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SUPERIOR STATE OF CALIFORNIA

COUNTY OF ALAMEDA

TYWANA PAULK, on behalf of the State of
California and Aggrieved Employees,

Plaintiff(s),

v.

GOBRANDS, INC., a Delaware
Corporation; GBL CALIFORNIA, LLC, a
Delaware Limited Liability Company and
GB LOGISTICS LLC d/b/a GOPUFF
LOGISTICS LLC, a Delaware Limited
Liability Company,

Defendants.

Lead Case No. 22CV007331

Hon. Julia Spain – Dept. 520

Consolidated with Case Nos. 22CV013580;
22CV013582; 23CV041050

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

Date: May 10, 2024

Time: 2:00 p.m.

Dept.: 520

Res. ID: A-07331-005

Action Filed: February 22, 2022

GERALD HANNAFIN, on behalf of the
State of California and Aggrieved
Employees,

Plaintiff(s),

v.

GOBRANDS, INC., a Delaware
Corporation; GBL CALIFORNIA, LLC, a
Delaware Limited Liability Company; and
GB LOGISTICS LLC d/b/a GOPUFF
LOGISTICS LLC, a Delaware Limited
Liability Company

Defendants.

Case No. 22CV013580

Action Filed: June 29, 2022

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ERICA MEDRANO, on behalf of the State
of California and Aggrieved Employees,

Plaintiff(s),

v.

GOBRANDS, INC., a Delaware
Corporation; GBL CALIFORNIA, LLC, a
Delaware Limited Liability Company and
GB LOGISTICS LLC d/b/a GOPUFF
LOGISTICS LLC, a Delaware Limited
Liability Company,

Defendants.

Case No. 22CV013582
Action Filed: June 29, 2022

ANGEL GALLARDO, FARIS HAMATI,
DANTE MADDOX, AND JHOVANNY
NOLASCO, on behalf of the State of
California and Aggrieved Employees,

Plaintiffs,

v.

GOBRANDS, INC., a Delaware
Corporation; GBL CALIFORNIA, LLC, a
Delaware Limited Liability Company and
GB LOGISTICS LLC d/b/a GOPUFF
LOGISTICS LLC, a Delaware Limited
Liability Company,

Defendants.

Case No. 23CV041050
Action Filed: August 18, 2023

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TREATISES

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REGULATIONS

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1 **I. INTRODUCTION**

2 Plaintiffs Tywana Paulk, Erica Medrano, Gerald Hannafin, Angel Gallardo, Jhovanny
3 Nolasco, Dante Maddox, and Faris Hamati (“Plaintiffs”) have reached a settlement of their claims
4 for civil penalties under the Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698, *et*
5 *seq.*, against Defendants GoBrands, Inc.; GBL California, LLC; and GB Logistics, LLC d/b/a
6 Gopuff Logistics, LLC, a Delaware Limited Liability Company (collectively, “Defendants”). The
7 parties have memorialized the terms of their settlement in the Private Attorneys General Act
8 Settlement Agreement (“Settlement”) attached as **Exhibit 1** to the Declaration of Carolyn H. Cottrell
9 (“Cottrell Decl.”), filed concurrently herewith. As set forth below, the Settlement is fair, reasonable,
10 and adequate in view of PAGA’s purposes to remediate and deter violations and maximize
11 enforcement of the Labor Code. Therefore, in accordance with Cal. Lab. Code § 2699(1)(2),
12 Plaintiffs respectfully request that the Court approve the Settlement.

13 **II. FACTS AND ALLEGATIONS**

14 Defendants provide wholesale delivery of consumer goods and food products (such as
15 snacks, drinks, toiletries, household items, pet supplies, and diapers) to convenience stores and other
16 retailers throughout the United States, including in California.¹ Plaintiffs and the Aggrieved
17 Individuals² are current and former hourly non-exempt employees of Defendants in California, who
18 were classified as independent contractors and who worked as delivery drivers or other similar
19 employees responsible for picking up delivery orders from Defendants’ warehouses and delivering
20 them to customers in the surrounding area, among other positions. (FACC, ¶¶ 12–17).

21 In this consolidated action, Plaintiffs allege that Defendants misclassify Plaintiffs and
22 Aggrieved Individuals as independent contractors and as a result: (1) fail to compensate Plaintiffs
23 and the Aggrieved Individuals for all hours worked; (2) fail to pay Plaintiffs and the Aggrieved
24 Individuals all minimum wages owed; (3) fail to pay Plaintiffs and the Aggrieved Individuals all
25 overtime and/or double-time wages owed; (4) fail to provide Plaintiffs and the Aggrieved
26 Individuals with timely and compliant meal and rest periods or premium payments for non-

27 ¹ See First Amended Consolidated Complaint (“FACC”), ¶ 18.

28 ² Unless otherwise indicated, all undefined capitalized terms used herein have the meanings ascribed to them in the Settlement.

1 compliant meal and rest periods; (5) fail to provide Plaintiffs and the Aggrieved Individuals
2 accurate, itemized wage statements; and (6) fail to compensate piece-rate workers for rest and
3 recovery periods and other nonproductive time, and/or fail to provide compliant itemized wage
4 statements for rest and recovery periods and other nonproductive time. In addition, Plaintiffs allege
5 that Defendants fail to reimburse Plaintiffs and the Aggrieved Individuals for all necessary
6 expenditures incurred in direct consequence of the discharge of their duties and make unlawful
7 gratuity deductions. (FACC, ¶ 3).

