relevant information needed to calculate settlement payments to the
6 extent available from Defendant’s records. *See Exhibit 1* at Paragraph 21, Page 7.

7 The Gross Settlement Amount will be wired by Defendant to Phoenix fourteen (14)
8 calendar days after entry of the order and judgment granting approval of the Settlement Agreement.
9 *See Exhibit 1* at Paragraph 22, Pages 7-8. Phoenix will disburse the GSA within fourteen (7) days
10 after funding. The Settlement Administrator shall disburse: (1) the Net Settlement Amount to be
11 paid to Aggrieved Employees; (2) the Attorney Fee Award and Cost Award to Plaintiff’s Counsel,
12 as approved by the Court; (3) the PAGA Representative Payment paid to the Plaintiff, as approved
13 by the Court; (4) the Administration Costs, as approved by the Court; and (5) the LWDA Payment.
14 *Id.* A Notice of PAGA Settlement, substantially similar to the form attached to the Settlement
15 Agreement as **Exhibit A**, subject to Court approval, shall accompany each check mailed to the
16 Aggrieved Employees.

17 **c. Undelivered Checks**

18 Any checks returned as non-deliverable on or before the check cashing deadline will be
19 sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no
20 forwarding address is provided, the Settlement Administrator will promptly attempt to determine
21 the correct address using a skip-trace, or other search using the name, address or Social Security
22 number of the Aggrieved Employee involved, and will then perform a single re-mailing. *See*
23 **Exhibit 1** at Paragraph 23, Page 8.

24 **d. Uncashed Checks**

25 Checks will remain negotiable for 180 days. Those funds represented by un-cashed checks
26 which remain outstanding 180 days after the mailing of the Settlement checks by the Settlement
27 Administrator will be tendered to Alliance for Children’s Rights. *See Exhibit 1* at Paragraph 23,
28 Page 8.

1 **e. Release of Claims**

2 Upon entry of the order and judgment granting approval of the Settlement Agreement,
3 Plaintiff and the LWDA will be forever barred from pursuing against Released Parties⁵ any and
4 all Released Claims during the PAGA Period. “Released Claims” means all claims for civil
5 penalties pursuant to PAGA, arising at any time during the PAGA Period based on facts alleged
6 in the operative complaint and notice submitted to the LWDA, or that could have been alleged
7 based on the facts pleaded in the operative complaint or LWDA notice, or that were alleged in the
8 case, including, but not limited to civil penalties that arise or that could arise out of allegations of
9 unpaid wages due to time spent queuing-to-punch and unpaid wages for alternative-work-schedule
10 employees who did not work a full 10-hour shift. *See Exhibit 1* at Paragraph 13, Pages 2-3. Other
11 than Plaintiff’s general release, this Settlement does not release any individual wage-and-hour
12 claims on behalf of the Aggrieved Employees.

13 Plaintiff has also agreed to a general release of his individual claims. *See Exhibit 1* at
14 Paragraph 18, Page 6.

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

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

25
26 ⁵ “Released Parties” means Defendant and any and all of its affiliated companies and its respective
27 parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without
28 limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past,
present or future officers, directors and employees) predecessors, successors, and assigns. *See*
Exhibit 1 at Paragraph 9, Page 2.

1 Cal. Lab. Code § 2699(1)(2). As noted above, Plaintiff already provided the Parties' Settlement
2 Agreement to the LWDA. Other than this requirement, the PAGA does not set forth any standards
3 by which the Court must conduct its review of the Settlement Agreement. *See Id.*

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

15 As with any settlement, a court must be mindful in conducting its inquiry that "[s]ettlement
16 is a compromise, which balances the possible recovery against the risks inherent in litigating
17 further." *See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) 2011 U.S.
18 Dist. LEXIS 103222, *24. Indeed, "the very essence of a settlement is ... 'a yielding of absolutes
19 and an abandoning of highest hopes'" [*Officers for Justice v. Civil Service Com.* (9th Cir. 1982)
20 688 F.2d 615, 624], as "it is the very uncertainty of outcome in litigation and avoidance of wasteful
21 and expensive litigation that induce consensual settlements." *Id.* at 625.

