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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA – NORTH COUNTY

YANCEY HEREDIA, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

STOWASSER BUICK-GMC, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No. 23CV02511

*[Assigned for all purposes to the Hon. Jed
Beebe, Dept. 4]*

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

Date: November 21, 2024
Time: 8:30 a.m.
Dept.: 4

Action Filed: June 8, 2023
Trial Date: None Set

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

PLEASE TAKE NOTICE that on November 21, 2024, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 4 of the above-entitled Court, located at 312-C East Cook Street, Santa Maria, California 93454, Plaintiff Yancey Heredia (“Plaintiff”), individually and on behalf of the State of California and other Aggrieved Employees, will, and hereby does, move this Court for entry of an Order as follows:

1. Granting approval, pursuant to California Labor Code § 2699(l), of the proposed settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698, *et seq.*) as set forth in the Parties’ Settlement Agreement, a true and correct copy of which is attached to the Declaration of Neil M. Larsen filed concurrently herewith;
2. Appointing Phoenix Settlement Administrators (“Phoenix”) as the Settlement Administrator;
3. Approving the proposed Explanatory Letter (attached as Exhibit A to the Settlement Agreement), 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;
5. Approving an award of attorneys’ fees to Plaintiff’s counsel of \$15,831.75 and an award of litigation costs to Plaintiffs’ counsel of \$7,709.16;
6. Approving \$1,950.00 in administration costs to Phoenix; and
7. Approving payment of \$16,506.82 to the Labor and Workforce Development Agency for its share of PAGA civil penalties pursuant to the Settlement Agreement.

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1 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
2 the declaration of Neil M. Larsen and all exhibits attached thereto; the declaration of Yancey
3 Heredia; the declaration of Jodey Lawrence of Phoenix Settlement Administrators; the Settlement
4 Agreement; all other pleadings and papers on file in this action; and on any further oral or
5 documentary evidence or argument presented at the time of hearing.

6
7 Dated: October 15, 2024

ABRAMSON LABOR GROUP

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

2 **I. INTRODUCTION**

3 Plaintiff Yancey Heredia (“Plaintiff”), an “Aggrieved Employee” under the Private
4 Attorneys General Act of 2004 (“PAGA”), respectfully moves this Court for an Order granting
5 approval of the Settlement Agreement (“Settlement”) with Defendant Stowasser Buick-GMC,
6 Inc. (“Defendant” or “Buick”).¹ This PAGA action seeks civil penalties predicated on Buick’s
7 alleged failure to reimburse cellular phone business expenses incurred by Aggrieved Employees.
8 The proposed Settlement, under which Buick has agreed to pay a non-reversionary Gross
9 Settlement Amount of \$47,500.00, will resolve Plaintiff’s representative claim filed on behalf of
10 the State of California and the following “Aggrieved Employees:”

11 All employees who are or were employed by Defendant Stowasser Buick-
12 GMC, Inc. (“Buick”) in California and did not receive a cell phone
13 reimbursement covering any pay period from March 28, 2022 to March 31,
14 2024 (“PAGA Period”).

15 Notably, the relief provided for under the Settlement, and the claims released thereunder,
16 are *solely* for the payment of *civil penalties* under the PAGA, and not for any underlying Labor
17 Code violations. The release encompasses PAGA civil penalties based upon the alleged violations
18 mentioned above, and only for such claims arising during the PAGA Period.

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 and PAGA litigation with the assistance of an experienced, neutral
24 mediator; (3) was negotiated subsequent to undertaking sufficient investigation to evaluate the
25 relative strength and value of Plaintiff’s PAGA claim; and (4) reflects a reasoned compromise
26 based directly on the relative strength and value of the PAGA claim, as well as the risks, expenses,
27 complexity and likely duration of further litigation.

28 ¹ The proposed Settlement Agreement is attached as Exhibit 1 to the Declaration of Neil M. Larsen filed herewith. The Explanatory Letter to accompany Aggrieved Employees’ Individual PAGA Payments is attached as Exhibit A to the Settlement Agreement.

