

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Tiara Gose-Hardy (SBN 323823)
tgose@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
FERNANDO QUEZADA

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
FERNANDO QUEZADA

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

FERNANDO QUEZADA, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

PDQ ENTERPRISES, INC. dba PDQ
RENTALS, a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 23STCV24330

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

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR SETTLEMENT APPROVAL OF
CLAIMS BROUGHT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT AND
REASONABLE ATTORNEYS' FEES, COSTS,
AND ENHANCEMENT AWARD;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: May 12, 2025
Time: 10:30 a.m.
Dept.: SSC-1

Complaint Filed: October 5, 2023
Trial Date: None Set

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

PLEASE TAKE NOTICE that on May 12, 2025 at 10:30 a.m., or as soon thereafter as the matter may be heard in Department SSC-1 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Fernando Quezada (“Plaintiff”), on behalf of himself and all other aggrieved employees, will and hereby does move this Court for entry of an Order as follows:

1. Granting approval, pursuant to California Labor Code section 2698 *et seq.*, and specifically Labor Code section 2699(1)(2), of the proposed Settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698 *et seq.*) and set forth in the Settlement;
2. Appointing Phoenix Settlement Administrators (“Phoenix”) as the Settlement Administrator, and approving an award of \$5,500.00 in anticipated costs to Phoenix for its settlement administration services;
3. Approving the proposed Notice of PAGA Settlement and Release of Claims as to form and content, and directing that it be distributed to the Aggrieved Employees pursuant to the terms of the Settlement;
4. Directing the distribution of the Gross Settlement Amount pursuant to the terms of the Settlement;
5. Approving an award of \$125,000.00, which is one-third of the Gross Settlement Amount, in attorneys’ fees to Plaintiff’s Counsel;
6. Approving an award in the amount of \$21,728.57 in actual litigation costs to reimburse Plaintiff’s Counsel;
7. Approving an enhancement award of \$7,500.00 to Plaintiff for his release of the PAGA claims and service to the Aggrieved Employees and the State of California;
8. Approving the payment of \$161,453.57 to the California Labor & Workforce Development Agency for its share of PAGA civil penalties; and
9. Approving the payment of \$53,817.86 to the Aggrieved Employees on a *pro rata* basis based on number of pay periods worked during the relevant time period.

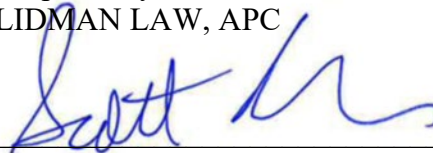
This Motion is based on this Notice, the attached Memorandum of Points and Authorities; the declarations of Scott M. Lidman, Milan Moore, Tiara Gose-Hardy, Paul K. Haines, Plaintiff Fernando

1 Quezada, and Jodey Lawrence on behalf of Phoenix and the exhibits attached thereto, the pleadings and
2 other papers filed in this action, and on any further oral or documentary evidence or argument presented
3 at the time of hearing.

4
5 Dated: February 27, 2025

Respectfully Submitted,
LIDMAN LAW, APC

6
7 By:



Scott M. Lidman

8 Attorneys for Plaintiff
9 FERNANDO QUEZADA

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Fernando Quezada (“Plaintiff”), an “Aggrieved Employee” under the California Labor
4 Code § 2698 *et seq.* (“PAGA”), respectfully requests this Court grant approval of the Settlement¹ with
5 PDQ Enterprises, Inc. doing business as PDQ Rentals (“Defendant”) pursuant to Labor Code section
6 2699(1)(2). This PAGA action is based on Defendant’s alleged failure to pay all overtime wages owed,
7 failure to provide meal periods, failure to authorize and permit rest periods, failure to reimburse necessary
8 business expenses, failure to provide accurate itemized wage statements, failure to pay all wages upon
9 termination, failure to pay sick pay wages at the correct rate of pay, and failure to maintain accurate
10 records for its current and former employees in California who worked for Defendant as hourly, non-
11 exempt employees, pursuant to various sections of the Labor Code. This PAGA action seeks civil
12 penalties on behalf of the California Labor & Workforce Development Agency (“LWDA”) and all
13 “Aggrieved Employees,” defined in the Settlement as “all current and former hourly, non-exempt
14 employees of Defendant PDQ Enterprises, Inc. who worked in California at any time from October 5,
15 2022 through the date the Court grants approval of this settlement.”

16 As set forth herein, the proposed Settlement should be approved because it is fair, reasonable, and
17 adequate, as it (1) is the product of arm’s-length negotiations, (2) was negotiated by attorneys experienced
18 in wage-and-hour issues, (3) was negotiated subsequent to undertaking sufficient investigation to
19 evaluate the relative strength and value of the PAGA-based claims, and (4) reflects a reasoned
20 compromise based directly on the relative strength and value of the PAGA-based claims, as well as the
21 risks, expense, complexity and likely duration of further litigation.

