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

JORGE GONZALEZ, individually and on behalf
of himself and other persons similarly situated,

Plaintiff,

vs.

CITISTAFF SOLUTIONS, INC., a California
corporation; and DOES 1 through 30, inclusive,

Defendants.

LUIS SILVA, an individual, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

CITISTAFF SOLUTIONS, INC., a California
Corporation, and DOES 1 through 100,

Defendants.

Case No. BC620115 (Lead Case)
Case No. BC622512

*[Assigned for all purposes to the Honorable
David S. Cunningham III, Dept. 37]*

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

Date: September 27, 2018
Time: 8:30 a.m.
Dept.: 37
Reservation ID: 180409304435

Complaint Filed [Lead Case]: May 10, 2016
FSC: October 22, 2018
Trial Date: October 30, 2018

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

PLEASE TAKE NOTICE that on September 27, 2018 at 8:30 a.m. or as soon thereafter as the matter may be heard in Department 37 of the above-entitled Court located at 111 N. Hill Street, Los Angeles, California 90012, Plaintiffs Jorge Gonzalez, Teresa Nieto, and Luis Silva (collectively, “Plaintiffs”), individually and on behalf of all similarly aggrieved employees, will and hereby do move this Court for entry of an Order as follows:

1. Granting approval, pursuant to California Labor Code § 2698 *et seq.*, and specifically § 2699(l), of the proposed Settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) and set forth in the Joint Stipulation of Settlement and Release (“Settlement Agreement”), a true and correct copy of which is attached to the Declaration of Paul K. Haines filed concurrently herewith;
2. Appointing CPT Group, Inc. as the Settlement Administrator;
3. Approving the proposed Notice of Settlement as to form and content, and directing that it be distributed to the Aggrieved Employees pursuant to the terms of the Settlement Agreement;
4. Directing the distribution of the Gross Settlement Amount pursuant to the terms of the Settlement Agreement; and
5. Approving an award of attorneys’ fees to Plaintiffs’ counsel in the amount of \$91,666.66, an award of attorneys’ costs to Plaintiffs’ counsel in the amount of \$12,147.00, an award of \$5,000 as Representative Plaintiff Enhancement Payment to each named Plaintiff, for a total of \$15,000 in Representative Enhancement Payments, and \$65,000.00 in administration costs to CPT Group, Inc.

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1 This Motion is and is based on this Notice; the attached Memorandum of Points and
2 Authorities; the declarations of Paul K. Haines, Dennis F. Moss, Jeremy F. Bollinger, Sahag
3 Majarian II, Jorge Gonzalez, Teresa Nieto, Luis Silva, and Julie Green, and all exhibits attached
4 thereto; the [Proposed] Order; the Settlement Agreement; all other pleadings and papers on file
5 in this action; and on any further oral or documentary evidence or argument presented at the time
6 of hearing.

7
8 Dated: June 14, 2018

Respectfully submitted,
HAINES LAW GROUP, APC

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10 By: _____

Paul K. Haines, Esq.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Jorge Gonzalez, Teresa Nieto, and Luis Silva (collectively “Plaintiffs”), as
4 “Aggrieved Employees” under the Private Attorneys General Act of 2004 (“PAGA”),
5 respectfully move this Court for an Order granting approval of the Joint Stipulation of Settlement
6 and Release (the “Settlement Agreement” or “Settlement”) with Defendant CitiStaff Solutions,
7 Inc. (“Defendant” or “CitiStaff”), which is attached as Exhibit 1 to the concurrently filed
8 Declaration of Paul K. Haines.

9 This proposed Settlement resolves two representative actions now pending before the Los
10 Angeles County Superior Court (the “Actions”). Both of these Actions only allege a single cause
11 of action under the PAGA, which is that CitiStaff failed to include its legal address on employee
12 wage statements in violation of Labor Code section 226(a). The Actions seek civil penalties for
13 these violations on behalf of the California Labor & Workforce Development Agency
14 (“LWDA”) and “all persons who at any time during the Settlement and Release Period [May 10,
15 2015 to September 12, 2016] were employed by Defendant in non-exempt hourly positions in
16 the State of California who were provided with at least one wage statement” (hereinafter
17 “Aggrieved Employees”). The relief provided for under the Settlement is *solely* for the payment
18 of civil *penalties* under the PAGA.

19 In deciding whether to grant approval of the Settlement, the primary issue to be decided
20 is whether the Settlement is fair, reasonable, and adequate. As set forth herein, the proposed
21 Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it
22 (1) is the product of arm’s-length negotiations, (2) was negotiated by attorneys experienced in
23 wage-and-hour issues, (3) was negotiated subsequent to undertaking sufficient investigation to
24 evaluate the relative strength and value of the PAGA claim, and (4) reflects a reasoned
25 compromise based directly on the relative strength and value of the PAGA claim, as well as the
26 risks, expense, complexity and likely duration of further litigation.

