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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SILVIA CABRERA, as an individual and on behalf of all others similarly situated, Plaintiff, vs. LAIBCO, LLC, doing business as LAS FLORES CONVALESCENT HOSPITAL, a California limited liability company; and DOES 1 through 100, inclusive, Defendants.	Case No. 24STCV19962 *[Assigned for all purposes to the Hon. Elaine Lu, Dept. SSC-9]* **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** **<u>Hearing Information</u>** Date: September 18, 2025 Time: 10:00 a.m. Dept.: SSC-9 **<u>Briefing Schedule</u>** Filing by Plaintiff: August 19, 2025 Opposition by Defendant: August 29, 2025 Reply by Plaintiff: September 9, 2024

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

PLEASE TAKE NOTICE that on September 18, 2025 at 10:00 a.m., or as soon thereafter as the matter may be heard in Department SSC-9 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Silvia Cabrera ("Plaintiff"), on behalf of herself 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(l)(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 ("PSA") as the Settlement Administrator, and approving an award of $4,500.00 in anticipated costs to PSA 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 $53,333.33, which is one-third of the Gross Settlement Amount, in attorneys' fees to Plaintiff's Counsel;
6. Approving an award in the amount of $12,721.34 in actual litigation costs to reimburse Plaintiff's Counsel;
7. Approving an enhancement award of $7,500.00 to Plaintiff for her release of the PAGA claims and service to the Aggrieved Employees and the State of California;
8. Approving the payment of $53,264.46 to the California Labor & Workforce Development Agency for its share of PAGA civil penalties; and
9. Approving the payment of $28,680.86 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 Silvia

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

Dated: June 18, 2025

Respectfully Submitted,
LIDMAN LAW, APC

By: ______________________
Scott M. Lidman

Attorneys for Plaintiff
SILVIA CABRERA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Silvia Cabrera ("Plaintiff"), an "Aggrieved Employee" under the California Labor Code § 2698 *et seq.* ("PAGA"), respectfully requests this Court grant approval of the Settlement[1] with Laibco, LLC doing business as Las Flores Convalescent Hospital ("Defendant") pursuant to Labor Code section 2699(l)(2). This PAGA action is based on Defendant's alleged failure to pay all minimum wages owed, failure to pay all overtime wages owed, failure to provide meal periods, failure to authorize and permit rest periods, failure to provide accurate itemized wage statements, failure to indemnify all necessary business expenditures, failure to pay all wages owed upon termination, and failure to maintain accurate records for its current and former employees in California who worked for Defendant as hourly, non-exempt employees, pursuant to various sections of the Labor Code. This PAGA action seeks civil penalties on behalf of the California Labor & Workforce Development Agency ("LWDA") and all "Aggrieved Employees," defined in the Settlement as "all current and former hourly, non-exempt employees of Defendant Laibco, LLC, doing business as Las Flores Convalescent Hospital who worked in California at any time from August 7, 2023 through March 25, 2025."

As set forth herein, the proposed Settlement should be approved because it 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, (3) was negotiated subsequent to undertaking sufficient investigation to evaluate the relative strength and value of the PAGA-based claims, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA-based claims, as well as the risks, expense, complexity and likely duration of further litigation.

This proposed PAGA Settlement obligates Defendant to pay a **<u>non-reversionary</u>** Gross Settlement Amount ("GSA") of $160,000.00. After deducting amounts for requested attorneys' fees (one-third of the GSA, $53,333.33), costs incurred by Plaintiff's counsel ($12,721.34), an enhancement award for Plaintiff ($7,500.00), and settlement administration costs ($4,500.00) to Phoenix Settlement

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[1] The PAGA Settlement Agreement ("Settlement") is attached to the Declaration of Scott M. Lidman as <u>Exhibit 2</u>. The 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 $81,945.33. Pursuant to Labor Code section 2699(i), 65% of $81,945.33 (or $53,264.46) will be distributed to the LWDA and 35% of $81,945.33 (or $28,680.87) 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 214 Aggrieved Employees, the average individual payment to each Aggrieved Employee is estimated to be approximately <u>$134.02</u> (and will vary based on an employee's actual number of pay periods worked during the relevant time period).