22 This proposed PAGA Settlement obligates Defendant to pay a **non-reversionary** Gross
23 Settlement Amount (“GSA”) of \$375,000.00. After deducting amounts for requested attorneys’ fees
24 (one-third of the GSA, \$125,000.00), costs incurred by Plaintiff’s counsel (\$21,728.57), an enhancement
25 award for Plaintiff (\$7,500.00), and settlement administration costs (\$5,500.00) to Phoenix Settlement
26

27 ¹ The PAGA Settlement Agreement (“Settlement”) is attached to the Declaration of Scott M. Lidman as Exhibit 2. The
28 Proposed Notice of PAGA Settlement and Release of Claims is attached to the Settlement as Exhibit B. All defined terms in
this Motion have the same definitions as used in the Settlement.

Administrators, the Settlement provides for distribution of civil penalties in the amount of \$215,271.43. Pursuant to Labor Code section 2699(i), 75% of \$215,271.43 (or \$161,453.57) will be distributed to the LWDA and 25% of \$215,271.43 (or \$53,817.86) will be distributed to the Aggrieved Employees on a *pro rata* basis. The amounts requested for attorneys' fees and costs, Plaintiff's enhancement award, and settlement administration costs are fair, adequate, and reasonable, particularly in light of the recovery obtained. Because there are approximately 384 Aggrieved Employees, the average individual payment to each Aggrieved Employee is estimated to be approximately \$141 (and will vary based on an employee's actual number of pay periods worked during the relevant time period).

The GSA of \$375,000.00 represents a fair and reasonable recovery for the State of California and Aggrieved Employees considering the limited scope and time period of the release. The release in the Settlement does not impact any underlying Labor Code claims any of the Aggrieved Employees may have. Further litigation may have resulted in a smaller recovery or even no recovery at all based on the defenses asserted by Defendant and given the significant litigation risks involved.

In light of the foregoing, this Court should enter the [Proposed] Order and Judgment granting approval of the Settlement submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION

A. The Parties

Defendant is in the business of providing equipment and tool rentals, sales, parts and repair services. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. Plaintiff, a former non-exempt Welder, was employed by Defendant from approximately April 2017 through approximately November 2022. *See* Declaration of Fernando Quezada ("Quezada Decl."), ¶ 3.

B. Procedural History

On October 5, 2023, Plaintiff filed a class action Complaint against Defendant PDQ Enterprises, Inc. dba PDQ Rentals asserting claims for (1) failure to pay all overtime wages owed; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) failure to reimburse necessary business expenses; (5) failure to provide accurate, itemized wage statements; (6) failure to pay all wages upon termination; (7) failure to pay sick pay wages at the correct rate of pay; and (8) unfair competition.

1 Lidman Decl., ¶ 11.

2 On October 6, 2023, Plaintiff sent a written notice pursuant to Labor Code section 2698 *et seq.* to
3 the Labor Workforce Development Agency (“LWDA”) and Defendant asserting claims for civil penalties
4 pursuant to the California Labor Code Private Attorney General Act, Labor Code section 2698, *et seq.*
5 (“PAGA”) stemming from Defendant’s failure to pay all overtime wages, provide meal and rest periods,
6 furnish accurate and compliant itemized wage statements, pay all earned wages at least twice during each
7 calendar month, sick pay at the legal pay rate, timely pay all final wages due, and maintain accurate
8 records for all hourly, non-exempt employees. Lidman Decl., ¶ 12; Exh. 1.

9 On December 12, 2023, Plaintiff filed a First Amended Complaint, adding a claim for civil
10 penalties pursuant to California Labor Code Private Attorney General Act, Labor Code section 2698, *et*
11 *seq.* (“PAGA”) stemming from Defendant’s alleged violations of the California Labor Code set forth in
12 the Complaint and LWDA notice. Lidman Decl., ¶ 13.

13 On March 15, 2024, due to the existence of an arbitration agreement between the Parties and at
14 Plaintiff’s request, the Court dismissed the class action allegations without prejudice, and submitted
15 Plaintiff’s individual claims to arbitration. Lidman Decl., ¶ 14. Thus, the only remaining claim in this
16 action is the PAGA representative claim. *Id.* Further, although Plaintiff commenced the arbitration on
17 or around April 15, 2024, the Parties agreed to stay the arbitration proceedings so that they could privately
18 mediate the remaining PAGA claim in this action. *Id.*

19 A copy of this motion, including the settlement agreement, has been submitted to the California
20 Labor Workforce Development Agency (“LWDA”) on the same date that Plaintiff filed this motion. *Id.*
21 at ¶ 42, Exh. 6.

22 **C. Informal Discovery, Mediation, and Arms-Length Negotiations**

23 After agreeing to participate in a private mediation, Defendant informally produced to Plaintiff
24 information and documents pertaining to Plaintiff and other Aggrieved Employees, including time records
25 and payroll data for all Aggrieved Employees. Lidman Decl., ¶ 15. After the detailed review of the
26 information produced by Defendant, Plaintiff’s Counsel drew on their extensive experience in similar
27

1 cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.* This discovery allowed the parties
2 to assess the merits and value of Plaintiff’s claims and determine if a settlement could be reached. *Id.*

3 On December 5, 2024, the Parties participated in mediation with Kevin Barnes, a well-respected
4 wage and hour class and representative action mediator. Lidman Decl., ¶ 16. During mediation, the
5 Parties vigorously debated their opposing legal positions and the likelihood of Plaintiff’s ability to
6 proceed on a representative basis and ultimately obtain a judgment in his favor. *Id.* Ultimately, the
7 Parties reached a settlement, the terms of which were subsequently finalized in writing after mediation.
8 Lidman Decl., ¶ 16, Exh. 2.

