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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

JUAN VIDAL, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

ROYAL WEST DRYWALL, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No. CVRI2105729

*[Assigned for all purposes to Hon. Harold
W. Hopp in Dept. 10]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
SETTLEMENT OF CLAIMS
BROUGHT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT AND
REASONABLE ATTORNEYS' FEES,
COSTS, AND ENHANCEMENT
PAYMENT**

Date: January 5, 2023
Time: 8:30 a.m.
Dept.: 10

Reservation ID: 071572515468

Complaint filed: December 21, 2021
Trial Date: None Set.

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

3 PLEASE TAKE NOTICE that on January 5, 2023, at 8:30 a.m., or as soon thereafter as
4 the matter may be heard in Department 10 of the above-entitled Court, located at 4050 Main
5 Street, Riverside, California 92501, Plaintiff Juan Vidal (“Plaintiff”), as an individual and on
6 behalf of the State of California, will, and hereby does, move this Court for entry of an Order as
7 follows:

- 8 1. Granting approval, pursuant to California Labor Code § 2699(l), of the proposed
9 settlement of claims brought pursuant to the Private Attorneys General Act of 2004
10 (Cal. Labor Code § 2698, *et seq.*) and as set forth in the Parties’ Settlement Agreement,
11 a true and correct copy of which is attached to the Declaration of Sean M. Blakely
12 filed concurrently herewith;
- 13 2. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
- 14 3. Approving the proposed Explanatory Letter (attached as Exhibit A to the Settlement
15 Agreement), and directing that it be distributed to Aggrieved Employees pursuant to
16 the terms of the Settlement Agreement;
- 17 4. Directing the funding and distribution of the Gross Settlement Amount pursuant to the
18 terms of the Settlement Agreement;
- 19 5. Approving an award of attorneys’ fees to Plaintiff’s counsel of \$136,666.67 and an
20 award of litigation costs to Plaintiff’s counsel of up to \$10,390.07;
- 21 6. Approving an Enhancement Payment to Plaintiff in the amount of \$5,000.00, for his
22 services to Aggrieved Employees and the State of California;
- 23 7. Approving \$5,750.00 in administration costs to Phoenix Settlement Administrators;
24 and
- 25 8. Approving the payment of \$189,144.95 to the California Labor & Workforce
26 Development Agency for its share of PAGA civil penalties.

27 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
28 the declaration of Sean M. Blakely and all exhibits attached thereto; the declaration of Paul K.

1 Haines; the declaration of Jodey Lawrence of Phoenix Settlement Administrators and all exhibits
2 attached thereto; the declaration of Plaintiff Juan Vidal; the Settlement Agreement; all other
3 pleadings and papers on file in this action; and on any further oral or documentary evidence or
4 argument presented at the time of hearing.

5
6
7 Dated: December 12, 2022

Respectfully submitted,

HAINES LAW GROUP, APC

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9 By: 
10 Sean M. Blakely
11 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Juan Vidal (“Plaintiff”), an “Aggrieved Employee” under the Private Attorneys’
4 General Act of 2004 (“PAGA”), respectfully moves this Court for an Order granting approval of
5 the Settlement Agreement (“Settlement”) with Defendant Royal West Drywall, Inc. (“Royal
6 West”).¹ This PAGA representative action seeks civil penalties predicated on Royal West’s
7 alleged violations of the California Labor Code from December 22, 2020, through the date of the
8 Court Order granting approval of the PAGA Settlement (the “PAGA Period”). The proposed
9 Settlement, under which Royal West has agreed to pay a non-reversionary Gross Settlement
10 Amount (“GSA”) of \$410,000.00, will resolve Plaintiff’s representative claims filed on behalf of
11 the State of California and all “Aggrieved Employees,” which includes all current and former
12 non-exempt employees who worked for Royal West in California at any time during the PAGA
13 Period.

14 Notably, the relief provided for under the Settlement, and the claims released thereunder,
15 are *solely* for the payment of *civil penalties* under the PAGA, and not for any underlying Labor
16 Code violations. The release also encompasses only PAGA civil penalties based upon the factual
17 allegations and theories alleged by Plaintiff in this Action and only for claims arising during the
18 PAGA Period.

19 In deciding whether to grant approval of the Settlement, the primary issue is whether the
20 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement
21 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the
22 product of arm’s-length negotiations; (2) was negotiated by attorneys experienced in wage-and-
23 hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was
24 negotiated after undertaking sufficient discovery and investigation to evaluate the relative
25 strength and value of Plaintiff’s PAGA claim and Royal West’s defenses thereto; and (4) reflects
26

27 ¹ The proposed Settlement Agreement is attached as Exhibit 1 to the Declaration of Sean M.
28 Blakely filed herewith. The proposed Explanatory Letter to Aggrieved Employees is attached as
Exhibit A to the Settlement.

1 a reasoned compromise based on the relative strength and value of the PAGA claim, as well as
2 the risks, expenses, complexity and likely duration of further litigation.

3 As noted above, the Settlement provides for a GSA of \$410,000.00. After deducting
4 amounts for requested attorneys' fees (\$136,666.67), attorneys' costs (\$10,390.07), Plaintiff's
5 Enhancement Payment (\$5,000.00), and administration costs (\$5,750.00), the Settlement provides
6 for distribution of a Net Settlement Amount ("NSA") of approximately \$252,193.26 to be paid to
7 Aggrieved Employees and the California Labor & Workforce Development Agency ("LWDA").
8 Settlement, §§ III.4-5; *see also* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 13 & Exhibit
9 1; Declaration of Jodey Lawrence ("Lawrence Decl."), ¶ 16 & Exhibit B.

