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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SANTA CLARA**

13 ALONZO PINEDA, individually, on behalf
14 of those similarly situated, and all Aggrieved
Employees

15 Plaintiff,

16 vs.

17 RECON360, LLC, a California limited
18 liability company; ROSARIO WONG, an
individual; and DOES 1 through 100,
19 inclusive,

20 Defendants.
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Case No.: 22CV398574

[Assigned to Hon. Charles F. Adams, Dept. 7]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
REPRESENTATIVE PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Filed concurrently with:

- Declaration of John A. Van Hook
- Declaration of Adrian Byrne
- [Proposed] Order and Judgment

Date: March 6, 2025

Time: 1:30 p.m.

Dept.: 7

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 PLEASE TAKE NOTICE THAT on March 6, 2025, at 1:30 p.m., or as soon thereafter
3 as the matter may be heard in Department 7 of the Santa Clara County Superior Court, 191
4 North First Street San Jose, CA 95113, Plaintiff Alonzo Pineda, on behalf of himself and all
5 other aggrieved employees and the State of California as a private attorney general, will and
6 hereby does move the Court for an order approving the Parties' representative settlement under
7 the California Labor Code Private Attorneys General Act of 2004 (the "PAGA Settlement").

8 The Motion is based on this Notice of Motion and Motion; the accompanying
9 Memorandum of Points and Authorities, the Declarations of John A. Van Hook and Adrian C.
10 Byrne and exhibits thereto (including the executed PAGA Settlement Agreement); and on such
11 further oral and documentary evidence which may be submitted at the time of hearing, and on
12 the complete files and records in this action.

13
14 Dated: February 3, 2025

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

15
16 

17 John A. Van Hook
Adrian C. Byrne

18 Attorneys for Plaintiff Alonzo Pineda and all
19 other Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alonzo Pineda (“Pineda” or “Plaintiff”) and Defendants Recon360, LLC
4 (“Recon360”) and Rosario Wong (“Wong”) (together, “Defendants”, and collectively with
5 Plaintiff, the “Parties”), after years of hard-fought litigation and negotiations, reached a
6 representative settlement of this case under the California Labor Code Private Attorneys
7 General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”), in the amount of One
8 Hundred Ninety-Five Thousand Dollars (\$195,000.00).

9 For the reasons discussed herein, this is a fair, reasonable and appropriate settlement.
10 Thus, Plaintiff respectfully requests that this Court grant approval of the PAGA Settlement
11 Agreement and order the Parties to take all steps necessary to effectuate the settlement.

12 **II. FACTUAL OVERVIEW**

13 Recon360 provides reconstruction services, including roofing, painting, and emergency
14 services, to multi-unit residential buildings throughout the San Francisco Bay Area. Wong is the
15 owner of Recon360. See Declaration of John. A Van Hook [“Van Hook Decl.”], ¶ 3.

16 Plaintiff started working for Recon360 on January 18, 2021. Plaintiff worked as a general
17 construction worker and painter, as an hourly, non-exempt employee. Plaintiff’s employment
18 with Recon360 ended on or about September 15, 2021. See *id.*, ¶¶ 4-5.

19 For the time period covered by this representative PAGA settlement, July 31, 2021,
20 through July 9, 2024 (the “PAGA Period”), Defendants’ records reflect approximately 291 non-
21 exempt employees worked a total of approximately biweekly 7,618 pay periods. See *id.*, ¶ 6.

22 **III. PROCEDURAL BACKGROUND**

23 **A. The Diaz Class Action Settlement**

24 Prior to Plaintiff’s filing of this lawsuit, Recon360 defended and settled many of the same
25 wage and hour claims in the class action entitled *Carrillo Diaz v. Recon360, LLC*, Santa Clara
26 County Superior Court Case No. 20CV370603 (“*Diaz*”). The *Diaz* settlement resolved class and
27 PAGA claims on behalf of Recon360’s hourly California employees. Plaintiff timely opted out

1 of the class portion of the *Diaz* settlement. As a result of the *Diaz* settlement’s release period, the
2 PAGA Period in this case begins on July 31, 2021. See Van Hook Decl., ¶¶ 7-8.

