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

DAVID VELEZ, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

DOWN DOG LODGE, LLC, a limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 23STCV17285

REPRESENTATIVE ACTION

*[Assigned for all purposes to Hon. David S.
Cunningham III, Dept. 11]*

**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
PAYMENTS**

Date: February 3, 2025
Time: 9:00 a.m.
Dept.: 11

Complaint Filed: July 24, 2023
Trial date: None Set

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

2 PLEASE TAKE NOTICE that on February 3, 2025 at 9:00 a.m., or as soon thereafter as
3 the matter may be heard in Department 11 of the above-entitled Court, located at 312 N. Spring
4 Street, Los Angeles, California, 90012, Plaintiff David Velez (“Plaintiff”), individually and on
5 behalf of the State of California and other Aggrieved Employees, will, and hereby does, move
6 this Court for entry of an Order as follows:

- 7 1. Granting approval, pursuant to California Labor Code § 2699(l), of the proposed
8 settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal.
9 Labor Code § 2698, *et seq.*) and as set forth in the Parties’ Settlement Agreement, a true
10 and correct copy of which is attached to the Declaration of Neil M. Larsen filed
11 concurrently herewith;
- 12 2. Appointing Phoenix Settlement Administrators (“Phoenix”) as the Settlement
13 Administrator;
- 14 3. Approving the proposed Explanatory Letter (attached as Exhibit A to the Settlement
15 Agreement), and directing that it be distributed to Aggrieved Employees pursuant to the
16 terms of the Settlement Agreement;
- 17 4. Directing the distribution of the Goss Settlement Amount pursuant to the terms of the
18 Settlement Agreement;
- 19 5. Approving an award of attorneys’ fees to Plaintiff’s counsel of \$21,666.45 and an award
20 of litigation costs to Plaintiff’s counsel of \$8,581.65;
- 21 6. Approving a service payment of \$5,000.00 to Plaintiff;
- 22 7. Approving \$2,450.00 in settlement administration costs to Phoenix; and
- 23 8. Approving payment of \$20,476.43 to the Labor and Workforce Development Agency for
24 its share of PAGA Civil Penalties pursuant to the Settlement Agreement.

25 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
26 the declaration of Neil M. Larsen and all exhibits attached thereto; the declaration of Jodey
27 Lawrence of Phoenix and all exhibits attached thereto; the declaration of Plaintiff David Velez;
28 the Settlement Agreement; all other pleadings and papers on file in this action; and on any further

1 oral or documentary evidence or argument presented at the time of hearing.

2 Respectfully submitted,

3 Dated: January 10, 2025

ABRAMSON LABOR GROUP

4
5 By: Neil Larsen

6 Neil M. Larsen

7 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff David Velez (“Plaintiff”), an “Aggrieved Employees” 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 Down Dog Lodge, LLC
6 (“Down Dog” or “Defendant”). This PAGA representative settlement resolves Plaintiff’s claim
7 for civil penalties predicated on Defendant’s alleged failure to pay all earned overtime wages,
8 failure to pay all wages at the correct rate(s) of pay, failure to provide meal periods, failure to
9 authorize and permit rest periods, failure to reimburse business-related expenses, failure to pay
10 sick pay, failure to provide accurate wage statements, and failure to pay all wages during
11 employment and/or owed at the separation of employment, and any other claims under PAGA
12 that could have been alleged on the facts, claims, causes of action or legal theories asserted in the
13 operative complaint and Plaintiff’s July 25, 2023 PAGA notification letter, including but not
14 limited to all applicable IWC Wage Orders, California Regulations, and California Labor Code
15 sections 201, 202, 203, 204 , 226, 226(a), 226.3, 226.7, 246, 510, 512, 516, 558, 1194, 1198,
16 2802, 2804, and 2698, *et seq.*, from July 25, 2022 through the date of settlement approval (the
17 “PAGA Period”).

18 The proposed Settlement, under which Defendant has agreed to pay a non-reversionary
19 Gross Settlement Amount (“GSA”) of \$65,000.00, will resolve Plaintiff’s representative claim
20 for civil penalties filed on behalf of the State of California and all “Aggrieved Employees,” which
21 consists of approximately 64 current and former non-exempt employees who worked for
22 Defendant in California during the PAGA Period.

