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

NADENE NEVAREZ, JILL GARDNER, and
BERTHA DOMINGUEZ, individually, and on
behalf of all other aggrieved employees,

Plaintiffs,

vs.

SONESTA INTERNATIONAL HOTELS
CORPORATION, a California corporation; and
DOES 1 to 50, inclusive,

Defendants.

Case No.: 22STCV36156

Assigned for all purposes to Hon. Wendy Chang

ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET SEQ.

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR COURT APPROVAL OF
PAGA SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

[Filed concurrently with Declarations of Mark
Yablonovich, Scott Wheeler, and Marcus Bradley;
Declaration of Plaintiffs Nevarez, Gardner, and
Dominguez; and [Proposed] Order and Judgment]

Reservation ID Number: 484105338452

Date: July 10, 2025
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Dept.: 36

Complaint Filed: November 14, 2022
FAC Filed: March 25, 2025

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1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 10, 2025, at 8:30 a.m., or as soon as this matter may be
3 heard, before Hon. Wendy Chang in Department 36 of the Los Angeles County Superior Court, located
4 at 111 North Hill Street, Los Angeles, California 90012, Plaintiffs Nadene Nevarez, Jill Gardner and
5 Bertha Dominguez (“Plaintiffs”) in the above-captioned action will, and do, move this Court for an order
6 approving a PAGA settlement between Plaintiffs and Defendant Sonesta International Hotels
7 Corporation (“Defendant” or “Sonesta”) (Plaintiffs and Defendant together are referred to as the
8 “Parties”) pursuant to California Labor Code section 2699(1)(2).¹

9 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
10 and Authorities, the Declaration of Mark Yablonovich and exhibits, the Declaration of Scott Wheeler
11 and exhibits, the Declaration of Marcus Bradley and exhibits, the Declarations of Plaintiffs Nadene
12 Nevarez, Jill Gardner, Bertha Dominguez, the [Proposed] Order and Judgment, the complete files and
13 records of this case, and any other evidence or oral argument which may be considered by the Court.

14 Plaintiffs further request a Final Reporting hearing in approximately twelve months from the
15 hearing, on or after July 10, 2026.

16
17 Dated: April 4, 2025

Respectfully submitted,

18 LAW OFFICES OF MARK YABLONOVICH

19
20 By: 

Mark Yablonovich
Monica Balderrama
Tony Roberts
Attorneys for Plaintiff Jill Gardner

21
22
23 Dated: April 4, 2025

Respectfully submitted,

24 THE WHEELER LAW FIRM, APC

25
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Scott Ernest Wheeler
Justin A. Wheeler
Attorneys for Plaintiff Nadene Nevarez

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28 ¹ All references to Labor Code sections 2699, et seq. are to the PAGA statute in effect at the time
the original Actions were filed in 2022.

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Dated: April 4, 2025

Respectfully submitted,

BRADLEY/GROMBACHER, LLP

By: 

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code
3 sections 2698 et seq.,² Plaintiffs Nadene Nevarez, Jill Gardner and Bertha Dominguez (“Plaintiffs”)
4 respectfully request the Court approve the Parties’ Joint Stipulation of PAGA Settlement and Release
5 Agreement³ that resolves this matter in its entirety.

6 **I. INTRODUCTION**

7 Plaintiffs allege that Defendant Sonesta International Hotels Corporation (“Defendant” or
8 “Sonesta”) violated various Labor Code sections. Plaintiffs brought their respective PAGA actions as
9 representatives of the State of California to recover civil penalties. The three matters are now jointly
10 before this Court. The proposed PAGA Settlement will dispose of this action in its entirety as to the
11 following group: All persons who are or were employed by Defendant as hourly paid, non-exempt
12 employees in the State of California at any time during the PAGA Period (the “PAGA Members”).
13 (Settlement Agreement, ¶ 32.) The PAGA Period and Release Period run from November 9, 2020 to
14 November 17, 2024. (*Id.* at ¶¶ 30, 38.)

15 Defendant will pay a non-reversionary Maximum Settlement Amount of Two Million Eight
16 Hundred Fifty Thousand Dollars and Zero Cents (\$2,850,000.00). (*Id.* at ¶¶ 11, 26, 44.a.) The PAGA
17 penalties secured by the Settlement are fair, adequate, and reasonable, and fulfill PAGA’s underlying
18 purpose to benefit the public.

19 Plaintiffs’ request for attorneys’ fees in the amount of one-third of the Maximum Settlement
20 Amount, i.e., Nine Hundred Fifty Thousand Dollars and Zero Cents (\$950,000.00), attorneys’ costs in
21 the amount not to exceed Sixty Thousand Dollars and Zero Cents (\$60,000.00), Plaintiffs’ General
22 Release Payments not to exceed the combined amount of Thirty Thousand Dollars (\$30,000) or \$10,000
23 to each PAGA Representative, and Settlement Administration Costs not to exceed Thirteen Thousand
24 Dollars (\$13,000.00), are also fair and reasonable.

25 Accordingly, Plaintiffs respectfully request that the Court enter an order granting approval of the
26

27 ² As stated in the Notice, all references to Labor Code sections 2699, et seq. are to the PAGA
statute in effect at the time the original Actions were filed in 2022.

28 ³ The Joint Stipulation of PAGA Settlement and Release Agreement is referred to as the
“Settlement Agreement” or “PAGA Settlement” and is attached as Exhibit 1 to the Declaration of Mark
Yablonovich.

1 PAGA Settlement and order the distribution of the settlement funds.

2 **II. FACTUAL AND PROCEDURAL BACKGROUND**

3 Sonesta is a collection of hotels and resorts throughout the world and California. The hotelier
4 business requires Sonesta to run 24 hours a day, seven days a week. Sonesta operates 13 brands⁴
5 comprising over 1,100 hotels, 34 of which are in California. There are approximately 2600 PAGA
6 Members (i.e., non-exempt employees).

7 Defendant employed Plaintiff Gardner from approximately May 9, 2021 to September 7, 2021,
8 as an hourly-paid Front Desk Attendant, Night Auditor, and Housekeeper at Sonesta's resort in Lake
9 Forest, California. (Declaration of Plaintiff Jill Gardner ["Gardner Decl."] ¶ 5.) Defendant employed
10 Plaintiff Nevarez from approximately August 18, 2021 to February 7, 2022 as an hourly-paid Sales and
11 Human Resources Coordinator at Sonesta's Los Angeles Airport hotel. (Declaration of Plaintiff Nadene
12 Nevarez ["Nevarez Decl."] ¶ 4.) Defendant employed Plaintiff Bertha Dominguez from approximately
13 December 1, 2020 to January 7, 2022 as an hourly-paid Housekeeper, and Housekeeper Supervisor at
14 Sonesta's San Francisco Airport hotel. (Declaration of Plaintiff Bertha Dominguez ["Dominguez Decl."] ¶ 5.)
15

16 On November 9, 2021, Plaintiff Gardner provided notice to the State of California's Labor and
17 Workforce Development Agency ("LWDA") and Defendant regarding various alleged Labor Code
18 violations committed by Defendant. (Declaration of Mark Yablonovich ["Yablonovich Decl."] ¶ 10.)

19 On January 13, 2022, after exhausting the pre-filing requirements, Plaintiff Gardner filed a wage
20 and hour PAGA action in San Diego County Superior Court against Defendant alleging, among other
21 things, failure to provide meal periods and rest periods, and the underpayment of wages.⁵ (*Id.*, ¶ 11.)

22 ⁴ Sonesta's brands include The Royal Sonesta, The James Hotels, Classico Collection, Sonesta
23 Hotels & Resorts, MOD Collection, Sonesta Select, Sonesta ES Suites, Sonesta Simply Suites, Red Lion
Hotels, Inns & Suites, Signature Inn, Americas Best Value Inn, and Canadas Best Value Inn.

