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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LIZBETH REYES and ANGELA ALFARO, as individuals, on behalf of themselves and all other aggrieved employees,

Plaintiffs,

vs.

IMPRESS COMMUNICATIONS, INC., a California corporation; and DOES 1 through 100,

Defendants.

Case No. 23STCV23663

[*Case assigned for all purposes to the Hon. Stuart M. Rice, Dept. SSC-1*]

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

Date: April 22, 2025
Time: 10:30 a.m.
Dept.: SSC-1

Complaint filed: September 28, 2023
Trial Date: None Set

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

PLEASE TAKE NOTICE that on April 22, 2025 at 10:30 a.m., or as soon thereafter as the matter may be heard in Department 1 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Lizbeth Reyes and Angela Alfaro (thereafter, "Plaintiffs"), individually and on behalf of the State of California and other Aggrieved Employees, will, and hereby do, move this Court for entry of an Order as follows:

1. Granting approval, pursuant to California Labor Code § 2699(l), of the proposed settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698, *et seq.*) and as set forth in the Parties' PAGA Settlement Agreement;
2. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
3. Approving the proposed Notice of PAGA Settlement ("Notice") as to form and content, and directing that it be distributed to Aggrieved Employees pursuant to the terms of the PAGA Settlement Agreement ("Agreement");
4. Directing the funding and distribution of the Gross Settlement Amount pursuant to the terms of the Agreement;
5. Approving an award of attorneys' fees to Plaintiffs' counsel of $31,666.67 and an award of litigation costs to Plaintiffs' counsel of not more than $10,578.43;
6. Approving enhancements payments to Plaintiffs of up to $10,000.00 ($5,000.00 for each Plaintiff) for their service to the Aggrieved Employees and the State of California;
7. Approving $2,950.00 in administration costs to Phoenix Settlement Administrators;
8. Approving the payment of $29,853.68 to the California Labor & Workforce Development Agency ("LWDA") for its share of PAGA civil penalties; and
9. Approving the payment of $9,951.22 to the Aggrieved Employees on a *pro rata* basis based on the number of pay periods worked during the relevant PAGA Period.

This Motion is based on this Notice; the attached Memorandum of Points and Authorities;

the declaration of Sean M. Blakely and all exhibits attached thereto; the declaration of Paul K. Haines; the declaration of Joel M. Gordon; the declaration of Jodey Lawrence of Phoenix Settlement Administrators and all exhibits attached thereto; the declarations of Plaintiffs Lizbeth Reyes and Angela Alfaro; the Agreement; all other pleadings and papers on file in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Respectfully submitted,

Dated: March 4, 2025

HAINES LAW GROUP, APC

By: ______________________

Paul K. Haines
Sean M. Blakely
Joel M. Gordon
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Lizbeth Reyes and Angela Alfaro (collectively "Plaintiffs"), as "aggrieved employees" under the Private Attorneys' General Act of 2004 ("PAGA"), respectfully move this Court for an Order granting approval of the PAGA Settlement Agreement ("Agreement") with Defendant Impress Communications, Inc. ("Impress").[1] This PAGA representative action ("Action") seeks civil penalties predicated on Impress' alleged violations of the California Labor Code from September 28, 2022 to June 10, 2024 (the "PAGA Period"). The proposed Agreement, under which Impress has agreed to pay a non-reversionary Gross Settlement Amount of Ninety-Five Thousand Dollars and Zero Cents ($95,000.00), will resolve Plaintiffs' representative claims filed on behalf of the State of California and all "Aggrieved Employees," which includes all current and former non-exempt employees who worked for Impress within the State of California at any time during the PAGA Period.

Notably, the relief provided for under the Agreement, and the claims released thereunder, are *solely* for the payment of *civil penalties* under the PAGA, and not for any underlying Labor Code violations. The release also encompasses only PAGA civil penalties based upon the factual allegations and theories alleged by Plaintiffs in this Action, and only for claims arising during the PAGA Period, which, as noted above, runs through June 10, 2024.