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

27 In deciding whether to grant approval of a PAGA settlement, the primary issue is whether
28 the settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement

embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the product of arm's-length negotiations; (2) was negotiated by attorneys experienced in wage-and-hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was negotiated after undertaking sufficient informal discovery and investigation to evaluate the relative strength and value of Plaintiff's PAGA claim and Defendant's defenses thereto; and (4) reflects a reasoned compromise based on the relative strength and value of the PAGA claim, as well as the risks, expenses, complexity, and likely duration of further litigation.

As noted, the Settlement provides for a PAGA GSA of \$65,000.00. *See* Settlement §§ I.7, III.2. After deducting amounts for requested attorneys' fees (\$21,666.45), litigation costs (\$8,581.65), Plaintiff's service payment (\$5,000.00), and settlement administration costs (\$2,450.00), the Settlement provides for distribution of a Net Settlement Amount ("NSA") of approximately \$27,301.90 to be paid to Aggrieved Employees and the California Labor and Workforce Development Agency ("LWDA"). *See* Settlement, §§ I.10, III.4, III.5; Declaration of Neil M. Larsen ("Larsen Decl."), ¶¶ 17-18 & Exhibit 5; Declaration of Jodey Lawrence ("Lawrence Decl."), ¶ 16 & Exhibit A; Declaration of David Velez ("Velez Decl."), ¶ 6.

The NSA shall be distributed 75% (approximately \$20,476.43) to the LWDA, and 25% (approximately \$6,825.47) to Aggrieved Employees, on a *pro rata* basis based on their respective number of pay periods worked for Defendant during the PAGA Period, pursuant to the requirements of the PAGA as codified in Lab. Code § 2699(i). *See* Settlement, § III.5. There are approximately 64 Aggrieved Employees, resulting in average payments of approximately \$106.64 to the Aggrieved Employees. *See* Settlement, § III.3; *see also* Larsen Decl., ¶ 18.

This Settlement represents a reasonable recovery for the State of California and Aggrieved Employees, who will receive significant monetary benefit in exchange for release of only civil penalties. In addition, the monetary recovery furthers the PAGA's purposes 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 and costs, Plaintiff's service payment, and settlement administration costs are fair, adequate, and reasonable.

II. SUMMARY OF THE LITIGATION

A. Brief Factual Background and Summary of Claims

Defendant is a dog daycare facility that offers boarding and grooming services for dogs. Larsen Decl., ¶ 8. Plaintiff Velez was employed by Defendant as a non-exempt employee from approximately August 2019 until approximately November 2022. *See* Velez Decl., ¶ 2.

In this lawsuit, Plaintiff contends that Defendant failed pay all earned overtime wages, failed to provide timely meal periods, failed to authorize and permit all required rest periods, failed to reimburse business-related expenses, failed to pay sick pay, failed to provide accurate wage statements, and failed to pay all wages owed upon separation of employment.

B. Procedural History

On July 24, 2023, Plaintiff Velez filed a Class Action Complaint alleging claims for: (1) failure to pay overtime wages; (2) meal period violations; (3) rest period violations; (4) wage statement violations; (5) waiting time penalties; (6) failure to reimburse business expenses; and (7) unfair competition. Larsen Decl., ¶ 9.

On July 25, 2023, Plaintiff, on behalf of himself and other aggrieved employees, submitted a notice to the LWDA memorializing claims against Defendant for alleged violations of the California Labor Code, including claims for failure to pay overtime wages; meal period violations; rest period violations; wage statement violations; waiting time penalties; failure to pay sick time; and failure to reimburse necessary business expenses; and resulting civil penalties pursuant to PAGA. Larsen Decl., ¶ 10, Exhibit 2.

On September 29, 2023, after the prescribed 65-day waiting period under Labor Code § 2699.3(a)(2)(A), Plaintiff filed the First Amended Complaint to add a cause of action for civil penalties pursuant to PAGA. Larsen Decl., ¶ 11.

On October 30, 2023, Defendant filed a Motion to Compel Arbitration, Strike Class Claims and Allegations, and Stay the Action Pending Completion of Individual Arbitration (“Motion to Compel Arbitration”). Larsen Decl., ¶ 12.