8 Based on these alleged practices, Plaintiffs assert ten causes of action in the FACC: (1) meal
9 period violations (Cal. Lab. Code §§ 226.7 and 512); (2) rest period violations (Cal. Lab. Code §
10 226.7); (3) failure to pay for all hours worked (Cal. Lab. Code §§ 204, 1194 and 1198); (4) failure
11 to pay minimum wage (Cal. Lab. Code §§ 1182.12, 1194 and 1197); (5) failure to pay overtime
12 wages (Cal. Lab. Code §§ 510 and 1194); (6) failure to reimburse necessary business expenses (Cal.
13 Lab. Code § 2802); (7) inaccurate wage statements (Cal. Lab. Code § 226); (8) waiting time
14 penalties (Cal. Lab. Code §§ 201–203); (9) willful misclassification (Cal. Lab. Code § 226.8); and
15 (10) improper gratuity deductions (Cal. Lab. Code §§ 351, 353). (FACC, ¶¶ 56–181).

16 Defendants deny any wrongdoing or liability with respect to the allegations in the FACC.
17 (Settlement, ¶ 4.1). The parties entered into the Settlement based on their assessment of the mutual
18 risks and costs of further litigation, and the Settlement does not constitute an admission of liability
19 or wrongdoing as to the merits of Plaintiffs’ claims. (*Id.*). Defendants also deny, except for purposes
20 of settlement, that Plaintiffs’ claims have been properly brought as representative actions. (*Id.*).

21 **III. PROCEDURAL HISTORY**

22 After complying with all administrative requirements, Plaintiffs Paulk, Hannafin, and
23 Medrano filed representative PAGA actions against Defendants in Alameda County Superior Court
24 on behalf of the State of California and Aggrieved Employees: *Paulk v. GoBrands, Inc., et al.*, No.
25 22CV007331 (Super. Ct. Alameda Cnty.), filed February 22, 2022; *Hannafin v. GoBrands, Inc., et*
26 *al.*, No. 22CV013580 (Super. Ct. Alameda Cnty.), filed June 29, 2022; and *Medrano v. GoBrands,*
27 *Inc., et al.*, No. 22CV013582 (Super. Ct. Alameda Cnty.), filed June 29, 2022. (Cottrell Decl., ¶ 9).

28 In these actions, Plaintiffs Paulk, Hannafin, and Medrano allege causes of action for (1)

1 failure to compensate for all hours worked; (2) failure to pay all minimum wages owed; (3) failure
2 to pay all overtime and/or double-time wages owed; (4) failure to provide timely and compliant
3 meal and rest periods or premium payments in lieu thereof; (5) failure to provide accurate, itemized
4 wage statements; (6) failure to compensate piece-rate workers for rest and recovery periods and
5 other nonproductive time and/or to provide compliant itemized wage statements for such time; (7)
6 failure to reimburse business expenses; (8) unlawful gratuity deductions; and (9) willful
7 misclassification. (Cottrell Decl., ¶ 10).

8 Subsequently, and pursuant to the parties' arbitration agreements, Plaintiffs Paulk, Hannafin,
9 and Medrano each filed arbitration demands to arbitrate their individual PAGA claims. (Cottrell
10 Decl., ¶ 11). In addition to the claims alleged in their PAGA actions, Plaintiffs Paulk, Hannafin, and
11 Medrano included in their arbitration demands claims for breach of contract and implied covenant
12 of good faith and fair dealing, interference with advantageous business relations, conversion, and
13 unjust enrichment as a result of Defendants' crediting of Plaintiffs' earned tip wages against the
14 minimum hourly rate guaranteed by Defendants, as well as violations of Cal. Bus. & Prof. Code §§
15 17200, *et seq.* (*Id.*).

16 After the filing of the *Paulk, Hannafin, and Medrano* actions, Plaintiffs Gallardo, Nolasco,
17 Maddox, and Hamati notified Defendants and the LWDA of their intent to bring identical claims to
18 those alleged in *Paulk, Hannafin, and Medrano* under PAGA. The parties then attended two
19 mediations in an attempt to resolve the claims of all Plaintiffs. (Cottrell Decl., ¶ 12). On April 20,
20 2023, the parties participated in private mediation with Deborah Saxe, Esq., which did not result in
21 a resolution. (*Id.*). The parties subsequently participated in private mediation with Tripper Ortman,
22 Esq. on August 14, 2023, which also did not result in an immediate settlement. (*Id.*). Accordingly,
23 as had been agreed by the parties, Plaintiffs Gallardo, Nolasco, Maddox, and Hamati filed their
24 PAGA complaint on August 18, 2023. (*Id.*).

25 The parties continued to negotiate after their second mediation and eventually agreed on the
26 terms of the Settlement on October 11, 2023. (Cottrell Decl., ¶ 13). The parties then spent weeks
27 negotiating and finalizing the Settlement, which all parties executed on April 2, 2024 (*Id.*). Pursuant
28 to the Settlement, the parties moved to consolidate the *Paulk, Hannafin, Medrano, and Gallardo*

actions, with the *Paulk* action as the lead case. (Settlement, ¶ 9). The parties now seek approval of the Settlement through the instant motion, in accordance with the terms of the Settlement. (Settlement, ¶ 9.1). As set forth below, the Settlement is fair, reasonable, and adequate.

IV. TERMS OF THE SETTLEMENT

A. Monetary Terms

The Settlement provides for a non-reversionary Gross Settlement Amount of \$1,400,000.00. (Settlement, ¶ 1.5). From this amount, Plaintiffs' counsel seeks attorneys' fees not to exceed \$490,000.00, or approximately 35% of the Gross Settlement Amount, and actual costs incurred. (Settlement, ¶ 6.4). The Settlement also provides for settlement administration costs to the settlement administrator in the amount of \$36,550.00, and a \$3,000.00 service award to each Plaintiff for the efforts and risks they have undertaken on behalf of the Aggrieved Individuals. (Settlement, ¶¶ 1.12, 1.13, 6.4).

The remainder of the Gross Settlement Amount after these deductions will form the PAGA Payment, which will be paid to the Aggrieved Individuals and the Labor and Workforce Development Agency ("LWDA") as follows. Twenty-five percent (25%) of the PAGA Payment will be paid to the Aggrieved Individuals. (Settlement, ¶ 6.2). The Aggrieved Individuals' share of the PAGA Payment shall be paid *pro rata* to all Aggrieved Individuals based on the number of Pay Periods in which Aggrieved Individuals accepted or completed an order during the Settlement Period according to Defendants' records. (*Id.*). Seventy-five percent (75%) of the PAGA Payment will be paid by the Settlement Administrator to the LWDA. (*Id.*).