27 This proposed Settlement provides for CitiStaff to pay a Gross Settlement Amount
28 (“GSA”) of \$275,000.00 on a non-reversionary basis. After deducting amounts for requested

1 attorneys' fees (one-third of the GSA, or \$91,666.66), attorneys' costs (\$12,147.00),
2 Representative Plaintiff Enhancement Payments (\$15,000.00), and settlement administration
3 expenses (up to \$65,000.00 for CPT Group, Inc.), the Settlement provides for distribution of no
4 less than \$91,186.34 to the Aggrieved Employees and the LWDA. Per the PAGA, this amount
5 will be distributed 25% (\$22,796.59) to the Aggrieved Employees (the "Distributable Amount"),
6 and 75% (\$68,389.75) to the LWDA. *See* Cal. Lab. Code § 2699(i).

7 The GSA of \$275,000 represents an excellent recovery for the State of California and
8 Aggrieved Employees. Further litigation may have resulted in a smaller recovery or even no
9 recovery at all based on the defenses asserted by CitiStaff, CitiStaff's financial condition,¹ and
10 given the significant litigation risks involved. The amounts requested for Plaintiffs' Counsel's
11 attorneys' fees and costs, the Representative Plaintiff Enhancement Payments, and claims
12 administration costs are fair, adequate, and reasonable. In light of the foregoing, this Court
13 should enter the [Proposed] Order Granting Approval of Settlement submitted concurrently
14 herewith.

15 **II. SUMMARY OF THE LITIGATION**

16 **A. Brief Factual and Procedural History**

17 CitiStaff offers a variety of staffing solutions in industries such as warehouse,
18 distribution, logistics, manufacturing, and food manufacturing across the state of California.
19 Plaintiffs and other Aggrieved Employees are current and former non-exempt employees who
20 worked for CitiStaff during the Settlement and Release Period. Plaintiffs' PAGA claim is based
21 on a single allegation that for slightly over one year during the relevant time period, CitiStaff
22 failed to include its address on employee wage statements in violation of Cal. Labor Code §
23 226(a)(8). Declaration of Paul K. Haines ("Haines Decl."), ¶ 11. The Actions allege a single
24 cause of action for penalties under the PAGA.

25 ¹ Following CitiStaff's representation of its financial condition, it turned over its financials to
26 Plaintiffs' retained forensic accountant, Keith Messerschmidt, who opined that CitiStaff could
27 not afford to pay any larger amount without substantially jeopardizing its business operations,
28 and that the Settlement payment terms were also warranted in light of CitiStaff's financial
condition. Should the Court wish to review a declaration from Mr. Messerschmidt attesting to
these facts, such declaration could either be filed *in camera* or filed under seal, at the Court's
request. Plaintiffs' counsel will bring a copy of the declaration to the hearing on this Motion.

1 On December 14, 2015, Plaintiffs Jorge Gonzalez and Teresa Nieto sent a certified letter
2 to CitiStaff and the LWDA describing CitiStaff's alleged Labor Code violations, as required by
3 Labor Code § 2699.3(a)(1). Haines Decl., ¶ 11. After waiting the prescribed thirty-three-day
4 exhaustion period, Plaintiffs Jorge Gonzalez and Teresa Nieto filed their complaint, titled *Jorge*
5 *Gonzalez v. CitiStaff Solutions, Inc.* ("Gonzalez" action") Case No. BC620115 on May 10, 2016.
6 *Id.* On April 27, 2016, Plaintiff Luis Silva sent a certified letter to CitiStaff and the LWDA
7 describing CitiStaff's alleged Labor Code violations, as required by Labor Code § 2699.3(a)(1).
8 *Id.* After waiting the prescribed thirty-three-day exhaustion period, Plaintiff Luis Silva filed his
9 complaint, titled *Luis Silva v. CitiStaff Solutions, Inc.* ("Silva" action) Case No. BC622512 on
10 June 2, 2016. *Id.* The actions were subsequently deemed related and consolidated before this
11 Court. *Id.* The parties agreed to attend mediation with the Hon. Nancy Wieben Stock (Ret.) on
12 January 18, 2017.

13 **B. Informal Discovery and Mediation**

14 In preparation for mediation, the parties engaged in an extensive informal exchange of
15 information and data. Haines Decl., ¶ 13. Specifically, CitiStaff provided Plaintiffs with the
16 number of potential Aggrieved Employees and the number of aggregate pay periods in which
17 wage statements were issued to Aggrieved Employees during the relevant time period that
18 arguably did not contain CitiStaff's address. *Id.*

19 Following extensive discussions about the factual and legal strengths and weaknesses of
20 the claims and defenses, and following the submission of detailed mediation briefs, the parties
21 attended a full day of mediation before the Judge Stock, a respected mediator with experience
22 handling California wage-and-hour class actions and representative PAGA actions. Haines
23 Decl., ¶ 14. During mediation, the parties vigorously debated the likelihood of Plaintiffs' ability
24 to proceed on a representative basis as to the wage statement claims, the legal bases for Plaintiffs'
25 claims and CitiStaff's defenses, and the parties' data analyses and conclusions based on data
26 provided by CitiStaff. *Id.* At the conclusion of mediation, the parties were unable to reach a
27 settlement resolving both actions. *Id.* Following the mediation, the parties continued to engage
28 in settlement discussions through 2017, and after extensive arm's-length negotiations, the parties

were able to reach a settlement resolving both actions. Notably, this settlement was only reached after a thorough review of CitiStaff's financial condition, which played a significant role in settlement discussions. Following Plaintiff's retained financial expert's review of CitiStaff's financials, and carefully weighing the strengths and weaknesses of both sides' respective positions, the parties reached the Settlement that is now before the Court for approval.

