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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

LAMONT SOLOMON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

APRIA HEALTHCARE LLC, a Delaware
Corporation; and DOES 1 through 100,

Defendants.

Case No. RIC2002553

*[Case assigned for all purposes to the Hon.
Daniel Ottolia, Dept. 04]*

**PLAINTIFF LAMONT SOLOMON'S
NOTICE OF MOTION AND MOTION
FOR APPROVAL OF SETTLEMENT
OF CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT AND REASONABLE
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARD**

Date: February 2, 2022
Time: 8:30 a.m.
Dept.: 4

Reservation ID: 541912703976

Complaint Filed: July 9, 2020
Trial Date: None Set

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

3 PLEASE TAKE NOTICE that on February 2, 2022 at 8:30 a.m., or as soon thereafter as
4 the matter may be heard in Department 04 of the above-entitled Court, located at 4050 Main
5 Street, Riverside, California 92501, Plaintiff Lamont Solomon (“Plaintiff”), individually and on
6 behalf of the State of California and other Aggrieved Employees, will, and hereby does, move
7 this Court for entry of an Order as follows:

- 8 1. Granting approval, pursuant to California Labor Code § 2699(l), of the proposed
9 settlement of claims brought pursuant to the Private Attorneys General Act of 2004
10 (Cal. Labor Code § 2698, *et seq.*) and set forth in the parties’ Settlement Agreement,
11 a true and correct copy of which is attached to the Declaration of Paul K. Haines filed
12 concurrently herewith;
- 13 2. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
- 14 3. Approving the proposed Explanatory Letter (attached as Exhibit A to the Settlement
15 Agreement), and directing that it be distributed to Aggrieved Employees pursuant to
16 the terms of the Settlement Agreement;
- 17 4. Directing the funding and distribution of the Gross Settlement Amount pursuant to
18 the terms of the Settlement Agreement;
- 19 5. Approving an award of attorneys’ fees to Plaintiff’s counsel of \$581,666.67 and an
20 award of litigation costs to Plaintiff’s counsel in the amount of \$17,106.10;
- 21 6. Approving an award of \$5,000 as Plaintiff’s Service Award; and
- 22 7. Approving \$6,250 in administration costs to Phoenix Settlement Administrators.

23 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
24 the declaration of Paul K. Haines and all exhibits attached thereto; the declaration of Jodey
25 Lawrence and all exhibits attached thereto; the declaration of Plaintiff Lamont Solomon; the
26 Settlement Agreement; Plaintiff’s Request for Judicial Notice and all exhibits attached thereto;
27 all other pleadings and papers on file in this action; and on any further oral or documentary
28 evidence or argument presented at the time of hearing.

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Dated: January 6, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

By: 
Paul K. Haines
Attorneys for Plaintiff and Aggrieved
Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Lamont Solomon (“Plaintiff”), an “aggrieved employee” under the Private
4 Attorneys’ General Act of 2004 (“PAGA”), respectfully moves this Court for an Order granting
5 approval of the Settlement Agreement (“Settlement”) with Defendant Apria Healthcare LLC.
6 (“Defendant” or “Apria”).¹ This PAGA representative action seeks civil penalties predicated on
7 Apria’s alleged failure to pay all overtime wages owed and alleged failure to issue accurate
8 itemized wage statements from March 30, 2019 through June 13, 2021 (the “PAGA Period”). The
9 proposed Settlement, under which Apria has agreed to pay a non-reversionary Gross Settlement
10 Amount (“GSA”) of \$1,745,000.00, will resolve Plaintiff’s representative claim filed on behalf
11 of the State of California and all “Aggrieved Employees,” which includes all individuals who are
12 or previously were employed by Apria as non-exempt employees in California and who received
13 shift differentials, on call payments, or driver safe bonuses during the PAGA Period.

14 Notably, the relief provided for under the Settlement, and the claims released thereunder,
15 are *solely* for the payment of *civil penalties* under the PAGA, and not for any underlying Labor
16 Code violations. The release also encompasses only PAGA civil penalties based upon the factual
17 allegations and theories alleged by Plaintiff in this Action, and only for claims arising during the
18 PAGA Period, which as noted above, ends on June 13, 2021.

19 In deciding whether to grant approval of the Settlement, the primary issue is whether the
20 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement
21 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the
22 product of arm’s-length negotiations; (2) was negotiated by attorneys experienced in wage-and-
23 hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was
24 negotiated after undertaking sufficient discovery and investigation to evaluate the relative
25 strength and value of Plaintiff’s PAGA claim and Defendant’s defenses thereto; and (4) reflects
26 a reasoned compromise based on the relative strength and value of the PAGA claim, as well as
27 the risks, expenses, complexity and likely duration of further litigation.