3 **B. Pineda Files a Putative Class Action and Representative PAGA Lawsuit.**

4 On November 24, 2021, Plaintiff filed a notice with the Labor and Workforce
5 Development Agency (“LWDA”) of Plaintiff’s potential claims under PAGA, and their
6 supporting facts and theories. See *id.*, ¶ 9.

7 On May 24, 2022, Plaintiff filed this lawsuit as a putative class action and PAGA
8 representative action. Plaintiff alleged nine separate causes of action for unpaid wages, penalties
9 and other relief on a class and representative basis. See *id.*, ¶ 10.

10 **C. The Court Grants Defendants’ Motion to Compel Arbitration in Part, Ordering**
11 **Plaintiff’s Individual Claims to Arbitration and Dismissing the Class Claims.**

12 Following the filing of the Complaint, counsel for the Parties met and conferred several
13 times regarding Plaintiff’s class and representative claims, the arbitration agreement, and
14 possible waiver. Following those discussions, Defendants filed a motion to compel Plaintiff to
15 arbitrate his claims on an individual basis and seeking dismissal of Plaintiff’s class action and
16 representative PAGA claims. Plaintiff opposed the motion, arguing that Recon360 had waived its
17 right to enforce the arbitration agreement because it had acted inconsistently with that agreement.
18 See *id.*, ¶ 11.

19 On February 27, 2023, following oral argument, the court (Judge Sunil R. Kulkarni)
20 issued a ruling on Defendants’ motion. The court rejected Plaintiff’s waiver argument and
21 granted Defendants’ motion to compel in part. The court ordered Plaintiff’s individual claims to
22 arbitration, dismissed the class claims, and stayed the representative PAGA claims pending the
23 completion of the individual arbitration. See *id.*, ¶ 12.

24 **D. Plaintiff Initiates Arbitration Proceedings on His Individual Claims.**

25 On March 20, 2023, Plaintiff submitted his demand for arbitration to JAMS. The
26 arbitration included not only Plaintiff’s individual wage and hour claims (including his
27 “individual” PAGA claims), but also his individual claims relating to the termination of his

1 employment. The Parties selected Judge Melinda A. Johnson (Ret.) as the arbitrator. See *id.*, ¶13.

2 The Parties engaged in substantial discovery in the arbitration. Defendants took a full-
3 day, in-person deposition of Plaintiff. Plaintiff took the depositions of five (5) witnesses that
4 Recon360 produced as person most knowledgeable witnesses. The Parties also engaged in
5 written discovery and document productions. See *id.*, ¶ 14.

6 The depositions, written discovery, and document productions in the arbitration related
7 not only to Plaintiff's individual claims in the arbitration, but also to issues directly relevant to
8 the representative PAGA claims, including Plaintiff's legal theories and supporting evidence for
9 wage and hour liability, as well as Recon360's policies and procedures relating to timekeeping
10 and payroll, meal and rest periods, reimbursement of business expenses. See *id.*, ¶ 15.

11 Plaintiff's counsel also conducted their own investigation regarding Defendants' relevant
12 wage and hour practices, including conducting interviews and obtaining written statements from
13 some of Plaintiff's former co-workers (and alleged aggrieved employees). See *id.*, ¶ 16.

14 **E. The Parties Resolve the Individual Claims and Representative PAGA Action**
15 **Through Private Mediation.**

16 Following discovery in the arbitration, the Parties agreed to participate in a private
17 mediation to resolve both the representative PAGA claims and Plaintiff's individual claims in
18 arbitration. The Parties selected Brandon Coen, Esq., an experienced employment law mediator.
19 See *id.*, ¶ 17. In addition to the discovery that had already been conducted, Defendants provided
20 information specifically related to the representative PAGA claims, including data regarding the
21 number of aggrieved employees and pay periods at issue during the PAGA Claim Period, and a
22 sampling of allegedly aggrieved employees' payroll and timekeeping records. See *id.*, ¶ 18.