In deciding whether to grant approval of the Agreement, the primary issue is whether the Agreement is fair, reasonable, and adequate. As set forth herein, the proposed Agreement 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 discovery and investigation to evaluate the relative

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[1] The proposed PAGA Settlement Agreement is attached as **Exhibit 1** to the Declaration of Sean M. Blakely filed herewith. The Proposed Notice of PAGA Settlement is attached as **Exhibit A** to the PAGA Settlement Agreement. All terms in the Motion have the same definitions as used in the Settlement. The red-lined version of the LASC Model PAGA Settlement Agreement, showing modifications that were made in drafting the Settlement Agreement is attached to the Declaration of Sean M. Blakely as **Exhibit 5**.

strength and value of Plaintiffs' PAGA claim and Impress' 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 Agreement provides for a non-reversionary Gross Settlement Amount of $95,000.00. Agreement, §§ 1.10, 3.1. After deducting amounts for requested attorneys' fees ($31,666.67), litigation costs ($10,578.43), Plaintiffs' Enhancement Payments ($10,000.00 in total, $5,000.00 for each Plaintiff), and settlement administration costs ($2,950.00), the Agreement provides for distribution of a Net Settlement Amount of approximately $39,804.90 to be paid to Aggrieved Employees and the California Labor & Workforce Development Agency ("LWDA"). Agreement, §§ 1.15, 3.2; *see also* Declaration of Sean M. Blakely ("Blakely Decl."), ¶¶ 13, 21, Exhibit 4; Declaration of Jodey Lawrence ("Lawrence Decl."), ¶ 16, Exhibit B.

The Net Settlement Amount shall be distributed 75% (approximately $29,853.68) to the LWDA, and 25% (approximately $9,951.22) to Aggrieved Employees, pursuant to the requirements of the PAGA as codified in Lab. Code § 2699(i). *See* Agreement, § 3.2.4. There are approximately 83 Aggrieved Employees, resulting in average payments of approximately $119.89 to each Aggrieved Employee. Blakely Decl., ¶ 13; Agreement, § 4.1.

The Settlement represents a positive result for the State of California and Aggrieved Employees. Further litigation may have resulted in a smaller recovery or even no recovery at all, based on the defenses asserted by Impress and significant ongoing litigation risks. Moreover, the Gross Settlement Amount is greater than other PAGA penalty awards that have been approved as reasonable. *See, e.g., Penaloza v. PPG Industries Inc*., Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-aside of $5,000, or $7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-aside of $10,000, or $3.33 per employee). The amounts requested for attorneys' fees and costs, the Plaintiffs' Enhancement Payments, and settlement administration costs are all fair, adequate, and reasonable. Thus, Plaintiffs respectfully request that the Court enter the [Proposed] Judgment and Order submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION

A. Brief Factual Background and Summary of Claims

In business since 1989, Impress provides packaging and commercial printing services. Blakely Decl., ¶ 8. Plaintiff Lizbeth Reyes has worked as a non-exempt employee in the position of "Packaging Associate" from approximately March 17, 2021 to approximately October 2024. *See* Declaration of Plaintiff Lizbeth Reyes ("Reyes Decl."), ¶ 2. Plaintiff Angela Alfaro worked as a non-exempt employee in the position of "Packaging Associate" from approximately April 29, 2021, to approximately October 23, 2023. *See* Declaration of Plaintiff Angela Alfaro ("Alfaro Decl."), ¶ 2. Plaintiffs, like all Aggrieved Employees, were employed by Impress in California as non-exempt employees during the PAGA Period and were subject to Impress' wage and hour policies and practices at issue in this Action. Reyes Decl., ¶ 3; Alfaro Decl., ¶ 3.

Plaintiffs' PAGA claims are predicated primarily on allegations that they and other employees were not provided with all compliant meal and rest periods, were not provided with accurate and compliant wage statements, and did not receive all final wages owed at the time of separation of employment. As explained below, Impress denies Plaintiffs' allegations and has asserted several affirmative defenses to their claims.