28 ¹ The proposed Settlement is attached as Exhibit 1 to the Declaration of Paul K. Haines filed herewith.
The Explanatory Letter to Aggrieved Employees is attached as Exhibit A to the Settlement.

1 As noted, the Settlement provides for a GSA of \$1,745,000.00. After deducting amounts
2 for requested attorneys' fees (\$581,666.67), attorney costs (\$17,106.10), Plaintiff's Service
3 Award (\$5,000), and administration costs (\$6,250), the Settlement provides for distribution of a
4 Net Settlement Amount ("NSA") of approximately \$1,134,977.23 to be paid to Aggrieved
5 Employees and the California Labor & Workforce Development Agency ("LWDA"). Settlement,
6 § III.2-5; *see also* Declaration of Paul K. Haines, ¶ 15 & Exh. 1; Declaration of Jodey Lawrence,
7 ¶ 16 & Exh. B.

8 The NSA shall be distributed 75% (approximately \$851,232.93) to the LWDA, and 25%
9 (approximately \$283,744.30) to Aggrieved Employees, pursuant to the requirements of the PAGA
10 as codified in Lab. Code § 2699(i). *See* Settlement, § III.5. There are approximately 1,600
11 Aggrieved Employees, resulting in average payments of approximately \$177.34 to each
12 Aggrieved Employee. Haines Decl., ¶ 15.

13 The GSA of \$1,745,000.00 represents a positive result for the State of California and
14 Aggrieved Employees. Further litigation may have resulted in a smaller recovery or even no
15 recovery at all, based on the defenses asserted by Apria and significant ongoing litigation risks.
16 Moreover, the GSA is greater than other PAGA penalty awards that have been approved as
17 reasonable. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624
18 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-aside of \$5,000, or
19 \$7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013
20 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-aside of \$10,000, or
21 \$3.33 per employee). The amounts requested for attorneys' fees and costs, service award, and
22 administration costs are all fair, adequate, and reasonable. Thus, Plaintiff respectfully requests
23 that the Court enter the [Proposed] Judgment and Order submitted concurrently herewith.

24 **II. SUMMARY OF THE LITIGATION**

25 **A. Brief Factual Background and Summary of Claims**

26 Apria is one of the nation's leading providers of home respiratory services, including
27 oxygen therapy, inhalation therapies, sleep apnea treatment, and negative pressure wound
28 therapy. Plaintiff has worked for Apria as a non-exempt "Delivery Technician" since 2017.

1 Plaintiff's PAGA claim is predicated primarily on allegations that he and other employees
2 were paid shift differentials and non-discretionary bonuses that were not properly incorporated in
3 the calculation of their "regular rate" of pay for computing overtime. Plaintiff also alleges that
4 Apria failed to include the correct rate of pay associated with shift-differentials, and failed to
5 include the applicable hours or units of on-call pay, on employee wage statements. As explained
6 below, Apria denies Plaintiff's allegations and asserted several affirmative defenses to his claims.

7 **B. Relevant Procedural History**

8 On March 30, 2020, Plaintiff submitted his notification letter to Apria and to the LWDA
9 regarding Apria's alleged Labor Code violations, as required by Labor Code § 2699.3. *See* Haines
10 Decl., ¶ 12 & Exh. 2. On July 6, 2020, after the 65-day waiting period under Labor Code §
11 2699.3(a)(2)(A), Plaintiff filed a Representative Action Complaint in this Court. Haines Decl., ¶
12 13. On September 1, 2020, Plaintiff filed the operative First Amended Complaint ("Complaint"),
13 alleging a single cause of action for PAGA civil penalties. *Id.*

14 After Plaintiff propounded initial discovery and counsel for the Parties met and conferred
15 regarding the litigation and Plaintiff's claims, the Parties agreed to mediate with Jeffrey A. Ross,
16 Esq. in an effort to resolve Plaintiff's PAGA claim. Haines Decl., ¶ 14. In connection with
17 mediation, Apria informally produced information and documents pertaining to Plaintiff and other
18 Aggrieved Employees, including but not limited to payroll and timekeeping records for Plaintiff
19 and a representative sample of Aggrieved Employees; several data points including the number
20 of Aggrieved Employees and their hire and termination dates (where applicable); and relevant
21 wage and hour policy documents, in order for Plaintiff's counsel to investigate Plaintiff's
22 allegations and value the claims prior to mediation. *Id.* The parties attended mediation with Mr.
23 Ross on April 14, 2021. *Id.* During mediation, the parties vigorously debated the legal bases for
24 Plaintiff's claims and Apria's defenses, the manageability of the case as a representative action,
25 the potential amount of penalties, and the parties' data analyses and conclusions based thereon.
26 *Id.* With the assistance of Mr. Ross, the Parties agreed to fully and finally resolve Plaintiff's
27 PAGA claim. *Id.* The Parties subsequently negotiated and finalized the Settlement now before the
28 Court. *Id.*