10 The NSA shall be distributed 75% (approximately \$189,144.95) to the LWDA, and 25%
11 (approximately \$63,048.31) to Aggrieved Employees, pursuant to the requirements of the PAGA
12 as codified in Lab. Code § 2699(i). *See* Settlement, § III.5; Blakely Decl., ¶ 13. There are
13 approximately 474 Aggrieved Employees, resulting in average payments of approximately
14 \$133.01 to each Aggrieved Employee. Blakely Decl., ¶ 21.

15 This Settlement represents a reasonable recovery for the State of California and Aggrieved
16 Employees. Of particular relevance here is the fact that on June 15, 2022, only a few weeks after
17 this Settlement was reached, the United States Supreme Court issued its opinion in *Viking River*
18 *Cruises, Inc. v. Moriana* ("Viking River"), where it overruled the California Supreme Court's
19 holding in *Iskanian v. CLS Transportation Los Angeles, LLC* which held that a PAGA claim could
20 not be compelled to arbitration. *See Viking River Cruises, Inc. v. Moriana* (June 15, 2022, No.
21 20-1573) 596 U.S. ____ [142 S.Ct. 1906, 2022 WL 2135491 ("Viking River"); *Iskanian v. CLS*
22 *Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348. In effect, the U.S. Supreme Court's
23 ruling in *Viking River* means that, if this matter had not settled, Royal West would likely have
24 been able to compel this case to individual arbitration and bar Plaintiff from recovering PAGA
25 civil penalties for violations suffered by other Aggrieved Employees. Therefore, this is a unique
26 case where further litigation would almost certainly have resulted in a smaller recovery or even
27 no recovery at all. Moreover, notwithstanding these risks, the GSA exceeds other PAGA penalty
28 awards approved as reasonable throughout California. *See, e.g., Penaloza v. PPG Industries Inc.,*

Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-aside of \$5,000, or \$7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-aside of \$10,000, or \$3.33 per employee). Further, the amounts requested for attorneys’ fees and costs, Plaintiff’s Enhancement Payment, and settlement administration costs are fair, adequate, and reasonable. In light of the foregoing, this Court should enter the [Proposed] Judgment and Order submitted herewith.

II. SUMMARY OF THE LITIGATION

A. Brief Factual Background and Summary of Claims

Royal West provides services for the installation of drywall and paint for a wide variety of residential projects throughout Southern California. Blakely Decl., ¶ 8. Plaintiff worked for Royal West as a non-exempt “Painter” from approximately December 2019 until September 3, 2021. *See* Declaration of Plaintiff Juan Vidal (“Vidal Decl.”), ¶ 2. Plaintiff, like all Aggrieved Employees, was employed by Royal West as a non-exempt employee during the PAGA Period and was subject to Royal West’s wage and hour policies and practices. *Id.*

Plaintiff’s PAGA claim is predicated primarily on Plaintiff’s allegations that Plaintiff and other Aggrieved Employees were not paid all wages owed due to Royal West’s timekeeping policies/practices, were denied compliant meal and rest periods, were not reimbursed for all necessary business expenses, did not receive accurate and compliant wage statements, and were not paid all final wages owed at the time of separation of employment. As explained below, Royal West denies Plaintiff’s allegations and asserts several affirmative defenses to his claims.

B. Relevant Procedural History

On December 21, 2021, Plaintiff filed the instant action, alleging class-wide violations of the California Labor Code for: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) failure to reimburse all necessary business expenditures; (6) waiting time penalties; (7) wage statement violations; and (8) unfair competition. Blakely Decl., ¶ 9. On December 22, 2021, Plaintiff submitted his notification letter to Royal West and the LWDA regarding Royal West’s alleged Labor Code violations and his

1 intent to pursue a PAGA representative action, as required by Labor Code § 2699.3. *See* Blakely
2 Decl., ¶ 9 & Exhibit 2.

3 On February 25, 2022, after the 65-day waiting period under Labor Code §
4 2699.3(a)(2)(A), Plaintiff filed a First Amended Class and Representative Action Complaint in
5 this Court. Blakely Decl., ¶ 9. Shortly thereafter, Royal West produced an arbitration agreement
6 that Plaintiff signed during this employment with Royal West. *Id.* As a result, the Parties agreed
7 to attend a mediation in an attempt to resolve Plaintiff's PAGA claim. *Id.* In light of the arbitration
8 agreement, which contained a class action waiver, Plaintiff will be submitting a request to dismiss
9 the class claims without prejudice. *Id.*

10 **C. Pre-Mediation Discovery and Mediation**

11 In connection with mediation, the Parties engaged in extensive informal discovery. Royal
12 West provided Plaintiff with a 10% sampling of timekeeping and payroll records as well as the
13 number of current and former non-exempt employees employed during the PAGA Period and the
14 corresponding number of pay periods worked during the PAGA Period. Blakely Decl., ¶ 11.
15 Royal West also produced its relevant written wage and hour policies. *Id.* Plaintiff conducted a
16 detailed review of Royal West's records to create a PAGA exposure analysis. *Id.* This discovery
17 allowed the Parties to evaluate the strength of Plaintiff's claims and Royal West's defenses
18 thereto. *Id.*