As noted, the Settlement provides for a Gross Settlement Amount (“GSA”) of \$47,500.00. See Settlement, §§ I.6; III.2. After deducting amounts for requested attorneys’ fees (one-third of the GSA, \$15,831.75), litigation costs (\$7,709.16), and administration costs (\$1,950.00), the Settlement provides for distribution of a Net Settlement Amount (“NSA”) of approximately \$22,009.09 to Aggrieved Employees and the California Labor & Workforce Development Agency (“LWDA”). See Settlement, §§ I.9; III.4-5.

The Net Settlement Amount shall be distributed 75% (approximately \$16,506.82) to the LWDA, and 25% (approximately \$5,502.27) to Aggrieved Employees, pursuant to the requirements of the PAGA as codified in Lab. Code § 2699(i). See Settlement, § III.5. There are approximately 34 Aggrieved Employees. Thus, the average Individual PAGA Payment to Aggrieved Employees is estimated at \$161.83.

This Settlement represents a positive result for the State of California and Aggrieved Employees. Indeed, Aggrieved Employees stand to recover a significant amount of penalties for the alleged unreimbursed cellular phone expenses they incurred during the PAGA Period (March 28, 2022 to March 31, 2024), in exchange for a release of only civil penalties. Moreover, the settlement furthers the PAGA’s purpose to “remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). Further, the amounts requested for attorneys’ fees, costs, and settlement administration costs are fair, adequate, and reasonable.

II. SUMMARY OF THE LITIGATION

A. Brief Factual Background and Summary of Claims

Buick is a car dealership and service center located in Santa Maria, California. Declaration of Neil M. Larsen (“Larsen Decl.”), ¶ 8. Plaintiff worked for Buick as a non-exempt employee from approximately July 2020 until approximately November 2022. See Declaration of Yancey Heredia (“Heredia Decl.”), ¶ 2.

Plaintiff’s PAGA claim is predicated on Plaintiff’s allegations that Buick failed to reimburse Plaintiff and other Aggrieved Employees for cellular phone expenses they incurred for work related purposes.

1
2 **B. Procedural History**

3 On March 28, 2023, Plaintiff provided written notice to the LWDA and Buick of his intent
4 to pursue civil penalties under PAGA for alleged violations of the California Labor Code,
5 including Labor Code sections 2802 and 2804, and California Industrial Commission Wage Order
6 4. See Settlement, §§ I.13, II.2-3; Larsen Decl., ¶ 9, Exhibit 2.

7 On June 8, 2023, after the prescribed 65-day waiting period under Labor Code §
8 2699.3(a)(2)(A), Plaintiff filed his Representative Complaint seeking civil penalties under PAGA
9 for Buick’s alleged violations of Labor Code sections 2802 and 2804. Larsen Decl., ¶ 10.

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

11 In connection with mediation, Buick informally produced relevant information, data
12 points, and policy documents pertaining to Plaintiff’s claim for unreimbursed cellular phone
13 expenses. Larsen Decl., ¶ 11.

14 On May 12, 2024, the Parties participated in a day-long mediation with Hon. Steven R.
15 Denton, (Ret.). *Id.*, ¶ 12. During mediation, the Parties vigorously debated Plaintiff’s ability to
16 proceed on a representative basis, the legal basis for Plaintiff’s claims and Buick’s defenses, the
17 potential amount of penalties that could be recovered, and the Parties’ data analyses and
18 conclusions based thereon. *Id.* With Judge Denton’s assistance, the Parties agreed to fully and
19 finally Plaintiff’s PAGA claim

20 **III. SUMMARY OF THE SETTLEMENT**

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

22 Aggrieved Employees are defined as “all employees who are or were employed by Buick
23 in California and did not receive a cell phone reimbursement covering any pay period during the
24 PAGA Period.” See Settlement, § I.11. The PAGA Period is defined as March 28, 2022 to March
25 31, 2024. *Id.*, § I.12.

26 **B. Monetary Terms**

27 As noted, the Settlement provides for Buick’s payment of a non-reversionary GSA of
28 \$47,500.00. Settlement, §§ I.6; III.2. After deducting amounts for requested attorneys’ fees,

litigation costs, and settlement administration costs, the Settlement provides for the remaining Net Settlement Amount (“NSA”) to be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Lab. Code § 2699(i). *Id.* at §§ I.9; III.4. The 25% portion to Aggrieved Employees shall be distributed based on each Aggrieved Employee’s proportional number of pay periods worked for Buick in California during the PAGA Period. *Id.* at § III.5.