The GSA of $160,000.00 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 <u>*not*</u> 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 does business as a nursing facility. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. Plaintiff, a former non-exempt Dietary Assistant and Assistant Cook, was employed by Defendant from approximately the year 2019 through approximately March 9, 2024. *See* Declaration of Silvia Cabrera ("Cabrera Decl."), ¶ 3.

B. Procedural History

On August 7, 2024, Plaintiff filed a class action Complaint against Defendant Laibco, LLC dba Las Flores Convalescent Hospital asserting claims for (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to provide accurate, itemized wage statements; (6) failure to reimburse necessary business expenses; (7) failure to pay all wages owed upon termination; and (8) unfair competition. Lidman Decl., ¶ 11.

On August 7, 2024, Plaintiff sent a written notice pursuant to Labor Code section 2698 *et seq*. to the Labor Workforce Development Agency ("LWDA") and Defendant asserting claims for civil penalties pursuant to the California Labor Code Private Attorney General Act, Labor Code section 2698, *et seq*. ("PAGA) stemming from Defendant's failure to pay all minimum and overtime wages, failure to provide meal and rest periods, failure to furnish accurate and compliant itemized wage statements, failure to reimburse for all necessary business expenditures, failure to pay all earned wages at the end of employment, and failure to maintain accurate records for all hourly, non-exempt employees. Lidman Decl., ¶ 12; Exh. 1.

On October 14, 2024, Plaintiff filed a First Amended Complaint, adding a claim for civil penalties pursuant to California Labor Code Private Attorney General Act, Labor Code section 2698, *et seq*. ("PAGA) stemming from Defendant's alleged violations of the California Labor Code set forth in the Complaint and LWDA notice. Lidman Decl., ¶ 13.

On October 18, 2024, due to the existence of an arbitration agreement between the Parties and at Plaintiff's request, the Court dismissed the class action allegations without prejudice, and submitted Plaintiff's individual claims to arbitration. Lidman Decl., ¶ 14. Thus, the only remaining claim in this action is the PAGA representative claim. *Id*. Plaintiff commenced the arbitration on or around February 28, 2025. *Id*.

A copy of this motion, including the settlement agreement, has been submitted to the California Labor Workforce Development Agency ("LWDA") on the same date that Plaintiff filed this motion. Lidman Decl., ¶ 42, Exh. 6.

C. <u>Informal Discovery, Mediation, and Arms-Length Negotiations</u>

After agreeing to participate in a private mediation, Defendant informally produced to Plaintiff information and documents pertaining to Plaintiff and other Aggrieved Employees, including time records and payroll data for all Aggrieved Employees. Lidman Decl., ¶ 15. After the detailed review of the information produced by Defendant, Plaintiff's Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id*. This informal discovery allowed the parties to assess the merits and value of Plaintiff's claims and determine if a settlement could be reached. *Id*.

On February 25, 2025, the Parties participated in mediation with Michael Ludwig, Esq., a well-respected wage and hour class and representative action mediator. Lidman Decl., ¶ 16. During mediation, the Parties vigorously debated their opposing legal positions and the likelihood of Plaintiff's ability to proceed on a representative basis and ultimately obtain a judgment in her favor. *Id*. Ultimately, the Parties reached a settlement, the terms of which were subsequently finalized in writing after mediation. *Id*; Exh. 2.

III. ARGUMENT

A. Standard For Approval of A PAGA Settlement

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

In evaluating the adequacy of the settlement amount, the Court's focus is not concerned with the amount(s) that "aggrieved employees" are to receive, but rather, must focus on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages." *Mendez v. Tween Brands, Inc.,* 2010 WL 2650571 (E.D. Cal. Jul. 1, 2010) at *4. "Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). 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 reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a "compromise" that stops short of rendering findings of liability and damages.

The Court must not lose sight of the fact that "[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." *Ochoa-Hernandez,* at *4.

Additionally, 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* at *5.