On February 2, 2024, the Court granted Defendant’s Motion to Compel Arbitration, struck Plaintiff’s class claims and allegations, and stayed the Action pending completion of arbitration

of Plaintiff's individual claims. Larsen Decl., ¶ 13.

C. Pre-Mediation Discovery and Mediation

In connection with the mediation, Defendant produced a "class list" that included Aggrieved Employees' hire date and termination date (if applicable), a 10% sampling of payroll and time records for Aggrieved Employees, relevant policy documents, and additional relevant information and documents. Larsen Decl., ¶ 14.

On August 20, 2024, the Parties participated in a full-day mediation with experienced wage and hour mediator Phillip Cha, Esq. *See* Larsen Decl., ¶ 15. During mediation, the Parties vigorously debated Plaintiff's ability to proceed on a representative basis, the legal basis for Plaintiff's claims and Defendant's defenses, the potential amount of penalties that could be recovered, and the Parties' data analyses and conclusions based thereon. *Id.* With Mr. Cha's assistance, the Parties agreed to fully and finally resolve Plaintiff's PAGA claim. *Id.*

III. SUMMARY OF THE SETTLEMENT

A. "Aggrieved Employees" Defined

As noted above, the settlement covers all current and former non-exempt employees who worked for Defendant in California at any time during the PAGA Period, i.e., from July 25, 2022 through the date of Court approval of the Settlement. *See* Settlement, §§ I.2, I.12.

B. Monetary Terms

As noted, the Settlement provides for Defendant's payment of a non-reversionary GSA of \$65,000.00. Settlement, §§ I.7; 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.10; III.5. The 25% portion to Aggrieved Employees shall be distributed based on each Aggrieved Employee's proportional number of pay periods worked for Defendant in California during the PAGA Period. *Id.* at § III.5.

1. *Requested Attorneys' Fees and Costs, Administration Costs, and Plaintiff's Service Payment*

Plaintiff's counsel requests one-third of the GSA (i.e., \$21,666.45) in attorneys' fees, and

1 \$8,581.65 in litigation costs. *See* Settlement, §§ I.10, III.4(a); Larsen Decl., ¶¶ 18, 30; Exhibit 5.
2 As discussed in detail below, a fee award of one-third of the GSA is fair, adequate, and reasonable
3 as a percentage of the fund and is in line with fee awards in other PAGA settlements.

4 The Parties have agreed to engage Phoenix Settlement Administrators (“Phoenix”) as the
5 third-party settlement administrator. *See* Settlement, §§ I.17; IV.1. Phoenix will update Aggrieved
6 Employee addresses using the National Change of Address database, calculate and distribute
7 Individual PAGA Payments, mail payments to all Aggrieved Employees together with the
8 Explanatory Letter, and perform other duties that are integral to the effectuation of the Settlement.
9 *Id.*, at §§ IV.1-6. Plaintiff requests that the Court approve \$2,450.00 in administration costs to
10 Phoenix, which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.* at
11 §§ I.10; III.4(c); *see also* Declaration of Jodey Lawrence (“Lawrence Decl.”), ¶ 16, Exhibit A.

12 **2. Payment to LWDA and Aggrieved Employees**

13 As stated, the NSA will be distributed 75% to the LWDA and 25% to Aggrieved
14 Employees, pursuant to Labor Code § 2699(i). Settlement, § III.5. Based on the above requested
15 distributions, the NSA is estimated to be \$27,301.90, with \$20,476.43 paid to the LWDA and
16 \$6,825.47 distributed to Aggrieved Employees. *Id.* at §§ I.10; III.4-5.

17 **3. Funding of the Settlement**

18 Defendant will fund the settlement in two equal instalment payments: (1) \$32,500 will be
19 deposited with the Settlement Administrator within 30 calendar days of settlement approval and
20 (2) \$32,500.00 will be deposited with the Settlement Administrator within 180 days after the
21 initial deposit. *See* Settlement, § III.2. Within 10 business days after the GSA has been fully
22 funded, and after receiving approval from counsel of the payment calculations, Phoenix will mail
23 the Explanatory Letter and Individual PAGA Payments to Aggrieved Employees via First-Class
24 U.S. Mail. Settlement, § IV.5.