9 **III. ARGUMENT**

10 **A. Standard For Approval of A PAGA Settlement**

11 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute,
12 which states that the “court shall review and approve any penalties sought as part of a proposed settlement
13 agreement pursuant to this part.” *See* Lab. Code § 2699(l). Notably, the PAGA statute does not set
14 expressly forth the criteria by which a PAGA settlement is to be judged.

15 In evaluating the adequacy of the settlement amount, the Court’s focus is not concerned with the
16 amount(s) that “aggrieved employees” are to receive, but rather, must focus on the total settlement
17 amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit consists of civil
18 penalties, not individual or class damages.” *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 (E.D.
19 Cal. Jul. 1, 2010) at *4. “Unlike class actions, these civil penalties are not meant to compensate unnamed
20 employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders*
21 *Foods, Inc.*, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). Moreover, while “[a PAGA] action is
22 ... designed to protect the public and penalize the employer for past illegal conduct” (*Mendez*, 2010 WL
23 2650571 at *4), a reviewing Court must take into account the fact that settlement of a PAGA claim – like
24 any settlement – involves a “compromise” that stops short of rendering findings of liability and damages.

25 The Court must not lose sight of the fact that “[u]nlike a class action seeking damages or
26 injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover
27 civil penalties for the government that otherwise may not have been assessed and collected by
28

1 overburdened state enforcement agencies.” *Ochoa-Hernandez*, at *4.

2 Additionally, consistent with the fact that unnamed employees have no property interest in a
3 PAGA claim,² “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the
4 ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez* at *5.

5 **B. This Court Should Approve The Settlement Because It Is A Fair, Adequate, And**
6 **Reasonable Compromise Of Disputed Claims**

7 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*
8 *Court* 62 Cal.App.3d 231, 236 (1976). To be approved, a settlement must be “fair, reasonable and
9 adequate to all concerned.” *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012). The
10 Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole
11 is fair and is not the product of fraud or collusion between the negotiating parties. *See, e.g., Hanlon,*
12 *supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was
13 negotiated at arm’s length by experienced counsel. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th
14 116, 130 (2008).

15 Here, the GSA secured by Plaintiff is greater than other PAGA penalty awards approved as
16 reasonable within California state courts, which often range between \$7,500.00 and \$15,000.00 for
17 PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty
18 payments on a per person basis. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013
19 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of \$5,000.00 to
20 class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL
21 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of \$10,000.00 for class
22 of approximately 3,000 members).

23 Because this Settlement is fair, adequate, and reasonable, Plaintiff respectfully requests that the
24 Court approve the Settlement.

25 ² As held by the California Supreme Court, “[t]he Labor Code Private Attorneys General Act of 2004 does not
26 create property rights or any other substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved
27 employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law
28 enforcement agencies.” *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal. 4th 993, 1003
(2009).

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

2 A settlement is presumptively fair where it is reached through arm's-length bargaining, based on
3 sufficient discovery and investigation to allow counsel and the court to act intelligently, and counsel is
4 experienced in similar litigation. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). Relevant
5 factors for the Court to consider in determining whether the settlement is "fair, adequate, and reasonable"
6 include, but are not limited to:

7 [T]he strength of Plaintiff's case, the risk, expense, complexity and likely
8 duration of further litigation, the risk of maintaining class action status
9 through trial, the amount offered in settlement, the extent of discovery
10 completed and the stage of the proceedings, the experience and views of
11 counsel, the presence of a governmental participant, and the reaction of the
12 class members to the proposed settlement.
13 *Dunk*, 48 Cal.App.4th at 1801.³

14 "In the context of a settlement agreement, the test is not the maximum amount Plaintiffs might
15 have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the
16 circumstances." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements
17 inherently involve compromise, even settlements providing for substantially narrower relief than likely
18 would be obtained if the suit were successfully litigated can be reasonable because "the public interest
19 may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding
20 litigation." *Id.* (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th
21 Cir. 1972)). In addition, courts review the discovery process and information received through it to aid
22 them in assessing whether the parties sufficiently developed the claims and their supporting factual bases
23 before reaching settlement. *See Kullar, supra*, 168 Cal.App.4th at 129-31. Information is sufficient
24 where it allows the parties and the court to form "an understanding of the amount that is in controversy
25 and the realistic range of outcomes of the litigation." *Clark v. Am. Residential Serv. LLC*, 175 Cal.App.4th
26 785, 801 (2009). This requirement exists so that the parties can provide the court with "a meaningful and
27 substantiated explanation of the manner in which the factual and legal issues have been evaluated."
28 *Kullar*, 168 Cal.App.4th at 132.

³ As explained above, in the context of a representative PAGA settlement, the third and eighth factors (risk of maintaining class action status and reaction of class members to settlement) are inapplicable.