24 ⁵ The *Gardner* complaint alleges violations of Labor Code sections: (1) 510 and 1198 (unpaid
25 overtime); (2) 223, 1182.12, 1194, 1197, and 1197.1 (unpaid minimum wages); (3) 1198 (unpaid split
26 shifts); (4) 226.7, 512(a), and 1198 (failure to provide meal periods and/or pay meal premiums); (5)
27 226.7, 516, and 1198 (failure to provide rest periods and/or pay rest period premiums); (6) 226(a) and
28 1198 (non-compliant wage statements); (7) 1174(d) (failure to maintain accurate and complete pay
records); (8) 1174(d) and 1198 (failure to maintain accurate timekeeping records); (9) 204 (wages not
timely paid during employment); (10) 201, 202, and 203 (wages not timely paid on termination); (11)
2810.5(a)(1) (failure to provide employees with written notice of information material to employment);
(12) 246, 248.2, and 248.5 (failure to provide compliant sick leave pay); (13) 212-213 (failure to pay
wages using a negotiable instrument); (14) 1198 and section 14 of the applicable IWC Wage Order
(failure to provide suitable seating); and (15) 6400, 6401, 6402, 6403, 6404, and 6407 (failure to furnish

1 On November 14, 2022, Plaintiff Nevarez filed a similar wage and hour PAGA action against
2 Defendant in Los Angeles County Superior Court, Case No. 22STCV36156. (*Id.* ¶ 15.) On April 7,
3 2022, Plaintiff Dominguez filed a wage and hour class action against Defendant in San Mateo County
4 Superior Court which was later removed to the U.S. District Court for the Northern District of California,
5 Case No. 3:22-cv-03027-JCS, on May 31, 2022. (*Id.*) Plaintiff Dominguez then amended her complaint
6 to add PAGA claims on October 27, 2022. (*Id.*) Also based on information and belief, the class
7 allegations in *Dominguez* have been dismissed without prejudice. (*Id.*)

8 On or about February 25, 2024, Plaintiffs' counsel agreed to work cooperatively to prosecute the
9 three Actions. The Plaintiffs and their counsel entered into a joint prosecution agreement. (*Id.*, ¶ 16.)

10 The Parties agreed to a global mediation of the Actions with Todd Smith, a respected wage and
11 hour class action and PAGA action mediator. (*Id.*, ¶ 17.)

12 On September 9, 2024, the Parties entered into a Stipulated Protective Order to facilitate the
13 production of documents. (*Id.*, ¶ 18.)

14 Under the mediation confidentiality statute, Defendant produced employment policies and
15 documents, collective bargaining agreements with respect to two of the 34 locations, information
16 regarding the PAGA Members' demographics (such as the number of employees and pay periods), and a
17 20% sample of electronic time and pay records for employees. Plaintiffs' consultant analyzed the
18 electronic data and provided information pertinent to mediation. Plaintiffs' consultant also converted
19 additional mediation data and further analyzed Defendant's supplemental data. (*Id.*, ¶ 19.)

20 On October 18, 2024, the Parties attended mediation with Todd Smith. Mr. Smith helped to
21 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
22 sides. (*Id.*, ¶ 20.)

23 At the end of the mediation, Mr. Smith made a mediator's proposal that the Parties accepted.
24 The Parties subsequently memorialized their agreement in a Memorandum of Understanding that was
25 fully executed on November 14, 2024. (*Id.*, ¶ 21.)

26 After additional negotiations regarding the principal terms of the Settlement, the Parties
27 memorialized their final agreement in the Joint Stipulation of PAGA Settlement and Release Agreement
28 _____
a safe and healthful place of employment).

1 (“Settlement Agreement” or “Agreement”) which was fully executed on April 3, 2025. (*Id.*, ¶ 22, Ex.
2 1.)⁶

3 On April 4, 2025, Plaintiff Gardner submitted a copy of the Settlement Agreement to the
4 LWDA. (*Id.*, ¶ 24, Ex. 2.)

5 **III. ARGUMENT**

6 **A. The Civil Penalties Secured by the PAGA Settlement Are Fair, Adequate, and** 7 **Reasonable and Consistent with PAGA’s Underlying Purpose to Benefit the Public**

8 Pursuant to California Labor Code section 2699(l)(2), a “superior court shall review and
9 approve” any PAGA settlement. While the PAGA statute lacks specific approval standards, the
10 California Court of Appeal delineated a standard in *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56
11 (2021) (“*Moniz*”), establishing that courts should assess PAGA settlements for “fraud, collusion or
12 unfairness” and ensure they “protect[] the interests of the public and the LWDA in the enforcement of
13 state labor law.” *Id.* at 77. *Moniz* set forth that a “trial court should evaluate a PAGA settlement to
14 determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present
15 labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Id.*

16 The seminal cases in California that address whether a settlement is fair, adequate, and
17 reasonable—*Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794 (1996) (“*Dunk*”) and *Kullar v. Foot Locker*
18 *Retail, Inc.*, 168 Cal.App.4th 116 (2008) (“*Kullar*”)—are class actions. A PAGA action is
19 “fundamentally different from a class action.” *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123
20 (9th Cir. 2014). “Unlike class actions, ... civil penalties [in PAGA] are not meant to compensate
21 unnamed employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez*
22 *v. Cjaders Foods, Inc.*, 2010 WL 1340777 *4 (N.D. Cal. April 2, 2010). PAGA actions are one of the
23 “primary mechanisms for enforcing the Labor Code.” *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal.4th
24 348, 383 (2014) (rev. by *Viking River Cruises v. Moriana*, 142 S. Ct. 1906, 1924 (2022) on other
25 grounds). As the State’s proxy or agent, “the employee plaintiff represents the same legal right and
26 interest as state labor law enforcement agencies – namely, recovery of civil penalties that otherwise
27 would have been assessed by and collected by the [LWDA].” *Id.* “[A]n aggrieved employee’s action

28 ⁶ Attached as Exhibit A to the Settlement Agreement is the Parties’ proposed Notice of PAGA
Action Settlement.

1 under [PAGA] functions as a substitute for an action brought by the government itself.” *Id.* The goal of
2 PAGA is to impose civil penalties for violations “significant enough to deter violations.” *Id.*, at 379.
3 “Unlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA
4 is to incentivize private parties to recover civil penalties for the government that otherwise may not have
5 been assessed and collected by overburdened state enforcement agencies.” *Id.* Thus, the Court’s
6 evaluation of the settlement should not focus on the average recovery per aggrieved employee as would
7 be appropriate in a class action because, by definition, 75% of the recovery goes to the State.

8 Despite the differences between PAGA matters and class actions, “many of the factors used to
9 evaluate class action settlements bear on a settlement’s fairness—including the strength of the plaintiff’s
10 case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the
11 settlement amount—[and] these factors can be useful in evaluating the fairness of a PAGA settlement.”
12 *Moniz*, 72 Cal.App.5th at 77. Thus, *Moniz* simply announced that courts are recommended to use the
13 standards in *Dunk* and *Kullar* when evaluating a PAGA settlement to the extent the standards apply. *Id.*

14 *Dunk* found that a proposed settlement is presumed fair under the following circumstances: (1)
15 the parties reached a settlement after arm’s-length negotiations; (2) investigation and discovery were
16 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
17 litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802. Here, as will be
18 shown, these factors—with the exception of the percentage of objectors, which is not applicable in a
19 PAGA action—are present.

20 *Kullar* instructs that an understanding of the amount in controversy is an important factor into
21 whether the settlement “of . . . claims is reasonable in light of the strengths and weaknesses of the claims
22 and the risks of the particular litigation.” *Kullar*, 168 Cal.App.4th at 129. The most important factor in
23 this regard is “the strength of the case for Plaintiff on the merits, balanced against the amount offered in
24 settlement.” *Id.* In weighing the strength of the Plaintiffs’ case, *Kullar* instructs that the court is not to
25 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of
26 the attorneys.” *Id.*, at 133.