1 **III. SUMMARY OF THE SETTLEMENT**

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

3 As noted above, the “Aggrieved Employees” under the Settlement consist of all
4 individuals who are or previously were employed by Apria as non-exempt employees in
5 California and who received shift differentials, on call payments or driver safe bonuses during
6 the PAGA Period. *See* Settlement, § I.2.

7 **B. Monetary Terms**

8 The Settlement provides for Apria’s payment of a non-reversionary Gross Settlement
9 Amount (“GSA”) of \$1,745,000.00. *See* Settlement, §§ I.6, III.2. After deducting attorneys’ fees,
10 litigation costs, Plaintiff’s service award, and administration costs, the Settlement provides for
11 the Net Settlement Amount (“NSA”) to be distributed 75% to the LWDA and 25% to Aggrieved
12 Employees, per Labor Code § 2699(i). *Id.*, §§ III.4-5. The Aggrieved Employees’ portion of the
13 NSA is estimated to be \$283,744.30 and will be distributed to all Aggrieved Employees based on
14 the number of Affected Pay Periods worked by each Aggrieved Employee during the PAGA
15 Period. *See* Settlement, § III.5.

16 **1. *Attorneys’ Fees and Costs, Administration Costs, and Plaintiff’s***
17 ***Enhancement award***

18 Plaintiff’s counsel request one-third of the GSA (i.e., \$581,666.67) in attorneys’ fees, and
19 \$17,106.10 in litigation costs. *See* Settlement, § III.4(a); Haines Decl., ¶¶ 20, 24 & Exh. 4. As
20 discussed in detail below, a fee award of one-third of the GSA is fair, adequate, and reasonable
21 as a percentage of the settlement fund and as confirmed by a lodestar cross-check, and is in line
22 with fee awards in other PAGA settlements.

23 The parties have agreed to engage Phoenix Settlement Administrators (“Phoenix”) as the
24 third-party settlement administrator. *See* Settlement, § IV.1. Phoenix will update Aggrieved
25 Employee addresses using the National Change of Address database, calculate and distribute
26 Individual PAGA Payments, mail payments to all Aggrieved Employees together with the
27 Explanatory Letter, and perform other duties that are integral to the effectuation of the Settlement.
28 *Id.*, § IV.2. Plaintiff requests that the Court approve \$6,250 in administration costs to Phoenix,

1 which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.* at § III.4(c);
2 *see also* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached exhibits.

3 Finally, Plaintiff requests a service award of \$5,000, in recognition of Plaintiff’s
4 contributions to this case and his efforts in bringing this case to successful resolution. *See*
5 Settlement, § III.4(b); Declaration of Lamont Solomon (“Solomon Decl.”), ¶¶ 6-7.

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

7 The NSA will be distributed 75% to the LWDA and 25% to Aggrieved Employees,
8 pursuant to Labor Code § 2699(i). Based on the above requested distributions, the NSA is
9 estimated to be \$1,134,977.23, with \$851,232.93 paid to the LWDA and \$283,744.30 distributed
10 to Aggrieved Employees. Haines Decl., ¶ 15. As noted, there are approximately 1,600 total
11 Aggrieved Employees. *Id.* Thus, it is anticipated that overall, Aggrieved Employees will receive
12 average Settlement payments of approximately \$177.34. *Id.*

13 **3. Funding of the Settlement**

14 Apria will deposit the Gross Settlement Amount with Phoenix, the Settlement
15 Administrator, within 30 calendar days of Court approval. *See* Settlement, § III.2. Within twenty-
16 one calendar days after the Settlement has been fully funded and after receiving approval from
17 counsel of the payment calculations, Phoenix will mail the Explanatory Letter and Individual
18 PAGA Payments to Aggrieved Employees via First-Class U.S. Mail. *See* Settlement, § IV.3.