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

1 Under *Hanlon*, a court must conclude that a settlement is “fundamentally fair, adequate,
2 and reasonable” before it approves of the settlement. *Hanlon*, 150 F.3d at 1026. The analysis in
3 *Hanlon* is typically used in federal district courts to evaluate proposed class action settlements. In
4 California state courts, settlements are more typically evaluated under the standards set forth in the
5 cases *Dunk v. Ford Motor Co.* (“*Dunk*”) (1996) 48 Cal.App.4th 1794, and *Kullar v. Foot Locker*
6 *Retail, Inc.* (“*Kullar*”) (2008) 168 Cal.App.4th 116. Similar to *Hanlon*, *Dunk* found that in deciding
7 whether to approve a proposed class action settlement under California Code of Civil Procedure §
8 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” *Dunk*, 48
9 Cal.App.4th at 1801.

10 A proposed settlement is presumed fair under the following circumstances: (1) the Parties
11 reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient
12 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
13 and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802. Here, as will be shown
14 herein, all of these elements bearing on the fairness of the proposed settlement—with the exception
15 of the percentage of objectors, which is not applicable in a PAGA action⁶—are present.

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

26 ⁶ 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 **a. The Settlement is Fair, Reasonable, and Adequate**

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

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

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

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

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

16 Both Plaintiff’s Counsel and Defendant’s Counsel are particularly experienced in wage and
17 hour employment law and class actions. Plaintiff’s Counsel has significant experience in litigating
18 unpaid wages, unprovided meal and rest periods, and overtime claims. Indeed, Plaintiff’s Counsel
19 at Mara Law Firm, PC, was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*,
20 which is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court*
21 (2012) 53 Cal.4th 1004. Mara Dec. ¶¶ 2-8. Plaintiff’s Counsel has prosecuted numerous wage and
22 hour cases on behalf of employees for California Labor Code violations and thus are experienced
23 and qualified to evaluate the claims and to evaluate settlement versus trial on a fully informed
24 basis, and to evaluate the viability of the defenses. Mara Dec. ¶ 8. This experience instructed
25 Plaintiff’s Counsel on the risks and uncertainties of further litigation and guided their
26 determination to endorse the proposed settlement.⁷ Defendant’s Counsel practices labor and

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28 ⁷ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the
Class Notice has been provided to the class and they have had an opportunity to respond. This

1 employment law and have represented numerous employers in similar types of claims.
2 Accordingly, both Parties' Counsel are experienced in wage and hour employment law and class
3 and representative actions.

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

5 An understanding of the amount in controversy is an important factor into whether the
6 settlement of the Aggrieved Employees' "claims is reasonable in light of the strengths and
7 weaknesses of the claims and the risks of the particular litigation." *Kullar*, 168 Cal.App.4th 116,
8 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
9 409. The most important factor in this regard is "the strength of the case for plaintiffs on the merits,
10 balanced against the amount offered in settlement." *Id.*

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

21 As the following subsections show, the Parties' investigation and discovery revealed a
22 healthy discount was needed in order to reach a settlement.

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

25 Based upon the data provided by Defendant prior to mediation, Plaintiff determined that
26 there are approximately 224 Aggrieved Employees who worked approximately 14,878 pay
27 periods.

28 _____
information will be provided to the Court in conjunction with the final approval motion.

1 Plaintiff claims that there are seven (7) potential violations under § 2699(f)(2) – failure to
2 provide lawful meal breaks or pay a premium, failure to provide lawful rest breaks or pay a
3 premium, failure to pay all wages, failure to pay overtime, failure to pay for failure to provide
4 accurate itemized wage statements, failure to pay wages at the time of termination, and failure to
5 pay wages twice per month – of the Labor Code sections which give rise to PAGA penalties. Mara
6 Dec. ¶ 22.

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

9 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per
10 pay period for the initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent violation.

