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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF KERN**

ALEJANDRO ORTEGA, as an individual and  
on behalf of all others similarly situated,

Plaintiff,

vs.

KEY ENERGY SERVICES, LLC, a Texas  
limited liability company; and DOES 1  
through 100,

Defendants.

Case No.: BCV-23-102240-BCB

*[Assigned for all purposes to the Hon. Bernard  
C. Barmann, Jr., Bakersfield Division H]*

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

Date: December 13, 2024

Time: 8:30 a.m.

Dept: Bakersfield Division H

Action Filed: July 12, 2023

Trial Date: None Set

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

2           PLEASE TAKE NOTICE that on December 13, 2024 at 8:30 a.m., or as soon thereafter  
3 as the matter may be heard, in Bakersfield Division H of the Kern County Superior Court, located  
4 at 1215 Truxtun Avenue, Bakersfield, CA 93301, Plaintiff Alejandro Ortega (“Plaintiff”),  
5 individually and on behalf of other PAGA Aggrieved Employees, will and hereby does move this  
6 Court for entry of an Order as follows:

- 7           1. Granting approval pursuant to Labor Code section 2699(l) of the parties’ proposed  
8 PAGA Settlement Agreement of claims brought by Plaintiff pursuant to the Private  
9 Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*;
- 10          2. Appointing Phoenix Class Action Administration Solutions (“Phoenix”) as the third-  
11 party Settlement Administrator, and approving an award of \$4,500 in anticipated  
12 costs to Phoenix for its settlement administration services;
- 13          3. Approving as to form and content the proposed Notice of PAGA Settlement and  
14 Release of Claims (“PAGA Notice”), and directing that it be distributed to the PAGA  
15 Aggrieved Employees pursuant to the terms of the PAGA Settlement Agreement;
- 16          4. Directing the distribution of the Maximum Settlement Amount (\$265,000.00)  
17 pursuant to the terms of the PAGA Settlement Agreement;
- 18          5. Approving an award of one-third of the Maximum Settlement Amount (\$88,333.33)  
19 in attorneys’ fees to Haines Law Group, APC as Plaintiff’s counsel;
- 20          6. Approving an award of \$21,769.23 in actual litigation costs reimbursement to  
21 Plaintiff’s counsel;
- 22          7. Approving a representative enhancement payment of \$5,000.00 to Plaintiff for his  
23 service to the PAGA Aggrieved Employees and the State of California; and
- 24          8. Approving the payment of \$109,048.08 to the California Labor & Workforce  
25 Development Agency for its 75% share of PAGA civil penalties.

26           This Motion is based on this Notice, the attached Memorandum of Points and Authorities;  
27 the declarations of Matthew K. Moen, Paul K. Haines, Fletcher W. Schmidt, Susan J. Perez,  
28 Plaintiff Alejandro Ortega, and Jodey Lawrence of Phoenix, and all exhibits attached thereto; the

1 PAGA Settlement Agreement; all other pleadings and papers on file in this action; and on any  
2 further oral or documentary evidence or argument presented at the time of hearing.

3  
4 Dated: November 15, 2024

Respectfully Submitted,  
HAINES LAW GROUP, APC

5  
6 By:



Matthew K. Moen  
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alejandro Ortega (“Plaintiff”), an “aggrieved employee” under the Private  
4 Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”),  
5 respectfully moves this Court for an Order granting approval of the PAGA Settlement Agreement  
6 (the “Settlement Agreement” or “Settlement”)<sup>1</sup> entered into between Plaintiff and Defendant Key  
7 Energy Services, LLC (“Defendant”).<sup>2</sup> The proposed Settlement, under which Defendant will pay  
8 a non-reversionary Maximum Settlement Amount of \$265,000.00, will dispose of Plaintiff’s  
9 representative PAGA claim filed on behalf of the State of California and all “PAGA Aggrieved  
10 Employees” as defined by Labor Code section 2699(c). This PAGA action is predicated on  
11 Defendant’s alleged failures to: pay all minimum and overtime wages; provide all lawful meal  
12 periods; authorize and permit all lawful rest periods; reimburse all necessary business expenses;  
13 issue accurate itemized wage statements; pay all wages earned at least twice during each calendar  
14 month; and maintain accurate employment records.

15 This PAGA action seeks civil penalties for Defendant’s Labor Code violations on behalf  
16 of the California Labor & Workforce Development Agency (“LWDA”) and all “PAGA  
17 Aggrieved Employees,” defined as “all of Defendant’s current and former nonexempt employees  
18 in California who held the job title(s) of Rig Services, Coiled Tubing, and/or Fishing and Rental,  
19 and who worked at any time during the PAGA Period” (the “PAGA Period” is defined as July  
20 12, 2022 to March 25, 2024). Notably, the relief provided under the Settlement, and the claims  
21 released thereunder, are *solely* for the payment of civil penalties under the PAGA, and PAGA  
22 Aggrieved Employees other than Plaintiff will not be releasing any underlying wage and hour  
23 claims through this settlement, only PAGA claims. Based on the information provided by  
24 Defendant, there are approximately 309 PAGA Aggrieved Employees.

25 \_\_\_\_\_  
26 <sup>1</sup> The Settlement Agreement is attached as Exhibit 1 to the Declaration of Matthew K. Moen (“Moen  
27 Decl.”), filed concurrently with this Motion. The Notice of PAGA Settlement and Release of Claims  
28 (“PAGA Notice”) is attached as Exhibit A to the Settlement Agreement. *See* Moen Decl., ¶ 10.

<sup>2</sup> Concurrently with the filing of this motion, Plaintiff provided notice of the proposed Settlement, a copy  
of this motion, and all papers filed in support hereof, to the LWDA. *See* Moen Decl., ¶ 11, Exhibit 2.