27 **B. The PAGA Settlement Is Reasonable Given the Risks of Further Litigation**

28 In assessing whether the amount in civil penalties is fair, adequate, and reasonable, the Court

1 may balance the amount in penalties with the risks of further litigation. Here, Plaintiffs obtained a
2 meaningful amount in civil penalties. (Yablonovich Decl., ¶ 32.)

3 Based on information provided by Defendant, the approximately 2,600 Aggrieved Employees
4 (also referred to as PAGA Members in the Settlement Agreement) worked an aggregate of
5 approximately 92,000 pay periods during the PAGA Period.

6 Civil penalties are calculated according to Labor Code section 2699(f)(2): If, at the time of the
7 alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars
8 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
9 (\$200) for each aggrieved employee per pay period for each subsequent violation.⁷

10 Plaintiffs' Counsel determined an appropriate range of recovery for settlement purposes by
11 offsetting Defendant's potential exposure for PAGA penalties by: (i) the strength of Defendant's
12 affirmative defenses on the merits; (ii) the risk of the Court finding that a PAGA trial would be
13 unmanageable;⁸ (iii) the risk of losing on any dispositive motions or motion in limine that could have
14 eliminated all or some of Plaintiffs' claims or barred evidence; (iv) the risk of losing at trial or prevailing
15 on only some of the claims; (v) the risk that the Court would exercise its discretion under PAGA to
16 significantly reduce the maximum civil penalties available by statute (*see* Lab. Code § 2699(e)); (vi) the
17 chances of a favorable verdict being reversed on appeal; and (vii) the difficulties attendant to collecting
18 on a judgment (the "Discount Factors"). Plaintiffs' Counsel determined an appropriate range of recovery
19 for settlement purposes by offsetting Defendant's potential exposure for PAGA penalties by the strength
20 of its defenses and the other Discount Factors. (Yablonovich Decl., ¶ 30; Ex. 3.)

21
22 ⁷ However, the "subsequent" penalty under PAGA applies only after a court or the Labor
23 Commissioner determines that the employer has violated the Labor Code. *See Gunther v. Alaska*
24 *Airlines, Inc.*, 72 Cal.App.5th 334, 356 (2021) ("the increased \$200 civil penalty for 'subsequent
violation[s]' does not apply unless [Plaintiff] presents evidence that the Labor Commission or a court
notified [Defendant] that it was in violation of the Labor Code."). Here, no basis exists to apply the
heightened amount.

25 ⁸ Although Plaintiffs maintain that such a trial would be manageable (*see, e.g., Estrada v.*
26 *Royalty Carpet Mills, Inc.*, 15 Cal.5th 382 (Jan. 18, 2024)), they are aware of the risks, as illustrated by
27 several cases. *Ortiz v. CVS Caremark Corp.*, No. C-12-05859 EDL, 2014 U.S. Dist. LEXIS 36833, at
28 *11 (N.D. Cal. Mar. 19, 2014) ("[T]he Court finds that the PAGA claim in this case is unmanageable...
because a multitude of individualized assessments would be necessary"); *Wesson v. Staples the Office*
Superstore, LLC, 68 Cal.App.5th 746 (2021) (same); *Brown v. Am. Airlines, Inc.*, No. CV 10-8431-AG
(PJWx), 2015 U.S. Dist. LEXIS 150672, at *10 (C.D. Cal. Oct. 5, 2015) (same); *Litty v. Merrill Lynch &*
Co., Inc., No. CV 14-0425 PA (PJWx), 2014 U.S. Dist. LEXIS 160448, at *6 (C.D. Cal. Nov. 10, 2014)
(same).

1 **1. Assessment of the Meal Period and Rest Period Claims**

2 Plaintiffs allege that employees regularly suffered meal and rest period violations due to severe
3 understaffing and the general high demands of the hospitality industry. Plaintiffs contend that
4 Defendant’s uniform policies, practices, and procedures regularly led to employees working off-the-
5 clock during meal periods for which Defendant did not pay. For example, Plaintiffs allege that
6 Defendant required the use of walkie talkies during breaks which interrupted meal periods. Plaintiffs also
7 contend that Defendant’s records demonstrate meal period violations. *See Donohue v. AMN Services,*
8 *LLC*, 11 Cal.5th 58 (2021) (holding that “time records showing noncompliant meal periods raise a
9 rebuttable presumption of meal period violations”). Plaintiffs argue that Defendant prioritized guest
10 services and facility-needs over employees’ meal and rest period rights. Operating around the clock,
11 Defendant pressured employees to work through both meal and rest periods to meet the continuous
12 demands of guests and hotel operations.

13 Plaintiffs also allege that Defendant required employees to stay on the premises during rest
14 periods. *See Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 272-73 (2016) (California law
15 requires employers to “relinquish any control over how employees spend their break time, and relieve
16 their employees of all duties...”). Plaintiffs argue that consequently, Defendant failed to relinquish
17 control over employees as mandated by the California Supreme Court in *Brinker Rest. Corp. v. Super.*
18 *Ct.*, 53 Cal.4th 1004 (2012).

19 Defendant could argue that there is no documentary evidence of off-the-clock work during meal
20 periods, and that Defendant’s policies prohibited off-the-clock work. Defendant would further argue that
21 Plaintiffs would have an uphill battle to show employees worked off-the-clock, that Defendant
22 understaffed its hotels, and individualized issues would make this claim unmanageable.

23 Defendant would contend that the records reflect only potential violations and that any such meal
24 period ‘violations’ in the records reflect a matter of personal choice rather than a legal violation.
25 Defendant would also contend that it paid premiums when a violation occurred. Defendant would also
26 contend that its meal and rest period policies and practices comply with California law in that it relieves
27 employees of all duties during breaks. Defendant would also contend that any insistence that more be
28 done is advocating that it must “police” employees, a standard the California Supreme Court rejected in

1 *Brinker*. Defendant could contend that Plaintiffs bear the burden of proving that meal periods and/or rest
2 periods were not taken and that doing so would involve numerous individual issues, which ostensibly
3 requires the testimony of virtually all employees and thus raising concerns that the case may be
4 unmanageable.

5 There was therefore a significant risk that Defendant would show not only that these claims were
6 not manageable, but also that any failure to take breaks was voluntary rather than a result of Defendant's
7 policies and practices. Moreover, even if Plaintiffs could prove that some PAGA Members were
8 prevented from taking breaks, the amount of potential exposure would be significantly lower than the
9 full verdict value.

10 Plaintiffs determined a settlement value for civil penalties based on meal period violations by
11 offsetting Defendant's exposure by the Discount Factors, yielding a settlement value of \$517,040. (See
12 Ex. 3, No. 1.⁹) Plaintiffs similarly determined a settlement value for civil penalties based on rest period
13 violations by offsetting Defendant's exposure by the Discount Factors, yielding a settlement value of
14 \$460,000. (See Ex. 3, No. 2.)

15 **2. Assessment of the Regular Rate of Pay Claims**

16 Plaintiffs argue that Defendant did not properly calculate the regular rate of pay for overtime,
17 meal premiums, and sick pay when non-discretionary pay was earned. "[W]hen calculating the regular
18 rate of pay for purposes of overtime calculation under the IWC Orders, non-discretionary bonuses must
19 be calculated into the formula." DLSE Enforcement Policies and Interpretation Manual, 2002 Update, ¶
20 35.7. With respect to meal period premiums, "the term 'regular rate of compensation' in section 226.7(c)
21 has the same meaning as 'regular rate of pay' in section 510(a) and encompasses not only hourly wages
22 but all nondiscretionary payments for work performed by the employee." *Ferra v. Loews Hollywood*
23 *Hotel, LLC*, 11 Cal.5th 858, 878 (2021). Similarly, with respect to sick pay, Labor Code section 246(l)(1)
24 provides that "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the
25 *regular rate of pay* for the workweek in which the employee uses paid sick time, whether or not the
26 employee actually works overtime in that workweek." Plaintiffs argue that when Defendant paid

27
28 ⁹ Attached as Exhibit 3 to the Declaration of Mark Yablonovich is a summary of Plaintiffs' exposure analysis by claim setting forth realistic maximum theoretical exposures, assumptions, formulas, percentages of recovery, and settlement values.