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

28 ///

1 **IV. LEGAL ARGUMENT**

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

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

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

23 First, in evaluating a PAGA settlement, the court is not concerned with amount(s) received
24 by “aggrieved employees,” but rather, must focus on the total settlement amount in achieving
25 PAGA’s objective. “The remedy sought in a PAGA suit consists of civil penalties, not individual
26 or class damages.” *Mendez, supra*, 2010 WL 2650571 at *4. “Unlike class actions, these civil
27 penalties are not meant to compensate unnamed employees because the action is fundamentally
28 a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, No. C-08-2073-MHP, 2010

1 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court confirmed, “PAGA claims
2 are ‘representative’ actions in the sense that they are brought on the state’s behalf. The
3 employee... ‘represents the same legal right and interest as’ those agencies — ‘namely, recovery
4 of civil penalties that otherwise would have been assessed and collected by the [LWDA].” *ZB,*
5 *N.A. v. Superior Court*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian*, 59 Cal.4th at 380).

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

13 Second, consistent with the fact that unnamed employees have no property interest in a
14 PAGA claim¹, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
15 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010
16 WL 1340777 at *5; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482
17 (2020) (recognizing that “there is no mechanism for opting out of the judgment entered on the
18 PAGA claim.”). This renders the approval process of a PAGA settlement distinct from a class
19 action settlement, as the Court need not employ the “two-step approval process” required for class
20 action settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

21 Finally, unlike a class action settlement under Fed. R. Civ. Proc. Rule 23(e) or Cal. Rule
22 of Court 3.769, the scope of release in a PAGA settlement is limited to *civil penalties*. While
23 “judgment in [a PAGA] action is binding not only on the named employee Plaintiffs but also on
24 government agencies and any aggrieved employee not a party to the proceeding...the non-party
25 employees, because they were not given notice of the action or afforded any opportunity to be
26

27 ¹ “The [PAGA] does not create property rights or any other substantive rights” as “[i]t is simply
28 a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code
violations—that otherwise would be sought by state labor law enforcement agencies.”
Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct., 46 Cal.4th 993, 1003 (2009).

1 heard, would not be bound by the judgment as to remedies other than civil penalties.” *Arias v.*
2 *Sup. Ct.*, 46 Cal. 4th 969, 986-87 (2009).

3 The Settlement is fair and adequate because settlements inherently involve compromise,
4 even a settlement providing for substantially narrower relief than might be obtained if the suit
5 were successfully litigated can be reasonable because “the public interest may indeed be served
6 by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.”
7 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards,*
8 *etc.*, *Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)).

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

10 In deciding whether to approve a proposed settlement, a trial court has broad powers to
11 determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup.*
12 *Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to
13 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*,
14 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court to
15 consider include, but are not limited to:

16 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration
17 of further litigation, the risk of maintaining class action status through trial, the
18 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.

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

1 information received through it to aid them in assessing whether the parties sufficiently developed
2 the claims and their supporting factual bases before reaching settlement. *Kullar v. Foot Locker*
3 *Retail, Inc.*, 168 Cal.App.4th 116, 129-31 (2008). Information is sufficient where it allows the
4 parties and the court to form “an understanding of the amount that is in controversy and the
5 realistic range of outcomes of the litigation.” *Clark v. Am. Residential Serv. LLC*, 175 Cal.App.4th
6 785, 801 (2009). This requirement exists so that the parties can provide the court with “a
7 meaningful and substantiated explanation of the manner in which the factual and legal issues have
8 been evaluated.” *Kullar, supra*, 168 Cal.App.4th at 132.