B. Relevant Procedural History

On September 28, 2023, Plaintiff Reyes filed the instant action, alleging violations of the California Labor Code for: (1) meal period violations; (2) rest period violations; (3) wage statement violations; and (4) unfair competition. Blakely Decl., ¶ 9. That same day, Plaintiff Reyes submitted her notification letter to the LWDA and Impress regarding Impress' alleged Labor Code violations and her intent to pursue a PAGA representative action, as required by Labor Code § 2699.3. *Id.*, Exhibit 2. On November 15, 2023, Plaintiff Alfaro submitted her notification letter to the LWDA and Impress regarding Impress' alleged Labor Code violations and her intent to pursue a PAGA representative action, as required by Labor Code § 2699.3. Blakely Decl., ¶ 9, Exhibit 3.

On December 4, 2023, after exhausting her pre-filing PAGA requirements under Labor Code § 2699.3(a)(2)(A), Plaintiff Reyes filed a First Amended Class and Representative Action

Complaint in this Court to add a cause of action for civil penalties under the Private Attorneys General Act ("PAGA"). Blakely Decl., ¶ 10. Shortly after the class action complaint was filed, Impress produced arbitration agreements that the Plaintiffs signed during their employment with Impress. *Id.* As a condition of the Settlement, Plaintiffs requested dismissal of class claims without prejudice, which the Court granted on February 20, 2025. *Id.*; Agreement, § 2.1. On February 24, 2025, Plaintiffs filed the operative Second Amended PAGA Representative Action Complaint ("SAC"), adding Plaintiff Alfaro as a named plaintiff, along with certain factual allegations relating to her PAGA claim. Blakely Decl., ¶ 10.

On June 10, 2024, the Parties participated in a full-day mediation with respected wage-and-hour mediator Jason Marsili, Esq. Blakely Decl., ¶ 11. In connection with mediation, Impress informally produced information and documents pertaining to Plaintiffs and other Aggrieved Employees, including, but not limited to, payroll and timekeeping records for Plaintiffs and a representative sample of Aggrieved Employees during the PAGA Period; several data points, including the number of Aggrieved Employees and the number of aggregate pay periods worked by Aggrieved Employees during the PAGA Period; and Impress' employee handbook and other written policies in effect during the PAGA Period, in order for Plaintiffs' counsel to investigate Plaintiffs' allegations and value the claims prior to mediation. *Id*. Plaintiffs conducted a comprehensive analysis and extrapolation of the data produced by Impress to calculate Impress' potential PAGA exposure. *Id*.

During mediation, the parties vigorously debated Plaintiffs' ability to proceed on a representative basis, the legal basis for Plaintiffs' claims and Impress' defenses, the potential amount of penalties, and the Parties' data analyses and conclusions based thereon. Blakely Decl., ¶ 12. At the end of mediation, Mr. Marsili issued a mediator's proposal to fully and finally resolve Plaintiffs' PAGA, which was accepted by both sides. *Id*. Over the following months, the Parties negotiated and finalized the Agreement now before the Court. *Id*.

III. SUMMARY OF THE AGREEMENT

A. "Aggrieved Employees" Defined

The "Aggrieved Employees" consist of all current and former non-exempt employees who worked for Impress within the State of California at any time during the PAGA Period. *See* Agreement, §§ 1.4, 1.19. Impress estimates there are approximately 83 Aggrieved Employees who worked approximately 2,445 total PAGA Pay Periods. *Id.*, § 4.1. The PAGA Period is defined as any time from September 28, 2022, until June 10, 2024. *Id.*, § 1.19.