1 In deciding whether to grant approval of the Settlement, the primary issue is whether the  
2 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement is fair,  
3 reasonable, and adequate, as it (1) is the product of extensive arm's-length negotiations, (2) was  
4 negotiated by attorneys experienced in wage-and-hour issues with the assistance of an  
5 experienced, neutral mediator, (3) was negotiated after the parties undertook sufficient  
6 investigation to evaluate the relative strength and value of the PAGA claim, and (4) reflects a  
7 reasoned compromise based directly on the relative strength and value of the PAGA claim, as  
8 well as the risks, expense, complexity and likely duration of further litigation.

9 Pursuant to the Settlement, Defendant will pay a Maximum Settlement Amount ("MSA")  
10 of \$265,000.00 on a non-reversionary basis. *See* Settlement, §§ I.8 and II.2. After deducting  
11 amounts for requested attorneys' fees (\$88,333.33), attorney costs (\$21,769.23),<sup>3</sup> Plaintiff's  
12 representative enhancement payment (\$5,000.00), and settlement administration costs (\$4,500),  
13 the Settlement provides for distribution of \$109,048.08 to the LWDA for its 75% share of the  
14 civil penalties pursuant to Labor Code section 2699(i), and approximately \$36,349.36 in civil  
15 penalties to the PAGA Aggrieved Employees, an average of approximately \$117.63 per PAGA  
16 Aggrieved Employee. *Id.*, §§ I.9, II.4-5.

17 The MSA represents a reasonable recovery for the State of California and PAGA  
18 Aggrieved Employees when considering the limited release of only PAGA claims based on the  
19 factual allegations in Plaintiff's operative complaint and July 12, 2023 letter to the LWDA.  
20 Additional litigation may have resulted in a smaller recovery, or even no recovery at all, based on  
21 the defenses asserted by Defendant and the significant litigation risks involved. Moreover, the  
22 MSA results in individual payments that exceed other PAGA penalty awards approved as  
23 reasonable throughout California. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No.

24  
25 <sup>3</sup> Although the Settlement provides for reimbursement of Plaintiff's verified litigation costs and expenses  
26 "up to \$30,000.00," Plaintiff's counsel is requesting an expense reimbursement of \$21,769.23. Moen  
27 Decl., Exhibit 3. Although Plaintiff's Counsel's expense summary identifies Plaintiff's Counsel's to-date  
28 out of pocket expenses as \$21,652.85, the total amount that Plaintiff's Counsel is requesting for expense  
reimbursement (\$21,769.23) includes an additional \$116.38 in anticipated future costs for the filing and  
service of this motion, which will be incurred by the time the motion is heard, and costs for the filing of a  
Final Accounting Declaration. *Id.*, ¶ 22.

BC471369, 2013 WL 2917624 at \*2 (Super. Ct. L.A. County, May 20, 2013) (average PAGA penalties of \$7.49); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (average PAGA penalties of \$3.33). Further, the amounts requested for attorneys’ fees and costs, Plaintiff’s enhancement award, and settlement administration costs are fair, adequate, and reasonable. In light of the foregoing, this Court should enter the [Proposed] Judgment and Order submitted herewith.

## **II. SUMMARY OF THE LITIGATION**

### **A. The Parties**

Defendant operates an oil field in Bakersfield, California. Moen Decl., ¶ 12. Plaintiff was hired by Defendant as a non-exempt “Floorhand” in approximately June 2022. Declaration of Alejandro Ortega (“Ortega Decl.”), ¶ 2. Since March 2023, Plaintiff has been on a medical leave of absence. *Id.* Plaintiff’s job duties consisted of performing maintenance on and servicing oil wells. *Id.* Plaintiff, like all PAGA Aggrieved Employees, was subject to Defendant’s wage and hour policies and practices. *Id.*, ¶¶ 3-4; Moen Decl., ¶ 12.

### **B. Procedural History**

On July 12, 2023, Plaintiff filed a class action complaint, alleging Defendant failed to: (1) pay all overtime wages owed; (2) pay all minimum wages owed; (3) provide all lawful meal periods; (4) authorize and permit all lawful rest periods; (5) reimburse all necessary business expenses; (6) issue accurate itemized waged statements; and (7) comply with California’s unfair competition laws. Moen Decl., ¶ 13. On the same day, Plaintiff submitted a written PAGA Notice Letter to the LWDA and Defendant, notifying both of his intent to file a claim for civil penalties under PAGA. *Id.*, Exhibit 4. On September 18, 2023, after Plaintiff exhausted his administrative remedies with the LWDA, Plaintiff filed a First Amended Class and Representative Action Complaint (“FAC”), adding an eighth cause of action for civil penalties under PAGA. *Id.*

Shortly after Plaintiff filed this action, Defendant’s counsel provided Plaintiff’s counsel with an arbitration agreement that was signed by Plaintiff containing a class action waiver. Moen Decl., ¶ 14. Thereafter, Plaintiff dismissed his individual claims and the class-wide claims without prejudice, and pursued this action on a representative PAGA basis only. *Id.*

1 On March 25, 2024, the Parties attended an early private mediation with mediator Hon.  
2 Amy D. Hogue (Ret.). Moen Decl., ¶ 15. Prior to attending mediation, Defendant provided  
3 Plaintiff with a 15% representative sampling of the PAGA Aggrieved Employees' timekeeping  
4 and payroll records spanning the relevant time period, as well as policy documents and key data  
5 points. *Id.* Plaintiff then retained an expert with a Ph.D. in economics to examine Defendant's  
6 produced data and conduct a comprehensive exposure analysis for the claims at issue. *Id.*

7 During mediation, the parties debated the legal bases for their claims and defenses, their  
8 respective data analyses, and their positions regarding the extent to which the Court might reduce  
9 any PAGA penalties recovered. Moen Decl., ¶ 16. At the conclusion of mediation, Judge Hogue  
10 made a mediator's proposal to fully resolve Plaintiff's PAGA claim, which the parties ultimately  
11 accepted. *Id.* Over the following months, the parties negotiated the final terms of the proposed  
12 Settlement now before this Court for approval. *Id.*