19 Funds from any settlement checks remaining uncashed after 180 days will be sent by
20 Phoenix to Public Service Law Corporation dba Riverside Legal Aid, which is a 501(c)(3)
21 organization dedicated to providing legal services to indigent residents of Riverside County. *See*
22 Settlement, § IV.4.

23 **IV. LEGAL ARGUMENT**

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

25 The settlement of a PAGA claim requires court approval pursuant to the PAGA statute,
26 which states that the “court shall review and approve any settlement of any civil action filed
27 pursuant to this part.” Labor Code § 2699(l). Of course, “[s]ettlement is a compromise, which
28 balances the possible recovery against the risks inherent in litigating further.” *See In re TD*

1 *Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13, 2011). “[T]he
2 very essence of a settlement is...‘a yielding of absolutes and an abandoning of highest hopes,’”
3 as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
4 litigation that induce consensual settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d
5 615, 624 (9th Cir. 1982). As such, “the settlement or fairness hearing is not to be turned into a
6 trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure
7 of what might have been achieved by the negotiators.” *Id.*

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

17 First, in evaluating a PAGA settlement, the court is not concerned with amount(s) received
18 by “aggrieved employees,” but rather, must focus on the total settlement amount in achieving
19 PAGA’s objective. “The remedy sought in a PAGA suit consists of civil penalties, not individual
20 or class damages.” *Mendez*, 2010 WL 2650571 at *4. “Unlike class actions, these civil penalties
21 are not meant to compensate unnamed employees because the action is fundamentally a law
22 enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, No. C-08-2073-MHP, 2010 WL
23 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court confirmed, “PAGA claims are
24 ‘representative’ actions in the sense that they are brought on the state’s behalf. The
25 employee...‘represents the same legal right and interest as’ those agencies — ‘namely, recovery
26 of civil penalties that otherwise would have been assessed and collected by the [LWDA].” *ZB,*
27 *N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian v. CLS Transp. Los Angeles, LLC*, 59
28 Cal.4th 348, 380 (2014)).

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

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim,² “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL 1340777 at *5; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482 (2020) (recognizing that “there is no mechanism for opting out of the judgment entered on the PAGA claim.”). This renders the approval process of a PAGA settlement distinct from a class action settlement, as the Court need not employ the “two-step approval process” required for class action settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

Finally, unlike a class action settlement under Fed. R. Civ. Proc. Rule 23(e) or Cal. Rule of Court 3.769, the scope of release in a PAGA settlement is limited to *civil penalties*. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding...the non-party employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.” *Arias v. Sup. Ct.*, 46 Cal. 4th 969, 986-87 (2009).

1. Factors in Evaluating a Representative PAGA Settlement.

In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup.*

² “The [PAGA] does not create property rights or any other substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies.” *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009).

1 *Ct.*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to
2 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.*,
3 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court
4 to consider include, but are not limited to:

5 [T]he strength of plaintiffs’ case, the risk, expense, complexity and
6 likely duration of further litigation, the risk of maintaining class action
7 status through trial, the amount offered in settlement, the extent of
8 discovery completed and the stage of the proceedings, the experience
9 and views of counsel, the presence of a governmental participant, and
10 the reaction of the class members to the proposed settlement.

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

15 Because settlements inherently involve compromise, even a settlement providing for
16 substantially narrower relief than might be obtained if the suit were successfully litigated can be
17 reasonable because “the public interest may indeed be served by a voluntary settlement in which
18 each side gives ground in the interest of avoiding litigation.” *Wershba v. Apple Computer, Inc.*,
19 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*,
20 455 F.2d 101, 109 (7th Cir. 1972)). Courts also review the discovery process and information
21 received through it to aid them in assessing whether the parties sufficiently developed the claims
22 and their supporting factual bases before reaching settlement. *Kullar*, 168 Cal.App.4th at 129-31.
23 Information is sufficient where it allows the parties and the court to form “an understanding of
24 the amount that is in controversy and the realistic range of outcomes of the litigation.” *Clark v.*
25 *Am. Residential Serv. LLC*, 175 Cal.App.4th 785, 801 (2009). This requirement exists so that the
26 parties can provide the court with “a meaningful and substantiated explanation of the manner in
27 which the factual and legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132.