B. <u>Monetary Terms</u>

The Agreement provides for Impress' payment of a <u>non-reversionary</u> Gross Settlement Amount of $95,000.00. *See* Agreement, § 3.1. After deducting requested attorneys' fees, litigation costs, Plaintiffs' Enhancement Payments, and administration costs, the Agreement provides for the Net Settlement Amount to be distributed 75% to the LWDA and 25% to Aggrieved Employees, per Labor Code § 2699(i). Agreement, § 3.2. The 25% portion to Aggrieved Employees shall be distributed based on each Aggrieved Employee's proportionate number of PAGA Pay Periods worked for Impress in California during the PAGA Period. *Id.*, § 3.2.5

1. *Attorneys' Fees and Costs, Administration Costs, and Plaintiffs' Enhancement Payments*

Plaintiffs' counsel requests one-third of the Gross Settlement Amount in attorneys' fees (i.e., $31,666.67) and $10,578.43 in litigation costs. *See* Agreement, § 3.2.1.; Blakely Decl., ¶¶ 21-22, Exhibit 4. As discussed in detail below, a fee award of one-third of the Gross Settlement Amount is fair, adequate, and reasonable as a percentage of the settlement fund and is in line with fee awards in other PAGA settlements.

The parties have agreed to engage Phoenix Settlement Administrators ("Phoenix") as the third-party settlement administrator. *See* Agreement, § 7.1. Phoenix will conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without forwarding addresses, calculate and distribute Individual PAGA Payments, mail payments to all Aggrieved Employees together with the Notice, and perform other duties that are integral to the effectuation of the Agreement. *Id.*, at §§ 4.4; 7. Plaintiffs request that the Court approve $2,950.00 in administration costs to Phoenix, which will cover all costs incurred by Phoenix in connection with the Agreement. *Id.,* at § 3.2.3.; *see also* Lawrence Decl., Exhibit B.

Finally, Plaintiffs request enhancement payments of up to $10,000.00 ($5,000.00 for each

Plaintiff), in recognition of Plaintiffs' contributions to this case and their efforts in bringing this case to successful resolution. *See* Agreement, § 3.2.2; Reyes Decl., ¶¶ 4-7; Alfaro Decl., ¶¶ 4-7.

2. *Payment to LWDA and Aggrieved Employees*

The Net Settlement Amount will be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Labor Code § 2699(i). *See* Agreement, § 3.2.4. Based on the above requested distributions, the Net Settlement Amount is estimated to be $39,804.90 with $29,853.68 paid to the LWDA and $9,951.22 distributed to Aggrieved Employees. Blakely Decl., ¶ 13. As noted, there are approximately 83 total Aggrieved Employees. *Id.* Thus, it is anticipated that overall, Aggrieved Employees will receive average payments of approximately $119.89. *Id*.

3. *Funding of the Settlement*

Impress shall fully fund the Gross Settlement Amount by transmitting the funds to Phoenix no later than thirty (30) days after the Effective Date. *See* Agreement, § 4.3. Within fourteen (14) days after Impress funds the Gross Settlement Amount, Phoenix will mail checks for all Individual PAGA Payments via First Class U.S. Mail, postage prepaid, the LWDA PAGA Payment, Plaintiffs' Enhancement Payments, the Administration Expenses Payment, and the PAGA Counsel Expenses Payment. *See* Agreement, § 4.4.

Funds from any settlement checks remaining uncashed after 180 days will be sent by Phoenix to the California State Controller's Office for deposit in the Unclaimed Property Fund in the name of the Aggrieved Employee. *See* Agreement, §§ 4.4.1, 4.4.3.

IV. <u>LEGAL ARGUMENT</u>

A. <u>Standards for Approval of a PAGA Settlement</u>

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

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

First, in evaluating a PAGA settlement, the court is <u>not</u> concerned with amount(s) received by "aggrieved employees," but rather, must focus on the total settlement amount in achieving PAGA's objective. "The remedy sought in a PAGA suit consists of civil penalties, not individual or class damages." *Mendez,* 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.*, No. C-08-2073-MHP, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court confirmed, "PAGA claims are 'representative' actions in the sense that they are brought on the state's behalf. The employee… 'represents the same legal right and interest as' those agencies — 'namely, recovery of civil penalties that otherwise would have been assessed and collected by the [LWDA].'" *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 380 (2014)).