1 nondiscretionary bonuses it did not incorporate bonuses when paying overtime, premiums or sick pay.

2 Defendant would argue that its policy was compliant and that it did not pay nondiscretionary
3 bonuses that would need to be incorporated into the regular rate. Defendant also denies that it failed to
4 incorporate nondiscretionary pay into the regular rate of pay or was required to do so.

5 Plaintiffs determined a settlement value for civil penalties for alleged overtime regular rate
6 violations by offsetting Defendant's exposure by the Discount Factors, yielding a settlement value of
7 \$15,640. (See Ex. 3, No. 3.) Plaintiffs determined a settlement value for civil penalties for alleged meal
8 premium regular rate violations by offsetting Defendant's exposure by the Discount Factors, yielding a
9 settlement value of \$231,840. (See Ex. 3, No. 4.) Plaintiffs determined a settlement value for civil
10 penalties for alleged sick pay regular rate violations by offsetting Defendant's exposure by the Discount
11 Factors, yielding a settlement value of \$58,880. (See Ex. 3, No. 5.)

12 **3. Assessment of the Unpaid Wages Claims**

13 Plaintiffs contend—and Defendant disagrees—that Defendant's improper rounding of time
14 violates California's requirement that employers pay for all time during which employees are under an
15 employer's control. On the other hand, Defendant would argue that any rounding policy it may have is
16 neutral, and that Plaintiffs would have difficulty establishing an illegal rounding policy and that it would
17 be unmanageable.

18 Plaintiffs determined a settlement value for civil penalties for the unpaid wages claim by
19 offsetting Defendant's exposure by the Discount Factors, yielding a settlement value of \$36,800. (See
20 Ex. 3, No. 6.)

21 **4. Assessment of the Supplemental COVID-19 Pay Claim**

22 Plaintiffs allege that Defendant did not provide for and maintain records of supplemental
23 COVID-19 sick leave for its employees pursuant to Labor Code section 248.2. Plaintiffs also argue that
24 Defendant failed to provide employees with written notice of information material to employment
25 pursuant to Labor Code section 2810.5.

26 Plaintiffs allege that, starting on or about March 28, 2021, Defendant was required to but failed
27 to maintain records regarding supplemental COVID-19 sick leave either by itemizing the available hours
28 on the employees' wage statements or by providing separate written documents ensuring employees

1 understood how many separate COVID-specific sick leave hours they had available.

2 Defendant would argue that its COVID-19 sick pay was legal and notice compliant. Defendant
3 would further argue that Plaintiffs would have a difficult time showing a failure to pay COVID-19 sick
4 pay and that presenting all the wage statements to establish incorrect wage statements make this claim
5 unmanageable.

6 Plaintiffs determined a settlement value for civil penalties based on the COVID-19 sick pay
7 claim by offsetting Defendant's exposure by the Discount Factors, yielding a settlement value of
8 \$119,600. (See Ex. 3, No. 7.)

9 **5. Assessment of the Split Shift Claim**

10 Wage Order 11050(5)(B) provides that if employees are required to report a second time on the
11 same workday, they must be paid split shift pay. Plaintiffs assert that Defendant failed to pay employees
12 mandatory split shift premiums when employees return to work for an additional shift on the same day,
13 after being clocked out for over an hour.

14 Defendant would likely contend that it does not schedule split shifts. Further, because Section
15 1198 is the basis for multiple civil penalties, Defendant would argue that this is impermissible stacking of
16 penalties that would not only be duplicative but also 'confiscatory' and would therefore be stricken by
17 the Court.

18 Plaintiffs determined a settlement value for civil penalties based on the split shift claim by
19 offsetting Defendant's exposure by the Discount Factors, yielding a settlement value of \$7,820. (See Ex.
20 3, No. 8.)

21 **6. Assessment of the Reporting Time Claim**

22 California law mandates that employees who report to work but are not provided with sufficient
23 work for at least half of their scheduled shift must receive "reporting time pay." Specifically, Wage
24 Order No. 5, section 5(A) requires that employees be paid for half of their usual or scheduled day's work
25 when they report for a shift but are not given sufficient work, with a minimum of two hours and a
26 maximum of four hours of compensation at the employee's regular rate of pay. See 8 Cal. Code Regs. §
27 11050, subd. 5(A). Plaintiffs contend that Defendant violated this reporting time requirement by sending
28 employees home upon arrival or releasing them after working less than half of their scheduled hours

1 without the requisite reporting time pay.

2 Defendant would contend that employees voluntarily left early and that it would be impossible
3 for Plaintiffs to show whether employees went home voluntarily or whether Defendant sent them home
4 early.

5 Plaintiffs determined a settlement value for civil penalties based on the reporting time claim by
6 offsetting Defendant's exposure by the Discount Factors, yielding a settlement value of \$37,720. (See
7 Ex. 3, No. 9.)

8 **7. Assessment of the Untimely Final Pay Claim and Untimely Payment of**
9 **Wages During Employment Claim**

10 Based on the foregoing allegations, Plaintiffs allege that Defendant failed to timely pay all wages
11 at termination as required by Labor Code sections 201 and 202 and failed to timely pay wages during
12 employment as required by Labor Code section 204. Plaintiffs also assert that Defendant's final pay to
13 terminated employees was often late by an average of three days.

14 Defendant would contend that Plaintiffs' claims are only as strong as the underlying predicate
15 claims, and thus, all of the affirmative defenses to the preceding allegations apply with equal force to the
16 untimely payment of wages at termination and during employment.

17 Plaintiffs determined a settlement value for the civil penalties for the untimely payment of final
18 wages claim by offsetting Defendant's exposure by the Discount Factors, yielding a settlement value of
19 \$7,876. (See Ex. 3, No. 10.) Plaintiffs determined a settlement value for the civil penalties for the
20 untimely payment of wages during employment claim by offsetting Defendant's exposure by the
21 Discount Factors, yielding a settlement value of \$460,000. (See Ex. 3, No. 11.)

22 **8. Assessment of the Failure to Rehire Employees Claim**

23 Effective January 1, 2022, California Labor Code section 2810.8 mandates that employers offer
24 laid-off employees specified information about job positions that become available for which the laid-off
25 employees are qualified. Employers are required to offer these positions to laid-off employees based on a
26 preference system, adhering to specified timelines and procedures. Plaintiffs contend that Defendant
27 failed to comply with these statutory obligations because it did not provide laid-off aggrieved employees
28 with the required information about job positions that became available for which they were qualified

1 and that it did not offer these positions to laid-off employees based on a preference system, nor did it
2 adhere to the specified timelines and procedures mandated by the statute.

3 Defendant would contend that the statute did not apply and to the extent it did, Defendant fully
4 complied with all notice requirements. Defendant could also argue that there is no private right of action
5 under Section 2810.8, and that there were no layoffs or recalls during the PAGA Period. Defendant
6 could also assert that this is merely a “notice” claim and that PAGA penalties are not recoverable.

7 Plaintiffs determined a settlement value for the civil penalties for the failure to rehire employees
8 claim by offsetting Defendant’s exposure by the Discount Factors, yielding a settlement value of \$4,470.
9 (See Ex. 3, No. 12.)