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

Although he steadfastly maintains his claims are meritorious, Plaintiff acknowledges his
position included real risks and uncertainty. Haines Decl., ¶ 17. Apria asserted several affirmative
defenses to Plaintiff’s claims. For example, Apria argues that it properly includes on-call pay and

1 bonus payments in its calculation of the regular rate of pay for the purposes of overtime and that
2 it has done so throughout the PAGA Period. *Id.* Apria further argues it has always maintained
3 compliant wage and hour policies, including legally-compliant overtime policies and has always
4 paid its employees in accordance with those lawful policies. *Id.* With respect to Plaintiff’s claim
5 that the wage statements issued by Apria failed to list the applicable hourly rates for shift
6 differentials, Apria argues that the information can be easily be determined using the information
7 available on the wage statements and simple math (i.e. the amount earned divided by hours
8 worked). *Id.* Apria argues that because an employee is not required to refer to other documents to
9 determine their rate of pay for shift-differentials, Apria’s wage statements comply with the
10 requirements of Labor Code section 226(a)(9). *See Hernandez v. BCI Coca-Cola Bottling Co.*,
11 (9th Cir. 2014) 554 Fed. Appx. 661, 662 (“Wage Statements comply with § 226(a) when a
12 plaintiff employee can ascertain the required information by performing simple math, using
13 figures on the face of the wage statement.”); *Morgan v. United Retail, Inc.* (2010) 186
14 Cal.App.4th 1136, 1142 (where an employee “could determine the sum of all hours worked
15 without referring to time records or other documents” by “simply add[ing] together the total
16 regular hours figure and the total overtime figure” does not constitute a violation of section
17 226(a)(2).); *see also* Haines Decl., ¶ 17. As for Plaintiff’s claim that wage statements did not
18 include rates of pay or units for on-call pay, Apria argues on-call payments are not paid based on
19 an employee’s number of hours worked, nor are they piece-rate units because they are not based
20 on units of employee production, and therefore no hourly rate of pay or piece-rate unit need be
21 included on wage statements pursuant to Labor Code § 226(a)(3) or (9). *Id.* Apria also argued that
22 wage statements always accurately reflected amounts paid to employees, and thus Apria could
23 not be found liable for wage statement violations under *Maldonado v. Epsilon Plastics, Inc.*, 22
24 Cal.App.5th 1308, 1336 (2018) (“The purpose of section 226 is to *document the paid wages* to
25 ensure the employee is fully informed regarding the calculation of those wages.”) (italics in
26 original); *see also* Haines Decl., ¶ 17.

26 Apria further maintains that even if the Court awarded PAGA penalties for any of the
27 alleged violations, it would substantially reduce the penalties based on the discretionary factors
28 in Labor Code § 2699(e)(2) (authorizing reduction in penalties “if, based on the facts and

1 circumstances of the particular case, to do otherwise would result in an award that is unjust,
2 arbitrary and oppressive, or confiscatory.”). Haines Decl., ¶ 18. Indeed, Apria argues, many courts
3 have reduced PAGA penalties drastically where, as here, the employer presented good-faith
4 defenses and attempted to comply with the law. *See Thurman v. Bayshore Transit Mgmt., Inc.*,
5 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because “defendants
6 took their obligations...seriously and attempted to comply with the law”); *Fleming v. Covidien,*
7 *Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing
8 PAGA penalties by over 82%, in part because employer “not aware” of violations); *Carrington v.*
9 *Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay
10 period where employer made “good faith attempts” to comply with the law).

11 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

12 Although the parties had engaged in significant informal discovery, the parties still had
13 more formal discovery, including written and deposition discovery, to conduct if the case did not
14 settle. Moreover, potential additional substantive motion work and trial preparation remained for
15 the parties, as well as potential appeals. As a result, the parties would likely incur considerably
16 more attorneys’ fees and costs through trial and possible appeal. The Settlement avoids those risks
17 and the accompanying expense.

18 **c. Amount Offered in Settlement Given Realistic Value of Claims**

19 The proposed Settlement provides a fair and reasonable monetary recovery for the State
20 of California and Aggrieved Employees in the face of hotly disputed claims, when compared with
21 the potential realistic exposure. Based on data provided by Apria, there were approximately
22 67,000 Affected Pay Periods worked by the Aggrieved Employees through February 20, 2021,
23 shortly before the end of the PAGA Period. Haines Decl., ¶ 19; Settlement, § III.3. Assuming an
24 “initial” violation rate of \$100 per pay period under Labor Code § 2699(f) (*see Amaral v. Cintas*
25 *Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (holding “initial” violation rate applies to PAGA
26 penalties until employer is notified by Labor Commissioner or a court that it violated Labor
27 Code)), Plaintiff estimated a total potential PAGA exposure of \$6,700,000. *Id.* However, Apria
28 asserted several affirmative defenses on the merits as noted above. Apria also argued that Plaintiff