Moreover, while "'[a PAGA] action is … designed to protect the public and penalize the employer for past illegal conduct" (*Mendez*, 2010 WL 2650571 at *4), a PAGA settlement – like any settlement – involves a compromise that stops short of rendering findings of liability and damages. "Unlike 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." *Ochoa-Hernandez,* 2010 WL 1340777 at *4.

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim,[2] "[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; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482 (2020) (recognizing that "there is no mechanism for opting out of the judgment entered on the PAGA claim."). This renders the approval process of a PAGA settlement distinct from a class action settlement, as the Court need not employ the "two-step approval process" required for class action settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

Finally, unlike a class action settlement under Fed. R. Civ. Proc. Rule 23(e) or Cal. Rule of Court 3.769, the scope of release in a PAGA settlement is limited to *civil penalties*. 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." *Arias v. Sup. Ct.*, 46 Cal. 4th 969, 986-87 (2009). Thus, the scope of release in a PAGA settlement is strictly confined to PAGA penalties.

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

In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup. Ct.,* 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.*, 48

[2] "The [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." *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009).

Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited to:

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

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

Because settlements inherently involve compromise, even a settlement providing for substantially narrower relief than might be obtained if the suit were successfully litigated can be reasonable because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). In addition, courts review the discovery process and information received through it to aid them in assessing whether the parties sufficiently developed the claims and their supporting factual bases before reaching settlement. *Kullar v. Foot Locker Retail, Inc.,* 168 Cal.App.4th 116, 129-31 (2008). Information is sufficient where it allows the parties and the court to form "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Clark v. Am. Residential Serv. LLC,* 175 Cal.App.4th 785, 801 (2009). This requirement exists so that the parties can provide the court with "a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated." *Kullar,* 168 Cal.App.4th at 132.

a. <u>The Strength of Plaintiffs' Case</u>

Although Plaintiffs steadfastly maintain their claims are meritorious, Plaintiffs acknowledge that there are substantial risks and uncertainty in proceeding to trial. For example, with respect to the Plaintiffs' meal period claims, Impress counters that it maintained compliant written meal period policies throughout the PAGA Period and provided compliant meal periods in line with those policies. Blakely Decl., ¶ 14. Impress further contends that it always provided employees with the opportunity to take meal periods and is not required to ensure they are taken. *Id*.; *see Brinker Restaurant Corporation v. Superior Court*, 53 Cal.4th 1004, 1034 (2012) (rejecting "ensure" standard). Thus, Impress argues, any non-compliant meal periods were the result of lawful employee choice rather than any policy and/or practice of Impress. Blakely Decl., ¶ 14. Impress further argues that Plaintiffs' allegations that Impress supervisors altered Plaintiffs' meal period punches are without merit and further highlights the individualized nature of Plaintiffs' meal period claims. *Id*. Finally, Impress maintains Plaintiffs' meal period claim is not suited for representative treatment because individual inquiries would be needed to assess which employees, if any, took non-compliant or missed meal periods; how many meal periods were non-compliant or missed; the reasons why a particular employee did not take a meal period on a particular shift; and (for second meals) whether employees waived the meal period. *Id*.

With respect to Plaintiffs' rest period claims, Impress contends that it has maintained and enforced compliant written rest period policies/practices and has always authorized and permitted employees a 10-minute rest period for each four (4) hours worked, or major fraction thereof, as required under the Wage Order, and that any failure to take rest periods was a result of employee choice rather than any Impress policy and/or practice. Blakely Decl., ¶ 15. Impress further argues that Plaintiffs' rest period claims are not amenable to representative treatment since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id*. These manageability concerns are especially present with respect to rest period claims, Impress argues, given that rest periods are not, and need not, be recorded. *Id*.