1. Requested Attorneys’ Fees and Costs, Administration Costs, and Plaintiff’s Enhancement Payment

Plaintiff’s Counsel requests one-third of the GSA (i.e., \$15,831.75) in attorneys’ fees, and up to \$7,709.16 in litigation costs. Settlement, § III.4(a). As discussed in detail below, a fee award of one-third of the GSA is fair, adequate, and reasonable as a percentage of the fund and is in line with fee awards in other PAGA settlements.

The Parties have agreed to engage Phoenix Settlement Administrators (“Phoenix”) as the third-party settlement administrator. *See* Settlement, §§ I.17; IV.1. Phoenix will update Aggrieved Employee addresses using the National Change of Address database, calculate and distribute Individual PAGA Payments, mail payments to all Aggrieved Employees together with the Explanatory Letter, and perform other duties that are integral to the effectuation of the Settlement. *Id.*, at §§ IV.1-6. Plaintiff requests that the Court approve \$1,950.00 in administration costs to Phoenix, which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.* at §§ I.9; III.4; *see also* Declaration of Jodey Lawrence (“Lawrence Decl.”), ¶ 15, Exhibit B.

2. Payment to LWDA and Aggrieved Employees

As stated, the NSA will be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Labor Code § 2699(i). Settlement, § III.5. Based on the above requested distributions, the NSA is estimated to be \$22,009.09, with \$16,506.82 paid to the LWDA and \$5,502.27 distributed to Aggrieved Employees. *Id.* at §§ I.9; III.4-5.

3. Funding of the Settlement

Buick will fund the settlement within fifteen (15) court days of the Effective Date, *See* Settlement. §§ I.5; III.2. Within twenty-one (21) calendar days after the GSA has been fully funded, and after receiving approval from counsel of the payment calculations, Phoenix will mail the Explanatory Letter and Individual PAGA Payments to Aggrieved Employees via First-Class

1 U.S. Mail. Settlement, § IV.3.

2 Funds represented by undeliverable checks, or checks remaining uncashed after 180 days,
3 shall escheat to the California State Controller’s Office for deposit in the Unclaimed Property
4 Fund, in the name of the Aggrieved Employee. *Id.*, § IV.4.

5 **IV. LEGAL ARGUMENT**

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

7 The settlement of a PAGA claim requires court approval pursuant to the PAGA statute,
8 which states that the “court shall review and approve any settlement of any civil action filed
9 pursuant to this part.” Labor Code § 2699(l). Of course, “[s]ettlement is a compromise, which
10 balances the possible recovery against the risks inherent in litigating further.” *See In re TD*
11 *Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13, 2011). “[T]he
12 very essence of a settlement is...‘a yielding of absolutes and an abandoning of highest hopes,’”
13 as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
14 litigation that induce consensual settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d
15 615, 624 (9th Cir. 1982). As such, “the settlement or fairness hearing is not to be turned into a
16 trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure
17 of what might have been achieved by the negotiators.” *Id.*

18 Although the PAGA statute does not set forth the criteria by which a PAGA settlement is
19 to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a
20 class action settlement. However, “a PAGA claim asserted on a non-class representative basis...is
21 not considered a class action but a law enforcement action, and therefore does not have to meet
22 the requirements of [a class action].” *Casida v. Sears Holdings Corp.*, 2012 WL 253217 at *3
23 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at *4 (E.D. Cal. Jul.
24 1, 2010) (“PAGA claims are law enforcement actions, not class actions”). A court’s review of a
25 PAGA settlement implicates the following unique features that render the approval process
26 distinct from approval of a class action settlement.

27 First, in evaluating the adequacy of the settlement, the court is not concerned with the
28 amount(s) received by “aggrieved employees,” but rather, must focus on the total settlement

1 amount in achieving PAGA’s objective. “The remedy sought in a PAGA suit consists of civil
2 penalties, not individual or class damages.” *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike
3 class actions, these civil penalties are not meant to compensate unnamed employees because the
4 action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*,
5 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court recently confirmed,
6 “PAGA claims are ‘representative’ actions in the sense that they are brought on the state’s behalf.
7 The employee...‘represents the same legal right and interest as’ those agencies — ‘namely,
8 recovery of civil penalties that otherwise would have been assessed and collected by the
9 [LWDA].’” *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian v. CLS Transp. Los*
10 *Angeles, LLC*, 59 Cal.4th 348, 380 (2014)).