11 California courts have interpreted this language to require notice to the employer that an initial
12 violation occurred before penalties for subsequent violations could be assessed. *See Amaral v.*
13 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1210. Under *Amaral*, “subsequent” has a special
14 meaning within the California Labor Code that triggers heightened statutory penalties only after
15 an employer has learned that its conduct violates the Labor Code—that is, pursuant to
16 *Amaral*, courts may reject a purely chronological understanding of the term “subsequent” and
17 interpret its use in California Labor Code to require that “the employer has been notified that it is
18 violated a Labor Code provision” before higher penalties are triggered. *Amaral*, 163 Cal.App.4th
19 at 1157, 1207–09. Each of Plaintiff’s claims, with the exception of Plaintiff’s claims for failure to
20 waiting time penalties, occurred at least once in every pay period. Plaintiff’s claims for waiting
21 time penalties only occurred in approximately 224 pay periods. Thus, Defendants’ *maximum*
22 exposure under §2699(f)(2) is \$8,949,200:

23 \$100 x 6 PAGA violations x 14,878 pay periods = \$8,926,800

24 \$100 x 1 PAGA violation x 224 pay periods = \$22,400

25 Maximum Exposure: \$8,949,200

26 Mara Dec. ¶ 23.

27 In exploring the settlement of any PAGA action, the critical fact that the Court is permitted
28

1 discretion to award a “lesser amount than the maximum penalty amount” must be heavily taken
2 into consideration. *Lab. Code*. 2699 § (e)(2). Unlike the underlying violations upon which the
3 Plaintiff seeks to impose PAGA civil penalties, there is no set amount the Court must levy on an
4 employer Defendant it finds to have violated the underlying claims. Under “the facts and
5 circumstances of the particular case,” the Court is permitted wide discretion to slash civil penalty
6 amounts. This discretion and how a particular court will exercise it is always an unknown variable
7 in predicting the dollar outcome of any PAGA action when evaluating settlement. Under its wide
8 discretion to award lesser amounts, a Court could side with Plaintiff on his claims and find that the
9 underlying Labor Code rights were violated but decide to substantially moderate the imposition of
10 PAGA penalties for those violations.

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

27 _____
28 ⁸ These instances of judicial discretion imposing massive reductions in recoverable penalties is to
be contrasted with *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) 365 F.Supp. 3d 980, 992, where

1 Thus, the projected value of PAGA claims is a variable value of two predictive indexes: 1)
2 the likelihood that Plaintiff will succeed in proving the underlying claims were violated, and 2) the
3 extent to which the Court will impose Civil Penalties permitted under PAGA. This is to be
4 distinguished from the projected values of class claims of Labor Code and Wage Order violations.
5 For instance, and relevant to the underlying claims in this action, class claims alleging California's
6 meal and rest break, minimum wage, and wage statement laws were violated, the predictive value
7 for purposes of determining whether settlement values are fair and reasonable rests only on the
8 likelihood of prevailing on the merits and the exposure related thereto, as there is no judicial
9 discretion to award lesser amounts owed for adjudged violations. It is for these reasons that, in
10 assessing and judging the reasonableness of PAGA settlements, the touchstone feature is the
11 "remedial purpose" achieved in the settlement amount, which takes into account the defendant
12 employer's "good faith" belief that it complied with the laws claimed to be violated. *Bernstein*,
13 365 F. Supp. 3d at 991.

14 Based on this blind spot of how the Court would exercise its discretion in addition to the
15 likelihood the Court would side with Plaintiff on the underlying Labor Code violations, Plaintiff
16 necessarily and substantially had to discount the settlement value off of the full PAGA penalty
17 amounts. As discussed earlier, Defendant argues its meal and rest policies and practices track the
18 Labor Code and Wage Order requirements and the standards articulated in *Brinker* and *Augustus*.
19 Likewise, Defendant argues that they pay employees for all time worked. Thus, even if Defendant
20 was proven wrong on these fronts and ultimately found to have violated the underlying Labor Code
21 claims, the court could find a good faith reliance on *Brinker*, *Augustus*, and other governing
22 authorities justifiably instructed Defendant's actions and thereby impose a massive reduction of
23 PAGA penalties akin to the Courts in *Kaanaana* and *Carrington*.

24 Good faith settlement negotiations, after considerable discovery, investigation, and
25 litigation, necessarily had to focus on amounts far less than that potential exposure. The proposed

26 _____
27 the trial court reduced the recoverable PAGA penalties by only 25%. *Bernstein*, however, only
28 amplifies the predictive blind spot of how a court can exercise its wide-discretion to reduce full
PAGA exposure.