As a result of Impress' alleged failure to pay all meal and rest period premiums, Plaintiffs allege derivative PAGA claims for failure to issue accurate and itemized wage statements and failure to pay all wages owed at separation. *See* Labor Code §§ 226(a), 201-203; Blakely Decl., ¶ 16. In response, Impress argues that Plaintiffs underlying claims will fail and, as a result, the derivative claims will also fail. *See Price v. Starbucks Corp*., 192 Cal.App.4th 1136, 1147 (2011)

("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail"). Impress also maintains that any "derivative" PAGA claims for violations of Labor Code Sections 226 or 203 would be entirely duplicative and would be unlikely to be awarded in any significant manner by a Court. Blakely Decl., ¶ 16.

Impress further maintains that even if the Court awarded PAGA penalties for any of the alleged violations, it would substantially reduce the penalties based on the discretionary factors in Labor Code § 2699(e)(2) (authorizing reduction in penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). Blakely Decl., ¶ 17. Indeed, Impress argues, many courts have reduced PAGA penalties drastically where, as here, the employer presented good-faith defenses and attempted to comply with the law. *Id.*, *see also*, *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because "Defendant took their obligations…seriously and attempted to comply with the law"); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%, in part because employer "not aware" of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

While Plaintiffs were prepared to litigate their claims through trial, Plaintiffs faced substantial challenges in prevailing in this matter and obtaining a better result than will be provided through the Agreement. Thus, this factor supports approval.

b. <u>Risk, Expense, Complexity, and Duration of Further Litigation</u>

Although the Parties engaged in significant informal discovery prior to mediation, the Parties still had much formal 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 Agreement avoids those risks and the accompanying expense.

c. <u>Amount Offered in Agreement Given Realistic Value of Claims</u>

The proposed Agreement provides a fair and reasonable monetary recovery for the State of California and Aggrieved Employees in the face of hotly disputed claims. Based on data provided by Impress, there were approximately 2,445 PAGA Pay Periods worked by the Aggrieved Employees during the PAGA Period. Blakely Decl., ¶ 18; Agreement, § 8.

Labor Code § 2699(f)(2) provides for PAGA civil 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. *See* Labor Code § 2699(f)(2). However, courts have interpreted section 2699(f)(2) to only impose the $200 subsequent penalty after an employer has been notified that its conduct violates the Labor Code. *See, e.g., Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854, at *5 (C.D. Cal. Dec. 19, 2012) ("courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430, at *9 (S.D. Cal. 2009) (finding that California law imposes the "subsequent violation penalty" only after an employer has been notified its conduct violates the Labor Code). Therefore, assuming that Plaintiffs could prove at least one Labor Code violation in each pay period, Plaintiffs calculated Impress' <u>maximum</u> PAGA exposure at $244,500 (2,445 pay periods * $100 per violation). Blakely Decl., ¶ 18.

In light of Impress' arguments and defenses described above, Plaintiffs discounted that figure by 30% for a risk of losing on the merits and/or not recovering a PAGA penalty in each and every pay period, and by an additional 40% for risk of the Court reducing penalties, to arrive at a realistic exposure of approximately $102,690.00. Blakely Decl., ¶ 18; s*ee 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).

In the face of Impress' defenses on the merits and the Court's discretion to reduce PAGA penalties, Plaintiffs felt that the negotiated settlement of $95,000.00, which represents approximately 92.5% of Plaintiffs' reasonably forecasted total recovery, was clearly in the best interests of the LWDA and the Aggrieved Employees and was well within the range of reasonableness. Blakely Decl., ¶ 18; *See Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) ("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.") (internal quotations omitted).