B. <u>This Court Should Approve The Settlement Because It Is A Fair, Adequate, And Reasonable Compromise Of Disputed Claims</u>

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

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

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

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[2] As held by the California Supreme Court, "[t]he Labor Code Private Attorneys General Act of 2004 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).

1. Factors in Evaluating a Representative PAGA Settlement

A settlement is presumptively fair where it is reached through arm's-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, and counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). Relevant factors for the Court to consider in determining whether the settlement is "fair, adequate, and reasonable" 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.
> *Dunk*, 48 Cal.App.4th at 1801.[3]

"In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than likely would 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." *Id.* (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. *See Kullar, supra,* 168 Cal.App.4th at 129-31. Information is sufficient where it allows the parties and the court to form "an understanding of the amount that 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.

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[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.

a) **Overview of the Proposed Settlement**

i. **"Aggrieved Employees" Defined**

Aggrieved Employees are defined as, "all current and former hourly, non-exempt employees of Defendant Laibco, LLC, doing business as Las Flores Convalescent Hospital who worked in California at any time from August 7, 2023 through March 25, 2025." *See* Lidman Decl., ¶ 20, Exh. 2 (Settlement, Sec. I.2.). The Aggrieved Employees, including Plaintiff, worked a total of 5,235 pay periods during the period of August 7, 2023 through February 25, 2025 (the date of mediation). *See* Lidman Decl. ¶ 20, Exh. 2 (Settlement, Sec. III.3.).

ii. **Essential Terms of The Settlement**

This Settlement provides for Defendant to pay a Gross Settlement Amount of $160,000.00. Lidman Decl., Exh. 2 (Settlement, Sec. III.2.). After deducting amounts for requested attorneys' fees, attorneys' costs, Plaintiff's requested enhancement award, and settlement administration costs, the Settlement provides for distribution of the remaining Net Settlement Amount ("NSA") to Aggrieved Employees and the LWDA distributed as follows: 65 percent to the LWDA and 35 percent to Aggrieved Employees pursuant to Labor Code 2699(i). Lidman Decl., Exh. 2 (Settlement, Sec. III.5.).

Gross Settlement Amount:	**$160,000.00**[4]
Minus Court-approved attorneys' fees (1/3):	$53,333.33
Minus Court-approved attorneys' costs:	$12,721.34
Minus Court-approved enhancement award:	$7,500.00
Minus settlement administrator costs:	$4,500.00
Net Settlement Amount:	**$81,945.33**

Net Settlement Amount:	**$81,945.33**
65% to LWDA	$53,264.46
35% to Aggrieved Employees	$28,680.87

[4] Based on its records, Defendant estimates that, as of February 25, 2025, there were 5,235 PAGA Pay Periods during the PAGA Period. In the event that the final number of PAGA Pay Periods during the PAGA Period exceeds 5,758 PAGA Pay Periods, Defendant agrees to increase the GSA on a proportional 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).

Lidman Decl., ¶ 17.

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

iii. Payment to the LWDA and Aggrieved Employees

The entire NSA shall be designated as PAGA civil penalties. Lidman Decl., ¶ 19. Sixty-five percent (65%) of the NSA will be distributed to the LWDA and thirty-five percent (35%) will be distributed to the Aggrieved Employees pursuant to Labor Code § 2699(i). *Id*. Based on these distributions, the amount to be paid to the LWDA will be $53,264.46 and the amount paid to Aggrieved Employees is estimated to be $28,680.87. *Id*. This portion of the NSA shall be paid to all Aggrieved Employees pro rata based on the proportional number of pay periods worked by each Aggrieved Employee during the PAGA Period and **will be reported on an IRS Form 1099.** Lidman Decl., Exh. 2 (Settlement, Sec. IV.3.). The average payment to an Aggrieved Employee is estimated to be $134.02. Lidman Decl., ¶ 19.