1 PAGA settlement here of \$1,350,000, which takes into account the realistic exposure, the very real
2 impediments of succeeding on the merits, the risk of further litigation, and, even if Plaintiff
3 succeeded on the merits, persuading against a robust discount, reflects an appropriate, balanced,
4 and reasonable settlement value of the PAGA claims. The settlement amount fits within the
5 “remedial purpose” of PAGA of enforcing compliance with important employee protections in the
6 Labor Code and Wage Order.

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

8 The PAGA provides that any employee who prevails is entitled to an award of reasonable
9 attorneys’ fees and costs. Cal. Lab. Code § 2699(g)(1). The PAGA statute provides for approval
10 of the settlement but does not specifically provide that the amount or reasonableness of attorneys’
11 fees and costs is subject to court approval. Cal. Lab. Code §§ 2699(g)(1) and (l)(2). A reasonable
12 interpretation of the PAGA is that the amount of attorneys’ fees need only be addressed by a court
13 when the LWDA objects because there is no need to provide absent employees’ due process rights
14 in a PAGA settlement since the aggrieved employees do not have their own substantive rights. *See*
15 *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 436. And, the LWDA,
16 as the real party in interest and the primary beneficiary of the settlement, has an opportunity to
17 review the settlement before it is approved. Cal. Lab. Code § 2699(l)(2). Unlike a class action,
18 where the purpose of court approval is to protect absent class members, in a PAGA settlement the
19 real party in interest, the LWDA, has the opportunity to review and consider the reasonableness of
20 the fees and object before the court hears the approval motion. If a court considers the
21 reasonableness of the attorneys’ fees requested, it should be guided by the common fund doctrine
22 typically applied in class action cases.

23 **i. The Requested Attorneys’ Fee and Cost Award is Within the Range of**
24 **Fees Approved in Comparable Common Fund Cases**

25 California state and federal courts have recognized that an appropriate method for
26 determining an award of attorneys’ fees is based on a percentage of the total value of benefits to
27 class members by a settlement, also known as the “common fund” method. *Serrano v. Priest*
28 (1977) 20 Cal.3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent*

1 *v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. “Despite its primacy, the lodestar
2 method is not necessarily utilized in common fund cases.” *Lealao v. Beneficial California, Inc.*
3 (2000) 82 Cal.App.4th 19, 27 [“*Lealao*”]; *Dunk*, 48 Cal. App. 4th at 1808 (the percentage method
4 calculates attorney fees as a reasonable percentage of the common fund and may be used where
5 the amount of the settlement is a certain or easily calculable sum of money). The purpose of the
6 common fund/percentage approach is to “spread litigation costs proportionally among all the
7 beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent*, 557
8 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: “[O]ne
9 who expends attorneys’ fees in winning a suit which creates a fund from which others derive
10 benefits may require those passive beneficiaries to bear a fair share of the litigation costs.”

11 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the
12 California Supreme Court recognized that the common fund doctrine has been applied
13 “consistently in California when an action brought by one party creates a fund in which other
14 persons are entitled to share.” The reasons for applying the common fund doctrine include:
15 “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery
16 might be consumed by the expenses; correlative prevention of an unfair advantage to the others
17 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
18 encouragement of the attorney for the successful litigant, who will be more willing to undertake
19 and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured
20 that he will be properly and directly compensated should his efforts be successful.” *Id.*

21 Assessing an appropriate fee based on a percentage of the fund involves taking into account
22 “all of the circumstances of the case.” There is sparse case law addressing the evaluation of
23 reasonable attorneys’ fees in employee representative or class actions as appellate cases addressing
24 fees arise almost exclusively where awards were challenged by defendants or objectors – the only
25 parties with standing to appeal. *Wershba*, 91 Cal.App.4th at 236. Several studies of class action
26 fee awards have found that the median common fund fee award is approximately one-third of the
27 total settlement fund. See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11
28 (numerous studies have shown that “fee awards in class actions average around one-third of the

recovery.”); Reagan W. Silber and Frank E. Goodrich, Common Funds and Common Problems: Fee Objections and Class Counsel’s Response, 17 Rev. Litig. 525, 546 ; T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in the traditional range of approximately one-third of the total settlement”).