10 **9. Assessment of the Wage Statement Claim**

11 Based on the foregoing allegations, Plaintiffs allege that Defendant failed to properly itemize
12 wage statements. Defendant would contend that the wage statement claim is only as strong as the
13 underlying predicate claims, and thus, all of the affirmative defenses to the preceding allegations apply
14 with equal force to the wage statement claim.

15 Plaintiffs determined a settlement value for civil penalties based on the wage statement claim by
16 offsetting Defendant’s exposure by the Discount Factors, yielding a settlement value of \$460,000. (See
17 Ex. 3, No. 13.)

18 **10. Assessment of the Inaccurate Pay and Time Records Claim**

19 Based on the foregoing allegations, Plaintiffs allege that Defendant failed to maintain accurate
20 payroll and time records per Labor Code section 1198 and Wage Order 11050(7). Plaintiffs contend that
21 Defendant failed to record off-the-clock work and accurate meal periods for its employees resulting in
22 inaccurate time records. Plaintiffs also allege that Defendant’s failure to pay employees at the correct
23 regular rate of pay resulted in inaccurate payroll records.

24 Similar to the wage statement claim, the inaccurate records claim is derivative of Plaintiffs’ wage
25 claims. Therefore, the arguments Defendant could have raised for each of those claims apply here.

26 Plaintiffs determined a settlement value for civil penalties based on the inaccurate payroll and
27 time records claim by offsetting Defendant’s exposure by the Discount Factors, yielding a settlement
28 value of \$65,000. (See Ex. 3, No. 14.)

1 **11. Assessment of the Suitable Seating and Resting Facility Claims**

2 Plaintiffs argue that Defendant did not provide seating for the many tasks that can reasonably be
3 performed while seated, such as filling out paperwork, answering phones, working on computers, and
4 assisting guests at the front desk and reception areas despite ample space. Plaintiffs argue that employees
5 can easily perform those duties just as proficiently while seated.

6 Similarly, Plaintiffs argue that employers are obligated to provide suitable resting facilities for
7 their employees during work hours. Plaintiffs argue Defendant failed to comply with this mandate
8 because employees were denied access to designated rest areas where they could comfortably take their
9 meal and rest periods.

10 Defendant would argue not only that the seating and resting facility claims are unmanageable,
11 but that establishing the claims would require individualized inquiries, and that the nature of the job—the
12 twisting and turning movement of the numerous and wide-ranging job positions in the hotels—is not
13 conducive (or safe) for seats and that it provided sufficient resting facilities for all its employees.

14 Plaintiffs determined a settlement value for civil penalties based on the suitable seating claim by
15 offsetting Defendant’s exposure by the Discount Factors, yielding a settlement value of \$92,000. (See
16 Ex. 3, No. 15.) Plaintiffs determined a settlement value for civil penalties based on the resting facility
17 claim by offsetting Defendant’s exposure by the Discount Factors, yielding a settlement value of
18 \$92,000. (See Ex. 3, No. 16.)

19 **12. Assessment of the Illegal Background Check Claim**

20 Plaintiffs argue that Defendant violated Labor Code section 432.5 by requiring employees to
21 undergo unlawful background checks. Defendant would argue that it fully complied with the
22 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq.

23 Plaintiffs determined a settlement value for civil penalties based on the alleged unlawful
24 background check claim by offsetting Defendant’s exposure by the Discount Factors, yielding a
25 settlement value of \$26,000. (See Ex. 3, No. 17.)

26 **13. Assessment of the Unreimbursed Business Expense Claim**

27 Plaintiffs allege that Defendant failed to fully reimburse its employees for all business expenses.
28 Plaintiffs argue that Defendant violated Labor Code section 2802 by not reimbursing employees for the

1 required use of their own personal cell phones in addition to personal protective equipment during the
2 COVID-19 pandemic, including face masks and disposable gloves and other supplies. *Cochran v.*
3 *Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137, 1144 (2014) (the purpose of Labor Code section
4 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to
5 their employees).

6 Defendant argues that it fully reimbursed, pursuant to its policy, all reasonable business expenses
7 and provided equipment to protect from COVID-19. Defendant could also argue a lack of manageability
8 of this claim.

9 Plaintiffs determined a settlement value for civil penalties based on the failure to reimburse
10 business expenses claim by offsetting Defendant's exposure by the Discount Factors, yielding a
11 settlement value of \$92,000. (See Ex. 3, No. 18.)

12 **14. The PAGA Settlement Is Fair and Reasonable and Fulfills PAGA's** 13 **Objectives**

14 As the above analysis demonstrates, Plaintiffs objectively and knowledgeably balanced the
15 strengths and weaknesses of their claims against the risks of continued litigation and were able to
16 determine a realistic range of settlement recovery for PAGA penalties. The PAGA settlement therefore
17 accomplishes PAGA's objectives by imposing sufficient civil penalties "to punish and deter" Defendant
18 from future alleged Labor Code violations, while also ensuring that the penalties are not "unjust, arbitrary
19 and oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2).

20 While Plaintiffs and their counsel believe that the claims are meritorious, Plaintiffs face
21 significant risk that the Court could award a reduced amount of penalties under Labor Code section
22 2699(e)(2) or find no liability on some or all the theories of liability and/or find the case unmanageable
23 and therefore not appropriate to continue as a representative action. (Yablonovich Decl., ¶ 27.)

24 Defendant also could contend that a reduction to any applicable PAGA penalties would be
25 appropriate, as the Court has the power to reduce PAGA penalties to ensure that they are not "unjust,
26 arbitrary and oppressive, or confiscatory." See Cal. Lab. Code § 2699(e) ("...a court may award a lesser
27 amount than the maximum civil penalty amount specified by this part if, based on the facts and
28 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and

oppressive, or confiscatory.”); *see also Fleming v. Covidien Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590, *8-*9 (C.D. Cal. Aug. 12, 2011) (“Also, were not aware that the wage statements violated the law and took prompt steps to correct all violations once notified. Given these circumstances, the Court finds a \$2.8 million penalty unjust according to § 2699(e)(2). Accordingly, in its discretion, the Court reduces the penalty to \$500,000.”).

Even when plaintiffs have prevailed at trial on PAGA claims, courts have routinely exercised their discretion to significantly reduce the amount of PAGA penalties awarded to as little as \$5.00 per pay period. *See, e.g., Carrington v. Starbucks Corp., et al.*, San Diego Superior Court No. 37-2014-00018637-CU-OE-CTL (Apr. 3, 2017) (holding that the plaintiff was only entitled to \$5 for each pay period when a meal period violation occurred; the plaintiff requested more than \$70 million in penalties and the court’s reduction to \$150,000 was affirmed on appeal and reflected .2% of the total recoverable penalties sought). In *Kaanaana v. Barrett Business Services, Inc.*, 29 Cal.App.5th 778, 788, 809 (2018), the Court of Appeal took no issue with the trial court exercising its discretion in reducing PAGA civil penalties for violations of Labor Code section 512 to 13% of the total recoverable penalties.

Furthermore, the court in *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112 (2012) determined that an award of the maximum penalty allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the maximum amount. The *Thurman* court found that penalties may be reduced when a defendant has taken its obligations to comply with the law seriously. *Id.* Defendant could contend that if the case were to continue in litigation, it would be able to show that it took its obligations to comply with the law seriously and it has continued to proactively keep its policies updated and compliant with California’s evolving Labor Code. As such, if Plaintiffs were able to prevail on the merits of their PAGA claims, it is likely that the Court would reduce the maximum penalty allowed.

Here, by comparison, the gross amount obtained by Plaintiffs and their counsel is approximately \$30.98 per pay period (= \$2,850,000 ÷ 92,000 pay periods). (Yablonovich Decl., ¶ 29.)