19 On May 31, 2022, the Parties attended a full-day mediation with experienced wage and
20 hour mediator Steven G. Mehta, Esq., in an effort to resolve Plaintiff's PAGA claim. Blakely
21 Decl., ¶ 12. During mediation, the Parties vigorously argued the legal basis for Plaintiff's claims
22 and Royal West's defenses, the impact of *Viking River* on this Action, the manageability of the
23 case as a representative action, the potential amount of PAGA civil penalties, and the Parties' data
24 analyses and conclusions based thereon. *Id.* With Mr. Mehta's assistance, the Parties agreed to
25 fully and finally resolve Plaintiff's PAGA claim at mediation. *Id.* Over the following months, the
26 Parties subsequently negotiated and finalized the Settlement now before the Court. *Id.*

27 ///

28 ///

1 **III. SUMMARY OF THE SETTLEMENT**

2 **A. “Aggrieved Employees” Defined**

3 As noted above, the “Aggrieved Employees” consist of all current and former non-exempt
4 employees who worked for Royal West in California at any time during the PAGA Period. *See*
5 Settlement, § I.2. The PAGA Period is defined as the time period from December 22, 2020,
6 through the date of the Court Order granting approval of the PAGA Settlement. Settlement, §
7 I.11.

8 **B. Monetary Terms**

9 The Settlement provides for Royal West’s payment of a non-reversionary Gross
10 Settlement Amount (“GSA”) of \$410,000.00. *See* Settlement, §§ I.8, III.2. After deducting
11 requested attorneys’ fees, litigation costs, Plaintiff’s Enhancement Payment, and settlement
12 administration costs, the Settlement provides for the Net Settlement Amount (“NSA”) to be
13 distributed 75% to the LWDA and 25% to Aggrieved Employees, per Labor Code § 2699(i).
14 Settlement, §§ III.4-5. The Aggrieved Employees’ portion of the NSA is estimated to be
15 \$63,048.31 and will be distributed to all Aggrieved Employees based on the number of pay
16 periods worked by each Aggrieved Employee during the PAGA Period. *See* Settlement, § III.5.

17 **1. *Attorneys’ Fees and Costs, Administration Costs, and Plaintiff’s***
18 ***Enhancement Payment***

19 Plaintiff’s counsel requests one-third of the GSA (i.e., \$136,666.67) in attorneys’ fees and
20 \$10,390.07 in total litigation costs. *See* Settlement, § III.4(a); Blakely Decl., ¶¶ 24-28 & Exhibits
21 3-4. As discussed in detail below, a fee award of one-third of the GSA is fair, adequate, and
22 reasonable as a percentage of the settlement fund, and as confirmed by a lodestar cross-check and
23 is in line with fee awards in other PAGA settlements.

24 After obtaining multiple bids, the Parties have agreed to engage Phoenix Settlement
25 Administrators (“Phoenix”) as the third-party settlement administrator. *See* Settlement, § IV.1;
26 Blakely Decl., ¶ 22. Phoenix will update Aggrieved Employees’ addresses using the National
27 Change of Address database, calculate and distribute Individual PAGA Payments, mail payments
28 to all Aggrieved Employees together with the Explanatory Letter, and perform other duties that

are integral to the effectuation of the Settlement. *Id.*, §§ IV.2-6. Plaintiff requests that the Court approve up to \$5,750.00 in administration costs to Phoenix, which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.* at § III.4(c); *see also* Declaration of Jodey Lawrence & Exhibits.

Finally, Plaintiff requests an Enhancement Payment of \$5,000.00 in recognition of Plaintiff's contributions to this case and his efforts in bringing this case to a successful resolution. *See* Settlement, § III.4(b); Vidal Decl., ¶¶ 4-6.

2. Payment to LWDA and Aggrieved Employees

The NSA will be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Labor Code § 2699(i). Based on the above requested distributions, the NSA is estimated to be \$252,193.26, with \$189,144.95 paid to the LWDA and \$63,048.31 distributed to Aggrieved Employees. Blakely Decl., ¶ 13. As noted, there are approximately 474 total Aggrieved Employees. *Id.* Thus, it is anticipated that overall, Aggrieved Employees will receive average Settlement payments of approximately \$133.01. *Id.*

3. Funding of the Settlement

Royal West shall deposit the Gross Settlement Amount into a Qualified Settlement Account within thirty (30) days of the Court's Order approving the PAGA settlement. *See* Settlement, § III.2. Within twenty-one (21) calendar days after the Settlement has been fully funded and after receiving approval from Plaintiff's counsel and Royal West's counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter in English and Spanish, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail. *See* Settlement, § IV.3. Funds from any settlement checks remaining uncashed after 180 days shall escheat to the California State Controller's Office for deposit in the Unclaimed Property Fund in the name of the Aggrieved Employee. *See* Settlement, § IV.4.