23 The Parties participated in a full day mediation on July 9, 2024. At the end of the
24 mediation, the Parties reached an agreement on the principal terms of a settlement of the entire
25 action, including a proposed settlement of the representative PAGA claims and a confidential
26 settlement of Plaintiff's individual claims. The Parties executed a memorandum of understanding
27 ("MOU") regarding the settlement. See *id.*, ¶ 19.

1 On or about August 13, 2024, the Parties executed a long-form agreement with respect to
2 the proposed PAGA settlement. Attached as **Exhibit 1** to the Van Hook Declaration is a true and
3 correct copy of the Private Attorneys General Act Settlement Agreement and Release (the
4 “PAGA Settlement Agreement”). See *id.*, ¶ 20; Ex. 1. After execution of the PAGA Settlement
5 Agreement, Plaintiff’s counsel promptly contacted the Court to obtain a hearing date for the
6 motion to approve the PAGA settlement. Plaintiff reserved the earliest hearing date available on
7 the court’s calendar, March 6, 2025. See *id.*, ¶ 21.

8 As required by PAGA, concurrently with the filing of this Motion, Plaintiff’s counsel are
9 submitting the PAGA Settlement Agreement and moving papers to the LWDA for its review.
10 See *id.*, ¶ 22.

11 **IV. TERMS OF THE PAGA SETTLEMENT**

12 The PAGA Settlement Agreement provides that Defendants will pay a total of \$195,000
13 (the “Gross PAGA Settlement Fund”), as a non-reversionary settlement fund to settle the
14 representative PAGA claims in this action. The “Aggrieved Employees” for purposes of the
15 PAGA Settlement are Recon360’s non-exempt employees that worked in California at any time
16 between July 31, 2021, through July 9, 2024. From the Gross Settlement Fund of \$195,000, the
17 following amounts will be paid, subject to this Court’s approval:

- 18 • Plaintiff’s counsel’s attorney’s fees of 1/3 of the Gross PAGA Settlement Fund
19 (\$65,000.00);
- 20 • Plaintiff’s counsel’s out-of-pocket litigation expenses of \$6,000.00 for the
21 representative PAGA claims (including Plaintiff’s share of the mediation fee);
- 22 • PAGA settlement administration expenses of \$4,500.00; and
- 23 • An enhancement payment of \$5,000.00 to Plaintiff for serving as representative of the
24 State and the Aggrieved Employees, and his efforts made in the case.
- 25 • This results in an estimated Net PAGA Settlement Fund of \$114,500.00 (i.e., the
26 Gross PAGA Settlement Fund, minus requested fees, costs, representative plaintiff
27 enhancement, and PAGA settlement administration expenses).

1 See Ex. 1 to Van Hook Decl. As required by PAGA,¹ 75% of the Net PAGA Settlement Fund
2 will be paid to the LWDA and the remaining 25% of the Net PAGA Settlement Fund will be
3 distributed among the Aggrieved Employees on a pro-rata basis according to their pay periods
4 during the PAGA period.

5 Defendants' data as of July 9, 2024, indicates approximately 291 non-exempt employees
6 who worked a total of approximately 7,618 pay periods during the PAGA Period. To avoid the
7 dilution of this PAGA Settlement, the Parties agreed to end the settlement as of the mediation
8 date (July 9, 2024), rather than extending the settlement period through the date of court
9 approval. Recognizing that the final headcount and pay period figures may change somewhat,
10 the Parties agreed to a 10% buffer to the 7,618 pay periods, meaning that no additional
11 consideration shall be necessary if the total number of pay periods covered by the PAGA
12 Settlement does not exceed 8,380. If the total number of pay periods is greater than that, then the
13 Gross PAGA Settlement Amount shall be increased by a pro-rata amount for those pay periods
14 greater than 8,380. See Van Hook Decl., ¶ 28; Ex. 1.