1 **a) Overview of the Proposed Settlement**

2 **i. “Aggrieved Employees” Defined**

3 Aggrieved Employees are defined as, “all current and former hourly, non-exempt employees of
4 Defendant PDQ Enterprises, Inc. who worked in California at any time from October 5, 2022 through
5 the date the Court grants approval of this settlement.” *See* Lidman Decl., ¶ 20, Exh. 2 (Settlement, Sec.
6 I.2.). The Aggrieved Employees, including Plaintiff, worked a total of 22,620 pay periods during the
7 period of October 5, 2022 through December 5, 2024 (the date of mediation). *See* Lidman Decl. ¶ 20,
8 Exh. 2 (Settlement, Sec. III.3.).

9 **ii. Essential Terms of The Settlement**

10 This Settlement provides for Defendant to pay a Gross Settlement Amount of \$375,000.00.
11 Lidman Decl., Exh. 2 (Settlement, Sec. III.2.). After deducting amounts for requested attorneys’ fees,
12 attorneys’ costs, Plaintiff’s requested enhancement award, and settlement administration costs, the
13 Settlement provides for distribution of the remaining Net Settlement Amount (“NSA”) to Aggrieved
14 Employees and the LWDA distributed as follows: 75% to the LWDA and 25% to Aggrieved Employees
15 pursuant to Labor Code 2699(i). Lidman Decl., Exh. 2 (Settlement, Sec. III.5.).

16

Gross Settlement Amount:	\$375,000.00⁴
Minus Court-approved attorneys’ fees (1/3):	\$125,000.00
Minus Court-approved attorneys’ costs:	\$21,728.57
Minus Court-approved enhancement award:	\$7,500.00
Minus settlement administrator costs:	\$5,500.00
Net Settlement Amount:	\$215,271.43

20

Net Settlement Amount:	\$215,271.43
75% to LWDA	\$161,453.57
25% to Aggrieved Employees	\$53,817.86

24

25 ⁴ Based on its records, Defendant estimates that, as of December 5, 2024, there were 22,620 PAGA Pay
26 Periods during the PAGA Period. In the event that the final number of PAGA Pay Periods during the
27 PAGA Period exceeds 24,881 PAGA Pay Periods, Defendant agrees to increase the GSA on a proportional
28 basis equal to the percentage increase in the number of pay periods worked by the PAGA Period above
the 10%. *See* Lidman Decl., ¶ 20, Exh. 2 (Settlement, Sec. III.3).

1 Lidman Decl., ¶ 17.

2 The payment of the GSA shall be made within 30 calendar days of the “Effective Date” defined
3 as the date upon entry of an Order by the Court approving the Settlement. *See* Lidman Decl., ¶ 18, Exh.
4 2 (Settlement, Sec. III.2.). Within ten (10) business days of the Effective Date, Defendant shall provide
5 the Settlement Administrator with information for Aggrieved Employees in order to calculate and
6 distribute checks to Aggrieved Employees. *See id.* (Settlement, Sec. IV.2). Within seven (7) business
7 days of receiving the Aggrieved Employees’ information from Defendant, the Settlement Administrator
8 will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual
9 settlement payments to each Aggrieved Employee and the data used to calculate such payments. *Id.* The
10 Settlement Administrator shall also determine whether the Escalator Clause in Section III.3 of the
11 Settlement has been triggered. *Id.* Within two (2) business days of receiving the Parties’ approval, the
12 Settlement Administrator shall mail copies of the explanatory letter to all Aggrieved Employees with
13 their checks. *Id.* Any checks remaining uncashed for more than 180 days will be tendered to the State
14 Controller’s Office under the unclaimed property fund laws in the names of the Aggrieved Employees to
15 whom the checks were issued. Settlement, Sec. IV.4.

16 **iii. Payment to the LWDA and Aggrieved Employees**

17 The entire NSA shall be designated as PAGA civil penalties. Lidman Decl., ¶ 19. Seventy-five
18 percent (75%) of the NSA will be distributed to the LWDA and twenty-five percent (25%) will be
19 distributed to the Aggrieved Employees pursuant to Labor Code § 2699(i). *Id.* Based on these
20 distributions, the amount to be paid to the LWDA will be \$161,453.57 and the amount paid to Aggrieved
21 Employees is estimated to be \$53,817.86. Lidman Decl., ¶ 19. This portion of the NSA shall be paid to
22 all Aggrieved Employees pro rata based on the proportional number of pay periods worked by each
23 Aggrieved Employee during the PAGA Period and **will be reported on an IRS Form 1099.** Lidman
24 Decl., Exh. 2 (Settlement, Sec. IV.3.). The average payment to an Aggrieved Employee is estimated to
25 be \$141.15. Lidman Decl., ¶ 19.

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

27 The Parties conducted an extensive informal exchange of documents and information for
28

1 mediation which allowed Plaintiff to thoroughly evaluate the claims. *See* Lidman Decl., ¶ 15. Had the
2 Parties not settled, they would need to engage in formal discovery, potential cross-summary judgment
3 motions, preparation for trial as well as the prospect of appeals in the wake of a summary judgment ruling
4 for either party, and/or post-trial motions. As a result, the Parties would incur considerably more
5 attorneys' fees and costs through trial. This settlement avoids those risks, the accompanying expense,
6 and protracted litigation.