The proposed PAGA settlement here of \$2,850,000 accounts for the realistic exposure, the real impediments of succeeding on the merits, and reflects an appropriate, balanced, and reasonable settlement value of the PAGA claims. The settlement amount, being over two million dollars, fits

squarely within the “remedial purpose” of PAGA to enforce compliance with important employee protections in the Labor Code and Wage Order.

C. The PAGA Settlement was Reached as a Result of Arm’s Length Negotiations

The settlement was reached as a result of arm’s-length negotiations with the assistance of a mediator. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. Counsel for the Parties conducted extensive arm’s length settlement negotiations until the settlement was reached. (Yablonovich Decl., ¶ 26.)

D. The Settlement is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research, and discovery to support the settlement. (Yablonovich Decl., ¶ 25.) Defendant produced policies and documents, information regarding the PAGA Members’ demographics (such as the number of employees and pay periods), a sample of 20% of the employee time and wage records and data for employees, and collective bargaining agreements with respect to two of the 34 locations. (*Id.*, ¶ 19.) Plaintiffs’ counsel also retained an expert/consultant to process and analyze the data. (*Id.*) Counsel for both Parties conducted the necessary exchange of data and information and performed thorough analyses which were the substantial bases upon which the Parties’ “clear view of the strengths and weaknesses of their cases” was made possible. *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (1979).

E. Plaintiffs’ Counsel Has Extensive Experience in PAGA Actions

Highly capable and experienced counsel conducted the settlement negotiations. Plaintiffs’ Counsel are respected members of the bar with a strong record of vigorous and effective advocacy for their clients, and they are experienced in handling complex wage and hour class action and PAGA litigation. (Yablonovich Decl., ¶¶ 4-7; Wheeler Decl. ¶¶ 5-12; Bradley Decl. ¶¶ 9-13.) Although Plaintiffs and their counsel were prepared to try the case, they support the PAGA Settlement as being consistent with PAGA’s dual purpose and as being fair and reasonable. (Yablonovich Decl., ¶ 32; Wheeler Decl. ¶ 3; Bradley Decl. ¶ 8.)

F. The Proposed Service Awards to Plaintiffs Are Fair and Reasonable

Both the State of California and all PAGA Members are beneficiaries of a settlement that would

not have been made possible but for the effort and commitment of Plaintiffs. (Yablonovich Decl., ¶¶ 34-38; Wheeler Decl. ¶ 3; Bradley Decl. ¶ 37; *see generally* Nevarez Decl., Gardner Decl. and Dominguez Decl.) Here, the PAGA Settlement provides for General Release Payments to Plaintiffs in an amount not to exceed Ten Thousand Dollars (\$10,000) each. (Settlement Agreement, ¶ 23, 44.a.iii.) The General Release Payments are reasonable because Plaintiffs “remained fully involved and expended considerable time and energy during the course of the litigation.” *In re Toys “R” Us FACTA Litig.*, 295 F.R.D. 438, 471 (C.D. Cal. 2014) (citation omitted). Plaintiffs devoted substantial time and effort toward assisting their attorneys with the prosecution of the claims, and her unique contributions to the litigation should be rewarded. (Yablonovich Decl., ¶¶ 34-38; Wheeler Decl. ¶ 28; Bradley Decl. ¶¶ 42-46; Nevarez Decl., ¶¶ 10-11; Gardner Decl., ¶¶ 11-13; Dominguez Decl., ¶¶ 13-19.) The requested General Release Payments are intended to recognize: (1) the substantial time and effort that Plaintiffs expended on behalf of the State and PAGA Members; (2) the significant risks Plaintiffs faced as a result of bringing the Action, which could affect their prospects for future employment; (3) the fact that Plaintiffs put the interests of the State of California and other PAGA Members ahead of their own; and (4) the substantial benefits conferred upon the State and the PAGA Members as a result of Plaintiffs’ action. (*Id.*) Plaintiffs spent numerous hours performing tasks for this case, including but not limited to, consulting with counsel, searching for relevant documents, providing counsel with information about witnesses, reviewing and consulting with counsel regarding settlement documents, keeping themselves informed of the developments in the case, preparing for and remaining on call during the full-day mediation, and participating in decisions concerning the case, including settlement. (*Id.*)

The amount is also reasonable in light of service awards approved in other representative actions.¹⁰ In short, neither the action nor the PAGA Settlement would have been possible without the aid

¹⁰ Courts have routinely granted approval of settlements containing such incentive awards. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class representative); *Ross v. U.S. Bank Nat’l Assn.*, U.S.D.C. Case No. 07-2951 SI, (awarding each of the four plaintiffs \$20,000); *Smith, et al. v. Kaiser Foundation Hospitals, Inc.*, U.S.D.C. Case No. 08-cv-2353 LAB-JMA (awarding two plaintiffs enhancements of \$25,000 each and one plaintiff an enhancement of \$20,000); *Winzelberg*

1 of Plaintiffs who put their own time and effort into this litigation and placed themselves at risk for the
2 sake of the State and the PAGA Members. (Yablonovich Decl., ¶ 35; Wheeler Decl. ¶¶ 29; Bradley
3 Decl. ¶¶ 42-46; Nevarez Decl., ¶¶ 22-23; Gardner Decl., ¶¶ 7-13; Dominguez Decl., ¶¶ 22-23.)

4 Other considerations also support the General Release Payments. First, the awards are justified in
5 light of the reputational risk that Plaintiffs have assumed by litigating claims against a former employer.
6 (Yablonovich Decl., ¶ 35.) *See Billingshausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267-68 (N.D. Cal.
7 2015) (finding “personal detriment” upon testimony that future employers can easily learn that a
8 prospective employee served as a plaintiff through the internet).

9 The General Release Payments are appropriate because Plaintiffs otherwise “will not gain any
10 benefit beyond that he [or she] would receive as an ordinary [Aggrieved Employee].” *In re Toys ‘R’ Us*
11 *FACTA Litig.*, 295 F.R.D. at 472; *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D.
12 Cal. 1995) (holding that a substantial award is appropriate where a [representative’s] claim made up
13 “only a fraction of the common fund.”). Here, absent the General Release Payments, Plaintiffs will
14 recover no more than other PAGA Members, despite undergoing personal sacrifice in bringing this suit.
15 (Yablonovich Decl., ¶ 30.) Plaintiffs agreed to a general release of all claims they may have against
16 Defendant. (Settlement Agreement, ¶ 23.) The general releases signed by Plaintiffs are considerably
17 broader than the separate, narrower releases required of other PAGA Members. (Yablonovich Decl., ¶
18 36; Wheeler Decl. ¶ 30; Bradley Decl. ¶ 46.) *See Billingshausen*, 306 F.R.D. at 267-68 (awarding the
19 plaintiff an incentive payment of \$15,000 in part due to the plaintiff having executed a broad individual
20 release). Moreover, \$30,000 total represents only 1% of the gross settlement amount, well within a
21 reasonable realm.

22 **G. The Requested Attorneys’ Fees Are Reasonable**

23 Labor Code section 2699(g)(1) provides that “[a]ny employee who prevails in any action shall be
24 entitled to an award of reasonable attorney’s fees and costs.” Cal. Lab. Code § 2699(g)(1). Plaintiffs have
25 prevailed and are entitled to an award of reasonable attorneys’ fees and costs. *See, e.g., Graciano v.*
26 *Robinson Ford Sales, Inc.*, 144 Cal.App.4th 140, 153 (2006) (“[P]laintiffs may be considered ‘prevailing
27 parties’ for attorney’s fee purposes if they succeed on any significant issue in the litigation that achieves
28

v. Liberty Mutual Ins. Co., U.S.D.C. Case No. 07-460 GAF (awarding an enhancement of \$20,000).

some of the benefit the parties sought in bringing suit.”) (internal citation omitted); *DeSaulles v. Cmty. Hosp. of Monterey Peninsula*, 62 Cal.4th 1140, 1158 (2016) (a plaintiff who settles a lawsuit for payment of money or other tangible benefits may be considered a prevailing party.”) (citations omitted).