15 Aggrieved Employees will not be required to submit a claim form or take any other steps
16 to receive their payment. As this is a PAGA-only settlement, non-PAGA claims (such as
17 underlying claims for alleged unpaid wages or statutory penalties) of other Aggrieved Employees
18 are not being released by virtue of the PAGA Settlement. See *id.*, ¶ 29; Ex. 1.

19 Subject to the Court's approval, the settlement administration, including calculation and
20 issuance of payments, will be performed by Phoenix Settlement Administrators, a nationally
21 recognized settlement administrator. Attached as **Exhibit 2** to the Van Hook Declaration is a true
22 and correct copy of Phoenix's quote in the amount of \$4,500 for PAGA settlement
23 administration. See *id.*, ¶ 30; Ex. 2.

24
25 ¹ On June 27, 2024, the California Legislature passed two bills amended various provisions of
26 PAGA. However, the amendments were only applicable to civil actions brought on or after June
27 19, 2024. See Assembly Bill 2288 and Senate Bill 92. Thus, this case is subject to the original
28 legal landscape for PAGA cases and settlements and all references to PAGA refer to the prior
statutory provisions applicable to this matter.

1 The PAGA Settlement Agreement releases Defendants and the defined Released Parties
2 from PAGA penalties for “alleged violations of Labor Code §§ 201, 202, 203, 204, 216, 226,
3 226.7, 510, 512, 1174, 1194, 1197, 1991.1, 1198, 1199, and 2802, as well as all applicable
4 Industrial Welfare Commission Wage Orders; and claims for attorneys’ fees, costs, or interest
5 resulting therefrom.” The PAGA release extends for the duration of the PAGA Period. See *id.*, ¶
6 31; Ex. 1.

7 Within 14 days of the Court’s order approving the settlement, Defendants will fund with
8 settlement. See Van Hook Decl., ¶ 32; Ex. 1 [¶ III.2]. Within 14 days of funding of the settlement
9 by Defendants, the Settlement Administrator, the Settlement Administrator shall:

- 10 • Distribute a total of 25% of the Net PAGA Fund to the Aggrieved Employees, along
11 with an explanatory letter, translated into English and Spanish (the English version is
12 attached hereto as Exhibit 1-A).
- 13 • Distribute 75% of the Net PAGA Fund to the LWDA.
- 14 • Distribute Plaintiff’s counsel’s fees and costs, as approved by the Court.
- 15 • Distribute enhancement payment to Plaintiff, as approved by the Court.
- 16 • Pay itself for services as Settlement Administrator, as approved by the Court.

17 See *id.*, ¶ 33; Ex. 1.

18 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND SHOULD BE APPROVED.**

19 **A. Legal Standard**

20 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf
21 of other current or former employees to recover civil penalties for Labor Code violations.
22 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Seventy-five percent of
23 any penalties recovered go to the LWDA, leaving the remaining 25% for the employees. *Id.*
24 Labor Code § 2699 (l) provides that “[t]he superior court shall review and approve any penalties
25 sought as part of a proposed settlement agreement pursuant to” PAGA. “[T]here is no
26 requirement that the Court certify a PAGA claim for representative treatment” as in a class
27 action. *Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No.

CV122615PSGJEMX), 2015 WL 12732709 at *5.

Settlement of a PAGA claim requires that the “Court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.” Cal. Lab. Code § 2699(1)(2). In contrast to class settlements, there is little case law addressing the standard for approving a PAGA settlement. Courts have found that the PAGA settlement must be reasonable in light of the potential verdict value. *See O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135 (rejecting settlement of less than one percent of the potential verdict). However, PAGA settlement may be substantially discounted given the uncertainties that the plaintiff would prevail, and because courts often exercise their discretion to award PAGA penalties below the statutory maximum, even where a claim succeeds at trial. *See Vicerai v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869 at **8-9. *See also Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (affirming a judgment which only provided for a PAGA penalty of \$5 per violation, as opposed to the \$100 maximum awardable penalty).

B. This Settlement Was The Product Of Extensive Arm’s-Length Negotiations.

While PAGA settlements do not need to satisfy the same requirements for class action settlements, in the context of class action settlements, a “presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. *See also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52–53 and *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389-1390. While PAGA settlements are not treated as class action settlements, we set forth the class action settlement standard here as a general guide for PAGA settlements approval.