The funds remaining from the Gross Settlement Amount after deductions for attorneys' fees and costs (\$490,000.00 and \$39,937.63, respectively), settlement administration costs (\$36,550.00),³ Plaintiffs' service awards (\$3,000.00 each), and the payment of 75% of the PAGA Payment to the LWDA (\$609,384.28) will form the Net Settlement Amount available to be distributed to the Aggrieved Individuals. The Net Settlement Amount is approximately \$203,128.10.

³ The parties' initial settlement agreement indicated settlement administration costs of \$26,000.00. (Cottrell Decl., ¶ 14). On April 26, 2024, the parties fully executed an amendment to the agreement to reflect administration costs of \$36,550.00. (*Id.*; Ex. 2). This discrepancy was caused by a prior estimate being based on a lower number of Aggrieved Employees. (*Id.*).

1 **B. Settlement Administration and Distribution of Funds**

2 The parties have agreed to retain Phoenix Class Action Administration Solutions (“Phoenix”)
3 as the settlement administrator. (Settlement, ¶ 1.14). Plaintiffs’ counsel has used Phoenix to
4 administer dozens of settlements. (Cottrell Decl., ¶ 14).

5 Within 10 business days after the Effective Date,⁴ Defendants will send Phoenix the Group
6 List, containing each Aggrieved Individual’s (1) name, (2) last known home address and telephone
7 number, (3) number of Pay Periods worked as an Aggrieved Individual during the Settlement Period,
8 and (4) social security number. (Settlement, ¶ 6.3). Within 3 business days after receiving the Group
9 List, Phoenix will email the parties confirming receipt and stating the number of Aggrieved
10 Individuals and the number of Pay Periods included in the Group List. (*Id.*).

11 Within 10 calendar days after receiving the Group List, Phoenix will cross-reference all the
12 addresses provided in the Group List with the United States Postal Service National Change Of
13 Address database (which provides updated addresses for any individual who has moved in the
14 previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain
15 current address information. (*Id.*).

16 Within 15 business days after the Effective Date, Defendants will deposit the Gross
17 Settlement Amount in a single lump sum payment with Phoenix. (*Id.*). Within 15 calendar days
18 following receipt of the Gross Settlement Amount from Defendants, Phoenix will make the
19 following payments via check or wire transfer from those proceeds: (1) the Individual Settlement
20 Payments; (2) the Service Awards (which shall be delivered to Plaintiffs’ Counsel); (3) the
21 Attorneys’ Fees and Cost Award; (4) the portion of the PAGA Payment to the LWDA; and (5)
22 payment to itself for administration of the Settlement. (*Id.*).

23 Phoenix will mail via U.S. First Class mail each Individual Settlement Payment to each
24 Aggrieved Individual’s last known address with directions to the Postmaster to deliver the checks
25 to any applicable forwarding address and to return all undeliverable checks to Phoenix. (Settlement,
26

27 ⁴ “Effective Date” means the later of either five (5) calendar days from the final resolution of any
28 appeals timely filed, or the expiration date of the time for filing or noticing any such appeals.
(Settlement, ¶ 1.4).

¶ 6.3).⁵ If any settlement check is returned as undeliverable, within 3 business days, Phoenix will use reasonable skip-trace methods to locate a new address. (*Id.*). If a new address is located, Phoenix will re-mail the check to that address within 3 business days of locating the new address. (*Id.*).

Individual Settlement Payments will remain valid and negotiable for 180 calendar days from the date of their issuance. (*Id.*). If any uncashed checks remain following this period, the uncashed funds will escheat to the State of California Unclaimed Property Fund in the name of the Aggrieved Individual whose check went uncashed. (*Id.*). There will be no reversion to Defendants. (*Id.*).

C. Tax Treatment

For tax purposes, all Individual Settlement Payments will constitute penalties. (Settlement, ¶ 6.2). Phoenix will issue an IRS Form 1099 to the relevant party in connection with the Aggrieved Individuals' Individual Settlement Payments, Plaintiffs' Service Awards, Plaintiffs' counsel's attorneys' fees and costs award, and the settlement administration costs. (*Id.* at ¶¶ 6.2, 6.4, 6.5). Plaintiffs, the Aggrieved Individuals, and Plaintiffs' counsel will be solely responsible for the payment of any taxes or penalties assessed on the payments issued to them in accordance with the Settlement. (*Id.* at ¶ 6.4).

D. Releases

Upon the Effective Date, in exchange for the Individual Settlement Payments to Aggrieved Individuals and the PAGA Payment to the LWDA, Plaintiffs, on behalf of the State of California and all Aggrieved Individuals, (including Plaintiffs) will, for the Settlement Period, be deemed to have fully and finally released and discharged GoBrands, Inc., a Delaware Corporation; GBL California, LLC, a Delaware Limited Liability Company; and GB Logistics, LLC d/b/a Gopuff Logistics, LLC, a Delaware Limited Liability Company and all of their divisions, subsidiaries, parent corporations, affiliates, predecessors, successors, shareholders, owners, investors, representatives, directors, insurers, officers, agents, servants, employees, attorneys, and all persons connected with them (whether or not acting within the scope of their duties), past and present (collectively, the "Released Parties"), from all claims under PAGA that are alleged in this

⁵ A letter substantially in the form of Exhibit A to the Settlement will be included in the mailing of each Aggrieved Individuals' Individual Settlement Payment. (Settlement, ¶ 6.3).

1 consolidated action or that could have been alleged based on the facts alleged in the consolidated
2 action that arose during the Settlement Period⁶ in connection with the Aggrieved Individuals’ use of
3 Defendants’ platform, including but not limited to claims based on alleged violations of Cal. Lab.
4 Code §§ 201–203, 204, 226, 226.2, 226.7, 226.8, 350–356, 510, 512, 1194, 1197, 1198, and/or 2802.
5 (Settlement, ¶ 5.1).