III. SUMMARY OF THE SETTLEMENT AND CLAIMS PROCESS

A. "Aggrieved Employees" Defined

The Aggrieved Employees are defined as "all persons who at any time during the Settlement and Release Period were employed by Defendant in non-exempt hourly positions in the State of California who were provided with at least one wage statement. See Settlement Agreement at § II.1.² The Settlement and Release Period is defined as "May 10, 2015 through September 12, 2016." *Id.*, § II.27.

B. Monetary Terms

This Settlement provides for Defendant to pay a Gross Settlement Amount (or "GSA") of \$275,000.00. See Settlement Agreement at § III.H.1. After deducting amounts for requested attorneys' fees, attorneys' costs, Representative Plaintiff Enhancement Payments, and settlement administration costs, the Settlement provides for distribution of a PAGA Penalty Fund of no less than \$91,186.34, with no less than \$68,389.75 paid to the LWDA, representing 75% of the PAGA Penalty Fund, and no less than \$22,796.59, representing 25% of the PAGA Penalty Fund, paid to the Aggrieved Employees (the "Net Settlement Amount") on an equal per-capita basis. See Settlement Agreement, § III.H.1. Significantly, this settlement is non-reversionary, and does not require any Aggrieved Employees to submit claim forms to reap the financial benefits of the Settlement. *Id.*; Haines Decl., ¶ 15.

1. *Attorneys' Fees and Costs*

Plaintiff's Counsel is requesting \$91,666.66 (one-third of the GSA) in attorneys' fees, and \$12,147.00 in actual litigation costs. Settlement, §§ III.H.1.A-B; Haines Decl., ¶ 18. In the

² All citations to the Settlement Agreement refer to the Settlement Agreement attached as Exhibit 1 to the Declaration of Paul K. Haines filed concurrently herewith.

1 event the Court reduces the amount requested in Plaintiff's Counsel Fees or Costs, that amount
2 shall be added to the Net Settlement Amount for Aggrieved Employees. *Id.*

3 **2. Settlement Administration Costs**

4 The parties have agreed to use CPT Group, Inc. ("CPT") as the third-party settlement
5 administrator. *See* Settlement Agreement, §§ I, III.I. CPT shall be responsible for mailing the
6 Notice of Settlement and calculating and distributing the settlement checks, among other duties.
7 The parties have designated \$65,000.00 as administration costs, which will cover the costs
8 incurred by CPT in connection with the settlement. *Id.*, §§ III.H.1.D, III.I. The settlement
9 administration bid provided by CPT is attached to the Declaration of Julie Green as Exhibit B.

10 **3. Representative Plaintiff Enhancement Payments**

11 Plaintiffs request Representative Plaintiff Enhancement Payments of \$5,000.00 each, for
12 a total of \$15,000.00, in recognition of Plaintiffs' unique contributions to the prosecution of this
13 case, as well as their agreement to execute a general release of all claims against CitiStaff,
14 including a waiver of Cal. Civil Code § 1542. *See* Settlement, §§ II.23, III.H.1.C.

15 **4. Payment to the LWDA**

16 Seventy-five percent of the \$91,186.34 PAGA Penalty Fund, i.e., \$68,389.75, will be paid
17 to the LWDA. *See* Settlement, § III.H.1; Cal. Labor Code § 2699(H)(i) ("Except as provided in
18 subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows:
19 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and
20 education of employers and employees about their rights and responsibilities under this code, to
21 be continuously appropriated to supplement and not supplant the funding to the agency for those
22 purposes; and 25 percent to the aggrieved employees.").

23 **5. Payments to Aggrieved Employees**

24 The estimated distributable amount to the Aggrieved Employees is \$22,796.59,
25 representing 25% of the PAGA Penalty Fund. The distributable amount will be divided amongst
26 Aggrieved Employees on an equal per-capita basis. *See* Settlement, § III.H.1. Payment to each
27 Aggrieved Employee shall be reported on an IRS Form 1099. *Id.*, § III.H.2.