Here, with the exception of the percentage of objectors (which is not a factor in the PAGA settlement context) all of these factors are satisfied. The PAGA settlement here was the result of vigorous, arm’s-length negotiations between experienced employment law attorneys

1 who are familiar with the substantive legal issues and with complex representative PAGA
2 litigation. The Parties participated in a full-day, private mediation with an experienced mediator
3 and managed to reach a settlement of Plaintiff's PAGA representative claims, subject to court
4 approval. *See* Van Hook Decl., ¶¶ 17-19.

5 In addition, Plaintiff's counsel are experienced in the litigation and settlement of complex
6 wage-and-hour cases, including class action and representative PAGA actions. *See* Van Hook
7 Decl., ¶¶ 36-42; Declaration of Adrian C. Byrne ["Byrne Decl."], ¶¶ 3-6. Based on their
8 experience litigating similar cases, Plaintiff's counsel believe the PAGA Settlement is fair,
9 reasonable, and adequate and is in the best interests of all Parties, the LWDA, and the Aggrieved
10 Employees, in light of all known facts and circumstances and the risks inherent in litigation. *See*
11 Van Hook Decl., ¶¶ 43-45; Byrne Decl., ¶ 11.

12 **C. Calculation of Potential PAGA Penalties.**

13 Based on the data provided by Defendants, the Parties estimated in the PAGA Settlement
14 that there were a total of 291 non-exempt employees who worked a total of approximately 7,618
15 pay periods during the PAGA Period. For purposes of Plaintiff's calculations of the total
16 potential exposure for PAGA penalties, the "initial" penalty rate of \$100 per pay period was
17 applied for all pay periods. *See Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1172-73 (9th Cir.
18 2021) ("subsequent" penalty rate applies only after an employer is notified by a court or the
19 Labor Commissioner that it is violating the Labor Code). Accordingly, in the absence of
20 "stacking" of penalties of multiple alleged Labor Code penalties for the same pay periods,²
21 assuming a Labor Code violation could be proven for every aggrieved employee in every pay
22

23 ² Plaintiff contends that he could pursue PAGA penalties for every Labor Code provision that
24 was allegedly violated. Even if PAGA did permit "stacked" penalties, however, many of these
25 violations would be derivative of each other, and provide arguably redundant penalties. It is quite
26 likely, therefore, that despite the maximum theoretical recovery that might be available from
27 "stacked" penalties, the Court would exercise its discretion to reduce penalties that appeared
28 redundant or excessive. Accordingly, for purposes of settlement, and as discussed further below,
Plaintiff and his counsel believe that this is a reasonable and appropriate method to calculate
potential PAGA penalty exposure.

1 period, and assuming no discretionary reduction of penalties by the Court, the maximum
2 potential PAGA penalties total **\$761,800.00** (7,618 pay periods x \$100 per pay period).

3 The PAGA settlement here is **\$195,000**, or **25.6%** of this estimated PAGA exposure.
4 Based on an estimated 7,618 pay periods, the settlement provides for \$25.60 per pay period.

5 **D. The Risks of Further Litigation Are Substantial and the PAGA Settlement**
6 **Provides Significant Relief for the State and the Putative Aggrieved Employees.**

7 Given the risks and challenges that Plaintiff's claims would face in extended litigation,
8 and the vigorous substantive and procedural defenses that Defendants would present, Plaintiff
9 and his counsel believe that this is a fair and reasonable settlement, and a fair and reasonable
10 outcome for the LWDA and for the Aggrieved Employees. Plaintiff applied various risk
11 discounts to account for the perceived strengths of each claim. *See* Van Hook Decl., ¶ 45.