6 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD**
7 **BE APPROVED**

8 **A. PAGA Settlement Approval Standard**

9 The Labor Code provides that “[t]he superior court shall review and approve any settlement
10 of any civil action pursuant to [PAGA].” Cal. Lab. Code § 2699(l)(2). In seeking approval of a
11 PAGA settlement, parties are not obligated to “satisfy class action requirements” such as
12 commonality and typicality or abide by class action procedures such as notice and opt-out rights.
13 *Arias v. Superior Court* (2009) 46 Cal.4th 969, at 975; *O’Connor v. Uber Techs., Inc.* (N.D. Cal.
14 2016) 201 F.Supp.3d 1110, 1133. Instead, the Court’s role in reviewing the settlement of a PAGA
15 claim is to “determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to
16 remediate present labor law violations, deter future ones, and to maximize enforcement of state
17 labor laws.” *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. The Settlement satisfies this
18 standard.

19 **B. PAGA’s Purpose**

20 PAGA provides a mechanism to enforce the Labor Code by enlisting individual plaintiffs as
21 private attorneys general to recover civil penalties for the State, with a share also going to the
22 plaintiffs and other aggrieved employees. Prior to PAGA, civil penalties for Labor Code violations
23 could only be recovered by the California Department of Labor. *See Arias, supra*, at 980–81.

24 The Labor Code’s primary purpose is to “ensure employees are not required or permitted to
25 work under substandard unlawful conditions ... and to protect employers who comply with the law
26 from those who attempt to gain a competitive advantage at the expense of their workers by failing
27

28 ⁶ “Settlement Period” means December 14, 2020 to the date of approval of the Settlement.
(Settlement, ¶ 1.15).

1 to comply with minimum labor standards.” Cal. Lab. Code § 90.5(a). In enacting PAGA, the
2 Legislature expressly stated that “the only meaningful deterrent to unlawful conduct is the vigorous
3 assessment and collection of civil penalties as provided in the Labor Code.” Stats. 2003 ch. 906, §
4 1. The Legislature determined that it was “in the public interest to allow aggrieved employees, acting
5 as private attorneys general, to recover civil penalties for Labor Code violations, with the
6 understanding that labor law enforcement agencies were to retain primacy over private enforcement
7 efforts.” *Arias*, 46 Cal.4th at 980.

8 Within this framework, Plaintiffs, acting as private attorneys general and proxies for the State,
9 filed their respective actions seeking civil penalties for Defendants’ alleged violations of the Labor
10 Code. Because the Settlement provides meaningful recovery to the Aggrieved Individuals and the
11 State and furthers the above legislative goals, Plaintiffs respectfully request that the Court approve
12 it.

13 **C. The Settlement Enforces PAGA’s Purpose**

14 The \$1,400,000.00 penalty in this case serves as a warning to Defendants and to employers
15 throughout California that failing to ensure strict compliance with the California Labor Code will
16 lead to expensive repercussions. PAGA is not a restitution statute, and a PAGA action does not seek
17 damages. “A PAGA action is at heart a civil enforcement action filed on behalf of and for the benefit
18 of the state.” *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1124. The Court’s
19 focus in evaluating a PAGA settlement, therefore, is not the amount aggrieved employees ultimately
20 receive as a result of a settlement, but whether the total settlement achieves PAGA’s objectives, even
21 if it represents only a portion of Defendants’ total exposure. *See* Cal. Lab. Code §§ 2699(i)–(j),(l);
22 *Rosario v. Inter-Con Sec. Sys.* (Super. Ct. Alameda Cnty. Jan. 28, 2019) No. RG17849836, 2019
23 Cal. Super. LEXIS 95638, at *7.

24 If approved by the Court, the \$1,400,000.00 penalty will achieve PAGA’s objectives by (1)
25 holding Defendants accountable for their violations of the Labor Code; (2) deterring future
26 violations of the Labor Code by Defendants and other employers; (3) collecting penalties from
27 Defendants and recovering 75% of the penalties on behalf of the State of California for purposes of
28 enforcement and education; and (4) distributing 25% of the penalties to the Aggrieved individuals

1 pursuant to Cal. Lab. Code § 2699(i).

2 This substantial penalty shows Defendants and other employers that having compliant
3 policies is insufficient if those policies are not strictly enforced. The Settlement encourages
4 employers to expend additional resources to ensure that they pay employees for all hours worked
5 and authorize and permit meal and rest breaks, and deters other violations of the Labor Code.

6 In addition, the Settlement will result in a large payment to the LWDA to use for furthering
7 its mission of protecting workers, as well as reasonable payments to the Aggrieved Individuals
8 which do not require them to release their individual claims. The Settlement provides for a Net
9 Settlement Amount of approximately \$203,128.10 to be distributed to the Aggrieved Individuals.
10 (Cottrell Decl., ¶ 15). This provides an estimated net recovery of \$19.00 per Aggrieved Individual,
11 which is within the range of recoveries provided by other PAGA settlements approved by courts in
12 California. *See Patel v. Nike Retail Servs.* (N.D. Cal. May 8, 2019) No. 14-cv-04781-RS, 2019 U.S.
13 Dist. LEXIS 77988 (approving settlement award amounting to an average of approximately \$30 per
14 aggrieved employee); *Cebrenos v. Richy* (Super. Ct. L.A. Cnty. Jan. 28, 2022) No. 20STCV27218,
15 2022 Cal. Super. LEXIS 25588, at *4 (approving PAGA allocation amounting to \$4.44 per aggrieved
16 employee); *Pasno v. Hibu PNC* (Super. Ct. L.A. Cnty. May 17, 2023) No. 22STCV01361, 2023 Cal.
17 Super. LEXIS 60325, at *5 (approving PAGA allocation amounting to \$18.11 per aggrieved
18 employee).