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

18 Second, consistent with the fact that unnamed employees have no property interest in a
19 PAGA claim,² “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
20 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
21 1340777 at *5. This renders the approval process of a PAGA settlement distinct from a class
22 action settlement, as the Court need not employ the “two-step approval process” required for class
23 action settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

24 Finally, unlike a class action settlement under Rule 23(e) and Rule 3.769, the scope of
25 release in a PAGA settlement is limited to *civil penalties*. While “judgment in [a PAGA] action
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27 “The [PAGA] does not create property rights or any other substantive rights” as “[i]t is simply a
28 procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code
violations—that otherwise would be sought by state labor law enforcement agencies.” See
Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct., 46 Cal. 4th 993, 1003 (2009).

1 is binding not only on the named employee plaintiff but also on government agencies and any
2 aggrieved employee not a party to the proceeding...the nonparty employees, because they were
3 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
4 judgment as to remedies other than civil penalties.” *Arias v. Sup. Ct.*, 46 Cal. 4th 969, 986-87
5 (2009). Thus, the scope of release in a PAGA settlement is strictly confined to PAGA penalties.

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

7 In deciding whether to approve a proposed settlement, a trial court has broad powers to
8 determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup.*
9 *Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to
10 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*,
11 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court
12 to consider include, but are not limited to:

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

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

23 Because settlements inherently involve compromise, even settlements providing for
24 substantially narrower relief than likely would be obtained if the suit were successfully litigated
25 can be reasonable because “the public interest may indeed be served by a voluntary settlement in
26 which each side gives ground in the interest of avoiding litigation.” *Wershba v. Apple Computer,*
27 *Inc.*, 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines,*
28 *Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). In addition, courts review the discovery process and
information received through it to aid them in assessing whether the parties sufficiently developed
the claims and their supporting factual bases before reaching settlement. *Kullar v. Foot Locker*
Retail, Inc., 168 Cal.App.4th 116, 129-31 (2008). Information is sufficient where it allows the

1 parties and the court to form “an understanding of the amount that is in controversy and the
2 realistic range of outcomes of the litigation.” *Clark v. Am. Residential Serv. LLC*, 175 Cal.App.4th
3 785, 801 (2009). This requirement exists so that the parties can provide the court with “a
4 meaningful and substantiated explanation of the manner in which the factual and legal issues have
5 been evaluated.” *Kullar, supra*, 168 Cal.App.4th at 132.

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

7 Although he steadfastly maintains his claims are meritorious, Plaintiff acknowledges his
8 position included real risks and uncertainty. Larsen Decl., ¶ 16. Plaintiff alleges that Buick did
9 not reimburse the Aggrieved Employees for the required use of their personal cellular phones for
10 work related purposes. *Id.* Specifically, Plaintiff alleges that he and other employees were
11 required to use their personal cellular phones to record their time worked on an app called
12 NetChex, to communicate with their supervisors and managers, and to access and answer daily
13 COVID-19 symptom questionnaires on a website called Hotlink HR. *Id.* Buick contends that it
14 has paid reimbursements during approximately 340 of the pay periods at issue during the PAGA
15 Period (leaving only approximately 1,500 pay periods without cellular phone reimbursements),
16 and that it supplied computers at worksites for employees to perform clock ins and outs, as well
17 as the COVID related questionnaires, and thus there was no requirement for the Aggrieved
18 Employees to use their personal cell phones. *Id.*

19 Buick further maintains that even if the Court awarded PAGA penalties for any of the
20 alleged violations, the Court would substantially reduce the penalties based on the discretionary
21 factors in Labor Code § 2699(e)(2) (authorizing reduction in PAGA penalties “if, based on the
22 facts and circumstances of the particular case, to do otherwise would result in an award that is
23 unjust, arbitrary and oppressive, or confiscatory.”). Larsen Decl., ¶ 17. Indeed, Buick argues,
24 many courts have reduced PAGA penalties drastically where, as here, the employer presented
25 good-faith defenses and attempted to comply with the law. Larsen Decl., ¶ 17; *see, e.g., Thurman*
26 *v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of
27 PAGA penalties because “defendants took their obligations...seriously and attempted to comply
28 with the law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4

(C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%, in part because employer was “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law). Larsen Decl., ¶ 17.