IV. LEGAL ARGUMENT

A. Standards for Approval of a PAGA Settlement

The settlement of a PAGA claim requires court approval pursuant to the PAGA statute,

1 which states that the “court shall review and approve any settlement of any civil action filed
2 pursuant to this part.” Labor Code § 2699(l). Of course, “[s]ettlement is a compromise, which
3 balances the possible recovery against the risks inherent in litigating further.” *See In re TD*
4 *Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13, 2011). “[T]he
5 very essence of a settlement is...‘a yielding of absolutes and an abandoning of highest hopes,’”
6 as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
7 litigation that induce consensual settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d
8 615, 624 (9th Cir. 1982). As such, “the settlement or fairness hearing is not to be turned into a
9 trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure
10 of what might have been achieved by the negotiators.” *Id.*

11 Although the PAGA statute does not set forth the criteria by which a PAGA settlement is
12 to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a
13 class action settlement. However, “a PAGA claim asserted on a non-class representative basis...is
14 not considered a class action but a law enforcement action, and therefore does not have to meet
15 the requirements of [a class action].” *Casida v. Sears Holdings Corp.*, 2012 WL 253217 at *3
16 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at *4 (E.D. Cal. Jul.
17 1, 2010) (“PAGA claims are law enforcement actions, not class actions”). A court’s review of a
18 PAGA settlement implicates the following unique features that render the approval process
19 distinct from approval of a class action settlement.

20 First, in evaluating a PAGA settlement, the court is not concerned with amount(s) received
21 by “aggrieved employees,” but rather, must focus on the total settlement amount in achieving
22 PAGA’s objective. “The remedy sought in a PAGA suit consists of civil penalties, not individual
23 or class damages.” *Mendez*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties
24 are not meant to compensate unnamed employees because the action is fundamentally a law
25 enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, No. C-08-2073-MHP, 2010 WL
26 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court confirmed, “PAGA claims are
27 ‘representative’ actions in the sense that they are brought on the state’s behalf. The
28 employee...‘represents the same legal right and interest as’ those agencies — ‘namely, recovery

1 of civil penalties that otherwise would have been assessed and collected by the [LWDA].” *ZB*,
2 *N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian v. CLS Transp. Los Angeles, LLC*, 59
3 Cal.4th 348, 380 (2014)).

4 Moreover, while “[a PAGA] action is ... designed to protect the public and penalize the
5 employer for past illegal conduct” (*Mendez*, 2010 WL 2650571 at *4), a PAGA settlement – like
6 any settlement – involves a compromise that stops short of rendering findings of liability and
7 damages. “Unlike a class action seeking damages or injunctive relief for injured employees, the
8 purpose of PAGA is to incentivize private parties to recover civil penalties for the government
9 that otherwise may not have been assessed and collected by overburdened state enforcement
10 agencies.” *Ochoa-Hernandez*, 2010 WL 1340777 at *4.

11 Second, consistent with the fact that unnamed employees have no property interest in a
12 PAGA claim,² “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
13 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
14 1340777 at *5; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482 (2020)
15 (recognizing that “there is no mechanism for opting out of the judgment entered on the PAGA
16 claim.”). This renders the approval process of a PAGA settlement distinct from a class action
17 settlement, as the Court need not employ the “two-step approval process” required for class action
18 settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

19 Finally, unlike a class action settlement under Fed. R. Civ. Proc. Rule 23(e) or Cal. Rule
20 of Court 3.769, the scope of release in a PAGA settlement is limited to *civil penalties*. While
21 “judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on
22 government agencies and any aggrieved employee not a party to the proceeding...the non-party
23 employees, because they were not given notice of the action or afforded any opportunity to be
24 heard, would not be bound by the judgment as to remedies other than civil penalties.” *Arias v.*
25 *Sup. Ct.*, 46 Cal. 4th 969, 986-87 (2009).

26
27 ² “The [PAGA] does not create property rights or any other substantive rights” as “[i]t is simply
28 a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code
violations—that otherwise would be sought by state labor law enforcement agencies.” *See*
Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct., 46 Cal.4th 993, 1003 (2009).

1 **1. *Factors in Evaluating a Representative PAGA Settlement***

2 In deciding whether to approve a proposed settlement, a trial court has broad powers to
3 determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup.*
4 *Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to
5 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*,
6 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court to
7 consider include, but are not limited to:

8 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely
9 duration of further litigation, the risk of maintaining class action status
10 through trial, the amount offered in settlement, the extent of discovery
11 completed and the stage of the proceedings, the experience and views of
counsel, the presence of a governmental participant, and the reaction of the
class members to the proposed settlement.

12 *Id.* These factors require balancing, are non-exhaustive, and trial courts should tailor the factors
13 to each case and give due regard to “what is otherwise a private consensual agreement between
14 the parties.” *Id.* In the context of a PAGA settlement, the third and eighth factors (risk of
maintaining class action status and reaction of class members to settlement) are inapplicable.