7 **c) Strength of Plaintiff's Case and Realistic Value of Claims**

8 Here, Aggrieved Employees' claims arise from Defendant's failure to pay all overtime wages
9 owed, failure to provide meal periods, failure to provide rest periods, failure to reimburse necessary
10 business expenses, failure to provide accurate itemized wage statements, failure to pay all wages upon
11 termination, failure to pay all earned wages at least twice during each calendar month, failure to pay sick
12 pay at the correct rate of pay, and failure to maintain accurate records. Lidman Decl., ¶ 21. Although he
13 maintains that the PAGA action is meritorious, Plaintiff acknowledges that his position includes real risks
14 and uncertainty, especially in the face of Defendant's numerous defenses on the merits discussed below.
15 While Plaintiff maintains he could rebut these defenses, Plaintiff nonetheless faced several substantial
16 challenges in prevailing in this matter, and this risk factor weighs in favor of approving the Settlement.
17 Plaintiff estimates Defendant's realistic exposure, based on these defenses and risks, as follows:

18 Civil Penalties Owed for Overtime/Regular Rate Violations: Plaintiff alleges that Defendant did
19 not pay Plaintiff and other non-exempt employees the proper overtime compensation equal to one and
20 one-half times their regular rate of pay for all overtime hours worked. Lidman Decl., ¶ 22. Specifically,
21 Defendant paid Plaintiff and other non-exempt employees bonuses and/or other forms of pay not properly
22 excludable as a matter of law when calculating Plaintiff's regular rate of pay (hereinafter referred to as
23 "Incentive Pay"). *Id.* Despite Defendant's payment of Incentive Pay to Plaintiff and other non-exempt
24 employees, Defendant failed to include the Incentive Pay when calculating their regular rate of pay for
25 purposes of overtime, thereby causing Plaintiff and other non-exempt employees to be underpaid for all
26 their required overtime wages. *Id.*

27 In addition, despite Defendant's payment of Incentive Pay to Plaintiff and other non-exempt
28 employees, Defendant's policies and/or procedures failed to include all forms of Incentive Pay when

1 calculating the regular rate of pay for purposes of paying sick pay in a manner that fully complies with
2 Labor Code § 246(1) in that Defendant failed to pay sick days at the regular rate of pay and unlawfully
3 paid sick days at the straight time or base rate of pay. Lidman Decl., ¶ 22.

4 Plaintiff contends that the aforementioned alleged violations occurred in 600 pay periods during
5 the relevant time period. *Id.* Accordingly, pursuant to Labor Code section 1198 and the default penalties
6 set forth in the PAGA, Plaintiff calculated Defendant's civil penalty exposure on this claim at \$60,000.00
7 (600 x \$100 initial violation rate). Lidman Decl., ¶ 22.

8 In defense of this claim, Defendant contends that the bonuses paid to non-exempt employees are
9 a percentage of overall income, including overtime, such that the regular rate claim lacks merit pursuant
10 to applicable law. Lidman Decl., ¶ 23.

11 In light of this very viable defense and Defendant's argument that the Court would exercise its
12 discretion to reduce any civil penalty due to its good faith efforts to comply with applicable law, Plaintiff
13 discounted the maximum recovery on this claim by 75% to account for the risk that Defendant could
14 prevail in its defenses, to arrive at a projected total of approximately \$15,000. Lidman Decl., ¶ 23.

15 Civil Penalties Owed for Meal Period Violations: Plaintiff alleges that he and other Aggrieved
16 Employees were not provided all meal periods due to Defendant's meal period policies and practices.
17 Lidman Decl., ¶ 24. Specifically, first meal periods took place after the fifth hour of work when
18 employees worked in excess of 5.0 hours in a day, and if permitted to have a second meal period when
19 working more than 10.0 and/or 12.0 hours in a day, the second meal period took place after the tenth hour
20 of work. *Id.* Further, Defendant maintained policies and practices that permitted supervisors to alter
21 timecards such that meal periods appeared compliant even though they were not. *Id.* Therefore, pursuant
22 to Labor Code section 226.7 and the default penalties set forth in the PAGA, Plaintiff calculated
23 Defendant's exposure at \$4,421,800 ((384 employees x \$100) + (21,917 x \$200 subsequent violation)).
24 *Id.*

25 Defendant counters that it has always provided non-exempt employees with an opportunity to
26 take legally compliant meal periods, and any non-compliant meal periods reflected in employee
27 timekeeping records were solely the result of employee choice, rather than any policy or practice of
28 Defendant. Lidman Decl., ¶ 25. Defendant points out that under *Brinker Restaurant Corp. v. Superior*

1 Court (2012) 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal periods, not
2 “ensure” meal periods are taken, and that it has always done so. *Id.*; *See Brinker, supra*, 53 Cal.4th at
3 1038 (rejecting “ensure” standard). Defendant also contends that only the initial violation rate would
4 apply since it had never been cited to be in violation of the meal period laws. *Id.*

5 In light of these defenses and Defendant’s argument that the Court would exercise its discretion
6 to reduce any civil penalty due to its good faith efforts to comply with applicable law, Plaintiff discounted
7 the maximum recovery on this claim by 70% to account for the risk that Defendant could prevail in its
8 defenses, to arrive at a projected total of approximately \$1,326,540. Lidman Decl., ¶ 25.