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

10 Although he steadfastly maintains that his claims are meritorious, Plaintiff acknowledges
11 his position included real risks and uncertainty. Larsen Decl., ¶ 19. Plaintiff alleges that Defendant
12 failed to incorporate shift differentials, non-discretionary bonuses, and/or other forms of non-
13 excludable compensation in Aggrieved Employees’ “regular rate” of pay, and that this failure
14 resulted in underpaid overtime and sick pay wages. *Id.* Defendant contends the payments in
15 question were discretionary, and/or were not tied to the quantity or quality of work performed,
16 and were therefore excludable from the regular rate. *Id.* Defendant also contends that any overtime
17 under-payments were *de minimis* and not recoverable. *Id.*

18 Plaintiff also alleges that he and Aggrieved Employees were often forced to take late,
19 short, and/or missed meal periods, and sometimes were not able to take all rest periods to which
20 they were entitled, as a result of the workload imposed on them by Defendant and work-related
21 interruptions. Larsen Decl., ¶ 20. Defendant argues that it has maintained legally-compliant meal
22 and rest period policies and practices throughout the relevant time period, and that under *Brinker*
23 it is only required to “provide” the opportunity to take meal periods and “authorize and permit”
24 rest periods, not to “ensure” that breaks are taken. *Id.* Further, Defendant argues that it has always
25 informed employees of their right to take meal and rest periods, and that any failure to take a
26 compliant meal or rest period was the result of employee choice, and not any Defendant policy
27 or practice. *Id.*

28 Plaintiff also alleges that Defendant failed to indemnify him and other employees,

1 including but not limited to, the use of their personal cell phones and vehicles for work purposes.
2 Larsen Decl., ¶ 21. Defendant maintains that employees do not incur personal expenses because
3 there is no need or requirement that such expenses be incurred. *Id.* In the event that such an
4 expense does incur, without Defendant’s approval, Defendant maintains that there are procedures
5 in place for employees to request reimbursement of work-related expenses. *Id.* Defendant further
6 contends that if employees used their personal cell phones and/or personal vehicles for work
7 purposes received, such employees had the opportunity to request reimbursement. *Id.*

8 As for Plaintiff’s derivative claims that Defendant violated its wage statement obligations
9 in violation of Labor Code § 226, Defendant asserts did not violate any wage statement
10 obligations, and if an inadvertent clerical error did occur, Defendant has strong, good-faith
11 defenses to Plaintiff’s underlying claims, precluding a finding of waiting time penalties. Larsen
12 Decl., ¶ 22. Defendant maintains that the wage statements furnished upon Aggrieved Employees
13 accurately reflected amounts paid to employees, and thus Defendant cannot be found liable for
14 wage statement violations under the relevant case law. *Id.*

15 Defendant further maintains that even if the Court awarded PAGA penalties for any of the
16 alleged violations in the event that Plaintiff was successful in a judgement based upon the merits,
17 the Court would substantially reduce the penalties based on the discretionary factors in Labor
18 Code § 2699(e)(2) (authorizing reduction in PAGA penalties “if, based on the facts and
19 circumstances of the particular case, to do otherwise would result in an award that is unjust,
20 arbitrary and oppressive, or confiscatory.”). *See* Larsen Decl., ¶ 23. Indeed, many courts have
21 reduced PAGA penalties where, as here, the employer presented good-faith defenses and
22 attempted to comply with the law. Larsen Decl., ¶ 23; *see, e.g., Thurman v. Bayshore Transit*
23 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because
24 “defendants took their obligations...seriously and attempted to comply with the law”); *Fleming*
25 *v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011)
26 (reducing PAGA penalties by over 82%, in part because employer was “not aware” of violations);
27 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just
28 \$5 per pay period where employer made “good faith attempts” to comply with the law). Larsen

Decl., ¶ 23.

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 Defendant'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., ¶ 24. Based on data provided by Defendant, there were approximately 1,957 pay periods during the PAGA limitations period and approximately 64 Aggrieved Employees. *Id.*, ¶ 24; *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 \$195,700.00. Larsen Decl., ¶¶ 24-25. However, because the Court maintains discretion to reduce these penalties, and in light of Defendant's arguments and defenses 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 exposure of \$70,606. Larsen Decl., ¶ 25; *see also, e.g., Thurman*, 203 Cal.App.4th at 1136 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047 at *5 (reducing PAGA penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

Thus, the proposed \$65,000.00 GSA therefore represents approximately 92.06% of Plaintiff's reasonably forecasted total recovery, while avoiding the risks of proceeding through

trial. Larsen Decl., ¶ 25. “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). Plaintiff acknowledges there was substantial uncertainty and risk as to his claims. Approval of the Settlement is appropriate, as the Settlement will provide tangible monetary relief to Aggrieved Employees and the State of California.

d. Discovery Completed and the Status of Proceedings

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

e. The Experience and Views of Counsel

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel with extensive experience, who believe this Settlement to be fair and adequate for all involved. Larsen Decl., ¶¶ 2-6. This factor strongly supports settlement approval. *Kullar*, 168 Cal.App.4th at 130 (“The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s length transaction entered without self-dealing or other potential misconduct.”).