Approval of the Agreement is appropriate, as the Agreement will provide tangible monetary relief to Aggrieved Employees and the State of California while avoiding the risks and costs of continued litigation and trial.

d. <u>Discovery Completed and the Status of Proceedings</u>

As noted, the parties engaged in substantial informal discovery to evaluate the value of Plaintiffs' PAGA claim. Impress provided Plaintiffs with, *inter alia*, a sampling of timekeeping and payroll records for non-exempt employees, additional relevant data points, and its relevant written policies. Blakely Decl., ¶ 11. Only after engaging in mediation and in adversarial discussions about the likelihood of proceeding on a representative basis and prevailing on the merits, did the parties reach the proposed Agreement. Thus, this factor supports settlement approval.

e. <u>The Experience and Views of Counsel</u>

"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). Plaintiffs are represented by experienced wage and hour counsel with decades of combined experience, who believe this Agreement to be fair and adequate for all involved. Blakely Decl., ¶¶ 2-6; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8; Declaration of Joel M. Gordon ("Gordon Decl."), ¶¶ 3-4. 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. <u>The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the Gross Settlement Amount</u>

Plaintiffs are 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”). It is undisputed that by obtaining PAGA penalties for the LWDA and Aggrieved Employees, Plaintiffs have prevailed. *See 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” (internal citation omitted)).

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

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

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

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

Here, Plaintiffs’ fee request of one-third of the Gross Settlement Amount (estimated to be $31,666.67) which is the same percentage approved by the California Supreme Court in *Laffitte*, is fair and reasonable based on the percentage of the recovery method, as confirmed by a lodestar cross-check.

In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte,* 1 Cal.5th at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id*. at 506 (“[w]e hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee”).

Under the lodestar method, the court multiplies the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure by a "multiplier" to account for a range of factors, such as the contingent nature of the case and the degree of success achieved. *See Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977); *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (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.A County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of approximately 12.8). In representative actions such as this one, where Plaintiffs' counsel efficiently protected the rights of the aggrieved employees and where the value of the benefit conferred to the group "can be monetized with a reasonable degree of certainty," the 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, Plaintiffs' counsel has a lodestar of approximately $103,375.00 without the use of any multiplier, resulting in a *negative* multiplier compared to the $31,666.67 fee request. Blakely Decl., ¶ 22. Plaintiffs' counsel submit that the billing rates used are reasonable in view of the market rates and the rates at which Plaintiffs' counsel has been approved at in other courts. Blakely Decl., ¶¶ 22-23; Exhibit 6 (*Laffey* Matrix).

Name	**Rate**	**Hours**	**Pre-Multiplier Lodestar**
Paul K. Haines (18th Year Attorney)	$850	9.2	$7,820.00
Sean M. Blakely (15th Year Attorney)	$750	61.7	$46,275.00
Joel M. Gordon (10th Year Attorney)	$650	72.8	$47,320.00
Firm Paralegals	$175	11.2	$1,960.00
Total Lodestar			**$103,375.00**

Critically, Plaintiffs' recovery for the State of California and Aggrieved Employees of approximately $39,804.90 (Net Settlement Amount) exceeds other PAGA awards approved by California courts. *See, e.g., Aguirre v. DSW, Inc.*, No. DCV-11-01522-GW (SPx), 2012 WL 11875296 at *3 (C.D. Cal. Nov. 29, 2012) (approving $10,000 PAGA payment); *Jamil v. Workforce Res., LLC*, No. 18-CV-27 JLS (NLS), 2020 WL 6544660) at *6 (S.D. Cal. Nov. 5, 2020) (approving $10,000 total PAGA payment, finding the amount "fair and adequate in view of the purposes and policies of PAGA"); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-cv-0324-AWI-SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) ("approving $10,000 total PAGA payment, finding that "[t]his comports with settlement approval of PAGA awards in other cases. [Citations.]"); *Boyd v. Bank of Am. Corp.*, No. SACV-13-0561-DOC (JPRx), 2014 WL 6473804 at *8 (C.D. Cal. Nov. 18, 2014) (approving $18,750 PAGA payment); *Franco v. Ruiz Food Prods.*, No. 1:10-cv-02354-SKO, 2012 WL 5941801 at *14 (E.D. Cal. Nov. 27, 2012) (approving $10,000 PAGA payment); *Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) ($10,000 PAGA payment).