1. The Requested Attorneys’ Fees Are Reasonable Under the Common Fund Method

The PAGA Settlement provides for a payment of attorneys’ fees to Plaintiffs’ Counsel in an amount not to exceed one-third of the Gross Settlement Amount, i.e., \$950,000. (Settlement Agreement, ¶¶ 16, 34.a.i.1.) Plaintiffs’ request for attorneys’ fees as a percentage of the Gross Settlement Amount is supported by the “common fund doctrine,” where “one who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs.” *Serrano v. Priest*, 20 Cal.3d 25, 35 (1977). The purpose of the common fund approach is to “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.” *City & County of San Francisco v. Sweet*, 12 Cal.4th 105, 110 (1995).

A number of courts have recognized the advantages of awarding fees as a percentage of the common fund. *See, e.g., In re Activision Securities Litigation*, 723 F.Supp. 1373, 1375 (N.D. Cal. 1989). The percentage approach is preferable because: (1) it provides predictability to counsel; (2) encourages efficient resolution of the litigation by providing an incentive for early settlement; and (3) reduces the demands on judicial resources.¹¹ California and federal courts have long recognized that a percentage of recovery for attorneys’ fees is properly awarded on the basis of the total value. *Boeing v. Van Gemert*,

¹¹ *Id.* at 1378-79; *see also Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19 (2000). In *Lealao v. Beneficial California, Inc.*, the court discussed the findings of a task force commissioned by the Third Circuit, which “concluded that the lodestar approach (1) increases the workload of an already overtaxed judicial system, (2) is insufficiently objective and produces results that are far from homogenous, (3) creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, (4) is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the Claimants or of an overall dollar amount, (5) encourages lawyers to expend excessive hours, and engage in duplicative and unjustified work, (6) creates a disincentive for the early settlement of cases, (7) deprives trial courts of flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered, (8) works to the particular disadvantage of the public interest bar, and (9) results in confusion and lack of predictability.” *Lealao*, 82 Cal.App.4th at 28.

1 444 U.S. 472, 480-481 (1980); *see also In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 n.13
2 (2009) (“Empirical studies show that . . . fee awards in class actions average around one-third of the
3 recovery.”)

4 In *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480, 489 (2016) (“*Laffitte II*”), a unanimous
5 California Supreme Court encouraged California courts to exercise their discretion to use the common
6 fund—or “percentage method”—to calculate fees when a discrete fund is created for the benefit of a
7 large group of beneficiaries. *Laffitte II*, 1 Cal.5th at 503. *Laffitte II* explained that the percentage method
8 has “recognized advantages” over the lodestar-multiplier method, “including relative ease of calculation,
9 alignment of incentives between counsel and the class, a better approximation of market conditions in a
10 contingency case, and the encouragement it provides counsel to seek an early settlement and avoid
11 unnecessarily prolonging the litigation.” *Id.*

12 By awarding counsel a percentage of the total recovery, rather than fees based on hours worked,
13 the common fund method encourages attorneys to efficiently litigate to achieve the best results possible
14 for the group of employees. *See id.* at 492-494.

15 The Court should also consider that Plaintiffs’ Counsel’s efforts have resulted in significant
16 benefits in the form of a non-reversionary settlement fund established to enforce the Labor Code and
17 help fulfill the dual purpose of PAGA. As a result, not only will the State of California benefit from the
18 settlement, but so will PAGA Members.

19 **2. The Requested Attorneys’ Fees Are Reasonable Under the Lodestar** 20 **Method**

21 Under the lodestar method, the Court considers the time spent and a reasonable hourly
22 compensation for each attorney to evaluate the reasonableness of the fee requested. *Ramos v.*
23 *Countrywide Home Loans, Inc.*, 82 Cal.App.4th 615, 622 (2000).

24 Under the lodestar approach, courts determine that “the time spent was reasonably necessary and
25 that [] counsel made ‘a good faith effort to exclude from the fee request hours that are excessive,
26 redundant, or otherwise unnecessary.” *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir.
27 1987). The court “should defer to the winning lawyer’s professional judgment as to how much time he
28 was required to spend on the case.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)

(noting that “[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”). “Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.” *Martino v. Denevi*, 182 Cal.App.3d 553, 559 (1986) (citations omitted); *see also Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 255 (2001) (“California permits fee awards in the absence of detailed time sheets”); *Margolin v. Regional Planning Com.*, 134 Cal.App.3d 999, 1006–1007 (1982) (the court may award fees based on time estimates).

The efforts expended by Plaintiffs’ Counsel to achieve this significant result include, but are not limited to, the following: interviews with Plaintiffs and review of documents produced in the Action; drafting and mailing PAGA notices to the LWDA and Defendant; drafting and filing the original and first amended PAGA complaint; preparing for and attending court proceedings; motion practice; meeting and conferring and negotiating with Defendant regarding case management, and data produced by Defendant for mediation; drafting a mediation brief and exposure analyses; preparing for and participating in an all-day mediation; engaging in extensive subsequent mediated discussions; drafting the PAGA Settlement and this Motion and the supporting papers. (Yablonovich Decl., ¶ 41; Wheeler Decl. ¶¶ 20-21; Bradley Decl. ¶¶ 25-27.) Thus, Plaintiffs’ Counsel’s hours were necessary and reasonable to achieve the result here.

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (2000). “[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorney’s skill as reflected in the quality of work, as well as the attorney’s reputation and status.” *MBNA Am. Bank, N.A. v. Gorman*, 147 Cal.App.4th 1, 3 (2006). The trial court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.” *Parkinson v. Hyundai Motor Am.*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

The rates requested here by Plaintiffs’ Counsel are in line with the current prevailing billing rates in the Southern California area. (Yablonovich Decl., ¶¶ 44-45; Wheeler Decl. ¶ 18; Bradley Decl. ¶ 33.) Plaintiffs’ Counsel’s rates are also comparable to those approved by courts for other plaintiff’s firms in the Southern California area. *See, e.g., Kearney v. Hyundai Motor Am.*, No. SACV 09–1298–JST

(MLGx), No. SACV 09-1298, 2013 U.S. Dist. LEXIS 91636 (C.D. Cal. June 28, 2013) (approving hourly rates of \$650-\$800 for senior attorneys in consumer class action); *Vitela v. Ameri-Force Mgmt. Servs., Inc.*, Case No. 37-2008-00096019 (San Diego Sup. Ct., Aug. 27, 2010) (\$695 to \$750 an hour for partners; \$495 an hour for associates); *Barrera v. Gamestop Corp.*, Case No. CV 09-1399 (C.D. Cal. Nov. 29, 2010) (\$700 an hour for partners; \$475 an hour for associates).

Plaintiffs' Counsel are experienced litigators who concentrate in employment law, with a substantial wage and hour class action and PAGA practice. (Yablonovich Decl., ¶¶ 4-7; Wheeler Decl. ¶¶ 5-12; Bradley Decl. ¶¶ 9-13.) Other courts have approved Plaintiffs' Counsel's hourly rates. (Yablonovich Decl., ¶ 45; Wheeler Decl. ¶ 19; Bradley Decl. ¶¶ 28-33.) Given the skill and experience of Plaintiffs' Counsel, and the significant result achieved for the State and PAGA Members, the requested rates are reasonable.

3. California Law Authorizes the Application of a Lodestar Multiplier to Compensate Plaintiffs' Counsel for Their Contingent Risk

The hours spent and the reasonable hourly compensation produce a lodestar figure which may then be augmented or diminished by the court taking into account various "multiplier" factors. *See Ramos v. Countrywide Home Loans, Inc.*, 82 Cal.App.4th at 622 (citing *Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977)). Here, Plaintiffs' Counsel's total lodestar is approximately \$496,000, which is based upon approximately 643 hours of attorney time at customary hourly rates. (Yablonovich Decl., ¶ 44 [\$312,605.50 lodestar]; Wheeler Decl. ¶¶ 14-15 [\$96,140 lodestar]; Bradley Decl. ¶¶ 34-36 [\$87,480 lodestar].) Plaintiffs' Counsel are requesting a 1.9 multiplier.