19 The Gross Settlement Amount of \$1,400,000.00 is approximately 12% of Defendants' total
20 estimated exposure of \$11,414,900.00 for the PAGA claim for failure to pay for all hours worked.⁷
21 (Cottrell Decl., ¶ 16). This percentage is also within the range of settlements approved by courts in
22 California. *See Haralson v U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959 at 972–
23 74 (citing cases reflecting approval of settlements at 0.2% to 1.1% of verdict value of PAGA
24 penalty); *Merante v. Am. Inst. for Foreign Study, Inc.* (N.D. Cal. Jul. 25, 2022) No. 21-cv-03234-
25 EMC, 2022 U.S. Dist. LEXIS 131833, at *18–19 (approving PAGA allocation amounting to

26 ⁷ This estimated recovery for one substantive violation is realistic given doubts regarding whether
27 stacking of penalties is permitted (*see Smith v. Lux Retail N. Am., Inc.* (N.D. Cal. June 13, 2013)
28 No. 13-cv-1579-WHA, 2013 U.S. Dist. LEXIS 83562, at *9) raising doubts “that we would really
pile one penalty on another for a single substantive wrong”), and courts’ broad discretion to reduce
PAGA penalties, as discussed further below. (*see infra*, § V.D).

1 “between .27% and 2% of the maximum PAGA liability”); *Hamilton v. Juul Labs, Inc.* (N.D. Cal.
2 Nov. 16, 2021) No. 20-CV-03710-EMC, 2021 U.S. Dist. LEXIS 221416, at *27 (approving
3 settlement of PAGA claims resulting in 1.3–2.2% of the maximum value); *Perez v. CVS Health*
4 *Corp.* (E.D. Cal. Jun. 11, 2021) No. 1:19-cv-00449-DAD-BAM, 2021 U.S. Dist. LEXIS 110216, at
5 *18–19 (approving settlement representing 2.5% of the maximum potential recovery).

6 Considering the Settlement’s achievement of PAGA’s objectives, the amount provided by the
7 Settlement is fair and reasonable. *See Viceria v. Mistras Group, Inc.* (N.D. Cal. Oct. 11, 2016) 2016
8 U.S. Dist. LEXIS 140759 at * 9 (approving the settlement of PAGA claims for less than 1% of their
9 maximum value where the settlement taken as a whole vindicated employee rights and had a
10 potentially deterrent effect on the defendant employer); *Roe v. Jose Torres L.D. Latin Club Bar, Inc.*
11 (N.D. Cal. Aug. 27, 2020) No. 2020 U.S. Dist. LEXIS 156837, at *13 (approving settlement in part
12 because it “changed the defendant’s business practices” to protect workers).

13 **D. The Settlement is Fair, Reasonable, and Adequate in Light of the Risks and**
14 **Expense of Continued Litigation**

15 The result achieved by the Settlement is fair and reasonable in light of the risks Plaintiffs
16 would face in proving their claims. In general, trials are inherently risky for all parties. Although
17 Plaintiffs believe that they could have succeeded in proving their claims, and that Defendants’
18 evidence would not have been as persuasive, a trial on Plaintiffs’ claims would have carried a
19 particularly high degree of risk here, as all of Plaintiffs’ claims—substantive and derivative—hinge
20 on whether they are employees or independent contractors. (Cottrell Decl., ¶ 17).

21 In order to prove any liability, Plaintiffs would first need to prove that they were misclassified
22 as independent contractors. (*Id.* at ¶ 18). Defendants have argued that Plaintiffs and the Aggrieved
23 Individuals are independent contractors under California Proposition 22 (“Prop. 22”), “which
24 established a new test for distinguishing between employees and independent contractors for the
25 purposes of the Labor Code.” (*Id.*); *Castellanos v. Cal.* (2023) 89 Cal.App.5th 131, 143. Plaintiffs
26 would have had to show that Prop. 22 does not apply to Defendants. (*Id.*). This argument would
27 have required proving that Aggrieved Individuals did not meet the standards of Prop. 22 by, for
28 example, not being paid 120% of the due minimum wage for all engaged time or not having the

1 ability to accept or deny deliveries. (Cottrell Decl., ¶ 18). There was no guarantee that Plaintiffs
2 would have been successful on these arguments. (*Id.*). Failing to show that Prop. 22 did not apply
3 to Plaintiffs and the Aggrieved Employees would have made it impossible for Plaintiffs to pursue
4 their PAGA penalties. (*Id.*).

5 In addition, among other arguments, Defendants would have likely argued that no penalties
6 for waiting-time violations should be awarded because their failure to pay was not “willful,” an
7 element that Plaintiffs acknowledge would have been difficult to prove. *See* Cal. Lab. Code § 203;
8 Cal. Code Regs. 13520 (“A willful failure to pay wages within the meaning of Labor Code section
9 203 occurs when an employer intentionally fails to pay wages to an employee when those wages
10 were due.”); *Smith v. Rae Venter Law Group* (2002) 29 Cal.4th 345, 354 n.2 (holding that a good
11 faith dispute that any wages are due will preclude an award of waiting time penalties). Defendants
12 may also have argued that an employer’s failure to pay wages is not willful unless it reaches the
13 standard of “gross negligence or recklessness.” *See Amaral v. Cintas Corp. No. 2* (2008) 163
14 Cal.App.4th 1157, 1201. These and other hurdles would have rendered success far from certain.