28 **6. Funding of the Settlement**

CitiStaff will tender the GSA to CPT on the following schedule: Payment 1: \$15,000.00,

1 to be paid within five (5) business days from an Order from the Court approving this Settlement
2 or June 1, 2018, whichever is later, representing Representative Plaintiffs' Enhancement
3 Payments; Payment 2: \$12,146.04 to be paid on July 1, 2018 representing Aggrieved Employees'
4 Counsel Costs; Payment 3: \$30,555.55 to be paid on August 1, 2018, representing the first 1/3
5 of the Aggrieved Employees' Counsel Fees; Payment 4: \$30,555.55 to be paid on October 1,
6 2018, representing the second 1/3 of the Aggrieved Employees' Counsel Fees; Payment 5:
7 \$30,555.55 to be paid on December 1, 2018, representing the third 1/3 of the Aggrieved
8 Employees' Counsel Fees; Payment 6: \$15,630.78 to be paid on January 1, 2019 representing the
9 amounts distributable to the LWDA, Aggrieved Employees and Settlement Administration
10 Costs; Payments 7 through 18: \$12,777.78 to be paid monthly, commencing on February 1,
11 2019 through December 1, 2019, to be paid on the first date of each month, representing the
12 amounts distributable to the LWDA, Aggrieved Employees and Settlement Administration
13 Costs. See Settlement, § III.H.2. Because the hearing date for Plaintiffs' Motion will not occur
14 until September 27, 2018 or after Payments 1, 2, and 3 are to be paid, CitiStaff will fund Payments
15 1, 2, and 3 in accordance with the above-mentioned schedule and CPT will hold the funds in
16 escrow pending this Court's approval of the Settlement. Haines Decl., ¶ 16. Within fifteen
17 (15) business days of settlement approval, CitiStaff will provide CPT with a list containing the
18 Aggrieved Employees' names, last known addresses, last known telephone numbers, and social
19 security numbers. *Id.*, III.D.

20 Within ten (10) days of the receipt of CitiStaff's final payment of the GSA, CPT will
21 distribute Settlement Payments to the Aggrieved Employees along with the Notice of Settlement
22 via First-Class U.S. Mail. *Id.*, III.J. Before mailing, CPT will perform a search of the National
23 Change of Address registry and/or perform skip-traces to find the most current addresses for
24 Aggrieved Employees. *Id.* If any Notices are returned with a forwarding address, CPT will re-
25 mail the Notices to the Aggrieved Employees at the forwarding address. *Id.*

26 Aggrieved Employees will not be required to submit claim forms to participate in this
27 Settlement, and will automatically receive their shares under the terms of the Settlement.
28 Aggrieved Employees will have 180 days within which to cash their checks. See Settlement, §
III.H.1. The amount of any Settlement checks that are returned as undeliverable or not cashed

1 by Aggrieved Employees within 180 days shall be tendered to the Director of Industrial Relations
2 in the name of the Aggrieved Employee. *Id.* III.I.

3 **IV. LEGAL ARGUMENT**

4 **A. Standards for Approval of a PAGA Settlement**

5 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
6 statute, which states that the “court shall review and approve any penalties sought as part of a
7 proposed settlement agreement pursuant to this part.” *See* Labor Code § 2699(l).

8 As with any settlement, the Court must be mindful in conducting its inquiry that
9 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
10 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 WL 4079226, *9 (N.D.
11 Cal. Sept. 13, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes and
12 an abandoning of highest hopes,’” as “it is the very uncertainty of outcome in litigation and
13 avoidance of wasteful and expensive litigation that induce consensual settlements.” *See Officers*
14 *for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir., 1982). As such, “the settlement
15 or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits” or “judged
16 against a hypothetical or speculative measure of what might have been achieved by the
17 negotiators.” *Id.*

18 Although the operative PAGA statute does not set forth the criteria by which a PAGA
19 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors
20 for review of a class action settlement. However, “a PAGA claim asserted on a non-class
21 representative basis...is not considered a class action but a law enforcement action, and therefore
22 does not have to meet the requirements of [a class action].” *See Casida v. Sears Holdings Corp.*,
23 2012 WL 253217 at *3 (E.D. Cal. Jan. 26, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 WL
24 2173715 at *13 (E.D. Cal. June 2, 2011); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at
25 *4 (E.D. Cal. July 1, 2010). Based thereon, a court’s review of a PAGA settlement necessarily
26 implicates the following unique features that render the approval process distinct from approval
27 of a class action settlement under C.C.P. § 382 and Rule 3.769, Cal. Rules of Court.

28 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not

1 concerned with the amount(s) that “aggrieved employees” are to receive, but rather, must focus
2 on the total settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in
3 a PAGA suit consists of civil penalties, not individual or class damages.” *Mendez, supra*, 2010
4 WL 2650571 at *4. “Unlike class actions, these civil penalties are not meant to compensate
5 unnamed employees because the action is fundamentally a law enforcement action.” *Ochoa-*
6 *Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). Moreover,
7 while “[a PAGA] action is ... designed to protect the public and penalize the employer for past
8 illegal conduct” (*Mendez, supra*, 2010 WL 2650571 at *4), a reviewing Court must take into
9 account the fact that settlement of a PAGA claim – like any settlement – involves a “compromise”
10 that stops short of rendering findings of liability and damages. Moreover, the Court must not
11 lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for injured
12 employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for
13 the government that otherwise may not have been assessed and collected by overburdened state
14 enforcement agencies.” *See Ochoa-Hernandez, supra*, 2010 WL 1340777 at *4.