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

Although the Parties had engaged in significant informal discovery, the Parties still had much written and deposition discovery to conduct if the case did not settle. Substantive motion work and trial preparation also remained for the Parties, as well as potential appeals. As a result, the Parties would likely incur considerably more attorneys’ fees and costs through trial and possible appeal. The Settlement avoids those risks and the accompanying expense.

c. Amount Offered in Settlement Given Realistic Value of Claims

This proposed Settlement provides a fair and reasonable monetary recovery for the Aggrieved Employees in the face of hotly disputed claims. Plaintiff estimated Buick’s realistic exposure for PAGA civil penalties as follows:

Based on the above-described violations, Plaintiff asserts that he would be able to seek PAGA penalties for each Aggrieved Employee for each pay period in the PAGA Period. Larsen Decl., ¶ 18. Based on data provided by Buick, there were approximately 1,500 pay periods during the PAGA limitations period wherein Aggrieved Employees were not reimbursed for their work-related cellular phone usage, and approximately 34 Aggrieved Employees. *Id.*, ¶ 17; *see also* Settlement, § III.3. Assuming an initial violation rate of \$100 per pay period under Labor Code § 2699(f) (*see Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (holding “initial” violation rate applies to PAGA penalties until employer is notified it violated Labor Code)), Plaintiff estimated a total potential PAGA exposure of \$150,000.00. Larsen Decl., ¶ 19. However, because the Court maintains discretion to reduce these penalties, and in light of Buick’s arguments and defences described above, Plaintiff discounted that figure by 35% for a risk of losing on the merits, and an additional 45% for risk of the Court reducing penalties, to arrive at a realistic

1 exposure of \$53,625. Larsen Decl., ¶ 19; *see also, e.g., Thurman*, 203 Cal.App.4th at 1136
2 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047 at *5 (reducing PAGA
3 penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just
4 \$5 per pay period).

5 The proposed \$47,500.00 GSA therefore represents approximately 88.5% of Plaintiff's
6 reasonably forecasted total recovery, while avoiding the risks of proceeding through trial. Larsen
7 Decl., ¶ 19. "The fact that a proposed settlement may only amount to a fraction of the potential
8 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
9 should be disapproved." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).
10 Plaintiff acknowledges there was substantial uncertainty and risk as to his claims. Approval of
11 the Settlement is appropriate, as the Settlement will provide tangible monetary relief to Aggrieved
12 Employees and the State of California.

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

14 Only after the completion of informal discovery and following significant debate and
15 discussion with a third-party mediator regarding the merits and defenses of this case, did the
16 Parties reach the proposed Settlement. Thus, this factor supports settlement approval.

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

18 "Parties represented by competent counsel are better positioned than courts to produce a
19 settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter. Sec.*
20 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel, who
21 believe this Settlement to be fair and adequate for all involved. Larsen Decl., ¶¶ 2-7; 20. This
22 factor strongly supports settlement approval. *Kullar, supra*, 168 Cal.App.4th at 130 ("The court
23 undoubtedly should give considerable weight to the competency and integrity of counsel and the
24 involvement of a neutral mediator in assuring itself that a settlement agreement represents an
25 arm's length transaction entered without self-dealing or other potential misconduct.").

26 **B. The Settlement Furthers the Purpose of PAGA**

27 The Settlement provides a fair, adequate, and reasonable recovery for the LWDA and the
28 aggrieved employees "in view of PAGA's purposes to remediate present labor law violations,

1 deter future ones, and to maximize enforcement of state labor laws.” *Moniz, supra*, 72
2 Cal.App.5th at 89 (“In review and approval of a proposed settlement under section 2699, subd.
3 (I)(2), a trial court [] must scrutinize whether, in resolving the action, a PAGA plaintiff has
4 adequately represented the state’s interests, and hence the public interest.”). Courts, in assessing
5 the fairness, adequacy, and reasonableness of a PAGA settlement may compare the potential
6 penalty amount with the actual recovery under the settlement. *See Id.*, at 87. Here, the Settlement
7 represents the state’s interests by serving PAGA’s remedial, deterrence, and enforcement
8 purposes considering the total potential realistic exposure involved here. Specifically, this lawsuit
9 has resulted in Buick now reimbursing its employees for the work related use of their cellular
10 phones, will likely deter future violations of the Labor Code, and recovers approximately 88.5%
11 of Plaintiff’s reasonably forecasted total recovery.