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

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

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

Here, Aggrieved Employees' claims arise from Defendant's failure to pay all minimum wages owed, failure to pay all overtime wages owed, failure to provide meal periods, failure to authorize and permit rest periods, failure to provide accurate and itemized wage statements, failure to reimburse for all necessary business expenditures, failure to pay all wages owed upon termination, and failure to maintain accurate records. Lidman Decl., ¶ 21. Although she maintains that the PAGA action is meritorious, Plaintiff acknowledges that her position includes real risks and uncertainty, especially in the face of Defendant's numerous defenses on the merits discussed below. While Plaintiff maintains she could rebut these defenses, Plaintiff nonetheless faced several substantial challenges in prevailing in this matter, and this risk factor weighs in favor of approving the Settlement. Plaintiff estimates Defendant's realistic exposure, based on these defenses and risks, as follows:

Civil Penalties Owed for Unpaid Wages: Plaintiff alleges that Defendant did not pay Plaintiff and other non-exempt employees for all hours worked. Lidman Decl., ¶ 22. Specifically, Plaintiff alleges Defendant required Plaintiff to perform work duties during meal and/or rest periods. *Id*. Plaintiff and other non-exempt employees were to be available to answer work-related calls during meal and/or rest periods. *Id*. Defendant regularly called Plaintiff and other non-exempt employees during meal and/or rest periods with work-related questions. *Id*. As a result, Plaintiff and other non-exempt employees were performing work duties while not clocked in and as such, Defendant failed to pay Plaintiff and Aggrieved Employees all required minimum and overtime wages. *Id*. Plaintiff contends that the violations occurred in 5,235 pay periods during the relevant time period. *Id*. Accordingly, pursuant to Labor Code section 1198 and the default penalties set forth in the PAGA, Plaintiff calculated Defendant's civil penalty exposure on this claim at $523,500.00 (5,235 pay periods x $100 violation rate). *Id.*

Defendant denies that it required employees to work without proper compensation. Lidman Decl., ¶ 23. Defendant further contends that prior to Plaintiff's written notice pursuant to Labor Code section 2698 *et seq*., Defendant took all reasonable steps to be in compliance with all provisions identified in the notice and thus its penalties should not be any more than 15 percent of the penalty sought. *Id.* In light of this and Defendant's argument that the Court would exercise its discretion to reduce any civil penalty due to its good faith efforts to comply with applicable law, Plaintiff discounted the maximum recovery on this claim by 80% to account for the risk that Defendant could prevail in its defenses, to arrive at a projected total of approximately $104,700.00. *Id.*

<u>Civil Penalties Owed for Meal Period Violations</u>: Plaintiff alleges that Defendant failed to provide meal periods before the fifth and tenth hour of work and failed to provide meal periods of at least 30 minutes in duration, all in violation of California law. Lidman Decl., ¶ 24. Further, Defendant regularly interrupted Plaintiff's and Aggrieved Employees' meal periods to perform work duties. *Id.* Based on the analysis by Plaintiff's expert of Defendant's records, Plaintiff estimates there is a 36.52 percent meal period violation rate (based on work days and based on the written records). *Id.* As such, pursuant to Labor Code section 226.7 and the default penalties set forth in the PAGA, Plaintiff calculated Defendant's exposure at $353,800.00 (3,538 pay periods with meal violation x $100 violation rate). *Id.*

Defendant counters that it has always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Defendant. Lidman Decl., ¶ 25. Defendant points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that it has always done so. *Id.*; *See Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Further, Defendant contends that prior to Plaintiff's written notice pursuant to Labor Code section 2698 *et seq*., Defendant took all reasonable steps to be in compliance with all provisions identified in the notice and thus its penalties should not be any more than 15 percent of the penalty sought. Lidman Decl., ¶ 25. In light of these defenses and Defendant's argument that the Court would exercise its discretion to reduce any civil penalty due to its good faith efforts to comply with applicable law, Plaintiff discounted the maximum recovery on this claim by 65% to account for the risk that Defendant could prevail in its defenses, to arrive at a projected total of approximately $123,830.00. *Id*.

<u>Civil Penalties Owed for Rest Period Violations</u>: Plaintiff alleges that she and other Aggrieved Employees were not authorized and permitted to take all required rest periods due to Defendant's policies and practices, heavy work demands, and Defendant's practice of understaffing. Lidman Decl., ¶ 26. Specifically, Defendant's rest period practices failed to authorize and permit any uninterrupted rest periods throughout the workday. *Id*. Pursuant to Labor Code section 226.7 and the default penalties set forth in the PAGA, Plaintiff calculated Defendant's exposure at $523,500.00 (5,235 pay periods x $100 violation rate). *Id*.