1 would not be able to show a violation occurred in each and every pay period and therefore his
2 damages analysis was substantially inflated. *Id.* Because the Court maintains discretion to reduce
3 these penalties, and in light of Apria's arguments and defenses described above, Plaintiff
4 discounted that maximum figure by 50% for a risk of losing on the merits and/or failing to show
5 a violation in each and every pay period, and by an additional 40% for risk of the Court reducing
6 penalties, to arrive at a realistic exposure of \$2,010,000. Haines Decl., ¶ 19; *see, e.g., Thurman*,
7 203 Cal.App.4th at 1136 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047
8 at *5 (reducing PAGA penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming
9 PAGA civil penalty of just \$5 per pay period for a total of \$150,000, just 0.21% of the \$70 million
10 in maximum penalties alleged by the plaintiff).

11 The proposed \$1,745,000 GSA therefore represents approximately 87% of Plaintiff's
12 reasonably forecasted total recovery, while avoiding the risks of proceeding through trial. Haines
13 Decl., ¶ 19. "The fact that a proposed settlement may only amount to a fraction of the potential
14 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
15 should be disapproved." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).
16 Approval of the Settlement is appropriate, as the Settlement will provide tangible monetary relief
17 to Aggrieved Employees and the State of California while avoiding the risks and costs of
18 continued litigation and trial.

19 **d. Discovery Completed and the Status of Proceedings**

20 As noted, the parties engaged in substantial informal discovery to evaluate the PAGA
21 claim. Apria provided Plaintiff with, *inter alia*, timekeeping and payroll records for non-exempt
22 employees, additional relevant data, and its relevant written policies. Haines Decl., ¶ 14. Only
23 after engaging in mediation and in adversarial discussions about the likelihood of prevailing on
24 the merits, did the parties reach the proposed Settlement. Thus, this factor supports settlement
25 approval. *Id.*

26 **e. The Experience and Views of Counsel**

27 "Parties represented by competent counsel are better positioned than courts to produce a
28 settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter. Sec.*

1 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel with
2 decades of combined experience, who believe this Settlement to be fair and adequate for all
3 involved. Haines Decl., ¶¶ 3-11. This factor strongly supports settlement approval. *Kullar*, 168
4 Cal.App.4th at 130 (“The court undoubtedly should give considerable weight to the competency
5 and integrity of counsel and the involvement of a neutral mediator in assuring itself that a
6 settlement agreement represents an arm’s length transaction entered without self-dealing or other
7 potential misconduct.”).

8 **B. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of**
9 **the Settlement Fund, as Cross-Checked Against Counsel’s Lodestar**

10 Plaintiff is entitled to attorney fees in this PAGA action under Labor Code § 2699(g)(1),
11 which provides that “[a]ny employee who prevails in any [PAGA] action shall be entitled to an
12 award of reasonable attorneys’ fees and costs.” *See also Gouskos v. Aptos Village Garage, Inc.*,
13 94 Cal.App.4th 754, 765 (2001) (holding that attorneys’ fees to prevailing party are mandatory
14 when the statute uses the word “shall”). It is undisputed that by obtaining PAGA penalties for the
15 LWDA and Aggrieved Employees, Plaintiff has prevailed. *See Graciano v. Robinson Ford Sales*,
16 144 Cal.App.4th 140, 153 (2006) (“[P]laintiffs may be considered ‘prevailing parties’ for
17 attorney’s fee purposes if they succeed on any significant issue in the litigation that achieves some
18 of the benefit the parties sought in bringing suit.” (internal citation omitted)).

19 A fee award is justified where the legal action has produced its benefits by way of
20 settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Comty. for*
21 *Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest* (1977) 20
22 Cal.3d 25, 34 (“when a number of persons are entitled in common to a specific fund, and an action
23 brought by a plaintiff...for the benefit of all results in the creation or preservation of that fund,
24 such plaintiff...may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh* (1982) 32
25 Cal.3d 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties,
26 the trial court acts within its equitable power to prevent the other parties’ unjust enrichment);
27 *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 (the percentage of
28 the fund method for calculating attorneys’ fees more accurately reflects the results achieved for

1 the putative class than the lodestar method and “establishes reasonable expectations on the part
2 of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
3 avoids protracted litigation.”); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005)
4 (“The percentage-of-recovery method is generally favored in common fund cases because it
5 allows courts to award fees from the fund ‘in a manner that rewards counsel for success and
6 penalizes it for failure.’”).