13 **C. Plaintiff's Claims and Defendant's Defenses**

14 Plaintiff alleges that he and the PAGA Aggrieved Employees were regularly required to  
15 arrive at Defendant's on-site locker room 15-minutes before the scheduled start of their shift in  
16 order to don protective gear and prepare work-related equipment while off-the-clock, but were  
17 only paid from the start of their scheduled shift time. Moen Decl., ¶ 17. Similarly, Plaintiff and  
18 other PAGA Aggrieved Employees were required to clock out at the end of their scheduled work  
19 shift prior to doffing their safety equipment in Defendant's on-site locker room. *Id.* Plaintiff  
20 further alleges that he and the PAGA Aggrieved Employees were frequently required to clock out  
21 for purported meal periods but to continue performing work, resulting in Defendant's failure to  
22 accurately track and pay Plaintiff and other PAGA Aggrieved Employees all minimum and  
23 overtime wages owed, as well as Defendant's failure to provide all lawful, duty-free 30-minute  
24 meal periods to which the PAGA Aggrieved Employees are entitled. *Id.* Plaintiff also asserts that  
25 Defendant frequently provided untimely meal periods and interrupted meal periods prior to the  
26 completion of a full 30 minutes due to work demands, and failed to provide *any* second, duty-  
27 free 30-minute meal periods for shifts over ten hours. *Id.*

28 ///

1 In response, Defendant maintains it accurately records and properly pays all wages for all  
2 hours worked by the PAGA Aggrieved Employees. Moen Decl., ¶ 18. First, Defendant argues  
3 that its policies require all donning and doffing activities to be conducted while clocked in, and  
4 points to the employee time records reflecting varying clock-in times prior to the employees’  
5 scheduled shifts as evidence of this practice. *Id.* Next, Defendant contends it maintained lawful  
6 meal period policies/practices at all times and provided all timely, duty-free meal periods, and  
7 whether any PAGA Aggrieved Employees chose to refrain from taking a compliant meal period  
8 on any given day is an individualized issue not reflective of Defendant’s policies and practices.  
9 *Id.*; see also *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1038 (rejecting “ensure”  
10 standard). Lastly, Defendant argues that PAGA Aggrieved Employees voluntarily waived 93%  
11 of their second meal periods, raising additional concerns about the individualized and  
12 unmanageable nature of Plaintiff’s claims. Moen Decl., ¶ 18.

13 Plaintiff further alleges that Defendant failed to authorize and permit the PAGA  
14 Aggrieved Employees to take **any** lawful rest periods to which they were entitled. Moen Decl., ¶  
15 19. Specifically, Plaintiff contends Defendant only provided one single break to Plaintiff and the  
16 PAGA Aggrieved Employees during their work day—a purported meal period—and otherwise  
17 required the PAGA Aggrieved Employees to perform their work duties without interruption, in  
18 violation of California law. *Id.* In response, Defendant maintains it authorized and permitted the  
19 PAGA Aggrieved Employees to take all lawful rest periods to which they are entitled and  
20 maintained lawful rest period policies/practices at all times throughout the relevant time period.  
21 *Id.* Defendant further contends that Plaintiff’s claims lack merit, and questioned how Plaintiff  
22 intended to prove such violations without any documentary evidence of rest period violations. *Id.*

23 Moreover, Plaintiff alleges that Defendant failed to reimburse Plaintiff and the PAGA  
24 Aggrieved Employees for the use of their personal cellular phones for essential work duties. Moen  
25 Decl., ¶ 20. Specifically, Defendant required the PAGA Aggrieved Employees to download a  
26 timekeeping application on their personal cell phones to clock in and out for meal periods, without  
27 reimbursing the employees for a reasonable portion of their monthly cell phone expenses. *Id.*; see  
28 *Cochran v. Schwan’s Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, and Labor Code § 2802.

1 In response, Defendant argues it maintained a policy to reimburse all reasonable and  
2 necessary business expenditures and that, to the extent that any expenses were not reimbursed, it  
3 was the result of Defendant's employees failing to submit expense reimbursement requests. Moen  
4 Decl., ¶ 20. Further, Defendant contends it provided all work crews with company tablets and/or  
5 company cellular phones for employees to use to clock in and out with, and any use of personal  
6 cellular phones was not authorized by Defendant. *Id.*

7 Finally, Plaintiff contends that as a result of Defendant's failure to pay all minimum  
8 wages, overtime wages, and meal period and rest period premiums, Defendant also failed to issue  
9 accurate itemized wage statements and maintain accurate employment records. Moen Decl., ¶ 21.  
10 In response, Defendant argues that Plaintiff's underlying claims will fail and, as a result, the  
11 derivative claims will also fail. *See Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147  
12 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.");  
13 Moen Decl., ¶ 21. Defendant also maintains that any "derivative" PAGA claims for violations of  
14 Labor Code section 226 would be entirely duplicative and would be unlikely to be awarded in  
15 any significant manner by the Court. *Id.* Further, Defendant argues that, given its asserted good  
16 faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties  
17 awarded. *Id.*; *see also* Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012)  
18 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks*  
19 *Corporation* (2018) 30 Cal.App.5th 504 (affirming trial court's reduction of PAGA penalties to  
20 10% of calculated exposure after bench trial). Further, Defendant argues that Plaintiff could only  
21 seek PAGA penalties at the \$100 "initial" violation rate, as opposed to the \$200 "subsequent"  
22 violation rate, since Defendant had never been put on notice by a court or the Labor Commissioner  
23 that their practices violated the Labor Code until Plaintiff initiated this action. Moen Decl., ¶ 21;  
24 *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (finding "initial"  
25 violation rate applies until employer has been notified that it is violating a Labor Code provision).