9 Civil Penalties Owed for Rest Period Violations: Plaintiff alleges that he and other Aggrieved
10 Employees were not authorized and permitted to take all required rest periods due to Defendant’s policies
11 and practices and heavy work demands. Lidman Decl., ¶ 26. Specifically, Defendant’s rest period
12 practices failed to authorize and permit third rest periods after ten hours or worth and/or fourth rest
13 periods after 14 hours of work. *Id.* Pursuant to Labor Code section 226.7 and the default penalties set
14 forth in the PAGA, Plaintiff calculated Defendant’s exposure at \$4,421,800 ((384 employees x \$100) +
15 (21,917 x \$200 subsequent violation)). *Id.*

16 Defendant contends it has always maintained and enforced lawful rest period policies and
17 practices, and that hourly, non-exempt employees were authorized and permitted to take all off-duty rest
18 periods in compliance with California law. Lidman Decl., ¶ 27. Defendant also contends that rest period
19 violations would be difficult to litigate effectively and prove since records were not maintained of rest
20 periods. *Id.* Lastly, Defendant contends that only the initial violation rate would apply since it had never
21 been cited to be in violation of the rest period laws. *Id.*

22 In light of these defenses and Defendant’s argument that the Court would exercise its discretion
23 to reduce any civil penalty due to its good faith efforts to comply with applicable law, Plaintiff discounted
24 the maximum recovery on this claim by 85% to account for the risk that Defendant could prevail in its
25 defenses, to arrive at a projected total of approximately \$663,270. Lidman Decl., ¶ 27.

26 Civil Penalties Owed for Wage Statement Violations: Plaintiff alleges that Defendant issued
27 inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid minimum
28 wages, overtime wages, and meal and rest period premium wages described above. Lidman Decl., ¶ 28.

1 Plaintiff's data analysis reflected that there were approximately 24,492 wage statements issued during
2 the relevant time period. *Id.* Accordingly, pursuant to Labor Code section 226 and the default penalties
3 set forth in the PAGA, Plaintiff calculated Defendant's exposure at \$2,442,450.00 ((135 employees x
4 \$50) + (24,357 subsequent violations x \$100)). *Id.*

5 Defendant argues that its alleged wage statement violations could not be shown to be "knowing
6 and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a
7 result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of
8 penalties. Lidman Decl., ¶ 29. Defendant contends that only the initial violation rate would apply since
9 it had never been cited to be in violation of the wage statement laws. *Id.*

10 In light of these defenses and Defendant's argument that the Court would exercise its discretion
11 to reduce any civil penalty due to its good faith efforts to comply with applicable law, Plaintiff discounted
12 the maximum recovery on this claim by 80% to account for the risk that Defendant could prevail in its
13 defenses, to arrive at a projected total of approximately \$448,490. Lidman Decl., ¶ 29.

14 Civil Penalties Owed for Failure to Reimburse: Plaintiff alleges Defendant failed to reimburse
15 non-exempt employees for all necessary business expenses incurred. Lidman Decl., ¶ 30. Specifically,
16 Defendant required Plaintiff and non-exempt employees to use their personal cell phones for work-related
17 purposes but did not reimburse the non-exempt employees for such usage in violation of Labor Code §
18 2802. *Id.* Therefore, Plaintiff calculated Defendant's exposure for unreimbursed business expenses
19 at approximately \$2,262,000 (22,620 workweeks x \$100/workweek). *Id.*

20 Defendant contends employees were not required to use their personal electronic devices to
21 communicate with team members and would only do so at their own volition. Lidman Decl., ¶ 31.
22 Defendant further contends that any purportedly necessary expenses incurred by non-exempt employees
23 were minimal. *Id.*

24 In light of these defenses and Defendant's argument that the Court would exercise its discretion
25 to reduce any civil penalty due to its good faith efforts to comply with applicable law, Plaintiff discounted
26 the maximum recovery on this claim by 65% to account for the risk that Defendant could prevail in its
27 defenses, to arrive at a projected total of approximately \$791,700. Lidman Decl., ¶ 31.

28 The proposed settlement of \$375,000.00 therefore represents approximately 11.42 percent of the

1 realistic total recovery (\$3,285,000) for Aggrieved Employees and avoids the risks of proceeding
2 through trial. Lidman Decl., ¶ 32. “The fact that a proposed settlement may only amount to a fraction
3 of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly
4 inadequate and should be disapproved.” *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242
5 (9th Cir. 1998) (internal quotations omitted). Plaintiff acknowledges that there was substantial
6 uncertainty and risk as to his claims of Labor Code violations. Approval is appropriate since this
7 settlement will provide tangible, monetary relief to Aggrieved Employees and the State of California.

8 **d) The Experience and Views of Counsel**

9 “Parties represented by competent counsel are better positioned than courts to produce a
10 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
11 *Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995).