7 Fee awards of one-third of the settlement fund are routinely awarded in California courts
8 in class and representative PAGA actions. The California Supreme Court confirmed its approval
9 of the use of the “percentage of fund” method in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480,
10 506 (2016), where it announced “the percentage of fund method survives in California class action
11 cases...” Specifically, the *Laffitte* Court held:

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

15 *Id.*, at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-
16 third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also*
17 *Chavez v. Saticoy Lemon Ass’n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)
18 (approving attorneys’ fees of one-third of settlement fund in PAGA settlement); *Clavel v. Lupe’s*
19 *Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25,
20 2016) (same). This is also consistent with Plaintiff’s counsel’s experience in similar wage-and-
21 hour class and PAGA matters. Haines Decl., ¶ 20.

22 Indeed, courts have awarded attorneys’ fees equal to much more than one-third of the
23 settlement fund in PAGA cases. *See Charles v. JPMorgan Chase Bank*, No. CGC-14-538933
24 (San Francisco Cty. Sup. Ct., June 18, 2019) (awarding \$2.88 million in attorneys’ fees,
25 amounting to over 48% of total PAGA settlement, plus over \$281,000 in costs); *Salas v. Hallmark*
26 *Aviation Services LP*, No. BC586585 (Los Angeles Cty. Sup. Ct. Feb. 17, 2017) (awarding
27 \$600,000 in attorneys’ fees, amounting to 48% of total settlement); *Monroe v. Continental Design*
28 *Co., Inc.*, No. RG16817667 (Alameda Cty. Sup. Ct. June 21, 2017) (awarding \$110,000 in

1 attorneys' fees, amounting to about 49% of settlement, plus \$7,500 in litigation costs, and total
2 PAGA penalties of just \$90,000); *Boseman v. VXi Global Solutions, LLC*, No. BC602442 (Los
3 Angeles Cty. Sup. Ct. Jan. 3, 2019) (awarding \$750,000 in attorneys' fees and costs, amounting
4 to about 43% of settlement); *see also Rippee v. Boston Market Corp.*, No. 05-cv-1359-BTM
5 (JMA), 2006 WL 8455400 at *5 (S.D. Cal. Oct. 10, 2006) (approving attorneys' fee award of
6 40% of \$3.75 million wage and hour class action settlement, resulting in a positive lodestar
7 multiplier of 3.23).

8 Here, Plaintiff's fee request of one-third of the GSA (estimated to be \$581,666.67), which
9 is the same percentage approved by the California Supreme Court in *Laffitte*, is fair and reasonable
10 based on the percentage of the recovery method, as confirmed by a lodestar cross-check.

11 In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the
12 reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial court
13 calculates counsel's lodestar and determines whether the "lodestar multiplier" needed to bring the
14 lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. Under
15 the lodestar method, the court multiplies the number of hours reasonably expended by each
16 attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure
17 by a "multiplier" to account for a range of factors, such as the contingent nature of the case and
18 the degree of success achieved. *See Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977); *Ketchum v.*
19 *Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834
20 (2001) ("There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial
21 discretion to increase or decrease a lodestar calculation").

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

litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009).

In this case, Counsel has a lodestar of approximately \$209,002.50, which results in a 2.78 multiplier compared to the \$581,666.67 fee request. Haines Decl., ¶ 20. A general summary showing the number of hours of work performed by each attorney and firm paralegal is set forth below. Counsel submits that the billing rates used are reasonable in view of the market rates and the rates at which Class Counsel has been approved at in other California and State courts. *Id.* Exhibit 3 (Laffey Matrix).

Lawyer	Title	Law School Grad Year	Rate	Hrs	Fees
Paul K. Haines	Partner/Principal	2006	\$695	85.5	\$59,422.50
Tuvia Korobkin	Partner	2009	\$675	125.3	\$84,577.50
Alexandra R. McIntosh	Associate	2017	\$400	149.6	\$59,840.00
Paralegals			\$175	29.5	\$5,162.50
Total					\$209,002.50