15 There is also the risk that, even if Plaintiffs prevailed in proving that they are employees, and
16 proving liability as to all of their claims, the Court would award penalties less than the amount of
17 Defendants’ total exposure. “A trial court’s discretion to reduce PAGA penalties might be a reason
18 to ultimately discount the value of PAGA claims, perhaps even significantly, in reaching a
19 settlement.” *Gonzales v. CoreCivic of Tenn., LLC* (E.D. Cal., Sept. 12, 2018) No. 1:16-cv-01891-
20 DAD-JLT, 2018 U.S. Dist. LEXIS 156549, at *26. Given that Defendants’ liability hinges on
21 whether Plaintiffs and the Aggrieved Individuals are classified as employees, and the “uncertainty
22 as to whether stacking is permitted,” the Court could have exercised its discretion pursuant to Labor
23 Code section 2699(e)(2) to award an amount less than the maximum civil penalty amount. *See*
24 *Posephny v. AMN Healthcare Inc.* (N.D. Cal. Jul. 9, 2020) No. 18-cv-06284-KAW, 2020 U.S. Dist.
25 LEXIS 268743, at *10. Indeed, courts exercise broad discretion when discounting PAGA civil
26
27
28

1 penalties.⁸

2 The Settlement provides a reasonable overall sum given these and other risks faced by
3 Plaintiffs in proving their claims. *See Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504. It
4 is well-settled that a proposed settlement is not to be measured against a hypothetical ideal result
5 that might have been achieved. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.*
6 (2000) 85 Cal.App.4th 1135, 1150 (quoting *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151
7 F.3d 1234, 1242 with approval: "This court has aptly held that 'it is the very uncertainty of outcome
8 in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.
9 The proposed settlement is not to be judged against a hypothetical or speculative measure of what
10 might have been achieved by the negotiators.'"). A settlement that represents only a fraction of the
11 potential recovery is still reasonable. *See, e.g., In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213
12 F.3d 454, 459 ("It is well-settled law that a cash settlement amounting to only a fraction of the
13 potential recovery does not *per se* render the settlement inadequate or unfair.") (internal quotation
14 marks omitted). Given the risks associated with proceeding with litigation, including Plaintiffs
15 recovering nothing due to a finding that they are independent contractors, the Settlement is
16 reasonable.

17 Further, if the Action were to go to trial, fees and costs would increase significantly. (Cottrell
18 Decl., ¶ 19). Plaintiffs' claims and Defendants' defenses would require substantial additional
19 preparation and discovery. (*Id.*). They would require depositions of experts, the presentation of
20 percipient and expert witnesses at trial, as well as the consideration, preparation, and presentation
21 of voluminous documentary evidence and the preparation and analysis of expert reports. (*Id.*). In
22 contrast to litigating this suit, resolving this case by means of the Settlement will yield a prompt,
23 certain, and substantial recovery for the Aggrieved Individuals and the State. (*Id.*). Such a result will
24 benefit the parties and the court and will bring finality to nearly two years of litigation. (*Id.*).

25
26 ⁸ *See Carrington*, 30 Cal.App.5th at 504 (\$75 million in penalties sought, yet court awarded PAGA
27 penalties of only \$150,000 based on 30,000 violations and reduced the penalty rate to \$5 per
28 violation, equating to a 95% discount of the initial penalty rate of \$100 per violation; affirmed on
appeal); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112 (requested
\$512,000, awarded \$358,588, reflecting a 25% discount; *Amaral*, 163 Cal.App.4th at 1214
(requested \$500,000, awarded \$258,900, reflecting a 48% discount).

1 Accordingly, in light of the risk and expense of continued litigation, the Settlement is fair,
2 reasonable, and adequate.

3 **VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

4 For their efforts and the substantial risk they undertook in obtaining a common fund
5 settlement to benefit the LWDA and the aggrieved PAGA employees, the parties allocated 35% of
6 the Gross Settlement Amount to Plaintiffs' counsel for reasonable attorneys' fees, plus actual
7 litigation costs. These fees and costs are warranted under the law and within the range commonly
8 awarded in similar cases.

9 PAGA provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses, and
10 costs. Cal. Lab. Code § 2699(g)(1) provides that "[a]ny employee who prevails in any action shall
11 be entitled to an award of reasonable attorney's fees and costs." As discussed below, in a *qui tam*
12 action (which PAGA actions have been compared to), reasonable attorneys' fees and costs are
13 typically awarded under the common fund doctrine where, as here, the litigation creates a common
14 fund of money in a specific amount for the benefit of others.

15 **A. Plaintiffs' Counsel is Entitled to Recovery Fees of One-Third of the Common**
16 **Fund.**

17 The California Supreme Court in *Iskanian* held that "[a] PAGA representative action is
18 therefore a type of *qui tam* action." *Iskanian v. CLS Transp. L.A., LLC* (2014) 59 Cal.4th 348, 382.
19 A *qui tam* action allows a private person to sue to recover damages or penalties, all or part of which
20 will be paid to the government. *People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210
21 Cal.App.4th 487, 501. A PAGA action is like a *qui tam* action because the statute allows a plaintiff,
22 acting as the proxy of the State's labor law enforcement agency, to sue his employer for Labor Code
23 violations and recover civil penalties that otherwise would have been assessed and collected by the
24 LWDA. *See Iskanian, supra*, at 382. Indeed, a majority of the civil penalties recovered in a PAGA
25 action are paid to the State, with a smaller portion paid to the employees. *See* Cal Lab. Code §
26 2699(i).

27 Where a common fund is created in a *qui tam* action by the successful litigation of a plaintiff,
28 the plaintiff's attorneys are entitled to recover their fees from the common fund:

Those benefiting from the recovery of the fund, in this case some depositors and eventually the People of the State of California, must bear their share of the cost of litigation. Fees for taxpayers' attorneys will be deducted from the judgment, and each claimant's share reduced proportionately. To the extent the judgment relies upon section 1021.5 for recovery of attorney fees, it must be modified to confine the award of fees to the common fund theory.

Bank of Am. v. Cory (1985) 164 Cal.App.3d 66, 91 (authorizing common fund fees in a *qui tam* taxpayer suit against certain banks).