15 Because settlements inherently involve compromise, even a settlement providing for
16 substantially narrower relief than might be obtained if the suit were successfully litigated can be
17 reasonable because “the public interest may indeed be served by a voluntary settlement in which
18 each side gives ground in the interest of avoiding litigation.” *Wershba v. Apple Computer, Inc.*,
19 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*,
20 455 F.2d 101, 109 (7th Cir. 1972)). Courts also review the discovery process and information
21 received through it to aid them in assessing whether the parties sufficiently developed the claims
22 and their supporting factual bases before reaching settlement. *Kullar*, 168 Cal.App.4th at 129-31.
23 Information is sufficient where it allows the parties and the court to form “an understanding of
24 the amount that is in controversy and the realistic range of outcomes of the litigation.” *Clark v.*
25 *Am. Residential Serv. LLC*, 175 Cal.App.4th 785, 801 (2009). This requirement exists so that the
26 parties can provide the court with “a meaningful and substantiated explanation of the manner in
27 which the factual and legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132.
28

1 **a. The Strength of Plaintiff’s Case**

2 Plaintiff acknowledges that there are substantial risks and uncertainty in proceeding to
3 trial. Blakely Decl., ¶ 14. First and foremost was the risk that the United States Supreme Court’s
4 opinion in *Viking River* would result in an outright dismissal of Plaintiff’s representative PAGA
5 claim. *Id.* At the time this settlement was reached, the U.S. Supreme Court had granted certiorari
6 in *Viking River* but had not yet issued its opinion. *Id.* However, shortly after the Parties entered
7 into this Settlement, the Supreme Court issued its opinion and overturned the California Supreme
8 Court’s holding in *Iskanian v. CLS Transportation Los Angeles, LLC* which held that a
9 representative PAGA claim could not be compelled to arbitration. *See Viking River Cruises, Inc.*
10 *v. Moriana* (June 15, 2022, No. 20-1573) 596 U.S. ____ [____ S.Ct. ____, 2022 WL 2135491;
11 *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348. Accordingly, absent
12 this settlement, it is likely that **no** representative PAGA recovery (i.e., a recovery of PAGA civil
13 penalties for violations suffered by other Aggrieved Employees) would be possible at all. Blakely
14 Decl., ¶ 14.

15 In addition to its defense under *Viking River*, Royal West also presented multiple defenses
16 with respect to the merits of Plaintiff’s claims. For example, with respect to Plaintiff’s claim that
17 Royal West required Plaintiff and other Aggrieved Employees to record only their scheduled start
18 and end times rather than their actual hours worked, Royal West argues that employees recorded
19 their own time on handwritten timesheets and, therefore, any fault in reporting hours worked was
20 their own and not as a result of Royal West’s policy and/or practice. Blakely Decl., ¶ 15. Royal
21 West further argues that this claim is not manageable as individualized inquiries would be
22 necessary to determine whether employees were, in fact, underpaid or overpaid for each workday
23 in question, resulting in an unmanageable series of mini trials. *Id.*

24 With respect to Plaintiff’s meal and rest period claims, Plaintiff alleges that Royal West
25 maintained an unlawful policy/practice of combining employee meal and rest periods into one
26 “combined” break of 45 minutes per shift, regardless of employee shift length. *Id.*, at ¶ 16; *see*
27 *also Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027 (holding that in the context of an 8–
28 hour shift with a single meal period, the preferred schedule requires the provision of a rest period

1 in the middle of each “work period” before and after the meal break, and that “a departure from
2 the preferred schedule is permissible only when the departure (1) will not unduly affect employee
3 welfare and (2) is tailored to alleviate a material burden that would be imposed on the employer
4 by implementing the preferred schedule.”). Royal West contends that it has always maintained
5 compliant written meal and rest period policies throughout the PAGA Period and has always
6 provided employees the *opportunity* to take legally compliant meal periods, and that they are not
7 required to “ensure” meal periods are taken. Blakely Decl., ¶ 16; *see Brinker Restaurant Corp. v.*
8 *Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard and holding employers
9 only have to “provide” employees the opportunity to take meal periods). Moreover, Royal West
10 argues that Plaintiff and other Aggrieved Employees often worked independently, and thus Royal
11 West contends that they had complete discretion regarding when and how to take their meal and
12 rest breaks. Blakely Decl., ¶ 16 Finally, Royal West argues that Plaintiff’s meal and rest period
13 claim are not suited for representative treatment, as individual inquiries would be needed to assess
14 which employees took non-compliant meal and rest periods or missed meal and rest periods, how
15 many meal and rest periods were non-compliant or missed, and the reasons why a particular
16 employee did not take a compliant meal and rest period on a particular shift. *Id.*

17 With respect to Plaintiff’s reimbursement claim, Royal West maintains that Aggrieved
18 Employees were not required to use their personal cellular phones as part of their job. Blakely
19 Decl., ¶ 17. Royal West further argues that any expenses incurred by employees were minimal,
20 given the wide availability of low-cost cellular phone plans. *Id.*

21 As a result of Royal West’s failure to pay all meal and rest period premiums and all wages
22 owed, Plaintiff alleges derivative PAGA claims for failure to issue accurate and itemized wage
23 statements and failure to pay all wages owed at separation of employment. *See* Labor Code
24 §§ 226, 201-203; *see also* Blakely Decl., ¶ 18. In response, Royal West argues that Plaintiff’s
25 underlying claims will fail and, as a result, the derivative claims will also fail. *See Price v.*
26 *Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action
27 fail, the derivative UCL and PAGA claims also fail.”). Royal West also maintains that any
28 “derivative” PAGA claims for violations of Labor Code Sections 226 or 203 would be entirely

1 duplicative and would be unlikely to be awarded in any significant manner by a Court. Blakely
2 Decl., ¶ 18.