B. The Settlement Furthers the Purpose of PAGA

The Settlement provides a fair, adequate, and reasonable recovery for the LWDA and the aggrieved employees “in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz, supra*, 72 Cal.App.5th at 89 (“In review and approval of a proposed settlement under section 2699, subd. (1)(2), a trial court [] must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state’s interests, and hence the public interest.”). Courts, in assessing the fairness, adequacy, and reasonableness of a PAGA settlement may compare the potential

penalty amount with the actual recovery under the settlement. *See Id.*, at 87. Here, the Settlement represents the state's interests by serving PAGA's remedial, deterrence, and enforcement purposes considering the total potential realistic exposure involved here. Specifically, this lawsuit will likely deter future violations of the Labor Code, and recovers approximately 92.06% of Plaintiff's reasonably forecasted total recovery.

C. **The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Settlement Fund as Confirmed by a Lodestar Cross-Check**

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

A fee award is justified where the legal action has produced its benefits by way of settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Comty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ("when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation or preservation of that fund, such plaintiff...may be awarded attorney's fees out of the fund."); *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

1 it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and
2 penalizes it for failure.’”).

3 Fee awards of one-third of the settlement fund are routinely awarded in California courts
4 in class and representative PAGA actions. The California Supreme Court confirmed its approval
5 of the use of the “percentage of fund” method. *See Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th
6 480, 506 (2016) (“the percentage of fund method survives in California class action cases...”)

7 Specifically, the *Laffitte* Court held:

8 The recognized advantages of the percentage method—including relative ease of
9 calculation, alignment of incentives between counsel and the class, a better
10 approximation of market conditions in a contingency case, and the
11 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.

12 *Id.*, at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-
13 third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also*,
14 *e.g.*, *Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)
15 (approving attorneys’ fees of one-third of settlement fund in PAGA settlement). This is consistent
16 with Plaintiff’s counsel’s experience in similar wage-and hour matters. Larsen Decl., ¶ 26.

17 Here, Plaintiff’s fee request of one-third of the GSA (estimated to be \$21,666.45), is fair
18 and reasonable based on the percentage of the recovery method, as confirmed by a lodestar cross-
19 check. In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the
20 reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court
21 calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring
22 the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06.
23 Under the lodestar method, the court multiplies the number of hours reasonably expended by each
24 attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure
25 by a “multiplier” to account for a range of factors, such as the contingent nature of the case and
26 the degree of success achieved. *See Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977); *Ketchum v.*
27 *Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834
28 (2001) (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial

discretion to increase or decrease a lodestar calculation”).

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

In this case, Plaintiff’s counsel has a lodestar of approximately \$29,452.50, without the use of any multiplier, compared to the \$21,666.45 fee request. Larsen Decl., ¶ 28. The billing rates used are reasonable in view of the evidence submitted herewith. *Id.*, ¶¶ 28-29 & Exhibit 4 (2024-2025 *Laffey* Matrix).

Attorneys and Staff	Rate	Hours	Pre-Multiplier Lodestar
Tuvia Korobkin (15th Year Attorney)	\$675	11.1	\$7,492.50
Neil M. Larsen (13th Year Attorney)	\$650	23.5	\$15,275.00
Eli J. Drummond (2nd Year Attorney)	\$375	6.2	\$2,325.00
Jennifer S. Rivera (1st Year Attorney)	\$350	5.6	\$1,960.00
Paralegals	\$200	12.0	\$2,400.00
Total Lodestar			\$29,452.50

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

1 contingency risk of this litigation for the benefit of the Aggrieved Employees, as well as the State
2 of California (which elected not to take the case after receiving Plaintiff's PAGA notice).