### 26 **III. THE PROPOSED SETTLEMENT**

#### 27 **A. "PAGA Aggrieved Employees" Defined**

28 PAGA Aggrieved Employees are defined as all of Defendant's current and former non-  
exempt employees in California who held the job title(s) of Rig Services, Coiled Tubing, and/or

Fishing and Rental, and who worked at any time during the PAGA Period. *See* Settlement, § I.2.

**B. Essential Terms Of The Settlement**

Defendant will pay a MSA of \$265,000.00. *See* Settlement, § I.8. After deducting amounts for requested attorneys’ fees and costs, Plaintiff’s representative enhancement payment, and settlement administration costs, the remaining Net Settlement Amount (“NSA”) distributable to the PAGA Aggrieved Employees and the LWDA is estimated to be \$145,397.44. *See id.*, § I.9.

The monetary terms of the Settlement are as follows:

|                                                          |                     |
|----------------------------------------------------------|---------------------|
| <b>Maximum Settlement Amount:</b>                        | <b>\$265,000.00</b> |
| Minus Court-approved attorneys’ fees (1/3):              | \$88,333.33         |
| Minus Court-approved attorneys’ costs:                   | \$21,769.23         |
| Minus Court-approved representative enhancement payment: | \$5,000.00          |
| Minus settlement administrator costs:                    | \$4,500.00          |
| <b>Net Settlement Amount:</b>                            | <b>\$145,397.44</b> |
| LWDA’s 75% Share:                                        | \$109,048.08        |
| <b>Total Paid to PAGA Aggrieved Employees:</b>           | <b>\$36,349.36</b>  |

**1. Attorneys’ Fees and Costs**

Plaintiff’s counsel requests one-third of the MSA (\$88,333.33) in attorneys’ fees, and \$21,769.23 in actual litigation costs. Moen Decl., ¶ 22, Exhibit 3; Settlement, § II.4.a.

**2. Settlement Administration Costs**

The parties agree to engage Phoenix Class Action Administration Solutions (“Phoenix”) as the third-party settlement administrator. *See* Settlement, § I.16. Phoenix shall be responsible for calculating the settlement checks and mailing the settlement checks and PAGA Notice to the PAGA Aggrieved Employees, among other duties. *Id.*, § III. Phoenix estimates incurring \$4,500 in costs in connection with the administration of this settlement. *See* Declaration of Jodey Lawrence (“Lawrence Decl.”), Exhibit B.

**3. Plaintiff’s Representative Enhancement Payment**

Plaintiff also requests a representative enhancement payment of \$5,000.00 in recognition of his efforts to initiate this case, his contributions to the prosecution of this case, and his efforts in bringing this case to a successful resolution. Settlement, §§ I.9, II.4.b; Ortega Decl., ¶¶ 3-6.

**4. Payment to the LWDA and PAGA Aggrieved Employees**

The entire NSA shall be designated as PAGA civil penalties. Settlement, § II.5. From the NSA, 75% (\$109,048.08) will be distributed to the LWDA, and 25% (\$36,349.36) will be

distributed to the PAGA Aggrieved Employees. *Id.*; *see also* Labor Code § 2699(i) (“[C]ivil penalties recovered by PAGA Aggrieved Employees shall be distributed as follows: 75 percent to the [LWDA]...and 25 percent to the PAGA Aggrieved Employees.”). 100% of the individual payments to the PAGA Aggrieved Employees will be reported using IRS Form 1099-MISC, since all funds received under Section 2699 are civil penalties that do not trigger payroll taxes or withholdings. *See* Settlement, § III.3. Individual Settlement Payments shall be apportioned based on the proportionate number of pay periods worked by each PAGA Aggrieved Employee during the PAGA Period, by multiplying the NSA by a fraction, the numerator of which is each PAGA Aggrieved Employee’s total pay periods worked during the PAGA Period, and the denominator of which is the total aggregate number of pay periods worked by all PAGA Aggrieved Employees during the PAGA Period. *Id.*, § II.5. There are approximately 9,461 aggregate pay periods worked by the estimated 309 PAGA Aggrieved Employees during the PAGA Period. Settlement, § II.3. Therefore, in addition to the \$109,048.08 recovery for the State of California, average payments to the PAGA Aggrieved Employees are estimated at approximately \$117.63. The lowest possible recovery, should a PAGA Aggrieved Employee have been employed for only a single pay period during the PAGA Period, is approximately \$3.84, while the highest possible recovery, should a PAGA Aggrieved Employee have worked throughout the entirety of the PAGA Period (approximately 44 bi-weekly pay periods), is approximately \$168.96.

#### **5. Funding of the Settlement**

Defendant will deposit the MSA within thirty (30) calendar days after the Effective Date, as that term is defined in the Settlement Agreement. Settlement, §§ I.5, II.2. Within ten (10) business days after the court signing the settlement approval order, Defendant will provide Phoenix with information for the PAGA Aggrieved Employees, including their full names, last known mailing addresses, last known telephone numbers, Social Security numbers, and pay period information. Settlement, § III.2. Within twenty-one (21) calendar days Defendant’s deposit of the MSA and after receiving approval from the parties of the calculations used to determine the Individual Settlement Payments, Phoenix will mail copies of the explanatory letter, along with the Individual Settlement Payments, to the PAGA Aggrieved Employees via First-Class U.S.