12 **1. Uncertainties Regarding Calculation of PAGA Penalties**

13 Plaintiff took into account various risk factors and uncertainties in negotiating the PAGA
14 Settlement, including the following:

15 **a) The Availability of "Stacked" PAGA Penalties**

16 Plaintiff and his counsel believe that PAGA allows for a separate penalty to be assessed
17 for each pay period *for each violation*. For example, if an employee suffered five separate Labor
18 Code violations in a single pay period, five penalties in the same pay period may be assessed.
19 Some trial court decisions have supported this interpretation. *See, e.g., Schiller v. David's Bridal,*
20 *Inc.* (E.D. Cal. July 14, 2010) 2010 WL 2793650 at *6 (finding that PAGA penalties may be
21 stacked in determining the amount in controversy); *Smith v. Brinker Intern., Inc.* (N.D. Cal.
22 May 5, 2010) No. 10-CV-213-VRW, 2010 WL 1838726, at *2-6 (stacking PAGA penalties in
23 determining the amount in controversy in an individual action and granting motion to remand).

24 Defendants, however, contend that only a single penalty may be assessed per pay period,
25 regardless of the number of different Labor Code provisions violated during that pay period.
26 Defendants argue that this reading is supported by, among other things, the language of Section
27 2699(f)(2): "the civil penalty is one hundred dollars (\$100) for each aggrieved employee for pay

1 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
2 pay period for each subsequent violation.” As the statute does not explicitly state that this
3 amount is multiplied by the number of violations, Defendants contend that only a single penalty
4 may be assessed for each employee for each pay period. While Plaintiff certainly disputes this
5 statutory interpretation, Plaintiff recognizes the lack of certainty, including the lack of appellate
6 authority, as to how trial courts would interpret the statute.

7 **b) The Trial Court’s Discretion to Reduce PAGA Penalties**

8 As Defendants have vigorously argued throughout these settlement negotiations, even if
9 Plaintiff were to prevail on some or all of his PAGA claims, the statute gives trial courts the
10 discretion to reduce the penalties actually awarded. *See* Lab. Code § 2699(e)(2) (allowing
11 reductions of penalties where the full amount would be “unjust, arbitrary and oppressive, or
12 confiscatory”). Moreover, as long as the Court awards some penalties, the statute imposes no
13 limit to the reduction that a Court can make to PAGA penalties. Defendants have argued that this
14 Court could (and should) greatly reduce any penalty award against them. In that regard, Plaintiff
15 recognizes that Recon360 is a privately owned and operated business that may be unduly
16 burdened by the maximum potential penalty amount. Plaintiff and his counsel properly
17 considered this substantial uncertainty in reaching this settlement.

18 Likewise, in light of this judicial discretion (and the other uncertainties surrounding
19 PAGA), courts have approved significantly *lower* PAGA settlements involving many more
20 employees and pay periods. *See, e.g., Navarro v. Ordaz Cultured Marble & Onyx, Inc.*, 2015
21 U.S. Dist. LEXIS 21374, *2-3 (N.D. Cal. 2015) [approving \$20,000 PAGA settlement]; *Franco*
22 *v. Ruiz Food Prods., Inc.*, 2012 U.S. Dist. LEXIS 169057, *14 (E.D. Cal. 2012) [approving
23 PAGA penalties in amount of \$10,000 for 2,055 employees asserting wage and hour violations];
24 *Garcia v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052, *3 (E.D. Cal. 2012) [approving
25 \$10,000 in PAGA penalties for 1,868 employees in wage and hour case]; *Chu v. Wells Fargo*
26 *Investments, LLC*, 2011 U.S. Dist. LEXIS 15821, *1 (N.D. Cal. 2011) [approving PAGA
27 penalties of \$7,500 for 2,752 employees in wage and hour action].

1 In light of these potential issues, this PAGA Settlement is a reasonable and fair result for
2 the State of California and the Aggrieved Employees.