15 Second, consistent with the fact that unnamed employees have no property interest in a
16 PAGA claim,³ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
17 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez* at *5. This
18 renders the approval process of a PAGA settlement distinct from a class action settlement, as
19 there is no need for the Court to employ the “two-step approval process” required under FRCP
20 Rule 23(e) and California Rule of Court 3.769.⁴

21
22 ³ As held by the California Supreme Court, “[t]he Labor Code Private Attorneys General Act of
23 2004 does not create property rights or any other substantive rights” as “[i]t is simply a procedural
24 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. Superior Court*, 46 Cal.4th 993, 1003 (2009).

25 ⁴ Significantly, the “two-step” approval process of Rule 23(e) is required to facilitate “notice” to
26 absent class members [e.g. *In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist.
27 LEXIS103222, at 10 (“Approval under this rule entails a two-step process: (1) preliminary
28 approval of the settlement; and (2) final approval of the settlement at a fairness hearing following
notice to the class.”)], as Rule 23(e) expressly requires notice and an opportunity for absent class
members to exclude themselves or object. *See Fed. Rules Civ. Proc. R. 23(e)* (“The following
procedures apply to a proposed settlement ... (1) The court must direct notice in a reasonable
manner to all class members who would be bound by the proposal.... (4) ... the court may refuse

1 Finally, unlike a class action settlement under Rule 23(e) and Cal. Rule of Court 3.769,
2 the scope of release permitted in a PAGA settlement is limited. While “judgment in [a PAGA]
3 action is binding not only on the named employee plaintiff but also on government agencies and
4 any aggrieved employee not a party to the proceeding...the nonparty employees, because they
5 were not given notice of the action or afforded any opportunity to be heard, would not be bound
6 by the judgment as to remedies other than civil penalties.” *See Arias v. Superior Court*, 46 Cal.
7 4th 969, 986-87 (2009). Thus, with the exception of the named Plaintiffs, the scope of a release
8 in a PAGA settlement is necessarily strictly confined to the PAGA penalties alleged in the
9 complaint, and claims that were or could have been alleged pursuant to PAGA based on the
10 factual allegations in the Complaint.⁵ In the case at hand, as the only claims at issue are PAGA
11 claims, those will be the only claims extinguished as a result of this Settlement.

12 **B. This Court Should Approve the Settlement Because It Is a Fair, Adequate,**
13 **and Reasonable Compromise of Disputed Claims**

14 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v.*
15 *Superior Court* 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action
16 settlements (and representative PAGA settlements) involve a court approval process that exists
17 to prevent fraud, collusion, and unfairness to absent individuals. *See Malibu Outrigger Bd. of*
18 *Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). California law generally
19 follows the same standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See*
20 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (stating that Rule 23(e) requires
21 the trial court to determine “whether a proposed settlement is fundamentally fair, adequate, and

22 to approve a settlement unless it affords a new opportunity to request exclusion to individual
23 class members (5) Any class member may object to the proposal if it requires court approval
24 under this subdivision”). Cal. Rule of Court 3.769 contains similar rules for State class actions.

25 ⁵ This is contrasted with the much broader release permitted in a class action context, which may
26 be based on “any matter or fact” alleged in the complaint. *See In re Corrugated Container*
27 *Antitrust Litigation*, 643 F.2d 195, 221(5th Cir. 1981) (“The weight of authority establishes that
28 ... a court may release not only those claims alleged in the complaint and before the court, but
also claims which ‘could have been alleged by reason of or in connection with any matter or fact
set forth or referred to in’ the complaint.”); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir.,
2010) (“we have held that federal district courts properly released claims not alleged in the
underlying complaint where those claims depended on the same set of facts as the claims that
gave rise to the settlement.”).

reasonable”). To be approved, a settlement must be “fair, reasonable and adequate to all concerned.” *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012). Settlement is the preferred means of dispute resolution, particularly in complex representative litigation. See *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product of fraud or collusion between the negotiating parties. See, e.g., *Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s length by experienced counsel. See, e.g., *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008). Because this Settlement is fair, adequate, and reasonable, Plaintiff respectfully requests that the Court approve the Settlement.

1. Factors in Evaluating a Representative PAGA Settlement.

A settlement is presumptively fair where it is reached through arm’s-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, and counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk, supra*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited to:

[T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery 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.