3 Royal West further maintains that even if the Court awarded PAGA penalties for any of
4 the alleged violations, it would substantially reduce the penalties based on the discretionary
5 factors in Labor Code § 2699(e)(2) (authorizing reduction in penalties “if, based on the facts and
6 circumstances of the particular case, to do otherwise would result in an award that is unjust,
7 arbitrary and oppressive, or confiscatory.”). Blakely Decl., ¶ 19. Indeed, Royal West argues that
8 many courts have reduced PAGA penalties drastically where, as here, the employer presented
9 good-faith defenses and attempted to comply with the law. *Id.*; see *Thurman v. Bayshore Transit*
10 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because
11 “defendants took their obligations...seriously and attempted to comply with the law”); *Fleming*
12 *v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011)
13 (reducing PAGA penalties by over 82%, in part because employer “not aware” of violations);
14 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just
15 \$5 per pay period where employer made “good faith attempts” to comply with the law).

16 While Plaintiff was prepared to litigate his claims through trial, Plaintiff faced substantial
17 challenges in prevailing in this matter and obtaining a better result than will be provided through
18 the Settlement. Thus, this factor supports approval.

19 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

20 As discussed above, *Viking River* posed an existential threat to this case and has since
21 become controlling precedent that would likely result in the dismissal of Plaintiff’s representative
22 PAGA claim if it had not already been settled. Therefore, at the time the settlement was reached,
23 Plaintiff faced tremendous risk that continued litigation would have resulted in the dismissal of
24 his representative PAGA claim. This factor, therefore, supports approval of the Settlement.

25 **c. Amount Offered in Settlement Given Realistic Value of Claims**

26 The proposed Settlement provides a fair and reasonable monetary recovery for the State
27 of California and Aggrieved Employees in the face of hotly disputed claims when compared with
28 the potential realistic exposure. Based on data provided by Royal West, there were approximately

1 11,324 pay periods worked by the Aggrieved Employees during the PAGA Period. Blakely Decl.,
2 ¶ 21.

3 Labor Code § 2699(f)(2) provides for PAGA civil penalties in the amount of \$100 for
4 each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved
5 employee per pay period for each subsequent violation. *See* Labor Code § 2699(f)(2). However,
6 courts have interpreted section 2699(f)(2) to only impose the \$200 subsequent penalty after an
7 employer has been notified that its conduct violates the Labor Code. *See, e.g., Amaral v. Cintas*
8 *Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until
9 employer is notified that it is violating a Labor Code provision); *Trang v. Turbine Engine*
10 *Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854, at *5 (C.D.
11 Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for
12 subsequent violations unless and until a court or commissioner notifies the employer that it is in
13 violation of the Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw*
14 *Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430, at *9 (S.D. Cal. 2009)
15 (finding that California law imposes the “subsequent violation penalty” only after an employer
16 has been notified its conduct violates the Labor Code). Therefore, Plaintiff calculates Royal
17 West’s **maximum** PAGA exposure at \$1,132,400 (11,324 pay periods * \$100 per violation),
18 assuming that Plaintiff could prove a violation in each and every pay period and without any
19 reductions on the merits or for the risk of reduced penalties. Blakely Decl., ¶ 21.

20 However, as discussed above, Royal West raised numerous defenses to the merits of
21 Plaintiff’s claims and argued that even if found liable, the Court would exercise its discretion to
22 reduce any potential PAGA penalties given Royal West’s good-faith defenses. *See Thurman,*
23 *supra*, 203 Cal.App.4th at 1136 (affirming reduction of PAGA penalties); *Carrington, supra*, 30
24 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of maximum exposure).
25 Additionally, at the time of mediation, there was a looming threat that a forthcoming decision in
26 *Viking River* could preclude any representative PAGA recovery at all. Blakely Decl., ¶¶ 14-19. In
27 the face of Royal West’s defenses on the merits, the Court’s discretion to reduce PAGA penalties,
28 and the threat (which has since become reality) of an adverse *Viking River* ruling, Plaintiff felt

1 that the negotiated settlement of \$410,000.00 was clearly in the best interests of the LWDA and
2 the Aggrieved Employees and was well within the range of reasonableness. *See Linney v. Cellular*
3 *Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“The fact that a proposed settlement
4 may only amount to a fraction of the potential recovery does not, in and of itself, mean that the
5 proposed settlement is grossly inadequate and should be disapproved.”) (internal quotations
6 omitted); Blakely Decl., ¶¶ 14, 21.

7 Approval of the Settlement is appropriate, as the Settlement will provide tangible
8 monetary relief to Aggrieved Employees and the State of California while avoiding the risks and
9 costs of continued litigation and trial.

10 **d. Discovery Completed and the Status of Proceedings**

11 As noted above, the Parties engaged in substantial informal discovery to evaluate the
12 PAGA claim. Blakely Decl., ¶ 11. Royal West provided Plaintiff with, *inter alia*, a sample of time
13 and payroll records for Aggrieved Employees, the number of Aggrieved Employees and number
14 of pay periods worked in the PAGA Period, and its relevant written policies. *Id.* Only after
15 engaging in mediation and in adversarial discussions about the likelihood of prevailing on the
16 merits did the Parties reach the proposed Settlement. Thus, this factor supports settlement
17 approval.

18 **e. The Experience and Views of Counsel**

19 “Parties represented by competent counsel are better positioned than courts to produce a
20 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec.*
21 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel with
22 decades of combined experience, who believe this Settlement to be fair and adequate for all
23 involved. Blakely Decl., ¶¶ 3-6; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 3-9. This
24 factor strongly supports settlement approval. *Kullar*, 168 Cal.App.4th at 130 (“The court
25 undoubtedly should give considerable weight to the competency and integrity of counsel and the
26 involvement of a neutral mediator in assuring itself that a settlement agreement represents an
27 arm’s length transaction entered without self-dealing or other potential misconduct.”).