3 **c) Defendants' Legal Defenses**

4 Throughout this litigation, including in the settlement negotiations and in the settlement
5 agreement, Defendants steadfastly argue that Plaintiff would lose his PAGA claims if they were
6 tried because Defendants complied with their obligations under the Labor Code. As to Plaintiff's
7 claims for unpaid wages and overtime, Defendants have argued that they had lawful timekeeping
8 and payroll policies, and that they had a valid expense policy that adequately reimbursed all
9 expenses due. Defendants also argue that they provided meal periods and authorized and
10 permitted employees to take rest periods, and that any non-compliant meal and rest periods were
11 the result of decisions by the employees themselves, and not the result of Defendants' actions.
12 Further, Defendants also argue that their wage statements are accurate and complete. Defendants
13 also argued that even if some violations could be proven, not every aggrieved employee could
14 establish a violation in every pay period, greatly reducing the potential PAGA penalties that
15 Plaintiff could recover. See Van Hook Decl., ¶ 43.

16 While Plaintiff rejects these various defenses, they have not been tested in litigation,
17 raising substantial risks and uncertainty that some or all of Plaintiff's PAGA claims might be
18 defeated on the merits if this litigation continued. Further, even if Plaintiff were to prevail on all
19 of his claims underlying the PAGA cause of action, it is far from certain that Plaintiff could
20 prove that *every aggrieved employee* suffered a violation in *every pay period*, as is assumed by
21 Plaintiff's estimate of potential PAGA penalties.

22 Particular uncertainty existed regarding one of Plaintiff's central theories of liability –
23 that Recon360 improperly rounded employees' recorded time. Legal issues regarding time
24 rounding are currently before the California Supreme Court in *Delmer Camp v. Home Depot*
25 *U.S.A., Inc.*, Case No. S277518. At the time of the mediation (and as of the date of this Motion),
26 the California Supreme Court had not yet scheduled oral argument on this case. The outcome of
27 this case could significantly alter the legal landscape impacting these rounding claims, as well as

the various derivative claims. Accordingly, substantial uncertainty and risk exists for both sides, further supporting Plaintiff's valuation of the case for settlement purposes. See Van Hook Decl., ¶ 44.

E. The Requested Fees and Litigation Costs are Reasonable and Appropriate.

PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Labor Code § 2699(g). The U.S. Supreme Court has recognized that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478. *Accord*, *Serrano v. Priest* (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to award attorneys' fees and costs when a litigation proceeding in a representative capacity secures a substantial benefit); *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. This guidance should equally apply to representative settlements under PAGA.

Plaintiff requests an award of attorney's fees of \$65,000, equaling one-third of the gross PAGA settlement sum, which is typical in class and PAGA settlements. As described more fully in the declarations of Plaintiff's counsel, Plaintiff's attorneys, to date, have billed 140.4 hours totaling \$82,158.00 on this representative PAGA matter.³

Attorney	Hourly Rate	Hours Billed	Lodestar
John A. Van Hook	\$650.00	91.2	\$59,280.00
Adrian Byrne	\$465.00	49.2	\$22,878.00
Totals		140.4	\$82,158.00

This does not include additional expected work relating to the hearing and settlement

³ Plaintiff's attorneys have provided detailed, contemporaneous time records reflecting the hours billed. See Ex. 3 to Van Hook Decl. and Ex. 4 to Byrne Decl. Such a showing is not required by law, however. *Raining Data Corp. v. Barrenechea*, 175 Cal. App. 4th 1363, 1375 (2009) ("an award of attorney fees may be based on counsel's declarations, without production of detailed time records"); *Lunada Biomedical v. Nunez*, 230 Cal.App.4th 459, 487-488 (2014) (a party requesting attorney fees "can carry its burden of establishing its entitlement to attorney fees by submitting a declaration from counsel instead of billing records or invoices.").

1 administration. It also does not include work relating to the arbitration. *See* Van Hook Decl., ¶
2 47; Byrne Decl., ¶ 8.

3 It would be reasonable for Plaintiff to seek a multiplier on the lodestar to reflect the risks
4 that Plaintiff's counsel would not be paid for years of work.⁴ Nevertheless, the fees requested by
5 Plaintiff in this case reflect a *negative* multiplier, less than 80% of the lodestar to date.