As discussed above, this case presented significant risks to Plaintiffs. Plaintiffs' counsel conducted extensive research regarding the merits of Plaintiffs' claims, their ability to recover PAGA civil penalties, and Impress' potential defenses. Blakely Decl., ¶¶ 14-17. Since undertaking representation of Plaintiffs, Plaintiffs' counsel has dedicated substantial resources to this litigation without receiving any compensation to date. *Id.*, at ¶ 21. Plaintiffs' counsel also performed extensive analysis of data and information produced by Impress, used this analysis to evaluate Plaintiffs' claims, and drafted a comprehensive mediation brief. *Id.*, at ¶ 11. Plaintiffs' counsel attended a full-day mediation, and expended significant effort in preparing settlement documents, this Motion and supporting documents, and will oversee the settlement administration process. *Id*. Given the considerable potential for adverse outcomes in this case, the contingent risk borne by Plaintiffs' counsel was great. *Id.*, ¶ 20. The quality of Plaintiffs' counsel's work, and the efficacy and dedication with which it was performed, should be compensated. Thus, Plaintiffs submits the requested fee award is fair, reasonable and adequate and should be approved.

Plaintiffs' counsel have over three decades of combined wage-and-hour class and representative action experience and have been certified as class counsel in numerous wage and hour class actions. Blakely Decl., ¶¶ 2-6; Haines Decl., ¶¶ 3-8; Gordon Decl., ¶¶ 3-4. Because it is reasonable to compensate counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable. Other factors show the requested fee is reasonable. This case involved nuanced legal issues, including Impress' obligations to "provide" meal periods, as well as the availability and amount of PAGA civil penalties for the alleged Labor Code violations. Blakely Decl., ¶ 20. Impress was also represented by experienced wage-and-hour litigation counsel. Thus, Plaintiffs submit the requested fee award is fair, reasonable and adequate and should be approved.

C. <u>PAGA Counsel Litigation Expenses Payment and Administrator's Expenses Payment Are Fair, Reasonable, and Adequate</u>

Plaintiffs' request for reimbursement of litigation costs of $10,578.43 is also fair and reasonable. All of Plaintiffs' litigation costs are reasonably incurred. *See* Blakely Decl., ¶ 21, Exhibit 4. Moreover, the costs Plaintiffs seek are the types of costs routinely approved by courts. *See*, *e.g.*, *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *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); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs reimbursable); *In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

Likewise, the request for administration costs of $2,950.00 is also fair and reasonable. Phoenix Settlement Administrators was selected because it is an experienced settlement administrator and returned a reasonable bid. *See* Agreement, §§ 3.2.3, 7.1; *See also* Lawrence Decl. and Exhibits. Moreover, Phoenix will perform several important functions that are integral to the implementation of the Settlement. The fee requested is therefore reasonable.

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D. **<u>The Court Should Approve Plaintiffs' Requested Enhancement Payments Because They Are Fair, Adequate, and Reasonable in View of Plaintiffs' Efforts and the Risks They Assumed in This Litigation.</u>**

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 Plaintiff); *Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294 (N.D. Cal. 1995) (approving $50,000 incentive payment). Here, the Plaintiffs each seek an Enhancement Payment of $5,000.00. *See* Agreement, § 3.2.2. This request is reasonable given the Plaintiffs' efforts in this case and the risks they undertook on behalf of Aggrieved Employees. Reyes Decl., ¶¶ 4-7; Alfaro Decl., ¶¶ 4-7. Plaintiffs provided substantial factual information and documents to counsel, assisted in identifying potential witnesses, and participated in numerous discussions with Plaintiffs' counsel regarding the case. *Id.*; *see also* Blakely Decl., ¶ 24. Accordingly, the Plaintiffs' requested Enhancement Payments are appropriate and justified and should be approved.

V. **<u>CONCLUSION</u>**

For the reasons stated herein, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion and adopt the [Proposed] Judgment and Order Granting Settlement Approval submitted concurrently herewith.

Respectfully submitted,

Dated: March 4, 2025

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