3 Critically, Plaintiff's recovery in this case significantly exceeds other PAGA awards
4 approved by California courts. *See, e.g., Aguirre v. DSW, Inc.*, 2012 WL 11875296, *3 (C.D. Cal.
5 Nov. 29, 2012) (approving \$10,000 PAGA payment); *Garcia v. Gordon Trucking, Inc.*, 2012 WL
6 5364575, *7 (E.D. Cal. Oct. 31, 2012) (approving \$10,000 PAGA payment, finding it "comports
7 with settlement approval of PAGA awards in other cases. [Citations.]"); *Boyd v. Bank of Am.*
8 *Corp.*, 2014 WL 6473804, *8 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment);
9 *Franco v. Ruiz Food Prods.*, 2012 WL 5941801, *14 (E.D. Cal. Nov. 27, 2012) (\$10,000 PAGA
10 payment); *Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645, *1 (N.D. Cal. Feb. 16, 2011) (\$10,000
11 PAGA payment). That counsel achieved these results without engaging in a protracted legal
12 battle, in the face of serious defense challenges, confirms the strength of the results achieved.

13 Plaintiff's counsel has significant experience wage-and-hour class and representative
14 action experience and have been certified as class counsel in numerous wage and hour class
15 actions. Larsen Decl., ¶¶ 2-6, 26. Because it is reasonable to compensate counsel commensurate
16 with their skill, reputation, and experience, a fee award of one-third of the GSA is reasonable.
17 Other factors show the requested fee is reasonable. This case involved nuanced legal issues and
18 Defendant was also represented by experienced wage-and-hour litigation counsel. *Id.*, ¶¶ 19-22,
19 27. Thus, Plaintiff submits the requested fee award is fair, reasonable and adequate and should be
20 approved.

21 **D. The Requested Litigation Costs and Settlement Administration Costs Are**
22 **Fair, Reasonable, and Adequate**

23 Plaintiff's request for reimbursement of litigation costs of \$8,581.65 is also fair and
24 reasonable. All of Plaintiff's litigation costs were reasonably incurred. *See* Larsen Decl., ¶ 30 &
25 Exhibit 5. Moreover, the reimbursement of costs Plaintiff seek are the types of costs routinely
26 approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should
27 recover "those out- of-pocket expenses that would normally be charged to a fee paying client");
28 *Ashker v. Sayre*, 2011 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing
pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and

are reimbursable); *In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, postage, filing fees, messenger and overnight delivery costs, and other costs are reimbursable).

Likewise, the request for administration costs of \$2,450.00 is also fair and reasonable. Phoenix was selected because it is an experienced settlement administrator and returned a reasonable bid. *See* Declaration of Jodey Lawrence & Exhibits. Moreover, Phoenix will perform several important functions that are integral to the implementation of the Settlement. *Id.* Its requested fee is therefore reasonable.

E. The Court Should Approve Plaintiff's Requested Service Payment Because It Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks He Assumed in This Litigation

Courts routinely approve enhancement awards to compensate named plaintiffs for the services they provide and the risks they incur during representative litigation. *See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000 incentive payment); *Rodriguez v. West Publishing Co.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (observing incentive awards are "fairly typical" and are awarded to named plaintiffs "...to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general") (emphasis added); *see also Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (awarding \$10,000 incentive award in wage-and-hour class/PAGA action). Here, Plaintiff seeks a service payment of \$5,000.00. *See* Settlement, §§I.10, IV.4(b), *see also* Velez Decl., ¶¶ 4-5.

This request is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of Aggrieved Employees. *See* Velez Decl., ¶¶ 4-5. Plaintiff provided substantial factual information and documents to Counsel, assisted in identifying potential witnesses, and participated in numerous discussions with Counsel regarding the case and the settlement. *Id.*; *see also* Larsen Decl., ¶ 31. Accordingly, Plaintiff's requested service payment is appropriate and justified as part of the Settlement.

///

1 **V. CONCLUSION**

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

5 Respectfully submitted,

6 Dated: January 10, 2025

ABRAMSON LABOR GROUP

8 By: Neil Larsen
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10 Attorneys for Plaintiff
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