Critically, Plaintiff’s recovery for the State of California and Aggrieved Employees of approximately \$1,134,977.23 significantly exceeds other PAGA awards approved by California courts. *See, e.g., Aguirre v. DSW, Inc.*, No. DCV-11-01522-GW (SPx), 2012 WL 11875296 at *3 (C.D. Cal. Nov. 29, 2012) (approving \$10,000 PAGA payment); *Jamil, supra*, 2020 WL 6544660 at *6 (S.D. Cal. Nov. 5, 2020) (approving \$10,000 total PAGA payment, finding the amount “fair and adequate in view of the purposes and policies of PAGA”); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-cv-0324-AWI-SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (“approving \$10,000 total PAGA payment, finding that “[t]his comports with settlement approval of PAGA awards in other cases. [Citations.]”); *Boyd v. Bank of Am. Corp.*, No. SACV-13-0561-DOC (JPRx), 2014 WL 6473804 at *8 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Franco v. Ruiz Food Prods.*, No. 1:10-cv-02354-SKO, 2012 WL 5941801 at *14 (E.D. Cal. Nov. 27, 2012) (approving \$10,000 PAGA payment); *Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (\$10,000 PAGA payment).

Counsel conducted extensive research regarding the merits of Plaintiff’s claims, his ability to recover PAGA civil penalties, and Apria’s potential defenses. Counsel also performed

1 extensive analysis of data and information produced by Apria, used this analysis to evaluate
2 Plaintiff's claims, and drafted a comprehensive mediation brief. Counsel also attended a private
3 mediation, and expended significant effort in preparing settlement documents, this Motion and
4 supporting documents, and will oversee the settlement administration process. Given the
5 considerable potential for adverse outcomes in this case, the contingent risk borne by Plaintiff's
6 counsel was great. Haines Decl., ¶ 22. The quality of Plaintiff's counsel's work, and the efficacy
7 and dedication with which it was performed, should be compensated. Thus, Plaintiff submits the
8 requested fee award is fair, reasonable and adequate and should be approved.

9 Other factors show the requested amount of fees is reasonable. This case involved nuanced
10 legal issues, including but not limited to the legality of Apria's compensation practices and the
11 availability and amount of PAGA penalties for alleged Labor Code violations. Apria was also
12 represented by experienced wage-and-hour litigation counsel. Thus, Plaintiff submits that the
13 requested fee award is fair, reasonable and adequate and should be approved.

14 **C. The Requested Litigation Costs and Settlement Administration Costs Are**
15 **Fair, Reasonable, and Adequate**

16 Plaintiff's request for reimbursement of litigation costs of \$17,106.10 is also fair and
17 reasonable. All of Plaintiff's litigation costs are reasonably incurred. *See* Haines Decl., ¶ 24 &
18 Exh. 4. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts.
19 *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-
20 of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, 2011
21 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings, motions and exhibits
22 are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of*
23 *Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-
24 59 (9th Cir. 2006) (legal research costs reimbursable); *In re Immune Response Sec. Litig.*, 497
25 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
26 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

27 Likewise, the request for administration costs of \$6,250 is also fair and reasonable.
28 Phoenix was selected because it is an experienced settlement administrator and returned a

1 reasonable bid. *See* Declaration of Jodey Lawrence & Exhibits. Moreover, Phoenix will perform
2 several important functions that are integral to the implementation of the Settlement. *Id.* Its
3 modest requested fee is therefore reasonable.

4 **D. The Court Should Approve Plaintiff’s Requested Enhancement Award**
5 **Because It Is Fair, Adequate, and Reasonable in View of Plaintiff’s Efforts**
6 **and the Risks He Assumed in This Litigation.**

7 Courts routinely approve enhancement awards to compensate named plaintiffs for the
8 services they provide and the risks they incur during representative litigation. *See, e.g., Bell v.*
9 *Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named
10 plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
11 \$50,000 incentive payment); *see also* Plaintiff’s Request for Judicial Notice, Exhs. 1-7 (PAGA
12 settlement approval orders awarding incentive payments to representative PAGA plaintiffs
13 ranging from \$5,000 to \$20,000). Here, Plaintiff seeks a service award of \$5,000. *See* Settlement,
14 § III.4.b. This request is reasonable given Plaintiff’s efforts in this case and the risks he undertook
15 on behalf of Aggrieved Employees, especially given his status as a current employee of Apria.
16 Solomon Decl., ¶¶ 2-7. Plaintiff provided substantial factual information and documents to
17 counsel, assisted in identifying potential witnesses, and participated in numerous discussions with
18 Plaintiff’s counsel regarding the case. *Id.*; *see also* Haines Decl., ¶ 26. Accordingly, Plaintiff’s
19 requested service award is appropriate and justified as part of the Settlement.

20 ///

21 ///

22 ///

1 **V. CONCLUSION**

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

5
6 Dated: January 6, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

7 By: 
8 Paul K. Haines
9 Attorneys for Plaintiff and
10 Aggrieved Employees
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