6 Plaintiff's counsel's litigation costs are also reasonable, as Plaintiff seeks \$6,000 for
7 reimbursement of out-of-pocket litigation costs, including a portion of the mediation fee paid by
8 Plaintiff. *See* Van Hook Decl. ¶¶ 51-52.

9 **F. The Requested Enhancement for Plaintiff is Reasonable and Appropriate**

10 Plaintiff requests an enhancement payment of \$5,000 to recognize the risks, efforts, and
11 time he expended in pursuing these claims on behalf of the State and his former co-workers.

12 In PAGA settlements, as in class settlements, it is reasonable and appropriate to provide
13 an incentive payment to the named plaintiffs for their service as representatives. *See, e.g., In re*
14 *Cellphone Fee Termination Cases, supra*, 186 Cal.App.4th at 1380 (upholding \$10,000 incentive
15 awards to each of the four class representatives). Courts frequently approve service awards of
16 \$10,000 or more for class and PAGA representatives to compensate them "for the expense or
17 risk they have incurred in conferring a benefit on other members of the class." *Id.* at 1394
18 quoting *Clark v. American Residential Services, LLC* (2009) 175 Cal. App. 4th 785, 806.

19 This requested enhancement of \$5,000 to Mr. Pineda is reasonable in light of the risks he
20 incurred in pursuing these claims, as well as the time and effort that he provided. Plaintiff
21 provided substantial, invaluable assistance to counsel throughout this case, and during the
22 process of investigating and evaluating the claims prior to initiating suit. Plaintiff met with and

23 ⁴ Multipliers are routinely requested and granted, particularly where the attorneys worked on
24 a contingency fee basis. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1138 (2001) (recognizing it is
25 appropriate "to provide a fee enhancement reflecting the risk the attorney will not receive
26 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is
27 neither unexpected nor fortuitous."); *Mangold v. Cal. Pub. Utils. Comm'n*, 67 F.3d 1470, 1478-
28 79 (9th Cir. 1995) (2.0 multiplier); *City of Oakland v. Oakland Raiders* 203 Cal. App. 3d 78, 82-
85 (1988) (2.34 multiplier); *Crommie v. State of Cal. Public Utilities Comm'n* 840 F.Supp.719,
726 (N.D. Cal. 1994) (2.0 multiplier in employment case).

1 spoke with counsel regularly and provided critical help to counsel in fact gathering, in
2 identifying potential witnesses, locating evidence to support Plaintiff's claims, sitting for a full-
3 day, in-person deposition, and actively participating in a full-day mediation. *See* Van Hook
4 Decl., ¶ 53; Byrne Decl. ¶ 10. This case would not have been prosecuted, and this settlement
5 would not have been achieved, without the diligent efforts of Plaintiff over a span of years.

6 Plaintiff also risked his job prospects to serve as a PAGA representative. While Plaintiff
7 no longer works for Recon360, he continues to perform painting and construction work in the
8 greater Bay Area. He faces the ongoing risk that a future employer might treat him adversely due
9 to his decision to step forward and fight for the employment rights of himself and other workers.
10 Courts have recognized that assuming potentially career-damaging risks for the vindication of
11 the rights of fellow employees is a factor justifying a substantial enhancement award. *See, e.g.,*
12 *Roberts v. Texaco* (S.D.N.Y. 1997) 979 F. Supp. 185, 201 ("present or past employee whose
13 present position or employment credentials or recommendation may be at risk by reason of
14 having prosecuted the suit, who therefore lends his or her name and efforts to the prosecution of
15 litigation at some personal peril, a substantial enhancement award is justified").

16 Thus, Plaintiff believes the requested enhancement is reasonable and justified.

17 **VI. CONCLUSION**

18 For the foregoing reasons, Plaintiff respectfully requests that this Court approve the
19 proposed PAGA Settlement Agreement and direct the Parties to take all steps necessary to
20 effectuate its terms.

21
22 Dated: February 3, 2025

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

23
24 

25 John A. Van Hook
Adrian C. Byrne

26 Attorneys for Plaintiff Alonzo Pineda and all
27 other Aggrieved Employees