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

1 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
2 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
3 under all of the circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250
4 (2001). Because settlements inherently involve compromise, even settlements providing for
5 substantially narrower relief than likely would be obtained if the suit were successfully litigated
6 can be reasonable because “the public interest may indeed be served by a voluntary settlement in
7 which each side gives ground in the interest of avoiding litigation.” *Id.* (quoting *Air Line*
8 *Stewards, etc., Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972). In
9 addition, courts review the discovery process and information received through it to aid them in
10 assessing whether the parties sufficiently developed the claims and their supporting factual bases
11 before reaching settlement. *See Kullar v. Foot Locker Retail Inc.*, 168 Cal.App.4th 116, 129-31
12 (2008). Information is sufficient where it allows the parties and the court to form “an
13 understanding of the amount that is in controversy and the realistic range of outcomes of the
14 litigation.” *See Clark v. American Residential Services LLC*, 175 Cal.App.4th 785, 801 (2009).
15 This requirement exists so that the parties can provide the court with “a meaningful and
16 substantiated explanation of the manner in which the factual and legal issues have been
17 evaluated.” *Kullar, supra*, 168 Cal.App.4th at 132.

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

19 Although Plaintiffs steadfastly maintain that their PAGA claim is meritorious, Plaintiffs
20 acknowledge that their position includes real risks and uncertainty. Haines Decl., ¶ 21.
21 Plaintiffs’ sole claim was that Defendant’s wage statements failed to list the address of the
22 employer on the wage statement itself. Specifically, the wage statements that accompanied the
23 live checks had no entity address on the face of the wage statement, and included the employer
24 address only on the outside of the perforated envelope containing the wage statement. *Id.* When
25 CitiStaff pays its employees through direct deposit, it provides a detachable wage statement.
26 Like its practice with live checks, the detachable wage statements have no entity address on the
27 face of the wage statement and included the employer address only on the outside of the
28 perforated envelope containing the wage statement. *Id.* Plaintiffs therefore faced the argument

1 that CitiStaff had not violated Lab. Code § 226 because CitiStaff's address on the outside of the
2 perforated enveloped arguably satisfied Defendant's obligations under Section 226.

3 Additionally, Plaintiffs faced a significant risk that even if the Court did award PAGA
4 penalties, the Court could drastically reduce the penalties awarded based on the discretionary
5 factors contained in Cal. Lab. Code § 2699(e)(2) ("In action by an aggrieved employee..., a court
6 may award a lesser amount than the maximum civil penalty amount specified by this part if,
7 based on the facts and circumstances of the particular case, to do otherwise would result in an
8 award that is unjust, arbitrary and oppressive, or confiscatory.") Plaintiffs believed there was an
9 acute risk of the Court significantly reducing penalties or awarding only nominal penalties given
10 the highly technical nature of the alleged violations. Haines Decl., ¶ 23.

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

12 This factor also weighs in favor of settlement approval. The parties engaged in substantial
13 informal and formal discovery, including a deposition of CitiStaff's Person Most Qualified
14 (PMQ), the provision by CitiStaff of relevant data points including the number of potentially
15 impacted employees and the number of potentially impacted pay periods, and a detailed review
16 of CitiStaff's financial records by Plaintiff's retained expert. See Haines Decl., ¶ 22. Preparation
17 for summary judgment and trial remained for the parties as well as the prospect of appeals in the
18 wake of a ruling for either party. As a result, the parties would incur considerably more attorneys'
19 fees and costs through trial. This settlement avoids those risks and the accompanying expense.
20 Thus, this factor favors settlement approval.

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

22 The Settlement provides a fair and reasonable monetary recovery for the Aggrieved
23 Employees. Plaintiffs estimated CitiStaff's realistic exposure for the PAGA penalties as follows:

24 **PAGA Penalties for Failure to Include Address: \$3,935,183**

25 Based on the data provided by CitiStaff in anticipation of mediation, there were
26 approximately 562,169 total pay periods during the Settlement and Release Period. Assuming
27 an initial violation rate of \$100 (see *Amaral v. Cintas*, *supra*, 163 Cal.App.4th at 1209), Plaintiffs
28 estimated a total potential PAGA exposure for this claim of \$56,216,900 for all Aggrieved

1 Employees. *Id.* However, Plaintiffs discounted that figure heavily, first by 65% for a risk of not
2 prevailing on the merits, and an additional 80% to account for the Court’s discretion to reduce
3 the penalties, given the highly technical nature of the alleged violations. *Id*; *see also, Fleming v.*
4 *Covidien Inc.*, 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties
5 from \$2.8 million to \$500,000); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th
6 1112, 1136 (2012) (affirming trial court’s finding that awarding maximum PAGA penalties
7 would be unjust). Although the GSA of \$275,000.00 represents a fraction of Plaintiff’s
8 reasonably forecasted total recovery of \$3,935,183, the settlement is reasonable under the
9 circumstances. “The fact that a proposed settlement may only amount to a fraction of the
10 potential recovery does not, in and of itself, mean that the proposed settlement is grossly
11 inadequate and should be disapproved.” *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234,
12 1242 (9th Cir. 1998) (internal quotations omitted). Plaintiffs emphasize that CitiStaff’s financial
13 condition substantially limited potential recovery. Based on Plaintiffs’ retained expert’s analysis
14 and opinion, Plaintiffs concluded that CitiStaff could not pay more than the GSA without
15 substantially jeopardizing its business operations. *Id.* As explained above, Plaintiffs
16 acknowledge that there was substantial uncertainty and risk as to their claim. Thus, approval is
17 appropriate since this settlement will provide tangible, monetary relief to the State of California
18 and Aggrieved Employees.