Defendant contends it has always maintained and enforced lawful rest period policies and practices, and that hourly, non-exempt employees were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 27. Defendant also contends that rest period violations would be difficult to litigate effectively and prove since records were not maintained of rest periods. *Id*. Defendant further contends that prior to Plaintiff's written notice pursuant to Labor Code section 2698 *et seq*., Defendant took all reasonable steps to be in compliance with all provisions identified in the notice and thus its penalties should not be any more than 15 percent of the penalty sought. *Id*. In light of these defenses and Defendant's argument that the Court would exercise its discretion to reduce any civil penalty due to its good faith efforts to comply with applicable law, Plaintiff discounted the maximum recovery on this claim by 85% to account for the risk that Defendant could prevail in its defenses, to arrive at a projected total of approximately $73,525.00. *Id*.

<u>Civil Penalties Owed for Wage Statement Violations</u>: Plaintiff alleges that Defendant issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid minimum wages, overtime wages, and meal and rest period premium wages described above. Lidman Decl., ¶ 28. Plaintiff further alleges that Defendant has not cured the wage statement violation, as Defendant has not provided fully compliant, itemized wage statements for each pay period in which there was violation. *Id*. Plaintiff's data analysis reflected that there were approximately 5,235 wage statements issued during the relevant time period. *Id*. Accordingly, pursuant to Labor Code section 226 and the default penalties set

forth in the PAGA, Plaintiff calculated Defendant's exposure at $133,125 (5,235 wage statements x $25 violation rate). *Id*.

Defendant argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 29. In light of these defenses and Defendant's argument that the Court would exercise its discretion to reduce any civil penalty due to its good faith efforts to comply with applicable law, Plaintiff discounted the maximum recovery on this claim by 45% to account for the risk that Defendant could prevail in its defenses, to arrive at a projected total of approximately $73,218.75. Lidman Decl., ¶ 29.

<u>Civil Penalties Owed for Failure to Reimburse</u>: Plaintiff alleges Defendant failed to reimburse non-exempt employees for all necessary business expenses incurred. Lidman Decl., ¶ 30. Specifically, Defendant required Plaintiff and non-exempt employees to use their personal cell phones for work-related purposes but did not reimburse the non-exempt employees for such usage in violation of Labor Code § 2802. *Id*. Therefore, Plaintiff calculated Defendant's exposure for unreimbursed business expenses at approximately $523,500.00 (5,235 pay periods x $100 violation rate). *Id*.

Defendant contends employees were not required to use their personal electronic devices to communicate with team members and would only do so at their own volition. Lidman Decl., ¶ 31. Defendant further contends that any purportedly necessary expenses incurred by non-exempt employees were minimal. *Id*. Defendant argues that prior to Plaintiff's written notice pursuant to Labor Code section 2698 *et seq*., Defendant took all reasonable steps to be in compliance with all provisions identified in the notice and thus its penalties should not be any more than 15 percent of the penalty sought. *Id*. In light of these defenses and Defendant's argument that the Court would exercise its discretion to reduce any civil penalty due to its good faith efforts to comply with applicable law, Plaintiff discounted the maximum recovery on this claim by 70% to account for the risk that Defendant could prevail in its defenses, to arrive at a projected total of approximately $157,050.00. *Id*.

The proposed settlement of $160,000.00 therefore represents approximately 29.7 percent of the realistic total recovery ($537,323.75) for Aggrieved Employees and avoids the risks of proceeding through trial. Lidman Decl., ¶ 32. "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotations omitted). Plaintiff acknowledges that there was substantial uncertainty and risk as to her claims of Labor Code violations. Approval is appropriate since this settlement will provide tangible, monetary relief to Aggrieved Employees and the State of California.

d) <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 Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995).