28 ///

1 **B. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of**
2 **the Gross Settlement Amount as Confirmed by a Lodestar Cross-Check**

3 Plaintiff is entitled to attorneys’ fees in this PAGA action under Labor Code § 2699(g)(1),
4 which provides that “[a]ny employee who prevails in any [PAGA] action shall be entitled to an
5 award of reasonable attorneys’ fees and costs.” *See also Gouskos v. Aptos Village Garage, Inc.*,
6 94 Cal.App.4th 754, 765 (2001) (holding that attorneys’ fees to prevailing party are mandatory
7 when the statute uses the word “shall”). It is undisputed that by obtaining PAGA penalties for the
8 LWDA and Aggrieved Employees, Plaintiff has prevailed. *See Graciano v. Robinson Ford Sales*,
9 144 Cal.App.4th 140, 153 (2006) (“[P]laintiffs may be considered ‘prevailing parties’ for
10 attorney’s fee purposes if they succeed on any significant issue in the litigation that achieves some
11 of the benefit the parties sought in bringing suit.” (internal citation omitted)).

12 A fee award is justified where the legal action has produced its benefits by way of
13 settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Comty. for*
14 *Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest* (1977) 20
15 Cal.3d 25, 34 (“when a number of persons are entitled in common to a specific fund, and an action
16 brought by a plaintiff...for the benefit of all results in the creation or preservation of that fund,
17 such plaintiff...may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32
18 Cal.3d 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties,
19 the trial court acts within its equitable power to prevent the other parties’ unjust enrichment);
20 *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 (the percentage of
21 the fund method for calculating attorneys’ fees more accurately reflects the results achieved for
22 the putative class than the lodestar method and “establishes reasonable expectations on the part
23 of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
24 avoids protracted litigation.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005)
25 (“The percentage-of-recovery method is generally favored in common fund cases because it
26 allows courts to award fees from the fund ‘in a manner that rewards counsel for success and
27 penalizes it for failure.”).

28 Fee awards of one-third of the settlement fund are routinely awarded in California courts

1 in class and representative PAGA actions. The California Supreme Court recently confirmed its
2 approval of the use of the “percentage of fund” method. *See Laffitte v. Robert Half Int’l, Inc.*, 1
3 Cal.5th 480, 506 (2016) (“the percentage of fund method survives in California class action
4 cases...”.) Specifically, the *Laffitte* Court held:

5 The recognized advantages of the percentage method—including relative ease
6 of calculation, alignment of incentives between counsel and the class, a better
7 approximation of market conditions in a contingency case, and the
encouragement it provides counsel to seek an early settlement and avoid
unnecessarily prolonging the litigation—convince us the percentage method is a
valuable tool that should not be denied our trial courts.

8 *Id.*, at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-
9 third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also*
10 *Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)
11 (approving attorneys’ fees of one-third of settlement fund in PAGA settlement); *Clavel v. Lupe’s*
12 *Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25,
13 2016) (same). This is also consistent with Plaintiff’s counsel’s experience in similar wage-and-
14 hour class and PAGA matters.

15 Here, Plaintiff’s fee request of one-third of the GSA (estimated to be \$136,666.67), which
16 is the same percentage approved by the California Supreme Court in *Laffitte*, is fair and
17 reasonable based on the percentage of the recovery method, as confirmed by a lodestar cross-
18 check.

19 In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the
20 reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court
21 calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring the
22 lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. While
23 a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold further
24 that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the court
25 did here; they also retain the discretion to forgo a lodestar cross-check and use other means to
26 evaluate the reasonableness of a requested percentage fee.”).

27 Under the lodestar method, the court multiplies the number of hours reasonably expended
28 by each attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar

figure by a “multiplier” to account for a range of factors, such as the contingent nature of the case and the degree of success achieved. *See Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977); *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation”).

Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L.A. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of approximately 12.8). In representative actions such as this one, where Plaintiff’s counsel efficiently protected the rights of the aggrieved employees and where the value of the benefit conferred to the group “can be monetized with a reasonable degree of certainty,” the Court may “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557 (2009).

In this case, Plaintiff’s counsel has a lodestar of approximately \$102,992.50 without the use of any multiplier, resulting in a modest multiplier of approximately 1.32 compared to the \$136,666.67 fee request. Blakely Decl., ¶ 27. Plaintiff’s counsel submits that the billing rates used are reasonable in view of the market rates and the rates at which Plaintiff’s counsel has been approved at in other courts. Blakely Decl., ¶¶ 27-28; Exhibit 5 (Laffey Matrix).