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

20 The parties engaged in substantial informal discovery required to evaluate the value of
21 the PAGA claims. Defendant provided Plaintiffs with exemplars of the live check and electronic
22 wage statements at issue, as well as the number of potential aggrieved employees and
23 approximate number of pay periods at issue. Haines Decl., ¶ 13. Only after the completion of
24 this comprehensive informal discovery process, a deposition of CitiStaff’s PMQ, and significant
25 discussions about the merits of Plaintiff’s claim and about CitiStaff’s financial condition, did the
26 parties reached the proposed settlement. *Id.*, ¶ 14. Thus, this factor supports settlement approval.

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

28 “Parties represented by competent counsel are better positioned than courts to produce a

1 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
2 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are
3 represented by competent and experienced wage and hour counsel, who pressed Plaintiffs' claims
4 forward against experienced and sophisticated defense counsel and believe this Settlement to be
5 fair and adequate for all involved. Haines Decl., ¶¶ 3-9, 23; Declaration of Jeremy F. Bollinger
6 ("Bollinger Decl."), ¶ 4; Declaration of Dennis F. Moss ("Moss Decl."), ¶ 5. This factor strongly
7 supports settlement approval. *See, Kullar, supra*, 168 Cal.App.4th at 130 ("The court
8 undoubtedly should give considerable weight to the competency and integrity of counsel and the
9 involvement of a neutral mediator in assuring itself that a settlement agreement represents an
10 arm's length transaction entered without self-dealing or other potential misconduct.").

11 **C. The Requested Awards of Attorneys' Fees, Litigation Costs, and Settlement**
12 **Administration Expenses Warrant This Court's Approval as Fair,**
13 **Adequate, and Reasonable**

14 Plaintiffs, as the prevailing party in settlement, are entitled to recover their attorneys' fees
15 and costs for their claims. *See* Cal. Labor Code § 2699(g) ("Any employee who prevails in any
16 action shall be entitled to an award of reasonable attorney's fees and costs."); Code of Civil
17 Procedure § 1021.5(a). A fee award is justified where the legal action has produced its benefits
18 by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987);
19 *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983).

20 Fee awards of roughly one-third of the settlement fund are routinely awarded in class and
21 representative PAGA actions. *See Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480 (2016) (holding
22 "the percentage of fund method survives in California class action cases"). Counsel's request for
23 fees of one-third of the GSA is well within the range of reasonableness, and is typical for common
24 fund settlements.; *see also, Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008) (holding
25 that "fee awards in class actions average around one-third of the recovery") ; *In re Pacific*
26 *Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award);
27 *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (holding that
28 class counsel's fee award should have been calculated as one-third of the gross settlement fund).

The fee award requested here is justified because Plaintiffs' counsel achieved a

1 significant monetary recovery for the Aggrieved Employees in an uncertain and risky case while
2 bearing the substantial burdens of representation on a contingency basis, and the fees requested
3 are in line with the market rate. Plaintiffs' counsel negotiated a substantial recovery for the
4 Aggrieved Employees, in the face of significant defenses and despite the fact that there were no
5 actual underlying unpaid wages alleged. Plaintiffs' counsel expended significant time and
6 resources in litigating this case, which resulted in a favorable result for Plaintiffs and the
7 Aggrieved Employees. Plaintiffs' counsel elected to bear the contingency risk of this litigation
8 for the benefit of the Aggrieved Employees, as well as for the State of California (who elected
9 not to investigate the alleged violations after receiving the PAGA notice).

10 As discussed above, this case carried substantial risk as to the merits as well as a potential
11 reduction in potential recovery. Accordingly, it is fair and reasonable to account for these risks
12 in compensating Plaintiffs' counsel. Plaintiffs' counsel should also be compensated for the risks
13 involved in undertaking this litigation, and expending considerable effort, all while working on
14 a pure contingency basis. Since undertaking representation of Plaintiffs, Plaintiffs' counsel
15 dedicated substantial resources to this litigation, including expending \$12,147.00 in costs,
16 without receiving any compensation to date. Haines Decl., ¶ 19. Plaintiffs' counsel conducted
17 extensive legal research regarding the merits of Plaintiffs' claims, their ability to recover
18 penalties under the PAGA, and CitiStaff's potential defenses. *Id.* The Parties engaged in formal
19 discovery and Plaintiffs' counsel deposed CitiStaff's Person Most Qualified. *Id.* Plaintiffs'
20 counsel also conducted significant research and analysis of data and information produced by
21 CitiStaff prior to mediation, and used this data and analysis to draft a comprehensive mediation
22 brief, with exposure analyses for the PAGA penalties. *Id.* Plaintiffs' counsel also attended a
23 full-day mediation, continued settlement discussions over the course of the next year, and
24 expended significant additional effort in preparing subsequent settlement documents, this Motion
25 for settlement approval, supporting declarations, and will oversee the settlement administration
26 process. *Id.* Given the considerable potential for adverse outcomes in this case, including
27 Plaintiffs' losing a challenge to their status as Representative Plaintiffs, losing on the merits as
28 to Plaintiffs' theories of recovery, and/or facing drastic reduction to PAGA penalties, the