Here, PAGA Counsel applies for an award of attorneys’ fees in the sum of \$449,955 (which is 33.33% of the GSA). The requested fee falls in the mid-range of percentage class fee awards, which commonly range from 20% to 50% of a common fund, and constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates PAGA Counsel for their efforts, as well as the result achieved for the benefit of the State of California and the Aggrieved Employees. Mara Dec. ¶ 24.

Numerous state and federal courts in California routinely approve fee requests equal to or greater than 33.33% of the common fund. In short, PAGA Counsel’s fee request of \$449,955 is in line with awards in California and nationwide and demonstrates that PAGA Counsel’s fee request is consistent with market rates and is reasonable.

ii. A Lodestar Cross-Check with a Modest Multiplier Confirms the Reasonableness of the Requested Fee

PAGA Counsel’s fee request is reasonable when calculated using the lodestar method. 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. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *see also Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92 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”).

Courts “routinely enhance[] the lodestar to reflect the risk of non-payment in common fund cases.” *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of the most common fee enhancers [...]

1 is for contingency risk.”) Such an enhancement “mirrors the established practice in the private
2 legal market of rewarding attorneys’ fees for taking the risk of nonpayment by paying them a
3 premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 220 F.3d at
4 1051. A risk multiplier also serves to bring the financial incentives for enforcing important rights
5 “into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-
6 for-service basis.” *Ketchum*, 24 Cal.4th at 1132. In determining whether or not to enhance or
7 reduce the lodestar, California courts take into account multiple factors, including: the time and
8 labor required; the skill requisite to perform the legal services properly; the preclusion of other
9 employment by the attorney due to the acceptance of the case; the contingent nature of the fee; the
10 amount involved and results obtained; the experience, reputation, and ability of the attorney; and
11 awards in similar cases. *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 822.

12 PAGA Counsel has worked 444 hours to date on this case and have calculated the lodestar
13 fee on those hours at \$303,950 at rates reflecting those currently earned in the marketplace. Mara
14 Dec. ¶¶ 29-30, 32-33; **Exhibit 5**, Summary of Time and Costs. All of the work and tasks performed
15 by PAGA Counsel were reasonable and necessary to the prosecution of this case and are reflected
16 in the result achieved. Mara Dec. ¶ 25.

17 Courts “routinely enhance[] the lodestar to reflect the risk of non-payment in common fund
18 cases.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002); *Graham v.*
19 *DaimlerChrysler Corp.*, 34 Cal.4th 553, 579 (2004) (“One of the most common fee enhancers [...]”
20 is for contingency risk.”) Such an enhancement “mirrors the established practice in the private
21 legal market of rewarding attorneys’ fees for taking the risk of nonpayment by paying them a
22 premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 220 F.3d at
23 1051. A risk multiplier also serves to bring the financial incentives for enforcing important rights
24 “into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-
25 for-service basis.” *Ketchum*, 24 Cal.4th at 1132. In determining whether or not to enhance or
26 reduce the lodestar, California courts take into account multiple factors, including: the time and
27 labor required; the skill requisite to perform the legal services properly; the preclusion of other
28 employment by the attorney due to the acceptance of the case; the contingent nature of the fee; the

1 amount involve and results obtained; the experience, reputation, and ability of the attorney; and
2 awards in similar cases. *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 822.

3 As discussed above, this was a highly-contested matter which required a significant amount
4 of time and labor. PAGA Counsel had to investigate and analyze hundreds of pages of documents
5 and Excel spreadsheets of data. In addition, PAGA Counsel had to marshal the evidence in a
6 manner in which it could be adjudicated manageably on behalf of all the Aggrieved Employees,
7 an endeavor which cannot be underscored. So often, lawyers unskilled in PAGA wage and hour
8 cases do not pay attention to or put the work into how the evidence must be presented for
9 adjudication on a representative basis. Strong PAGA cases perish in the hands of inexperienced
10 counsel because the case has not been worked up to succeed in demonstrating manageability.
11 PAGA Counsel here has considerable experience in PAGA litigation and, from the beginning of
12 the case, is marshalling the evidence with a sharp focus on representative proof needed for the
13 matter to make it to trial. This case was no different. This filtering of voluminous evidence into
14 representative proof while keeping an eye on the merits of the litigation resulted in a considerable
15 amount of attorney time and skill.