1 Mail. *Id.*, § III.3.<sup>4</sup> Before mailing, Phoenix will perform a search on the National Change of  
2 Address database to update the PAGA Aggrieved Employees' addresses. *Id.*

3 **IV. ARGUMENT**

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

5 The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699(l)  
6 (stating, the "court shall review and approve any penalties sought as part of a proposed settlement  
7 agreement pursuant to this part."). The Court must be mindful that "[s]ettlement is a compromise,  
8 which balances the possible recovery against the risks inherent in litigating further." *In re TD*  
9 *Ameritrade Account Holder Litig.*, Case Nos. C 07-2852 SBA, C 07-4903 SBA, 2011 WL  
10 4079226, \*9 (N.D. Cal. Sept. 13, 2011). Indeed, "the very essence of a settlement is ... 'a yielding  
11 of absolutes and an abandoning of highest hopes,'" as "it is the very uncertainty of outcome in  
12 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements."  
13 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir., 1982). As such, "the  
14 settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits,"  
15 or "judged against a hypothetical or speculative measure of what might have been achieved." *Id.*

16 Although the PAGA statute does not set forth the criteria by which a PAGA settlement is  
17 to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a  
18 class action settlement. However, "a PAGA claim asserted on a non-class representative basis...is  
19 not considered a class action but a law enforcement action, and therefore does not have to meet  
20 the requirements of [a class action]." *See Casida v. Sears Holdings Corp.*, 2012 WL 253217 at  
21 \*3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at \*4 (E.D. Cal.  
22 Jul. 1, 2010). A court's review of a PAGA settlement necessarily implicates the following unique  
23 features that render the approval process distinct from approval of a class action settlement under  
24 C.C.P. § 382 and C.R.C. Rule 3.769.

25 First, in evaluating the adequacy of the settlement amount, the Court's focus is not  
26 concerned with the amount(s) that "PAGA Aggrieved Employees" are to receive, but rather, must  
27 focus on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy

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28 <sup>4</sup> Based on the demographics of Defendant's employees, PAGA Notices will be mailed in English only.

sought in a PAGA suit consists of civil penalties, not individual or class damages,” and while a “[PAGA] action is ... designed to protect the public and penalize the employer for past illegal conduct,” a reviewing Court must be mindful of the fact that settlement of a PAGA claim involves a compromise. *Mendez, supra*, 2010 WL 2650571 at \*4. “Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at \*4 (N.D. Cal. Apr. 2, 2010). The Court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” *Id.*

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim,<sup>5</sup> “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL 1340777 at \*5. This renders the approval process of a PAGA settlement distinct from a class action settlement, as there is no need for the Court to employ the “two-step approval process” required under F.R.C.P. Rule 23 (“Rule 23”) and C.R.C. Rule 3.769 (“Rule 3.769”).<sup>6</sup>

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

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<sup>5</sup> As held by the California Supreme Court, “[PAGA] does not create property rights or any other substantive rights” as “[i]t is simply 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.* (2009) 46 Cal.4th 993, 1003.

<sup>6</sup> The “two-step” approval process of Rule 23(e) is required to facilitate “notice” to absent class members, as Rule 23(e) expressly requires notice and an opportunity for absent class members to exclude themselves or object. *See Fed. R. Civ. Proc. R. 23(e)*. Rule 3.769 contains similar rules for State court class actions.

1 986-87. Thus, the scope of a release in a PAGA settlement is confined to the PAGA penalties  
2 alleged in the complaint and to the claims that were, or could have been, alleged pursuant to  
3 PAGA based on the factual allegations in the complaint.<sup>7</sup> In the case at hand, as the only claims  
4 at issue are PAGA claims, those will be the only claims extinguished because of this Settlement.

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

7 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v.*  
8 *Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class and  
9 representative PAGA settlements involve a court approval process that exists to prevent fraud,  
10 collusion, and unfairness to absent individuals. *See Malibu Outrigger Bd. of Governors v.*  
11 *Superior Court* (1980) 103 Cal.App.3d 573, 578-79. California law generally follows the same  
12 standards applicable under Rule 23. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.  
13 1998) (stating that Rule 23(e) requires the trial court to determine “whether a proposed settlement  
14 is fundamentally fair, adequate, and reasonable”). To be approved, a settlement must be “fair,  
15 reasonable and adequate to all concerned.” *Reed v. United Teachers Los Angeles* (2012) 208  
16 Cal.App.4th 322, 337. Settlement is the preferred means of dispute resolution, particularly in  
17 complex representative litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.  
18 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the  
19 agreement taken as a whole is fair and is not the product of fraud or collusion between the  
20 negotiating parties. *See, e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of  
21 fairness when the settlement agreement was negotiated at arm’s length by experienced counsel.  
22 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Because this Settlement is  
23 fair, adequate, and reasonable, Plaintiff respectfully requests that the Court grant approval.

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24  
25 <sup>7</sup> This is contrasted with the much broader release permitted in a class action context, which may release  
26 all underlying Labor Code violations based on “any matter or fact” alleged in the complaint. *See In re*  
27 *Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981) (“The weight of authority  
28 establishes that . . . 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.”).

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

2                   A settlement is presumptively fair where it is reached through arm's-length bargaining,  
3 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,  
4 and counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th  
5 1794, 1802; *see also Kullar, supra*, 168 Cal.App.4th at 130. In deciding whether to approve a  
6 proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair  
7 under the circumstances of the case. *Mallick v. Sup. Ct.* (1979) 89 Cal.App.3d 434, 438. In  
8 exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair,  
9 adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant  
10 factors for the Court to consider include, but are not limited to:

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

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

20                   "In the context of a settlement agreement, the test is not the maximum amount Plaintiff  
21 might have obtained at trial on the complaint, but rather whether the settlement is reasonable  
22 under all of the circumstances." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,  
23 250. Because settlements inherently involve compromise, settlements providing for narrower  
24 relief than can be obtained if the suit were successfully litigated can be reasonable because "the  
25 public interest may indeed be served by a voluntary settlement in which each side gives ground  
26 in the interest of avoiding litigation." *Air Lines Stewards, etc., Local 550 v. Am. Airlines, Inc.*,  
27 455 F.2d 101, 109 (7th Cir. 1972). Further, courts review the discovery conducted by the parties  
28 to aid in assessing whether the parties sufficiently developed the claims and supporting factual  
bases before reaching settlement. *See Kullar, supra*, 168 Cal.App.4th at 129-31. Information is  
sufficient where it allows the parties and the court to form "an understanding of the amount that

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

5 **a) The Strength of Plaintiff’s Case**

6 Plaintiff acknowledges that there are substantial risks and uncertainty in proceeding to  
7 trial. Defendant presented numerous defenses to Plaintiff’s underlying claims and arguments to  
8 why Plaintiff’s damages calculations were overstated; chief among them that the Court would  
9 utilize its discretion to substantially reduce any award of PAGA penalties. While Plaintiff was  
10 prepared to litigate his claims through trial, Plaintiff faced substantial challenges in prevailing in  
11 this matter and obtaining a better result than will be provided through the Settlement. Thus, this  
12 factor supports approval.