1 contingent risk borne by Plaintiffs' counsel was great. *Id.* The quality of Plaintiffs' counsel's
2 work, and the efficacy and dedication with which it was performed, should be compensated.

3 Plaintiffs' counsel's previous experience in litigating similar class and representative
4 actions also supports the reasonableness of the fee request. Plaintiffs' counsel brings over two
5 decades of plaintiff and defense-side wage-and-hour class, collective and representative action
6 experience. *See* Haines Decl., ¶¶ 3-9; Bollinger Decl., ¶ 4; Moss Decl., ¶ 5. They have been
7 certified as class counsel in numerous cases alleging wage and hour claims. *Id.* Their experience
8 in similar matters was integral in evaluating the strengths and weaknesses of the case against
9 CitiStaff and the reasonableness of the Settlement. Haines Decl., ¶ 23. Practice in the narrow
10 field of wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving
11 substantive law, as well as the procedural law of class and representative action litigation.
12 Because it is reasonable to compensate Plaintiffs' counsel commensurate with their skill,
13 reputation, and experience, a fee award of one-third of the GSA is reasonable.

14 Other factors also show that the amount of fees requested in this case is reasonable under
15 the circumstances. This case involved nuanced legal issues regarding both substantive and
16 procedural law, the Labor Code sections pertaining to itemized wage statements, including but
17 not limited to Labor Code section 226 and the propriety of civil PAGA penalties without any
18 underlying unpaid wages. CitiStaff was also represented by respected counsel with extensive
19 wage-and-hour litigation experience. Accordingly, Plaintiffs' counsel submit that the requested
20 fee award is fair, reasonable and adequate and should be approved.

21 Plaintiffs' request for reimbursement of actual litigation costs of \$12,147.00 is also fair
22 and reasonable. All of Plaintiffs' litigation costs are documented and reasonably incurred. Haines
23 Decl., ¶ 19 & Exh. 2; Bollinger Decl., ¶ 5 & Exh. A; Majarian Decl., ¶ 6 & Exh. A. The request
24 for administration costs of \$65,000.00 is also fair and reasonable. CPT Group, Inc. was selected
25 because it is an experienced, well-respected settlement administrator. *See* Declaration of Julie
26 Green, ¶¶ 4-7 & Exhs. A-B.

1 **D. This Court Should Approve Plaintiffs' Requested Enhancement Payments**
2 **Because They Are Fair, Adequate, and Reasonable in View of Plaintiffs'**
3 **Efforts and the Risks They Assumed on Behalf of Aggrieved Employees.**

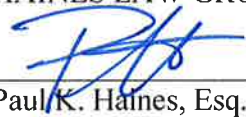
4 Courts routinely approve incentive awards to compensate named plaintiffs for the
5 services they provide and the risks they incur during class and representative litigation. *See, e.g.,*
6 *Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments"
7 to named plaintiffs for their efforts in bringing the case); *see also Van Vranken v. Atlantic*
8 *Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000 incentive payment). Here,
9 pursuant to the Settlement, Plaintiffs seek an incentive award of \$5,000 each, for a total of
10 \$15,000. This request is reasonable given Plaintiffs' efforts in this case and the risks that they
11 undertook on behalf of the Aggrieved Employees. Plaintiffs provided substantial factual
12 information and documents to Plaintiffs' counsel, assisted in identifying potential witnesses, and
13 attended numerous in-person and telephonic meetings with Plaintiffs' counsel. *See* Declaration
14 of Luis Silva, ¶ 5; Declaration of Teresa Nieto, ¶¶ 15-18; Declaration of Jorge Gonzalez, ¶¶ 15-
15 18. Plaintiffs have also agreed to a broader release of all known and unknown claims including
16 claims which are not wage and hour related, subject to a waiver of Civil Code § 1542. *See*
17 Settlement, §§ II.16, II.22. Accordingly, the incentive payment to Plaintiffs are appropriate and
18 justified as part of the Settlement.

19 **V. CONCLUSION.**

20 For the reasons stated herein, this Court should grant Plaintiffs' motion in its entirety and
21 adopt the [Proposed] Order Granting Settlement Approval submitted concurrently herewith.

22 Dated: June 11, 2018

Respectfully submitted,
HAINES LAW GROUP, APC

23 By: 

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