12 **C. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of**
13 **the Settlement Fund, as Cross-Checked Against Counsel’s Lodestar**

14 Plaintiff is entitled to attorneys’ fees in this PAGA action under Labor Code § 2699(g)(1),
15 which provides that “[a]ny employee who prevails in any [PAGA] action shall be entitled to an
16 award of reasonable attorneys’ fees and costs.” *See also Gouskos v. Aptos Village Garage, Inc.*,
17 94 Cal.App.4th 754, 765 (2001) (holding that attorneys’ fees to prevailing party are mandatory
18 when the statute uses the word “shall”); *see also Graciano v. Robinson Ford Sales*, 144
19 Cal.App.4th 140, 153 (2006) (“[P]laintiffs may be considered ‘prevailing parties’ for attorney’s
20 fee purposes if they succeed on any significant issue in the litigation that achieves some of the
21 benefit the parties sought in bringing suit.”).

22 A fee award is justified where the legal action has produced benefits for its proponents,
23 including through a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91
24 (1987); *Westside Comty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983);
25 *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number of persons are entitled in common to
26 a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation
27 or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”);
28 *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained
for the benefit of all parties, the trial court acts within its equitable power to prevent the other

parties’ unjust enrichment); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (“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.’”).

Fee awards of one-third of the settlement fund are routinely awarded in California courts in class and representative PAGA actions. The California Supreme Court recently confirmed its approval of the use of the “percentage of fund” method. *See Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (“the percentage of fund method survives in California class action cases...”)

Specifically, the *Laffitte* Court held:

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

Id., at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015) (approving attorneys’ fees of one-third of settlement fund in PAGA settlement); *Clavel v. Lupe’s Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25, 2016) (same). This is also consistent with Plaintiff’s counsel’s experience in similar wage-and-hour class and PAGA matters. Larsen Decl., ¶ 20.

Here, Plaintiff’s fee request of one-third of the GSA (estimated to be \$15,831.75) is fair and reasonable based on the percentage of the recovery method, as confirmed by a lodestar cross-check.

1 In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the
2 reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court
3 calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring the
4 lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. Under
5 the lodestar method, the court multiplies the number of hours reasonably expended by each
6 attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure
7 by a “multiplier” to account for a range of factors, such as the contingent nature of the case and
8 the degree of success achieved. See *Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977); *Ketchum v.*
9 *Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834
10 (2001) (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial
11 discretion to increase or decrease a lodestar calculation”).

12 Under California law, lodestar multipliers can range from 2 to 4 or even higher. See, e.g.,
13 *Chavez*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L.*
14 *County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving
15 multiplier of approximately 12.8). In class and representative actions, where the value of the
16 benefit conferred “can be monetized with a reasonable degree of certainty,” a court may “adjust
17 the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
18 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
19 litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009).

20 In this case, Plaintiff’s counsel has a lodestar of approximately \$36,552.50 without the
21 use of any multiplier, compared to the \$15,831.75 fee request. Larsen Decl., ¶ 22. A general
22 summary showing the number of hours of work performed by each attorney and paralegals is set
23 forth below. The billing rates used are reasonable in view of the evidence submitted herewith.
24 See Larsen Decl., ¶¶ 22-23 & Exhibit 4 (*Laffey Matrix*).