16 Most importantly, all services were performed by PAGA Counsel on a contingent basis.
17 Both California and federal courts recognize that attorneys should be compensated for taking on
18 such contingent risks and provided with financial incentives to enforce important rights and
19 protections like those at issue in this case. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24
20 Cal.4th at 1132-33. Here, PAGA Counsel bore the risk that, in spite of all of their efforts and skill
21 employed, there may be no recovery. Mara Dec. ¶ 26.

22 PAGA Counsel respectfully requests a fee of \$449,955, which, based on the total attorney
23 hours expended and rates, would require a 1.48 multiplier to raise the generated fees of \$303,950
24 to the requested amount. Mara Dec. ¶ 27. Far greater multipliers have been awarded in similar
25 cases, and the total amount of fees sought by PAGA Counsel is also reasonable compared to fees
26 awarded in like cases. Courts routinely enhance lodestar amounts based on multipliers that “range
27
28

1 from 2 to 4 or even higher.”⁹ Thus, consideration of the lodestar method as a cross-check to the
2 percentage figure sought strongly supports the reasonableness of the requested fee award. PAGA
3 Counsel moves for and respectfully requests that the Court grant attorneys’ fees in the amount of
4 \$449,955.

5 **iii. PAGA Counsel’s Hourly Rates are Reasonable**

6 PAGA Counsel’s hourly rates are between \$550 and \$800 and are in line with rates
7 typically approved in wage and hour class action and PAGA litigation and which rates have been
8 approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda,
9 Orange and San Diego County Superior Courts. *Mara Dec.* ¶ 28; **Exhibit 2**, Westlaw Court
10 Express’s Legal Billing Report, Volume 14, Number 3, California Region for December 2012;
11 **Exhibit 3**, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC
12 GIC834348; **Exhibit 4**, 2012 National Law Journal Survey of Hourly Billing Rates for Partners
13 and Associates).

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

20 PAGA Counsel’s skill and experience support their hourly rates. Their practice is limited
21 exclusively to litigation, focusing on the representation of employees in wage and hour class action
22 and PAGA matters. As prominent attorneys in the field of wage and hour employment litigation,
23 Plaintiff’s counsel continually monitors the prevailing market rates charged by both defense and
24 plaintiff law firms and set the billing rates of their attorneys and paralegals/law clerks to be
25 consistent with the prevailing market rates in the private sector for attorneys and staff of

26 ⁹ *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255; *see, e.g., Vizcaino*, 290 F.3d
27 at 1051 (approving multiplier of 3.65); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123
28 (2d Cir. 2005) (approving multiplier of 3.5); *Craft v. County of San Bernardino*, 624 F. Supp. 2d
1113, 1125 (C.D. Cal. 2008) (awarding multiplier of 5.2 and collecting cases with cross-check
multipliers ranging from 4.5 to 19.6); *Glendora Community Redevelopment Agency v. Demeter*,
155 Cal.App.3d 465, 479-80 (1984) (approving fee award with multiplier of 12).

comparable skill, qualifications and experience. Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates.

iv. PAGA Counsel's Total Hours are Reasonable

In determining a lodestar fee, reasonable hours include, in addition to time spent during litigation, the time spent before the action was filed, including time spent interviewing clients, investigating the facts and the law, and preparing the initial pleadings.¹⁰ Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 ("*Serrano IV*"). PAGA Counsel has expended a total of 444 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. ¶¶ 29, 32.

Counsel's many tasks, in summary form, included the following: pre-filing investigation and legal research; communicating with Plaintiff; interviewing aggrieved employees throughout the state; drafting PAGA letter notifying the LWDA of Plaintiff's claims; investigation into Defendants' pay-structures and policies; draft and file pleadings; numerous conferences with Defendant's Counsel regarding a variety of issues throughout the litigation, draft case management statements; attend case management conferences; propound discovery; review discovery responses; draft meet and confer letter; analyze documents produced by Defendants relating to their policies, pay-structures, and time keeping; numerous conferences with Plaintiff's expert regarding the employee time and wage data produced by Defendant in advance of mediation; prepare for and attend mediation; draft mediation brief and mediation damage and exposure models; 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; draft supplemental brief regarding the settlement motion and supporting papers; and appearing at the settlement approval hearing. Mara Dec. ¶¶ 29, 32.