Likewise, in this case, through the successful efforts of Plaintiffs and their attorneys, a common fund was created in the amount of \$1,400,000.00 for the benefit of the Aggrieved Individuals and the State. Thus, these beneficiaries must bear their share of the costs and attorneys' fees, to be deducted from the Settlement Amount under the common fund theory. *See id.* Such fees are deducted as a percentage of the settlement amount. *See, e.g., Boeing Co. v. Van Gemert* (1980) 444 U.S. 772, 478–82; *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 967.

The California Supreme Court upheld the use of the common fund theory of recovery for attorneys' fees in *Laffitte v. Robert Half Int'l. Inc.* (2016) 1 Cal.5th 480, 506. In *Laffitte*, the settlement created a common fund of \$19,000,000.00. The Court approved attorneys' fees in the amount of one-third of the gross settlement (*i.e.*, \$6,333,333.33) under the common fund theory. *Id.* By awarding counsel a percentage of the total recovery, rather than fees based on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the best results possible for the class. *See Laffitte, supra*, at 492–94. Indeed, the “percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’” *Id.* at 493 (quoting *In re Rite Aid Corp. Sec. Litig.* (3d Cir. 2005) 396 F.3d 294, 300).

California state and federal courts routinely award attorneys' at or near the requested 35% amount. *See, e.g., Pena v. Taylor Farms Pac., Inc.* (E.D.Cal. Mar. 10, 2021) No. 2:13-cv-01282-KJM-AC 2021 U.S. Dist. LEXIS 45326, at *16. “The court therefore finds the requested 35 percent award is reasonable.”; *Laffitte, supra*, at 506 (“33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits”); *Martin v. Ameripride Servs., Inc.* (S.D. Cal. June 9, 2011) No. 08cv440-MMA (JMA), 2011 U.S. Dist. LEXIS 61796, at *23 (“[C]ourts may award attorneys' fees in the 30–40% range in wage and hour ... actions that

1 result in recovery of a common fund under \$10 million.”); *Buenrostro-Flores v. Langer Juice Co.*
2 (Super. Ct. L.A. Cnty. June 21, 2023) No. 21STCV01133, 2023 Cal. Super. LEXIS 38919, at *3–5
3 (approving attorneys’ fee award amounting to one third of the common fund); *Chavez v. Netflix, Inc.*
4 (2008) 162 Cal.App.4th 43, 66; Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An*
5 *Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27–78, March 2004, at 35
6 (independent studies of class action litigation nationwide concluded that fees representing one third
7 of the total recovery are consistent with market rates).

8 A 35% common fund attorneys’ fee award is also consistent with superior court awards in
9 PAGA-only settlements. *See, e.g., Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County
10 Superior Court, Case No. C15-02051, January 4, 2019 Order (approving 33.33% fee award in a
11 \$11,000,000.00 settlement of PAGA-only claims); *Gonzales v. Healthcare Servs. Grp., Inc. et al.*,
12 Case No. CGC-18-570988, San Francisco County Superior Court, Cheng, J., Order dated Mar. 21,
13 2022, ¶ 9 (approving one-third fee award); (*Garcia v. Macy’s West Stores, Inc.*, San Bernardino
14 County Superior Court, Case No. CIVDS1516007, September 13, 2017 Order (approving 33.33%
15 fee award in \$12,500,000.00 settlement of PAGA-only claims); *Garcia v. Pep Boys Manny Moe &*
16 *Jack* (Super Ct. Orange Cnty. Jul. 14, 2016) No. 30-2014-00720574-CU-0E-CJC, 2016 Cal.
17 (approving 33.33% fee award in a \$1,030,000.00 settlement of PAGA-only claims); *Brewer v.*
18 *Connell Chevrolet* (Super. Ct. Orange Cnty. Jun. 15, 2017) No. 30-2016-00852123-CU-OC-CXC,
19 2017 Cal. Super. LEXIS 15031 (approving 33.33% fee award in a PAGA-only settlement).

20 The requested fee award is fair and reasonable under the relevant factors.

21 Among the factors considered in determining whether a requested fee percentage is
22 reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of
23 counsel and the quality of the work performed; (4) the contingent nature of the fee and the financial
24 burden carried by the plaintiffs; and (5) awards made in similar cases. *Vizcaino v. Microsoft Corp.*
25 (9th Cir. 2002) 290 F.3d 1043, 1048–50. For the reasons below, all these factors support an award
26 here of one third of the common fund.

27 Here, Plaintiffs’ counsel’s efforts resulted in a Gross Settlement Amount of \$1,400,000.00.
28 This is a fair and reasonable settlement and an especially favorable result in light of the number of

1 Aggrieved Individuals and the challenges Plaintiffs may have faced at trial. (Cottrell Decl., ¶ 20).
2 This result was achieved by the work and success of Plaintiffs’ counsel, who negotiated the
3 Settlement after extensive preparation. (*Id.*).

4 Second, Plaintiffs faced substantial risks going forward with this litigation, as described
5 above. (*See supra*, § V.D).

6 Third, Plaintiffs’ counsel are experienced representative action litigators. (Cottrell Decl., ¶¶
7 5–8, 20). This experience and expertise, combined with the high quality of work performed in this
8 case by Plaintiffs’ counsel, resulted in the Settlement. (*Id.* at ¶ 20).

9 Fourth, Plaintiffs’ counsel have been representing Plaintiffs and the State in this matter on
10 strictly contingency-fee basis. (Cottrell Decl., ¶ 21). Plaintiffs’ counsel have exposed themselves to
11 the risk of zero recovery after a substantial investment of time, money, and resources, and have done
12 so since the inception of the case without any payment or compensation. (*Id.*).

13 Fifth, as discussed and cited above, the request for attorneys’ fees in the amount of
14 approximately 35% of the Settlement Amount falls within the range found acceptable by state and
15 federal courts in California in comparable wage-and-hour actions. The award of such a fee recovery
16 under the common fund doctrine was approved by the California Supreme Court in *Laffitte*, 1
17 Cal.5th at 503.