13 **b) Risk, Expense, Complexity, and Duration of Further Litigation**

14 Although the Parties engaged in a significant exchange of documents and information as  
15 part of the informal mediation production, no formal written or deposition discovery had been  
16 conducted prior to mediation. Moen Decl., ¶ 23. Absent settlement, the Parties will be required  
17 to expend substantial time and resources completing formal discovery. *Id.* Preparation for trial  
18 remained, as well as the prospect of appeals in the wake of a summary judgment ruling for either  
19 party, as well as appeals after trial. *Id.* This Settlement avoids these considerable costs, risks, and  
20 the accompanying burden of continued litigation on the Court.

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

22 This proposed Settlement provides a fair and reasonable monetary recovery for the  
23 LWDA and PAGA Aggrieved Employees in the face of disputed claims and significant litigation  
24 risks. Plaintiff and his retained expert analyzed Defendant’s produced data, and forecasted  
25 Defendant’s realistic exposure for PAGA civil penalties as follows:

26 The PAGA Aggrieved Employees worked an aggregate 9,461 pay periods during the  
27 relevant time period. Moen Decl., ¶ 24. Labor Code § 2699(f)(2) provides for PAGA civil  
28 penalties in the amount of \$100 for each aggrieved employee per pay period for the initial  
violation, and \$200 for each aggrieved employee per pay period for each subsequent violation.

1 See Labor Code § 2699(f)(2). However, courts have interpreted section 2699(f)(2) to only impose  
2 the \$200 subsequent penalty after an employer has been notified that its conduct violates the  
3 Labor Code. See, e.g., *Amaral, supra*, 163 Cal.App.4th at 1207 (finding “initial” violation rate  
4 applies until employer is notified that it is violating a Labor Code provision); *Trang v. Turbine*  
5 *Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854, at  
6 \*5 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened  
7 penalties for subsequent violations unless and until a court or commissioner notifies the employer  
8 that it is in violation of the Labor Code”). Plaintiff’s expert’s analysis confirmed that Plaintiff’s  
9 primary substantive theories of relief (daily off-the-clock unpaid wages, meal and rest period  
10 violations, and failure to reimburse for work-related cell phone use) would be triggered in  
11 virtually every pay period during the PAGA Period. Moen Decl., ¶ 24. Assuming that Plaintiff  
12 could prove at least one Labor Code violation in each pay period, Plaintiff calculated Defendant’s  
13 maximum possible PAGA exposure at \$946,100 (9,461 pay periods x \$100 per violation). *Id.*

14 However, as discussed above, Defendant raised numerous defenses to the merits of  
15 Plaintiff’s underlying claims and argued that even if found liable, the Court would exercise its  
16 discretion to drastically reduce any potential PAGA penalties awarded. Moen Decl., ¶ 24; see  
17 also Section II.C, *supra*. In the face of Defendant’s defenses on the merits and the Court’s  
18 discretion to reduce PAGA penalties, Plaintiff discounted this figure by 30% to account for the  
19 risk of losing on the merits and by an additional 60% for the risk of the Court reducing the  
20 penalties, to arrive at a realistic recovery of \$264,908. *Id.*; see also, *Fleming v. Covidien Inc.*,  
21 Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, \*4 (C.D. Cal. Aug. 12, 2011)  
22 (reducing PAGA penalties from \$2.8 million to \$500,000 (17% of exposure)); *Carrington, supra*,  
23 30 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of maximum exposure).

24 Therefore, the mediator’s proposed settlement amount of \$265,000 represents *more* than  
25 Plaintiff’s reasonably forecasted recovery, which is well within the range approved by courts as  
26 being fair, reasonable and adequate, while also avoiding further expense and risk of further  
27 litigation. Moen Decl., ¶ 24; see also *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, \*9  
28 (N.D. Cal. 2015) (“Although 15% represents a modest fraction of the hypothetical maximum

1 recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary  
2 approval...). Therefore, approval is appropriate since the Settlement will provide tangible,  
3 monetary relief to the PAGA Aggrieved Employees and the State of California.

4 **d) Discovery Completed and the Status of Proceedings**

5 The parties engaged in a significant exchange of documents and data necessary to evaluate  
6 the value of the PAGA claim prior to mediation. Moen Decl., ¶ 15. Defendant provided Plaintiff  
7 with a representative sampling of the PAGA Aggrieved Employees' timekeeping and payroll  
8 records and written wage and hour policies. *Id.* It was only after the completion of this informal  
9 discovery exchange and Plaintiff's expert's comprehensive data analysis that the parties attended  
10 mediation. *Id.* Thus, this factor supports settlement approval.