Here, Plaintiff's Counsel collectively brings over four decades of wage-and-hour class and representative action experience. *See* Lidman Decl., ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-4; and Declaration of Tiara Gose-Hardy ("Gose-Hardy Decl."), ¶¶ 2-3. They have been certified as class counsel in numerous cases alleging wage and hour claims. *Id.* Their experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement. Lidman Decl., ¶ 34. Practice in the narrow field of wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class and representative action litigation. *Id.* Because it is reasonable to compensate Plaintiff's Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the GSA is reasonable. Other factors show that the amount of fees requested is reasonable. This case involved legal issues regarding the propriety of civil PAGA penalties, an unsettled area of law. Defendant was also represented by respected counsel with extensive wage-and-hour litigation experience. This factor strongly supports settlement approval. *See, Kullar, supra,* 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.").

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 $53,333.33 (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 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).

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[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).

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 $114,125.00 without the use of any multiplier, which is ***more*** than the $53,333.33 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 (26th Year Attorney)	$900	63.7	$57,330.00
Paul K. Haines (18th Year Attorney)	$850	11	$9,350.00
Milan Moore (9th Year Attorney)	$650	45.5	$29,575.00
Tiara Gose-Hardy (6th Year Attorney)	$525	26	$13,650.00
Paralegals	$200	21.1	$4,220.00
Total Lodestar			**$114,125.00**

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

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

Indeed, since undertaking representation of Plaintiff, Plaintiff's Counsel dedicated substantial resources to this litigation, including expending a total of $12,721.34 (including costs associated with the instant motion) in actual litigation costs, without receiving any compensation to date. Lidman Decl., ¶ 40, Exh. 5. Plaintiff's Counsel conducted legal research regarding the merits of Plaintiff's claims, the ability to recover penalties under the PAGA, and Defendant's potential defenses. *Id*. Plaintiff's Counsel spent significant time reviewing and analyzing the data Defendant produced informally prior to mediation and prepared an exposure analysis on the PAGA penalties. *Id.* Plaintiff's Counsel expended significant additional effort in preparing subsequent settlement documents, this Motion for settlement approval, and supporting declarations, and will oversee the settlement administration process. *Id.* Given the considerable potential for adverse outcomes in this case, the contingent risk borne by Plaintiff's Counsel was great. Lidman Decl., ¶¶ 39-40. The quality of Plaintiff's Counsel's work, and the efficacy and dedication with which it was performed, should be compensated.

Thus, Plaintiff's Counsel submit that the requested fee award is fair, reasonable and adequate and should be approved. Plaintiff's request for reimbursement of litigation costs in the amount of $12,721.34 is also fair and reasonable. As the evidence submitted herewith shows, all of Plaintiff's litigation costs are documented and reasonably incurred. *See* Lidman Decl., ¶ 40, Exh. 5.

D. <u>Notice and Requested Settlement Administration Costs Are Fair and Reasonable</u>

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

PSA 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 $4,500.00 as settlement administration costs. Settlement, Sec. III.4.c. PSA's quote is attached as Exhibit F to the Declaration of Jodey Lawrence on behalf of PSA 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 her unique contributions to the prosecution of this case and her efforts in bringing this case to a successful and significant resolution. Lidman Decl., ¶41; Cabrera Decl., ¶¶ 9-11. This request is reasonable given Plaintiff's efforts in this case and the risks she undertook on behalf of the Aggrieved Employees. Plaintiff provided substantial factual information to Plaintiff's Counsel, attended meetings with Plaintiff's Counsel, and otherwise assisted in the litigation of this action. *Id*. Further, Plaintiff put her future employment prospects at risk by becoming a representative, as the fact that she filed a lawsuit

[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).

"is searchable on the internet and may become known to prospective employers when evaluating" her for employment. *Id.*; *Guippone v. BH S&B Holdings, LLC*, 2011 U.S., Dist. LEXIS 126026, *20 (S.D.N.Y. Oct. 28, 2011). Accordingly, Plaintiff's request is appropriate and justified as part of the Settlement.

IV. CONCLUSION

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

Dated: June 18, 2025

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________
Scott M. Lidman

Attorneys for Plaintiff
SILVIA CABRERA