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (17th Year Attorney)	\$675	18.0	\$12,150.00
Sean M. Blakely (14th Year Attorney)	\$650	67.8	\$44,070.00
Alexandra R. McIntosh (4th Year Attorney)	\$400	106.3	\$42,520.00
Firm Paralegals	\$175	24.3	\$4,252.50
Total Lodestar			\$102,992.50

Critically, Plaintiff’s recovery for the State of California and Aggrieved Employees of approximately \$252,193.26 (NSA) significantly exceeds other PAGA awards approved by

California courts. *See, e.g., Aguirre v. DSW, Inc.*, No. DCV-11-01522-GW (SPx), 2012 WL 11875296 at *3 (C.D. Cal. Nov. 29, 2012) (approving \$10,000 PAGA payment); *Jamil, supra*, 2020 WL 6544660 at *6 (S.D. Cal. Nov. 5, 2020) (approving \$10,000 total PAGA payment, finding the amount “fair and adequate in view of the purposes and policies of PAGA”); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-cv-0324-AWI-SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (“approving \$10,000 total PAGA payment, finding that “[t]his comports with settlement approval of PAGA awards in other cases. [Citations.]”); *Boyd v. Bank of Am. Corp.*, No. SACV-13-0561-DOC (JPRx), 2014 WL 6473804 at *8 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Franco v. Ruiz Food Prods.*, No. 1:10-cv-02354-SKO, 2012 WL 5941801 at *14 (E.D. Cal. Nov. 27, 2012) (approving \$10,000 PAGA payment); *Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (\$10,000 PAGA payment).

As discussed above, this case presented significant risks to Plaintiff, including the risk that an adverse *Viking River* decision could have effectively concluded the case. It is fair and reasonable to account for these risks in compensating Plaintiff’s counsel, as well as the risks involved in undertaking this litigation and expending considerable effort while working on a pure contingency basis. Since undertaking representation of Plaintiff, Plaintiff’s counsel dedicated substantial resources to this litigation, including expending \$10,390.07 in litigation costs, without receiving any compensation to date. Blakely Decl., ¶¶ 25-26. Plaintiff’s counsel conducted extensive research regarding the merits of Plaintiff’s claims, the ability to recover PAGA civil penalties, and Royal West’s potential defenses. Plaintiff’s counsel also performed extensive analysis and extrapolation of data and information produced by Royal West, used this analysis and extrapolation to evaluate Plaintiff’s claims, and drafted a comprehensive mediation brief. Plaintiff’s counsel also attended a private mediation and expended significant effort in preparing settlement documents, this Motion, and supporting documents, and will oversee the settlement administration process. Given the considerable potential for adverse outcomes in this case, the contingent risk borne by Plaintiff’s counsel was great. *Id.* The quality of Plaintiff’s counsel’s work, and the efficacy and dedication with which it was performed, should be compensated. Thus, Plaintiff submits the requested fee award is fair, reasonable, and adequate and should be approved.

Plaintiff's counsel's previous experience in litigating wage and hour class and representative actions also supports the reasonableness of the fee request. Plaintiff's counsel is well-versed in plaintiff and defense-side wage and hour class and representative action litigation, and collectively bring over three decades worth of wage-and-hour class and representative action litigation experience. *See* Blakely Decl., ¶¶ 3-6; Haines Decl., ¶¶ 3-9. Plaintiff's counsel has also been certified as class counsel in numerous class action cases alleging wage and hour claims. *Id.* Plaintiff's counsel's experience in similar matters was integral in evaluating the strengths and weaknesses of this case and the reasonableness of the Settlement. Because it is reasonable to compensate Plaintiff's counsel commensurate with their skill, reputation, and experience, the requested fee award is fair, reasonable, and adequate and should therefore be approved.

C. The Requested Litigation Costs and Settlement Administration Costs Are Fair, Reasonable, and Adequate

Plaintiff's request for reimbursement of litigation costs of \$10,390.07 is also fair and reasonable. All of Plaintiff's litigation costs are reasonably incurred. *See* Blakely Decl., ¶ 26 & Exhibit 3. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, 2011 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs reimbursable); *In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Likewise, the request for administration costs of up to \$5,750.00 is also fair and reasonable. Phoenix was selected because it is an experienced settlement administrator and returned a reasonable bid. *See* Declaration of Jodey Lawrence & Exhibits. Moreover, Phoenix will perform several important functions that are integral to the implementation of the Settlement. *Id.* Its modest requested fee is therefore reasonable.

1 **D. The Court Should Approve Plaintiff's Requested Enhancement Payment**
2 **Because it is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts**
3 **and the Risks He Assumed in This Litigation**

4 Courts routinely approve enhancement awards to compensate named plaintiffs for the
5 services they provide and the risks they incur during representative litigation. *See, e.g., Bell v.*
6 *Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named
7 Plaintiff); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
8 \$50,000 incentive payment). Here, Plaintiff seeks an Enhancement Payment of \$5,000.00. *See*
9 Settlement, § III.4.b. This request is reasonable given Plaintiff's efforts in this case and the risks
10 he undertook on behalf of Aggrieved Employees. Vidal Decl., ¶¶ 4-6. Plaintiff provided
11 substantial factual information and documents to counsel, assisted in identifying potential
12 witnesses and participated in numerous discussions with Plaintiff's counsel regarding the case.
13 *Id.*; *see also* Blakely Decl., ¶ 30. Accordingly, Plaintiff's requested Enhancement Payment is
14 appropriate and justified as part of the Settlement.

15 **V. CONCLUSION**

16 For the reasons stated herein, Plaintiff respectfully requests that this Court grant Plaintiff's
17 Motion and adopt the [Proposed] Judgment and Order Granting Settlement Approval submitted
18 concurrently herewith.

19 Dated: December 12, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

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21 By: 
22 Sean M. Blakely
23 Attorneys for Plaintiff
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