Attorneys and Staff	Rate	Hours	Pre-Multiplier Lodestar
Tuvia Korobkin (15th Year Attorney)	\$675	23.1	\$15,592.50
Neil M. Larsen (13th Year Attorney)	\$650	18.5	\$12,025.00
Eli J. Drummond (2nd Year Attorney)	\$375	8.2	\$3,075.00

Jennifer S. Rivera (1st Year Attorney)	\$350	7.6	\$2,660.00
Paralegals	\$200	16.0	\$3,200.00
Total Lodestar			\$36,552.50

The requested fee award is also justified because Plaintiff's counsel achieved a significant monetary recovery in an uncertain and risky case, while bearing the substantial burden of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees). Here, counsel expended significant time and resources in litigating this case, which resulted in a favorable result for Plaintiff, the State of California, and Aggrieved Employees in the face of significant defenses. Counsel also bore the contingency risk of this litigation for the benefit of the Aggrieved Employees, as well as the State of California (which elected not to take the case after receiving Plaintiff's PAGA notice).

Critically, Plaintiff's recovery in this case significantly exceeds other PAGA awards approved by California courts. *See, e.g., Aguirre v. DSW, Inc.*, 2012 WL 11875296, *3 (C.D. Cal. Nov. 29, 2012) (approving \$10,000 PAGA payment); *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, *7 (E.D. Cal. Oct. 31, 2012) (approving \$10,000 PAGA payment, finding it "comports with settlement approval of PAGA awards in other cases. [Citations.]"); *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, *8 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Franco v. Ruiz Food Prods.*, 2012 WL 5941801, *14 (E.D. Cal. Nov. 27, 2012) (\$10,000 PAGA payment); *Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645, *1 (N.D. Cal. Feb. 16, 2011) (\$10,000 PAGA payment). That counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges, confirms the strength of the results achieved.

Counsel conducted extensive research regarding the merits of Plaintiff's claims, his ability to recover PAGA civil penalties, and Buick's potential defenses. Larsen Decl., ¶ 21. Counsel also analyzed the data and information produced by Buick to draft a comprehensive mediation brief and exposure analysis. *Id.* Counsel attended a full-day mediation, and expended significant effort in preparing subsequent settlement documents, this Motion and supporting documents, and will

1 oversee the settlement administration process. *Id.* Given the considerable potential for adverse
2 outcomes in this case, the contingent risk borne by Plaintiff's counsel was great. *Id.*, ¶ 21. The
3 quality of Plaintiff's counsel's work, and the efficacy and dedication with which it was performed,
4 should be compensated, justifying the \$7,709.16 request for covering costs incurred by Plaintiff's
5 counsel.

6 Plaintiff's counsel has significant experience wage-and-hour class and representative
7 action experience and have been certified as class counsel in numerous wage and hour class
8 actions. Larsen Decl., ¶¶ 2-7, 20. Because it is reasonable to compensate counsel commensurate
9 with their skill, reputation, and experience, a fee award of one-third of the GSA is reasonable.
10 Other factors show the requested fee is reasonable. This case involved nuanced legal issues and
11 Buick was also represented by experienced wage-and-hour litigation counsel. *Id.*, ¶ 21. Thus,
12 Plaintiff submits the requested fee award is fair, reasonable and adequate and should be approved.

13 **D. The Requested Litigation Costs and Settlement Administration Costs Are**
14 **Fair, Reasonable, and Adequate**

15 Plaintiff's request for reimbursement of litigation costs of \$15,831.75, and for
16 reimbursement costs of litigation costs in the amount of \$7,709.16, is also fair and reasonable.
17 All of Plaintiff's litigation costs are documented and reasonably incurred. *See* Larsen Decl., ¶ 24
18 & Exhibit 5. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by
19 courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover
20 "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v.*
21 *Sayre*, 2011 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings, motions
22 and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable);
23 *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d
24 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response*
25 *Securities Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant
26 and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery
costs are reimbursable).

27 The request for administration costs of \$1,950.00 is also fair and reasonable. Phoenix was
28 selected because it is an experienced settlement administrator, and because it returned a

1 competitive bid. *See* Settlement, § I.17, IV.1; *see also* Lawrence Decl. & Exhibits A-B.
2 Moreover, Phoenix will perform several important functions that are integral to the
3 implementation of the Settlement. Its modest requested fee is therefore reasonable. *Id.*

4 **V. CONCLUSION**

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

8
9 Dated: October 15, 2024

Respectfully submitted,
ABRAMSON LABOR GROUP

10 By: Neil Larsen
11 Neil M. Larsen
12 *Attorneys for Plaintiff and Aggrieved*
13 *Employees*
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