Applying a 1.9 multiplier to that lodestar yields the requested fees. A 1.9 multiplier is not "extraordinarily high"—to the contrary, the normal range for a multiplier on a lodestar cross-check "can range from 2 to 4 or even higher." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (multipliers "ranging from one to four are frequently awarded ... when the lodestar method is applied"; affirming fees where the cross-check multiplier is 3.65).

Courts routinely accept multipliers ranging from 2 to 4 on a lodestar cross-check. *See, e.g., Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a

1 lodestar cross-check); *Chavez*, 162 Cal. App. 4th at 66 (applying a 2.5 multiplier in a consumer class
2 action); *Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22,
3 2015) (approving a 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells*
4 *Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in
5 lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358,
6 at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code violations).

7 Indeed, courts following *Laffitte II* have reaffirmed that a multiplier between 2 and 4 to be
8 reasonable and not so “extraordinarily high” as to require greater judicial scrutiny. *See Spann v. J.C.*
9 *Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D. Cal. Sept. 30, 2016) (finding that a 3.07 multiplier is
10 “well within the range for reasonable multipliers” under *Laffitte II*).

11 A multiplier is needed primarily because Plaintiffs settled prior to engaging in extensive
12 litigation and a time-consuming trial. As explained above, the decision to settle early is to be lauded,
13 since PAGA Members and the State of California will now avoid the risks of additional litigation and are
14 assured of substantial and immediate monetary recovery.¹² Indeed, under California law, “the
15 promptness of settlement cannot be used to justify the refusal to apply a multiplier to reflect the size of
16 the class recovery without exacerbating the disincentive to settle promptly inherent in the lodestar
17 methodology.” *Lealao*, 82 Cal.App.4th at 52. According to *Lealao*, to not apply a multiplier under these
18 circumstances would undermine California policy, as “awards that are too small [will] chill the private
19 enforcement essential to the vindication of many legal rights and obstruct the representative actions that
20 often relieve the courts of the need to separately adjudicate numerous claims.” *Id.* at 53.

21 Plaintiffs’ fee request is fair and reasonable and should be approved.¹³

22
23
24 ¹² Many district courts in California have declined to apply a lodestar cross-check when parties
25 settle early in the case. *See, e.g., Glass v. UBS Financial Services, Inc.*, No. 06-4066-MMC, 2007 WL
26 221862, at *16 (N.D. Cal. Jan. 26, 2007) (finding “no need to conduct a lodestar cross-check [as] [c]lass
27 counsel’s prompt action in negotiating a settlement while the state of the law remained uncertain should
be fully rewarded”); *Lopez v. Youngblood*, No. 07-0474-DLB, 2011 WL 10483569, at *14 (E.D. Cal.
28 Sep. 2, 2011) (“A lodestar cross-check is not required in this circuit, and in a case such as this, is not a
useful reference point”).

¹³ Pursuant to Rules of Professional Conduct, Rule 1.5.1, Plaintiffs and Plaintiffs’ Counsel have
agreed to an attorneys’ fee division: LOMY is entitled to 57.50% of the attorneys’ fees, i.e., \$546,250;
Wheeler Law Firm is entitled to 23.75%, i.e., \$225,625; and Bradley/Grombacher is entitled to 18.75%,
i.e., \$178,125. (Yablonovich Decl. ¶ 16; Wheeler Decl. ¶ 13; Bradley Decl. ¶ 47.)

1 **H. The Requested Litigation Costs Are Reasonable**

2 Also pursuant to Labor Code section 2699(g)(l), Plaintiffs are entitled to costs. Plaintiffs’
3 Counsel has incurred approximately \$35,000 in litigation costs. Counsel was required to expend the
4 funds prosecuting the Action to a successful resolution on, among other things, court filing fees,
5 expert/consultant fees, document service, and mediation. (Yablonovich Decl., ¶¶ 47-49; Wheeler Decl.
6 ¶¶ 26-27; Bradley Decl. ¶¶ 38-41.) These costs were reasonable and necessary to the successful litigation
7 and resolution of this action. (*Id.*)

8 **I. The Settlement Administration Costs Are Reasonable**

9 Subject to Court approval, the Parties will engage Atticus Administration, LLC (“Atticus”) to
10 provide settlement administration services. Atticus’s duties will include, among others: (1) printing and
11 mailing the Notice of Settlement; (2) translating the Notice; (3) receiving and processing undeliverable
12 Notices and locating updated addresses for PAGA Members; (4) calculating and distributing the PAGA
13 Members’s Individual Settlement Payments; (5) mailing reminder postcards to PAGA Members whose
14 checks remain uncashed after ninety days; (6) tax reporting; (7) providing necessary reports and
15 declarations; (8) performing such other tasks as set forth in the Settlement Agreement or as the Parties
16 mutually agree or that the Court orders; and (9) transmitting all uncashed settlement checks to the
17 agreed-upon cy pres recipient(s).¹⁴ Settlement Administration Costs in an amount not to exceed Thirteen
18 Thousand Dollars (\$13,000) is therefore reasonable. (Ex. 1, Settlement Agreement, ¶¶ 44.a.ii; *see also*
19 Yablonovich Decl., ¶ 49.)

20 **IV. CONCLUSION**

21 For the foregoing reasons, Plaintiffs respectfully request that the Court approve the PAGA
22 Settlement, allow distribution of the Notice and funds. Plaintiffs request a Final Reporting hearing in
23 approximately twelve months from the hearing, on or after July 6, 2026. Plaintiffs further request that
24 this Court retain jurisdiction as to all matters relating to the enforcement of the PAGA Settlement
25 pursuant to California Code of Civil Procedure section 664.6, and for any other relief the Court deems

26
27 ¹⁴ To the extent PAGA Members do not cash their checks within 180 days of issuance, the
28 Parties agree that the uncashed funds will be distributed to Legal Aid at Work and California Court
 Appointed Special Advocate Association (CASA), subject to Court approval, with the division of the
 unclaimed funds to be divided equally. The Parties have no interest or involvement in Legal Aid at Work
 or CASA. (Yablonovich Decl. ¶ 50; Wheeler Decl. ¶ 31; Bradley Decl. ¶ 48.)

1 just and proper.

2

3 Dated: April 4, 2025

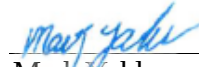
Respectfully submitted,

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LAW OFFICES OF MARK YABLONOVICH

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Attorneys for Plaintiff Jill Gardner

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Dated: April 4, 2025

Respectfully submitted,

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Make a Reservation

NADENE NEVAREZ vs SONESTA INTERNATIONAL HOTELS CORPORATION,

Case Number: 22STCV36156 Case Type: Civil Unlimited Category: Other Employment Complaint Case

Date Filed: 2022-11-14 Location: Stanley Mosk Courthouse - Department 36

Reservation

Case Name:

NADENE NEVAREZ vs SONESTA INTERNATIONAL
HOTELS CORPORATION,

Case Number:

22STCV36156

Type:

Motion re: (Motion for Approval of PAGA Settlement)

Status:

RESERVED

Filing Party:

JILL GARDNER (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 36

Date/Time:

07/10/2025 8:30 AM

Number of Motions:

1

Reservation ID:

484105338452

Confirmation Code:

CR-WKDSL2PGAJ7XAKH4H

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount:

\$0.00

Type:

NOFEE

Account Number:

n/a

Authorization:

n/a

Payment Date:

n/a

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