12 Here, Plaintiff’s Counsel collectively brings over four decades of wage-and-hour class and
13 representative action experience. *See* Lidman Decl., ¶¶ 2-8; Declaration of Paul K. Haines (“Haines
14 Decl.”), ¶¶ 2-8; Declaration of Milan Moore (“Moore Decl.”), ¶¶ 2-4; and Declaration of Tiara Gose-
15 Hardy (“Gose-Hardy Decl.”), ¶¶ 2-4. They have been certified as class counsel in numerous cases
16 alleging wage and hour claims. *Id.* Their experience in similar matters was integral in evaluating the
17 strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement.
18 Lidman Decl., ¶ 34. Practice in the narrow field of wage-and-hour litigation requires skill and knowledge
19 concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class
20 and representative action litigation. *Id.* Because it is reasonable to compensate Plaintiff’s Counsel
21 commensurate with their skill, reputation, and experience, a fee award of one-third of the GSA is
22 reasonable. Other factors show that the amount of fees requested is reasonable. This case involved legal
23 issues regarding the propriety of civil PAGA penalties, an unsettled area of law. Defendant was also
24 represented by respected counsel with extensive wage-and-hour litigation experience. This factor
25 strongly supports settlement approval. *See, Kullar, supra*, 168 Cal.App.4th at 130 (“The court
26 undoubtedly should give considerable weight to the competency and integrity of counsel and the
27 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.”).

C. Requested Award of Attorneys’ Fees/Costs Are Fair and Reasonable

Plaintiff, as the prevailing party in settlement, is entitled to recover attorneys’ fees and costs for these claims. *See* Cal. Labor Code § 2699(g) (“Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”); Cal. Code of Civil Procedure § 1021.5(a). A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community 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.”)

Fee awards of roughly one-third of the settlement fund are routinely awarded in California state and federal courts in class and representative PAGA actions.⁵ Indeed, the California Supreme Court approved the use of the “percentage of fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (“the percentage of fund method survives in California class action cases...”). This is also consistent with Plaintiff’s Counsel’s experience in similar wage-and-hour class and PAGA matters. *Lidman Decl.*, ¶¶ 33-37. Here, Plaintiff’s Counsel’s fee request of \$125,000.00 (one-third of the GSA) is the same percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the recovery method.

The California Supreme Court in *Laffitte* also 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. Under the lodestar method, the court multiplies the number of hours reasonably expended by each attorney or legal staff

⁵ *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008); *see also, In re Pacific Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award); *Chavez v. Saticoy Lemon Ass’n*, Case No. 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015) (approving attorneys’ fees of one-third of settlement fund in representative PAGA settlement).

member by their reasonable hourly rates, then enhances this lodestar figure by a “multiplier” to account for a range of factors. *See Serrano v. Priest* 20 Cal.3d 25, 48-49 (1977).

Lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez, supra*, 162 Cal. App. 4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal. App. 3d 241, 251 (1977) (approving multiplier of approximately 12.8). In this case, Plaintiff’s Counsel have a lodestar of \$134,965.00 without the use of any multiplier, which is more than the \$125,000.00 fee request. *See* Lidman Decl., ¶ 35. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth in the Lidman Declaration filed concurrently herewith. The billing rates used are reasonable in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. Lidman Decl., ¶ 36, Exh. 4.

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (26 th Year Attorney)	\$900	77.4	\$69,660
Paul K. Haines (18 th Year Attorney)	\$850	15	\$12,750
Milan Moore (9 th Year Attorney)	\$650	60.7	\$36,420.00
Tiara Gose-Hardy (6 th Year Attorney)	\$525	23.7	\$12,442.50
Paralegals	\$200	21.1	\$3,692.50
Total Lodestar			<u>\$134,965.00</u>

The fee award requested here is justified because it is lower than lodestar. Further, the fee award requested here is justified because Plaintiff’s Counsel achieved a fair civil penalty recovery for the State and the Aggrieved Employees in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys’ fees). Additionally, Plaintiff’s recovery for the State of California and Aggrieved Employees exceeds other PAGA awards approved by courts in California. *See, e.g., Boyd v. Bank of Am. Corp.*, 2014 WL 6473804 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Penaloza, supra*, 2013

1 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average PAGA
2 penalties of \$3.33). That Plaintiff's Counsel achieved these results without engaging in a protracted legal
3 battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength
4 of the results achieved.

5 As discussed above, this case carried substantial risks on the merits. It is fair and reasonable to
6 account for these risks in compensating Plaintiff's Counsel, as well as the risks involved in undertaking
7 this litigation and expending considerable effort while working on a pure contingency basis.

8 Indeed, since undertaking representation of Plaintiff, Plaintiff's Counsel dedicated substantial
9 resources to this litigation, including expending a total of \$21,728.57 (including costs associated with the
10 instant motion) in actual litigation costs, without receiving any compensation to date. Lidman Decl., ¶
11 40, Exh. 5. Plaintiff's Counsel conducted legal research regarding the merits of Plaintiff's claims, the
12 ability to recover penalties under the PAGA, and Defendant's potential defenses. *Id.* Plaintiff's Counsel
13 spent significant time reviewing and analyzing the data Defendant produced informally prior to mediation
14 and prepared an exposure analysis on the PAGA penalties. *Id.* Plaintiff's Counsel expended significant
15 additional effort in preparing subsequent settlement documents, this Motion for settlement approval, and
16 supporting declarations, and will oversee the settlement administration process. *Id.* Given the
17 considerable potential for adverse outcomes in this case, the contingent risk borne by Plaintiff's Counsel
18 was great. Lidman Decl., ¶¶ 39-40. The quality of Plaintiff's Counsel's work, and the efficacy and
19 dedication with which it was performed, should be compensated.