11 **e) The Experience and Views of Counsel**

12 "Parties represented by competent counsel are better positioned than courts to produce a  
13 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*  
14 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented  
15 by competent and experienced wage and hour counsel who possess extensive experience litigating  
16 wage and hour class actions and PAGA representative actions, and who believe this Settlement  
17 to be fair and adequate for all involved. *See* Moen Decl., ¶¶ 2-8; *see also, generally*, Declaration  
18 of Paul K. Haines ("Haines Decl."); Declaration of Fletcher W. Schmidt ("Schmidt Decl.");  
19 Declaration of Susan J. Perez ("Perez Decl."). Further, the proposed Settlement was reached with  
20 the input and assistance of mediator Hon. Amy D. Hogue (Ret.), whose mediator's proposal was  
21 ultimately accepted by the parties. Moen Decl., ¶¶ 15-16. Thus, this factor strongly supports  
22 settlement approval. *See, Kullar, supra*, 168 Cal.App.4th at 130 ("The court undoubtedly should  
23 give considerable weight to the competency and integrity of counsel and the involvement of a  
24 neutral mediator in assuring itself that a settlement agreement represents an arm's length  
25 transaction entered without self-dealing or other potential misconduct.").

26 **C. The Requested Award for Attorneys' Fees is Reasonable as a Percentage of**  
27 **the MSA**

28 Plaintiff, as the prevailing party in settlement, is entitled to recover attorneys' fees and  
costs for bringing this PAGA claim. *See* Cal. Labor Code § 2699(g) ("Any employee who prevails

1 in any action shall be entitled to an award of reasonable attorney’s fees and costs.”); Code of Civil  
2 Procedure § 1021.5(a). A fee award is justified where the legal action has produced its benefits  
3 by way of a voluntary settlement. *See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91;  
4 *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53.  
5 California state and federal courts routinely award fee awards of one-third of the settlement fund  
6 in class actions. *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, fn. 11; *see also Wershba,*  
7 *supra*, 91 Cal. App. 4th at 254 (recognizing the “percentage of recovery” method); *In re Pacific*  
8 *Enterprises Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (affirming 33% fee award). Indeed,  
9 the California Supreme Court approved the use of the “percentage of fund” method in California.  
10 *See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (“the percentage of fund method  
11 survives in California class action cases...”.) Specifically, the *Laffitte* Court held:

12       The recognized advantages of the percentage method—including relative  
13 ease of calculation, alignment of incentives between counsel and the class, a  
14 better approximation of market conditions in a contingency case, and the  
15 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.

16 *Id.*, at 503 (internal citation omitted); *see also Rawlings v. Prudential-Bache Properties, Inc.*, 9  
17 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorneys’ fees  
18 more accurately reflects the results achieved for the putative class than the lodestar method and  
19 “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected  
20 recovery; and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid*  
21 *Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery  
22 method is generally favored in common fund cases because it allows courts to award fees from  
23 the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’”). Further,  
24 while trial courts have discretion to conduct a “lodestar cross-check,” it need not do so. *Laffitte*,  
25 1 Cal.5th at 506 (“[w]e hold further that trial courts...retain the discretion to forgo a lodestar  
26 cross-check and use other means to evaluate the reasonableness of a requested percentage fee.”).

27       Here, Plaintiff’s counsel’s fee request of \$88,333.33 (one-third of the MSA) is the same  
28 percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the recovery

1 method. This is also consistent with Plaintiff's counsel's experience in similar wage and hour  
2 class action and PAGA matters. Moen Decl., ¶ 25; *see also* 4 Newberg on Class Actions § 14.6  
3 (4th Ed. 2013) ("No general rule can be articulated on what is a reasonable percentage of a  
4 common fund. Usually 50% of the fund is the upper limit on a reasonable fee award...").

5 The fee award requested here is justified because Plaintiff's counsel achieved a reasonable  
6 monetary recovery for the PAGA Aggrieved Employees and the State of California (who did not  
7 take this case after receiving Plaintiff's July 12, 2023 PAGA Notice letter) in an uncertain and  
8 risky case, while bearing the substantial burdens of representation on a contingency basis. Moen  
9 Decl., ¶ 26. Additionally, Plaintiff's recovery for the State of California and PAGA Aggrieved  
10 Employees exceeds other PAGA awards approved by courts in California. *See, e.g., Penaloza,*  
11 *supra*, 2013 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL  
12 1182822 (average PAGA penalties of \$3.33). That Plaintiff's counsel achieved these results  
13 without engaging in a protracted legal battle, in the face of serious defense challenges and an  
14 uncertain legal landscape, confirms the strength of the results achieved.

15 As discussed, this case presented significant risks to Plaintiff. It is fair and reasonable to  
16 account for these risks in compensating Plaintiff's counsel, as well as the risks involved in  
17 undertaking this litigation and expending considerable effort while working on a pure  
18 contingency basis. Since undertaking representation of Plaintiff, Plaintiff's counsel dedicated  
19 substantial resources to this litigation, including expending \$21,769.23 in litigation costs, without  
20 receiving any compensation to date. Moen Decl., ¶¶ 22 and 26, Exhibit 3. Plaintiff's counsel's  
21 efforts include conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal  
22 research regarding the merits and legal bases of Plaintiff's claims and ability to recover penalties  
23 under the PAGA, conducting legal research regarding Defendant's potential defenses, drafting  
24 and filing Plaintiff's complaint and July 12, 2023 PAGA Notice letter to the LWDA, attending  
25 various court hearings, meeting and conferring extensively with Defendant's counsel regarding  
26 the case and Defendant's informal document production, reviewing substantial documents and  
27 data produced by Defendant prior to mediation, retaining an expert to analyze Defendant's  
28 document production, evaluating the timekeeping and payroll data prior to mediation, drafting a

1 mediation brief, preparing for and attending mediation, negotiating and drafting the memorandum  
2 of understanding, negotiating and drafting the long-form Settlement Agreement and PAGA  
3 Notice, preparing this Motion for settlement approval and all supporting documents hereto, and  
4 otherwise litigating the case. Moen Decl., ¶ 26. Plaintiff's counsel will spend additional time  
5 attending the hearing on this Motion and overseeing the settlement administration process. *Id.*  
6 Given the potential for adverse outcomes, the contingent risks borne by Plaintiff's counsel was  
7 great. The quality of Plaintiff's counsel's work, and the efficacy and dedication with which it was  
8 performed, should be compensated.