18 For the above reasons, the requested fee award is fair and reasonable, which a lodestar
19 crosscheck confirms.⁹ The lodestar for Plaintiffs’ counsel in this consolidated action is
20 approximately 908 hours, corresponding to \$679,797.50 in fees.¹⁰ (Cottrell Decl., ¶ 22). The

21 ⁹ The Court may use an abbreviated lodestar cross-check for common fund awards if the Court
22 considers it useful. *Laffitte*, 1 Cal.5th at 504–05. However, under *Laffitte*, this is not meant to
23 displace the percentage analysis, but rather to act as a backstop. Indeed, the Supreme Court
24 expressly instructed that “the lodestar calculation, when used in this manner, does not override the
25 trial court’s primary determination of the fee as a percentage of the common fund and thus does not
26 impose an absolute maximum or minimum on the fee award.” *Id.* at 505. Critically, the Court in
27 *Laffitte* emphasized that only where the “multiplier calculated by means of a lodestar cross-check
is extraordinarily high or low” should the court “consider whether the percentage should be adjusted
so as to bring the imputed multiplier within a justifiable range.” *Id.* Furthermore, in conducting a
lodestar cross-check, courts are not “required to closely scrutinize each claimed attorney-hour.” *Id.*
An evaluation may be done by reviewing “counsel declarations summarizing overall time spent.”
Id.

28 ¹⁰ This total includes 550.4 hours and \$435,600.00 in fees for the *Paulk* action; 174.2 hours and
\$120,165.50 in fees for the *Medrano* action; 132.9 hours and \$92,973.00 in fees for the *Hannafin*
action; and 50.5 hours and \$31,059.00 in fees for the *Gallardo* action. (Cottrell Decl., ¶ 22).

1 attorneys' fees requested represent approximately 72% of the lodestar, resulting in a negative
2 multiplier. (*Id.* at ¶ 23). Plaintiffs' counsel has agreed to accept this compromise and reduction in an
3 effort to resolve the case and obtain a fair settlement for Plaintiffs, the Aggrieved Individuals, and
4 the State. (*Id.*). A cross-check of Plaintiffs' counsel's lodestar confirms that the requested fee award
5 is a reasonable and fair payment.

6 **B. The Requested Litigation Costs are Fair and Reasonable**

7 Plaintiffs' counsel also seeks to recover their expenses incurred in the prosecution of this
8 Action, in the amount of \$39,937.63. (Cottrell Decl., ¶ 24). Reasonable litigation expenses are
9 specifically recoverable under the PAGA and are ordinarily included with an award of attorneys'
10 fees pursuant to California wage-and-hour law. Cal. Lab. Code § 2699(g)(1); *see also, Serrano v.*
11 *Priest* (1977) 20 Cal.3d 25, 35; *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424.
12 Here, Plaintiffs' counsel's expenses were reasonable, necessary to the prosecution, and of the type
13 customarily billed to fee-paying clients. (Cottrell Decl., ¶ 24). Accordingly, the requested attorneys'
14 fees and costs are reasonable compensation for the significant recovery achieved and should be
15 approved.

16 **VII. THE REQUESTED SERVICE AWARDS ARE REASONABLE**

17 Service awards "are intended to compensate class representatives for work done on behalf of
18 the class, to make up for financial or reputational risk undertaken in bringing the action, and,
19 sometimes, to recognize their willingness to act as a private attorney general." *Cellphone*
20 *Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393–94.

21 Here, Plaintiffs have substantially contributed their time and efforts over a period of nearly
22 two years in pursuing claims on behalf of the Aggrieved Individuals and the State, and Plaintiffs'
23 role was crucial in this case. (Cottrell Decl., ¶ 25). Plaintiffs had discussions with Plaintiffs' counsel,
24 worked with Plaintiffs' counsel to review facts and answer questions, assisted Plaintiffs' counsel in
25 their mediation efforts, and have generally remained apprised of the case. (*Id.* at ¶ 26).

26 Furthermore, Plaintiffs took the significant risk of coming forward to represent the interests
27 of their fellow employees. (Cottrell Decl., ¶ 26). Plaintiffs' request for service awards in the amount
28 of \$3,000.00 each is reasonable considering the efforts they made and the risks they took and are

1 well within the range of service awards approved by this and other courts. *See, e.g., Amaraut v.*
2 *Sprint/United Mgmt. Co.* (S.D. Cal. Aug. 5, 2021) No. 19-cv-411-WQH-AHG, 2021 U.S. Dist.
3 LEXIS 147176, at *16–22 (approving \$15,000 and \$10,000 service awards); *Villalpando v. Exel*
4 *Direct, Inc.* (N.D. Cal. Dec. 9, 2016) No. 3:12-cv-04137-JCS, 2016 WL 7785852, at *2 (approving
5 \$15,000 service awards to each of three class representatives); *Schneider v. Catholic Healthcare W.*
6 (Super. Ct. S.F. Cnty. Jan. 13, 2017) No. CGC-10-506243, 2017 Cal. Super. LEXIS 2077, at *2
7 (approving \$15,000 service awards to two plaintiffs); *Sanchez v. RK Logistics Group* (Super. Ct.
8 Alameda Cnty. Feb. 25, 2020) No. RG16826234, 2020 Cal. Super. LEXIS 49330, at *8 (approving
9 “the service award of \$10,000 [a]s reasonable); *Ducote v. HSS, Inc.*, Alameda County Superior
10 Court, Case No. HG19036564, February 13, 2024 Order (approving \$10,000 service award).

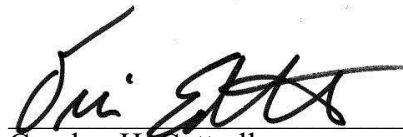
11 Accordingly, in light of these comparable awards and the efforts and risk undertaken by
12 Plaintiffs, the Court should approve the requested service awards.

13 **VIII. CONCLUSION**

14 For the foregoing reasons, the parties respectfully request that the Court grant this motion
15 and enter an order consistent with the proposed order submitted herewith.

16 Dated: May 2, 2024

Respectfully Submitted,

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