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

¹⁰ See *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.

1 this case.

2 **v. Costs of Litigation**

3 PAGA Counsel seeks reimbursement of the litigation costs and expenses of \$8,878.94.
4 These costs were all reasonable and necessary to the prosecution of this case and the results
5 achieved, and are fair, reasonable, and unopposed by Defendant. Mara Dec. ¶ 34; **Exhibit 5**.

6 **c. The Court Should Approve the Requested PAGA Representative Payment**

7 PAGA Counsel seeks approval of PAGA Representative Payment for the named Plaintiff
8 in the sum of \$10,000. In a typical class or representative action, Courts routinely approve service
9 payments, or incentive awards, to compensate named plaintiffs for the services they provide and
10 the risks they incur during class litigation. See *In re Cellphone Fee Termination Cases* (2010) 186
11 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-
12 26 (upholding service payments to class representatives); Manual § 21.62 n.971 (noting that
13 service payments are warranted). Plaintiff has not only deferred any individual recovery up until
14 this point, but as a result of this settlement, will be releasing his own claims arising out of his
15 employment with Defendant, including any individual wage and hour claims. If the Court approves
16 this settlement, the aggrieved employees are still free to pursue their own individual wage and hour
17 claims.

18 Not only is Plaintiff giving up the right to recover for his own individual wage and hour
19 claims in addition to all other known and unknown claims against Defendant,¹¹ Plaintiff has also
20 put a great deal of effort into pursuing this matter for the State of California and for his fellow
21 aggrieved employees, furthering the purposes of PAGA and conserving the limited resources of
22 the Labor Commissioner. The requested service payment is reasonable in light of the benefits
23 Plaintiff has conferred upon the State of California and the Aggrieved Employees, the significant
24 time spent assisting counsel with the investigation and prosecution of these claims, giving a general
25 release of all claims, and consenting to the proposed settlement. See Declaration of Paul

26
27 ¹¹ After entry of the order and judgment granting approval of the Settlement Agreement, and as a
28 condition of receiving any portion of the Enhancement Award, Plaintiff is agreeing to an additional
General Release of all claims against Defendants. See **Exhibit 1** at Paragraph 18, Page 6.

1 Hernandez. Based on the foregoing, the \$10,000 Enhancement Award to the named Plaintiff is
2 fair, appropriate and justified as part of the overall settlement.

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

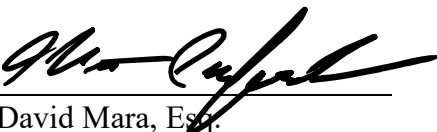
4 The Parties agreed to hire Phoenix as the Administrator.¹² Phoenix will be responsible for
5 formatting, printing, and mailing an agreed upon Notice of Settlement of PAGA Action to be sent
6 along with the checks to be mailed to the Aggrieved Employees. It will also be responsible for
7 updating addresses and re-mailing checks returned as undeliverable, responding to Aggrieved
8 Employee inquiries, and answering questions from the Parties. Phoenix also provided a declaration
9 for filing with the settlement motion. Phoenix seeks a fee of \$3,500 for the services it will provide
10 in conjunction with this settlement. *See* Lawrence Dec., **Exhibit B**. Plaintiff now requests that the
11 Court approve a fee of \$3,500 to Phoenix for services to be rendered. Following the grant of
12 approval, Phoenix will calculate and mail the checks to the Aggrieved Employees, disburse other
13 payments as ordered by the Court, and perform such other duties as set forth in the Settlement
14 Agreement. Phoenix's fee of \$3,500 for services rendered and to be rendered is fair and reasonable
15 and should be granted.

16 **VI. CONCLUSION**

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

18
19 Dated: December 27, 2022

MARA LAW FIRM, PC

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21 
22

David Mara, Esq.

23 Matthew Crawford, Esq.

24 Attorneys for PAUL HERNANDEZ, on behalf of
25 himself, all others similarly situated, and on behalf
26 of the general public.
27

28 ¹² *See* Lawrence Dec., which outlines Phoenix's qualifications and experience.