9 Plaintiff's Counsel's previous experience in litigating wage and hour class and  
10 representative actions also supports the reasonableness of the fee request. Plaintiff's Counsel are  
11 well-versed in plaintiff- and defense-side wage and hour class and representative action litigation,  
12 and collectively bring more than four decades worth of wage-and-hour class and representative  
13 action litigation experience. *See* Moen Decl., ¶¶ 2-8; *see also generally* Haines Decl.; Schmidt  
14 Decl.; Perez Decl. Plaintiff's Counsel have also been certified as class counsel in numerous class  
15 action cases alleging wage and hour claims. *See id.* Plaintiff's Counsel's experience in similar  
16 matters was integral in evaluating the strengths and weaknesses of this case and the  
17 reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires  
18 skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as  
19 the procedural law of representative litigation. Moen Decl., ¶ 27. Because it is reasonable to  
20 compensate Plaintiff's Counsel commensurate with their skill, reputation, and experience, the  
21 requested fee award of \$88,333.33 (one-third of the MSA) is fair and reasonable, as the California  
22 Supreme Court held in *Laffitte*, and should therefore be approved.

23 **D. The Requested Cost Reimbursement is Fair, Adequate, and Reasonable**

24 Plaintiff's Counsel incurred and respectfully requests reimbursement of \$21,769.23 in  
25 actual litigation costs. Moen Decl., ¶ 22, Exhibit 3.<sup>8</sup> Plaintiff's Counsel's request is fair, adequate,  
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27 <sup>8</sup> Plaintiff's Counsel utilized the expert services of Dr. J. Michael DuMond, Ph.D., of Berkeley Research  
28 Group, to perform all expert analyses for this case, and are providing a copy of the expert invoice received  
by Plaintiff's Counsel in support of this Motion. Moen Decl., ¶ 28, Exhibit 5 (Expert Invoice).

1 and reasonable, as all of these costs are documented and reasonably incurred. *Id.* Moreover, the  
2 costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g., Harris v.*  
3 *Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel should recover “those out-of-pocket expenses  
4 that would normally be charged to a fee paying client”); *Berkeley Cement, Inc. v. Regents of*  
5 *University of California* (2019) 30 Cal.App.5th 1133, 1142 (affirming trial court’s discretion to  
6 award costs of voluntary mediation); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, \* 3  
7 (N.D. Cal. 2011) (“costs of reproducing pleadings, motions and exhibits” are reimbursable);  
8 *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d  
9 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response*  
10 *Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation expenses, legal  
11 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable);  
12 *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 295 (recognizing necessity of expert  
13 testimony on topics that are not a matter of common knowledge). Because the expense  
14 reimbursements requested by Plaintiff’s Counsel were reasonably incurred, the Court should  
15 grant Plaintiff’s Counsel’s request for \$21,769.23 in actual litigation costs reimbursement.

16 **E. The Court Should Approve the Requested Administration Costs**

17 Plaintiff also requests that the Court approve \$4,500 in administration costs to the  
18 Settlement Administrator, Phoenix. Moen Decl., ¶ 29; Lawrence Decl., ¶ 16, Exhibit B. As  
19 detailed in the Settlement Agreement and declaration of Jodey Lawrence, submitted concurrently  
20 with this Motion, Phoenix will perform duties in connection with this Settlement that are integral  
21 in effectuating the Settlement and the PAGA Notice process. Among other things, Phoenix will  
22 calculate each PAGA Aggrieved Employee’s Individual Settlement Payment, update addresses  
23 contained in the employee data supplied by Defendant, format the PAGA Notices for mailing and  
24 mail PAGA Notices to all PAGA Aggrieved Employees, and otherwise administer the Settlement.  
25 *See generally*, Lawrence Decl.; Settlement, § III. Phoenix was selected to administer this  
26 Settlement because it is an experienced and well-respected settlement administrator, and returned  
27 a bid at a competitive rate. Moen Decl., ¶ 29; *see generally*, Lawrence Decl. For these reasons,  
28 Phoenix’s requested costs are fair, reasonable, and adequate, and should be approved.

Courts routinely approve enhancement awards to compensate named plaintiffs for the services they provide and the risks they incur during class and representative litigation. *See, e.g., Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 enhancement award). This is also true in the context of PAGA-only settlements. *See* Moen Decl., ¶ 30, Exhibit 6. Here, pursuant to the Settlement, Plaintiff seeks a representative enhancement payment of \$5,000.00. *See* Settlement, §§ I.9 and II.4.b. This request is reasonable given Plaintiff’s efforts in this case, the time devoted to the prosecution and resolution of this action, and the risks he undertook on behalf of the PAGA Aggrieved Employees. Among other things, Plaintiff searched for relevant documents for use in this lawsuit, provided factual information to his attorneys, had many phone calls with his attorneys to discuss the claims in the lawsuit and Defendant’s practices, assisted his attorneys to help them prepare for mediation, made himself available throughout mediation to answer factual questions raised by the mediator, reviewed and assisted his attorneys in finalizing the settlement agreement, and otherwise assisted his attorneys in moving this case towards resolution. Ortega Decl., ¶ 6. Plaintiff estimates spending approximately 15 to 20 hours on activities that ultimately lead to the Settlement. *Id.* Accordingly, Plaintiff’s representative enhancement payment is appropriate and justified as part of the Settlement.

For the reasons stated herein, this Court should grant Plaintiff's Motion in its entirety and adopt the [Proposed] Judgment and Order Granting Plaintiff's Motion for Settlement Approval of Claims Brought Under the PAGA, Reasonable Attorneys' Fees and Costs, and Representative Enhancement Payment, submitted concurrently herewith.

By: Matthew K. Moen  
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