20 Thus, Plaintiff's Counsel submit that the requested fee award is fair, reasonable and adequate and
21 should be approved. Plaintiff's request for reimbursement of litigation costs in the amount of \$21,728.57
22 is also fair and reasonable. As the evidence submitted herewith shows, all of Plaintiff's litigation costs
23 are documented and reasonably incurred. *See* Lidman Decl., ¶ 40, Exh. 5.

24 **D. Notice and Requested Settlement Administration Costs Are Fair and Reasonable**

25 The parties agreed to engage Phoenix Settlement Administrators ("Phoenix") as the settlement
26 administrator. Lidman Decl., Exh. 2 (Settlement, Sec. I.18.). Under the Settlement, Parties have agreed
27 to have the proposed Notice of PAGA Settlement and Release ("Notice"), subject to Court approval, be
28

sent with the settlement checks to inform the Aggrieved Employees about the scope of the released claims and their responsibility for any taxes payable on the amount received. The PAGA does not require notice, and the Aggrieved Employees do not have the right to opt-out. Settlement, Sec. IV.3. The Notice which is attached as Exhibit B to the Settlement and Exhibit A to the [Proposed] Order is only being provided as a courtesy.

Phoenix shall be responsible for translating and mailing the Notice in English and Spanish, and calculating and distributing the settlement checks, among other duties. Settlement, Sec. IV.3. The parties have designated \$5,500.00 as settlement administration costs. Settlement, Sec. III.4.c. Phoenix's quote is attached as Exhibit F to the Declaration of Jodey Lawrence on behalf of Phoenix in support of Motion for Approval of PAGA Settlement filed concurrently herewith.

E. Plaintiff's Requested Enhancement Award is Fair, Adequate, and Reasonable

Courts routinely approve enhancement awards to compensate named plaintiffs for the services they provide and the risks they incur during class and representative litigation. *Cellphone Termination Fee Cases*, 186 Cal. App. 5th 1380, 1393-94 (2010) ("These awards 'are discretionary, [citation], and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to *recognize their willingness to act as a private attorney general*.'")⁶

Here, pursuant to the Settlement, Plaintiff seeks an enhancement payment of \$7,500.00. *See* Lidman Decl., ¶41, Exh. 2 (Settlement, Sec. III.4.b.). Plaintiff will request the Court award this payment in recognition of his unique contributions to the prosecution of this case and his efforts in bringing this case to a successful and significant resolution. Lidman Decl., ¶41; Quezada Decl., ¶¶ 9-11. This request is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of the Aggrieved

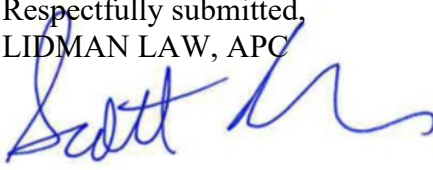
⁶ California courts routinely award enhancement payments in PAGA-only, non-class actions. *See Canul v. Basmat, Inc.*, LA County Case No. BC674940, Judge Beaudet (Dept. 50) (approved a PAGA-only settlement including a \$5,000 enhancement award to the named plaintiff); *Pickett v. 99 Cents Only Stores, et al*, LA County Case No. BC473038 (Judge Hiroshige (Dept. 54) approved a \$12,500 enhancement payment to each of two named plaintiffs in a PAGA only settlement); *Vargas v. JTS Modular, Inc.*, Kern County Case No. BCV-20-100645-JEB (Judge Bradshaw approved a \$7,500 enhancement in a PAGA only settlement); *Johnson v. DCH*, Ventura County Case No. 56-2018-00510579-Cu-OE-VTA (Judge Kellegrew approved \$12,000 enhancements to each of three named plaintiffs in a PAGA only settlement).

1 Employees. Plaintiff provided substantial factual information to Plaintiff's Counsel, attended meetings
2 with Plaintiff's Counsel, and otherwise assisted in the litigation of this action. *Id.* Further, Plaintiff put
3 his future employment prospects at risk by becoming a representative, as the fact that he filed a lawsuit
4 "is searchable on the internet and may become known to prospective employers when evaluating" them
5 for employment. *Id.*; *Guippone v. BH S&B Holdings, LLC*, 2011 U.S., Dist. LEXIS 126026, *20
6 (S.D.N.Y. Oct. 28, 2011). Accordingly, Plaintiff's request is appropriate and justified as part of the
7 Settlement.

8 **IV. CONCLUSION**

9 For the reasons stated herein, this Court should grant Plaintiff's Motion in its entirety and adopt
10 the [Proposed] Order and Judgment Granting Plaintiff's Motion for Settlement Approval of Claims
11 Brought Under the Private Attorneys General Act and Reasonable Attorneys' Fees, Costs, and
12 Enhancement Award submitted concurrently herewith.

13
14 Dated: February 27, 2025

Respectfully submitted,
LIDMAN LAW, APC
By: 

Scott M. Lidman

Attorneys for Plaintiff
FERNANDO QUEZADA